

Dr Cathy Wilkinson
Chief Executive Officer
Environment Protection Authority
Email: Cathy.Wilkinson@epa.vic.gov.au

6 July, 2020

Ref: 478450

Dear Cathy,

Re: Maddingley Brown Coal and West Gate Tunnel Project – New Environment Protection (Management of Tunnel Boring Machine Spoil) Regulations 2020 (S.R. No. 62/2020)

On Friday 3 July, 2020 Council became aware of the new Regulations (attached) which are dated 30 June 2020.

To our knowledge there has been no consultation about the Regulations with local government, certainly not with Moorabool Shire Council.

The Regulations came into existence whilst both the EPA and the Minister for Planning are assessing an active application, to which the Regulations clearly relate.

The Regulations require only that an EMP be submitted for the approval of the EPA. The EMP must contain self-formulated specifications i.e. formulated by the proponent. There are no empirical standards for the specifications.

The Regulations are an enabler that will allow the MBC to take spoil from the West Gate tunnel as long as they submit an Environmental Management Plan to the EPA. It throws into serious question the balance of the regulatory regime in relation to that spoil.

Following on from the above concern, Council require urgent clarification on the following:

1. How does the EPA intend using these new Regulations in assessing the MBC application at this advanced stage, including any changes in the assessment process and/or criteria?
2. Considering the lack of detail provided in the new Regulations, what role will the HHERA and the other technical reports play in deciding the MBC application having regard to the new Regulations?
3. What is the process from here?

Given the uncertainty as to when decision making will be finalised on the MBC proposal, we require your response to the above concerns and questions immediately.

Yours sincerely,



Derek Madden
Chief Executive Officer



Authorised Version

**Environment Protection (Management of Tunnel
Boring Machine Spoil) Regulations 2020**

S.R. No. 62/2020

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Authorised Version

STATUTORY RULES 2020

S.R. No. 62/2020

Environment Protection Act 1970

Environment Protection (Management of Tunnel Boring Machine Spoil) Regulations 2020

The Governor in Council, on the recommendation of the Authority, makes the following Regulations:

Dated: 30 June 2020

Responsible Minister:

LILY D'AMBROSIO

Minister for Energy, Environment and Climate Change

CLAIRE CHISHOLM
Clerk of the Executive Council

1 Objectives

The main objectives of these Regulations are—

- (a) to provide a mechanism for the management and disposal of tunnel boring machine spoil to protect human health and the environment; and
- (b) to make a consequential amendment to the Environment Protection (Scheduled Premises) Regulations 2017.

2 Authorising provision

These Regulations are made under section 71 of the **Environment Protection Act 1970**.

3 Definitions

In these Regulations—

containment system means a system used for the containment of tunnel boring machine spoil;

environment management plan means a plan submitted to the Authority for approval under regulation 6;

specifications for containment of tunnel boring machine spoil means specifications set out in an environment management plan as to the qualities and characteristics of tunnel boring machine spoil suitable for containment in a containment system;

spoil includes soil, rock, sludge and water;

the Act means the **Environment Protection Act 1970**;

tunnel boring machine spoil means spoil generated by the operation of a tunnel boring machine used for the purposes of developing transport infrastructure.

4 Exemptions for receiving tunnel boring machine spoil

- (1) Sections 19A and 20(1) of the Act do not apply to the occupier of a scheduled premises in respect of the receipt, storage, treatment, reprocessing, containment, handling or discharge or deposit onto land of tunnel boring machine spoil if—
 - (a) the occupier submits an environment management plan for the premises to the Authority; and
 - (b) the Authority approves that environment management plan.

- (2) Section 27A(2) of the Act does not apply to a person who deposits or permits to be deposited tunnel boring machine spoil at premises for which the occupier holds an environment management plan approved by the Authority.

5 Receipt of tunnel boring machine spoil at premises with an approved environment management plan

An occupier of premises who holds an environment management plan approved by the Authority must ensure that, at the premises for which the plan is held—

- (a) tunnel boring machine spoil is managed and disposed of in accordance with the environment management plan; and
- (b) the receipt, consolidation and dewatering of the tunnel boring machine spoil occurs on an impervious surface ("the processing area"); and
- (c) tunnel boring machine spoil is received in the processing area; and
- (d) no liquids, slurry or sludge escapes, spills or leaks from the processing area; and
- (e) the processing area is secured to prevent public access; and
- (f) the boundary of the processing area is at least 200 metres from any building that is a sensitive land use, including a residential dwelling, a health service, a childcare centre or an education centre; and
- (g) tunnel boring machine spoil is not removed from the processing area until it is determined, in accordance with the methodology set out in the environment management plan, if it meets the

- specifications for containment of tunnel boring machine spoil; and
- (h) any spoil that does not meet the specifications for containment of tunnel boring machine spoil is assessed to determine if it is prescribed industrial waste and, if it is prescribed industrial waste within the meaning of the Environment Protection (Industrial Waste Resource) Regulations 2009¹, categorised in accordance with those Regulations; and
 - (i) subject to paragraph (j), any tunnel boring machine spoil that does not meet the specifications for containment of tunnel boring machine spoil is, once removed from the processing area, deposited at a site licensed to accept industrial waste of that kind; and
 - (j) leachate generated in the processing area, including liquid generated from dewatering of tunnel boring machine spoil, is analysed in accordance with the requirements for leachate sampling and analysis set out in the environment management plan and removed from the processing area—
 - (i) if the analysis determines that the leachate meets the specifications for reuse set out in the environment management plan, for the purposes of reuse; or
 - (ii) for discharge or deposit into the sewerage system of a water corporation within the meaning of the **Water Act 1989** if the discharge or deposit occurs in accordance with a trade waste agreement under that Act; or

- (iii) for deposit at a site licensed to accept industrial waste of that kind; and
- (k) no dust generated by the receipt, storage, treatment, reprocessing, containment, handling or discharge or deposit onto the premises of tunnel boring machine spoil is discharged or emitted beyond the boundary of the premises that results in a risk of harm to human health or the environment; and
- (l) the containment system is designed and constructed in accordance with the environment management plan; and
- (m) the containment system is not used to contain any waste that is not tunnel boring machine spoil; and
- (n) the containment system is not used to contain tunnel boring machine spoil that does not meet the specifications for containment of tunnel boring machine spoil; and
- (o) the containment system is not used to contain tunnel boring machine spoil that contains free liquid as determined by Method 9095B - Paint Filter Liquids Test (Revision 2) published by the United States Environmental Protection Agency in November 2004; and
- (p) the following information is recorded and retained at the premises for at least 2 years—
 - (i) the quantity of tunnel boring machine spoil received at the processing area and the date on which it was received;
 - (ii) the quantity of tunnel boring machine spoil removed from the processing area for deposit in the containment system and the date on which it was removed and deposited;

- (iii) the quantity of leachate removed from the processing area for the purposes of reuse and the date on which it was removed;
 - (iv) the quantity of leachate removed from the processing area for discharge or deposit into the sewerage system of a water corporation;
 - (v) the quantity of tunnel boring machine spoil and leachate removed from the processing area for deposit at a site licensed to accept industrial waste of that kind and the date on which it was removed; and
- (q) any pollution incident at the premises or escape, spill or leak of waste outside the processing area is reported to the Authority in writing as soon as is practicable and that the report includes the following information—
- (i) the time, date and location of the incident;
 - (ii) the nature of the incident;
 - (iii) the circumstances in which the incident occurred (including the cause of the incident, if known);
 - (iv) the name of the person reporting the incident; and
- (r) a copy of the environment management plan is available at the premises.

Note

It is an offence against section 27A(1)(b) of the Act to contravene any regulations relating to industrial waste.

6 Environment management plan

- (1) An occupier of any premises may apply to the Authority for the approval of an environment management plan for those premises.
- (2) An environment management plan must, to the satisfaction of the Authority, include the following—
 - (a) a description and map of the location of the premises at which tunnel boring machine spoil is to be received;
 - (b) a plan of the premises identifying the location of the processing area for the purposes of regulation 5(b) and the location of the containment system;
 - (c) a description of the physical characteristics of the premises and elements or segments of the environment adjacent to the premises;
 - (d) the existing and proposed uses of the premises and elements or segments of the environment adjacent to the premises;
 - (e) a description of the activities to be undertaken at the premises;
 - (f) a description of the tunnel boring machine spoil to be received at the site;
 - (g) the specifications for containment of tunnel boring machine spoil at the premises;
 - (h) the methodology for determining if tunnel boring machine spoil meets the specifications for containment of tunnel boring machine spoil;
 - (i) an assessment of the risk of adverse impacts from the receipt, storage, treatment, reprocessing, containment, handling or discharge or deposit onto the premises of

- tunnel boring machine spoil ("the Activities") on any beneficial uses of the environment;
- (j) management arrangements and operating conditions designed to minimise the risk of adverse impacts from the Activities on any beneficial uses of the environment;
 - (k) detailed designs and technical specifications of the processing area for the purposes of regulation 5(b) and the containment system at the premises, including features intended to minimise the risk of adverse impacts from the Activities on any beneficial uses of the environment;
 - (l) a construction quality assurance plan for the containment system at the premises;
 - (m) requirements for leachate sampling and analysis;
 - (n) the specifications of the qualities and characteristics of leachate that is suitable for reuse and an identification of activities for which that leachate can be reused;
 - (o) details of the method to be used to measure and record the information required to be recorded and retained under regulation 5(p);
 - (p) a monitoring program to demonstrate compliance with the environment management plan;
 - (q) requirements for an environmental auditor to audit the risk of harm actually or potentially arising from the Activities at the frequency specified in the environment management plan;
 - (r) a pollution incident plan setting out how any pollution incident will be responded to;

- (s) a report prepared by an environmental auditor assessing the suitability of the detailed designs, technical specifications, construction quality assurance plan, monitoring program and pollution incident plan in achieving the requirements and objectives of these Regulations;
 - (t) how the environment management plan is to be reviewed.
- (3) The Authority may only approve an environment management plan if it is satisfied that the plan, together with these Regulations, adequately protects human health and the environment from the harmful effects of pollution and waste.
- (4) If the Authority approves an environment management plan, it must publish the plan on its website.
- (5) The Authority must ensure that commercially sensitive information contained in an environment management plan is not published under subregulation (4) except with the consent of the person to whom the information relates.
- (6) In this regulation, ***commercially sensitive information*** means information that relates to matters of a business, commercial or financial nature, the disclosure of which would be likely to unreasonably expose a person, an authority or an associated entity to commercial or financial disadvantage.

7 Amendment of Environment Protection (Scheduled Premises) Regulations 2017

In regulation 8 of the Environment Protection (Scheduled Premises) Regulations 2017²—

- (a) in paragraph (b), for "Schedule 1." **substitute** "Schedule 1; or";

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(b) after paragraph (b) **insert**—

"(c) regulation 4(1) of the Environment
Protection (Management of Tunnel
Boring Machine Spoil) Regulations
2020."

Endnotes

¹ Reg. 5: S.R. No. 77/2009 as amended by S.R. Nos 25/2015, 136/2016, 152/2016 and 72/2017.

² Reg. 7: S.R. No. 45/2017.

Table of Applied, Adopted or Incorporated Matter

The following table of applied, adopted or incorporated matter is included in accordance with the requirements of regulation 5 of the Subordinate Legislation Regulations 2014.

Statutory rule provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
Regulation 5(o)	Method 9095B - Paint Filter Liquids Test (Revision 2) published by the United States Environmental Protection Agency in November 2004	The whole