

# NSW watchdog failed to act on contamination risk despite ‘damning’ asbestos findings

**Exclusive:** environmental regulator has known for more than a decade that contaminated soil fill might have been used in childcare centres, schools and parks

[Lisa Cox](#), [Catie McLeod](#) and [Tamsin Rose](#)

Mon 29 Jan 2024 01:00 AEDT Last modified on Tue 30 Jan 2024 10:54 AEDT

The [New South Wales](#) environmental regulator has known for more than a decade that producers of soil fill made from construction and demolition waste were failing to comply with rules to limit the spread of contaminants such as lead and asbestos into the community.

Internal documents from the Environment Protection Authority (EPA), obtained by Guardian Australia, warned widespread breaches by industry meant potentially contaminated product might have been applied to land across the state, including at childcare centres, residential areas, schools and parks.

But the regulator walked away from a proposal to tighten regulations in 2022 after it received pushback from the waste industry warning the policy changes would force up the cost of landfill disposal, drive more waste into landfill and force skip bin companies out of business.

## Soil fill could contain asbestos fibres

The potentially contaminated product, known as “recovered fines”, is a soil or sand substitute made from the processing of construction and demolition waste, including skip bin residue, after all large recyclable material has been removed.

It is a different product from the [contaminated mulch recently found in Rozelle parklands](#). But experts say that unlike the bonded asbestos found in Rozelle, which is relatively harmless unless broken apart, recovered fines could contain asbestos fibres, which pose a greater risk to human health.

“Fibrous asbestos poses risk [because] inhalation can take it into your lungs and the fibres then get stuck in the lungs. It doesn’t go away,” said Prof Ravi Naidu, an internationally recognised expert in soil pollution from the University of Newcastle.

Waste facilities in NSW produce about 700,000 tonnes of recovered fines each year for application on land including landscaping, sporting fields and residential developments, according to the EPA. The product is not allowed to be used on agricultural land or around water infrastructure.

“The community will be rightly outraged that the profitability of industry appears to have been put above community safety by the EPA,” said the NSW Greens MP Kobi Shetty, whose seat of Balmain takes in the Rozelle parklands where bonded asbestos was discovered in mulch.

“If you look at the evidence, it’s pretty compelling that there’s a large problem.”

## Widespread breaches

Documents released through government information public access laws as part of a Guardian Australia investigation show two enforcement investigations by the regulator – one in 2013 and

one in 2019 – found widespread breaches by waste facilities of regulations that require producers of recovered fines to make sure their product is safe for reuse in the community.

Under NSW resource recovery regulations, producers of the processed waste must ensure their product does not exceed limits on contaminants such as lead, cadmium, plastics and glass.

There is no requirement they test specifically for asbestos.

The detailed results of the EPA's investigations have not been released previously and include a finding in 2013 that 94% of industry had not complied with at least one aspect of the regulations.

In a follow-up investigation in 2019, the EPA reviewed about 50,000 pieces of testing and sampling data from 21 waste facilities and found 71% had exceeded the absolute maximum concentration limit for a chemical or physical contaminant at least once over a two-year period, with the most frequent breaches identified for metals, glass and rigid plastics, pH levels and lead.

## **More than half of samples contained asbestos**

The NSW regulations for recovered fines do not require facilities to test for asbestos and the 2019 review found only 29% of facilities had requested asbestos testing.

In a second stage of that investigation, the EPA took its own samples at 14 facilities. That round of testing, according to an EPA industry presentation, found 57% of facilities had asbestos in their recovered fines.

Some of the EPA's findings from its 2019 investigation relating to poor industry compliance, including the asbestos contamination, [were made public](#) by the regulator in 2022 when it proposed a series of reforms.

The documents show that between 2013 and 2022, the EPA gave extensive consideration to tightening regulations based on the findings of its enforcement campaigns.

One preliminary analysis of potential options highlighted the potential risks of a business-as-usual approach by pointing to the 2013 finding that 94% of industry had not complied with at least one aspect of the regulations.

“This means that up to 658,000 tonnes (94% of 700,000 tonnes) of material produced annually may not have complied with the order,” the document states.

“This non-compliant material may be applied on sensitive land uses such as residential, child care facilities, schools and parks.”

## **Children at risk**

A spokesperson for the EPA told Guardian Australia the human health and environmental risks associated with recovered fines were low because the products were “generally used in low-contact situations, such as engineering fill and pipe bedding”.

The community needs to be placed first to protect them from unnecessary risks of harm.

But Mark Taylor, an honorary professor at Macquarie University who specialises in environmental contamination, said “the ultimate end use of recovered soils and fines is unknown”.

He said the products “could end up being used in the most sensitive environments involving young children under the age of five”.

Small children have a lower body mass index and are more likely to put things in their mouth so pollutants pose a greater risk to their health, experts say.

“If you’re going to have unfettered use of these products, you need to have the most conservative standards applied to the materials in order to protect human health where the risk is greatest,” Taylor said.

“To not do so means the industry is complicit and wilfully contaminating the environment.”

Taylor acknowledged the recovery and processing of waste for new uses was a “herculean task”, but said the public needed to know that products were safe and fit for purpose.

“While it is critical that resources are reused and recycled wherever possible to assist in meeting sustainable outcomes, the community needs to be placed first to protect them from unnecessary risks of harm.”

## **Proposed changes**

According to the documents obtained by Guardian Australia, the EPA considered a tough approach that involved revoking the existing regulations for recovered fines and introducing site-specific ones, which would have meant the material could not be applied to land as a soil or sand substitute or for landscaping purposes unless a facility demonstrated its recovered fines were high quality.