

## **CONTAMINATED SITES BILL 2002**

### *Committee*

The Deputy Chairman of Committees (Hon Simon O'Brien) in the Chair; Hon Tom Stephens (Minister for Local Government and Regional Development) in charge of the Bill.

#### **Clause 1: Short title -**

Hon BILL STRETCH: I will reflect briefly on the extensive comments made during the second reading debate on the Bellevue site. This ties in rather neatly with the comments I made on an earlier Bill concerning environmental protection legislation. It is worth recording in *Hansard*, if not elsewhere, that the Bellevue site originally was the site of the RefinOil project, which in its time was hailed as one of the great steps forward in environmental management. Until then there was virtually no recognised clean way to get rid of the enormous amount of sump oil from industry, and particularly from the automotive industry. This underlines the points I was making on the other legislation, which I would rather not mention, about doing what is right at the time only for that to be found, a long time down the track, to have turned into a bit of a nightmare. I am pleased to report, having now made some inquiries and having briefly spoken to the minister's staff, that the modern way of disposing of those oil wastes is vastly improved. In fact, the waste oil is now totally absorbed in very heavy residues. I understand that in the early days of RefinOil this waste could not be handled adequately. It is now incorporated as heavy sludge in bitumen road-making products. That waste is now incorporated in a more inert form, and certainly makes a useful contribution to the economy. I thought those points were worth making. That underlines the problems about going in too heavily with retrospective penalties on industry. I think it would have been in the last days of possibly even the Hawke Government that RefinOil got going, because it was not long after I first worked in Western Australia. Bulldozers, of course, produce massive quantities of waste oil. When we changed oils we would put aside the waste oil in drums and deliver it to RefinOil for re-refining. When that company went under, we just tipped the air cleaner and every other oil on the nearest fire and burnt it, which could be done without penalty in those days. However, no-one would dream of doing that now. Members should be wary of that.

I fully support this legislation. I will make a couple of queries during the committee stage on the transport of oil to and from the re-refineries, because they still provide a massive service to industry. We do not want to get in the way of that in any way. I understand that they may be impacted upon by other legislation, but we will explore that issue when we get further down the track.

#### **Clause put and passed.**

#### **Clause 2 put and passed.**

#### **Clause 3: Interpretation -**

Hon ROBIN CHAPPLE: After having had discussions with some of the minister's advisers, I wish to get a firm view of how tailings dams will be reported as classified or recorded. I require clarification of how the various aspects of tailings dams will be covered by the remediation section of this Bill. There are various elements, such as water forming on top of a tailings dam after it has been relinquished. The tailings dam would remain a contaminated site on the register but might, during its life, cause further contamination due to the natural environment.

Hon TOM STEPHENS: Hon Robin Chapple spoke at some length on the need for this Bill to apply to tailings dams, and the Government agrees. The Bill was drafted with that intent and we are of the view that it achieves this. The definition of "contaminated" in clause 4 refers to a substance present at the above background concentrations. This would certainly apply to tailings dams. At the end of the life of a mine, tailings dams are usually closed, covered and rehabilitated so that they pose no risk to human health or the environment while the cover remains intact. People who know of their existence will be required to report them because there is still the potential for a risk to human health or the environment if contaminated material is disturbed. Tailings dams are likely to be classified contaminated restricted use, and the restriction will be that the contaminated material should not be disturbed. This would be recorded on the title and in the database so that future landowners and occupiers could be protected. However, there would be no immediate requirement to remediate the contamination while the cover remained intact and effective.

Hon ROBIN CHAPPLE: Should constituents of the registered site move beyond that site over an extended period, would the site expand to include constituents? Material might move off the site through an aquifer.

Hon Bill Stretch; Hon Robin Chapple; Mr Tom Stephens; Deputy Chairman; Hon Jim Scott; Hon Robyn McSweeney; Hon Bruce Donaldson

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The DEPUTY CHAIRMAN: I wonder whether we are reading a little too much into the interpretation clause at this stage. It may be more convenient for the Committee to consider some of these detailed matters when we get to part 3 of the Bill, which deals with remediation of contaminated sites.

Hon JIM SCOTT: Clause 3(1) states -

**“contaminated”** has the meaning given by section 4;

Does this terminology include organic material such as genetic material, as well as other substances? For instance, recent news articles have referred to the proposal to get rid of mice by introducing a genetically modified virus. The community would be concerned about the possibility of that type of material changing its form - as the severe acute respiratory syndrome virus has done - and perhaps getting into other species or impacting on native marsupials etc. There are many native mice in the wild, but I am talking also about humans because some viruses can also be passed on to humans if they change form. Would that sort of material be covered under the definition of “contaminated”?

Hon TOM STEPHENS: The answer to the first question asked by Hon Jim Scott is no, it does not cover genetic material. However, it does cover biological pathogens.

**Clause put and passed.**

**Clauses 4 to 6 put and passed.**

**Clause 7: State bound -**

Hon ROBYN MCSWEENEY: This clause states, “This Act binds the State.” I was wondering why it is not the Crown, and whether there is any legal difference between binding the State and binding the Crown.

Hon TOM STEPHENS: There is no legal difference.

**Clause put and passed.**

**Clauses 8 and 9 put and passed.**

**Clause 10: Exemptions from Act -**

Hon TOM STEPHENS: I move -

Page 7, after line 14 - To insert -

if, in the opinion of the Minister -

(d) it is in the general interest of the public to do so; and

(e) no significant risk to human health, the environment or any environmental value will fail to be dealt with under this Act as a result of the order.

(2) Before making an order the Minister -

(a) is to consult with the Minister responsible for the administration of the *Health Legislation Administration Act 1984* and, if possible, reach agreement on any proposed aspect of the order relating to human health; and

(b) may seek comments from any public authority or any person which or who has, in the opinion of the Minister, a direct interest in the proposed subject matter of the order.

Hon BRUCE DONALDSON: It would be appropriate for the minister to explain the amendment to the Committee.

Hon TOM STEPHENS: The proposed amendments will ensure that the minister may grant an exemption only when, in the minister’s opinion, it is in the public interest to do so and when no significant risk to human health, the environment or any environmental value would result. The minister must consult with the Minister for Health about aspects of the proposed exemption relating to human health, and an exemption cannot take effect until the time period for disallowance by both Houses of Parliament has passed.

**Amendment put and passed.**

Hon TOM STEPHENS: I move -

Page 7, after line 19 - To insert -

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- (3) The Minister is to fix the day on which an order made under subsection (1) comes into operation by notice to be published in the *Gazette*, unless the order is disallowed under section 42(2) of the *Interpretation Act 1984* as applied by subsection (9).
- (4) The day fixed under subsection (3) is to be after there is no longer any possibility of the order ceasing to have effect under section 42(2) of the *Interpretation Act 1984* as applied by subsection (9).

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 11 and 12 put and passed.**

**Clause 13: CEO to classify sites -**

Hon ROBYN McSWEENEY: I move -

Page 12, after line 28 - To insert -

- (c) shall consult with the owner and occupier of the site;

The reason I am resubmitting this amendment from the other place is that we believe it is very important. The CEO must notify the owner or occupier that the site is being assessed. However, there is a huge difference between the action of assessing a site and classifying a site. The owner/occupier is involved with assessment, yet he is excluded from the classification process. Why would that be? We believe it is the owner's right to be informed of the classification. Who has a direct interest in the classification of a site? Would it be a neighbour or a select interest group?

Hon TOM STEPHENS: In answer to the second question, it would vary from site to site. Hon Robyn McSweeney is absolutely right; her amendment has been previously canvassed in the lower House for exactly the same reasons that she has canvassed and with the same arguments to support it. The arguments for rejecting it that the Government makes in this Chamber are the same as those given in the other House; that is, each owner and occupier will be notified that a report has been received, will be informed of the classification process and will have the opportunity to volunteer relevant information. Classification of a site is done on technical grounds by the Department of Environmental Protection in consultation with the Department of Health and anyone else who may have a technical input based on the available information and evidence. Owners and occupiers will be notified of the classification, pursuant to clause 15, and the appeal rights in clause 18 will apply. The department is concerned that the proposed amendment would delay classification of sites, as owners and occupiers may object to the sites being classified and may involve lawyers. This would frustrate the purpose of the Bill, which is to ensure that risk sites are identified and classified as soon as possible.

Hon JIM SCOTT: Can Hon Robyn McSweeney give a bit more information about the intention of her amendment before the Greens (WA) make a decision on it?

Hon ROBYN McSWEENEY: People have a right to know that a classification has been given and when it was given. It is very wrong. People will be notified when the site is being assessed but they will not be told when the site has been classified. That process should be followed all the way through.

Hon TOM STEPHENS: I draw the member's attention to clause 11(7), which specifically caters for the notification that she argues is needed in the framework of the legislation. Notification for the owner and occupier is required and the report will be received under the interplay of clauses 11 and 15.

**Progress reported and leave granted to sit again.**

*Sitting suspended from 12.58 to 2.00 pm*