CONTAMINATED SITES BILL 2002

Second Reading

Resumed from 11 September.

HON JIM SCOTT (South Metropolitan) [12.30 pm]: I spoke for a couple of minutes on this Bill last week. I pointed out that contaminated sites affect many people in this State, and all over the world in fact. Usually, the effect is an adverse effect. It makes people ill, reduces the value of their property and contaminates water. There are many examples in Western Australia of contaminated sites. The problem for government, of course, is that these sites are incredibly expensive, and in some cases very difficult, to clean up. I believe that the Omex site in Bellevue, for instance, has cost something like $12 million to clean up.

Hon Derrick Tomlinson: The contract for the actual clean-up is $6 million.

The DEPUTY PRESIDENT (Hon George Cash): Order, members! Would Hon Derrick Tomlinson speak up, so to speak, because Hansard is having difficulty hearing, and would other members either resume their seats or leave the Chamber, but certainly stop talking. It is very difficult to hear Hon Jim Scott today.

Hon JIM SCOTT: The clean-up that was done recently was only part of the total cost. There have been many other costs along the way. It was an issue that went on for many years and impacted on the community. Some of the costs, of course, have not yet been accounted for, because the job was not done properly. There is still a problem there with contamination escaping from the site.

Hon Derrick Tomlinson: At the Omex site?

Hon JIM SCOTT: Yes. The clean-up was not entirely successful, and my understanding is that at this point it has not been completed. The other costs that are often forgotten are the costs to the community surrounding those sites. Property values are seriously undermined when people discover that these sites exist in the vicinity. There was a good example of that in Cockburn at a site known as Vela-Luka Park, when bubbling black material came to the surface in a park that included a children's playground. That site had been cleaned up once before. It had been the site of the Fremantle gasworks. The Government bought it from a private operator for a large amount of money. The land had been developed but not adequately cleaned up. Now further work must be done in that area and the people who live there have had their properties devalued and are suffering economic consequences.

The major problem with contaminated sites, though, is the impact on people's health and the environment. I recently attended a meeting in South Fremantle. People who live adjacent to the tip site said that they had found elevated levels of a number of heavy metals in their underground water supply. I understand that at the Subiaco redevelopment, another emission has been found in the water. That is a gas that can impact on people's health. It is released when sprinklers spray the water around. Those sorts of impacts were not thought about at the time these sites were put in place. When we look at the Bill in detail, a number of issues will arise from the consequences that were not thought of.

Although the Bill is generally a very good Bill, it has some weaknesses in that some areas have been left out of it. My colleague Hon Robin Chapple is very interested in finding out whether the tailings dams on the mine sites around Western Australia will be regarded as contaminated sites. Significant contamination is occurring at those sites. According to the explanatory memorandum that we have been given, land is not contaminated simply because a substance is present in quantities above a certain level. It states -

> The presence of the substance at above background concentrations must pose a risk to human health or the environment for the land to be classified as contaminated.

It goes on to state -

> . . . regulations can be made to provide that land, water or a site is not contaminated under certain circumstances. It is proposed to provide, by regulation, that land, water or a site is not contaminated where:
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> (a) the land is affected by salinity; or
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> (b) the substance is present because of the correct application of a fertiliser, herbicide or pesticide.

This may be beneficial in an industry, or in horticulture or agriculture. However, unfortunately, areas that are currently used for industry will become urbanised in the future, and there are many examples of this around the State. Mr Deputy President (Hon Simon O'Brien), you will be aware that in the south of your electorate a number of contaminated sites have been redeveloped at Catherine Port and South Fremantle. These sites pose significant risks to the community if they are not cleaned up properly and carefully; otherwise the act of cleaning

up can sometimes cause people to become ill. There were certainly claims about that by the community during the cleaning up of the Omex site.

The Bill comprehensively deals with many very important issues regarding the responsibility for pollution. Although I certainly support the Bill, I will focus on a few areas that I am not particularly happy with. The deficiencies that we have gleaned in the Bill so far fall into two categories: ecological sustainability and social equity. In the area of ecological sustainability, we believe the Contaminated Sites Bill should reflect the current national and international environmental standards and policies and adhere to the central principles of ecologically sustainable development. I know that the Gallop Government has made a lot of its sustainability policy in recent months, but it dropped the ESD principle from this major piece of environmental legislation at the very first opportunity it had to incorporate it. We think that the Bill should adhere to those concepts and that the precautionary principle and intergenerational equity, which were removed from the Bill in the Legislative Assembly, should remain in the legislation. We recognise that there is a lot of misunderstanding about the application of the precautionary principle. I think that has come about because people have deliberately set out to vilify the very thought that somehow a precautionary approach is not appropriate because it is too difficult to adopt. However, the proper description of precautionary principle makes it quite clear; it is not the muddled approach that people say it is.

The precautionary approach that has been adopted by the European Union chemical policy directorates recognises that waiting for full scientific certainty about the impacts of chemicals and other pollutants is not a sound management approach. The problem is that, as time goes by, science is discovering more about the interaction of pollutants. It has become very clear that the traditional risk assessment approaches are inadequate. Unfortunately, the Government seems to want to go down the risk assessment road. We think that will result in unnecessary exposure and irreversible consequences in some cases. I have been involved with the Wagerup issue for a number of years through the Standing Committee on Environment and Public Affairs, which has had a number of public hearings on the issue. I have become very aware from evidence given by experts that the types of standards that are set and used under the traditional risk assessment process are not adequate. Each type of pollutant is considered on its own, as though it would have an effect that was entirely disconnected from the hundreds or thousands of other pollutants that might be on a contaminated site. That is simply a nonsense. On top of that there are a number of standards in Australia. For instance, from the expert evidence that I have been presented with, it appears that the trigger level for arsenic is 200 times too high before action is taken. People are being harmed by levels of pollutants that are regarded as safe.

Using the precautionary approach, a given chemical can be banned or phased out because it is part of a family of chemicals already known to have detrimental effects on human health and the environment. The difficulty is that a lot of those chemicals have not been properly evaluated and usually have been evaluated in isolation. The interesting thing I found in my research is that a vast number of chemicals have never been tested for their impacts on human health. Thousands of these types of chemicals have been regularly used in the community, but no tests have been done on their impacts on health or the environment. If the basis of risk assessment is that a chemical has been used in the community and has no known health effects, quite often that is because nobody has looked for them; in fact, most of the time people have not looked for them. Adequate health tests have not been done on the vast majority of chemical compounds before their release.

The traditional risk assessment has been used as the primary tool for environmental toxicology for decades. Although there have been lots of refinements to increase confidence in the levels of outcomes, risk assessment still has not been able to reflect the true impacts of the chemicals on human health and the environment. Quite often risk assessment is at conflict with the precautionary principle. The traditional system asks how much of a given chemical people can tolerate before a health impact occurs, whereas the precautionary principle asks what alternatives are available to releasing a chemical that is suspected of causing health or environmental impacts. There is a lack of scientific certainty with risk assessment. It presumes that all chemicals act in isolation; in fact, when some chemicals are combined, the impact can be reduced. For instance, we know that if an acid and a base are combined, they counter each other. However, there are many chemicals that can have a compounding effect on not only the environment but also human health. Rather than two damaging chemicals being twice as damaging, sometimes they can be 10 times as damaging because their particular combination causes greater health effects. The adoption of the precautionary principle in the Bill could fill the gap for decision makers who are undecided on how to classify or manage an affected site. With the risk assessment system, people will make mistakes and those who will pay for that will be sometimes the Government and, on most occasions, the people who have been harmed.

My electorate officer has put together some scenarios comparing the risk assessment model with the precautionary principle for the same issue. In scenario A, which is risk assessment alone, a suspected contaminated site has been around for 30 years and has a history of complaints made by local residents, who claim ground water is being polluted and people have been getting sick for decades because of the site. The Bill

is passed into law, and the site owner is obliged to investigate the site. The laboratory analysis of the soil and ground water identifies 60 chemicals and metals, all of which are one part per million below the respective acceptable criteria for human health. Under the current risk assessment practice, the site would be deemed safe, even though it contains considerable and widespread contamination. Under the current interpretation of this Bill, it would appear that the site would not even be considered to be a contaminated site. In that case the site would not be listed as a contaminated site and could legally be subdivided and sold for residential housing, thereby bringing even more people into close exposure situations with the contaminants. The site would not even need to be remediated. Two years then pass and many of the new residents also become ill. The long-term residents combine to petition for an epidemiological investigation and clinical study of the area's inhabitants. The results confirm that people are being made ill by a cocktail of chemicals acting in concert on the immune and endocrine systems of the inhabitants. Because risk assessment does not account for synergy or cumulative impacts over time and does not recognise immune or endocrine system impacts, the problems are invisible to a risk-driven process. In this way many sites will not be classified accurately, and harm to people and ecosystems will continue.

In scenario B, which is the precautionary principle in conjunction with risk assessment, a suspected contaminated site has been around for 30 years and has a history of complaints made by local residents, who claim ground water is being polluted and people have been getting sick for decades because of the site. The Bill is passed into law with the precautionary principle in place, and the owner is obliged to investigate the site. The laboratory analysis of the soil and ground water identifies 60 chemicals and metals, all of which are one part per million below the respective acceptable criteria for human health. While it is recognised that the levels of contaminants are just below the acceptable criteria, regulators decide that the range and complexity of the pollutants, the health complaints from residents and the lack of certainty inherent in risk assessment, warrants closer attention being paid to the nature of the site. An epidemiological investigation and clinical study of the area's inhabitants is commissioned, and it confirms that the contaminants are having an impact on human health, although the specific chemicals responsible cannot be isolated. As a precautionary measure, the site is deemed to be contaminated, and remedial measures to remove the contamination are ordered. No new cases of illness are reported in the community following the remediation.

If this scenario seems far fetched, we need consider only the case of Alcoa Wagerup. Many workers at the Alcoa facility and members of the nearby community complained to regulators that fumes from the plant were making them sick. Air monitoring was commissioned. I do not intend to read the part of the document that deals with this matter, because I know this situation very well. Even though a significant number of people were being made ill, the air monitoring did not show any pollutants that surpassed the allowable levels. Therefore, the emissions were not regarded as causing the illness of workers and people in the community. The Western Australian Government then commissioned a panel of clinicians, including industrial hygienists, to investigate the sick workers and residents, and they confirmed that they were being made ill by the cocktail of chemicals from the refinery. If the Government had used just the risk assessment process, that would not have been regarded as a problem. Mr Deputy President, do you want me to seek leave to continue my remarks at a later stage?

Hon Kim Chance: We will be able to get the Bill through this week if you sit down.

Hon JIM SCOTT: I have some things I want to say. Obviously there will be other speakers too.

The DEPUTY PRESIDENT (Hon Simon O'Brien): Hon Jim Scott has the call, and he has 19 minutes available to him.

Hon JIM SCOTT: I am glad the Leader of the House is so interested in my speech. If the Government had used just the risk assessment criteria for Alcoa, there is no way the issue could have been dealt with properly. However, after the clinicians were brought into action, it was agreed that there was a health problem at Alcoa, and that considering that the refinery was on its own and had no other industry around it, it was likely that a mixture of emissions from that facility was causing the problem. A risk assessment would have failed to pick up a situation in which each of the emissions was below a certain level and would have led people to say that everything was okay, despite the fact that people were becoming ill.

I turn now to intergenerational equity. Originally the Government had intended to include this principle in the Bill, but when the Bill went through the lower House this principle was dropped as well. Intergenerational equity is a key principle of sustainability, which we understand the Premier is keen on promoting. Intergenerational equity implores us to make decisions that will not disadvantage future generations through the degradation and consumption of natural resources and ecosystems. If the use of risk assessment creates a loophole that will allow contaminated sites to escape classification, then we will be passing on costs to future generations. I have already outlined those costs, but they include illness, loss of value of property and not being able to use ground water. Eventually, when the medical issues emerge, taxpayers - that is, future taxpayers, not

the taxpayers of today - will end up paying the bill. We believe the intergenerational equity provisions will ensure that the Bill is clear and that any uncertainty about the status of a site is reduced and proper deliberations can be made to manage and clean up the site.

I turn now to social equity. One of the problems in the Bill is that there will be cost shifting from corporations to taxpayers, and at the same time innocent landowners who have bought into contaminated sites will be required to pay to have their sites assessed and cleaned up. I intend to put on the supplementary notice paper an amendment to this part of the Bill, because this is a real weakness in the Bill. Under the legislation, if a contaminated site is identified and that site is no longer owned by the people who were the polluters, the new owner of the site is required to have the level and type of contamination assessed. That is a very expensive exercise.

Debate interrupted, pursuant to sessional orders.

Sitting suspended from 1.00 to 2.00 pm