

CONTAMINATED SITES BILL 2002

Second Reading

Resumed from 10 April.

HON ROBYN MCSWEENEY (South West) [5.10 pm]: The Opposition will support this Bill. This legislation was initiated by the previous Government and has been continued by this Government. The relevant report of the Auditor General, "Grounds for Improvement: Government Owned or Controlled Contaminated Sites" was released in 1996-97.

This Bill seeks to identify all contaminated sites in Western Australia. By the nature of development in this State, spillage was part of the norm in agriculture, resources extraction, infrastructure and chemical and heavy industries. Western Australia's heavy reliance on ground water and its predominantly sandy soils, particularly in coastal regions, makes it especially vulnerable to land contamination. Historically, land contamination has principally resulted from poor and inadequate operational practices associated with the manufacture, use and disposal of chemicals. Major concerns have been ground water contamination, residential development of former industrial, commercial or agricultural land, abandoned industrial and waste disposal sites; accidental spillage, leakage during plant operations, storage and transportation of raw materials, use of agricultural chemicals and migration of contaminants from a neighbouring site either through soil, groundwater, surface water or air. As a population, we have become very aware of the dangers associated with spillage of contaminated waste and most thinking people will no longer tolerate any wilful damage to our environment by companies or individuals who knowingly pollute.

This Bill seeks to have contaminated sites remediated when they pose a risk to the environment or to human health. There are many contaminated sites that have yet to be identified, possibly running into the thousands. I was pleased to read that clause 19(2) provides for the CEO to ensure that members of the public have access to the contaminated sites database free of charge. The database contains a list of all sites classified according to the remediation required, whether restricted use is possible, and the remediation necessary for restricted use. In addition, a description of each location and the extent of each site will be provided sufficient to identify sites. A description of the nature and extent of the contamination for each site will be provided. Persons wishing to purchase a property will be able to determine whether a property has had any contamination. As a population grows, the demand to redevelop past industrial and commercial sites expands. Therefore, raising the importance of cost-effective and targeted remediation methods in clean-ups is warranted. At the contaminated sites conference held in March 1999, it was stated that that was a trend now seen in Perth and one that has become an issue throughout the world. Sometimes the environment can cope with spills and leaks of chemicals and nature can take care of itself. However, there are many instances when it cannot. That is when effective remediation technologies are needed. The remediation techniques used in Perth include bioremediation strategies in which naturally occurring micro-organisms can be stimulated for clean-ups, the bio treatment of hydrocarbon-impacted soil, the application of waste products to land, underground aeration strategies and phytoremediation in which plants are used to remove contaminants. In addition, construction technologies can be used to isolate contaminated soil. It has also been said that a critical concern with contaminated sites and remediation work is the risk to ground water resources. A hydrologist, Dr Steven Appleyard, said that Western Australia was fortunate to have an adequate supply of ground water and that much of it was fresh enough to use for public supply. He went on to say that, through legislation, our ground water extraction areas for public supply are well protected from contamination risks. They are in priority one areas where no hazardous chemicals can be stored or used. Outside these areas there are localised and sometimes larger areas of ground water pollution. He said the problems have come about due to old industrial sites, septic tank use and excessive fertiliser use. The risks posed by the sites have, and are being, looked at. In many cases, remediation has been initiated. That was all said in 1999. This Bill is a continuation of the work done by the previous Government. In 1994 the Government paid \$17.5 million to remediate a former gasworks site as part of the redevelopment of East Perth. In 1997 the former fertiliser manufacturing plant site at Minim Code in Mosman Park was redeveloped for residential use at a cost of \$16 million. In 1997 residential blocks at Bellevue contaminated by waste from a lubricating oil refinery that had been disposed of in a disused clay pit were redeveloped at a cost of \$7 million. In 2000 the Albany gasworks residential development near the Albany foreshore was halted when tarry wastes were discovered. Redevelopment of the site cost the Government \$9 million. However, to a private developer next to the contamination it was extreme costly and he lost a great deal of money because his development was put on hold because of the contamination. The development was caught between a change of Government. He has had great trouble in obtaining compensation.

When redevelopment of past industrial sites for residential use has commenced without first identifying the extent of the contamination and assessing the potential health risks, the subsequent costs of trying to put things right have been high. During 2002 the Government paid \$14.5 million for remediation for Port Catherine at Coogee, Vela Luka Park in Spearwood and the Department of Conservation and Land Management in

Dwellingup. At Dwellingup buried drums in state forest were suspected, and subsequently found, to contain hazardous waste.

This Bill gives the DEP power to order investigations of suspected or known sites as well as the power to order the clean-up of contaminated sites. In addition, it gives the department the power to issue hazard abatement notices when an immediate and serious risk is posed to the environment or human health. It also allows the issue of certificates, including exemption certificates. People who have previously contaminated sites that have been remediated will be required to hold an exemption certificate to prove that remediation has occurred. Other landowners or users of land for a particular purpose will be required to hold a certificate indicating that the land uses can coexist in a safe manner with the contamination.

Sites that are suspected of being contaminated must be reported to the Department of Environmental Protection as soon as reasonably practicable after there is an awareness that contamination is a possibility. There are very strong penalties in the legislation. A person must not provide information or make a statement that the person knows is false or misleading in a material particular. The penalty is \$250 000 with a daily penalty of \$50 000. A person on whom a notice is binding must ensure that the requirements of the notice are complied with within such time as are specified in the notice. The penalty is \$500 000 with a daily penalty of \$100 000. That is fairly steep. If an owner or occupier commits an offence, the penalty is \$500 000 with a daily penalty of \$100 000. These penalties seem rather excessive. I hope that much consultation will take place before they are invoked. I believe that will be the case and that these penalties are in place to catch the so-called cowboys who think that they can get away with polluting. The penalties will act as a deterrent.

There are certain types of notices, one of which is an investigation notice, and it sets out the requirements to be complied with to ensure that a site is investigated, monitored and assessed. A clean-up notice sets out the requirements to be complied with to remediate a site. A hazard abatement notice is to be given if, in the opinion of the chief executive officer, a site is contaminated and there is an immediate and serious risk of harm to human health, the environment or any environmental value.

This Bill allows the department to accredit auditors, who will be able to issue certificates, write reports and do whatever is appropriate. A contaminated sites committee is to be established. The committee is to consist of between one and five persons selected by the minister from a panel of names, and, in the opinion of the minister, each person must have suitable expertise to make decisions for the purposes of the Act. The committee is to have at least one legal practitioner and one auditor, plus three other people. The Bill states that the committee is to determine its own procedures. I ask the minister, when he wakes up, to clarify exactly what that means.

Hon Peter Foss: You are giving him nightmares.

Hon ROBYN McSWEENEY: I do not think so. That one slipped past.

Hon Tom Stephens: I am listening to every word you are saying.

Hon ROBYN McSWEENEY: Of course. I expect nothing less from the minister.

The owner of contaminated land has certain responsibilities under the Bill. The Bill assumes that when crown land has been vested in local government or another management body, that body is the owner for the purposes of the Act. The Bill establishes a hierarchy of responsibility for remediation. Primary responsibility rests with the polluter. However, if the polluter is insolvent or otherwise unavailable, or if the owner changes the use of the land so as to require remediation, the owner is responsible. As a last resort, the State will take the liability. Responsibility for remediation may be transferred to another party, but only on the approval of the CEO.

This Bill establishes two exemptions to the responsibility to clean up a site. If a person purchased contaminated land prior to the enactment of the Bill and did not know or reasonably suspect that the land was contaminated, that person may be granted a certificate of exemption if he did not subsequently cause or contribute to or fail to prevent the contamination. In addition, a person can opt for a certificate of contamination audit to cap responsibility. Upon providing an assessment of the extent and type of contamination of the site, the department may grant the certificate, and the State will take responsibility for any contamination not recorded in it.

Division 4 of part 5 establishes the contaminated sites management fund. This fund may be applied by the minister for the investigation or remediation of any site for the remediation of which the State or a public authority other than a local government is responsible. The fund is to be administered by the minister. The funds available for the investigation or remediation of any site are: moneys from time to time appropriated by Parliament for that purpose; at the discretion of the Treasurer, money received by the State from the sale of land that comprised all or part of an orphan site; moneys received or recovered by the State; moneys received by the State as a result of charges; and other moneys received for investigation or remediation carried out by the State.

Part 5 of the Bill provides that if the responsible person, in seeking to comply with a notice, is refused access to the site by the owner or occupier without reasonable excuse, that owner or occupier commits an offence and

may, if the committee so decides, become the responsible person and the person on whom the notice is binding. The rights of the owner or occupier are protected by a power to recover any losses suffered due to actions taken to comply with the notice, including losses due to interruption of business.

Part 6 of the Bill introduces certificates of contamination audit to certify that the land is contaminated or that it has been cleaned up. Part 7 contains provisions for the accreditation of contaminated site auditors. Part 8 contains appeal provisions. Appeals against decisions of the contaminated sites committee on points of law only are dealt with by the Supreme Court. Part 9 contains the enforcement provisions, and part 10 contains miscellaneous provisions. One of those is victimisation. A person who prejudices, or threatens to prejudice, the safety or career of another person, intimidates or harasses, or threatens to intimidate or harass, another person, or takes, or threatens to take, detrimental action against another person, commits an offence and will be fined \$125 000, with a daily penalty of \$25 000. I certainly do not condone the above behaviour, but I believe that in these situations mediation is a better option than a fine of this nature. I understand the reasons that the penalties are in the Bill. Once again, they are in it only to act as a deterrent.

This Bill will clear up the weaknesses relating to the Government not previously being able to progress the identification and reporting of contamination. It will enforce polluters to undertake remedial action and sets clear rules for determining the liability for land contamination. As I said, this has been ongoing since 1997.

The issue of contaminated sites is one of national significance and is subject to commonwealth-state government agreements. The National Environment Protection Council Act 1994 provides for government agreements. It provides for the NEPC to take measures to ensure nationally consistent environmental approaches within Australia. A contaminated sites assessment was issued in December 1999, and it was endorsed by the Commonwealth and all state environment ministers. This national environment protection measure documents the process for site risk assessment and contains 10 detailed guidelines on how to conduct site examinations.

The legislation before us enables and facilitates the identification of contaminated sites so that they may be recorded on a register or the database. This will ensure that those sites that pose a threat to human health or the environment are cleaned up and that the market is fully informed when those sites that are contaminated change hands. It will also facilitate the management and remediation of contaminated sites, and will inform the land transaction process so that no-one should acquire a contaminated site not knowing it to be contaminated. The Bill will be reviewed in five years.

I have read all the transcripts on this Bill in the other place. The approach was very thorough. I have put forward one amendment about classification and the owners knowing when a classification takes place. I believe the Government should look seriously at that amendment.

Another point is that when a service station owner in my electorate rang the Department of Environmental Protection for some information on cleaning up a contaminated site, he was given no help, not because the department did not want to help him but because it did not have guidelines and did not really know where it was at. I guess I am asking somebody - but I do not know who I am asking because that person is probably not listening - for an answer on that issue.

HON JIM SCOTT (South Metropolitan) [5.28 pm]: The Greens (WA) will support this legislation, which has been a long time coming. I recall that a long time ago under the previous Government we were waiting to see -

Hon Peter Foss: I started it.

Hon JIM SCOTT: That is what I am saying. We heard that the legislation was being drafted. The rumours were that the Western Australian Chamber of Commerce and Industry had used considerable pressure to stall the legislation. It is good to see that the Bill has now arrived. I congratulate all those who played a part in bringing the Bill into being. Many people do not realise the huge cost to this State that will potentially be created as a result of past contamination and possible future contamination. Members would be well aware of the site in Bellevue. The State will have spent many millions of dollars - I imagine about \$14 million - on that site overall.

Debate interrupted, pursuant to sessional orders.