

19/2011



Contaminated Sites Committee

Decision in respect of appeal against classification

Contaminated Sites Act 2003, Part 8, Division 2

Appellant: Daniel Griffen
Site: Parcel 39472 Lot 12455 on Deposited Plan 221092, Shire of Irwin
Date: 21 November 2012
Decision: That the appeal be dismissed

SUMMARY

1. The site is owned by the Crown and operated by Norwest Energy N/L (site operator) for the purpose of oil and gas exploration, including drilling.
2. The Appellant reported the site to the Department of Environment and Conservation (DEC) as a suspected contaminated site on 11 August 2011.
3. DEC classified the property known as Lot 337 on Plan 3404 as shown on Certificate of Title Volume 264 Folio 61A as *report not substantiated* under the *Contaminated Sites Act 2003* (the Act) on 10 October 2011. DEC's reasons for the classification were set out in the 'Notice of Classification' given in accordance with section 15 of the Act on 12 October 2011.
4. On 4 November 2011 the Contaminated Sites Committee (Committee) received from the Appellant an appeal against the classification, lodged in accordance with sections 18 and 79 of the Act and outlining some grounds of appeal addressed below.
5. The Appellant provided further information on 2 February 2012 in the form of general information regarding the type of drilling that was being undertaken as well as photographs of samples that he had taken. No information or evidence was subsequently provided to the Committee regarding the nature or composition of the samples taken.
6. On 14 February 2012, in accordance with section 80 of the Act, the Committee forwarded a copy of the appeal and supporting information to the CEO of DEC for its report.
7. The CEO's report dated 30 March 2012, including additional information, was forwarded on 7 May 2012 to the Appellant for response by 8 June 2012.
8. The Appellant requested an extension of time to provide submissions in response, which was granted until 1 July 2012. An email dated 30 July 2012 from the Committee requesting the submissions received no response.
9. The Committee considered the appeal and supporting documents and the CEO's report and supporting documents on 17 October and further on 21 November 2012.
10. The Committee decided that the appeal should be **dismissed**. Under section 82(2) of the Act this decision of the Committee is final and without appeal.

REASONS FOR DECISION

APPEAL GROUNDS (SUMMARY):

- a) The drilling operation may use unknown synthetic drilling additives that may leach into surrounding soils and groundwater. DEC did not carry out any investigations of the site.
- b) The waste water pond was altered by the site operator, potentially destroying the integrity of the bentonite clay lining
- c) The waste water is of unknown composition
- d) The level of the waste water has been observed to be dropping at a rate faster than evaporation alone would cause
- e) Thermally mature shale rock contains high levels of radiation
- f) DEC relied on information provided by the operator who has a vested interest in the site, and DMP which has also not undertaken any investigations

The Committee found with respect to these grounds:

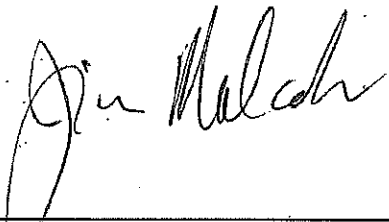
- a) Officers of DEC and the Department of Minerals and Petroleum (DMP) visited and inspected the site following the Appellant's application. DEC also obtained information from DMP and a copy of the operator's Environmental Management Plan (EMP) for the site which contained information regarding the drilling operations. Limited operations had occurred on the site when DEC officers visited the site. The officers did not observe any evidence of contamination of the site. It is not DEC's role under the Act to undertake on-site investigations to determine the contamination status of a site.
- b) The nature of drilling using bentonite, and bentonite lined tailings ponds, means that ponds necessarily 'self line' in the early stages of drilling. No evidence was provided to show that this was not occurring at this site.
- c) The composition of the waste water is indicated in the operator's EMP, and operations on the site are also subject to regulatory oversight by DMP and the Environmental Protection Authority. No evidence was provided regarding the composition of the waste water.
- d) The Committee noted that evaporation rates at the site would be relatively high, given the environment. Further, the standard drilling practice of recycling some of the bentonite clay from the waste water pond could provide the appearance of sudden drops in water level. DEC officers did not observe any indications that the water level had dropped significantly when inspecting the site.
- e) The Committee determined that there was no evidence to show that there was any radiation being moved to the surface.
- f) There is no evidence that the operator has not fully complied with DMP, DEC or the EPA.

The Committee noted that DMP and EPA are involved in regulating the site. DMP has approved the operator's EMP, which provides for remediation of the site in accordance with the requirements of DMP.

The Committee notes that while there is no evidence of contamination on the site at this time, evidence of contamination could be provided to DEC for further consideration, which may change the appropriate classification for the site.

▲ **The Committee dismisses all grounds of appeal**

Note: Section 82(2) of the Act provides that the Committee's decision under that section is final and without appeal. Section 83 of the Act provides that the CEO of DEC is to give effect to the outcome of the appeal as soon as practicable and to ensure that the details are published in the prescribed manner.

A handwritten signature in black ink, appearing to read "Jim Malcolm". The signature is written in a cursive style with a large initial "J".

**Jim Malcolm,
Chairman**

and as agent for and on behalf of
the Contaminated Sites Committee