

EDUCATION AND HEALTH STANDING COMMITTEE

INQUIRY INTO THE CAUSE AND EXTENT OF LEAD POLLUTION IN THE ESPERANCE AREA

TRANSCRIPT OF EVIDENCE TAKEN AT PERTH THURSDAY, 7 JUNE 2007

SESSION THREE

Members

Dr K.D. Hames (Acting Chairman)

Mrs D.J. Guise

Mr T.K. Waldron

Mr M.P. Whitely

Dr G.G. Jacobs

Mr P. Papalia

Hearing commenced at 1.00 pm

MURRAY, MR COLIN JEFFREY

Acting Director, Environmental Impact Assessment, Department of Environment and Conservation, examined:

HINWOOD, DR ANDREA LEE

Deputy Chair, Environmental Protection Authority, examined:

Mr T.K. WALDRON: Welcome, Mr Murray and Dr Hinwood, and thank you for coming. You probably expected to see the member for Dawesville, Kim Hames, who is the acting chairman, but unfortunately he cannot be here this afternoon. Also, Dianne Guise, the member for Wanneroo, is unwell today and cannot attend. I will make some opening comments and ask some opening questions.

This committee hearing is a proceeding of Parliament and warrants the same respect that the proceedings in the house itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as a contempt of Parliament. Do you understand that?

The Witnesses: Yes.

Mr T.K. WALDRON: Have you completed the "Details of Witness" form?

The Witnesses: Yes.

Mr T.K. WALDRON: Do you understand the notes at the bottom of the form?

The Witnesses: Yes.

Mr T.K. WALDRON: Did you receive and read an information for witnesses briefing sheet regarding giving evidence before parliamentary committees?

The Witnesses: Yes.

Mr T.K. WALDRON: Do you have any questions regarding your appearance before the committee today?

The Witnesses: No.

Mr T.K. WALDRON: The committee has received a submission from the Environmental Protection Authority. Do you wish to propose any amendments to it?

Dr Hinwood: That was provided by Dr Wally Cox. We have subsequently noted that there are incorrect dates provided in the tables on page 3 of the EPA's submission. The EPA forwarded issues raised in the submissions to the proponent on 12 November 1999, and not 7 January 2000, which was indicated in the submission. Also, Magellan Metal's response to the submission was provided to the EPA on 24 November 1999, not 31 July 2000, as indicated in that submission.

Mr T.K. WALDRON: Thank you. Before we ask any questions, do you wish to make an opening statement today?

Dr Hinwood: I will make an opening comment regarding the Environmental Protection Authority and what it does, which will set the scene for any subsequent questions.

Mr T.K. WALDRON: We have a lot of questions, so will it not be too long?

Dr Hinwood: I will be quick. The EPA is an independent statutory authority of five people. It comprises four part-time members and a full-time chair. I am currently the deputy chair and a part-time member. The EPA is serviced by the Department of Environment and Conservation. Staff who directly service the EPA are referred to as the "EPA service unit", which includes the environmental impact assessment division. Colin Murray is the acting director of that division. Although the director is employed by the Department of Environment and Conservation, the department provides advice so that the EPA may make its determinations on development proposals and planning etc. Often the day-to-day involvement requires reporting directly to the chair of the EPA. The EPA undertakes an environmental impact assessment of proposals under part 4 of the Environmental Protection Act. Once it has reported to the Minister for the Environment, it has no further involvement in any of those proposals unless there is a request to change a proposal or to revise any ministerial conditions that have been set after the EPA has provided its advice and recommendations. We do not have a regulating role in projects.

Mr T.K. WALDRON: The EPA provides information and unless it is asked back, the EPA's role finishes at that point.

Dr Hinwood: That is correct.

Mr T.K. WALDRON: Why did the EPA believe that the lead carbonate mined by Magellan would be a dangerous good?

Mr Murray: During the assessment, the EPA received varying advice as to whether lead carbonate was a dangerous good. Some earlier advice we received from the Department of Minerals and Energy of Western Australia in 1999 indicated that depending on whether it was termed "lead dioxide" or lead as a soluble compound, it would not be classified as a dangerous good. Right through to the assessment by the EPA the company had previously indicated that it was not a dangerous good. Right at the very beginning the company indicated that to us.

Mr T.K. WALDRON: Was that Magellan?

Mr Murray: Yes. By the time of the EPA's assessment, it was still not clear to the EPA whether it was classified as a dangerous good. When the EPA reported, it pointed out that one of the possibilities was that the product - the lead concentrate - could be a dangerous good in which case it would need to be regulated under the explosives and dangerous goods regulations.

Mr T.K. WALDRON: Did you report that to the Department of Environment?

Mr Murray: Yes, it was reported in the EPA's public report.

Mr T.K. WALDRON: What was the EPA's responsibility regarding ensuring that the lead carbonate was classified as a dangerous good?

Mr Murray: The EPA had no responsibility for that. That was the responsibility of the then Department of Minerals and Energy. The EPA was receiving advice and comment from the DME, but the EPA's responsibility was not related to ensuring that the DME met its statutory obligations.

Mr T.K. WALDRON: Did you or the Department of Minerals and Energy have to advise the Department of Environment of that?

Mr Murray: We had advice from the Department of Minerals and Energy that it might be a dangerous good, depending on the classification. As I said, by the time the EPA had finished its assessment, that was the only advice that we had had apart from Magellan's advice that it was not a dangerous good. At no point did Magellan point out to us that it was a dangerous good, but the issue remained a concern to the EPA to make sure that all the regulatory requirements related to the project were met. One of the things the EPA did in its public bulletin 996 was to point out that the explosives and dangerous goods regulations may be relevant to the product.

Mr T.K. WALDRON: When did that happen?

Mr Murray: The EPA report was released in September 2000.

Dr G.G. JACOBS: Mr Murray, am I right in understanding from your comments that the onus of classifying whether the lead carbonate was a dangerous good fell fully on the proponent, or the miner or the manufacturer in this case? Was the onus on Magellan?

Mr Murray: Magellan has a responsibility but the decision for classification is with the agency that is responsible for the explosives and dangerous goods regulations, which at that time was the Department of Minerals and Energy.

Dr G.G. JACOBS: Was there no role for the EPA to question it, to query it or to investigate it itself? If Magellan said that it was not a dangerous good, could the EPA have decided to take a closer look - if the onus is on the company - to see whether the classification or the feeling about the product was valid?

Dr Hinwood: I will clarify that. In the environmental impact assessment process, we look at environmental and health impacts. We deal with a range of substances but we do not necessarily cover dangerous goods legislation, which is specific to the transport, storage and handling of dangerous goods. That is usually within the province of a company in terms of its overall operation and the agency that administers that legislation. The EPA has no role in advising whether or not something is a dangerous good. We assess the environmental impacts of a particular process.

Mr M.P. WHITELEY: Are you saying that it is within the Department of Industry and Resources?

Dr Hinwood: At the time it was the DME. As far as I am aware, it is now DOCEP.

Mr Murray: The current Explosives and Dangerous Goods Act is the responsibility of the Department of Industry and Resources but it is administered through the Department of Consumer and Employment Protection.

Mr M.P. WHITELEY: Coming from a minerals background, I would think that that emphasis is more towards the transport of explosives.

Dr Hinwood: And the packaging, storage and transport of other goods.

Mr M.P. WHITELEY: What I am getting at is whether there is a lack of emphasis. Lead will not kill someone immediately or even in the short term; it has long-term health effects. It is not dangerous in the sense of having an immediate impact.

Dr Hinwood: True.

Mr M.P. WHITELEY: Is the framework and the mindset behind those who are supposed to regulate it set more towards the transport of explosives and other things that are used extensively?

Dr Hinwood: I do not believe that we can comment on that.

Mr T.K. WALDRON: Can you comment on the Magellan lead carbonate project in your submission? Under "identification of relevant environmental factors" it says that the storage, transport and handling of all dangerous goods and other hazardous substances are administered under the Explosives and Dangerous Goods Act 1961. Highlighted at the bottom of the page it says "factor does not require further EPA evaluation". Why was that so?

[1.15 pm]

Dr Hinwood: Because it is covered under another piece of legislation.

Mr T.K. WALDRON: What other legislation is it covered under?

Dr Hinwood: That is what I am saying: it will be covered under that piece of legislation if it is deemed to be a dangerous good.

Mr T.K. WALDRON: I am just trying to think. What if it was not a dangerous good?

Dr Hinwood: Okay, then it is covered by EPA's assessment of the environmental impacts, and therefore how it should be managed and the subsequent ministerial conditions that are attached. Is that what you are getting at?

Mr T.K. WALDRON: Yes, that is what I am trying to get at. I am sorry, I am trying to get around it myself.

Dr Hinwood: Okay; I am sorry.

Mr T.K. WALDRON: So, at the start I think you said Magellan at first said it was not a dangerous good.

Mr Murray: In their first submission to the EPA they indicated that lead carbonate was not a dangerous good.

Mr T.K. WALDRON: Therefore, as not a dangerous good, you would be responsible?

Dr G.G. JACOBS: You would be involved?

Mr T.K. WALDRON: That is my point that I am trying to get at.

Mr Murray: Yes, and the EPA was sufficiently unclear about whether it was a dangerous good or not, to specifically point out in its report, its public report to the minister, which was sent to a whole range of government agencies, including the Department of Minerals and Energy and others, that the issue of whether it was a dangerous good under the explosives and dangerous goods regulations still needed to be satisfied.

Mr T.K. WALDRON: So was there an assessment of the use of the covered kibbles by the EPA?

Mr Murray: The EPA did consider that as part of the proposal and the EPA was of the view that provided the covered kibbles met statutory requirements and they performed the function that they were supposed to, which was to contain the material, then that was an adequate form of transport.

Mr T.K. WALDRON: So, who makes that final decision? Do you make that, or when you pass on to the Department of Environment do they inspect the kibbles and say no, it is not; or is that for you to do from the very start?

Mr Murray: As Dr Hinwood indicated, the EPA does not regulate; okay?

Mr T.K. WALDRON: No.

Mr Murray: It gives advice, and it gives advice very early on in the process. It then requires the regulators to actually regulate under their relevant legislation.

Mr T.K. WALDRON: So your advice was that it met what was required; the covered kibbles met those requirements?

Mr Murray: That was the information that was given to us by the agencies who provided comment to the EPA.

Mr T.K. WALDRON: And you pass that advice on to -

Mr Murray: That advice was public advice in the EPA's report, and that report was published in October. I said September earlier; it was October 2000.

Dr G.G. JACOBS: I just need to get this right in my own mind. When Magellan decreed that this was not a dangerous good in their opinion, did you have some questions in your mind about that? Did you have any questions or queries in your own mind about the validity of that assessment?

Mr Murray: We provided that material to the Department of Minerals and Energy for two reasons; one is because they are the regulator at the mine as well and at that stage we were also seeking clarification from the Department of Minerals and Energy about whether the EPA should assess the proposal, which at that time represented the lead carbonate mine and also a lead refinery, probably at Geraldton. So we sought comment from them before the EPA made a decision about whether it

would assess the proposal. As part of that advice that we received from the Department of Minerals and Energy in January 1999, they indicated that they believed the proposal should be formally assessed by the Environmental Protection Authority, which is what the EPA did; and, secondly, that is where they pointed out to us that - and their words were - if their offsidars describe it as lead dioxide or lead compounds soluble, then it would be classified as a dangerous good. They were raising the question of whether lead carbonate should be classified as a dangerous good or not, but at that stage and at no other stage did anyone tell us that it should be.

Dr G.G. JACOBS: Can I just follow up on that?

Mr T.K. WALDRON: Okay.

Dr G.G. JACOBS: When we were talking about the covered kibbles and their assessment of that, and I have tried to get an answer on this in other forums about the question of if the product in fact was assessed as not a dangerous good, then the covered kibble tarpaulin was satisfactory in your assessment. However, if it was a dangerous good, would you be able to comment whether that tarpaulin cover would be satisfactory?

Mr Murray: No, I would not be able to.

Mr T.K. WALDRON: This leads into my next question. I may not have this right, but it seems that you make a recommendation, is that right, yet in the ministerial conditions there is nothing about the kibbles and the transport. So who actually regulates how the kibbles are set up? Who is responsible for that?

Mr Murray: The regulation is at multiple levels. Under the Environmental Protection Act there are conditions which the Minister for the Environment issues under part 4. They arise from the EPA's assessment. The proponent put forward a proposal which included the transport of the lead carbonate within covered kibbles. The environmental conditions that the Minister for the Environment ultimately issued on that project relied on the proponent actually implementing the proposal that had been assessed, and to do otherwise would create an offence under the Environmental Protection Act. So they said that they were going to move the material in covered kibbles, and the statement issued by the minister at the end of 2000 in fact required them to do that; but in all cases no-one challenged, in terms of advice to the EPA or during the minister's consideration of what conditions should be applied to the project, no-one challenged the covered kibbles.

Mr T.K. WALDRON: So there was no-one then who would go and inspect those kibbles to see if they were actually indeed covered, because if they had found out then they would be in breach of their -

Mr Murray: They would be in breach of the Environmental Protection Act.

Mr T.K. WALDRON: Are you aware of how the kibble is covered?

Mr Murray: No, I am not.

Mr T.K. WALDRON: They are covered with a tarpaulin that is pulled tight down, but the tarpaulin is flat, so it is not airtight, and that is the reason I ask. I do not know whether any other members want to follow up on that or are happy with that.

Mr M.P. WHITELEY: So "covered kibble" is not specified beyond that, the 10 covered kibbles?

Mr Murray: It pretty much is specified just like that.

Mr M.P. WHITELEY: So, a tarpaulin, it is not like a sealed -

Mr Murray: No, it is obviously not sealed in the sense of it is described as just covered rather than sealed.

Mr M.P. WHITELY: What would be the minimum requirements of “covered”? Do you whack a bit of newspaper on top? I am being flippant, but there is a -

Mr Murray: Sure. From a normal point of view, you would expect it to be something which has a sufficiently robust material over the top that it will last the purpose, which is to get the material from A to B in this case.

Mr T.K. WALDRON: Were you aware in that report that the Department of Health did raise a concern about that?

Mr Murray: Which report was this?

Mr T.K. WALDRON: In your report, under government agency and public comments - can I read this out? - this is the Department of Health. It is shown as DEP, but it should be DoH. Does it have a page number so that you can find it? There are no page numbers. It refers to lead carbonate concentrate with an initial moisture content of eight per cent -

Mr Murray: Yes.

Mr T.K. WALDRON: It goes on to say that it will be transported in covered kibbles from the minesite to the port; that the 670 kilometre journey by road, particularly in summer, may result in a decrease of eight per cent of the moisture content; and that unloading of kibbles at a reduced moisture content may generate dust. Were you aware of that? Would that have been something that someone should have picked up on?

Mr Murray: No, the health department did say that. They also said that the eight per cent moisture of concentrate may decline because of heating during transport, which may increase the possibility of lead dust, but that the unloading of kibbles was not anticipated to lead to dust.

Mr T.K. WALDRON: So, who said that?

Mr Murray: The Department of Health.

Mr T.K. WALDRON: Yet here it says “unloading kibbles at a reduced moisture content may generate dust”. So, there is a bit of a difference.

Mr Murray: Yes, sure, but the issue here was we are talking about transport and we are also talking about unloading, and the health department’s submission talked about unloading.

Mr T.K. WALDRON: Okay. Just in the report here it refers on page 1 to it being transported by road in fully enclosed kibbles. Does that refer to the same as covered kibbles?

Mr Murray: Yes.

Mr T.K. WALDRON: Fully enclosed but not sort of fully enclosed?

Mr M.P. WHITELY: I am sorry, that is not the system you said before. I mean, fully enclosed is completely sealed, is it not, whereas a covered kibble is not airtight?

Mr Murray: The description relates to the proposal that we were assessing, and the assessment was of covered kibbles.

Mr T.K. WALDRON: Covered kibbles?

Mr Murray: That is what it was.

Mr M.P. WHITELY: Who used the term “fully enclosed”?

Mr Murray: We may have in terms of the summary of the description of the proposal, but that is what it was.

Mr M.P. WHITELY: It is quite significant. If it was fully enclosed, you would not have any leakage.

Mr T.K. WALDRON: I guess it is a semantic matter. Is fully enclosed the same as sealed or is covered the same as fully enclosed? Fully enclosed says to me that it is fully enclosed, but sealed says nothing will ever get out. So I guess that is something we can look at.

Dr G.G. JACOBS: I think, Mr Chairman -

Mr T.K. WALDRON: If you want to take it further, feel free.

Mr M.P. WHITELY: I think we have taken it as far as we can, but I think it is a significant point; it is not just semantics.

Mr T.K. WALDRON: Okay. I just want to ask - and maybe when you were answering the member for Roe before you may have included some of this in it - what was the EPA's responsibility to make sure that the assumption made in recommending the project proceed and the conditions on which it was to proceed; that is, that the lead carbonate was a dangerous good was in fact the case?

Dr G.G. JACOBS: That is what I asked.

Mr T.K. WALDRON: Did you cover that? Do you feel happy you have covered that? Do you realise what we are getting at there?

Mr Murray: Yes.

Mr T.K. WALDRON: Do you want to make a comment on what I have just said or perhaps to reiterate?

Mr Murray: I thought I had answered it.

Mr T.K. WALDRON: Okay. Are you happy with that?

Dr G.G. JACOBS: Yes.

Mr T.K. WALDRON: I was elsewhere involved at the time. Should the EPA not have had responsibility to recommend alternative environmental conditions in the absence of lead carbonate being classified as a dangerous good?

Mr Murray: The EPA could have the capacity to do so. The question really for the EPA, and one of the key issues that the EPA has to consider, is: what are the regulatory controls that already exist, because one of the powers that the Environmental Protection Act has is that it can potentially override other legislation? So in terms of applying the rules or conditions under the Environmental Protection Act, it needs to be very clear and careful about what other legislation it might prevail over; and in this case the EPA was not looking at overriding any legislation. It was wanting to ensure that the proposal in its implementation complied with all relevant requirements and regulations.

Dr G.G. JACOBS: Mr Murray, if the EPA was impressed enough that there was a significant issue here in - let us say for the argument - a wrongly classified product, it did have the power if I get what you are saying, did it not, to actually intervene if it did believe that there was some significant anomaly in the classification of this product which had the potential to have significant environmental consequences?

Mr Murray: The EPA has the power to recommend conditions which, for instance, would be complementary to dangerous good requirements if it believed that the product should be handled in that way. But in this case the EPA still was asking the regulators after the assessment to basically come to a position about whether the existing regulatory controls would be under the explosives and dangerous goods regulations or not.

Dr G.G. JACOBS: And they did not come to a position where they felt this was a dangerous good?

Mr Murray: Certainly not during the EPA's assessment; neither before the Minister for the Environment issued the statement for the approval.

Mr T.K. WALDRON: Mr Murray, I think the next couple of questions I was going to ask you, you have already answered, so I am going to move along to the member for Roe. I think if we go to the question you have there, number 7.

[1.30 pm]

Dr G.G. JACOBS: As a long-term resident of Esperance myself, Mr Murray, I am concerned about the issue of what the community knew, and how much it was aware of the whole issue of lead carbonate coming through the port of Esperance. I often I hear people say that they did not even know that this product was going through their port. Why did the EPA not think it was significant that the Esperance community be consulted about the transport of lead carbonate through the town and the port?

Mr Murray: When Magellan Metals applied for a change of proposal to export through Esperance rather than Geraldton, their correspondence, which was an attachment to the EPA submission, indicated that they had undertaken some community consultation in a number of different ways. There an article in *The Esperance Express*. There was also an editorial in *The Esperance Express*. Both of those were on 2 September 2004. On 24 September, Magellan indicated, in the same correspondence, that it had given a presentation to the Esperance Port Authority workforce about what it was wanting to do. On the same day, 24 September, Magellan indicated that they had given a presentation to the Esperance Port Authority port development consultative committee. We took that to be a fairly broadly representative committee, so we accepted the information from Magellan Metals that, in fact, there had been a process of community information about this. I think it is also fair to say that the EPA had had some dealings, in terms of previous proposals for export of things like iron ore, with the community, and it was aware that Esperance was a community that was well informed and well organised. We saw these communications as a way of expecting that information to have been spread wider.

Mr P. PAPALIA: I refer to the report and recommendations of the Environmental Protection Authority into Magellan Metals' lead carbonate project, the initial one that was made on the proposal for Geraldton. In that report, you determined that one of the conditions for the proponent was that the proponent be prepared to prepare, make publicly available and implement a health, hygiene and environmental management program. Subsequently, in the document you say that the proponent shall implement the program, and the proponent shall make the health, hygiene and environmental management program required by condition 6.1 publicly available to the requirements of the Environmental Protection Authority. Are you saying that those things that you have just outlined satisfied you that the health, hygiene and environmental management program had been made publicly available in Esperance, prior to that authority being given?

Mr Murray: The public availability of the health, hygiene and environmental management plan, which is a requirement under condition 6 of the minister's statement, was released on 18 January 2005, so it was after the Minister for the Environment had issued that statement.

Mr P. PAPALIA: What happened in Geraldton? When the EPA was assessing the proponent's proposal, and you were talking about Geraldton, what happened with the HHEMP with regard to public consultation?

Mr Murray: The HHEMP was not prepared until late in 2004, because although the EPA had assessed the project and reported in 2000, and the Minister for the Environment had issued a statement in 2000, we had very little contact with the company until 2004, when they came back and said that they now wanted to move from export through Geraldton to export through Esperance. At that stage, they had almost finished preparing a draft health, hygiene and environmental

management plan. That environmental management plan in fact reflected the possibility of going through either Geraldton or Esperance. In fact, it covered both ports.

Mr P. PAPALIA: When it went to the public notification in Esperance, there was no HHEMP.

Mr Murray: No.

Mr P. PAPALIA: So it did not meet the requirement of the EPA report.

Mr Murray: At that time, no, but the company had -

Mr P. PAPALIA: I suggest that it never did. I maintain that the HHEMP was never made available publicly. That is what I am saying.

Mr Murray: I can tell you that the document was placed in public libraries on 6 January 2005. It was lodged in the State Library, the Department of Environment library, the Esperance library, the Kalgoorlie library, the Laverton library, the Leonora library, the Meekatharra library, the Sandstone library and the Wiluna library.

Mr P. PAPALIA: When I compare the public consultation process that took place in Geraldton - regardless of a HHEMP - with what subsequently took place in Esperance, there was more public consultation in Geraldton, was there not?

Mr Murray: Yes, there was, because the proposal that the EPA assessed in 2000 included a requirement that the consultative environmental review, which was the proponent's document, be made available for four weeks' public comment. The project was related to exporting through Geraldton at that time. So, there was specific consultation with the Geraldton community, and various people and organisations in that community made submissions to the EPA.

Mr P. PAPALIA: So, subsequently, when the request for variation of licence was made to enable export through Esperance, the EPA was again responsible for assessing that variation and making recommendations to the minister?

Mr Murray: Correct.

Mr P. PAPALIA: As I understand it, the recommendation was that no significant environmental impacts were associated with that variation proposal?

Mr Murray: Correct. The judgement that the EPA had to make, and ultimately that the Minister for the Environment made, was that there were no significant additional impacts related to that change.

Mr P. PAPALIA: How can you determine that without having a more thorough public consultation process, in much the same way as was conducted in Geraldton?

Mr Murray: It was the view of the EPA at the time, and the EPA service unit that was advising the EPA, that the consultation had been adequate.

Mr M.P. WHITELY: Part of the justification in the submission for the variation from Geraldton to Esperance was the fact that it would be transported in a moist, agglomerate form. What evidence did the EPA have about how this process would reduce dust emissions? Why was that significant?

Mr Murray: The company indicated to us - as you will see in the attachment for the request for variation - that the material would be moist. The proposal assessed by the EPA was that it would be moist filter cake. What the company indicated to us was that it was adding an additional process to take it from filter cake to an agglomerated one-centimetre granule. It indicated to us that that would be material that was less likely to lead to dust emissions.

Mr M.P. WHITELY: That is pretty significant in your mind?

Mr Murray: Yes.

Mr M.P. WHITELY: If it was so significant, why did the EPA not recommend that it become a condition of the minister's approval?

Mr Murray: What the variation does, in fact, is redefine the proposal to which the conditions are subject. So, in fact, there was no need to actually specify this agglomerated material within the condition, because legally, the variation that the company had put to us, which included that one-centimetre granule, formed part of its new approval.

Mr M.P. WHITELY: So you are saying it did not need to be specified?

Mr Murray: Because they had specified it in the variation, and the variation became part of the defined proposal that had been approved.

Mr M.P. WHITELY: So it then became a clear obligation of the company to transport it in that form

Mr Murray: Yes.

Mr M.P. WHITELY: And if that was not done, the company would be in breach of its licence conditions?

Mr Murray: Yes.

Mr M.P. WHITELY: The DEC clearly has a duty to regulate and monitor - not you, you are EPA, but the DEC?

Mr Murray: The director general of the department has a responsibility to monitor compliance.

The ACTING CHAIRMAN: So, if it is not going out in that agglomerated form, and if the director then becomes aware of it and does not take action, he is actually condoning a breach of licence? I notice you are nodding your head. Is that a yes?

Dr Hinwood: I do not think I want to say that!

Mr Murray: The director general may monitor compliance. There is no obligation under the EPA act for compliance to be monitored.

Mr M.P. WHITELY: But if they know that it is happening -

Mr Murray: Then they need to make a judgement about what action they take.

Dr G.G. JACOBS: I want to follow up on the theme of consultation with the Esperance community, because I hear a lot about this. There is certainly a perception that there was a lack of consultation, particularly for this project. Are ministers' variations to approved projects normally published, as is the report of the original project?

Mr Murray: No, but, if I may, they are not normally published in that way, but the statement is amended in the public record.

Dr G.G. JACOBS: So you are saying that if you went to a library, you could see it, but you would not necessarily see it in the local press?

Mr Murray: No.

Dr G.G. JACOBS: Would you see it on the website?

Mr Murray: On the EPA website? No.

Dr G.G. JACOBS: Why do you think the Geraldton variation was not published on the department's website? If we are talking about a change, or a variation, to export lead from Geraldton to Esperance, it would be important for the Esperance people in this consultation process to know that the lead was coming their way, when the original said it would be going through Geraldton.

Mr Murray: As I say, the information we received through the company was that there had been public information through the local media, and there had also been consultation with some groups within the community, about that shipment.

Dr G.G. JACOBS: Are you aware that the 24 September presentation was actually to the workforce at the port?

Mr Murray: That was one of the two presentations, yes.

Dr G.G. JACOBS: The other one was by Magellan, to the port development consultative committee. I mean, would you agree that that is hardly a wide public forum? They are specific groups. In retrospect, would you believe that that did not constitute valid public consultation?

Mr Murray: Let me distinguish between public information and public consultation, because in this process of variation, the EPA was not consulting with the community.

Dr G.G. JACOBS: Would you consider it a forum for public information?

Mr Murray: They often are forums for public information, yes.

The ACTING CHAIRMAN: Just to get back to something that you said before, so that we are clear, are you saying that anything that is put in a proposal to vary is legally enforceable?

Mr Murray: Yes.

Mr M.P. WHITELEY: To get back to the issue of moist agglomerate form, as I understand it, it was a convincing argument for not having extra public consultation, but it did need to be spelt out in the licence conditions, because, as the Chairman has just said, the application becomes part of the licence conditions, for want of a better way of explaining it?

Mr Murray: Do you mean licence, or do you mean the environmental conditions, or statement, issued by the minister?

Mr M.P. WHITELEY: I am talking about it as part of the statement from the minister.

Mr Murray: Right. They are different instruments. That is why I am seeking clarification.

Mr M.P. WHITELEY: Having said that, while you did not have that formal requirement for it to become part of the enforceable conditions, why, when it was so significant a variation, was it not mentioned in either the assessor's memo, or the letter to the minister from the EPA? If it is such a compelling argument, why did you not mention it to the minister?

[1.45 pm]

Mr Murray: Because, basically, we believe that the move from just filter cake to agglomeration was an improvement. We were not making a judgement that, as filter cake, it was not adequate but it was an improvement in terms of how the material was going to be prepared for transport and for export, and we saw that as an improvement; we did not see the need to consult on that or take it further.

Mr M.P. WHITELEY: Would the letter not say something to the effect of "Minister, we are comfortable with the variation from Geraldton to Esperance because of the assurances from the company that it will be put in moist agglomerate form." If it is such a compelling argument, why would it not be mentioned in your recommendations, the memo to the minister and the letter to the minister?

Mr Murray: I am not sure. I cannot answer that.

Mr M.P. WHITELEY: Do you think it should have been mentioned? Was it in fact the basis for your decision?

Mr Murray: No, it was not the basis, but it was certainly a factor.

Mr M.P. WHITELEY: The term you have used is that the decision was largely based on Magellan's advice that it would be transported in its moist agglomerate form.

Mr Murray: It was a factor; there is no question about that.

Dr G.G. JACOBS: There is a perception that the variation in this licence that brought the lead carbonate to Esperance was an overly simplified process and less stringent than it should have been. It was a \$29 fee for the port. In the light of that, did the EPA have any dealings in the process of the variation with any other political lobbyist or consultant in relation to the variation of the Magellan proposal?

Mr Murray: I am not aware of any; I do not know.

Mr M.P. WHITELEY: I understand that those fees are set on a cost recovery basis.

Mr Murray: The environmental impact assessment is free; there is no cost associated with an environmental impact assessment.

Mr M.P. WHITELEY: What about the application for variation?

Mr Murray: There are no fees attached to it.

Mr T.K. WALDRON: I just want to pursue this a little bit, about whether the variance is legally enforceable. Have you ever prosecuted anyone under that provision, that you know of?

Mr Murray: Not under a variance, no.

Mr T.K. WALDRON: For instance, one of the things stated in the variance was the amount that could be shipped. In 2005, 80 000 to 100 000 tonnes, and then it went to 50 000 to 70 000 tonnes, and 50 000 to 60 000. Does that mean that they could ship up to 60 000 tonnes, but after that they could be prosecuted?

Mr Murray: My recollection is that the request from the company indicated 120 000 tonnes.

Mr T.K. WALDRON: I will show you what I was looking at so that you will understand what I am talking about.

Mr Murray: They are the volumes that they indicated to us they would be exporting.

Mr T.K. WALDRON: Can they be prosecuted if they did not comply with that? I guess they could legally, but would they be?

Mr Murray: You would need to ask my director general. The director general is the person who is responsible for determining whether prosecution or other enforcement measures are required.

Mr T.K. WALDRON: Just before we move on to the member for Peel, you made a comment about the variance and the move to Esperance, that Esperance had a great record with the iron ore, and community consultation etc. I will make a comment and seek your response. Do you think there is a possibility that, at that time, because the port had dealt well with the iron ore and the problems that arose, and the community consultation had been very good, everyone involved, including the community, took for granted that it would all be the same?

Mr Murray: That is a possibility, but I would not know.

Mr P. PAPALIA: I return to the subject of the health, hygiene and environmental management plan. Looking at the statement that a proposal be implemented - this is the original one for Geraldton - it states that the proponent shall implement the health, hygiene and environmental management program required by condition 6.1, until such time as the Minister for the Environment, on the advice of the Environmental Protection Authority determines that the decommissioning and rehabilitation are complete. One component, as I understand it, of that HHEMP, was the dust management plan.

Mr Murray: It needed to include the dust management plan.

Mr P. PAPALIA: Would it concern you if I told you that the committee received evidence from Magellan that it dealt with the requirement to implement that HHEMP, particularly the dust management plan, by consulting with the port and then accepting what the port was advising would be done, without taking further action? Would that concern you at all?

Dr Hinwood: It would concern me.

Mr Murray: Yes, and we are aware that that is effectively what has apparently happened.

Mr P. PAPALIA: It appears to be what has happened, yes. There are some more issues involved with that, because there is another requirement under the environmental conditions in the same document. Section 6.1 paragraph 5 states that the HHEMP shall address the review of existing storage and ship unloading facilities at the Geraldton port, in this case, to be conducted by the proponent prior to the existing facilities being used for lead concentrates. It is to include a review of equipment, procedures and monitoring programs to identify potential pathways for lead to enter the environment and, if appropriate, additional equipment, management or revised procedures are to be determined. Would it concern you that, in complying with that requirement, Magellan determined that it would take the advice of the port? It had a meeting with the port and was told that an external consultant had assessed its capabilities and provided a report. Would it concern you that Magellan did not then follow through to see whether the report by the external consultant had been complied with, and had met the requirements of this part of the document?

Mr Murray: It would.

Mr P. PAPALIA: I would suggest that that is also something that has occurred.

Mr Murray: It would be of concern.

Mr P. PAPALIA: They had an independent consultant advise them of a number of things that they were deficient in with regard to the infrastructure for export of lead. Some of the recommendations from the external consultant were not implemented. The response by Magellan was that it assumed that the port would do it, and words to the effect that they trusted them, I imagine.

Mr Murray: Certainly, the conditions are quite clear on where the responsibility lies.

Mr P. PAPALIA: The onus lies with the proponent, Magellan.

Dr Hinwood: Absolutely.

Mr P. PAPALIA: In its original recommendation to the minister to support the Magellan project, can you tell us why the EPA did not include the Department of Health on the proposed HHEMP?

Mr Murray: When the recommended conditions were being prepared, we received comment from the Department of Health as a submission. It did not indicate any specific requirement to be involved, other than in a consultative fashion. Part of the process after the EPA has reported is that it recommends conditions, but the minister then goes through a formal consultation process with decision-making authorities, in this case the Minister for Health. The Department of Health specifically asked to be added as an adviser under that condition, and the minister agreed.

Mr P. PAPALIA: I understand that from that time on that the Department of Health did provide advice, but it went direct to Magellan, and not to anyone else or any other agency.

Mr Murray: That is likely, yes.

Mr P. PAPALIA: I think that is what occurred.

Mr Murray: I have certainly seen some very short Department of Health correspondence in relation to that plan, but fundamentally the whole approach of developing those plans is that the Department of Health, in this case, and also the Department of Minerals and Energy, would be advisers and would review the document before it came forward for approval.

Mr P. PAPALIA: The committee has evidence before it that some mining interests have concerns about the Department of Health having a specific and separate role in the approvals of resource projects. You might have seen this reported on in the media. Those interests believe that existing regulations covering environmental, planning, local government, dangerous goods, and occupational health and safety, will accommodate that input from the Department of Health. As you are probably aware, the Department of Health is proposing legislation to provide for a process called the health impact assessment in the overall resources assessment process. Does the EPA share the view of the industry or the Department of Health?

Dr Hinwood: Clearly, we think that health impact assessment is extremely important. The EPA takes advice from the Department of Health on a range of issues where health is being impacted and in fact will take it really seriously in saying “You shall do something” when a proponent needs to prepare a health risk assessment. In terms of the health impact assessment itself, it is far broader than the environmental impact assessment process. With that being said, it is entirely appropriate that the Department Health have that ability to conduct a health impact assessment and has the resources to contribute all the way through the EIA process.

Mr P. PAPALIA: As a comment, I would say that based on the evidence we have heard there is a fair amount of stove piping of the Department of Health’s advice, so that sometimes you may not receive it when you require it, or some other agency may not receive it. In this example of the HHEMP, Magellan got direct advice as the proponent, but a lot of agencies did not see that advice. I think I will agree with your assessment, and you have pretty much answered the last question.

Dr G.G. JACOBS: Dr Hinwood, in the part 4 arrangements that the EPA involves itself with, particularly the environmental impact statement, and the variation of the licence from the Geraldton to Esperance, would you comment on my argument that if we significantly change the site from which the product is to be exported - we could argue that there are a lot of differences between Geraldton and Esperance; they are obviously both coastal, although one is on the west coast and the other on the south coast but the whole demographic could be different - would you think it reasonable that, instead of an almost automatic, tick-the-box process saying that because it is all right for Geraldton it is now all right for Esperance, an environmental impact study be done on the new proposed site, as distinct from the old proposed site.

Dr Hinwood: Section 45(c) provides for cases where the environmental impacts are well understood and from what we can gather from this particular case, where the impacts are considered to be less of a problem, so you are improving an outcome. In retrospect, there should have been consultation with people in Esperance in a further way; but that is saying that in retrospect. I think, because there is an existing port, you are transporting material and you are under the assumption that it is being managed properly, the environmental risks would be considered to be minimal. In retrospect, we know that that is not actually what has occurred, and therefore, you would.

Mr T.K. WALDRON: Could the word “assumption” be seen as a problem? It seems that in some cases we are hearing that people are assuming things.

Dr Hinwood: The EPA, when it assesses a project, takes the information that is provided and assumes that the company will take its responsibilities seriously and manage its environmental impacts appropriately. The EPA has to do that. Of course, the system is set up so that compliance can be checked by the Department of Environment and Conservation at some other point.

[2.00 pm]

Mr T.K. WALDRON: So you assume that and DEC comes and check it?

Dr Hinwood: Yes.

Mr M.P. WHITELY: If you assume that they are going to do the right thing, they are hardly going to put something in an application that indicates they will do the wrong thing. Why does an industrial licensing authority not just rubber-stamp proposals? Let me be specific about Esperance.

Was the approval of the Esperance proposal a desktop study or did it involve somebody going down and inspecting the transport lines and the way the ship would be handled at the port? Was there an inspection? It was claimed that there are facilities to do it. Did somebody look at the facilities and see what was there, or was it simply a desktop study?

Mr Murray: It was desktop. We did not send anywhere down there to specifically review the Esperance port. As indicated before, we had some familiarity with the Esperance port but we did not do a specific inspection.

Mr M.P. WHITELEY: Let me go back to my original assertion. Why are you then not an industrial licensing authority that rubber-stamps proposals that are written?

Dr Hinwood: The aim of the Environmental Protection Act is to try to identify or prevent problems.

Mr T.K. WALDRON: I know what the member is getting at. The company advised today that it was surprised that a government regulatory department accepted its advice without checking further. That is what the company said. Would you like to comment on that? This is what we heard today. You do not want to comment on that?

Mr Murray: No.

Dr G.G. JACOBS: From your knowledge of what has happened, do you believe that there should be some systemic change in that issue? If the location and geography is changed, as the member said, the variation in the licence should not be rubber-stamped. That site should be assessed on its merits with all its individual characteristics rather than just assume that because it was okay for Geraldton, it is now okay for Esperance.

Dr Hinwood: I cannot comment on the decision of 45C at that time but I absolutely assure you that they are being scrutinised quite heavily. In the event of a change in location such as that, we would pick up the community consultation aspect of it or require it as part of the process.

Mr P. PAPALIA: Is it likely that most of your variations are in the same location?

Dr Hinwood: In most circumstances, they are in the same location, especially where there are no significant environmental impacts. From EPA's point of view, there were no environmental impacts associated with the proposal to change from Geraldton to Esperance; hence, it was not reassessed, which we can do.

Mr T.K. WALDRON: Was that because of Esperance's previous history as a port or perceived history as a port?

Mr Murray: Yes. We had some familiarity with the fact that they invested a lot of money on new equipment - conveyors and things like that.

Mr M.P. WHITELEY: What weighting is given to public interest as opposed to concerns about the project itself, if you understand what I am asking? For instance, suppose you had no concerns about the project or only a little concern about the project but there was strong lobbying from 500 locals who were opposed to it. What role does that play?

Dr Hinwood: Community views on projects are extremely important. In fact, the EPA does meet with communities on significant projects where we feel that there are environmental impacts and we should seek their involvement. We do this on quite a regular basis.

Mr M.P. WHITELEY: I have a copy of the article about the lead export - I presume that is what we were referring to earlier - from *The Esperance Express*. Apart from that, what other measures were taken to advertise? I think you might have answered this question earlier. Did that involve the library?

Mr Murray: That was later. The information given to the public at that time came by way of articles in the local press plus the presentation to the port workers and also to the port development consultative committee.

Mr T.K. WALDRON: Would it be fair to say that an open forum in the town would have been a good idea?

Mr Murray: Yes.

Mr T.K. WALDRON: Magellan advised earlier that it was not a dangerous good. Would you be able to provide copies of relevant documents that you might have that relate to dangerous goods?

Mr Murray: I can certainly provide you with the two key documents that I have referred to. One is the original documentation that we received from Magellan before it referred it to the EPA. This was really just informing us. The second is a copy of a fax that we received from the minerals and energy officer about the issue of whether it was lead dioxide or something else.

Mr T.K. WALDRON: If there are others that you subsequently come across, could you provide them as well?

Mr Murray: Yes.

Dr G.G. JACOBS: I have a science question. Do I address that to Dr Hinwood?

Dr Hinwood: You can ask me; I do not know whether I want to respond.

Dr G.G. JACOBS: We received a submission about the water solubility of lead carbonate. It listed lead carbonate, lead oxides and lead carbonate hydroxides. Does EPA involve itself in the chemistry of that and the specific issues of solubility and how that could possibly impact on the community?

Dr Hinwood: Yes, it is something that we should do. In the case of lead in this particular situation, there are two pathways - straight inhalation of dust and ingestion of contaminated water. Yes, we absolutely consider those factors. We consider both the exposure pathways and potential uptake in the environment as part of our assessment process. In this case, if there is an assumption that it is moist, it is being transported in a particular way and is not in a particulate form where people can be exposed to it, there would be a suggestion as to whether there is an exposure pathway. Clearly, there has been but if the EPA is assessing that as a moist product, it will be via a spill or accident that it gets into the environment and then it will be a case of whether that is taken up by humans.

Dr G.G. JACOBS: One of the submissions we received was about the scientific aspect of bulk handling profiles, water solubility and the safety perspective. It said that different dust abatement standards can apply to different materials in different locations and several properties of lead carbonate are relevant to note for selection of appropriate dust control measures. It referred to a fairly complex assessment process about the different forms within the lead carbonate ore. It talked about the flat plate-shaped particles readily transported in fluids, air and water. It talked about brittle needle-like particles being prone to particle sized degradation when handled and the fact that impurities tend to enhance the brittleness in most crystals. The scientific considerations of those particles are important in the implications of the potential for pollution and human health. I wondered if you were aware of those complexities in this product.

Dr Hinwood: In this specific product, no. We have come at this quite cold from that perspective. Again, if it is in a slurry situation, you are talking about a different exposure pathway. Then when it becomes dry, the particle size, shape and all the rest of it becomes relevant in terms of the exposure pathway.

Dr G.G. JACOBS: This was relevant in that this product travelled 950 kilometres. It was loaded in kibble form with a particular moisture content at the Magellan site and came all the way down to

Esperance. By the time it came to Esperance with the drying effect, particularly on a hot day, we were looking at some of the characteristics that I was talking about.

Mr T.K. WALDRON: We have before us a copy of a proposal to develop a lead and oxide mine and flotation concentrate near Wiluna and a refinery near Geraldton, Western Australia, from Magellan Metals Pty Ltd. Have you seen that?

Mr Murray: Yes.

Mr T.K. WALDRON: Does that identify as a dangerous good or have you not seen that before? Would you not take that to represent a dangerous good?

Mr Murray: I do not personally have expertise in being able to do that. It was my recollection that this was one of the two documents that I was referring to in terms of where the company said it was not a dangerous good.

Mr T.K. WALDRON: I do not have the expertise either. Would anyone from your department have seen that and picked it up?

Mr Murray: That was the document that we actually referred to the minerals and energy to seek advice on whether the proposal should be assessed.

Mr T.K. WALDRON: You presented that to minerals and energy for advice?

Mr Murray: Yes. It came back and said that the material needed to be clarified to determine whether it was a dangerous good. You have the first of the two documents that I was going to send to you.

Mr T.K. WALDRON: Mr Murray and Dr Hinwood, thank you very much for coming in today and answering our questions. A transcript of this hearing will be forwarded to you for correction of minor errors. Please make these corrections and return the transcript within 10 working days of mailing. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be introduced via these corrections and the sense of your evidence cannot be altered. Should you wish, however, to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence.

Hearing concluded at 2.12 pm
