

**STANDING COMMITTEE ON
ENVIRONMENT AND PUBLIC AFFAIRS**

INQUIRY INTO COCKBURN CEMENT LIMITED, MUNSTER

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 4 APRIL 2011**

SESSION TWO

Members

**Hon Brian Ellis (Chairman)
Hon Kate Doust (Deputy Chairman)
Hon Phil Edman
Hon Colin Holt
Hon Lynn MacLaren**

Hearing commenced at 10.37 am

JONES, MR RONALD
sworn and examined:

HESSE, MR STEVEN
sworn and examined:

The CHAIRMAN: On behalf of the committee I would like to welcome you to the meeting, and I ask you to take either the oath or affirmation.

[Witnesses took either the oath or affirmation.]

The CHAIRMAN: Can you each state your name, contact address, and the capacity in which you appear before the committee.

Mr Jones: I appear here in a private capacity as a friend of the community, to which I have been connected for quite some time.

Mr Hesse: I appear as a community representative. I have been an environmental activist involved with Cockburn Cement issues since early 2000.

The CHAIRMAN: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and speak into them. Ensure that you do not cover them with papers or make noises near them. I will remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Just on that point, it is your option to ask for a private hearing, but I do remind you to be aware that this is a public hearing and that any confidential matters need to be given consideration before being stated, such as people’s names or children’s names that you may not have had permission to release. You need to be aware of that.

Mr Jones: We asked for that to happen.

The CHAIRMAN: Are you asking for a private hearing?

Mr Jones: The children’s names were to be kept confidential.

The CHAIRMAN: I am just pointing out now that this is a public hearing, and if you wish to release names, maybe you will need to ask for a private hearing.

Please note that until such time as the transcript of your public evidence is finalised it should not be made public. I advise you that the publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Gentlemen, do you have an opening statement you would like to address to the committee?

Mr Hesse: Yes, Mr Chairman, if we could. I will start, and then you carry on from there.

Mr Jones: First of all we have to advise you that we have given in eight copies of our documentation that we are going to refer to and read from today. We understood the process would be that you would ask questions, and then we would do our closing statements. Do you want us to do that now?

The CHAIRMAN: I am asking you if you wish to address the committee now by making an opening statement, and then we will ask you questions.

Mr Jones: We will go straight into what would have been our closing.

The CHAIRMAN: I have just been reminded to introduce the committee to you, and I apologise for not doing it sooner. Hon Lynn MacLaren is a member of the committee; I am the chairman of the committee; Hon Kate Doust is the deputy chair; and Hon Colin Holt. We have an apology from Hon Phil Edman, who could not make today.

The Witnesses: Thank you.

Mr Hesse: First of all, the problems at Cockburn Cement are well established; I do not really think I need to go into that now. We all know the problems, but I would like to point out some things about government departments' regulation of Cockburn Cement, if you like, and the industry in general, if I could. I would like to bring the committee's attention to the Department of Health health survey carried out for Cockburn, Kwinana and Rockingham in September 2004.

The CHAIRMAN: Just before you go any further, would you like to table that?

Mr Jones: Have you handed in a copy?

Mr Hesse: I thought it was in your package.

Hon LYNN MacLAREN: Is it already in the submission you have given to us?

Mr Hesse: Yes, it is in the appendix on our submission.

Mr Jones: Yes, it is in our appendix.

Mr Hesse: The introduction to this report states —

The major aim of the study was to identify any health problems around the Kwinana Industrial Strip that were atypical of the State in general, and then to explain the differences if possible.

It then goes on to state —

However it is not possible to identify the underlying causes of symptoms or health conditions from a survey of this kind.

Yet for the past seven years, the Department of Health has been using this report—as well as industry, as well as other authorities such as the Kwinana council—continually to rely on the conclusion that the report shows that health problems are related to lifestyle factors, not pollution. This is what they have been saying, yet the report clearly says —

However it is not possible to identify the underlying causes of symptoms or health conditions from a survey of this kind.

The health department has referred to this report in its submission to the committee, but it certainly has not let the committee know that it is not possible to use this report in the way it is using it. That is just one I wanted to point out. I will hand over to Ron now.

Mr Jones: What about this part?

Mr Hesse: Yes; basically, that claim by the health department is false because of conflicting comments in the report itself. That is all; thank you.

Mr Jones: Just in concluding that part, I would say that in fact the health department has deliberately deceived this committee in its submission because it has tried to use a survey that was not designed for the purpose and could not produce the results it wanted, and yet it pretends it carries weight, and I think it should be investigated.

The next part is “Shame can be found in history”. It was clearly established in 1978 that the emitted fallout from CCL operations was a reality, and fallout was caused by “intermittent failure of the electrostatic precipitators on the two kilns to entrap the dust”. A Department of Health press release dated 17 March 1978—a copy is attached—reports on a visit to the CCL works by the Commissioner of Public Health, Dr McNulty, who had set up a special working party in 1978 to investigate and report on complaints of dust fallout around the CCL plant. Dr McNulty reported —

The problem seemed to originate from the stack of the plant’s number one and two kilns. Under certain wind conditions, dust blew from these stacks on to some nearby houses.

The dust emission appeared to be due to intermittent failure of the electrostatic precipitators on the two kilns to entrap the dust. Dr McNulty said the company had engaged a consultant from Sydney to examine the problem and recommend ways of improving the efficiency of the precipitators.

[10.48 am]

The response strongly says that CCL were in agreement with what Dr McNulty had said. However, complaints from nearby residents in the Cockburn town council still persist, as they have done to this day, and the question is why? So there we have it. The CCL emission fallout problems were acknowledged as real and the cause of the fallout was real and clearly identified at the highest level of public health in WA as far back as 1978, albeit the operation had drawn complaints as early as 1957. In 1978 only two kilns were in use, not four kilns as we have today, which are all operating with ramped up maximised throughputs. Despite the passage of between 54 and 55 years, not a thing has changed. The same equipment is causing the problem. The same type of fallout is happening. It still stems from exactly the same sources. Not a single thing has changed other than for it to get worse. No doubt it is exacerbated by the addition of the two extra kilns and a greatly increased annual tonnage throughput. This is despite the number of recorded complaints. The company has deliberately concealed the number of complaints that it gets because it has avoided them by cleaning people’s cars. We argue that every time Cockburn Cement paid for somebody’s car to be cleaned, it was in receipt of a complaint but it was never logged as a complaint. It has hidden the magnitude of the complaints.

Despite massive amounts of time and effort by the community and years of frustrated attempts to obtain relief from the outpourings of CCL, nothing has changed. Despite the number of licences that have been issued over the years, most with departmental and ministerial promises and assurances that each time it would solve the problem, nothing has changed. The question is how and why. How has this impasse been allowed to successfully flourish for so long? Our view is that Cockburn Cement has chosen to spend time and money during years of strategic procrastination and obfuscation by the bucketload and its capture of the regulators at DEC, DOH and the EPA. It has done that rather than spend money on maintaining its plant with anything like a clean and acceptable low emission rate standard or spend money on essential pollution control equipment. We also ask the question: why has DEC progressively weakened CCL licences on practically every occasion of renewal sufficient to make them more and more ineffective, useless and legally unenforceable? One of the ways it has done this is by removing individual component emission limits and replacing them with vague and unenforceable terminology. Perhaps it is up to this committee to find the answer to that question. Who else is to blame for such a gross impasse? In our view, the answer to that is CCL, DEC and the EPA, who need to explain how for 55 years they have done nothing to solve the problem. Why not? We are astounded that the DEC made the following claims. We give the reference in our appendices. It said that the issue of air emissions does not

require regulation as the environmental impact is insignificant. Also, with CCL's commitment to develop an ENP, it is not necessary to require any licence conditions.

Hon COL HOLT: Where did that quote come from?

Mr Hesse: I will just look it up.

Hon COL HOLT: Just a date and a document would be good.

Mr Hesse: It is Department of Environment and Conservation's environmental assessment report for Cockburn Cement, sections 2.1.3 and 2.2.2. Our reference INT04 is on the top of the document.

Mr Jones: It goes on. The issue of dust emissions does not require regulation as the environmental impact is insignificant. If, however, dust emissions do cause problems for neighbouring premises, the Environmental Protection (Unauthorised Discharges) Regulations 2004 can be applied. The question is: were these 2004 regulations applied? If the answer to that is yes, what did they achieve, apart from nothing? If they achieved nothing, why was some other form of regulation not brought in instead? Here are gold-plated examples of how DEC repeatedly gelded CCL's licences that DEC issued sufficient to render the licences useless. The question is, however: how is the parliamentary committee going to condemn the DEC and deal with this sort of regulatory behaviour?

We go on to a matter dealing with the FOI act. In 2003, CCL refused to release its stack testing results on the grounds of commercial-in-confidence, despite our objections. The original state agreement and the licence did not accept CCL from reporting its submissions so why did the DEC fail, even up to the High Court, to seriously challenge its right of refusal to release its emissions data? It is another instance of corrupt DEC collaboration with a polluter. The collaborative relationship between CCL and DEC in general, and specifically the relationship of behaviour in play between the senior DEC officers who seized control of the community reference group, deserves only the closest of investigative scrutiny.

In conclusion, it is blatantly obvious that CCL's electrostatic precipitators are primarily responsible for much of the unacceptable impact on the community over the past 55 years. We do not believe that the solution can we found in the installation of baghouse filtration alone. As we pointed out in our submission, baghouses have no effective ability to neutralise harmful aggressive gases which attack human and other animal respiratory tracts, much to the despair of many of those unfortunate enough to be vulnerable to such attack. I will just explain that a little further. It is well recognised that when you have a situation such as dry particulate, the effects of that are exacerbated by the presence of acid gases, or highly alkaline gases for that matter. Conversely, wet scrubbing does have the ability to precipitate and isolate most forms and sizes of particulate from the exiting gases with the bonus of being able to control the pH of the kiln gas discharge by quite simple means. Finally, we remind the committee that we have provided it with a considerable amount of documented evidence, complete with names in some cases, which we hold to be evidence of corrupt behaviour indulged in by DEC, DOH and CCL. This begs the question: what is the committee going to do with it? Please do not condemn this community to another 55 years of injustice and corruption.

The CHAIRMAN: As you know, your original submissions came in before the amended licence was issued —

Mr Jones: Could you speak a little louder please. I have been afflicted with an ear problem.

The CHAIRMAN: I am very sympathetic. I also have damaged hearing from being a farmer. I will speak a bit louder for you.

I was saying that your submissions came in before the amended licence in December. Do you have any views on that new amended licence and whether they meet —

Mr Jones: It is not worth the paper it is written on, as a measure of control.

Mr Hesse: In my view, it is still unenforceable. The DEC is still writing unenforceable licences.

Hon COL HOLT: Is that an issue—the unenforceability of it or is it what they are suggesting in terms of dust control? I know that you talked about wet scrubbing versus baghouse technology. Is it about enforceability of the licence and/or to do with the technology it is suggesting to reduce emissions?

[11.00 am]

Mr Jones: A licence does not and cannot specify actual types of equipment to be used; that is up to the company. As far as I understand it, the EP act provides that an end result must be produced in which pollution is up to only a maximum level. That licence does not have those sorts of limits; they stopped having them years ago, so there is no threshold. How can we enforce something if we do not have a threshold? How can we enforce a speed limit on the road without a speed limit sign? We cannot. It has got away with it for many years. It is up to the company to research, engineer and provide adequate equipment. As a retired engineer, I have had quite a lot to do with dust collection and dust treatment. In fact, I object to the word “dust” being used, because it trivialises what it is. It is an emitted pollutant. In fact, in relation to the Esperance incident, it was ruled that that word should stop being used as a substitute. Does that answer your question?

Hon COL HOLT: Yes, it does, thank you.

The CHAIRMAN: We have had comments before about this licence not being enforceable. Have you had legal opinion on that? It is an easy throwaway line, but obviously licences are signed and can be withdrawn as well if they do not meet the conditions of the licences.

Mr Hesse: We have asked the DEC for every licence for Cockburn Cement for as long as I can remember, going back to probably 2002, to prove to us that its licences were legally enforceable. I have asked for the DEC to provide legal advice to prove that its licences are enforceable; it has not done so. We have seen that in evidence from a government inquiry.

The CHAIRMAN: But you have not had any independent legal advice yourself?

Mr Hesse: No, we have not had any independent legal advice, but it has been stated in various government reports over the years that the licences are unenforceable.

Mr Jones: In our main submission, which you have had for some time, we gave quite a lot of information about the unenforceable licences that are regularly issued. A meeting with Midland Brick was attended by Mr Philip Hine, who at that stage was the licensing manager. He told everybody at this meeting that their worries were over and that a new licence was being issued that would fix everything up, same as we had for the current Cockburn Cement licence. My response to him was, “Philip, I know, you know, the minister knows, the Appeals Convenor knows and the company knows that the licence is unenforceable. Practically all licences that have ever been issued by the DEC are unenforceable.” I was amazed; I nearly fell off my chair, because he said, “Yes, Ron, you are correct”.

The CHAIRMAN: In respect of that, the new licence states 13 different environmental improvement requirements under the amended licence condition 56. Do you accept that, if the company followed the licence, those 13 requirements would address some of the problems that exist?

Mr Jones: The one and only thing that I read into that licence was something that gave me a little bit of pleasure—that it was to establish what I call a barcode style of registering complaints, so that every complaint had a unique number allocated to it. There would then be a trail as to what the outcome would be et cetera. That appears in that licence, and it is something that I have been fighting for, for probably 10 years, not just with Cockburn Cement, but with a range of industries. It was good to see that at last that had happened. That is the only thing that I see in that licence as being worthwhile.

Hon LYNN MacLAREN: Do you think that Cockburn Cement can clean up its act to the extent necessary to remain in that area, around residents? What is your view of the buffer zone?

Mr Hesse: I think they can. The buffer zone is there for a reason, but it really should not need a buffer zone. A modern industry should not need a buffer zone; it should be able to keep its emissions inside the boundary fence. Sure enough, it has stacks and things, but it is using the wrong technology. We have never, ever said that any industry in the Kwinana industrial area should shut down; they could all improve and do the right thing, but they just do not like spending money—that is the only problem. What it boils down to is how much money they are willing to spend. I know some people are pushing for baghouse filters, but my concern is that when we were fighting this issue in the mid-2000s, Cockburn Cement promised us a baghouse filter on kiln 6 back then.

Mr Jones: It first promised us wet scrubbers.

Mr Hesse: It did, but with the baghouse filter it decided it could not do it because it could not get a company to guarantee the work, because the temperatures of the kilns were too high for a baghouse filter. I thought at the time that that was very suspect, and we questioned Cockburn Cement as such, but it insisted that that was the case. I would now ask: what has changed?

Hon KATE DOUST: Why is the option of a wet scrubber a better option than a baghouse filter?

Mr Hesse: I have worked in a number of industries along the strip that have had both wet scrubbers and baghouse filters, and I know some people are saying that Alcoa is a different example. Alcoa did not have the massive dust problem or the acidic gas problem that Cockburn Cement has, and that is better treated with a wet scrubber. The wet scrubber makes it a lot easier to adjust and control the pH; you cannot control the pH in a baghouse filter, for example. Therefore, you can control a range of things, including the chemical gases.

Hon KATE DOUST: Is it a more or less expensive process to apply?

Mr Hesse: It is more expensive.

Hon KATE DOUST: More expensive.

Mr Jones: It is more expensive to buy, but not to run.

Hon KATE DOUST: Okay.

Mr Jones: We are really talking about air quality here. One thing I would like to point out is that when you get into buffer zones, the quality of the air cannot read paper, and they do not know that they have reached a certain distance and should not go any further. To give you an example of plumes—it is plumes that we are talking about—if we go back to the Bellevue waste control fire, that was detected in South Africa. In the days when there was much more sulfur in Kalgoorlie, there were incidents in which the plume of sulfur went through to Adelaide and people were complaining about the effect on their noses and throats.

Hon KATE DOUST: I am very familiar with the sulfur plumes in Kalgoorlie.

Mr Jones: You remember that?

Hon KATE DOUST: Yes, I do, having grown up there.

Mr Jones: Switzerland complains about the snow on its western slopes turning pink every so often because of red sand blowing from the Sahara Desert. When I was working for Hamersley Iron, we ran the pellet plant in Dampier, which used to give off a beautiful pink plume—a really quite dense one. Talking to people on the ships that were taking the iron ore up to the Straits of Malacca, they told us that, after sailing for two days, they would encounter the plume still coming from Dampier. They would sail across it at an angle so that they would have to shut all the portholes and doors for quite a few hours until they got through the plume. When we talk about buffer zones, we cannot rely on them stopping before they get to a boundary, on paper.

Hon LYNN MacLAREN: I want to ask about your experience with the community working group. Would you like to comment on that and how useful it is as a process?

Mr Jones: I have put quite a lot in the submission about that. It was an absolute and utter farce. It was a talkfest that was engineered. I have provided evidence in the form of copies of the agendas to show that community members of the group got only about five to 10 minutes at the conclusion of the meeting to be heard.

Hon LYNN MacLAREN: What would you like to have seen? What were your expectations of the community working group?

Mr Jones: The sort of thing they used to do was to fill the meeting up with people from the company or the DEC giving presentations to chew up the time and leave nothing for anyone else.

Hon COL HOLT: Are there any minutes? Did they take minutes during those meetings?

Mr Jones: Yes.

Mr Hesse: The actual minutes were not usually very much like the actual meeting.

Hon COL HOLT: They did not reflect what happened?

Mr Jones: They were highly selective, let us put it that way.

Hon COL HOLT: Who took the minutes?

Mr Jones: The company started off doing them, then DEC did them after that.

Mr Hesse: In the end, we were actually asked to leave the committee. We were basically sacked from the committee, and we still say today that it was only because we were capable of telling them that some of the things that they were coming up with were not the case and just simply were not true, and we were challenging them, and they did not like being challenged.

The CHAIRMAN: Thank you, gentlemen, for coming in. We have other hearings we wish to move on to within the time frame we have to work to.

Mr Jones: I hope, Mr Chairman, that you do get the chance to really study our written submission, because there are many, many things in there that will give answers to some of the things you will be dealing with.

The CHAIRMAN: I can assure you that the submission and information given today will be given due consideration. Thank you.

Hon LYNN MacLAREN: Did you want the submission to be public?

Mr Hesse: Yes, we were just concerned about, for example, there were photos of children in there and we did not want the names of the children published. Apart from that, we would be quite happy for it to be public.

The CHAIRMAN: Thank you.

Hearing concluded at 11.12 am
