

WALZEN GREENWATER



Environmental Defenders Office (SA) Inc.

NOVEMBER 2007 GREENLAW # 25

SITE CONTAMINATION LAWS—AT LAST!

After many years of discussion the SA Government has finally introduced a Bill in relation to site contamination.

The Bill will amend the Environment Protection Act. Site contamination is defined to exist when chemical substances are introduced onto a site, and remain in concentrations that are higher than the background concentrations of surrounding areas. The contamination must cause actual or potential harm to humans, water or the environment that is not trivial, taking into account the way in which the land is or will be used.

Under the proposed Bill, if site contamination is suspected to exist the Environment Protection Authority (EPA) can order either the person who caused the contamination, or in some circumstances the person who owns the land, to carry out a site contamination assessment to discover the nature and extent of the contamination.

If contamination is known to exist at a site, the EPA can order that person to remediate the site by managing or removing the contaminants. Liability for site contamination can be fully or partially transferred through the purchase or

transfer of land where the transaction takes into account the contamination.

The EPA can also declare 'special management areas' where widespread contamination occurs, which will be dealt with by a process of publication and consultation on the issue.

The Bill also makes it an offence for owners or occupiers of land not to notify the EPA regarding the existence of site contamination that affects or threatens groundwater, unless they believe that the EPA is already aware of the contamination.

The Bill was passed by the Legislative Council on 26 September and introduced into the House of Assembly on 27 September .

ADVANCE NOTICE EDO WATER CONFERENCE MARCH 2008

Examining key elements around water including:

- water legislation
- reuse
- desalination
- water trading

STATE PLANNING REVIEW

On the 19th June 2007 the State Government announced the State Planning and Development Review. According to the Government's media release the Review is intended to "take an intensive and wide-ranging look at the planning system, with a view to ensuring South Australia leads the nation in planning reform".

This Review follows on from other recent changes to the system including reform of Council Development Assessment Panels.

The Committee overseeing the Review is due to report to the State Government at the end of the year.

PENOLA PULP MILL BILL NOW LAW

The Penola Pulp Mill Authorisation Bill (SA) has now been passed by Parliament. This legislation allows the project to bypass a rigorous environmental impact assessment process.

EDO IS VISITING THE RIVERLAND

On Monday 12 November 2007 Ruth Beach will be consulting with clients at the Riverland Community Legal Service which is located at 8 Wilson St Berri .

Appointments can be made through the EDO office on 1800 337 566.

STATUTES AMENDMENT (WATER CONSERVATION TARGET AND SUSTAINABLE WATER RESOURCES) BILL (SA) 2007

Greens MLC Mark Parnell has introduced a Bill which seeks to amend the Public Corporations and the SA Water Corporation legislation to insert requirements around water conservation and ecologically sustainable development. The bill emphasises the importance of SA Water collaborating with other like-minded organisations and agencies.

In line with the legislation of other mainland States this Bill seeks to set specific water conservation targets and/or water conservation objectives. The aim here is to assist South Australians to reduce their household and garden water use by legislating to make SA Water take more responsibility to reduce water usage, possibly by offering incentives (e.g., more generous rebates, expert advice at minimal cost to the consumer) to SA Water consumers. The bill seeks to give SA Water a much stronger and clearer mandate to save water. SA Water is, currently, rewarded for selling water; this means that at the moment SA Water has little incentive to help households save water and money.

The Bill will require SA Water to be satisfied that there is sufficient and sustainable water resources before it connects new developments or adds any new areas as water districts that are entitled to connection and needs to ensure there is a sufficient and sustainable water supply.

THE WATERWORKS (MAKING OF RESTRICTIONS) BILL (SA) 2007

This private member's Bill relates to water restrictions and how those restrictions can be implemented in the future.

The Bill proposes that, when restrictions or water conservation measures are needed because of a water shortage, parliament should have the opportunity to debate the restrictions.

The Bill seeks to establish a Stakeholders Water Advisory Committee – the objective being that parliament would be able to use the expertise of this committee to make well-balanced decisions in relation to water restrictions on behalf of the people of South Australia. The Bill outlines the makeup of the committee and the knowledge or experience required by potential committee members. It also endeavours to redress any unfairness or eliminate any ineffectiveness when it comes to setting and implementing water restriction measures

ARKARoola SANCTUARY THREATENED BY PROPOSED URANIUM MINE

The internationally renowned sanctuary in SA's far north is under threat from a proposal by Marathon Resources to mine for uranium at a site on Mt Gee. The sanctuary is home to many endangered species of animals and plants including the yellow footed rock wallaby.

The proposal will undergo an environmental impact assessment as part of an assessment process under the Commonwealth Environment Protection and Biodiversity Conservation Act.

At the state level Greens MLC Mark Parnell has introduced a private member's bill which seeks in part to prohibit mineral exploration and mineral extraction in sanctuaries.

The lack of protection for sanctuaries is at odds with the situation which currently exists for national parks and other reserves where mining is not allowed except in specific areas.

To support the campaign to protect Arkaroola visit

<http://www.arkaroola.com.au/mining.php>

MOTORBIKES

We are acting on behalf of objectors where motorbikes are ridden in the Hills Face Zone and eroding the land, causing sediment to pollute a local river and causing noise pollution to surrounding neighbours. The issues are contentious.

SIGNIFICANT TREES BILL WITHDRAWN

The SA Government's Development (Regulated Trees) Amendment Bill 2007 was recently withdrawn from the Legislative Council following a lack of support from other members.

The Bill looked to introduce a two-tier system of assessing the removal of trees. A Regulated Tree would have been an overarching category for trees over the 2m circumference test. The relevant authority would then assess without the aid of an Arborist's report whether the regulated tree is significant by considering prescribed criteria, such as whether the tree significantly contributes to the amenity of the local area.

The Bill was aimed at reducing the cost to applicants for removal of trees that by their size alone are significant and "inappropriately planted" (e.g., close to dwellings). Critics of the Bill suggest it would have made it easier and cheaper to remove trees than is the case under current legislation.

Other themes of the Bill which are likely to reappear in any redrafted version of the Bill include Make-Good Orders where the Environment Court can order the replanting of a tree (that when fully grown will be significant) in the place where tree-damaging activity occurred.

Further a developer can be ordered to tear down a building that is put in the place of a tree illegally removed which some suggest would have provided a greater deterrent to developers who currently are willing to commit offences against the act by illegally removing trees and weighing up the fines against the profit of the development.

An Urban Tree Fund was also proposed whereby a fee may be paid into a fund to plant or maintain trees on the site of development (or elsewhere) in exchange for approval to remove the regulated or significant tree so that development can go ahead.

The question of how significant trees are dealt with is of major interest to many of our clients. We will be looking to comment on any new draft of this Bill.

BLUE GUMS

It is strange that the EDO might act where trees are being planted, but that happened on the Fleurieu Peninsula. A blue gum plantation which required almost double the rainfall than that required by indigenous eucalypts was approved by the local Council. The plantation was threatening water supply to the Inman River and Glacier Rock. We represented the objectors at the conference stage in the Environment Resources and Development Court.

MARINE PARKS BILL (SA) 2007

The Marine Parks Bill aims to protect and conserve examples of all marine habitats and the wide diversity of plants and animals that depend on them. The Bill is geared towards biodiversity conservation and not fisheries management. Its primary objects are to protect and conserve marine biological diversity and habitats by declaring and providing for the management of a comprehensive, adequate and representative system of marine parks and to help maintain the natural function of coastal, estuarine and marine ecosystems and their interdependence on one another.

A key component of the Bill will be the management plans. Management plans are statutory instruments which describe all zones and special purpose areas within a marine park. These plans will determine what can or cannot be undertaken in different marine parks or in different zones within these marine parks.

South Australia's marine parks will be zoned for multiple-use to protect and conserve marine biodiversity while providing for the ecologically sustainable use of suitable areas.

Conservation groups are critical of the multiple-use model that is being proposed – these groups fear that activities incompatible with biodiversity conservation (mining, petroleum exploration, commercial and recreational fishing, waste discharge) will be allowed under this Bill.

The Bill imposes a number of obligations and powers on the Minister (s 21) and it imposes some quite significant penalties; in some instances these penalties involve a maximum fine of \$100,000 or imprisonment for 2 years.

The Bill has passed through the Legislative Council on the 16 October and will now be debated in the House of Assembly.

Thursday night Advisory Service

Clients make appointments with our volunteer lawyers who are on a roster to give advice on environmental and planning issues. There are usually times for two appointments starting at 6pm. Clients can ring 8410 3833 to book a time to see a lawyer.

Goodbye to Chris Hales

I started with the EDO in July 1996, a few months after Mark Parnell and James Blindell opened the doors of the newly formed EDO for the first time. I have kept the office ticking over through three office moves and replacement of the two solicitors, but now it is time for a change.

This has been a tremendous job and I have loved the work. I have always had great support from the solicitors and this has made the office environment a pleasure to be in.

The Management Committees, a new lot each year, have also shown their trust in me, which has been most appreciated. I have felt valued and as such, the EDO has benefited by having a committed employee.

Whilst I am traveling between country councils doing my new work of records management consultancy, I will be thinking fondly of the EDO, its staff and volunteers, and all the great work it has done and will continue to do. I am proud to have been associated with the EDO and wish it well.

...Welcome to Kathy Whitta

Kathy started as the new EDO Administrator on the 16 October. Kathy has a history of involvement with the environment sector, including Geographical and Environmental studies at Adelaide Uni, and she has worked for Friends of the Earth Adelaide and the Environmental Protection Authority. Welcome Kathy!

Contact Us

Kathy Whitta, Administrator

Melissa Ballantyne, Principal Solicitor

Ruth Beach, Solicitor

GPO Box 170
Adelaide SA
Australia 5001

Ph: +61 (08) 8410 3833
Fax: +61 (08) 8410 3855
Email: edosa@edo.org.au

SA Country Free Call
1800337566

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