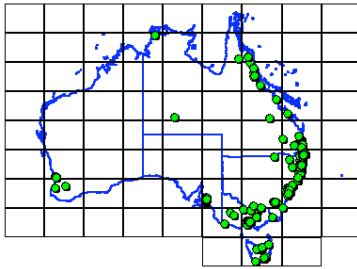


NATIONAL TOXICS NETWORK



NATIONAL TOXICS NETWORK INC.

Australian IPEN Focal Group
International POPs Elimination Network
PO Box 173 Bangalow 2479 NSW Australia
ABN 61 118 160 280
Phone/Fax (Int) 612 66871900
<http://www.oztoxics.org>

Submission to

Core Consultative Committee on Waste (3C)

On

Hazardous/Industrial Waste Precinct Coordinating Group

Discussion Paper on a Precinct Management Model

and

3C Workshop

Controlling and Managing Hazardous/Industrial Waste Treatment Precincts

5 July 2006

1. Introduction

In this, our third and probably final formal submission into the 3C process the National Toxics Network wishes to commence by confirming a comment from our previous submissions:

“We commend the work of the 3C as an extremely valuable contribution to hazardous waste management in Australia”.

Over the past three years, the 3C process developed from a search for a site for a State-wide hazardous/industrial waste treatment precinct, to searching for three regional sites. That, plus the unexpected unearthing of almost 1000 potential sites through the GIS analysis, means the process has expanded both in scale and duration well beyond what was initially anticipated. Despite this, and within the constraint of often severely-limited resources, we believe the 3C has continued to run a program based upon openness and accountability.

We note the 3C’s steadfastness in keeping its role in facilitating a stakeholder involvement program to inform the advice it makes to the Government strictly separate from the political lobbying process.

In our most recent submission in March 2006 we made the following expression of concern:

“We note with concern that a member of Cabinet, the Minister for Agriculture, recently stated publicly that he will not only work to ensure that at least one publicly-exhibited site will be rejected by Government if it is recommended by the 3C but also that he will do so using his own criteria. The Minister’s criteria are incompatible with the 3C criteria, which were recommended to Government after extensive discussion, negotiation and shared compromise and which were endorsed by Government.

“The threat to the integrity of the 3C process provided by the Minister’s intervention is obvious. However, we believe it is essential that the 3C continues to implement its program irrespective of the political machinations surrounding it. This submission conforms to the consistent message that the 3C has delivered during the public exhibition process; we will submit our views on the exhibited sites relative to the site selection criteria in this submission. Our views on the undermining of the 3C process by politicians will be submitted into the political process.”

Unfortunately, three months later the 3C process appears to be under even more intense pressure through undermining of the process by the Chamber of Commerce and Industry of Western Australia (CCIWA) with the apparent covert support of the Government’s Hazardous/Industrial Waste Precinct Coordinating Group.

In a submission to the 3C dated 3 April 2006¹, the CCIWA states it has been:

“closely involved in the 3C process and has sought to contribute in a positive manner throughout the process. Our members recognised at the start of the process some three years ago that the establishment of new and better hazardous waste treatment facilities in Western Australia would be difficult and require commitment and compromise from all stakeholders.

“Our members have maintained that commitment despite a number of concerns about the process, actual and potential, that have been raised over the past three years.”

¹ Available at <http://www.cciwa.com/default.aspx?MenuID=242#10804>

In fact the CCIWA submission shows that if it once brought a spirit of commitment and compromise to the 3C process, that spirit has gone and it is now actively working to discredit the 3C. It also appears to be in denial about the consensus recommendations it was involved in bringing forward for government decisions.

2. NTN's Understanding of the 3C Process and Current Threats to it

NTN understands the 3C process to have been founded on the principle of a stakeholder-led public involvement process in which, to date, consensus recommendations on a range of matters have been forwarded to State Cabinet for endorsement. Most importantly, these recommendations have included to date:

- site selection criteria, and
- technology suitability criteria, including recommendations that landfilling and incineration be deemed unsuitable technologies for hazardous/industrial waste precincts

The success of the current phase, involving consultation on the legislative/regulatory model to establish and management precincts is necessary to provide the major underpinning to provide public confidence that the 3C process really will provide future hazardous waste treatment facilities that are significantly better sited, more technologically advanced and better regulated than has been WA's unfortunate history.

It should be needless to say that this unfortunate history provided the need to establish the 3C process, but it appears that sections of industry and the State Government (at least within the bureaucracy) are now working actively to thwart the outcomes of the 3C process. Insofar that a raft of 3C recommendations have already been accepted by the State Government, these industry and government bureaucratic stakeholders are working actively to thwart Government policy.

The 3C has stated on many occasions that its consensus recommendations often were derived from tough negotiations and did not represent the preferred view of any particular stakeholders on the 3C. Rather they represented a compromise that all were prepared to live with in an attempt to secure the goal of new and better hazardous waste treatment facilities for WA.

So far as we are aware none of the groups represented by the community/environment, local government or trade union members of the 3C have resiled from any of the 3C recommendations to Government. This is what we would expect as proper behaviour from parties that have negotiated a consensus position, *ie* that they would stick to that position, at least unless and until other parties broke the consensus.

Additionally, one of the intended strengths of the 3C process was that the Government could adopt consensus 3C recommendations in confidence that the stakeholders who were part of that consensus would not subsequently undermine Government policy. It should go without saying that it is not easy for governments to make decisions on siting hazardous waste facilities and if major stakeholders cast doubt over processes created by the Government, political turbulence is a likely result.

The CCIWA's most recent submission to the 3C argues against many of the 3C's consensus recommendations made to the Government and subsequent Government decisions on those recommendations. It persistently attacks the 3C in what can only be reasonably regarded as an attempt to undermine the 3C's credibility; eg "the 3C made an error of judgment or oversight" and "the 3C made an error". In many conclusions and recommendations (including the long list on pages 10 and 11 of the submission to the 3C) CCIWA argues specifically against the core precepts of the 3C process and existing Government decisions, including the establishment of precincts, using the site selection criteria to establish precincts, requiring hazardous waste to be treated in precincts, the ban on landfilling and incineration in precincts and so on.

In short, the CCIWA argues for a zero outcome from the 3C process.

Extraordinarily, the submission then goes on to say:

“The 3C has been a valuable process in that:

- *It has increased the understanding between stakeholder groups,*
- *It has built a number of bridges between stakeholder groups, notwithstanding that the groups continue to have divergent and disparate views”*

We have certainly hoped that the 3C process would contribute to such understanding and bridge building, and for the first two-and-a half years of the process we were optimistic that it was making such a contribution. Unfortunately, the CCIWA has dynamited the bridges that had been built. We cannot conclude other than the CCIWA believes that if it and its members do not get exactly what they want from an open, consensus-based process they will then move to destroy the process and tell us how great it has been and isn't it terrific we have new ways of relating to each other.

NTN and other environment groups have participated in many stakeholder-based processes seeking to solve difficult hazardous waste and materials management issues. We have managed to negotiate with industry to secure important environmental outcomes, eg the National PCB and Organochlorine Pesticide Management Plans through the National Advisory Body on Scheduled Wastes process. We have no historical direct experience of industry participants² working to undermine consensus recommendations to government; if the CCIWA did not intend to give a centimetre to support improved hazardous waste management in WA it should not have entered into the 3C process. Our more normal experience is for governments (and, more particularly, their attendant bureaucracies which often strongly oppose the establishment of independent non-government committees reporting to Ministers) to fail to implement their agreed undertakings.

As will be outlined in more detail below, NTN has very serious concerns about the lack of detail in the Coordinating Group's (CG's) Discussion Paper on a Precinct Management Model. Given the lack of detail presented it would appear that the CG has either little intention of developing a precinct management model or, if it intends to do so, wants to do it in a non-consultative way. Given the content of the CCIWA's last submission to the 3C, and our understanding that industry has been heavily lobbying government with the false proposition that hazardous waste management in WA has been transformed for the better in the last few years, we believe that key agencies are working actively to create the case for minimal, if any, change.

3. Comments on the Coordinating Group's Discussion Paper

Despite its title the discussion paper does not provide a precinct management model. In fact, the paper provides so little information it appears that it may have been written with the intention of damaging the 3C process.

Throughout the last three years many stakeholders have expressed the view that even if hazardous waste precincts are sited on the basis of very stringent criteria, and treatment technologies are similarly required to meet very stringent criteria, the regulation of facilities will remain a significant concern. In the past the regulatory authorities have clearly not been up to the job, partly due to under-resourcing and partly due to cultural factors and too friendly relationships with industry, and we do not have any evidence to believe that much has changed.

The discussion paper provided the CG with an opportunity to demonstrate that it took this issue seriously. It has completely failed to take up this opportunity. It does not provide a model at all, merely outlines a series of vague objectives many of which appear to be written to provide truck-penetrating gaps.

² We understand that industry organisations not involved in the 3C may oppose 3C recommendations to Government, in the same way that community/environment groups may do so. What flummoxes us, is the CCIWA's total lack of support for a set of consensus recommendations and its apparent belief that this constitutes reasonable behaviour

NTN's understanding was that the 3C should be currently facilitating discussion on a draft legislative/regulatory model that has been drawn up by the CG on the basis of prior consultations with industry. We believe that there were a series of workshops with industry late in 2005 and that the current discussion paper was discussed with industry on 19 May 2006.

3.1 Summary

"This paper sets out the broad processes and requirements for the establishment and operation of hazardous/industrial waste treatment precincts as set out by government policy and guided by the 3C. It identifies:

- *The objectives of any legislative mechanisms that could be used to address any gaps that may be present between the existing regulatory framework and that required to give effect to the draft 3C definition of hazardous waste and the associated decision tree*
- *The likely steps that would be required to allow for any precincts to be developed*
- *The state and national processes and standards that will be met in developing these precincts"*

The vague language used in the above: "could", "may", "likely", "allow" etc is concerning. The comments fail to identify the number of gaps already existing in the current regulatory framework as a result of Government decisions to date on 3C recommendations. The language also raises concerns that the development of any precincts is speculative.

Recommendation : It be acknowledged that gaps between the existing regulatory framework and the framework necessary to give effect to existing and potential Government decisions made in response to 3C recommendations are not restricted to those "required to give effect to the draft 3C definition of hazardous waste and the associated decision tree". Additional gaps include those associated with giving effect to the site selection and technology suitability criteria and the prohibition of landfilling and incineration within precincts and their buffer zones. Resulting new state processes and standards that need to be met in developing precincts also need be defined.

3.2 Background

"The HIWPCG has sought to analyse and identify the requirements within legislation to enable the establishment of hazardous/industrial waste treatment precincts and also develop a management model for any precincts should they be established."

Presumably the CG has not "sought" these things very diligently, given the disconcerting lack of detail in the paper. Given the limited content in the discussion paper, it could have been readily written in much less than a person-day. The concern of environment/community groups has long been the lack of enforcement of those regulations already on the books. A failure to produce more than cursory detail on the scope of changes necessary to establish and properly regulate precincts serves to acknowledge these concerns.

Recommendation: The Hazardous/Industrial Waste Precincts Coordinating Group acknowledge that the lack of detail in the discussion paper has increased community concern over the future regulation of hazardous waste in WA.

"The HIWPCG has also commissioned an extensive study by GHD into the current status of the waste industry in WA. GHD were requested to identify technologies available for the treatment of these wastes and to provide some economic evaluation of adopting the revised hazardous waste management framework in accordance with 3C recommendations. The GHD study does not, however, form part of this discussion paper."

And why not, may we ask? Has the study been completed? Is it intended to publish the study, minus any genuinely commercially confidential material. It would seem to us that there should be much useful, non-commercial information in such a study to inform public understanding, if it has been competently carried out. Is there any truth

behind the persistent rumours that this study has been selective in its investigations and/or not well carried out, these contributing to its non-publication to date.

Comments made by the Department of Environment representative at the 3C Workshop in Perth on 1 July, cast doubt on whether this study would be published at all. We gained the impression that the report was being massaged for public consumption, that this may be proving difficult and hence that it may not be published. Failure to publish this report would mock the openness with which the 3C has conducted its process

Recommendation The Terms of Reference for the GHD study be made publicly available immediately. That the full report be made available upon completion or immediately (whichever is the sooner), after removing any genuinely commercially-confidential information.

3.3 Part One – Precinct Management Model

“Identify and fix any gaps in legislation if required”

The term “if required” is of concern, as the Government has already endorsed the following key factor: “Legislation to create designated precincts, protect buffers and ensure that hazardous wastes must be treated in precincts”. We have previously noted that CCIWA have argued against these provisions, and it doesn’t increase confidence when the CG appears to suggest that they may not be required.

Recommendation: The Coordinating Groups specifically acknowledges, in line with the Cabinet decision of 18 April 2005, that legislation is required to create designated precincts, protect buffers and ensure that hazardous waste must be treated in precincts.

3.4 The Objectives of Legislation

Of the broad legislative options available, *ie* amendment to existing legislation, creation of new legislation, or a combination of the above we believe the core 3C recommendations with respect to establishing precincts in the three major waste-generating regions (South West, Pilbara and Goldfields), protecting essential buffers, defining hazardous waste, directing hazardous wastes to precincts, the site selection and technology suitability criteria, the prohibition of incineration and landfills within precincts and their buffer zones, and the requirement for community monitoring committees should be enshrined in new legislation.

Unless these provisions are specifically enshrined in specific legislation, it will erode public confidence in the commitment of Government to move seriously to improve hazardous waste management in WA, noting industry lobbying to do as little as possible.

Recommendation: The core 3C recommendations with respect to establishing precincts in the three major waste-generating regions (South West, Pilbara and Goldfields), protecting essential buffers, defining hazardous waste, directing hazardous wastes to precincts, the site selection and technology suitability criteria, the prohibition of incineration and landfills within precincts and their buffer zones, and the requirement for community monitoring committees be enshrined in new legislation.

“1. Allow for the creation of designated precincts and buffer zones and ensure that these are protected in the long-term.”

We believe this objective to be undesirably and probably deliberately vague.

Recommendation: New legislation specifically create three precincts, one in each of the South-West, Pilbara and Goldfields regions, establish the essential 3km buffer zones around these precincts, and prohibit the establishment of any sensitive land uses within the essential buffer zones.

“2. Allow for a process to create further precincts for hazardous wastes in the future”

We accept the need to allow for this possibility, even if we cannot currently see the likelihood of a specific need for it.

Recommendation: The process for creating any future precincts should be based upon the learnings from the 3C process.

“3. Describe the process to define hazardous waste”

The 3C has expended much effort in developing a definition of hazardous waste, which has been accepted in principle by the Government. This is “the process to define hazardous waste”; the legislation needs to build upon this work, not take us back to square one and perhaps re-invent it in a way that suits those who want to remain in their comfort zone.

Recommendation: The legislation should define hazardous waste. Additional detail may reside in regulation as the detailed listing of hazardous wastes may change over time. The legislation must do more than describing the process to define hazardous waste – the Government signed off on that process over a year ago.

“4. Allow for the creation of mechanisms that enforce and administer the treatment of these hazardous wastes in precincts. This is to be based on the 3C decision tree model.”

This is waffly bureaucratspeak. The legislation must ensure that hazardous wastes are treated in precincts unless they are exempted by the decision tree endorsed by the Government.

Recommendation: The legislation must ensure that hazardous wastes are treated in precincts unless they are exempted by the decision tree endorsed by the Government. It should also prohibit landfills and incineration within precincts and their buffer zones.

“5. Allow for a process to identify hazardous waste treatments that are unacceptable for precincts ”

More waffle from those who provided a significant part of the need for the 3C process in the first place and who have a vested interest in rolling back the agenda. The Government has already proscribed landfills and incinerators in precincts within the framework of the Government’s (not just the 3C’s) technology suitability criteria.

Recommendation: Within the overarching framework of the Government’s technology suitability criteria the new legislation should prohibit landfills and incineration within precincts and their buffer zones. It should also ensure that any proposals to establish facilities within precincts conform to the technology suitability criteria.

“6. Allow for the creation of a mechanism to grant exemptions to the need to treat a waste in a precinct (under regulation)”

Noting the CCIWA’s assertions that there is no need to create precincts we are suspicious of attempts to grant exemptions under regulations. However, we agree that individual exemptions should not require legislative amendments. Equally, the widespread lack of public trust in the performance of the regulator makes it undesirable for approval of exemptions to lie with the regulator.

Recommendation The legislation should outline a process for exemption that provides for a clear obligation to articulate the case for an exemption and for it to be subjected to open public scrutiny and comment. Any decisions to

grant exemptions should lie with the responsible Minister and should be accompanied by a clear justification for the exemption.

“7. Prohibit treatment of hazardous waste in all areas of Western Australia except those defined under the 3C decision tree.”

We are not sure what this provision is stating that this is stating beyond the negative of that what is stated in objectives 4 and 6.

Recommendation: The meaning of objective 7 should be stated more clearly so that its purpose be understood and meaningful comment be made upon it.”

“8. Provide the Ministerial powers to set timeframes for existing treatment companies to comply with the above”

The Government as a whole needs to show that it is serious about establishing hazardous waste treatment precincts and ensure that hazardous wastes are treated in precincts. Objective 8 reads like an attempt from the bureaucrats to argue in favour of Ministerial timorousness.

Recommendation: Decisions relating to the timeframes in which existing treatment companies should be given to comply with the above objectives should be agreed by Cabinet and not by an individual Minister. There should also be a maximum period for compliance; no more than three years from a Government decision to establish precincts.

4. Comments on Draft 3C Position on Legislation/Regulation

“Protection of the essential 3km buffer from sensitive land uses”

Protection of the buffers in legislation is a key issue and should be provided for in legislation.

Recommendation: Legislative protection be provided for the essential 3km buffer from sensitive land uses for all hazardous/industrial waste treatment precincts.

“Prohibiting incineration and landfilling within precincts (and their buffers)”

NTN was amazed to hear that the argument has been advanced that while landfilling and incineration may be banned within precincts, they could be permitted within precinct buffer zones. The precincts and their buffers are an indissoluble package and these unacceptable technologies must be banned in both precincts and their buffers zones.

Recommendation: Legislation prohibit incineration and landfilling within precincts and their buffer zones.

“Definition of hazardous waste (based on the EU Directive and Catalogue)”

NTN supports the definition of hazardous waste being enshrined in legislation. It is not sufficient for the legislation to describe the process for defining hazardous waste, as suggested by the CG.

Recommendation: The definition of hazardous waste be enshrined in legislation.

“Requiring hazardous waste to be treated in precincts (within decision tree framework)”

NTN supports this proposal being enshrined in legislation.

Recommendation: There be a legislative requirement for hazardous waste to be treated in precincts (within the decision tree framework).

“The Technology Suitability Criteria for facilities treating hazardous waste”

It is noted that the CG discussion paper makes no reference to the Cabinet-endorsed technology suitability criteria, which are a key component of the 3C process.

Recommendation: The technology suitability criteria for assessing hazardous waste treatment facilities be enshrined in legislation.

“The site selection criteria to apply to any future precincts”

The initial precincts will be selected through application of the existing site selection criteria. For public confidence it is essential that any future selection of precincts be based upon similarly stringent site selection criteria. However, there should be the capacity to refine these criteria if experience shows this to be warranted.

Recommendation: Legislative backing be provided for the use of the existing site selection criteria as a starting point for selection of any precincts beyond the initial three. The legislation should provide for an open participatory process to examine the need to modify the criteria based upon experience.

“The requirement for a community monitoring committee (but not the composition or detailed terms of reference)”

For public confidence it is essential that the need to have a community monitoring committee for each precinct is provided for in legislation, and not hived off to subsidiary regulations or guidelines. It is also essential that the committees be given adequate ongoing resourcing to perform their role and to access independent expertise where necessary. We accept that the composition and terms of reference for each committee may vary over geography and time. Initial draft terms of reference should be provided for each committee, with the committee to recommend their final terms of reference and composition to the responsible Minister. NTN believes that the committees must have the ability to advise the responsible Minister and not have the diminished status of providing advice to government agencies only.

Recommendation: The requirement for a community monitoring committee and a general description of their purpose be provided for in legislation.

“Need mechanisms to ensure all hazardous waste treatment proposals are referred to the appropriate Decision Making Authority”

NTHN understands this provision to relate to trying to ensure that hazardous waste treatment facilities are not established by sneaking under the legislative/regulatory radar, eg by an inappropriately-described proposal being given approval by local government. The need for this is supported and early and full attention should be given to developing mechanisms for it.

Recommendation: The 3C should develop specific recommendation to the State Government to mechanisms to attempt to ensure that all hazardous waste treatment proposals are referred to the appropriate Decision Making Authority.