



Third Session - Thirty-Fifth Legislature
of the
Legislative Assembly of Manitoba

**STANDING COMMITTEE
on
PUBLIC UTILITIES
and
NATURAL RESOURCES**

39-40 Elizabeth II

*Chairperson
Mr. Jack Penner
Constituency of Emerson*



VOL. XLI No. 9 - 10 a.m., TUESDAY, JUNE 9, 1992



MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

Members, Constituencies and Political Affiliation

| NAME | CONSTITUENCY | PARTY |
|----------------------------|---------------------|--------------|
| ALCOCK, Reg | Osborne | Liberal |
| ASHTON, Steve | Thompson | NDP |
| BARRETT, Becky | Wellington | NDP |
| CARSTAIRS, Sharon | River Heights | Liberal |
| CERILLI, Marianne | Radisson | NDP |
| CHEEMA, Gulzar | The Maples | Liberal |
| CHOMIAK, Dave | Kildonan | NDP |
| CONNERY, Edward | Portage la Prairie | PC |
| CUMMINGS, Glen, Hon. | Ste. Rose | PC |
| DACQUAY, Louise | Seine River | PC |
| DERKACH, Leonard, Hon. | Roblin-Russell | PC |
| DEWAR, Gregory | Selkirk | NDP |
| DOER, Gary | Concordia | NDP |
| DOWNEY, James, Hon. | Arthur-Virden | PC |
| DRIEDGER, Albert, Hon. | Steinbach | PC |
| DUCHARME, Gerry, Hon. | Riel | PC |
| EDWARDS, Paul | St. James | Liberal |
| ENNS, Harry, Hon. | Lakeside | PC |
| ERNST, Jim, Hon. | Charleswood | PC |
| EVANS, Cliff | Interlake | NDP |
| EVANS, Leonard S. | Brandon East | NDP |
| FILMON, Gary, Hon. | Tuxedo | PC |
| FINDLAY, Glen, Hon. | Springfield | PC |
| FRIESEN, Jean | Wolseley | NDP |
| GAUDRY, Neil | St. Boniface | Liberal |
| GILLESHAMMER, Harold, Hon. | Minnedosa | PC |
| HARPER, Elijah | Rupertsland | NDP |
| HELWER, Edward R. | Gimli | PC |
| HICKES, George | Point Douglas | NDP |
| LAMOUREUX, Kevin | Inkster | Liberal |
| LATHLIN, Oscar | The Pas | NDP |
| LAURENDEAU, Marcel | St. Norbert | PC |
| MALOWAY, Jim | Elmwood | NDP |
| MANNES, Clayton, Hon. | Morris | PC |
| MARTINDALE, Doug | Burrows | NDP |
| McALPINE, Gerry | Sturgeon Creek | PC |
| McCRAE, James, Hon. | Brandon West | PC |
| McINTOSH, Linda, Hon. | Assiniboia | PC |
| MITCHELSON, Bonnie, Hon. | River East | PC |
| NEUFELD, Harold | Rossmere | PC |
| ORCHARD, Donald, Hon. | Pembina | PC |
| PENNER, Jack | Emerson | PC |
| PLOHMAN, John | Dauphin | NDP |
| PRAZNIK, Darren, Hon. | Lac du Bonnet | PC |
| REID, Daryl | Transcona | NDP |
| REIMER, Jack | Niakwa | PC |
| RENDER, Shirley | St. Vital | PC |
| ROCAN, Denis, Hon. | Gladstone | PC |
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| SANTOS, Conrad | Broadway | NDP |
| STEFANSON, Eric, Hon. | Kirkfield Park | PC |
| STORIE, Jerry | Flin Flon | NDP |
| SVEINSON, Ben | La Verendrye | PC |
| VODREY, Rosemary, Hon. | Fort Garry | PC |
| WASYLYCIA-LEIS, Judy | St. Johns | NDP |
| WOWCHUK, Rosann | Swan River | NDP |

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON
PUBLIC UTILITIES AND NATURAL RESOURCES

Tuesday, June 9, 1992

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cummings, Downey

Messrs. Edwards, Gaudry, Helwer, Hickes,
Laurendeau, Penner, Rose

Substitutions:

Ms. Cerilli for Mr. Ashton

Hon. Mr. Enns for Mr. Neufeld

WITNESSES:

Bill 53—The Dangerous Goods Handling and
Transportation Amendment Act:

Wayne Neily, Manitoba Environmental
Council

Paul Bergan, Private Citizen

Aileen Bergan, Private Citizen

Douglas Grantham, Town of Stonewall

David G. Lethbridge, Mayor, Town of
Stonewall

MATTERS UNDER DISCUSSION:

Bill 10—The Manitoba Hydro Amendment Act

Bill 53—The Dangerous Goods Handling and
Transportation Amendment Act

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Clerk of Committees (Ms. Patricia Chaychuk-Fitzpatrick): Order, please. Will the Standing Committee on Public Utilities and Natural Resources please come to order.

I have before me the resignation of Marcel Laurendeau as Chairperson of the standing committee. It is my understanding Mr. Laurendeau is not resigning as a member of the committee. He is only resigning as Chairperson.

Therefore, we must proceed to elect a new Chairperson. Are there any nominations?

Mr. Edward Helwer (Gimli): Madam Chairperson, I would like to nominate Jack Penner.

Madam Clerk: I am not Madam Chairperson, but Mr. Penner has been nominated. Are there any further nominations? If not, Mr. Penner, you are elected Chair. Please come and take the Chair.

Mr. Chairperson: I would like to call the committee to order, please. The committee will be considering two bills this morning: Bill 10, The Manitoba Hydro Amendment Act; and Bill 53, The Dangerous Goods Handling and Transportation Amendment Act.

It is customary to hear presenters in committee first, although we have a very short bill, Bill 10. What would the will of the committee be? Could we deal with Bill 10 first? Agreed.

Committee Substitution

Mr. George Hickes (Point Douglas): May I have leave to make a committee change?

Mr. Chairperson: Is there leave by the committee to make a committee change? Agreed? Proceed.

Mr. Hickes: I move, seconded by the member for Thompson (Mr. Ashton), that the composition of the Standing Committee on Public Utilities and Natural Resources be amended as follows: Radisson (Ms. Cerilli) for Thompson (Mr. Ashton) for June 9, 10 a.m.

*(1010)

Mr. Chairperson: Is it agreed that the member for Radisson (Ms. Cerilli) replace the member for Thompson (Mr. Ashton). Agreed? Agreed and so ordered. This will be read in the House this afternoon and should be moved and read in the House this afternoon.

Bill 10—The Manitoba Hydro Amendment Act

Mr. Chairperson: Did the minister responsible for Bill 10 have an opening statement?

Hon. James Downey (Minister responsible for The Manitoba Hydro Act): No, Mr. Chairperson, I am prepared to proceed to pass the bill as presented.

Mr. Chairperson: Do any of the honourable members on the committee have an opening statement?

Mr. Paul Edwards (St. James): This, of course, is a very short bill which achieves a fairly simple purpose, which is to expand the borrowing power from \$150 million to \$500 million for Manitoba Hydro. We have had a thorough debate in the House. There is no need to belabour the point at committee.

However, for the record, the minister and Manitoba Hydro, in our estimation, have not to date given an adequate explanation for the need for this. Our party is cognizant of the fact that, in particular, after the hearings that we have gone through with Manitoba Hydro's annual report, the plans of Manitoba Hydro for Conawapa are suspect and should be reviewed thoroughly, we suggest, by the Public Utilities Board.

We remain concerned that the corporation is going ahead without the required economic analysis based on new information and without fully appreciating the opportunities we think they have to save the ratepayers of this province financially as well as to curtail the environmental impact of the dam in the North.

We are prepared to not unduly delay this bill; however, we certainly oppose it because an adequate explanation has not been forthcoming. In our view, Manitoba Hydro is embarking on a course with Conawapa which is not prudent; that is, they have not reassessed, in light of the new information as to the Manitoba load demand, which they should in our view. Thank you, Mr. Chairperson.

Mr. Downey: Mr. Chairperson, I am not going to prolong debate. I just want to put it on the record that I cannot accept the comments made by the Liberal critic at this time. Pass the bill.

Mr. Chairperson: Thank you, Mr. Minister. We thank all the honourable members for their statements.

Will the bill be considered clause by clause? Is that the wish of the committee?

An Honourable Member: Page by page.

Mr. Chairperson: During consideration of the bill, the Title and the Preamble are normally postponed until all clauses have been considered in the proper order by the committee.

Clause 1—pass.

Clause 2.

Some Honourable Members: Pass.

Some Honourable Members: No.

Mr. Edwards: I would like a recorded vote, Mr. Chairperson.

Mr. Chairperson: All those in favour, say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Edwards: A show of hands, Mr. Chairperson.

Mr. Chairperson: In my opinion, the Yeas have it.

Mr. Edwards: Could I have a recorded vote, Mr. Chairperson.

A COUNTED VOTE was taken, the results being as follows:

Yeas 5, Nays 3.

Mr. Chairperson: Clause 2 is accordingly passed on a count of five in favour and three opposed.

Clause 3—pass; Preamble—pass; Title—pass. Bill be reported.

*(1015)

Bill 53—The Dangerous Goods Handling and Transportation Amendment Act

Mr. Chairperson: This morning the committee will be considering the second bill, which is Bill 53, The Dangerous Goods Handling and Transportation Amendment Act.

It is our custom, as I said before, to hear briefs before the consideration of the bill. What is the will of the committee? Agreed.

To date we have had three presenters registered to speak on this morning's bill, and I will read the names aloud. The name of the first presenter is Mr. Wayne Neily. Is Mr. Wayne Neily here? The second one is Mr. and Mrs. Paul and Aileen Bergan, and the third one is Douglas Grantham.

I am going to call on Wayne Neily, the first presenter, to come forward please.

Mr. Wayne Nelly (Manitoba Environmental Council): Mr. Chairperson, this is probably one of

the shortest briefs you will have seen from the Environmental Council, partly because we have been very busy with Conawapa and hazardous waste facilities and such things, but also because we are generally happy with this bill.

The Manitoba Environmental Council, a citizens' advisory group established under The Environment Act, wishes to commend the Manitoba government for Bill 53, this amendment to The Dangerous Goods Handling and Transportation Act. This amendment provides a useful complement to the existing array of legal measures designed to help protect Manitoba's environment, and we fully endorse it.

It strengthens and clarifies the powers of the director to require cleanup of contaminated sites or prevent environmental damage by contamination, and if it is implemented with good judgment and accompanied by adequate monitoring should prevent some of the regrettable situations that we have seen in recent years.

While this act is open to amendment, we would suggest one other small amendment, which should not be too controversial; you might want to consider now, or take under advisement for future change and that is to change the term "hazardous waste disposal facility" to "hazardous waste management facility."

Since the definition already indicates that such a facility is for the treatment and bulk storage of wastes as well as for their "disposal," this change would probably have little legal effect but should help the public perception and understanding because of the more positive connotations of "management" of the wastes as opposed to disposing of them. Thank you.

Mr. Chairperson: Thank you, Mr. Neily. Are there any questions by the committee of Mr. Neily?

Ms. Marianne Cerilli (Radisson): Mr. Neily, I am wondering if you are aware of other sections to The Dangerous Goods Handling and Transportation Act that have been contemplated earlier and developed that could have been included with this amendment. Has the Environmental Council reviewed other possible sections of The Dangerous Goods Act that could have been added with this bill?

Mr. Neily: We have not seen any draft legislation, if that is what you are suggesting.

Mr. Chairperson: The next presenters called will be Mr. and Mrs. Paul and Aileen Bergan, private

citizens. Would you come forward please? Have you a written presentation for distribution? Would you proceed, please.

Mr. Paul Bergan (Private Citizen): Good morning, Mr. Chairperson, and members of the committee. My wife and I are not here today because we are unhappy with the contents of Bill 53. In fact, we commend this government for taking steps to enact legislation that is long overdue. We need antipollution legislation that will protect Manitobans from those who, through their negligence or blatant disregard for our environment and human health, have allowed polluting practices to take place.

We would like to share with you our personal experience as victims of someone else's disregard for our environment. The history of PCB soil contamination, the Town of Stonewall Golf Course site, pertaining to the Bergan residence May 1991 to June 1992.

In May of 1990, we purchased a house located at 715 Seventh Street West, Stonewall, Manitoba. On August 1, 1990, we took possession of that house and moved to Stonewall from Lynn Lake, Manitoba.
* (1020)

In May of 1991, the town discovered that the greens on the former golf course site in Stonewall was a place where there had been extensive use of oil laced with PCBs and I quote: In order to stabilize the sand and create a smooth putting surface, oil was sprayed on the greens. It appears that waste oil containing PCBs was used to stabilize some of the sand greens at the golf course.

Just as an addition, all of these things are documented in the background and in the different appendices. I will leave that up to you, so I will not refer to numbers there, they are written.

The Town of Stonewall had contracted I.D. Systems Ltd., a company that deals in problems of the environment, to begin testing on this site. On June 18, 1991, testing was done in our backyard. On July 13, 1991, we were informed by the town administrator that our backyard was formerly green No. 6 at the Stonewall golf course. We were also informed that large quantities of PCB contamination had been discovered in our backyard, and that we should not eat any of the vegetables from our garden.

We were assured by the town that the town would look after cleaning up the site and that we had

nothing to worry about because the cleanup would be completed by mid-August. We were also told that the town had no legal obligation, but felt a moral obligation to clean up the PCB site.

On September 16, 1991, in an effort to understand the delay in the cleanup, we wrote a letter to the town requesting permission to attend any and all meetings dealing with the PCB issue. The Town of Stonewall refused us permission to attend a meeting held with I.D. Systems, Manitoba Hydro, the Department of Environment, the provincial medical officer and the Town of Stonewall. This meeting was held on Thursday, October 17, 1991.

On the evening of October 18, 1991, we received a phone call from the town administrator asking us to come to the town office. At this meeting, we were informed that the Town of Stonewall no longer felt morally obligated to clean up our yard, and that we should get a lawyer.

It was at this point that we phoned the Manitoba Department of Environment seeking advice on the matter. We were informed by the officials of the department that at a meeting with the town on October 17, Department of Environment site remediation guidelines were discussed. The misunderstanding regarding the details of site remediation between the parties at that meeting led to Environmental Order No. 0194.

Environmental Order No. 0194 was issued to the Town of Stonewall on October 24, 1991. The Town of Stonewall appealed Environmental Order No. 0194 on November 19, 1991. The Honourable J. Glen Cummings, Minister of Environment, upheld the appeal put forth by the Town of Stonewall on January 21, 1992.

It is amazing, I stand in front of junior high kids every day and never feel this dry throated.

It was at this time that we began to feel as though we had no alternatives. It was only through a series of letters and political action that it was revealed to us that Bill 53 was to be tabled in the Legislature on February 24, 1992. Through an article in the February 26, 1992 issue of the Stonewall Argus entitled, "New legislation could leave town on hook for PCB cleanup", we found out that the Town of Stonewall and Manitoba Hydro had begun negotiations for the cost share of the cleanup costs.

We requested that we be allowed to sit in on the meeting where Ian MacKay, Manitoba Hydro's

Division Manager for the Eastern Region, made Hydro's first proposal that we were aware of to the town regarding a cost-sharing arrangement of the cleanup.

These negotiations continued with the one major stumbling block appearing to be the ownership of the soil. It was the feeling of the Town of Stonewall, as stated by Mayor Dave Lethbridge, that, quote: The occupier of the land, not the owner should be responsible.

It was at this low point that it became very clear to us that the Town of Stonewall was indeed leaving us on our own. It also appeared to us that the town hoped that we would be held responsible for something that we inherited.

In a letter of April 21, 1992, from Ian MacKay to Robert Potter, Town Administrator of the Town of Stonewall, Mr. MacKay stated that he: was prepared to recommend an alternate arrangement to the Corporation.

* (1025)

One of the points in the alternative proposal was that: "Manitoba Hydro will accept ownership of all soil contaminated with concentrations of PCB greater than 50 parts per million."

Discussions between the Town of Stonewall and Manitoba Hydro continued back and forth until, finally, in a letter of May 28, 1992, Mr. Robert Brennan, President and CEO of Manitoba Hydro, officially withdrew all offers that had been made to the Town of Stonewall and considered: all discussions with the Town of Stonewall relative to this matter terminated.

It has now been 51 weeks since the first test for PCB contamination was done in our backyard. Today, almost one year later, because of the lack of strong legislation, the lack of a willingness on the part of the Town of Stonewall to clean up the problem, and the inability of the Town of Stonewall and Manitoba Hydro to negotiate a cost-shared settlement, we still have a backyard full of PCBs.

In his letter of May 28, 1992, Mr. Brennan states to the Town of Stonewall that Manitoba Hydro will proceed with the cleanup of our property. However, we have only a verbal commitment from Manitoba Hydro to clean up our backyard. We can only hope that that verbal commitment, once put in writing, will include remediation and restoration of our property, plus Hydro taking ownership of the contaminated soil. If Manitoba Hydro's commitment is only a

partial commitment, we have no recourse without the passage of Bill 53.

The Importance of the Passage of Bill 53: Environmental Order No. 0194, which was written under Section 16 of The Dangerous Goods Handling and Transportation Act C-D12, was successfully appealed by the Town of Stonewall.

The people of Manitoba need stronger legislation that cannot be appealed, but will allow the Department of Environment to enforce site remediation of polluted sites by the polluters responsible and/or the owners of the land at the time the contamination occurred.

The legislation needs to contain the following additional points:

(a) A requirement that remedial order must contain reasonable and expeditious time frames by which identified polluters must follow site remediation plans. Bill 53-16(4)(b) states that the remedial order may: contain provisions fixing the time within which any measure required by the order is to be commenced and the time within which the order or any part of the order is to be complied with.

Based on our recent experience, the time frame in the first order gave us relief that the end of the problem was in sight. After the order was successfully appealed, there was no end to the problem, and the emotional rollercoaster seemed to go on endlessly. As of today, June 9, 1992, we are still on that rollercoaster.

The legislation proposed in Bill 53 should substitute the word "shall" for "may" so that no delays in the remediation process can take place.

(b) The legislation must clearly state penalties for identified polluters who do not follow site remediation plans and time frames. In our understanding of Bill 53, we feel that nowhere in the legislation is there any opportunity to place a penalty on the persons or corporations responsible for their noncompliance with cleanup orders.

We feel that more severe criminal penalties, such as graduated fines and jail sentences, would deter harmful environmental practices and delays in the cleanup process. This would also give the Department of Environment more power to see that cleanups are completed in an expeditious manner.

(c) The legislation must clearly identify as to who owns and who is responsible for the contaminated material. We feel that the ownership of the

contaminated material lies with the identified polluter or polluters. Our major concern is with the unknown, long-term liability as a result of the ownership of the contaminated soil.

In our case, due to high levels of PCB contamination, the PCB contaminated soil has to be stored. The greater than 50 parts per million must be stored in specially made containers at the Manitoba Hydro site on Waverley Street in Winnipeg, and the less than 50 parts per million must be stored at the proposed lagoon site near Stonewall.

This would be a severe financial burden on our family due to the cost involved in storing and maintaining the soil. Also, in owning the soil, we become responsible for the eventual treatment costs of the soil and/or the transportation of the soil if the storage sites have to be changed in the future.

* (1030)

We are concerned about what happens when we die. Do our sons equally share in the ownership and financial burden of this soil? We question why that soil should be an ongoing emotional and financial burden to us when we were not responsible for or party to its contamination.

We feel that it is only fair and reasonable that Bill 53 state clearly that those persons responsible for polluting the soil, or the owners of the land at the time of pollution, should take full ownership and all future liabilities of the soil. Innocent victims of pollution, such as ourselves, cannot and should not be held responsible for the pollution of others simply because it happens to be discovered on our property.

We moved here from northern Manitoba, bought a home and planted a garden, and then received a phone call from the Town of Stonewall telling us that we should not eat the vegetables because of the PCBs. We have a backyard with PCB levels that reach 340 parts per million, with a volume of polluted soil measuring an estimated 220 cubic centimetres. Obviously, the polluters had not cleaned up the PCBs but passed them on to private citizens.

When the moral obligation to clean up our yard became a financial obligation of which they wanted no part, the Town of Stonewall abdicated the responsibility for which they should have been legally liable. The innocent victims of PCB contamination in Stonewall should have been able to turn to their local government for help.

To make matters worse, the Town of Stonewall was successful in obtaining a repeal of an order issued to them by the provincial Department of Environment. In other words, no legislation that existed in Manitoba at the time of the appeal by the town was strong enough to allow Order No. 0194 to be the final resolution of the PCB contamination.

We look to all levels of government for protecting our human health and safeguards of our soil and ground water, ensuring its safe usage for our children and their children. Bill 53 will ensure that safety but only if it contains time lines for mediation, penalties for those who do not comply with the time lines and a clear process for identifying who owns the contaminated material.

Manitoba needs laws that prevent pollution and enable governments to make polluters pay for any cleanup of a previously contaminated site. We cannot depend on local governments to be morally obligated. They must be legally obligated. Nor can we depend on corporations to be excellent corporate citizens unless so required by law.

We urge unanimous passage of a strong Bill 53. We thank you for this opportunity to participate in this forum, and we are available for questions.

Mr. Chalrperson: Thank you very much, Mr. Bergan.

Mr. Paul Edwards (St. James): Mr. Bergan, I have some familiarity with the issue that you speak of. It is very disturbing for me to hear of the events since the discovery of the contamination. As I recall at the time—and I do not know if you have searched Hansard—we were assured in the House that remedial action would indeed be taken.

I believe the Town of Stonewall was involved in those discussions approximately a year ago, so to learn today that the moral obligation they undertook has not been fulfilled is disturbing indeed. We will certainly pursue that, and I am glad you have come to this committee to give us your story.

With respect to this bill, you make some interesting points. Is it not true that the major deficiency, at least as I see it, and one you highlighted, but I would be interested to know if you see it as having the same priority that I do, is that throughout this bill it is replete with the word "may"? The director "may" do a number of things, which would be wonderful if he or she did them and enforced them.

* (1035)

As with Order No. 0194, in your case, ultimately, if the director or the department has the ability to overturn, to entertain a discretionary decision, there is no security. Ultimately, all the fine words in any bill, if prefaced with the word "may", put a person like you in a position of dependence upon the good will of the government of the day. Does that accord with your view of this bill? I see that as the major deficiency.

Mr. Bergan: That is the reason in point (a) where [interjection] Yes, oh, sorry.

Mr. Chalrperson: If you have not appeared here before, I will indicate your name before you respond just so the recorders can record properly.

Mr. Bergan: Yes, I agree with you. That is why in point (a) we do recommend that the word "may" be substituted with "shall" in each instance.

Mr. Edwards: It is fascinating reading the Stonewall Argus. It is an interesting little paper that has some very interesting stories. I saw one a week and a half ago where they had taken the contaminated soil from a couple of sites, the one I recall in particular was the Remand Centre, and they had put it around the Perimeter Highway. Did you see that article that they had done that with contaminated soil recently?

Mr. Bergan: Yes, I did.

Mr. Edwards: It was very interesting to me, and it links to the downfall of the government in your case as well, that the explanation of the official from the Department of Environment was that it was okay. It was not illegal because it only occurred once, in one place. That was the answer, which is a bizarre defence of putting contaminated soil on accessible public property around the Perimeter Highway.

I have very little confidence in this government's desire to, in fact, comply with its own standards and so I am interested to hear your story. I am not surprised, unfortunately.

The other question I had for you, Mr. Bergan, was what involvement did your local member of the Legislature have in this, because I recall it was Mr. Enns at the time, making commitments and expressing a desire to rectify the situation. Did you follow up with him? Has he been able to assist you in your desire to have remediation work done?

Mr. Bergan: I spoke with Mr. Helwer once at a meeting in Stonewall, but that is the only communication that we have had with him.

Mr. Edwards: Was any explanation ever given from the government for overturning Order No. 0194?

Mr. Bergan: I am just finding it. In his letter of January 21, Mr. Cummings says, we are advised that the grounds for the appeal appear to be valid. I guess that is it.

Mr. Edwards: What was the major basis for the appeal? Was it based on the sense of a legal obligation? Was there any dispute that the soil is there and that it is contaminated, and that it was done some years ago prior to your purchase by Manitoba Hydro in co-operation with the Town of Stonewall?

Mr. Bergan: I am not certain of the grounds for the appeal. What is the second part of your question again?

Mr. Edwards: Is there any question, has it ever been questioned by the Town of Stonewall or Manitoba Hydro as to how the contaminated soil actually got there, and the fact that it is contaminated?

Mr. Bergan: No, it has never been questioned.

Mr. Chairperson: I would like to remind committee members that we are dealing with Bill 53 and the questions and the presentations should be relevant to Bill 53. I am almost wondering whether we are trying to interrogate the presenter on an issue that is very personal to him, and it is an argument between another party, and is really not relevant to the legislation at all.

* (1040)

Mr. Edwards: I take issue with that. This man has come forward explaining a situation involving contaminated soil, just the type of situation that Bill 53 contemplates. He has come forward talking not just about the activities of the polluters of the time, but the activities of the Department of Environment, and this bill speaks to that as well, and how they handled it, and in fact, overturned their own departmental order to remediate and help these people.

It is absolutely relevant to the spirit and intent of Bill 53, which by putting the word "may" throughout, should give every member of this committee cause for concern in view of this man's situation.

However, my questions are limited. I really had one further, and that was to ask, when, to his knowledge, this contamination took place? Has

there been a date put on it? Was it over a period of time? When did this contamination happen?

Mr. Bergan: I do not have an exact date, but somewhere in the late '50s, early '60s.

Mr. Edwards: One further question, what is the approximate cost? Has there been any costing to get the soil out and to put your yard back to the shape it should be in with clean soil?

Mr. Bergan: We have heard between \$20,000 and \$40,000.

Mr. Edwards: Are there other homeowners in Stonewall, private property owners, who are affected like you, and if so, do you know how many?

Mr. Bergan: Yes, there are. There is one homeowner for sure.

Mr. Edwards: Were the other greens, the putting greens that were affected, are they on land owned by the Town of Stonewall then, or are they all privately held to your knowledge?

Mr. Bergan: There are two senior citizens homes that also have PCB contamination around them. The town owned some land that was going to be used for a hospital site, as well, and that was also contaminated.

Mr. Edwards: Have any of those sites, to your knowledge, been remediated?

Mr. Bergan: Yes, the property that the town owned where the hospital site is going has been cleaned up.

Mr. Edwards: So they cleaned up the land that they owned, but they did not clean up the land that you own?

Mr. Bergan: That is correct.

Mr. Edwards: That is unbelievable.

Ms. Cerilli: Mr. Chairperson, I would like to thank Mr. Bergan for his presentation and the work that went into it.

I, too, am quite disappointed with all the parties involved, the Town of Stonewall, Hydro and the provincial government's inaction on this issue. I know that we have raised the issue in the House, and I think the minister's words were that the Bergans would be taken care of.

One of the first questions I wanted to ask you is, has there been an acknowledgement by the minister, his office or the department that this piece of legislation, Bill 53, is necessary, so that the government can take action with your case in

helping you see that your backyard is decontaminated?

Mr. Bergan: Yes, Dave Ediger of the Department of Environment has acknowledged to us.

Ms. Cerilli: So you have had an indication by the department that this legislation will give the department the authority that it needs to require the Town of Stonewall to deal with the contaminated soil that is in your backyard?

Mr. Bergan: Yes, the Town of Stonewall, or whomever.

Ms. Cerilli: In your discussions with the department and with the community of Stonewall, was proof that the contamination was the result of the oil from Hydro used by the Town of Stonewall? Was proof ever an issue in your situation?

Mr. Bergan: No.

Ms. Cerilli: I know from other situations dealing with hazardous waste or environmental contamination that is a problem. Often we know who has done it, but the difficulty is legally proving that that has happened. It is encouraging to see that is not an issue here.

I would agree with you that there needs to be time specifications in either the legislation itself, or that it be indicated in the legislation that time provisions in any work orders are going to be required. Is that one of the amendments that you are recommending, that it be clear that time provisions in any work orders or in the legislation should be included?

Mr. Bergan: Yes.

Ms. Cerilli: It is interesting, the other issue that was raised—is it clear to you that under this act—and it is under this amendment which still falls in with all the other sections of the act and we may find the answers to this question there—that the disposal of contaminated soil would have to be disposed of properly at a certified facility? That again seems to me to be something that should be dealt with in this amendment if it is not already in the act. Would you agree with that?

Mr. Bergan: Yes, I would.

Ms. Cerilli: The other issue that is raised in the case that you have just described is that there are certain levels of contaminated soil that are going to need to be dealt with in one manner, and other levels of contaminated soil that are going to have a less

strict handling. I guess in your case that is not going to be of much help.

I would assume that you would like to see in the legislation that the current owner of property would not be responsible for any soil that has been contaminated no matter what the level of contamination is. Can you expand on that? Is that also of concern to you?

Mr. Bergan: Yes, it is a big concern because that soil does carry a lot of long-range problems with it. You know, if we have to own it, when do we shake it? Do your grandchildren get it? As long as it is being stored, it is still in existence.

Ms. Cerilli: There are two issues here. There is one that they are making a differentiation between soil with different levels of contamination, and then there is the other issue of ownership of the soil. I guess we would like to see in the legislation as well that, as you have said, the inheritor of the contamination has no responsibility for any contaminated soil, no matter what the level of contamination.

You have also raised the issue of ownership. I am wondering if you have had any discussions with the department or the minister's office to have any advice if this legislation as it exists is going to deal with the whole issue of who owns the contaminated soil once it is removed. In your discussions with Mr. Ediger, has that been discussed? Is that clear to you, who is going to be responsible for soil that is removed from the site?

Mr. Chairperson: I would suggest that either one of the Bergans can answer the question if they choose to do so. They are both named as presenters. So it is really—if you will.

Mrs. Aileen Bergan (Private Citizen): I guess this is the touchiest issue for us, the ownership, because it is a long term, it is going to be very costly. The treatment of the soil, they have bantered around numbers that scare us, something around \$80,000 to \$100,000. It has ruined us financially. We cannot have someone else who is responsible take ownership.

* (1050)

We have even had it bantered about off the record by people from the Department of Environment that say, you are stuck with the soil, lady. No matter what happens, if we remove it, you are stuck with it under the present legislation.

Mr. Edward Helwer (Gimli): Mr. Chairperson, I just want to commend Mr. and Mrs. Bergan for coming forward today and presenting this brief. I think it is very well done and the information is very good.

Mr. Chairperson: Could I interject? Could you pull your mike up just a wee bit?

Mr. Helwer: I want to correct a statement Mr. Edwards made, and that was he inferred that the land or the fill from the Remand Centre dumped on the Perimeter Highway had something to do with the Town of Stonewall. I just want to correct the record in saying that this had nothing to do at all with the Town of Stonewall, and it was, in fact, not from our area whatsoever. I just want that corrected.

Mr. Edwards: I certainly did not suggest the Town of Stonewall. I suggested the colleague, the Minister of the Environment (Mr. Cummings), had something to do with it. That was my point. If I inferred the Town of Stonewall, then I take it back.

Mr. Chairperson: I will interject here and I am not going to allow the dispute of facts to take place at this table. We will deal with Bill 53, and if it is relevant to Bill 53, I will entertain your question.

Mr. Edwards: I am confused. I heard that the cost of the remediation, I thought you had said was \$20,000 to \$40,000, and then your wife has mentioned a higher figure. What was the difference between those two figures, or what is the cost, to the best of your knowledge, of fixing this up?

Mrs. Bergan: We are talking about two different things. We are talking about remediation of the property, and then we are talking about the treatment of the soil. If they go on to take the PCBs out of the soil, that is an additional cost.

Mr. Edwards: Understood and thank you for that clarification. With respect to the value of your property, can you tell us what depletion of value you think you have suffered? Have you done any estimates of what you have lost in terms of the resale value of your property?

Mrs. Bergan: In terms of public perception, who would want to buy it? So put a value on that. How can we? Zero.

Mr. Edwards: When did you buy that property, and can you tell us what you paid for it?

Mr. Bergan: We took possession August of 1990. It was \$100,000.

Mr. Edwards: So you have lost substantially to this point. I guess if you were to try to fix it up, try to recover the value of your home, you are looking at \$20,000 to \$40,000 to get it out, and then you are still stuck with the soil at this point, is the current information you have.

Mr. Bergan: I would like to add one thing, if I could. Because of the obvious devaluation of our property because of the PCBs, we have had it reassessed, so it was reassessed to reflect that.

Mr. Chairperson: Are there any further questions? If not, thank you very much for the presentation.

We will move on then to the third presenter, Mr. Douglas Grantham. He will be appearing for Robert Potter from the Town of Stonewall. I understand there is a written presentation. Mr. Grantham, would you proceed?

Mr. Douglas Grantham (Town of Stonewall): Good morning, Mr. Chairperson, committee members, ladies and gentlemen. I appear on behalf of the Town of Stonewall here this morning. I am their lawyer who had involvement with this matter from the beginning, and I think as you go along, you will see my presentation will answer many of the questions that the various committee members had here this morning.

Before I begin with the actual presentation, I just want to put forth to the committee that we also agree with the Bergans and we sympathize with them. I do not agree with all the statements he made in his presentation, but our position is, this is not the forum where we should be arguing and discussing those things. Our position is, we will give you the facts here this morning. We will tell you what we think of your legislation and that is what we feel we are dealing with—not to actually come forth as to who is right and who is wrong in this scenario.

I think my opening comment will be just exactly the same as what Mr. Bergan's was. We are not responsible for, and we were not a party to this pollution. This is also true of the Town of Stonewall. As I go through my presentation, you will see that. I do not propose to read my presentation to you here this morning. You are welcome to follow along as we go. I will summarize and proceed along.

Just to give you some idea, we also want to point out that we are in favor of the legislation in principle. We are not here opposing the legislation. We are here agreeing with it in principle. We have some minor amendments which we think need to be

made, but we can see where this legislation is necessary and needs to come into force. As you will see, we also are an innocent party in this whole scenario.

To begin with, I will just give you a brief summary. I am not sure if you are all familiar with the town of Stonewall, but it is a small community, approximately 3,000 residents. It is located just north of Winnipeg, approximately 30 kilometres. We have a trading area of 15,000, however, that is not our tax base. Our tax base is the 3,000 people I think our tax base will become very important as this discussion goes on because we have seen the cost involved in remedying this particular situation.

We deal with the rural economy—and our prime resource here is the people. People who come to Stonewall live there because it is a beautiful place to live. I live there myself. We come there not because we want PCB problems. We come there because we want a nice, picturesque community within which to live. We also hope that this situation will be rectified in the near future.

Dealing with the problem, let me maybe give you some facts as to just what happened to our understanding of the facts. During the 1950s and 1960s, there was a golf course which operated in Stonewall. This was a private golf course which was operated solely by its members. The Town of Stonewall, their only involvement in this was being a gratis renting of their property to the golf course members for \$1.

The Town of Stonewall rented this property, approximately 31.23 acres, to the golf course members, and as has been illustrated by Mr. Bergan, in order to retain consistency in the sand greens, oil which was obtained from Manitoba Hydro has been placed upon those greens.

One thing we know for sure is the oil was supplied by Manitoba Hydro. Another thing we know for sure is it contained PCBs. What we do not know was what the arrangement between the golf course members were and Manitoba Hydro—whether this oil was sold, was given, was stolen—we do not know, and we are not purporting to make a statement here this morning as to just how the oil was there.

The golf course carried on its operation throughout the 1960s. In 1972, it ceased operation. I think, again, I wish to emphasize, the Town of Stonewall—we did not run this golf course. We did not administer it; we did not make any

decision-making processes; we did not cut the grass; we did not help them. We just rented them the land. It was our land. It was land that was not needed at the time by the town, so consequently, the land was rented to them.

As a matter of fact, we did not even have any knowledge that this oil was spread on the golf course. How this whole matter came to light was, one of the former golf course members, when he heard there was going to be a hospital constructed upon this land, took it upon himself to phone the hospital administrator and advise him that, hey, back in the 1950s and '60s, we spread oil on this thing, oil which we got from Manitoba Hydro.

Consequently, the hospital administrator, naturally, phoned the Town of Stonewall. The Town of Stonewall said, well, hey, let us check into this; we need to know what is going on; we need to know what is happening here. So the Town of Stonewall went out and spent some dollars in connection with this. As a matter of fact, we took 200 soil samples at a cost to the Town of Stonewall of \$53,886.17. We have spent some money trying to identify the problem just to see where it is. These are our tax dollars which we are referring to.

I think in order to properly understand the situation, in my booklet, at the very last page, is a map. I would like to refer to the map at this point in time. I think that will really give you an idea just how this situation exists and what the status of the matter is.

The map is showing an area of Stonewall. This is not by any means the whole town. We have just taken a small portion thereof, and any of you who are familiar with the town of Stonewall, right top in the centre is Lions Manor, north, of course, being at the top of the page, south being at the bottom of the page. The area outlined in blue is the area which was the former golf course. That is the 31.23 acres we are talking about here. As you can see, that is a fairly substantial parcel of land.

The areas outlined in green, and you will see there are four of them, I am going to proceed to identify them. At the top, there is a little green dot called Site No. 1. This is the property which is owned by Manitoba Housing and Renewal Corporation. This is the senior citizens home Mr. Bergan was referring to. Just over to the left of that you will see another green dot, and that is Site No. 2. That is Mr. and Mrs. Bergan's property.

* (1100)

To give you an idea of the situation, in addition to showing the green dot, which is the actual area of soil contamination, we have outlined in yellow Mr. Bergan's property there. It shows you the size of property involved, so at the same relation you can see how much property MHRC owns and how we have identified the problem-contaminated area.

Mr. and Mrs. Bergan, as I have indicated, their area is right in their backyard where their garden is. Proceeding on down to the bottom of the page, Site No. 4. It is a large site. That is the hospital site. You can see the area of contamination over on the bottom right-hand portion.

There is one other residence which is contaminated. That is Mr. and Mrs. Mollard, and they are just to the right of the hospital property.

This map shows you the four problem areas that have all the 200 soil samples which were taken. A private engineering firm of I.D. Engineering was hired, along with others, and these tests were done just to find out exactly where these problem areas were.

That gives you some idea of just where these areas are, and in connection with it, just to give you some idea of how they came about, the Manitoba Housing and Renewal Corporation, as I say, this is a seniors housing project which in 1972, after the golf course closed, the Town of Stonewall sold them this property for a nominal value of \$2000.

In 1988, MHRC required an additional 50 feet, so the Town of Stonewall gave them this property, another 50 feet, for a dollar. As it so turns out, this additional 50 feet is primarily where the contaminants are, so here we do not get any revenue for this property. We gave this property away. We have done nothing here, and yet everybody seems to be looking our way.

Going on, dealing with the actual Site No. 2, Mr. and Mrs. Bergan's property, this was property which the Town of Stonewall transferred in 1974. There have been many landowners prior to Mr. and Mrs. Bergan. Mr. and Mrs. Bergan just so happened to be the unfortunate ones who owned it at the time the discovery was made.

Mr. and Mrs. Mollard's property—this was originally sold by the Town of Stonewall in 1976. Again, similar to the Bergan's, there have been various owners from '76 until now.

Lastly, of course, is the property owned by the Town of Stonewall, being our future hospital site, which is Site No. 4.

There have been a number of questions which have come up dealing with just what has happened with Order No. 0194 in situations of that nature. You know, that order was issued pursuant to The Dangerous Goods Handling and Transportation Act. The Honourable Mr. Cummings issued the order at the time.

The Town of Stonewall, when we received the order, we were quite surprised. As a matter of fact, we looked at the order and it told us to clean up that entire area which is outlined on your map there, the whole thing. We do not even own two-thirds of this property, and yet we were told to clean it up. We looked at that and said, No. 1, we are not party to, we are not responsible for the pollution, why should we clean it up? Consequently, we appealed the particular order, and they came back acknowledging the appeal, saying that we are only responsible to clean up our own property.

We did not even wait for the appeal to come back. We went ahead in November of 1991, long before the appeal came back, we cleaned up our own property. We proceeded to do so, so that it could be done, because we had a hospital which was slated to be constructed the following spring. We cannot wait until spring to clean it up. It had to be done, so we did it. Another cost to our taxpayers, \$29,501.01, out of taxpayers' pockets who had nothing to do with this.

We sympathize with Mr. and Mrs. Bergan's position. We also say we are an innocent party here before you this morning.

Consequently, the total dollars expended by the Town of Stonewall to this date are \$83,000 that we have spent, and there is still the issue, as Mr. and Mrs. Bergan have brought forth, of who owns all this soil.

The Town of Stonewall has been negotiating with Hydro ever since the original contaminants were discovered. The Town of Stonewall's position, and we are not here today to discuss negotiations which took place on without-prejudice basis, but the Town of Stonewall and Manitoba Hydro negotiated for some months, and as Mr. Bergan has indicated, Hydro has broken off the negotiations. The town has never. We have said, hey, we are still prepared.

We made a position to them which we felt was fairly reasonable in that respect.

At this point in time though, the town has to look at we have a dual responsibility. We have a responsibility to those two unfortunate citizens, Mr. Bergan and Mr. Mollard, and we have to look at our responsibility to our ratepayers as a whole. Consequently, we were not about to go out and foot the entire bill for the entire cleanup of property, which we would love to see cleaned up by all means. However, we just do not have the dollars within which the ability is to do that. As we have said, we are a small town, 3,000 people.

Consequently, I think what we need to look at here is, let us look at Bill 53 itself which brings us to the actual issue before us this morning. Bill 53 we agree is an excellent piece of legislation in principle. We have some problems with the actual draftsmanship of it—two problems. We think it is drafted a little too broad and it will result in some absurdities, and our situation will be one—and I will make mention of some others as we proceed along here.

The problems which we have are in subsection 16(2)(b) thereof, and I do not propose to copy that legislation. I am sure you are familiar with it. I do not propose to actually read it out. What it indicates is that not only is the occupier of the land at the time the contaminants were distributed liable, but the owner of the land at the time the contaminants were placed into the soil can be potentially liable in this situation.

That is the main problem the town has, but also, in just as much light, we have a problem that the legislation does not go far enough, because if you read section 16(2), which is parties whom this particular order can be made against, there is no jurisdiction in there to make an order against the manufacturer of these particular products, no jurisdiction to make an order against the distributor, nor even any jurisdiction to make an order against a person who improperly disposes of these particular contaminants. We feel this legislation in this respect is lacking.

I am going to go through and deal with these two particular problems which we have in a little more detail here. Those are the two that we want to deal with this morning.

As far as it relates to the past ownership, we look at the situation and say, well, this is at the time the

contaminants were released. The town's position is, it is the person who has occupancy of the property. It is the person who has control of the property that should be the party who is liable at the time the contaminant is released. It should not be an innocent landowner who has—and we look at our situation. We had no control over this land. We did not partake in the actual distribution of the contaminant. We did not condone it. We did not consent to it. We did not even know about it. Yet, 15 years after the fact, you come back to us and say to us, hey, we should pay. I think there are a lot more parties out there a lot more responsible than us in this particular scenario.

Our position is that we feel that from Section 16(2) a simple removal of the word "owned" from subsection (b) thereof will be the appropriate legislation. Right now, we feel you have legislation which is drafted so broadly it is not really good legislation, because it is too broad. It will result in absurdity.

If you remove the word "owned", then it indicates simply that the party who had occupancy—and that could well be the owner, I am not saying it cannot be—but I think the indication here is that it is the occupant that should be liable, not the owner of the land.

We have many situations where the landowner could be in another part of Canada, could be in another part of the world, and why are they responsible for the scenario now?

I guess going on then, distinguishing that from question two, the other one is we look at the manufacturers and the distributors. It is very broad on the one hand as it relates to landowners, but in our position it is rather inadequate as it relates to the manufacturer. The legislation does not permit the party who manufactures something to be responsible, and yet they are the party who, in fact, should be making all the necessary tests, making all the investigations to determine that the product they are putting out in our marketplace is safe.

Yet the legislation does not permit any relief in that respect—nor the party who distributes it, perhaps to a lesser degree than the manufacturer, but a party who distributes a product has a certain responsibility to ensure that it is safe. When it is going to the ultimate consumer, he does not have the financial resources to conduct tests on the products and make sure they are all safe for the environment.

The third thing is, any person who improperly disposes of the particular product. In this case, Manitoba Hydro gave the stuff away and said, what happens to it, we do not care. We are surmising that. We do not know that, but somehow the actual oil got from Manitoba Hydro's hands into the hands of the individual golf course members who distributed it.

We feel very strongly that these two amendments need to be made in order to make this legislation better legislation. As I say, we agree in principle. We can see where there needs to be tougher legislation out there, but we are saying the way it is drafted right now, it will result in some absurdities.

I think a couple of just very quick examples—I have three examples which I propose to set forth to you here, and these are examples which I think you can all relate to. Let us assume a Mr. Stewart, a labourer working in Winnipeg, buys a revenue house with the idea that he would like to have some extra income, a retirement package; owns the revenue house for a period of five years; he put some tenants in it. The tenants, in order to keep the property looking respectable, spread Weed & Feed on the thing. They are trying to make the place look better.

Mr. Stewart subsequently disposes of this property down the road, sells it. He retires. All of a sudden, Weed & Feed has learned that it is a contaminant. Now, under this legislation, an order can be made against Mr. Stewart, who happened to own the property at the time. His tenant was the one who spread it. He did not have any knowledge of it. He did not condone it. He did not do it. He did not partake in it. Yet, he could be on the hook.

We feel that is an example of the type of situations which will result in an absurdity and the legislation we feel will result in an absurdity. Yet, the legislation does not permit the Province of Manitoba to make an order against the manufacturer or the distributor of Weed & Feed. We feel in that particular case, there is definitely something there.

Another situation, and this is a real-life situation which will be at hand, there are a number of oil wells which have taken place in the province, in southwestern Manitoba. We have an individual farmer, Mr. Giesbrecht, as an example. These names are fictitious by the way. I just made them up. I am not referring to anybody in a situation.

* (1110)

Mr. Giesbrecht acquires some property, say, in the 1940s, from his parents. In the 1950s oil is discovered on the property. He, of course, sells the rights to some oil company. For sake of reference, let us call them Long Gone Oil Company because they are no longer around. The people who operate the oil wells, they take the oil out, and in the course of doing so, they spill the vast majority on top of the ground.

The landowner, Mr. Giesbrecht, has no knowledge of this. He did not partake in it. He just sold the oil rights. He sells the property, ultimately retires and again, all of a sudden somebody finds out. Hey, hold it. Oil was spilled on this land. Well, who are we going to make clean it up? Well, Long Gone Oil Company, they are down the road; they are history. Let us make Mr. Giesbrecht clean it up. He owned the land at the time it was spilled.

There is another example. He had nothing to do with it. He was totally innocent in this situation.

I think the third situation in which the third scenario is even a little bit closer to home in your situation. The Province of Manitoba, you gentlemen have a lot of land in northern Manitoba, up around Inwood, Teulon. We are familiar with that because we do a lot of the leases up in that particular area. You could lease agricultural land to a farmer up there who, in order to break the land and properly clear it, could go forth, spread Roundup on the property. He has a whole half section he rents from the Province of Manitoba, he spreads Roundup on it.

Subsequently, he lets the lease go, somebody else takes the lease over, and ultimately, buys the property, so the province has sold the property five or six years ago. We find out, all of a sudden, Roundup is a contaminant. Bang! Going back to the situation of who owned it at the time it was put on, the Province of Manitoba owned it.

Why should you be liable? I mean, you did not spread it; you did not partake in it; you did not condone it; you did not even know that this gentleman put Roundup on your property, and yet, under this legislation, you can be liable.

Looking at those situations, we think that just emphasizes even more so our fact situation because I think if you look at ours, ours is another perfect example. I appreciate with what Mr. Bergan has said here. He is angry, he is flustered and he is mad at the world because he is an innocent victim.

Well, I put forth to you this morning, we are an innocent victim also. We sympathize with Mr. Bergan's position, but we did not partake in this; we did not condone this particular activity; we did not consent to it; we had nothing to do with it. We simply were being nice guys in renting our land for a buck. What did we get? We can get an order that could cost us a couple of hundred grand here.

The main thing is that it could well take many, many years. Now, I guess the next answer is, who should be responsible? We look at the situation and say, well, we are not sure. I mean it is an unfortunate situation, but we think the legislation should be drafted broad enough to at least permit Manitoba Hydro, who in fact improperly disposed of this particular good, to be liable. I mean they were the ones who distributed it. The manufacturer of PCBs could well be the case.

The Town of Stonewall certainly does not have deep pockets, and if it turns out that it is an unfortunate situation and there is nobody to pay for it, I agree wholeheartedly with Mr. and Mrs. Bergan. I do not think they should pay for it. By the same token, I do not think the Town of Stonewall, who are a meagre 3,000 people in this whole scenario, should pay for this.

We feel that any order which is made should have some foresight put into it. I think under the present legislation, they would need some amendment because it needs some more teeth, but I think the teeth are being directed in the wrong fashion here. We need the teeth in the appropriate fashion.

Thank you for listening. Are there any questions?

Mr. Helwer: I just have two short questions. A first one, you identified four sites of the old golf course property. Were there, in fact, nine holes on that golf course?

Mr. Grantham: Yes, Mr. Helwer, there were nine holes, and they were all tested. That was part of the 200 soil samples which were taken. I guess they obtained a number of batches of oil from Manitoba Hydro, and I think, as best as we can determine, only some of them were containing PCBs; it was not all PCBs. It just so happened that there are only four greens that have the PCBs on it.

All nine holes have been tested. It has all been looked after. We had engineers in to do the whole shebang. We did not just walk out and say, well, let us just test a couple of these. We tested them all

because we wanted to know if our residents had a problem.

Mr. Helwer: Mr. Grantham, because the ownership of the property here, the Stonewall golf club has been out of business since 1972 or somewhere in that vicinity, has the town tried to declare this site as an orphan site? Then, in fact, they would not be responsible for the cleanup. The province would, in fact, be responsible for the problem, if it could be declared as an orphan site.

Mr. Grantham: My particular knowledge in that respect is limited. Let me perhaps just check with Mayor Lethbridge and Mr. Potter. Do you gentlemen know if the site—if attempts have been made to declare it as an orphan site?

Mr. Chairperson: Could we have Mr. Lethbridge come forward and make that statement for the record?

Mr. David G. Lethbridge (Mayor, Town of Stonewall): Mr. Chairperson, we believe there is a program for orphan sites, or to be identified as an orphan site, but our understanding is that the federal government and the province have to enter into an agreement for such, and the province does not have an agreement with the federal government.

Ms. Cerilli: I would like to start off with thanking you for your presentation. You have made some suggestions, I think, that could improve the legislation, but I want to back up and slow down a minute, just to clarify.

With respect to the situation at Stonewall, are you saying that this was not a municipal golf course, that the municipality was not involved in the operation of managing the golf course?

Mr. Grantham: In answer to your question, that is exactly right. The Town of Stonewall—this was not a municipally operated golf course. This was a golf course which was a private club where the members themselves actually did all the work; they cut the grass; they did all of those things. The Town of Stonewall did not have this golf course as theirs. We did not own it; we did not operate it; we did not have anything to do with the administration or decision-making processes. We owned the land, which we rented for a dollar.

There are many situations like this. The Town of Stonewall, Kinsmen Lake, the Kinsmen built the lake. In this situation, the members did the golf course; we did not. It was simply a grass field which they put sand greens in. It was not a big dollar

capital expenditure like you see golf courses today. This was simply members went out, mowed the grass, put some sand in, and called it a green and said, here we go, let us do it.

Ms. Cerilli: Your comment about sort of being nice guys and giving away land for a dollar, it is no big sacrifice if it is contaminated land. It is no big savings, or it is, it is a saving to be giving it away if it is contaminated land.

You are also suggesting then that it should be the responsibility of the distributor of the oil, that they are responsible, that the Town of Stonewall had no knowledge about the kinds of practices that were being conducted at the golf course.

Mr. Grantham: In answer to your two questions, first of all, dealing with the actual knowledge, no, we did not have any knowledge whatsoever of what took place and what transpired at the golf course. As I said, we just rented the land; we were not part of it; we did not run it.

In relation to the question of, yes, we were not nice guys, well, when we gave this land away for a dollar, nobody had any idea it was polluted. We did not know it was polluted. We gave land away, and yet now, we can come back to be held responsible for that land.

Yes, sure, it ended up, perhaps, well, maybe we got rid of a detriment, but we have to look at the intention here. We are looking at fairness, and I think legislation has to look at fairness. We gave the land away and we then now could be held liable for it. We do not see that as being fair, and I think that is what legislation should address. Thank you.

Ms. Cerilli: Your legal opinion is, the wording of this bill would catch the Town of Stonewall as the owner of the land, but would not catch Hydro as the seller of the oil that was used on the golf course. Is that your legal opinion?

Mr. Grantham: That is exactly correct. I think if you look at the degree of responsibility, we are much less innocent than Manitoba Hydro is. If we are looking at responsibility and fairness, hey, let us look in the proper places.

Mr. Chalperson: I am going to interject here into the line of questioning. We are attempting, by the course of the questioning, to try to establish who is guilty of what. That is really not what this committee is all about. This committee is here, sitting here to determine the relevance of the bill. Comments and questions, I would ask the members of the

committee, to direct toward the establishment of the relevance of the bill.

Therefore, I am simply not going to allow any further questioning in regard to who is guilty of what in a given case. I ask members' indulgence in further questioning, that you pertain your questions and direct them to the bill.

* (1120)

Point of Order

Ms. Cerilli: Mr. Chairperson, I would suggest that question, in particular, was relevant. I was asking specifically about the bill and the ability of the bill to deal with the situation. In the spreadsheet for this bill, the minister has indicated that it is to deal with examples like Stonewall and Domtar. I think that the specifics of the case before us are definitely relevant to the bill.

I agree that we are not here to debate the responsibility in this specific case, but to use the case to help us figure out if this bill is going to deal with the kind of situations that it is intended to deal with.

Mr. Chalperson: The member does not have a point of order. I would ask for the member to continue the questioning in relevance to the bill.

* * *

Ms. Cerilli: Do you have, in your brief that you presented, some specific amendments for wording that would, in fact, deal with the distributor and manufacturer, as you have indicated?

Mr. Grantham: In answer to that, I wish to start off and say that I opened this comment by saying, we are in agreement with the bill in principle. We think it is good legislation. We have two minor fine-tuning points, is all we want.

I have made a specific suggestion as the ownership one; that is a very easy one to rectify. In paragraph 2(b), simply delete the word "owned".

The other one is a little more complicated, the one you are referring to, the actual one of drafting legislation which would encompass the manufacturer, distributor and party who improperly disposes. I am not a legislative draftsman, and I would therefore, turn that over to the professionals which you people have in order to deal with that issue. I have not made a specific amendment in that respect.

Mr. Edwards: I do not think—Mr. Grantham, with respect, I do not agree with his view of this. I think that many, many things, obligations flow from ownership of land. If there are questions as to who is responsible other than the owner, the owner has third party rights against any and all manufacturers, distributors and occupiers.

It is the owner who decides who occupies, and liability flows from that. Certain benefits flow from that, as well, just as in the scenarios Mr. Grantham has painted where in the one case, benefits flowing from the sale of the oil rights. In this case, benefits flowing in the wisdom of the Town of Stonewall from granting a lease for a dollar to the private club.

There are responsibilities which flow from ownership regardless of whether remuneration flows. If it is financially beneficial, that is for the owner to decide, but the owner does not stand up and escape all liability. The owner is there as a matter of record, and has responsibilities at law in all kinds of areas.

The owner then has rights as against a third party, in this case, perhaps, Manitoba Hydro, perhaps the private club, if it still existed. Whether it is overhangs, whether it is noxious weeds, other forms of pollution, noise, nuisance, the primary party responsible is the owner, and it is for the owner to determine whether or not third parties should be joined in sharing that liability.

Let not the Town of Stonewall come to this committee and purport to say that they have no responsibility, because they do, and if you are asking us to look at fairness, you are going to be in trouble because fairness—your intentions may have been pure. You may have made no money off it, but if you are looking at fairness, surely the Bergans have a superior case to you, Mr. Grantham.

Let me ask, with respect to the operation of the club, did you get any taxes from the private club? Was it open to the public? Can you answer those questions?

Mr. Chairperson: I am going to once again remind members that we are dealing with Bill 53, and the questions that are being asked right now are trying to establish relevance of ownership of given lands and responsibilities dealing with this specific case.

We are not here to argue the merits of a specific case. What we are here to ask and question and put forward suggestions to is Bill 53. I would

suggest that members keep their comments and their questions in relevance to Bill 53.

Mr. Edwards: Well, two points: firstly, this presenter, as well as the minister, in introducing this bill, used specific incidents and specific examples to reflect on the bill. Therefore, the committee members are entitled to explore those examples put forward. The minister put forward Domtar; the presenter here has put forward the Town of Stonewall. We have already listened to another presenter on it.

Secondly, one of the proposals of this presenter is that the word "owns", he who owns the property, be deleted from the bill. To substantiate that, this presenter says that in this case, even though the Town of Stonewall owned it, it would be unfair to hold them responsible.

I am exploring that with the presenter. Part of that is what the real situation was at the time that the pollution occurred. Ownership is clear. They owned the land. What I am exploring is the nature of their relationship with the people who actually dealt with Manitoba Hydro when it was polluted, and I would like the presenter to just—he has presented on the relationship, I would like to just explore that a little, find out some more details.

Mr. Chairperson: Mr. Edwards, the Chair is well aware of the direction that you are taking your questions. I indicate to you that I will not allow the establishment of the relevancy of the case that is being debated here. I will ask you to contain your comments to the bill and the contents of the bill, and that the questioning be directed in that manner.

Mr. Edwards: Mr. Chairperson, I do not agree with you, but I will rephrase my question to try to accommodate you.

You indicate, Mr. Grantham, that you want the ownership dropped from Section 16(2)(a) of the proposed bill. You say that ownership should not be the determining factor; it should be occupation. You cite as an example of that your situation with the Town of Stonewall.

My question to you is: What also flowed from ownership of that property in respect of specifically taxes and whether or not residents of the town of Stonewall, be they a member of the club or not, were they free to play on the golf course?

Mr. Grantham: Mr. Edwards, in answer to your questions, I wish to first of all clarify I hope I did not confuse you or not properly put this forth. My

proposed amendment is not to 16(2)(a). It is to 16(2)(b), because we are dealing with the time the contaminants were distributed. I mean, we realize that certain things fall from ownership and the party who owns the land today may unfortunately be the party who is stuck on the hook.

I mean, the Town of Stonewall has spent a lot of dollars on their property, and I am by no means suggesting that Bergans, or Mollards, or anybody else should pay for that because I think they are equally innocent parties.

What I want the legislation to do is to be fair, and I think the way it is drafted, it is not fair in looking at, owned at the time the contaminants were distributed. It is who has control of the land, who is occupying. They are the people who are doing the actual work. They are the ones who permit people to go on their land. They are the ones who permit people to enter it. When you lease land, 99 percent of all leases, the landowner is not out there watching what this guy is doing. You lease the land, and that is the end of it.

You have a lease to ensure that certain things are done, but you simply cannot be there, so from a question of fairness, when the contaminants are distributed, it may still be that we own this land, and it may still be that we ultimately therefore are responsible, and it may still be that the town has cleaned up their land. What I am suggesting to you, to require us to clean up Mr. Bergan's property, Mr. Mollard's property, or the Province of Manitoba's property by virtue of MHRC, would be unfair.

Mr. Edwards: You are not suggesting though, that as owner at the time, you would not have the ability to look to the occupier for any remedial costs? You are not suggesting that you would not have a claim against the occupier if, in fact, the occupier could be shown to be responsible?

* (1130)

Mr. Grantham: I do not propose to at this time deal with legal technicalities, Mr. Edwards. It may well be that we do. I am not here this morning to deal with legal technicalities. I think I am here to deal with fairness. What we are proposing to do is that—I have not researched that issue, I have not dealt with that issue, but they may well have a right against the Stonewall golf club members. By the same token, we are here this morning to say that we do not feel that situation is the one which should be addressed

here. The situation should be addressed as control of the land.

Mr. Edwards: Be that as it may, you would have us look to the now-defunct Stonewall—and the Bergans—golf course club as primarily responsible. Is that what you are suggesting the Bergans do?

Mr. Grantham: I am not suggesting that the Province of Manitoba issue orders against Mr. Bergan. I am not suggesting who the province should issue orders against. I am looking at the legislation. I am trying to isolate it to a certain degree. I am just using the Town of Stonewall's case as an example.

I used many other examples, and I have shown you how the situation can result in unfairness. What we want to deal with is not an isolated situation. Based on that fact, I am not suggesting that the order be issued against Mr. Bergan. I can tell you right now, that the Town of Stonewall, Mr. Bergan and Mrs. Bergan are innocent parties. The Town of Stonewall is an innocent party, perhaps not quite to the same degree, but to a lot of degree there.

For sure, we are a lot less innocent party than Manitoba Hydro which you folks have not even addressed in this legislation.

Mr. Edwards: Similarly, you would have rights as against Manitoba Hydro, if you felt they were responsible, would you not, Mr. Grantham?

Mr. Chalrperson: Again, I am going to caution you. I am not going to allow the questioning to lead toward who is or who is not guilty of a given case that has been put forward. I allow you to direct the questions in a manner that will establish the relevance of the bill and pertain your question to the bill.

Mr. Edwards: Mr. Grantham has specifically suggested that we include manufacturers and distributors in this bill. He suggested that we do that for a number of reasons. He puts forward four scenarios, his own and three others.

I am asking him, based on those scenarios, to clarify whether or not the owner, were the owner held responsible, would be without the ability to look to the manufacturer, distributor in any event, without putting it into this bill. I am speaking directly to his proposed amendment, and I would like his thoughts on it.

Mr. Grantham: In respect to that, there may well be no action which the Town of Stonewall has

against Manitoba Hydro because, No. 1, the Town of Stonewall had no contractual obligation with Manitoba Hydro; Manitoba Hydro did not spread this on Town of Stonewall property; Manitoba Hydro and the Town of Stonewall had no relationship whatsoever, Mr. Edwards.

We were dealing with a private golf club. We were not dealing with Manitoba Hydro or the manufacturer, Monsanto, or whoever manufactured these PCBs. They should be a party to whom this legislation could be directed also.

Mr. Edwards: You would though, in fact, have those rights as against, in this case taking one of your scenarios, the club. You let the club use the land for whatever benefit you saw fit, did you not; just as Mr. Stewart purchased the property as revenue property and let in the tenant, a tenant he had control over, he chose, he allowed to stay; just as Mr. Giesbrecht sold his oil rights to the Long Gone Oil Company, something he presumably received benefits, somebody he invited onto his property to do the work.

Mr. Grantham, I am afraid that your point that the owner does not bear primary responsibility just does not wash in my view. I would like your comments on whether or not you think the owner should not be, first and foremost, primarily responsible as the person who controls the land at the time.

Mr. Grantham: I think in answer to that, your last word is the critical word, "control." We do not have control, the owner does not have control at that time. It is leased property to somebody else. If you try to go on that property that you have leased to a third party and tell them, get off my land, you cannot spread, whatever, you cannot do Weed & Feed, you cannot do the rest of this. You know what that guy is going to tell you when legally he is going to court and he is going to be upheld. I think your legislation does not properly direct itself to that way.

When I say I have not convinced you, well, I am sorry, Mr. Edwards, I was here to convince you and I have showed you four absurdities. If you cannot see those absurdities, then I apologize, but those are my thoughts.

Point of Order

Hon. James Downey (Minister responsible for The Manitoba Hydro Act): Mr. Chairperson, I would suggest that it is this committee's responsibility to ask questions of the individuals

coming forward, not to get into a debate with individuals who come before the committee.

Mr. Chairperson: The honourable member does not have a point of order.

* * *

Mr. Edwards: I think every one of my statements has been a question for Mr. Downey's edification.

Mr. Grantham, the point you make is that you did not have control and you could not have control. You are not suggesting that if you had known that they were in fact polluting the land, or that you had become aware of that, you could not have taken back the land. You are not suggesting that a landlord has to allow a tenant to deplete, degrade the property. They have rights. They can go in and take it back. Is that correct? You do a lot of leases, Mr. Grantham.

Mr. Grantham: In answer to that, your legislation has covered that. If you know about the contaminants being put on or authorize it, because if you look at paragraph (e), it specifically says any person who caused or authorized. The legislation deals with the scenario you have dealt with, Mr. Edwards. It does not deal with the situation that we have proposed to you here, and we feel this is the one that is unfair. We did not authorize. We did not even know about it.

The legislation, I feel, is good legislation in principle. I am not here to strike down the whole thing. It is good, it needs to come in, but I think we need a couple of fine tunings. Just to look at the situation one step further, Mr. Edwards, are you suggesting then that Monsanto who manufactured PCBs or Hydro that distributed PCBs should not be in any way held responsible in this scenario?

Mr. Edwards: And they are, Mr. Grantham. As you well know, at law, they are. Do not come to this committee and pretend that they are not. Mr. Grantham, you suggested Section 16(2), that we change (b). I draw your attention to (d) which indicates that any person who owned or had possession, charge or control of the dangerous goods or contaminants at the time they escaped or discharged, or otherwise introduced into the environment. Do you not see that as covering anyone in this scenario you have painted other than the golf club? Does that go any way to satisfy you that others might be brought in as having had charge or control at the time they escaped or were discharged?

Mr. Grantham: In response to that, Mr. Edwards, look real closely at the legislation you have just quoted to me. It says at the time they were discharged. Hydro did not have control of them at the time they were discharged. The private golf club did, so Hydro is not on the hook there. Monsanto sure did not have control of them at the time they were discharged. You do not have any recourse there.

Mr. Edwards: However, I am talking specifically of your scenario with the Weed & Feed to the extent that someone who comes onto property to do it, who is contracted to do it, they clearly are included in this act.

Mr. Grantham: Let us look at Weed & Feed. The people who purchased the Weed & Feed and ultimately owned it in section (d), as you are referring to, was the tenant. Yes, the tenant is responsible and primarily so. He is the guy who put it on the land. I think your legislation is good in that respect. It covers the tenant.

It does not cover the manufacturer of Weed & Feed. They are the people who produced this particular product, sent it out into the marketplace. They obviously did not do the proper testing on it, because it is a contaminant. Your legislation does not go far enough. Yet, on the other hand, it goes too far, because poor Mr. Stewart who just happened to own this land had no control. He is on the hook. He is a lot less responsible than the manufacturer. He is a lot less responsible than the distributor.

Mr. Chairperson: I am going to allow the minister to interject for clarification purposes.

Hon. Glen Cummings (Minister of Environment): Mr. Chairperson, some thoughts that I intended to include in my introduction of the bill before we start our committee debate: at the time of introduction I was on record very clearly there, and I want to be on record again here, that we recognize that this bill is a first step in dealing with this general problem of contaminations and attribution of liability.

* (1140)

There is a debate going on nationally across the country. There is a debate through the national committee of ministers. There is an undertaking on my part, and the first steps having been taken, to have a further debate within the province and a commitment from me to further amendments if that debate produces either problems or concerns or

additional issues that need to be addressed. I suggest that part of that is what is causing some of the debate here this morning.

I appreciate that there are presenters here who have specific concerns and axes to grind, and that is fine. If we have any possibility of getting on with dealing with the bill itself this morning, I would like you to keep the thoughts I just gave you in mind, because this is the first step in a process and what I believe a fairly reasoned process.

Hon. Harry Enns (Minister of Natural Resources): Mr. Chairperson, I am speaking very briefly, having had the privilege of representing the community of Stonewall for many years in the Legislature. I must say, most of those years we were oblivious to the problems that are before us. I think though the value of the presentation given to us by the Bergans, by the representatives of the Town of Stonewall, will be immensely helpful to us, Mr. Minister, in doing just what you indicated just a few moments ago.

There is no question that, environmentally speaking, governments are being pressed, rightfully so, to clean up our land sites. Obviously, this case before us makes it clear that good intentions are sometimes a little more complicated when being carried out.

I just want to thank both the Bergans and the representative of the Town of Stonewall for providing this very real situation to committee members. I know that the minister and the Department of Environment and staff will have this situation very much before them when we finalize, particularly the regulations which are the operative part of any piece of legislation that we pass, as to how we can successfully and fairly resolve the issue before us. I just wanted to put that on the record.

Thank you, Mr. Chairperson.

Mr. Bob Rose (Turtle Mountain): Mr. Chairperson, I feel a little bit inadequate in entering this discussion without having the legal background and training that we have seen before us. I guess that is one of my concerns is that the argument seems to be developing over who is going to be responsible for it and that is what is set out in the legislation.

I would like to ask Mr. Grantham in the specific instance that is under discussion, I suspect at the time—I do not just know what time we decided that PCBs were a contaminant—that the contamination

occurred that no one knew that. While I am not sure of the exact timing, I will use one of the examples that you brought forward in your presentation concerning the use of Weed & Feed or Roundup.

I quite agree that it is conceivable at some time in the future that products that we are routinely using at the moment may be found to be contaminants. I guess my concern, and I would like your comments on it, is who should be responsible for use of products which at the time no one knew, including the manufacturer—and I have concerns about your suggestion that manufacturers and distributors should be held responsible, because if that, in fact, occurs that will be discouragement to manufacturers to develop new products if they are under the danger of somewhere down the road having those products identified as contaminants. Using again your examples of Roundup or Weed & Feed, you could take Roundup and there is almost the whole province of Manitoba that they would have to clean up.

Without having again the legal background, I have a real concern with legislation that places responsibility in the past for use of products that no one at the time—the users, the manufacturers, the owners of the land and anyone else—knew that they were doing anything wrong, and I appreciate your comments on that.

Mr. Grantham: In connection with that, those comments are very true, but I think what we have to look at are the facts of any pollution situation. It has to be cleaned up. Somebody has to pay. We have to look at the degree of fairness, who should pay.

Of course the ultimate bottom line is, let us say, hey, feds, province and all municipal governments enter a tripartite agreement of some sort and we will all share the cost. I mean, that is obviously a situation there, and that is what the orphan site situation is covering, but there are situations, and four which I presented here—and the Roundup is an excellent one.

That is why I presented it, to show the absurdity of the bill, that if you make all these owners of land—I mean, you and I both know, Roundup is throughout the whole country, not just Manitoba. All those landowners who have to go around and clean up their property, and they are the innocent victims in this thing. Granted the manufacturer—I can certainly appreciate where you are coming from and say we do not want to discourage manufacturing. Yes, that

is true, but by the same talk we do not want to encourage manufacturing to the degree that we pollute our whole countryside. I think the manufacturers, they are the ones who introduced it into the environment—or the distributor, or somebody who improperly disposes of it.

Even if you look at the situation at hand, to take—and I am not going to get into fault. Fault is not the issue here today. The issue here this morning is the actual degree of fairness, and I think when we look at it, we have to do something about it. From a fairness point of view, nobody should be held responsible, perhaps. We are just looking to a degree of responsibility, is all we are looking for here this morning.

Mr. Rose: Again I hesitate to get into discussion with legal terms, but I disagree with your contention that fault is not under discussion, because I think that fault is what is under discussion. My concern with what we are doing is that at the time of the contamination there was no fault, because it was not known to be a contaminant.

Mr. Grantham: Let us look at that situation at hand. We have the 1960s approximately when oil was being distributed. Oil was being disposed of, and oil at the time was known it certainly is not good for the environment. To simply just close your eyes and give away oil and say, hey, what happens to it, we do not care. Those people could have been taking that oil and dumping it into water systems. We certainly knew it polluted water systems. We knew that.

If somebody is distributing or disposing of a particular product—and PCB oil is a prime example, forget the PCBs were even in there, just treat it as oil. We knew it was oil. We knew that it could contaminate water systems. Even in the '60s we knew that, and the oil should, therefore, have been properly disposed of. It should have been disposed of, and they had storage facilities at the time, they had disposal sites at the time for oil.

Looking at that aspect of it, if we look at fault, the fault certainly should lie upon, well, as I said, No. 1, the manufacturer, No. 2, the distributor, but also a person who improperly disposes of it. Hydro improperly disposed of the oil. For whatever reason, there it went.

Mr. Edwards: Mr. Grantham, I do not want to belabour this any further, but I mean you are essentially asking us—and I just want to make sure

I have this correct—to put in manufacturers and distributors, to leave in current owners or occupiers in 16(2)(a) as potentially being held responsible, to also leave in former occupiers but to delete former owners. We add to it, and we leave in all the existing ones. I guess quite conveniently, for the Town of Stonewall, we are going to take out former owners from that list. Is that essentially your position here this morning?

Mr. Grantham: In essence, what we have to look at this morning is the question of, as I said, fairness in my position. We are asking—we are looking at this situation, and we can see the situation at hand where the owner, dealing with 16(a), the present owner in many situations could be the only party of last resort. Everybody else is gone. If you are looking to issue an order somewhere, it could be that you have to issue an order against the existing owner. The Town of Stonewall has accepted that responsibility. We are the existing owner. We have land the same way. You are sort of implying that we are here for the Town of Stonewall to escape all liability. We are not.

Mr. Edwards: Yes, I am implying that.

Mr. Grantham: Well, we just spent \$80,000 on liability.

Mr. Edwards: On your property.

Mr. Grantham: That is correct, on our property. From looking at the Bergan's property, I again sympathize with the Bergans in that respect. Had they been a large corporate entity, I do not think you would—[interjection]

Mr. Chairperson: Order, please. Continue, Mr. Grantham.

* (1150)

Mr. Grantham: In connection with that, you are not looking at the proper—[interjection] What we are looking at is, I think you have to look at the situation, and you are looking at the deep-pocket scenario here. You are looking to the Town of Stonewall as somebody who has deep pockets. You are not looking to Mr. and Mrs. Bergan. Had they been a large corporate citizen, you would not be sitting here saying that. You would be saying, hey, they own the land, they clean it up. It is not a deep-pocket scenario we should be looking at here. We need to look at the actual position of fairness.

Mr. Edwards: There is no indication in this legislation, there is no indication put forward by you,

there is no indication put forward by me that he who can pay should pay. That is a spurious comment, I suggest, Mr. Grantham. It has never been suggested by me. What I am suggesting to you is that former occupier, present occupier, present owner, manufacturer, distributor, can all be given orders except former owner. That is the position you have put forward here this morning, correct.

Mr. Grantham: That is correct, because our position is the former occupier is the party who had the control.

Ms. Cerilli: Mr. Chairperson, I feel like this is being clarified the more that we go on through this deliberation. Although it may seem frustrating, I think that it is helpful.

I appreciate your continuing on, because you are clarifying a few things, and I think that you are suggesting or were moving to suggesting some amendments that could improve the legislation. I appreciate that is one of the things that we are—and I hope you appreciate—that one of the things we are here to try and do. I think just from listening to you today that it is important that we have the opportunity to make some good amendments to this bill.

One of the things I want to ask you to clarify, what you were saying is, with the existing legislation or even with this bill, what would happen if the Town of Stonewall took Hydro to court over this issue?

Mr. Grantham: Well, what I really want to be cautious of is providing legal opinions to the Province of Manitoba or to the committee here. I am not giving a legal opinion here. I am simply speaking as a member on behalf of the Town of Stonewall as opposed to the lawyer. I want to make that very clear that when I am speaking about issues, I am not giving a legal opinion here.

If you look at the actual aspect, the Town of Stonewall had nothing to do with Manitoba Hydro. We did not buy the oil from them. We did not obtain the oil from them. We did not rent them the property. We did not do anything. We had no relationship there. We had a relationship with a private golf club and based on that fact, you are asking me can we sue the—sorry, I thought I was addressing Ms. Cerilli.

Proceeding on as to whether we can go ahead and actually sue Manitoba Hydro, I do not think is the relevant point here before you this morning. We are not dealing with private issues that we can sue between parties. People can sue all over the place between many, many different areas, many different

areas of the law. What we are looking at is who can the Province of Manitoba issue the order against. I am looking at this legislation. I want this to be a good piece of legislation. I pointed out to you a couple of minor fine-tuning places where I think you can fine tune it.

We should not have to be going and suing people if the legislation is looking at issuing against the order for the person whom they feel is at fault. I want them to be able to have that power to issue the order against the person who is at fault, because, obviously, when you make legislation you are looking at dealing with issuing it against that person. I feel it is not broad enough in that respect, and I feel it is too broad in others, because I have shown you the absurdities it can result in.

Ms. Corliss: Well, we are not only dealing with this case. I do not know if you are familiar with the situation in Transcona with the former Domtar site, but that is a case where the owner was the polluter, and right now there is some question about them being legally bound. That is one of the other reasons we have been given that we need to have this legislation.

I do not think we can take out any reference to owner, but if we can expand to make it as broad as possible to make sure we can catch all the responsible parties, I do not think that we are trying to create legislation that is going to find someone responsible, but that will find the correct party responsible. Are you familiar with the other situations that I am describing? Can you agree with what I am saying?

Mr. Grantham: In response to that, I am not familiar enough to the degree that I would like to make a comment that I could disagree. I am familiar very briefly with them, but no, I have to abstain from making a comment in that respect.

Ms. Corliss: I have no problem of trying to make an amendment that would include distributors and manufacturers. I am not disputing, as Mr. Edwards is, the legality of Stonewall's responsibility because they were the landowner and were collecting taxes at this point.

What I want to try and clarify is that we broaden—and I have no problem with trying to broaden this to include distributors or manufacturers as some of the members opposite have. I just want to make sure that we are going to do that in a way that can be enforced. From the kinds of

amendments that you are suggesting, how would that affect enforcement if we were to include the distributors and the manufacturers, which would be Hydro in your case? How would that affect the enforcement of the legislation?

Mr. Grantham: First of all, to clarify just on one point there. We did not collect any taxes on this land. Town-owned property, you get zero taxes on. We received no benefit from that.

Carrying on with your question as to how it affects enforcement, we are just identifying a person whom we are enforcing it against. It does not affect enforcement whatsoever in my opinion because, be that person be identified as a manufacturer, they could be a company manufacturing something right here in Winnipeg. We will encounter jurisdictional problems such as if the manufacturer is in Mexico. We will encounter that problem because the owner today could be a gentleman out of Mexico. So who the order is made against will not affect the enforcement of it.

We are trying to identify the proper parties, who the order could possibly be made against, and who we think should be included in that list.

Ms. Corliss: The minister has claimed that one of the things he wants to see happen with the legislation is to keep some of the battles that we are seeing relating to environment issues out of the courts. There would always be the opportunity for anyone who would be included in the legislation to appeal an order. I guess I am just clarifying for myself with relation to some of the comments that you are making.

I want to go back to initially, is it true that the town felt some and indicated that there was some moral responsibility to deal with this? If that was initially indicated to the Bergans, what happened after that?

Mr. Grantham: In connection with that, I would like to indicate in response are two questions. As they relate to appeal, when you indicate that a party can always appeal an order, do not forget that you are making legislation here. You are making the law.

We can only appeal a particular order if you do not have the grounds to actually make the order under the law. Well, you are making the law, so there is not going to be a suggestion of appealing this. When you make it, please make it so that it is proper, is what I am asking here today.

Once it is made and put in the books, we cannot appeal it. I cannot come forth to the Court of Appeal

saying, well the Province of Manitoba said that we cannot go against Manitoba Hydro because they did not have anything there. I think you should. We cannot appeal that. If the order is made, the order is made, as long as it is particular under the jurisdiction it is involved in, in connection with that.

As to actual dealings which the Town of Stonewall had with Mr. and Mrs. Bergan, those were preliminary dealings which were done right in the beginning. I was not a party to those dealings, and I am not aware of any particular statement that was made saying that we will clean up your property. The situation at hand, we would love to see their property cleaned up. As a matter of fact, as Mr. Bergan indicated himself, Manitoba Hydro has told him they are going to go in and clean up this property, they said within 30 days. I believe he said he had a letter dated May 28, where Hydro said they are going to go and clean it up.

Well, I mean, that is fabulous. The Town of Stonewall would love to see Mr. and Mrs. Bergan's property cleaned up, Mr. and Mrs. Mollard's. We would like to see all these PCBs out of our town. However, the fact remains that, I am not familiar with the statements that were made. Any of the statements that were made would be made on a without-prejudice basis, of course, and I do not think they are actually relevant to the bill here this morning in any event.

* (1200)

Mr. Chairperson: Thank you, Mr. Grantham. The hour is twelve o'clock. What is the will of the committee? Do we continue until we finish passing the bill? Okay. Ms. Cerilli, one more question.

Ms. Cerilli: I do not have any questions. I am concerned that we are going to be forced into a situation to pass this bill, and I just want to ensure that we are going to have an opportunity to collect our thoughts and put together some good amendments to the bill. From some of the information we got from presentations today, I would like to have a chance to come back to committee with some amendments.

Mr. Chairperson: Are there any further questions?

Mr. Edwards: I gather we are going to deal with the question raised by my friend after the questions are finished.

Mr. Chairperson: Yes.

Mr. Edwards: I just have a couple of questions. Looking at the proposed section 16(2)(e), Mr. Grantham—

Mr. Grantham: Sorry, I missed that. Which one?

Mr. Edwards: Proposed section 16(2)(e) at page 2 of the bill. First of all, it is important, as I am sure you will agree, to note that the director may direct any one or more of the following persons who owns or occupies throughout—it is all discretionary as to whether an owner or an occupier or both, or whomever, but 16(2)(e) any other person who caused, and then it says: or authorized the discharge, release, spill, abandonment or introduction into the environment of the dangerous goods or contaminants. Of course it is retrospective, whether before or after this section comes into force.

Taking out the phrase, "any other person who caused . . . the introduction into the environment of the dangerous goods or contaminants", is that not broad enough to include a manufacturer or distributor?

Mr. Grantham: My position is that word "caused" when read in connection with "or authorized" is looking toward the actual act and the direct act. My position is, no, that is not broad enough to catch a manufacturer or distributor or person who improperly disposes.

I think if we went to court on that, I feel fairly confident if I was acting for the person who is the manufacturer, I would win that case.

Mr. Edwards: You will acknowledge that is debatable. It is certainly reading it "any other person who caused . . . introduction into the environment of the dangerous goods or contaminants" could certainly include manufacturer or distributor in particular because the word is "the environment" as opposed to the specific site. It is a general term. I would be interested to hear the minister's response of whether that is intended by that section.

Mr. Grantham: Actually, I would just like to make one comment. You know, Mr. Edwards, it is comments like that that make lawyers rich. If you go to court, you want to make legislation that is—

Mr. Edwards: I am asking—

Mr. Chairperson: Order, please. I am going to end the questioning of the witness before us if we are going to want to continue in our disruly order.

Mr. Grantham: What you want to make legislation, please make it clear is my comment. Mr. Edwards is making a point. He feels that is broad enough to cover manufacturers. Obviously, some of us around the room here disagree with that. If you are making legislation, my point is, please make it clear, concise and correct. If you intend to catch a manufacturer, say so. Do not make it ambiguous, please. All that does is make court case after court case, because we are talking very extensive dollars here. People will fight this if you make an order that they feel is not appropriate.

My response to Mr. Edwards is, do not come back and say this may catch this, or this may—make it concise, please.

Mr. Edwards: My point is simple, and of course the words "manufacturer and distributor," those are contentious points, too, as to what they are. My point is perhaps that I wanted to have your opinion, because perhaps the minister, when we come to consider this, will tell us whether he intended it to cover that, in which case he may want to clarify it as you say. I will be interested to hear his response to that, and I take your opinion that in no way, shape or form would include a manufacturer-distributor. We will look forward to the minister's comments on that.

Mr. Chairperson: Thank you, Mr. Grantham. We have kept you here a long time. It was a good presentation.

We will now continue and ask the minister whether he has any comments to make on the bill. Mr. Helwer, before the minister.

Committee Substitution

Mr. Helwer: Before we deal with the bill clause by clause, I wonder if I could have leave to make a change to the committee.

Mr. Chairperson: Is there leave? Agreed, granted.

Mr. Helwer: I would like to move: The member for Lakeside (Mr. Enns) for the member for Rossmere (Mr. Neufeld).

Mr. Chairperson: The member for Lakeside for the member for Rossmere. Agreed? Agreed and so ordered.

The change will have to be moved in the House later on today.

* * *

Mr. Edwards: Mr. Chairperson, I do not believe we dealt with the concern raised by the member for Radisson (Ms. Cerilli). She had raised the question of breaking, and frankly, on second thought, I am inclined to agree that we can schedule another sitting for this to do clause by clause.

Mr. Chairperson: I thought we had agreement, Mr. Edwards, from the committee to proceed with the consideration of the bill in a clause-by-clause manner. We will do so. Ms. Cerilli raised the question of amendments, and I indicated to Ms. Cerilli privately that we would make those considerations in regard to the bill when we discussed the bill clause by clause and after the minister's comments.

Mr. Cummings: I will try and keep this brief, but perhaps these comments might have been better made prior to having listened to the presenters, although it would have been out of normal context.

There is no doubt that there are problems with identifying parties responsible for cleanup of property that has been contaminated in the past. Often the land has been sold since the contamination.

The Dangerous Goods Handling and Transportation Act presently allows the director to issue a cleanup order to the owner of the property or the product. However, where the contamination has occurred sometime in the past, the present owner may be an entirely innocent third party except for the purchase of the land.

Cleanup costs run in some cases into hundreds of thousands or millions of dollars. Financial institutions are also concerned less they foreclose on property, thereby becoming the owner and inherit sizable liability along with the property where their initial investment may not have been nearly as much as the potential cleanup costs.

Amendments attempt to alleviate some of those problems. They will broaden the net of responsibility by allowing the director to issue remedial orders against the owner of the property, the owner of the contaminant, the owner of the property at the time of the contamination, the owner-handler at the time of the contamination and other culpable parties.

It does broaden the scope of the order-making authority to allow the order to reflect real field

situations. I think this is reflected in some of the comments that we have heard earlier today, and the work that may be required to define and remedy a problem to clean up those affected areas. It will simplify the cost-recovery mechanism where the government has to incur the costs associated with the problem in default of the person responsible.

I want to continue to emphasize that we have continually said that this is such a broad and complex problem that we acknowledge that these amendments do not deal with all of the issues that surround liability, that we recognize there may be further debate and further discussion as to amendments in the future.

I made it very clear at the time of the introduction of this bill, and want to make it very clear again now, that that broader debate that I envisage is a broad public debate for proposed amendments that might lead to improvement of the operation and enforcement of environmental regulation as it pertains to historic cleanup in this jurisdiction.

The last thing we want to do is create an island, make Manitoba an island on either side of jurisdictional problem. You recognize very quickly the problems that are associated with that.

At the same time, we are pushing on the national agenda to make sure that other jurisdictions move forward similarly. We, in some respects, are moving in conjunction with other jurisdictions with these changes, but we want to move towards continuity across the country.

I think that is very important because if we do not have continuity across the country, certain jurisdictions may lag behind and become havens; other jurisdictions as they forge forward may inadvertently reap some of the negative benefits that go with increased regulation.

I have to take a little bit of umbrage, Mr. Chairperson, with some of the comments that were made regarding the act and the applicability of the act.

I would only remind my colleague the member for St. James (Mr. Edwards) that he raised some concerns about this bill when he spoke about it in the Legislature. He did indicate that we should not in this Legislature as a matter of course be purporting to bind past actions and past transactions that have already gone on. That is not good legislation in the normal course. Those are his

words. Therefore, binding is one thing and we have to mandate to do that, binding the past is another.

We recognize that in putting forward this type of legislation that we are coming close to the edge. I suggest that one of the strengths and on the other hand one of the weaknesses of this bill is that it allows some discretionary power on the part of the director.

I suggest to you that may be able to be tightened up down the road in some future amendments that you and other people across the province might want to suggest. In terms of how this legislation proceeds today, I would hope that it is brought forward as a measure that is an improvement, gives increased stability to the department, but recognizing the weaknesses that we have pointed to and moving that discussion on into the larger debate which we are actively pursuing, I believe it is the right thing to do in terms of pursuing that broader debate.

Governments never like to say that they believe that there may be changes made down the road as a result of further discussion at the time that they are introducing what is immediate legislation. In this case, and given the rapid changing pace of environmental legislation, I believe it is the right thing to do.

* (1210)

Mr. Chairperson: Would the official critic for the opposition have a statement to make?

Ms. Cerilli: Yes, I think this is a very important piece of legislation, as the minister says. It is an issue that is being debated across the country. I do not quite understand what he is saying about us being an island, or we could be an island if we moved ahead in this area.

I think of it as being a leader, and I do not see a problem with Manitoba being a leader in developing good environment legislation, particularly of hazardous waste. I think that we do not want to be in the situation in which we seem to be now, which is buyer beware.

I am thinking of all sorts of other ramifications from the presentations that we have heard about requirements for testing of land when it is being purchased. I think that it is important when we are developing this legislation that we are not just going to be trying to make sure that we can put the responsibility on any party, but that we create legislation where we are going to in fact be able to

cause the enforcement of the cleanup onto the most responsible in a fair way.

I am not convinced that the legislation we are looking at right now is going to do that, that it is going to be somewhat broad, but it is not going to allow us to ensure that the responsible party is in fact the one that is going to be faced with the work orders.

I also think it is important that since the department has indicated to the Bergans that this legislation is necessary so that their particular case can be dealt with that we make sure that this legislation is in fact going to be able to deal with their particular case.

We have a perfect opportunity right now to create an amendment to The Dangerous Goods Act to broadly deal with a lot of the issues facing Manitoba, and I would hate to see us lose that opportunity and have to come back again and make amendments to deal with some of these cases. We have an opportunity right now, and as I have said, since there has been an indication to the Bergans that this piece of legislation is necessary, then I think that we should make sure that it is amended so it will in fact be of assistance to the PCB contamination in Stonewall.

I also have questions about the legislation, if it would apply to banks, if they are holding a land title that is for land under receivership. I do not know if the minister would answer questions like that at this point.

Mr. Chairperson: I am not going to allow the questioning in regard to establishment of ownership of land in certain specific areas at this time. I think we are dealing, as I said before, with the act and how the act pertains to the environment. That is the line of questioning that we want to pursue.

Ms. Corliss: Well, I am just raising another issue that I want to have some confirmation, if the legislation is going to deal with a debate that is going on right now, if banks are going to be held responsible, the situation of having time lines attached to work orders and have that in the legislation that that is going to be required, is something I feel very strongly about.

We have worked very hard in Transcona. Community representatives who have been working on the issue of the former Domtar site were not able to be here today because they were working. They are very interested in seeing this bill passed, because again they have been told that this is

necessary legislation, so that the government can issue work orders with specific time lines for the specific actions that Domtar has now presented.

I have reviewed the plan to deal with that very large cleanup, and I would hate to see further delays in that area, because this legislation is not strong enough in specifying that there has to be time lines attached to work orders for contaminated site cleanup.

I think the other point that has been raised that is important for us to consider for other amendments is the whole issue of ownership of contaminated soil. [interjection]

The minister is saying that is not an issue. Well, I would hope that he would clarify how that is so with reference to the legislation.

I also have concerns about common properties and how contaminated ground water flowing under property that is then purchased would relate to this bill, if that is going to be another issue that is going to require amendments as the minister has said, how the whole—as we have seen with the Bristol contamination, if this legislation is going to in fact deal with the whole problem of proof, and particularly when there is ground water involved. That is another concern that I have.

I want to ensure that we can have some guarantees that the legislation is going to deal with some of these problems and that, as I said earlier, we have time to go back and develop some good amendments so that, as both presenters have indicated, we have legislation that is as strong as possible now that we have the opportunity to do that.

I guess, in closing, I just would like to say that this legislation should fit in with the whole polluter-pay principle which the government says it subscribes to, and that we have to be careful with what we are designating as an orphan site, that they truly be orphan sites and that we do not have situations that we have now that exist with Domtar where we know who the polluter is, that we are able to ensure that the responsible parties are held accountable, and that we are not declaring areas orphan sites.

Point of Order

Mr. Cummings: Let not the record be left to show that Domtar in any way has ever been considered an orphan site. We know who the responsible party is, and it is not an orphan, so do not put that on the record.

Mr. Chairperson: The honourable member does not have a point of order. Continue, please.

* * *

Ms. Cerilli: I thank the minister for putting that on the record.

The point I was trying to make is that this legislation is relating to that whole issue, as the minister said, of orphan sites, and that we have to be careful that we are not going to start including a lot of areas that should be enforced, to use the principle of polluter-pay to enforce the cleanup. With that, I will conclude my comments.

Mr. Chairperson: Thank you. Would the critic for the second opposition have a comment?

Mr. Edwards: Mr. Chairperson, very briefly, the minister references the retrospective nature of this legislation, which is always a concern, as it should be with any legislators, because it is not in the normal course an appropriate form of legislating.

In this case, there is some justification, and I stress in the normal course, there is some justification. I do note that the minister has indicated and drawn to our attention that there is discretion, and it is a broad discretion. One hopes that it will be used prudently and wisely to only punish those who deserve it in the sense of paying for the pollution cause.

* (1220)

The concern I have is with respect to 16(2)(a), which is the enabling section—I am sorry, 16(1), allows the director to issue a remedial order. My suggestion will be that that should be "shall," that remedial order should be, in every case, issued. There is then sufficient discretion throughout the rest of Section 16(2), Section 16(3), 16(4) as to what will be included, and there is enormous discretion as to what will be included in an order.

There should be an order flow in that situation, and that will be my suggestion. Who it includes, who it does not include, what it includes is discretionary. That is one thing. To say that it is also discretionary as to whether or not an order itself should flow, I think, is another.

With respect to the presentations which came before us, I take note of the comments of Mr. Grantham on the manufacturing distributor problem; his comments are interesting. I look forward to the minister—and I notice he did not do it in his comments—as to indicating whether or not sub (e)

was intended to include other than people directly—I see him shaking his head, so I gather the answer is no. Yes, he is shaking it no, as I see it. It did not intend to.

That may be something to address, hopefully sooner than later, because I think Mr. Grantham makes a good point. The point about dropping prior ownership I do not think has logic behind it, given that he himself, Mr. Grantham, indicated that in some cases the owner may be the person of last resort. I suggest that it may also be that the former owner may be a person of last resort—should certainly be left in there. It would be anomalous to have manufacture, distributor, current owner, current occupier, past occupier and somehow drop past owner.

In any event, Mr. Chairperson, this bill is positive, but in our view, as in the normal course, unfortunately I have to comment, does not do the full job. I do not see this legislation guaranteeing the kind of rights that the minister speaks of. It is replete with ministerial discretion, which is unfortunate and, again, is not good legislation in the sense that legislation should be guaranteeing rights to the people of this province.

Mr. Chairperson, unfortunately, with that level of ministerial discretion, there is not a lot to be encouraged about with respect to the past record of this department under this administration in enforcing the legislation it has before it. One need look no further than the same area of this province in which contaminated soil was dumped on the Perimeter Highway.

As well, we have news yesterday that up to 50 loads of garbage are dumped in the floodway, again with the knowledge of the provincial government. We have consistent—[interjection] stockpiling garbage in the floodway. Well, I certainly feel better about that, that all they were doing was stockpiling garbage in the floodway. It is just a bizarre defence of what occurred.

I look forward to some explanation of the dumping of contaminated soil on the Perimeter Highway, and the defence of that as a one-time-only exercise. In any event, there is, unfortunately for the Bergans and others, not a lot of confidence to be had in the past actions under ministerial discretion, be it under this act or other acts from this government. However, in the sense that this is enabling, will allow

the minister to do what he says he wants to do, we look forward to him doing it.

We would prefer it was guaranteeing the people of this province some rights, which it is not, but we also look forward to the minister making good his commitment to put into effect the principles brought in in this act.

Mr. Chairperson: The bill will be considered clause by clause. During the consideration of the bill, the Title and Preamble are postponed until all clauses have been considered in their proper order by the committee.

Ms. Cerilli: I ask for a moment.

Mr. Chairperson: While Ms. Cerilli is consulting with her colleague, could we, with the indulgence of the committee, allow the minister a comment?

Mr. Cummings: Mr. Chairperson, this bill was introduced before Christmas. To not be able to act on it for the last six months has caused us some grief. I hope that the committee will pass it with some consideration.

Ms. Cerilli: I had raised the issue before of allowing us to consider some of the comments that we have had today in developing some further amendments to the bill. I agree with the minister that it was introduced a while ago. The members have been waiting for us. We would just ask that the committee—we only have five minutes left right now—that we would recess and reconvene at another time to consider amendments which I would like to propose based on what the presentations have been today.

Mr. Chairperson: What is the will of the committee?

Mr. Cummings: Mr. Chairperson, while the presentations were interesting and useful, if it is so obvious that there are amendments that should flow from that, then we are prepared to hear them. This bill has been before the House since before Christmas. We have had ample time to debate, to research, and I would ask that we would move forward.

Mr. Chairperson: What is the will of the committee? Proceed?

Some Honourable Members: Proceed.

Mr. Chairperson: Clause 1—pass.

Clause 2—pass.

Mr. Edwards: Mr. Chairperson, I move, seconded by the member for St. Boniface (Mr. Gaudry),

THAT subsection 16(1), as set out in section 2 of the bill, be amended by striking out "may issue" and substituting "shall issue within a reasonable period of time".

[French version]

Il est proposé que le paragraphe 16(1), figurant à l'article 2 du projet de loi, soit amendé par substitution, à "peut donner", de "donne, dans un délai raisonnable".

This amendment is moved in both English and French.

Motion presented.

Mr. Edwards: Mr. Chairperson, just very briefly, this reflects my earlier comments and conclusion on this bill. What I have attempted to do is to give some assuredness to the people of this province that a remedial order will issue. What it includes is, of course, replete with discretionary power in the hands of the department. I have not attempted to bind the minister because, of course, each situation is going to depend on the facts of that situation.

What is clear, I suggest, is that taking the test, that where the director is of the opinion that dangerous goods or contaminants may cause, are causing, or have caused a significant adverse effect on an area of the environment, an order should flow. This amendment is not designed to direct who it is to flow to and what specifically it should include. That discretion is left.

I also put in the caveat that it shall issue within a reasonable period of time. That is, that there should be an opportunity to investigate as to what should be in the order and whom it should go to, prior to issuance. There is that level of discretion as well left to the department.

Mr. Cummings: I do not suppose that the member had any ulterior motive other than the good ones that he expressed in introducing this. This clause regarding orders is deliberately wide because there is discretion in whether or not may cause—

If we put in the director in a position where he must issue an order because he thinks there may be a problem, then he gets himself into some considerable problems. The broadness of this is generally seen to be more draconian than relaxed, as a matter of fact. Most people take the other approach, that wherever the director has discretion,

that it causes much more concern for the receiving party of those orders. I would appeal to the committee to leave it the way it is.

* (1230)

Mr. Edwards: Just by way of brief response, that is certainly true with respect to the decision making of power within the director's hands, which is to determine, in his or her opinion, whether or not dangerous goods or contaminants may cause, are causing, or have caused a significant environmental impact. Once that threshold is met, surely we can obligate ourselves as a government to attempt to remedy the situation through an order. What is in that order is again a matter of discretion. The minister, I think, is confusing the question of whether or not there is, in fact, contamination, which I am leaving untouched. Once that threshold is met, an order should flow.

Mr. Chairperson: Is the committee ready for the question?

All those in favour.

Ms. Cerilli: Yes, I would just like to support the amendment. We have seen situations where the issuing of an order has been delayed, or has not happened. As I understand it, to leave that kind of discretion to continue weakens the legislation and does not seem to have the kind of commitment to dealing with contamination that the minister claims. We have seen with the situation in Domtar where the work orders were not issued until—

Mr. Cummings: They have no basis in law.

Ms. Cerilli: The minister says they have no basis in law. There have not even been work orders to follow up on the commitments that the minister has made. I would just like to say that to continue to give that kind of discretion is not acceptable if we are amending the legislation to strengthen it.

Mr. Chairperson: All those in favour of the amendment, would you indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, would you indicate by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: I declare the amendment lost.

An Honourable Member: Recorded vote, Mr. Chairperson.

A COUNTED VOTE was taken, the result being as follows:

Yeas 3, Nays 5.

Mr. Chairperson: I declare the amendment lost by a vote of five to three.

Clause 2—pass; Clause 3—pass; Clause 4—pass; Clause 5—pass; Clause 6—pass; Preamble—pass; Title—pass. Bill be reported.

The time is now 12:35 p.m. What is the will of the committee?

An Honourable Member: Rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 12:35 p.m.