

Copper, Cancer and Callous Corruption



Welcome back to all the returning students, academics and the rest of the uni crew. And welcome to Wollongong Uni for the first time all those who have decided to join this fantastic section of the world.

This article is for all the above, whether you've been following the saga of the Port Kembla copper smelter over the past years or are just hearing about it today.

Where to begin?

Should I start with 1908, when the smelter opened, at a time when there were no controls on emissions or waste products of industries and not much awareness about them? Or perhaps with the late 1940's when the first public complaints were aired against the levels of heavy metals, dust particles and the sulphuric acid fallout from the copper smelting processes? These were destroying back yard gardens and aggravating respiratory problems (as well as perhaps being linked to high levels of various cancers).

How about the 1960's when the state government had to respond to the increasing pressure from health, environmental groups as well as general community awareness about air pollution and its effects? It passed the Clean Air legislation and the (then) State Pollution Control Commission (now the Environment Protection Authority) was established to monitor industries and enforce the legal pollution levels.

No, instead let's start with the recent events, beginning with 1993. That year marked the closure of the smelter due to the owners of the time, CRA, being unable to comply with the environmental controls established by law, and arguing it was not economically viable to upgrade the smelter to do so. The local residents believed it was a welcome end to the continuous pollution. However, a Japanese consortium, Furukawa Co. Ltd and Nissho Iwai Co. Ltd, decided to pour in millions of dollars to modify the smelter and re-open it.

Fair enough you say, if the new smelter would comply with the legal standards? Certainly, but instead the Japanese companies requested, and were granted, exemptions under the legislation, allowing exceedences of unlimited quantities of pollutants every year. Once again the local community rallied against the smelter. The sentiment was so strong that they formed an action group in 1996, called the Residents Against The Smelter (RATS). This led to surveys, marches, leaflets being produced, meetings with local council and MP's, the Illawarra Area Health Service and more.

Due to the support the RATS received and the realisation of the broader issues involved: public consultation, air pollution in general and toxic waste throughout the industrial area of the Illawarra, they changed their name to Illawarra Residents Against Toxic Emissions (IRATE).

Following the scam of the development consent for the upgrade of the smelter and the related lack of public consultation (as is required in law), legal action was taken. Helen Hamilton, a local resident and former member of IRATE, gained legal aid support along with the free services of skilled barrister Tim Robertson and hours of volunteers' time, to challenge the re-opening of the smelter in the NSW Land and Environment Court.

However, all the while there were public criticisms by local MP's against the use of legal aid funds in the case. This seemed an absurd reaction considering the tests applied before legal aid money is given means Helen must have had a reasonable chance of success for her to have been given the legal support. What did the politicians know that Helen and her legal team didn't?

It all became clear on May 28 1997, the night before Helen's case was to start in the courts. Instead of allowing the legal, social, environmental and health issues to have been aired in the courts and judged in the proper manner, the state government, obviously fearing defeat, introduced legislation into parliament to by-pass the case. At 8:44 pm that night, the Port Kembla Special Provisions Bill was introduced by Craig Knowles, the Minister for Urban Affairs and Planning (also a party to the legal challenge), which said the re-opening of the smelter was valid, despite any legal challenges against it. Due to the law later being passed by the state parliament, the case was futile.

Do I hear whispers of abuse of process, considering Mr. Knowles was a party to the case and therefore indirectly clinched a victory due to his position in parliament? Are there suggestions that Helen was going to win and that there were faults in the development consent process for the government to respond to the challenge in such a way?





Maybe it can be explained another way, by the fact that there was a truckload of information to be released in the course of the case, in relation to the process of the development consent and effects of the smelter, which may not have otherwise come to public light.

So, the next challenge for IRATE, Helen Hamilton and the legal crew, was to get that information that the government seemed to want to keep under wraps.

Helen put in a request for the documents, under Freedom of Information laws. Surprisingly, a lot were refused by the state government, according to exemptions for 'public interest' and 'confidential business information'. It didn't end there. This time, with the renewed assistance of barrister Tim Robertson and legal support from the Public Interest Advocacy Centre, Helen took the government to court seeking release of the documents.

Finally, success. In a landmark decision, the District Court of NSW granted Helen access to some of the information the government would have us believe was confidential or kept from the public for our own interest. Although not yet examined, the released documents should be of assistance in the continued fight against the unnecessary emission of "among other pollutants...heavy metals and, in particular, lead and sulphuric acid rain" (pollutants connected to the smelter and listed by Her Honour Judge Ainslie-Wallace).

As the judge said in the freedom of information case: "the smelter remains undeveloped and there is no immediate prospect of it reopening". Especially considering the plunge in international copper prices, it may not be viable for the Japanese companies to re-open the smelter. But who knows what the industries and government departments will do?

In any case, maybe they will be a little more reluctant to try to steamroll development without having conducted the proper consent processes and public consultation, and the government may not try to circumvent the objects of their own legislation, be they relating to environmental protection or freedom of information.

There may be more action on the smelter as the year goes on, so watch the local news, radio and your trusty Tertangala.

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NB. Material for this article was taken from the judgements of Helen Hamilton v Environment Protection Authority in the District Court of NSW No. 367 of 1997, 5/8/98 and 18/9/98 as well as the paper presented at *Environmental Justice: Global Ethics for the 21st Century*, University of Melbourne, 2 October 1997, entitled "When the RATS became IRATE: the Port Kembla copper smelter and the failure of environmental justice", by Dr. Glenn Mitchell and Ms. Elisa Arcioni.

