Hundreds of residents register for class action against lead smelter pollution in Australia

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Hundreds of residents living near two lead smelters have registered to join a law suit against Pasminco—the world's biggest zinc producer—in what is believed to be the first major class action against industrial pollution in Australia.

A Sydney law firm, Coleman & Greig, initiated the action in the Federal Court this week, alleging that fumes from Pasminco's smelters at Cockle Creek, near Newcastle, north of Sydney, and Port Pirie, in South Australia, have caused brain damage and behavioural problems.

The law firm established a hotline for potential claimants and was inundated with calls. About 600 residents registered within the first half-day. The class action will initially include anyone born in the two areas in the past 21 years or who has lived within a five-kilometre radius of the two smelters in the past six years.

The first claimants are Roslyn Cook and her eight-year-old daughter Samantha, who lived near the Cockle Creek smelter from 1989 to 1998. The Federal Court will hear evidence that lead in Samantha's blood reached 34 micrograms per decilitre—more than three times the recommended safety level—and that she suffered severe memory loss, brain damage, learning defects and respiratory problems. Her mother has suffered lead poisoning, sulphur dioxide burns to her lungs and bowel problems.

The Cooks are suing for a range of damages, including personal injury, medical expenses and loss of property value. They are also seeking an injunction preventing the company from continuing to pollute the environment.

One of the first to respond from Port Pirie was Vicky Blad, who said her son Ashley, 8, has learning disabilities as a result of high lead blood-levels. “There are a few things I am concerned about,” she told reporters. “I don't really know what we will get out of it, but I am doing it for the children.”

In a media statement, a solicitor with Coleman & Greig, Paul Gambin said the Pasminco smelters had “put out a cloud of various heavy metals and gases... These emissions are pouring out of the smelters and raining over the communities.” The law firm said thousands of people had been potentially affected.

The statement of claim lodged on behalf of the Cooks alleges that Pasminco has been negligent because it did not “exercise reasonable care to avoid a foreseeable risk of injury”. The company “wrongfully caused and permitted emissions of quantities of offensive, noxious and unwholesome smoke fumes, vapours and gases, lead, sulphur dioxide and other pollutants,” the statement said.

These pollutants were toxic to humans and caused “sustained injuries loss and damage”. The symptoms ranged from headaches and nausea; to behavioural problems, intellectual disabilities and asthma; to tumours and cancers.

Further, Pasminco failed to:

* Take any or sufficient precautions against causing or permitting toxic emissions to escape.
* Conduct research into methods of containing them.
* Warn people of the dangers of emissions, or comply with the Environment Protection Agency regulations.

The lawyers have launched the legal action on a “no-win, no-pay” basis, so that claimants will not be required to contribute to the substantial costs of running the case. And under the Federal Court's class action rules, only the nominated applicant may be liable for Pasminco's costs if the case fails. On the other hand, if the action succeeds, the law firm will recoup its costs from Pasminco.

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Residents in both Cockle Creek and Port Pirie have fought for many years to stop the poisoning of their communities, amassing compelling evidence. As long ago as 1984, a report in Port Pirie found that some children had blood-lead levels four times the accepted limit.

Pasminco's own figures show that in 1998, the last year that the Cooks lived at Cockle Creek, the smelter there released more than 16 tonnes of lead and 2,756 tonnes of sulphur dioxide into the atmosphere. In the same year, the Port Pirie smelter emitted 33 tonnes of lead and more than 58,000 tonnes of sulphur dioxide.

In what could be seen as an admission of responsibility, Pasminco recently bought many houses near the Cockle Creek smelter, setting up a “buffer zone” in First, Second and Third streets, Boolaroo. The company then leased the houses to tenants—on the condition that the inhabitants had no children or pets.

Pasminco did not warn the tenants of the health dangers of living in the shadow of the smelter. It simply said they could not have any children under 12 or pets and told them to regularly water the garden and hose-down the house. Once the story emerged in the media, Pasminco spokesman Keith Powell told reporters the lease conditions were for health reasons.

Pasminco recently announced record profits but its share price dropped 7 cents to $1.12 after the class action was announced on Monday. Its management has said it will defend the action, declaring arrogantly that its environmental performance had improved in line with “community standards and relevant regulations” since the Cockle Creek smelter was built 100 years ago.

A spokesman for the New South Wales Environment Protection Agency (EPA) sprang to the company's defence, saying that the Cockle Creek lead emissions had halved since 1990 and were only a quarter of what they had been in 1985. He admitted, however, that Pasminco had exceeded national standards for lead and sulphur in recent years, and revealed that it had been allowed to do so under the EPA's licence conditions.

There was “some way to go” in reducing the pollution, the EPA representative acknowledged, while claiming that work was under way. Yet under the new licensing legislation introduced by the NSW Labor government, companies like Pasminco will continue to receive what are, in effect, licenses to pollute. Their licence fees are simply set according to the volume of toxins they emit. In Pasminco's case, it can pay $1.3 million a year for the right to continue its present levels of pollution.

Officially, the EPA exists to protect the environment. In reality, it allows major companies to monitor their own emissions and negotiate pollution agreements with extended periods of grace and specifications tailored to meet their profit requirements. The EPA has given Pasminco until next month to submit a report outlining a plan and time frame to achieve lead levels of 0.5 parts per million.

The toxic emissions at Cockle Creek and Port Pirie are part of a wider pattern of industrial pollution. A Workers Inquiry into the extraordinarily high incidences of leukaemia and cancer in the industrial city of Wollongong, south of Sydney, in 1998 produced considerable evidence of lead poisoning. Childhood mental problems, lack of brain development, still births and childbirth defects, including spina bifida, were linked to lead fallout from the Port Kembla copper smelter, steelworks and industrial complex. Similar problems exist in other industrial areas.

The Workers Inquiry, convened by the Socialist Equality Party, also provided statistics showing elevated incidences of leukaemia and cancer around the Cockle Creek smelter. Data obtained from the Cancer Council and analysed by postcodes showed that for more than two decades, from 1972 to 1994, the leukaemia and cancer rates in Boolaroo and nearby Warners Bay were twice as high as in other suburbs of Newcastle, such as West Wallsend. These rates were only exceeded by those in neighbourhoods surrounding the BHP steelworks in Newcastle, which were up to twice as high again.

The response to the Pasminco class action is another sign of growing opposition among working people to the way in which governments and their regulatory agencies have for decades permitted corporate giants to fill the air, water and soil with cocktails of poisonous chemicals, including lead, with severe and widespread health consequences.

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