

*Standing Committee on Environment and Public Affairs — Forty-fifth Report —
“Petition Number 59 — Bio-Organics composting facility, Oakford” — Motion*

Resumed from 9 November.

Hon SAMANTHA ROWE: I rise to make a few comments on this report. We undertook our investigation into this matter in September 2014. The committee made 31 findings and seven recommendations. It has been an extensive process but I am really pleased that we recently received the government’s response to this report. It looks as though the government is supporting all the recommendations that the committee made. The petition came about as a result of some issues at the Bio-Organics composting facility.

Hon Donna Faragher: I presented that petition.

Hon SAMANTHA ROWE: Hon Donna Faragher did present that petition. We thank her for that.

Hon Donna Faragher: I gave you a lot of work to do, didn’t I?

Hon SAMANTHA ROWE: The committee is very grateful for the two years we had to produce the report.

There were concerns around the environmental contamination that was caused by the Bio-Organics composting facility, which is located in Oakford. The petitioners requested an inquiry into the actions that were taken by Bio-Organics, the Department of Environment Regulation and the Contaminated Sites Committee. The Standing Committee on Environment and Public Affairs inquired into the waste acceptance practices of Bio-Organics and the adequacy of the department’s regulation in this area. We held a number of hearings with petitioners. We heard from the Shire of Serpentine–Jarrahdale and the department. The director of Bio-Organics, Ben Avila, was asked if he wanted to attend a hearing. He presented a submission but declined to attend a hearing.

The volume of evidence that was obtained by the committee provided it with a huge amount of information that was necessary to make the 31 findings and the seven recommendations. I would like to highlight some of those. I will not go through all the findings because members can read them for their own information if they want to look at the report. Some of the recommendations were obviously very important. We are very pleased that the government has decided to support them. Recommendation 1 states —

The Committee recommends that the Minister for Environment examines the inconsistencies in the recording of load measurements in the Controlled Waste Tracking System and consider adopting a standard unit of measurement.

Recommendation 2 states —

The Committee recommends that comprehensive data in relation to the treatment and disposal of controlled waste in Western Australia be publicly reported.

I think that is a really sensible recommendation. It is important that we have transparency in this day and age.

Recommendation 3 states —

The Committee recommends that the Minister for Environment investigate and report to the Legislative Council on the cause of the system failure that resulted in the department issuing Bio-Organics with a licence to operate without verification of compliance with works approval specifications.

Recommendation 4 states —

The Committee recommends that the Department of Environment Regulation adopt procedures to assert the requirement to verify compliance with works approval specifications before a licence to operate is issued.

Recommendation 5 states —

The Committee recommends that the Department of Environment Regulation’s investigation of the nature and extent of potential groundwater contamination include identification of the extent to which non-compliant infrastructure or operational activities caused or contributed to contamination.

Recommendation 6 states —

The Committee recommends that the results of the Department of Environment Regulation’s groundwater monitoring and investigation programme, including conclusions regarding the source of contamination, are made public.

Recommendation 7 states —

The Committee recommends that the Department of Environment Regulation conduct a contamination assessment of the vineyard (Lot 6) adjacent to the Bio-Organics site.

We are really pleased to see that those recommendations are being supported by the government.

I would also like to extend a special thanks to the staff involved in putting this report together. It was a hugely detailed and complex report. I would like to especially single out Amanda Gillingham for all the work that she did on this report for the committee because I know that it was quite trying at times for her.

Hon DONNA FARAGHER: I did not intend to speak on this matter but given that the report that is being discussed at the moment emanated from a petition that I tabled in this place some time ago, I simply wanted to thank the Standing Committee on Environment and Public Affairs for the work that it has undertaken. I, too, have also seen the government response; indeed, I tabled it just yesterday. I think it is a demonstration of the work that is done in this place. Petitions are presented in this house almost on a daily basis and not all are considered in the amount of detail that this one has been. I am pleased that this one has gone through quite a rigorous process. I think it is important for the record to set out how I become involved in this; it was through contact with the late Don Randall, the then member for Canning, who had very much taken up the issues and concerns of the community at that time. I was very pleased to present that petition to this house at that time. I simply want to record that the late Don Randall was very much the driver for what emanated in a petition that I presented in this place. I simply want to thank the committee for the work that it has done. Having sat on committees—not this particular committee—I know the amount of work and time that goes into them, and I simply wanted to record my thanks.

Hon SIMON O'BRIEN: I would like to address this report, and the government response, in this manner. Firstly, I acknowledge the protracted amount of work entered into by the committee, including Hon Samantha Rowe, from whom we have just heard, Hon Stephen Dawson, Hon Brian Ellis and Hon Paul Brown. I also acknowledge the assistance provided by committee staff, who are mentioned in the report, including Suzanne Veletta, who has gone on to unquestionably bigger and better things, as she should; Margaret Liveris, our committee clerk; and most particularly Amanda Gillingham. To this day, anyone who wants to upset Amanda or disturb her normally cool calm and collected demeanour would just have to sneak up alongside her and say “Bio-Organics”. That would do the trick. This was a very difficult inquiry into a serious matter in the community that had been bounced into sundry too-hard baskets for years. Hon Donna Faragher is correct in saying that it was first raised in 2014 in the house via her tabling of a petition. If memory serves me correctly, we had conversations at the time—now that she is a minister again I will probably have to get an appointment to have a conversation with her —

Hon Donna Faragher: Not with me; I am very available.

Hon SIMON O'BRIEN: I am joking, of course, and I am very glad to see the minister back on the front bench. Hon Donna Faragher was having discussions with the community and with the late Don Randall about what to do, and the answer that she came up with that Don and others pursued was, when no-one else was able to pick it up because it was too much of a hot potato, to take it to the Legislative Council of the Parliament of Western Australia, because it has a mechanism for looking at these sorts of things. That is what happened. It was a very big inquiry that went on for years. There are some frustrating people in this town, Madam Chair, and you have probably met one or two of them over the years. I have met a few more in the course of this inquiry. That is the environment we work in.

It was interesting to see the progress of this issue in other matters. During the course of the inquiry we saw this site closed down. We have subsequently seen people charged with offences, and those cases are now pending. In some small part, I am sure that our inquiry helped focus on matters that led to some of those outcomes. It also makes it a bit difficult, when there are live legal proceedings happening all around, to ensure that our own inquiries do not frustrate the other processes of the courts. It was a complex, detailed and difficult inquiry. Members should consult the committee’s forty-fifth report for a general reference point. Thanks to all the members and staff for persisting.

I also thank the government for its response. In fairness, I believe that the Department of Environment Regulation, as it now is, has learnt from some of the mistakes of the past. In response to a range of recommendations, we see comments along the lines of “Supported—this is consistent with work currently underway”. Some of the work currently underway might have been got underway anyway, but it certainly did not hurt for the department to know that a committee of this Parliament was examining the matters, providing encouragement for the department to perform some of its process, and highlighting some of its past failures—to put a bit of ginger up them and get them moving. That is a good outcome as well.

I will now refer to one aspect of the committee’s report, of which we need to take particular notice. Whenever we do an inquiry, we find all sorts of things that can perhaps fall under the category of “could have done better”. Responsible and responsive agencies take that in a positive fashion, as a reminder that they need to lift their game, and make sure their culture is about excellence and attending to things that need to be done. We see that quite often, and there are many examples of that in both the report and the government’s response. However, there is one that I am particularly concerned about. There is a theme in this report of all sorts of environmental protection mechanisms being brought into existence, but none of them are of any blooming use at all if the

people responsible for enforcing them do not enforce them. We can have all the statutes and requirements for things to be done in triplicate and all the rest of it, but if the people responsible for monitoring and then taking action where necessary do not do that, then there is a problem. I will provide an example. I direct the attention of members to recommendation 3, which relates to the matter of the approval of the hardstand specifications. In the context of Bio-Organics, this was a composting facility. All the various raw materials have to be turned into compost. Solids, liquids and all sorts of things are involved. In chapter 5 of the report we discuss this specifically. The chapter begins —

- 5.1 The hardstand on a composting facility is intended to prevent liquid from the composting process infiltrating the land and groundwater. The Licence Revocation Decision for the Bio-Organics facility states that licence conditions relating to the hardstand constitute a *'prime and fundamental pollution control requirement for composting waste.'*

In other words, there is a big slab of concrete of certain specifications; all the gloop and everything else is placed on the top of it, and with all the pressures around it, and trucks driving over it, it must be of sufficiently low permeability so that contaminants do not leak through it into the groundwater. That, basically, is the sort of hardstand we are talking about. The chapter continues —

- 5.2 Failure to comply with permeability requirements is regarded by the department as *a significant and fundamental risk to the environment as it may enable nutrient rich leachate (and/or controlled waste) —*

We have seen the sorts of controlled waste, blood, medical waste and all sorts of things brought onto this site —

to enter the environment and contaminate the groundwater beneath or proximate to the composting operation.

It is a serious matter that the hardstand be constructed properly. The chapter continues —

- 5.3 The department's usual process for verifying infrastructure in 2002 was to require a compliance document from the holder of the works approval. An inspection by the department to verify compliance after installation was not, and is still not, routine practice ...

I think the committee found that to be reasonable, because perhaps something was needed, such as a certificate from an engineer, to say that the infrastructure—in this case a hardstand—has been built to spec. I would seek the call again, if I may.

The CHAIR: Hon Simon O'Brien.

Hon SIMON O'BRIEN: Thanks, members, for your indulgence.

Whereas, if a hardstand had been done and a Department of Environment Regulation inspector had come, that inspector's area of expertise might be in rocket science, protecting bilbies or whatever, and not necessarily in engineering of hardstands. Therefore, it would be reasonable to expect certification from a professional in the field to state, "Yes, this has been built according to spec." That is done, is it not, all the time for buildings and bridges and what have you? Something like that was required in this case, but, as the report notes —

The degree to which compliance was verified prior to operations commencing in 2002 is unclear. Departmental records indicate that Bio-Organics —

The company —

submitted a compliance document (as required by the Works Approval) and a site inspection was undertaken, however the department was not able to confirm that compliance was verified.

When the committee came to look at this matter some time later, when it had been found that problems had occurred and it had been discovered that the hardstand had not been built to spec, what happened? This is the very important point I want to bring to members' attention and I want them to contemplate. Back in 2002 there was a works approval that permitted something to be done, something that was to be used for a purpose that is about controlling, and again I quote, "a significant and fundamental risk to the environment", by way of leachate entering the groundwater or service water. This is important. If it were not important, it would not have been made part of the works approval process. It would not have required people to go to the expense of building the hardstand to a higher spec than perhaps other bits of concrete. It would not have required them to get some sort of professional sign-off to state that it had been built to spec. However, when it turned out 12 or so years later, that, hello, the hardstand had not been built to spec, would it not have then been appropriate to say, "Hang on, let's work our way through the process and ask who ticked it off"? The committee could not find anything. The committee does not know—it made extensive inquiries—whether documentation had been submitted by Bio-Organics that had been falsified or fraudulently created and uttered.

The committee does not know whether there is documentation from Bio-Organics stating that it had paid good money for something but that it had been issued by someone incompetent so that perhaps Bio-Organics did not get what it thought it had paid for all those years ago. We do not know whether the officer responsible for granting the works approval received a document that he would have been entitled to accept as genuine. Why is that? It is because nothing exists. The committee went looking and was told, "Sorry, we can't find anything." Bio-Organics advised that the permeability certificates would have been submitted but they are not in the department's records. Was verification by an independent person ever undertaken? Was it requested? Was it paid for? Was it improperly given? Was any document ever given to a departmental officer or was there perhaps a nod and a wink and a do not worry about it? Was there, in fact, a document on file that was submitted back in 2002 in accordance with what they said happened but that has somehow mysteriously disappeared from the departmental records? We have been through a lot of departmental records about this particular facility, but no-one in the department can find any trace of it—we are told. There are some questions that need to be answered, because when we find that the system has failed, whether it be through a fraudulent process, through people failing to do their duty, or something more sinister, I do not want to overdramatise this —

Hon Darren West: Go on!

Hon SIMON O'BRIEN: Although there might be some corners of the gallery that might like that.

The fact of the matter is that it could be the case that somebody, subsequently, got rid of a document that they knew to be false and that they did not want examined. Who knows? They are the sort of what-ifs we are asking. Clearly, something failed here. We know all about the saga that has gone on for many years since, and has caused all the distress and that has compromised property values and has upset neighbours and had consequences for the watertable, and all the rest of it.

Why am I hammering this matter so hard? I am doing it because it is vitally important that members take notice of this particular thing. We need this matter pursued. What is the purpose of having a system whereby a person has to get a works approval to comply with concern conditions today, on 16 November 2016, to establish a composting facility if it does not matter that compliance is not achieved, and that 12 or 14 years down the track if compliance is demonstrated not to have occurred, as it has been in this case, it does not matter; nothing is going to happen because no-one is going to follow it up? I want to know, and I have not been able to establish through the committee, who signed off on this when they should not have, or who gave a certification that was false, or who removed a certification that they knew to be false from some record, or whatever other thing happened. Something went wrong and it is not good enough to say, "Yes, well, that's noted", because I do not want it happening again, whether it is in Oakford or whether it is around the corner from any member's place. That is one ongoing issue that arises from this report and I think it is valuable. No-one else would have turned this up had Hon Donna Faragher not got the Randal-inspired petition to our committee.

Thanks again to those who did all the work. It was a big job, but a good one to work on. The report of the committee is eminently notable.

Hon STEPHEN DAWSON: I, too, rise as a member of the Standing Committee on Environment and Public Affairs to note its forty-fifth report. I acknowledge the work of my colleagues on the committee, particularly the chairmanship of Hon Simon O'Brien, Hon Samantha Rowe, Hon Brian Ellis and Hon Paul Brown. I do not want to go over the same points that Hon Simon O'Brien made, other than to indicate that I concur with what he said. There is no doubt that this inquiry was a very valuable exercise. Although it took the committee a fair time—almost two years—to get from start to finish, we were fairly methodical in our inquiries. Hon Simon O'Brien also alluded to legal action taking place in the vicinity of this issue, and we were obviously very mindful of that and not transgressing or getting in the way of any legal action taking place. This was a substantial issue for the residents of the Shire of Serpentine–Jarrahdale. Rightly, that was seen at the committee's public hearings. Nearly every hearing involved a busload of residents from the Serpentine–Jarrahdale area sitting in the gallery. I have not seen a packed gallery like we had for this inquiry for any other inquiry that the committee has done.

Hon Simon O'Brien: It was on several occasions.

Hon STEPHEN DAWSON: Absolutely; the gallery was packed on several occasions. It shows the level of concern, anxiety or frustration that this community has experienced for a number of years. Bear in mind that this inquiry had been going for a long time. I think Hon Simon O'Brien mentioned that the inquiry had been going for 12 years. It probably has taken 12 years to get to where we are today.

I am also concerned about the lack of action taken by this department. I know that over the years this department more than most has changed its name and composition. It has probably seen three or four iterations since the initial project was signed off a few years ago, but that is no excuse, because many of the individuals who were in the department when this project was first approved remain in the agency today. Frankly, I think a fair bit of butt

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covering has gone on in that agency over the past few years. It is a real concern that when we requested documents and asked questions, we were told that the documents did not exist or could not be found. That is certainly not the way to operate a government department. The committee has been fairly scathing in its comments. We identified serious deficiencies in the department's approval processes. We acknowledged that the department failed to correlate its own waste-tracking data and Bio-Organics waste intake, and through our inquiries we revealed a history of inadequate regulation by the department at the Bio-Organics site. There was also a serious lack of transparency around the work that the agency did.

Certainly, that lack of transparency was brought to our attention and it was acknowledged in our conversations with community members. Community members were concerned and had a perception that this government agency was, or is, secretive and dismissive of community concerns. I have to say, as a committee member, that the evidence presented to me made me believe that that was the case and that community members had been dismissed. They were essentially told that there was nothing to see there and to go away, but community members insisted. I acknowledge the late Don Randall's work, and the Minister for Planning, who is away from the chamber on urgent parliamentary business, who brought this petition to our attention. Over the last while, I have spoken to Councillor Barry Urban, the Labor candidate for Darling Range, and he and a number of his fellow councillors have expressed concerns about and frustration with the department on this issue. Lots of concerns were expressed by a variety of people, including politicians, councillors and community members, yet no action, or very little, was taken by the department.

I am pleased to see the government's response to this report because it supports all the recommendations the committee brought forward. I would have liked a more lengthy response; nonetheless, we have a response in front of us. The government acknowledges that there were deficiencies in the system and that work is currently underway to deal with or to fix some of the deficiencies raised by the committee. As Hon Simon O'Brien said, I think that a lot of the work that we have been told is underway would have happened during the course of our inquiry. As issues and concerns were raised at hearings and questions were asked of the department by committee members, people recognised that there were issues that needed to be fixed, and some of that work may well have commenced then. That is pleasing. I quite frequently take advantage of the opportunity to speak in this period on a Wednesday afternoon, and we do not always get a government response that acknowledges that deficiencies exist and comments that support the committee's work.

This is probably the last time that I will speak on this committee's work this year. It has been a pleasure to work with my fellow committee members. We are members of three different political parties, but we have been able to leave our politics at the door and to operate without fear or favour. We have worked in what I believe to be the best interests of the community and of the Legislative Council. Obviously, as a committee of the Legislative Council, we are members of that committee thanks to our fellow members in this place. Members of the Legislative Council have given us a task, and I think we have delivered it well. We have certainly ensured that issues have been given the level of scrutiny that they have needed.

I want to touch on the report's concluding remarks. I will read them into *Hansard* because this issue should not cease today. More work is to be done and people need to remain vigilant. The concluding remarks state —

Final results of groundwater monitoring and analysis in accordance with the Bio-Organics investigation notice will not be available until November 2016, subsequent to the tabling of this report. The Committee considers it vitally important that the community is provided with the results of the department's investigation, including conclusions regarding the cause and extent of any environmental contamination.

It is November 2016, and I have not seen those results yet and I do not know whether the community has seen the results. However, I will continue to watch this issue with interest, because the results should certainly, absolutely be made public. The community deserves to know those results. The second point in the concluding remark states —

The failure to provide information to local residents and the Shire about the operation and regulation of Bio-Organics has raised questions by the community about the department's effectiveness as a regulator and its desire to identify the nature and cause of contamination.

That needs to stop. From today, that department needs to be open and frank; it needs to tell the community what is going on in the community's backyard. Again, throughout the hearings I found that people were frustrated that the department did not treat the local shire with the respect it deserved. The shire is a partner with state government and these agencies in many respects, so it deserves respect. The shire should know when things go wrong; it should be kept in the loop and stuff should not be hidden from it.

The CHAIR: Hon Stephen Dawson.

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Hon STEPHEN DAWSON: I certainly hope that from now on this department treats the shire, or any shire and every community with the respect it deserves. This hiding stuff, losing documentation and not being consultative or open with local communities has to stop. What has happened in Serpentine–Jarrahdale in relation to the Bio-Organics facility should not happen to any other community or any other neighbourhood right around Western Australia. It has to stop and I hope this agency learns from this report.

The other point from the concluding remarks reads —

The Committee's inquiries reveal a history of inadequate regulation of the Bio-Organics composting facility ... a lack of transparency has resulted in the ... perception of a government agency that is both secretive and dismissive of community concerns. ... recent improvements to regulatory practices and information sharing, ... further evidence of effective and transparent regulation will be required to convince the community of the department's ability to protect the environment and public health.

It is a very important point. We have had years of inaction, secrecy and information being hidden. That has to stop. It is not going to stop. Just because we received a response yesterday, "We are going to change our ways and we acknowledge the committee's recommendation", does not mean that is going to happen overnight. There is a lot of work to do to rebuild the trust that is put in this agency. This is something that I will watch over the years to come.

I have a special interest in this area because over the years I have been in ministers' offices in which issues on this site have been considered or approvals have been given. I was not aware until the committee undertook its deliberations and inquiry of the extent of the secrecy and the extent of the frustrations and concerns that have been raised by residents in Serpentine–Jarrahdale over the past few years. I hope this report brings some level of closure to the residents out there and that this agency in particular learns from this report. I certainly hope that down the track we are not seeing a similar report into a different issue about this agency. I hope that people have learnt the lesson and ensure that they are not hiding things from the community in future.

Question put and passed.