

ECONOMICS AND INDUSTRY STANDING COMMITTEE

BELLEVUE HAZARDOUS WASTE FIRE INQUIRY

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 15 MAY 2002**

Members

Mr McRae (Chairman)
Mr Day (Deputy Chairman)
Mr Bowler
Mr Masters
Mr Murray

Committee met at 9.44 am

EDWARDES, HON CHERYL
Member of the Legislative Assembly,
Parliament House,
Harvest Terrace,
Perth, examined:

The CHAIRMAN: The committee hearing is a proceeding of Parliament and warrants the same respect that proceedings of the House itself require. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as a contempt of Parliament. Have you completed the "Details of Witness" form?

Mrs Edwardes: Yes.

The CHAIRMAN: Did you understand the notes attached to it?

Mrs Edwardes: Yes.

The CHAIRMAN: Did you receive and read an information for witnesses briefing sheet and guidance notes regarding giving evidence before parliamentary committees?

Mrs Edwardes: No, but I have been involved with committees for a long time.

The CHAIRMAN: I will accept that as a reasonable knowledge base.

Mrs Edwardes: I have read it at some point in the past.

The CHAIRMAN: Please state the capacity in which you are appearing before the committee.

Mrs Edwardes: I am appearing as the former Minister for the Environment.

The CHAIRMAN: The committee has not taken evidence from you previously, although both you and I have appeared in documentaries related to this inquiry. As you know, this inquiry has been running since the middle of last year. The committee has taken evidence from a wide range of people who have been involved in governance, regulation and policy setting. The questions we wish to ask today, as indicated by those forwarded to you earlier this week -

Mrs Edwardes: Which I received mid-afternoon yesterday.

The CHAIRMAN: They address three areas: policy setting, regulation making and enforcement - that is, the broader governance issues. Other members of the committee will probably want to direct questions to you. So that we understand the time frame, scope and responsibilities involved, when were you commissioned as Minister for the Environment?

Mrs Edwardes: In 1997.

The CHAIRMAN: So, you were the minister from 1996 until -

Mrs Edwardes: Until 2001.

The CHAIRMAN: During that period, when did you first become aware of the Bellevue site?

Mrs Edwardes: There was some publicity at the end of July. There was also a section 73 notice or two issued in August. I then had a meeting with the chief executive officer, who had sent me a fax saying that he needed to see me urgently because an issue at the site needed to be addressed immediately. It flowed from there.

The CHAIRMAN: That was July.

Mrs Edwardes: And August.

The CHAIRMAN: What year?

Mrs Edwardes: 1999.

The CHAIRMAN: Nothing arose from 1996 to 1999.

Mrs Edwardes: Not that I recall. I have received copies of documents under freedom of information legislation. There is no real notification about concerns at the site.

The CHAIRMAN: The manager of the Bellevue site, Dr Claflin, and a previous co-director of the company that operated the site, Rodney Mathers, have both testified that they made direct representations to the Government through a number of different channels prior to 1999. Do you have any recollections of that?

Mrs Edwardes: No. My first meeting or knowledge of a meeting with him was on 30 August 1999. They had written - I cannot remember whether it was in July or August 1999 - requesting a meeting.

The CHAIRMAN: I will come back to the urgent advice you received from the CEO. As a result of that, did you have cause to look at the history of the site?

Mrs Edwardes: No; the department provided me with a briefing note about the history of the site.

The CHAIRMAN: Do you recollect the impression you drew from that briefing note?

Mrs Edwardes: It was a recycling company that had been in existence for about 12 years. It had always met its financial obligations until that date and as such, its licences had been renewed. Obviously it became an issue because it could not pay for the removal of the drums. In reviewing the papers, it became obvious that there had been concerns about funding for some time. However, at the end of the day, the information I had was that the company found itself in some difficulty because of the change in Red Hill's acceptance of waste. We needed to do something with it.

The CHAIRMAN: Was there any suggestion in the briefing note in 1999 that there had been at least five years of continual failure to comply with licence obligations?

Mrs Edwardes: No, that was not mentioned in the briefing note.

The CHAIRMAN: Do you now find it strange, with the benefit of hindsight, that the briefing note from the department did not mention the repeated incidents of non-compliance noted at every inspection undertaken by departmental officers?

Mrs Edwardes: I have not read the file in its entirety; I have read only those documents detailing interaction. However, if you were to read it, you would get the sense that concerns were being raised by the department and that the company was going to do something about those concerns, even if not to the fullest extent. Therefore, it was an ongoing issue. However, the bunding issue was a problem for both the Department of Environmental Protection and the then Department of Minerals and Energy. The DME dealt with storage and transport. Therefore, the bunding was an issue in terms of the way the storage system was

operating. The issue for the DEP was, of course, the environmental obligations. It had to ensure that there was no leaching that might cause contamination.

The CHAIRMAN: Did you have a sense that the DEP or the DME was the lead agency with responsibility for the site?

Mrs Edwardes: A number of agencies had responsibility for the site, each with their own different responsibilities under their respective Acts.

Mr BOWLER: Do you think that was part of the problem?

Mrs Edwardes: I thought there was coordination between the respective agencies and that there were discussions.

Mr BOWLER: Did you think there was or did you know there was?

Mrs Edwardes: Some of the memorandums I received mentioned, for example, that consultation had taken place with the Fire and Emergency Services Authority, DME, WorkSafe and so on. The committee might consider whether there was sufficient coordination and one decision maker for the site. That issue could be considered for future sites.

The CHAIRMAN: It will be considered. Was the DEP/DME situation ever discussed subsequent to July/August 1999 and your then developing knowledge about the multi-agency responsibility for the site? Did that cause a conversation between you and Minister for Mines?

Mrs Edwardes: No.

The CHAIRMAN: Was it never such a high level issue in your mind that it caused an alarm bell to go off and discussions to be held about the policy framework?

Mrs Edwardes: No, because coordination was occurring between the two agencies at an operational level.

The CHAIRMAN: It is important for the committee not only to understand what you were thinking at the time, but also to define more clearly what the committee's report will recommend should that happen in future. That level of coordination was evidenced by file notes of discussions. Was there any evidence of combined action that resulted from that coordination? For example, was a joint submission brought to your attention about a policy framework, inspection processes or compliance enforcement?

Mrs Edwardes: No. The dangerous goods were discussed only with regard to whether responsibility should be shifted across to WorkSafe, not to DEP. Of course, when I became the Minister for Labour Relations, that was an ongoing issue. It is an issue before this Government.

The CHAIRMAN: What did you think about that?

Mrs Edwardes: It made a lot of sense with regard to what WorkSafe was looking at to a great extent, but not entirely. It does cover the same sorts of powers and responsibilities. There would need to be further legislative changes.

The CHAIRMAN: Who was advocating that?

Mrs Edwardes: Respective inquirers who inquired into the Occupational Safety and Health Act and the Mines Act.

The CHAIRMAN: The policy thinking of the environmental people might have suggested that it would be better placed with WorkSafe.

Mrs Edwardes: No.

The CHAIRMAN: Were the WorkSafe policy people saying that it would be better within its legal and enforcement framework?

[9.56 am]

Mrs Edwardes: No, the Department of Environmental Protection never got involved in that policy debate. The management of the sites and where waste management should go was a major issue for the DEP and the community. When I brought amendments into the Parliament in 1996-97, one of the big issues with the changes was whether a regulator should also be a manager. Of course, when it involved the Mt Walton facility, which dealt with class 5 intractable waste, a major policy decision needed to be made. That would never be put out to the private sector. The Government should always be involved with waste such as that. The key issue was whether the Government should be the regulator. Another issue was raised about the Forrestdale site and whether the DEP should be the manager of that facility. The history of it is that it was transferred from the Department of Health. It is a health as well as an environmental issue. It was felt at that time - I was not the minister -

The CHAIRMAN: The history of waste management?

Mrs Edwardes: Yes. I was not the minister at that time.

The CHAIRMAN: It was coming out of the public health -

Mrs Edwardes: It should go into the environment portfolio. Licensing of the sites had begun and was almost completed by about 1997, but I cannot be sure of that.

Mr BOWLER: Just going back to the Red Hill site, what were the reasons behind the changes to the acceptance criteria for waste at Red Hill? Were you concerned when all of a sudden it would not take the waste that was coming out of Bellevue? Was any provision made for dealing with that waste? Was it going to be left at Bellevue to build up?

Mrs Edwardes: It is a major issue. What does the Government do when there is a private manager of a site? It was a private entity. Governments cannot always tell them what to do. Criteria and guidelines can be set down, but if they decide, as they did in this instance, to take a more conservative approach, we could only tell them what they could and could not take. If the Red Hill facility took a more conservative approach and decided that it was not going to take waste that was not recyclable, it was out of our control. The issue then involved looking at alternatives.

Mr BOWLER: Did you look at them?

Mrs Edwardes: Yes. Absolutely. That was a key issue for the department. We did not have the quantity of waste to be able to ensure that there would always be a number of viable operations. That also became the issue when it came to the regulations. There were lots and lots of -

The CHAIRMAN: The system of waste management?

Mrs Edwardes: Yes; regulations were put in place in March last year to provide for an extended producer responsibility. That responsibility was put back on the producers of the waste rather than on those who deal with the waste. More than 1 000 small operators were producing tiny quantities of waste. What do you do with that?

The CHAIRMAN: Would it be fair to say that your focus in your four years as Minister for the Environment was to devise a system that would better manage and operate the waste management flow, from production through to use and then recycling or disposal, and for a higher level of participation to occur in that system, rather than with the enforcement of some notable breaches? A number of witnesses have come before this committee from both the

government and private sectors. It has been characterised that to some extent there is a competing set of interests. There is a balance between the interests of a waste management system and the regulatory framework that you build around that system and its participants, and the obligations of enforcement, which will sometimes squeeze people out of that system or shut companies down. In relation to Bellevue, the suggestion has been made that it was a critical operation, and that if stricter enforcement had been in place it would have collapsed out of the regulatory regime and caused a breakdown in the waste management schema that you were devising for the State.

Mrs Edwardes: Let me try to deal with that. You have raised a lot of issues. There are two separate functions. Enforcement is a totally separate function to the management of waste and development of a broader policy.

The CHAIRMAN: In your time as Minister for the Environment, would it be fair to say that you were putting greater emphasis on development of the system of waste management than on enforcement?

Mrs Edwardes: No. They are two separate issues.

The CHAIRMAN: They were not in competition?

Mrs Edwardes: No. The options available with the Bellevue site were considered when I took a minute to Cabinet to ask for \$100 000 to reduce the number of drums at that site. The waste that Bellevue took and the options for the site were considered. Should we have ordered the company to remove the drums under a section 73 notice? The company did not have the financial capacity to do that. The option that was open to us, and had been previously used in Bindoon, was for the Government to fund the operation up-front and then be reimbursed by the company. That was one option. Another option was to do nothing.

The CHAIRMAN: Are you running through the six options that were presented to Cabinet?

Mrs Edwardes: Yes. They were the options that needed to be addressed. I took one recommendation to Cabinet, but the options that were open and available to Cabinet were obviously discussed. One other option was that if the place did close down, we would end up with an orphan site. A more important question was what would happen to the waste that was being produced by the 1 000 operators. When dealing with such small amounts of waste, it would appear quite easy for illegal dumping to occur.

The CHAIRMAN: I will stop you there. What you have just described is precisely what I put to you; that is, that there is competition between policy setting and the tools of government at play. It was certainly converging in and around the Bellevue site; that is, on the one hand you were attempting to sustain a waste management regime in the State - you knew that the Bellevue site was in trouble in that regard - and, on the other hand you, knew that enforcement to the strict letter of the law and to the best environmental practice would have shut down the site, which would have caused a whole bunch of other waste management problems. We are talking about 1 000 producers of waste from across the State who would have had no place to lob their used waste for it to be recycled and re-used or disposed of appropriately. Even in the way that you have just described, there was direct competition between waste management policy setting for the State and the enforcement regime for which you were also responsible.

Mrs Edwardes: I do not see it as having been a matter of enforcement versus keeping the waste management options open. That was not how the thinking went. If the department believed that there was no way for the company to trade out of its current problems, and was therefore unable to meet its responsibility, I am sure I would have been told.

The CHAIRMAN: Did anybody ever tell you that?

Mrs Edwardes: Even as late as August -

The CHAIRMAN: So nobody said that this company would not be able to do that?

Mrs Edwardes: I received a memo in August 2000 - 12 months later - that clearly stated that an environmental plan had been negotiated and that it appeared that the company was trading responsibly and out of its current financial difficulties. The department made that assessment in August 2000.

Mr BOWLER: Did it indicate then that the drums were building up again and that the -

Mrs Edwardes: No; that was not until the end of November. The department indicated then that the number of drums had gone up to 2 100, which was a major concern, given that the licence was for 1 600 drums or thereabouts; it is measured in litres and all the rest of it. We paid for the removal of 1 000 drums, and then the drums went up to 2 100.

Mr BOWLER: Were you surprised to find that all of a sudden there were more than 2 000 drums at the site, yet only two months before you had been told that everything was hunky-dory? Did you not think, "Hold on, it must have been creeping up in August and the company must have been well over its limit then"?

Mrs Edwardes: The department had issued the licence in August 2000, so it had gone through that process. The conditions were amended in January 2001. A minister can only go on the best possible advice that he or she is getting. The department still believed that Waste Control Pty Ltd was going to be able to trade out of its financial difficulties. The department had major concerns that some of the conditions were not being met. In July 1999 the company made some changes, but obviously not all, to meet the necessary conditions of the licence.

Mr DAY: Do you think that the department was driven by a concern that if it took stronger action against the company, it would force the company to close, which would result in the system collapsing and chemicals being dumped in the bush and so on? That is the sort of thing that seems to come through from other people. Do you share that view?

Mrs Edwardes: I do not think that that was an overriding concern. One memo clearly states that the company was not a major employer in the State and was not the sole company that recycled this waste. There were operators in the eastern States. If those other companies were used, it would have meant that smaller operators faced increased costs, which might well have led to dumping of waste in the bush. It was not the same level of waste that the Government dealt with in terms of septic tank waste. Neither the quantity of waste nor an appropriate organisational structure was available to enable a regulatory regime similar to the one for septic tanks to be put in place. It was not the department's overriding concern. Although the department raised concerns, it was proceeding with issuing licences with conditions. The department obviously felt that although it had given Waste Control every possible opportunity, it would not be able to meet its conditions.

Mr DAY: So you were relying on professional advice from departmental officers about how the site was being managed?

Mrs Edwardes: The minister of the day can only act on the best possible advice that he or she is given, which is the advice of the department.

Mr DAY: Is it correct to say that your greater role, therefore, was to try to put in place better regulations and an overall policy?

Mrs Edwardes: The minister's role is primarily to deal with policy issues. We were attempting to get legislation into the Parliament to deal with contaminated sites. Of course, that had more to do with sites that were already contaminated and who would be responsible

for the clean-up of those sites. The legislation was also designed to amend the Environmental Protection Act to create an offence of environmental harm. That amendment would have given wider coverage in terms of being able to take action in particular instances.

Mr DAY: Were there difficulties in getting that legislation finalised?

Mrs Edwardes: They were the same difficulties that any minister faces in getting legislation drafted.

The CHAIRMAN: As well as the advice that you need to take from professionals in your department, would you not say that it is also incumbent upon a minister to seek to have that advice tested or to inquire into the advice that the department has given?

Mrs Edwardes: A minister always asks questions.

The CHAIRMAN: The department said in 1996 that this private sector organisation was critical in real terms because it sustained the waste management system for perchlorethylene in this State, but that it was in continuous breach of its licence conditions and looked to be in some financial difficulties. The department obviously made an assessment and gave you that advice. Once again, this shows the competition between the idea of sustaining a business that is critical to a large number of small businesses and which could lead to potential environmental harm if it were not available, and compliance and enforcement. You argue that they go hand in hand. I argue that they are sometimes in competition. When that advice was given to you, did anybody else put a proposition to you that the company would not be able to sustain its business, regardless of any remedial action that you might take?

Mrs Edwardes: No.

The CHAIRMAN: It has been put to me that some of the people directly involved in the industry advised you at the same time that the department put the six options to you, which you ultimately took to Cabinet, that the \$100 000 grant or loan to Waste Control would not see a change in the behaviour of that company. Do you have any recollection of that whatsoever?

Mrs Edwardes: None whatsoever.

The CHAIRMAN: Okay.

Mrs Edwardes: I know that a couple of companies thought they could take the waste. They would have been able to take some of the waste, but not all of it. I know that the department talked to a couple of those companies at that time. If there was a need to take the strict enforcement action that you are referring to, we knew what else was available.

The CHAIRMAN: What about any employees of Waste Control? Did you have any conversations with any employees of that company or its director, Dr Clafin?

Mrs Edwardes: I met with him on two occasions - 29 and 30 August. I also saw him at a Waste Management Association of Australia Christmas function.

Mr MASTERS: In 1999?

Mrs Edwardes: In 1999.

The CHAIRMAN: You did not speak to any other employees of Waste Control so far as you are aware?

Mrs Edwardes: Not that I am aware.

Mr BOWLER: Just going back to those options, what made you think that the cheapest option - the \$100 000 option - would fix the problem?

Mrs Edwardes: The strong advice from the department.

Mr BOWLER: The system created an oversupply of drums that the company could not get rid of. What does taking those drums away do to the system? How does that improve the system? Did you ask that question?

Mrs Edwardes: The briefing notes go into what the company wanted done in terms of distilling units. One of the distilling units had not worked for some time, which created a bit of a problem. In terms of the company's management, operation and where it wanted to go, it thought it could also convert waste to energy. I do not believe that the department ever thought that that was a possibility, but it allowed the company to explore that idea. Obviously, in terms of the operation itself, the company had to change some of its operations in order to deal with the increase in waste. I understood that the department had been concerned about a large number of the drums that were to be removed. They were old drums, which had started to leak.

[10.14 am]

Mr BOWLER: Just going back to that matter, who made the first recommendation that the \$100 000 option was the best one? Was it the bureaucrats below you or you? Did your department come to you and say that?

Mrs Edwardes: Yes, it did.

Mr BOWLER: Did you influence that decision?

Mrs Edwardes: No.

Mr BOWLER: Did you tell the department that money is tight and the cheapest option is the best one for the Government?

Mrs Edwardes: The department had to negotiate with Treasury. The matter was never considered in terms of the cheapest option. It was always considered in terms of taxpayers' money and what is the best value for that money.

Mr BOWLER: In hindsight it was a waste of money was it not?

Mrs Edwardes: At the end of the day, absolutely.

Mr MASTERS: Without spending that money, it would have left another 1 000 drums to be consumed in the fire of February 2001.

Mrs Edwardes: Yes, the other alternative is that there would have been far more drums. However, the issue was that stronger action had not been taken by the company to continue to remove those drums off site. Storage of that type of waste is not recommended. It needs to be kept moving.

Mr BOWLER: So there was no pressure from your ministerial office - perhaps not from you - on the department to pick the cheapest option?

Mrs Edwardes: No.

Mr BOWLER: With hindsight, the obvious option was never going to work and did not address the cause of the build-up of drums; all it did was lead to the removal of some drums. The system in place that led to the storage of those drums carried on.

Mrs Edwardes: Hindsight is always wonderful and can be very valuable at the same time. However, a decision must be made at the time with the information available. My records show that I have not always taken the cheapest option. If there has been a better method by which to clean up a contaminated site, that is the one that I have chosen. Omex Petroleum Pty Ltd, for example, was not a cheap option and was certainly not the cheapest option.

Mr DAY: How much was that option?

Mrs Edwardes: It ended up costing \$7 million or \$8 million. In this instance the issues were, first, that it could have just happened because of the increased number of drums that could not go into Red Hill. Second, the company had been in operation for 12 years and, as far as the advice from the department was concerned, it had always met its financial responsibilities.

The CHAIRMAN: And environmental responsibilities ?

Mrs Edwardes: A section 73 direction notice had never been issued until that date in July.

The CHAIRMAN: We will deal with section 73 and the whole interpretation of that -

Mrs Edwardes: Can I just finish with this matter first. Therefore, the best option was to get the company to trade out of its current difficulties and manage its own site and responsibilities, rather than the Government coming in over the top of it.

Mr DAY: Was it also the case that part of the motivation was to reduce the physical risk on the site by getting rid of the quantity of chemicals there?

Mrs Edwardes: That was the immediate need. The number of drums on that site needed to be reduced as a matter of urgency.

The CHAIRMAN: Was it the drum volume that was an issue or that the site was found to be passed its storage capacity and the drums were clearly leaking?

Mrs Edwardes: Both of those were issues.

Mr MASTERS: On the same theme, option 1, which was to do nothing, was the cheapest. Therefore, option 6 was not the cheapest. The statement has been made that cost was the major consideration that motivated everyone's decision-making process about which of those six options to take. What is your response to that?

Mrs Edwardes: Cost in terms of the value you get from taxpayers' money. If the best option for the taxpayers was to have the company trade out of its current financial difficulties and meet its environmental obligations, and if the Government needed to give the company some assistance at the end of day to remove those drums as a matter of urgency, which it was, then that was the best option. The cheapest option was always going to be to do nothing in the short term. In the long term, that would also have had a cost because somebody would have had to deal with the clean-up of the waste on the site.

Mr BOWLER: The department drew up the various options. As Mr Masters said, one option was to do nothing, another option was to spend \$100 000 and the rest of the options were more expensive. Would the department have dealt with your ministerial officers?

Mrs Edwardes: No.

Mr BOWLER: Did the department go straight to you?

Mrs Edwardes: Brian Jenkins faxed me a letter raising major concerns. He said he needed to see me urgently and walked into my office.

Mr BOWLER: Then he said that he thought the \$100 000 option was the best one?

Mrs Edwardes: He said that we had a major problem that needed to be dealt with urgently by reducing the number of drums on the site. The conversation flowed from there: had this been done before? What was the precedent for this? How was the amount of money established? What were the other options -

The CHAIRMAN: How did you establish the amount of \$100 000?

Mrs Edwardes: We always had a relationship with South Australia -

Mr BOWLER: Do you not mean Victoria?

Mrs Edwardes: I thought the drums went to South Australia.

Mr BOWLER: No, they went to Victoria.

Mrs Edwardes: Obviously, when the tender was let out that was the case.

Mr BOWLER: Did he say to you that he thought the option to spend \$100 000 was the best one, or did you say that?

Mrs Edwardes: No, the recommendation from the department was very clear?

Mr BOWLER: Are you surprised that the department would basically pick the cheapest option, rather than one that would really solve the problem?

Mrs Edwardes: The option that they chose was the one that they believed would solve the problem; that is, letting the company trade out of its current difficulties.

Mr BOWLER: Are you sure there was no pressure on him from your ministerial officers to pick a cheaper option?

Mrs Edwardes: The timing was not there.

The CHAIRMAN: On Thursday, 18 April, this committee visited Teris (Australia) Pty Ltd in Dandenong, Victoria, which was the company and the site that received and processed the waste from Waste Control Pty Ltd. It was first contacted about this as a potential business proposition after the cabinet decision had been made. It says it was contacted by Dr Geoffrey Claflin. What concerns me, which follows on from what Mr Bowler is trying to understand, is how the department developed this understanding that \$100 000 was sufficient because, subsequent to Dr Claflin making that contact, the department took over the negotiations on the contract. We will get to that later. However, that was the case and ultimately the waste went to Teris Australia in Dandenong, Victoria; yet, there had been no prior contact with it other than some precedent or relationship with the company or agency in South Australia, you say, from memory. It is a puzzle to me how the department formed the view that \$100 000 would do the job.

Mrs Edwardes: There was never any change or request for further funds. The amount of \$100 000 was fairly close to the mark and given the relationships with waste going across the border, which it does, the department would have had some idea about the cost.

The CHAIRMAN: When the department put that proposition to you, did it say that it could regulate or manage it in a way that would ensure that the \$100 000 was spent to remove the problem?

Mrs Edwardes: The advice was that it was needed, as a matter of urgency, to reduce the number of drums on the site.

The CHAIRMAN: Did you protect the State's interest by asking how the department would ensure that the \$100 000 did the job? Did you ask that question ?

Mrs Edwardes: The advice it gave was that by taking 1 000 drums off the site it would reduce the risk. That was the real issue behind why we were doing it as a matter of urgency; to reduce the health and environmental risks.

The CHAIRMAN: I do not have a difficulty with the motive. I am trying to understand the extent to which the department or you, as minister, took reasonable steps to ensure that the State's investment to ensure compliance was risk managed. I want to know whether you thought there was a need to manage the process of the \$100 000 shipment by departmental

inspection or by contractual specification to Teris Australia. What mechanism did you use to ensure that that \$100 000 did the job?

[10.24 am]

Mrs Edwardes: Obviously, that was up to the department. Ministers do not get involved in the tendering process of the operations. The issue for me was what was going to reduce the risk. That issue was taken to Cabinet. The other issue was what were we going to do in the future. As I understand it, the licence then became three-monthly and there were constant follow-ups. There were also two section 73 direction notices that needed to be met. The follow-up from the department had intensified in terms of inspections and audits.

Mr BOWLER: In August you were told that everything was okay, and yet in November, only two months later, all of a sudden it was at crisis point again. Did you as minister say, "Hang on, how did this situation get out of hand so quickly?"

Mrs Edwardes: It was not referred to as a crisis point.

Mr BOWLER: It was about 2 000 drums that caused the expenditure the last time.

Mrs Edwardes: The original drums that were removed that were of the greatest concern were the ones

The CHAIRMAN: That is where my questioning was headed. How did you know that the drums of greatest concern were removed?

Mrs Edwardes: I do not know that; only the department would be able to tell you that.

The CHAIRMAN: Did you seek to ensure that the department had a mechanism for monitoring that?

Mrs Edwardes: Yes, the department increased its levels of inspection.

The CHAIRMAN: During the contractual removal period, was there a mechanism in place to ensure that the drums of the highest concern were, in fact, the drums that were removed?

Mrs Edwardes: You would have to ask the department that question.

The CHAIRMAN: I put it to the member that Teris (Australia) has stated that it received the drums that were best able to be transported - it did a little bit of blending of the materials in the half-filled drums - but a core of drums on the site were never reached, and these were the drums that were in the worst condition -

Mrs Edwardes: It never got to those -

The CHAIRMAN: It never got to those because they were at the core of the site, and after the \$100 000 was spent the same number of drums were still on the site.

Mrs Edwardes: If that was the case, I would be pretty angry, because that was never the understanding. The drums were to be removed by the end of November. I was never given any indication that the number of drums had increased until November 2000. It was always my understanding that the drums of greatest concern were to be part of the 1 000.

The CHAIRMAN: It has been suggested to me that Dr Claflin used the \$100 000 simply as a means of increasing his throughput; that is, he had a stock of drums on site, there was a short-term reduction in the total number of drums which allowed him to increase his intake from industry generally, increase the turnover of the business, and that all that the \$100 000 did was act as a top-up to the income of the company. It did not effect a reduction in the total number of dangerous or leaking drums on the site.

Mrs Edwardes: As far as I am aware, the money did not go to Waste Control Pty Ltd. The money was to be spent according to the tender. There was never going to be a subsidy to the company.

The CHAIRMAN: I understand that, and that is why I am expressing a serious concern that no mechanism was put in place by the department, in implementing the decision made by Cabinet, to risk manage the site in the way needed to remove the drums that were either dangerous or leaking.

Mrs Edwardes: I cannot tell the committee what it did or did not do. I did not receive any advice that would indicate anything different to my understanding. I would be pretty surprised to think that the department would have done that at that stage.

Mr MASTERS: Mr Chairman, I attended the Teris briefing or site visit, and it is my understanding that the Teris staff were on site at Bellevue for the first couple of weeks -

The CHAIRMAN: For one week.

Mr MASTERS: Well, for a period of time. Obviously, old drums were being repackaged and sent off, but the staff said that they had their suspicions thereafter as to whether it was a case of drums coming in, being loaded straight on to the semi-trailer, and going off to their premises.

The CHAIRMAN: That is correct.

Mr MASTERS: There is no proof one way or the other; they had only their suspicions.

The CHAIRMAN: This information has been put to me by other people who have been involved in that site - we might discuss the idea of bringing such people before the committee. However, the second proposition suggests that that was a management technique of Waste Control, and it was not picked up in the management of the removal. That is what I am trying to understand.

Mr MASTERS: Again, I agree with what the chairman is saying. However, the witness now before the committee is not able to provide details of the day-to-day management of the site.

The CHAIRMAN: I do not have a problem with that. I wanted to test how much the member for Kingsley knows. That is what I am trying to understand.

Mr DAY: I did not go on the Teris visit, so I was not aware of these comments. However, if there is additional information that the committee must look into, it would be appropriate that we seek that from the appropriate people, whether they be departmental officers or whomever. We should not expect the member to know all that detail.

The CHAIRMAN: The member for Eyre made reference to section 73 notices that were in place at the time of the \$100 000 grant. How long had they been in place?

Mrs Edwardes: Only just. I think they were issued in July, or early August.

The CHAIRMAN: Were they part of an ongoing history of the site? Had there been continual improvement notices in order to try to get things up to speed?

Mrs Edwardes: The records would show that. I know that they have raised some concerns with respect to bunding when the licences were being renewed.

The CHAIRMAN: From your four-year experience as Minister for the Environment - that is a substantial period - would the history of that waste management site be consistent with other examples throughout the industry?

Mrs Edwardes: In terms of regulatory responsibilities, the only time that issues were brought to my attention by the department were when there were concerns. Of course, not every act or notice was brought to my attention.

The CHAIRMAN: Certainly not. Did other sites have similar compliance difficulties with their waste control?

Mrs Edwardes: I cannot tell you that.

The CHAIRMAN: Can you remember any others?

Mrs Edwardes: Well, it is a different sort of site. There were obviously concerns when we started licensing landfill sites. There were concerns about what they could and could not take, and some of them ended up closing down and amalgamating. I was obviously aware of those issues.

Mr BOWLER: I refer the member to when Dr Jenkins came to her with his options. Were you surprised that he picked the cheaper option? Imagine if Dr Jenkins had been the minister, and his job was to balance the books and to try to keep expenditure down and you were the bureaucrat from the department for the environment. Would it not be your job to do the best for the environment? In other words, should you not pick the best and most expensive option?

Mrs Edwardes: The most expensive option may not be the best option, and the best option -

Mr BOWLER: But in hindsight, we have spent \$100 000 and it will probably cost the State between \$10 million and \$20 million.

Mrs Edwardes: The option that was put to me by the chief executive officer was the option he thought to be the best at the time. You would have to ask him whether he would consider that the best option today. He obviously considered the option he chose to be the best option. He did not consider it to be the cheapest option, even though that was clearly the case, other than doing nothing, in the short term. From his point of view, it was clearly the best option.

Mr BOWLER: Are you sure that you or your office did not pressure him into picking a cheaper option?

Mrs Edwardes: There was no pressure whatsoever.

[10.34 am]

The CHAIRMAN: It has been suggested that part of the problem with devising these six options is the culture of enforcement and regulation that the Department of Environmental Protection has operated under for some time. For example, if the Department of Conservation and Land Management, which is a similar agency - not a mirror image - that deals with the environment in general had to fight a fire, it would not wait to go to Cabinet and to develop six options with a range of costings and outcomes attached to each of it. CALM would go in and fight the fire and do whatever it had to do, and then it would come back with a bill that would probably cause everybody's jaws to drop. Let us compare that with the DEP's response to the operation of a site that its chief executive officer is gravely concerned about and thinks the matter is urgent enough to request an immediate meeting with the minister. The DEP has on hand at least two current section 73 notices over a site that has a history stretching beyond the then minister's memory and involvement and that is operated by a company that shows an absolute culture of failure and non-compliance. Yet the DEP's response is to say that it has to develop six options and consider the remediation prospects and how it will enforce them. That is a totally different cultural response to what might be argued should have occurred. On the face of what the former minister has presented here this morning, the CEO saw this as a moment of critical importance, a moment when a major

pollution event or a major failure in government policy was impending. The CEO saw that the situation was about to collapse and we would be looking at pollution events, systems failure, industry failure, unemployment and illegal dumping - a crisis as significant as a bushfire.

Mrs Edwardes: The critical issue for the CEO was that the number of drums on the site had to be reduced. The critical issue was to remove the drums. The response was that the company had to remove them. However, the company could not pay for that removal so the answer was, "Right, let's go to the minister and get some money to remove these drums." That was the critical issue. Okay, once that decision was made, which was the quick response, what were the alternatives - the other options that were available? Okay, the drums would be removed under section 73. The company could not pay for that, so who was to pay for it? The Government paid. In terms of CALM -

The CHAIRMAN: Would CALM do that if it were faced with that situation?

Mrs Edwardes: CALM already has a huge budget for fire control.

The CHAIRMAN: But CALM would blow the budget every time there was a major fire.

Mrs Edwardes: CALM would not need to come anywhere near the minister for money. CALM has money that far exceeds that in the DEP, particularly at that time. That is because whatever CALM raised it could spend on whatever it needed. CALM did not need to come anywhere near the minister.

Mr DAY: Was that when CALM had some income coming out of forests and the like?

Mrs Edwardes: Yes.

The CHAIRMAN: Are you saying that CALM would just chop down more trees to fund the firefighting?

Mrs Edwardes: I think that is a bit tongue-in-cheek, Mr Chairman, if I may say.

The CHAIRMAN: That is what was just put to you by my colleague.

Mr DAY: They would not just go and chop down more trees.

Mrs Edwardes: It would need to be in accord with the current forest management plan, otherwise the EPA would have them in court.

Mr MASTERS: Mr Chairman, can we move on? I disagree with the last couple of statements you have made, but let us not dwell on that. I think we have a lot of important questions to ask the former minister.

In mid-2000 there were new licence conditions. Waste Control Pty Ltd appealed against those conditions; the appeal went to the appeals convenor. As a consequence of that you modified the conditions. Does the appeals convenor decide on or make recommendations on the merits of an appeal, and how does the appeals convenor interact with the minister? Also, can I seek a response about the claim that the modified licence conditions significantly impeded the DEP's ability to regulate Waste Control's operations?

Mrs Edwardes: The modified licence conditions came from the department. Therefore, I reject out of hand the last comment. I say that because that is the way the appeals convenor operates. The appeals convenor receives a letter of appeal and then goes to the relevant departments or agencies, which may be one agency or two or three agencies. It is then the appeals convenor's job to agree to a set of conditions, which might be the same or they might be modified in some way. Clearly, those recommendations came from the Department of Environmental Protection.

Mr MASTERS: Your role as minister was to take the report from the appeals convenor, look at the recommendations that had been agreed upon by the parties and then either accept or reject them?

Mrs Edwardes: He would send me a letter to sign, with the outcome of the appeals decision and the decision sheet. Although technically it is a recommendation, essentially the minister would sign off on those recommendations. There were a couple of occasions on which there was a conflict with one of my other roles. For instance, under the Wildlife Conservation Act I have a responsibility to protect all wildlife. As such, if a recommendation came from a different agency, such as the DEP, and it had not negotiated or talked to CALM about the issue, there might be a conflict. One issue came up when we were dealing with Cape Range National Park. Therefore, I sent the matter back saying that the DEP had not talked to CALM and it must. That was because I had other obligations, which the DEP had not taken into account.

Mr MASTERS: Mr Chairman, do you wish to lead the questions on Palos Verdes case?

The CHAIRMAN: No, I am happy for you to do that.

Mr BOWLER: I have some questions before we go to that. Rod Mathers has given evidence that Waste Control had hoped - almost expected - and believed that the Government would act promptly after the \$100 000 was given. Mathers said that that \$100 000 was just a stopgap measure, but that the long-term solution lay in legislation that the Government had promised. I am not too sure whether it would have come from your department or from Hon Norman Moore's department, but over a number of years legislation had been promised either to impose a charge on the initial producer of the waste product or to licence them, so that industry would have to go through Waste Control or someone like them.

As you know, the real reason that Waste Control was going bad and why the drums were building up was that it was buying business. Waste Control was buying in drums for \$80 and it was costing \$90 to get rid of the waste, so it did not want to get rid of it. Every drum that Waste Control got rid of cost it money. Do you know what that legislation was, and were you aware that Waste Control expected that legislation? In fact, Mathers told us that after the \$100 000 was given he expected the legislation would be forthcoming within the next year.

Mrs Edwardes: He wrote to me following the 30 August 1999 meeting. He did not appear to fully understand what was needed in terms of the regulations and the legislation. He said that he was doing his bit, but that the DEP was not doing its bit in the development of the regulations. When he wrote that letter it was probably early 2000. I received a number of letters from him. He obviously did not have an understanding that regulations are not developed overnight, particularly something for -

Mr BOWLER: I think he had been promised regulations, or something like that, since 1992.

Mrs Edwardes: I do not know about that. I do know that they were raised at the meeting primarily as the basis on which he said that a lot of illegal dumping was going on. He said that the only way to deal with that was by drafting these regulations and making it a requirement for people to dispose of their waste - he thought - with Waste Control.

[10.43 am]

The DEP brought in a consultant - I am sorry, I do not remember his name - to investigate those claims. I did not see the report, but from a briefing note to me the report was that there was no validity to the claim that large-scale illegal dumping was going on by these operators, and as such no further action needed to be taken by the department at that time. We still wanted to proceed, though, with the regulations. It was felt that they could add that to the septic liquid waste regulations. That proved to be a problem because of the number of

operators; they would need to be licensed etc. Therefore, in discussion with the Crown Solicitor's Office and parliamentary counsel, they looked at what else was available to them. They drafted a new set of regulations that followed the new thinking, not just here in Western Australia but around the world, that the responsibility to manage that waste should be put back on the producer of the waste.

Mr BOWLER: Were you aware that there were only one or two producers of perchlorethylene?

Mrs Edwardes: There would be other such waste.

Mr BOWLER: Were you aware that Rod Mathers, who was a director of Waste Control, said that he was a friend of Richard Court's?

Mrs Edwardes: No.

Mr DAY: Did he say he was a friend? He certainly had some contact in 1989.

Mrs Edwardes: He wrote to the Premier on a number of occasions, to which the Premier and I responded.

Mr BOWLER: Do you know whether he was a donor to the Liberal Party?

Mrs Edwardes: No.

Mr MASTERS: What about to the Labor Party?

Mrs Edwardes: No. I do not know whether he was a donor at all.

The CHAIRMAN: It was put to us that he had had a number of contacts with Mr Richard Court from 1989 through to when Mr Court became Premier. When this issue came up was there a level of knowledge or awareness within Cabinet of the problems in the industry?

Mrs Edwardes: No, because obviously Hon Norman Moore, as the then Minister for Mines, gave an indication that there was still strong support for the cabinet minute, and also the then Minister for Emergency Services indicated clearly that there was strong support from his agency for the minute. Therefore, those ministers who had a responsibility for agencies that had an interest in the site were aware.

The CHAIRMAN: Outside of that cabinet decision-making process, where there is a degree of confidentiality that I understand and respect -

Mrs Edwardes: Which I do not think I have breached.

The CHAIRMAN: No - were there other discussions with the Minister for Mines about his involvement with this site?

Mrs Edwardes: No.

The CHAIRMAN: At no stage?

Mrs Edwardes: No. We were moving quickly. The cabinet minute was drafted and signed off on the seventh, and a decision was made on the thirteenth, I think, and there would have been a weekend in between that. There was no need. The department had worked on and come up with an agreed position.

The CHAIRMAN: Can I just clarify the last elements surrounding the submission to Cabinet. Were you satisfied that the company was a viable operation?

Mrs Edwardes: From all the advice that had been given to me - and clearly the cabinet minute also addressed that - the company had been in operation for 12 years and had always met its financial responsibilities. The current problem that it found itself in was because of a change of acceptance of waste at Red Hill.

The CHAIRMAN: Did any evidence come to you, as part of showing that this company was viable, that went to the point that Mr Bowler made about previous owners' concerns about whether it was possible to sustain a company like Waste Control if there were what it saw as major leaks from the system?

Mrs Edwardes: Major leaks?

The CHAIRMAN: Mathers was suggesting that major dumping was going on. As you said, that was not substantiated by some sort of review done by a consultant to the department. It was also suggested by departmental officers that there was some concern about the level of dumping, but it was never quantified. Given that level of concern that existed was any evidence presented to you by the department that said, "Here is Rod Mathers. He was the owner and director of this company prior to Dr Chafin being involved. We know that Mathers has been suggesting this to the Premier and others for a number of years. Mr Mathers has now left the company"? Was there any investigation of the financial management of this company, or of the advocacy or lobbying that it was putting to government about what was necessary to sustain Waste Control?

Mrs Edwardes: It was obviously always going to be the case for what we were going to do with liquid waste, in the hierarchy of waste management. There were a number of hazardous and problematic wastes. Plastic bags are a problematic waste.

The CHAIRMAN: My proposition to you is that the evidence that was available from the lobbying and advocacy done by Rod Mathers, as the previous owner and director of Waste Control, was sufficient evidence to cause question marks about the viability of Waste Control.

Mrs Edwardes: In terms of the information the department gained about its history and financial capability, at the meeting that we had on 30 August it said it could not meet the cost of the removal of drums. It was obviously experiencing some financial difficulties. It had suspended operations at that time. It was obviously aware that this company was always going to be as it was at that particular time.

Mr MASTERS: A marginal prospect.

Mrs Edwardes: Yes. I do think it was ever going to make huge profits. I do not think they ever saw themselves as making huge profits out of the company.

The CHAIRMAN: I will move on; and this probably goes to the issue of section 73 and the other issues of environmental harm. Was there ever a proposition or discussion about the government taking over the management of hazardous waste directly?

Mrs Edwardes: No, not as a serious issue, primarily because of the ongoing debate about whether the regulator should also be the manager. We had just been through that debate in terms of Mt Walton. I still think a major issue that needs to be addressed is who should actually manage those sites. I would always recommend strongly that the Government never let Mt Walton go out of its hands and into private ownership.

Mr MASTERS: One of the greatest mysteries confronting this committee is the way in which the DEP considered it had certain restrictions on the way it could act because of the Palos Verdes case. You may or may not recall, but in 1972 there was a prosecution attempt by the DEP against Palos Verdes.

[10.53 am]

Mrs Edwardes: Was it not later than that, in 1992?

Mr MASTERS: Yes; it was in 1992, sorry. I had better not go too far back in history. The court found that damage to soil and vegetation was not defined as pollution. That was then

taken by the Department of Environmental Protection to mean that very severe constraints were placed on the application of that relevant section of the Act. It is my understanding, at least, and I think the committee's understanding, that that very much tied the hands of the Department of Environmental Protection in the way in which it could threaten to control companies such as Waste Control. Having said that, Justice Malcolm's judgment clearly says that incidents such as the contamination of soil from a toxic substance is pollution, but disturbance of soil by a bulldozer is not. In the light of David Malcolm clearly indicating that the Environmental Protection Act could have been used to control both on-site and off-site activities of Waste Control, I think the committee is very much surprised that the Department of Environmental Protection took so little action over the years. Can you shed any light on the Palos Verdes court case and the way in which the Department of Environmental Protection believed, rightly or wrongly, that it was constrained in the subsequent years?

Mrs Edwardes: It has been a long time since I have read Justice Malcolm's judgment. The issue always arose when we were developing the amendments to the Environmental Protection Act and the need for a new definition of pollution. At the time, I think in 1995, before I became the minister, the parliamentary committee recommended -

Mr MASTERS: Was that a select committee?

Mrs Edwardes: Yes. The committee recommended a change to the definition of pollution. The department recommended that the interpretation of pollution should be one of environmental harm. We proceeded to work through what environmental harm should be. It had three tiers to it, the first of which was to be significant and substantive, but I cannot remember the other two criteria.

The CHAIRMAN: Was this an issue of some priority when you became minister?

Mrs Edwardes: A discussion paper had been issued to the community. The response to that discussion was being analysed before going to Cabinet with the legislative amendments. Some of the amendments were introduced in 1996-97. I would have introduced some of them, including the definition of pollution, early last year if the coalition had won government. We were working on three sets of legislation, one was contaminated sites legislation, which would have been ready about the end of autumn last year following a little more consultation. The other two were waste management and contaminated sites. Waste management got caught up with the change of policy on how it needed to be dealt with - whether it should be within the department or separate from it. We worked that through with the final recommendations of Waste 20-20. The amendments to the Environmental Protection Act were almost ready also.

Mr MASTERS: If the Palos Verdes case was in 1992, can you give an insight into why a reasonably simple change to just one section of the Act to redefine pollution so that it took into account the concerns raised in that court case took so long and was so difficult? Since 1992 what could be simple amendments to the Act have not been passed to give the Department of Environmental Protection the powers that the committee has been told the department thought it did not have but needed.

Mrs Edwardes: The Department of Environmental Protection dealt with the definition of pollution arising from Palos Verdes - and another case to which Dr Jenkins referred - as contamination off-site as against on-site. That is why a section 73 infringement was issued against Waste Control for storm water or rainwater. It was taken off site.

The CHAIRMAN: Even that interpretation of the ability to apply a section 73 notice for pollution applied only where it was occurring off site. Was it your understanding that the department was suggesting that its powers did not go to a pollution event on the site itself?

Mrs Edwardes: That is the advice the DEP gave me.

The CHAIRMAN: Mr Master's question was: can you shed any light on why a full decade after that decision, no action has been taken to enable the State to stop a pollution event on site?

Mr MASTERS: Even though there have been two changes of government, I cannot help thinking there is a significant impediment to governments, no matter what their political make-up, that has caused this to be seen as a very difficult problem; yet the indications to this committee are that a fairly simple change to the Environmental Protection Act would have given the DEP many more powers to allow it to control far better a site like Waste Control.

Mrs Edwardes: I do not think I can answer the question satisfactorily. I can perhaps suggest that I felt ongoing frustration at not being able to introduce the legislation to make just one change to the definition. Legal issues arose out of how "environmental harm" could be used in the three tiers. I am sorry I cannot remember the other two tiers. That is why it was not part of the 1996-97 amendments. Those issues had not been resolved. All I can suggest is that we have all seen *Yes Minister*. The application of bureaucracy can be frustrating when we want to get things done. The department was also equally frustrated by the fact that I wanted consultation to occur. The department would have been very happy to do the drafting without talking to people on whom it would have impacted.

The CHAIRMAN: I have a sense that there was a lot of duckshoving in both directions.

Mrs Edwardes: Duckshoving?

The CHAIRMAN: Yes, shoving responsibility.

Mrs Edwardes: Between whom?

The CHAIRMAN: From Executive Government back to departments for not having properly used their powers, and from the department to the Executive and back to Parliament for not changing the law.

Mrs Edwardes: I disagree with duckshoving in terms of enforcement and the rest of it because the department had the powers. In some instances, it said it was not sufficient to deal with the job otherwise why would it make recommendations to change.

The CHAIRMAN: What was your answer to that? It was not rhetorical, surely?

Mrs Edwardes: I put time frames on the DEP to come up with drafts and consultation.

The CHAIRMAN: You are a lawyer. Surely, one decision of a court does not make a fixed precedent?

Mrs Edwardes: There was another court case, the name of which escapes me, that followed the Palos Verdes case, which also rigged down the current definition. I think it was based on the word "likely". It has been a long time.

The CHAIRMAN: That is right, if there was anticipation of a likely pollution event. However, we are talking about an actual pollution event. There are two different readings to be taken from those cases. My point is, as a lawyer who came upon this as a new minister in 1996, and saw the impasse, did you have a motivation to say that you wanted Crown Law to test this in the next available case?

Mrs Edwardes: The question of why we could not test it again had arisen. Obviously a case had not arisen that could enable the department to test it. That is the only answer I can give. It had been raised as an issue.

Mr DAY: From memory, the department was getting clear legal advice that the Palos Verdes court decision had this implication.

Mrs Edwardes: The department, particularly on prosecutions and issuing notices, rarely moved without checking its legal advice.

The CHAIRMAN: That is part of my underlying concern. Within Crown Law there was a fairly conservative reading of what was available to government to allow it to pursue either a narrowing of the reading of Palos Verdes and any subsequent case on what was pollution.

Mrs Edwardes: The Crown Solicitor's office is not gung-ho about wasting taxpayer's money. It is very conscious of that.

Mr DAY: It is conscious of the likelihood of getting a conviction.

[11.04 am]

Mrs Edwardes: Successful or otherwise.

The CHAIRMAN: A serious vacuum in and around environmental policy in this State is created in part by at least one.

Mr MASTERS: A regulatory vacuum.

The CHAIRMAN: I would say a policy vacuum, because I can divine no driving force that says that either Crown Law or the department then needed to pursue a particular policy line to further understand either the extent of the judicial decision or the urgency or otherwise of the regulatory or legislative change.

Mrs Edwardes: I suggest that no case has arisen to test, otherwise I am sure that they would have done that.

The CHAIRMAN: In other words, we are sitting around waiting for the right case to come up.

Mrs Edwardes: People do not pick on just any case. Obviously, they must wait for one that will fit within the requirements.

Mr DAY: It seems you are seeking to amend the legislation, which never occurred before the change of government in February 2001. Do you have any comment on the fact that we still have not seen any proposed amendments in the Parliament, given that it is now May 2002?

Mrs Edwardes: I do not know what is the current impasse for that legislation. I suggest it is partly to do with consultation with the respective constituencies of the current Government; that is, the conservation movement might be putting forward different positions.

Mr DAY: In other words, the issues are complex and perhaps not as easily solved as they might have seemed initially. Is that right?

Mrs Edwardes: They were not easy. The contaminated sites legislation was particularly difficult. We were the leaders in Australia. Dr Bryan Jenkins was the consultant to the Australian and New Zealand Environment and Conservation Council in the development of guidelines to be put in place for contaminated sites and the establishment of national guidelines. There were also the big issues of finance, insurance and the like for the outcome. We did not want a whole lot of orphan sites left around the place, and the question of how to overcome that. That issue had not been looked at in the previous discussion papers.

The CHAIRMAN: You are saying that Dr Jenkins was recognised as a national leader for policy and regulation development. Was he seen in the same way for pollution events such as remediation, isolation or protection from further damage from existing sites?

Mr MASTERS: We are talking about the creation of contaminated sites by, in the case of Bellevue, 10 years of pollutants leaching into the groundwater.

The CHAIRMAN: That is after the event.

Mr MASTERS: No, 10 years of operation caused the contaminated site. The point I am trying to make is that if there had been willingness by the Department of Environmental Protection to use laws to ensure good management practices on that site, it would not have turned into a contaminated site.

The CHAIRMAN: That is my point as well. We are struggling to understand. It is 10 years on and there has been a Labor Government at the end of eight years of coalition Government. The Palos Verdes incident emerged during the course of the Labor Government in the early 1990s. Here we are in the new decade, the Labor Government is back and nothing has gone on in between. We are still waiting for the current Government to present its legislative reforms to Parliament. I do not accept that there was not a case worth testing.

Mrs Edwardes: None was brought to my attention.

The CHAIRMAN: I can accept that. Did you ask the department or have discussions in Cabinet, or with your cabinet colleagues, about the need to pursue this? For example, did you talk to the Attorney General and say that you wanted to find some examples with which to pursue a court case so pollution could be defined?

Mrs Edwardes: When I became Minister for the Environment, the Attorney General had held the environment portfolio for the previous three years. Had a case come in that enabled him to test it, he would have done so with vigour because he had a firm commitment to solving the problem of this environmental harm. Similarly, had a case had been presented to me, I would have tested it.

The CHAIRMAN: Even with the benefit of that observation, I think it is perceived as part of the problem. Faced with a judge handing down a decision on what constitutes pollution, the response from the policy makers in the agencies and ultimately from the legislators is that they need to think of a new concept that is about environmental harm; that is, they need to define the level of impact on living entities.

Mrs Edwardes: That is not surprising. If the law is tested and it fails, people change it.

The CHAIRMAN: My problem is that it was applied once, maybe twice, and nobody ever went back to test it again.

Mrs Edwardes: We were proposing to change the definition.

The CHAIRMAN: My problem is that it went from having an Act that talked about pollution events, which got a whack from the courts, to the thinking that we need a new scheme which talks about environmental harm.

Mrs Edwardes: I would have thought that pretty normal. Had a case come up that would have allowed us to test it and was not too restrictive, we would have taken that opportunity.

The CHAIRMAN: It is an important and perhaps a more interesting and complex policy debate than we have time for here this morning.

We are still investigating that. I do not have any evidence before me that suggests that there was an immediate need to move away from “pollution” to “environmental harm”. I had not heard a substantial argument that would make understand why people gave up on it.

Mrs Edwardes: The term “environmental harm” will be far broader and stronger than the other changes that were to be put in place for pollution abatement notices by the mere

changing of the definition. It will empower the department far more than merely changing the definition to meet the decision in the Palos Verdes case.

The CHAIRMAN: That means that 10 years on in search of a magic formula we have still not dealt with the original failing.

Mrs Edwardes: I hope that legislation will come in shortly.

The CHAIRMAN: I find it difficult. Everybody has obviously deferred dealing with the failure of the definition of “pollution” on the basis that they would chase the other thing that would be better for them, but 10 years on we still do not have a remedy.

Mr MASTERS: If I may explore that a little further; one of the judges’ description of section 73 as it existed at the time of the Palos Verdes case, and still exists, was that it was draconian because there is no right of appeal. Why would a simple change to the Environmental Protection Act, allowing section 73 to be appealable, not have overcome that perceived legislative judicial problem, so that the powers available to the Department of Environmental Protection would have been that little bit better?

Mrs Edwardes: That is probably one of the options that were considered at the time. It was not in my time, and I cannot tell you what was the thinking, but the development of the definition of “environmental harm” had obviously moved on.

Mr DAY: To complete this, when you became Minister for the Environment what level of awareness was there of this aspect? Was it a major issue in the portfolio or were there other, much more pressing issues which demanded a much greater level of awareness?

The CHAIRMAN: Was it in the top ten?

Mrs Edwardes: It was, in the development of legislation. There were obviously always competing interests, but this was one of the high priorities for the department.

Mr MASTERS: Did you develop enough of a relationship with Dr Jeffrey Claflin to form an opinion about him as a professional person and manager of a waste control company?

Mrs Edwardes: No. We met on two occasions in my office. On one occasion we met at a Waste Management Association of Australia function, at which I spoke to him for a matter of less than minutes. He wanted to meet Brian Bradley. I introduced them and left them.

[11.14 am]

The CHAIRMAN: Did your ministerial officers meet with him on other occasions?

Mrs Edwardes: They met again on 28 April 2000 without my presence. Dr Jenkins and another officer from the Department of Environmental Protection were present at that meeting.

The CHAIRMAN: Was that a discussion about changes to the licensing conditions?

Mrs Edwardes: I can refer to the notes on the issues that came from the department, but I think they essentially talked about licensing. My officers indicated that my response was that Waste Control Pty Ltd must continue to work with the department to map out the future. It was essentially a grizzle session about the DEP.

The CHAIRMAN: I think the DEP agreed with the observation that the relationship between government enforcement agencies and Claflin, the manager of Waste Control Pty Ltd, in trying to get Waste Control to comply could be characterised as brinkmanship. The department established compliance standards and Claflin complied with a percentage of the required changes and then stared down the departmental officers when they continued to pursue the remainder of the standards.

Mrs Edwardes: It came through in one of Claflin's letter that he consistently argued that this government department had started a war with a small four-man operation and that if he continued meeting its requirements he would not get any work done and would not earn any money. My response to his letters that were referred to me was that I had forwarded them on to the department for its information and I reiterated that he must continue to work with the department.

The CHAIRMAN: Did any other waste management operators or industry participants express a view to you about waste control?

Mrs Edwardes: Not to my knowledge.

The CHAIRMAN: Do you not have a recollection of that?

Mrs Edwardes: No.

The CHAIRMAN: Did anybody lobby you to say that failing to regulate Waste Control was allowing a cost-cutting exercise to sustain itself in this State?

Mrs Edwardes: Not formally. The only thing I can think of that you might be referring to is that some other operators would have liked to get into the market, which the department would have encouraged.

The CHAIRMAN: They could not do that until the volumes were there; is that right?

Mrs Edwardes: Multiple operations in any business are not viable until there is mass.

Mr BOWLER: Apart from the mass, did you know that Claflin was basically buying business?

Mrs Edwardes: It came up in one of the briefing notes from the department. I cannot tell you any more about that after that.

Mr BOWLER: After he was granted the \$100 000?

Mrs Edwardes: I cannot tell you that. However, the department did say words to the effect that Waste Control was buying cheaply. I cannot remember the exact terminology but it was something along those lines.

The CHAIRMAN: The suggestion from the department was that Waste Control was -

Mrs Edwardes: Undercutting was the term used.

The CHAIRMAN: That expression was referred to before. It either undercut existing competitors or knocked out potential competitors in the market through pricing. In doing that, it created its own problem in that the margins in which it was operating were either too thin or non-existent, which caused it financial difficulty.

Mrs Edwardes: Subsequently, that was identified as bad business.

Mr BOWLER: Did you or anyone else inquire about that when the five or six options were being considered?

Mrs Edwardes: It may very well have come after the event, but I cannot tell you of the timing of it. It was not an issue at the time we were trying to decide how to reduce the risk.

Mr BOWLER: Probably August or November 2000?

Mrs Edwardes: It might have been; I am sorry, I cannot tell you.

The CHAIRMAN: Do you not find it passing strange, given the regulatory failure signalled to you by flashing warning lights and bells from the chief executive officer of the department and the suggested business proposition to salvage that failure, that the department did not brief you on that regulatory failure, the economic failure in a market dominated by that

business and its history of environmental failure? Those were three fairly substantial areas of breakdown in the system. I would have thought that would have been part of the department's briefing to you.

Mrs Edwardes: Your reading of the past failures to meet the conditions for funding is far more serious than the department believed them to be prior to 1999.

The CHAIRMAN: I understand that.

Mrs Edwardes: I picked that up only from the briefing notes I received.

Mr BOWLER: You have indicated that the problem appeared to emanate totally from the fact that the Red Hill site was all of a sudden closed off as a location to get rid of waste. How did the grant of \$100 000 overcome that problem?

Mrs Edwardes: It was intended to fund the removal of a number of drums on the site that were in a more critical state, which would reduce the risk.

Mr BOWLER: How did that overcome the long-term problem of the next lot of drums coming onto that site, because they still could not go to Red Hill?

Mrs Edwardes: By the company's considering the other options for dealing with that waste, whether that be recycling or distillation etc.

Mr MASTERS: In other words, the economic viability of the company depended on its restructuring itself in some way after those 1 000 drums were removed?

Mrs Edwardes: Restructuring of the company was, obviously, something for the company to decide. I know it considered that on a number of occasions. However, it also recognised that its operations had to change.

Mr MASTERS: Operations and pricing?

Mrs Edwardes: Pricing was not an issue for us.

The CHAIRMAN: I know that you did not become the minister until 1996. This matter was raised with you in July or August 1999 when a proposition was put to you. I will rattle off a couple of things that are immediately apparent from departmental files of the Department of Environmental Protection and the former Department of Minerals and Energy - now the Department of Mineral and Petroleum Resources.

Mrs Edwardes: I have not seen any DME files or anything that went from the DEP to the DME.

The CHAIRMAN: I understand that. However, you said earlier today that you had seen evidence in advice received from the department that there was a degree of communication.

Mrs Edwardes: Yes, in briefing notes to me.

The CHAIRMAN: Did you assume there was coordination between those two primary agencies and was your understanding and assumption based on what you had seen?

Mrs Edwardes: Yes.

The CHAIRMAN: In January 1990 an operating licence was issued to Austech (Australia) Pty Ltd by the Department of Environmental Protection. There was no interaction with that company between January 1990 and March 1993, when a site inspection revealed that the company name changed from Austech (Australia) Pty Ltd to Waste Control Pty Ltd. The inspection report recommended that additional bunding be installed to accommodate the increased number of drums on site. Intervening in that period from January 1990 to March 1993 were inspections in April and May 1990 that indicated efficiencies had been made. Similar inspections in March 1993 indicated efficiencies. In May 1993 the company

retrospectively applied for a licence for its operations. The DME advised that a licence could not be amended until some site remediation work was done and the site complied with its licence conditions. In August 1993 both the DME and the DEP were involved at various stages continuing to identify major breaches of the licence conditions. In December 1993, DME inspections revealed non-compliance was considerably lower than on previous inspections. There was, therefore, a bit of improvement after a concerted effort. In August 1994 a DEP site inspection was carried out and recommendations made to amend the licence conditions to require groundwater sampling and an inventory of chemicals be held on site.

Mrs Edwardes: I have a note with me of July 1994 that states the number of drums had been reduced and there was then sufficient funding.

[11.25 am]

Mr MASTERS: As a consequence of the improvement -

The CHAIRMAN: We have no note of that. Thank you for that.

Mrs Edwardes: It would be on the Department of Environmental Protection file.

The CHAIRMAN: No, I do not have a record of it.

Mr DAY: For the record, what are you quoting from, Mr Chairman?

The CHAIRMAN: I am quoting from a compilation chronology of inspections and file notes. We have not yet had them fully agreed by the department. This is our assessment of its files, and I suspect there will be some other entries, such as the one that has just been noted. I will not read them all out. They go on through February, August, September and October 1994, and then there is nothing between October 1994 and July 1996, when WorkSafe received a complaint.

Mrs Edwardes: No, I have notes for 1995 in respect of its licence. The licence was renewed subject to conditions etc; and 1996 -

The CHAIRMAN: You have entries for that?

Mrs Edwardes: Yes.

The CHAIRMAN: The files that the committee has at the moment do not show that. I thank you for that. There are notes from August 1996 to 1997, when there are a number of entries from different departments - DEP and the Department of Minerals and Energy. There is no local government or WorkSafe involvement after July 1996. The point I am getting to is that leading up to the briefing note in August when the chief executive officer contacted you -

Mrs Edwardes: No; I received a note at the end of July 1999, because that was when the incident occurred, from memory.

The CHAIRMAN: In 1999 it was pretty busy on that site. It must have been receiving visits fairly regularly from a number of different agencies. However, the DEP file note suggests to us that in June 1999 Waste Control Pty Ltd made a direct appeal to the minister.

Mrs Edwardes: It appealed its licence conditions.

The CHAIRMAN: You said earlier today that you were not aware of that until Dr Jenkins raised the matter with you in July.

Mrs Edwardes: If any licence conditions are appealed, it is dealt with as -

The CHAIRMAN: An administrative appeal?

Mrs Edwardes: Yes.

The CHAIRMAN: So that was not brought to your attention?

Mrs Edwardes: I would have had to sign off on it, but that is a matter of everyday operation.

The CHAIRMAN: As a result of that appeal against the licence condition, there was no signal to you that this was a problem, yet a month later the department gave you the sort of flashing lights and ringing bells warning.

Mrs Edwardes: I remember that one of the thoughts that crossed my mind because of the urgent nature of it was, "July 1999, and now you are coming in August-September". We had already had the meeting with Waste Control on 30 August, so why rush it in then and what was the lead-up to it.

The CHAIRMAN: I guess that is what I am trying to understand as well, and why I am giving you a potted history from DEP. DEP would have given you direct reports after you became minister. However, as you say, you noted that there had been communication at least between DEP and DME. I put it to you, firstly, that I do not think you were properly informed. Secondly, with hindsight, do you want to comment on whether you were properly informed when evidence was put before you?

Mrs Edwardes: I cannot make all those judgments because I do not have the advantage that you have of access to the full and complete file. However, on reflection, there were some things that the department felt were ones that it did not bring to the minister's attention.

The CHAIRMAN: When Waste Control appealed the licensing conditions and that was dealt with by the appeals convenor did the department get notice that an appeal had been lodged?

Mrs Edwardes: Yes, absolutely, because the department, as I explained earlier this morning, actually prepared the licence conditions.

The CHAIRMAN: I understand that, but when the licence applicant -

Mrs Edwardes: Any change to those licence conditions must be done by the department.

The CHAIRMAN: I understand that. However, when an appeal was lodged by a business, would the department have been notified of the appeal?

Mrs Edwardes: Absolutely - immediately.

The CHAIRMAN: When that happened, was there a process that followed broad administrative law processes? Even though we do not have administrative law in this State, you would still have followed natural justice procedures, I imagine, and said, "Here is the condition that the department seeks to apply. Here are the appellant's grounds for revision of or change to those. Here are the department's comments on those grounds of appeal." Would all those things be part of a process for considering that appeal?

Mrs Edwardes: Not by me.

The CHAIRMAN: No, but by the appeals convenor?

Mrs Edwardes: The department must provide advice back to the appeals convenor. If anybody appeals, it goes immediately to the department and the agencies for advice. Therefore, any advice comes back, and I know very well that the amended conditions of the licence were actually prepared by the DEP and endorsed by -

The CHAIRMAN: Therefore, in June the appeals convenor would have taken evidence from the appellant and the department about what the licence conditions should be and would have taken advice on that, considered it and given it to you for signing off; is that right?

Mrs Edwardes: No. The appeals convenor would have given it straight to the department to deal with it.

The CHAIRMAN: You would not have signed off on it?

Mrs Edwardes: Not at that stage. The department would have then sat down with the appellant and said, "Okay. Obviously, you want to do it this way. We believe this is better. Give us your reasons." There would be a process in respect of how the matter would be resolved. The department would then provide a draft of the amended conditions to the appeals convenor. He would write his letter for me, and forward the appeal decision and the amended conditions for me to sign off on.

The CHAIRMAN: Therefore, the appeals convenor would not make the decision. It would be a negotiated outcome.

Mrs Edwardes: Essentially with the departments and agencies. The appeals convenor -

The CHAIRMAN: The appeals convenor would not then arbitrate on non-agreed matters?

Mrs Edwardes: No, the appeals convenor did not have an arbitrary role. If there were real difficulties between respective departments and/or agencies and/or other scientific bodies - I am not talking about this issue; I am talking about other issues in which the University of Western Australia or the museum would be brought in - he might bring them altogether to get a consensus position, but he did not arbitrate.

The CHAIRMAN: With hindsight - I know it is a wonderful thing, as you have said - would you not think, given all that went on in June 1999, that the alarm bells that started ringing for you in July and August 1999, which was between four and eight weeks after this whole process, should have told you, "Here is the history of a company that has been non-compliant since at least March 1993"?

Mrs Edwardes: The advice that I received from the department was quite clear; that is, that the DEP was actively managing potential contamination from the site, and it would keep the minister's office advised of any significant developments on the issue.

The CHAIRMAN: Therefore, the DEP said that there was potential contamination?

Mrs Edwardes: This is in July 1999. Therefore, the advice that I consistently got from the department was that it was managing it; it would keep me informed of any significant developments.

The CHAIRMAN: Did it advise you that there had been non-compliance since 1993?

Mrs Edwardes: In terms of the history, this advice did not include it. You have the file there.

The CHAIRMAN: No, but given what we know now, do you not think that it was a serious omission for the minister not to be informed of a history of non-compliance - pages and pages of non-compliance - for at least three preceding years?

Mrs Edwardes: I do not have the benefit of knowing where that information has come from.

The CHAIRMAN: I have just given you an example of some of those, and you have identified gaps.

Mrs Edwardes: You have also drawn on DME.

The CHAIRMAN: Yes.

Mrs Edwardes: Obviously the department can answer for itself. I do not have to answer for it.

The CHAIRMAN: I am asking whether you would expect a briefing note that states there was a serious problem to also tell you -

Mrs Edwardes: It would have been nice.

The CHAIRMAN: It think it is a bit more than nice.

Mrs Edwardes: It would have been nice to have actually had the -

The CHAIRMAN: I put to you that the department was obliged to tell you about the history of that site.

[11.35 am]

Mr MASTERS: It would have been professional.

The CHAIRMAN: It is part of the department's obligation to inform the minister.

Mrs Edwardes: If the history of a particular site was being developed, one would have thought that everything in relation to its history would be incorporated.

Mr DAY: To put it in context, we are talking about quite detailed operational matters. I admit that I have never been Minister for the Environment, but, presumably, in that situation the minister expects a department to operate in a professional manner.

The CHAIRMAN: That is right.

Mr DAY: If there is something of such magnitude that the minister needs to be aware of it, the department will make the minister aware of it.

The CHAIRMAN: One would hope.

Mrs Edwardes: That is the case in this instance. There was something of significance, which the department obviously needed Cabinet to make a decision on, and it immediately brought it to my attention.

Mr DAY: This is a slightly more extreme example: the Commissioner of Police does not make the Minister for Police aware of a particular offender who has been charged with or investigated for a range of serial offences. That is a bit extreme, but it is the same principle.

The CHAIRMAN: Mrs Edwardes, we are running out of time. The House sits in about 20 minutes and, under standing orders, the committee cannot sit at the same time. This has been a very useful and enlightening session. Thank you very much for your time and forthrightness. I cannot say definitely that we will not want to follow up some issues with you. However, we may do that in writing, if possible, rather than in a hearing. If we require you to appear again, we will let you know.

Mr DAY: Are there any other comments you would like to make about how these issues should be handled in the future or about any other aspect?

Mrs Edwardes: The management of these types of operations will always be complex. The location of these sites is the critical issue. We have found often that contaminated sites have received all the relevant approvals that they need. Linking the planning is a major issue. When amendments were made to the planning legislation, which link to the Environmental Protection Act, I ensured that ongoing reviews took place on how it was operating.

The CHAIRMAN: The system checks?

Mrs Edwardes: It is new, and it takes time to get some sense of the history of the operation of those mechanisms because of the way the planning and the Department of Environmental Protection operate. It is possibly still too early to develop a real assessment of it. There is an early indication that there is a need for further amendments to both pieces of legislation to provide a better link between them. I know that the former Ministry for Planning was talking about amendments, but it had not come to me at that stage when I was the minister, so I do

not know where that is at. However, that is a critical issue in the development of any of these operations and their locations.

Under the Department of Mineral and Petroleum Resources, if a miner wants to mine a particular site, he must provide a bond. Therefore, in some operations - I do not have a feel for where the lines would be drawn - when there is a real or potential risk, there may be a need to implement a system along those lines.

The CHAIRMAN: It would be an environmental bond of some sort.

Mrs Edwardes: Under the contaminated sites legislation, all those sorts of issues are considered. If you have not yet received a briefing on the contaminated sites legislation, you might like to do so.

The CHAIRMAN: Thank you for your time this morning.

Committee adjourned at 11.39 am