

ECONOMICS AND INDUSTRY STANDING COMMITTEE

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH,
WEDNESDAY, 5 SEPTEMBER 2001**

FIRST SESSION

Members

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

Committee met at 9.00 am

LIM, MR LAWRENCE,
Senior Inspector, Explosives and Dangerous Goods Division,
Department of Mineral and Petroleum Resources,
100 Plain Street,
East Perth, examined:

RUSSELL, MR MALCOLM PAUL,
Director, Explosives and Dangerous Goods Division,
Department of Mineral and Petroleum Resources,
100 Plain Street,
East Perth, examined:

The CHAIRMAN: This hearing of the Economics and Industry Standing Committee is a continuation of a hearing that commenced in Midland in August; we last sat on Friday, 31 August. The committee will also take evidence tomorrow and is likely to schedule at least a couple of hearing days once it has processed the information gathered from witnesses and submissions. I anticipate that we will reconvene this hearing in the third or fourth week in September.

Mr Lim, have you completed the "Details of Witness" form?

Mr Lim: Yes, I have.

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

Mr Lim: Yes.

The CHAIRMAN: Did you receive and read the "Information for Witnesses" briefing sheet regarding giving evidence before parliamentary committees?

Mr Lim: Yes, I did.

The CHAIRMAN: Did you understand all aspects of that information?

Mr Lim: Yes.

The CHAIRMAN: Will you be speaking to the submission made by your department under the name of the Director General, Jim Limerick?

Mr Lim: No.

The CHAIRMAN: Do you have a separate submission?

Mr Lim: No.

The CHAIRMAN: Are you providing technical and expert evidence?

Mr Lim: Yes.

The CHAIRMAN: Mr Russell, have you completed the "Details of Witness" form?

Mr Russell: Yes

The CHAIRMAN: Did you receive and read the "Information for Witnesses" briefing sheet regarding giving evidence before parliamentary committees?

Mr Russell: Yes, I did.

The CHAIRMAN: Did you understand all aspects of that information?

Mr Russell: Yes.

The CHAIRMAN: Will you speak to the submission made under the name of Jim Limerick, Director General of the Department of Mineral and Petroleum Resources?

Mr Russell: Yes, I will.

The CHAIRMAN: Do you propose to make any amendment to the submission?

Mr Russell: I have one very small amendment. A date is incorrect on the last line of the first paragraph of page 7 of 13. The last line reads "issued, valid until 9 December 1998." but should read "issued, valid until 9 December 1988." I do not think it has any material significance.

The CHAIRMAN: Do you wish that the submission, as amended, be incorporated as part of the transcript of this hearing?

Mr Russell: Yes, please.

The CHAIRMAN: We would like you to take the committee through that submission. We might want to stop and deal with particular points in clumps of information.

Mr Russell: The submission by the now Department of Mineral and Petroleum Resources was restricted deliberately to a very factual account of the department's involvement with this particular facility since 1987. We tried to apprise the committee of the legislation that applied to the licensing of dangerous goods sites, to give some historical background to the role of the department, to explain the circumstances leading up to the prosecution action in December 2000 and, to a lesser degree, the department's involvement with the emergency response arrangements on the night of the fire in February 2001.

If I could go to the start of the submission I would like to point out that certain materials in circulation in Western Australia are classed as dangerous goods. Not all the materials at the Bellevue site were dangerous goods, but some of those goods were subject to dangerous goods legislation. The primary legislation is 40 years old; it was written in 1961. However, the regulations applying to the handling and storage of dangerous goods were drafted in 1992, so they are somewhat more modern in their nature, context and powers. The Act and the regulations contain some significant powers for the chief inspector. For the purposes of the Act, the chief inspector is the director at the time. I have been the chief inspector under the legislation since December 2000 - about five weeks before the fire.

The legislation calls up a number of technical standards that specify such matters as the bunding; that is, containment, separation, fire protection, fire prevention and a range of other issues in relation to dangerous goods sites. It covers quite specifically and in prescriptive terms issues such as the marking of packages and dangerous goods, the separation distances, the requirements for containment - generally we use the phrase bunding. It also covers the management and conduct of the operator of the premises, and the need for such things as emergency plans, a manifest, training of operators, opening of packages, internal transfer of dangerous goods and segregation of incompatible dangerous goods. The regulations and the code contain some additional requirements for particular materials; and, finally, the regulations lay down some specific requirements for firefighting.

It is important to point out that not all of the products taken to the Waste Control Pty Ltd site at Bellevue were classed as dangerous goods. The general approach to dangerous goods is that they are marked in accordance with international protocols, so that every person in the supply and use chain is aware of the material and can get easy reference to the precautions needed to handle that material.

The CHAIRMAN: When you say that people would be able to draw on material to establish or identify the standards for particular materials, in the case of Bellevue site, where would you expect people would go to identify Australian standards for handling and maybe emergency responses?

Mr Russell: They could get information from a number of sources. We produce guidance material, which is readily available; it is published on the Internet. We would expect professionals in the industry to have to hand a number of reference sources including Australian Standards material safety data, so that they are aware of the material properties and precautions for handling and use of any material that is taken onto the site.

The CHAIRMAN: A materials safety data sheet, which is a summary sheet generally drawn from a number of sources, would still rely on a standard. Let us use one issue that has been before this committee as an example. Where would we find the Australian standard for evacuation procedures relating to the materials that were known to be on this site?

Mr Lim: The current Australian standard for storage of flammable liquid requires a person to prepare an emergency plan. We have divisional guidance on how to prepare an emergency plan, and what we would expect the emergency plan to cover such as spill containment, fire protection, evacuation and other issues.

Mr DAY: Do you know whether the operators of this site had the necessary emergency plans and other relevant technical information on site?

Mr Lim: They do have an emergency plan and I believe you have a copy.

The CHAIRMAN: That is not part of this submission though?

Mr Russell: No.

Mr DAY: In summary, were you satisfied with what they had on site in relation to the technical information they needed for handling materials and also an emergency plan?

Mr Lim: At the time that we assessed it, I believe it was adequate.

Mr DAY: When did you last assess it?

Mr Lim: I could not confirm that at this stage.

The CHAIRMAN: Could we have a copy of that emergency plan, and at some point could you indicate the last occasion on which that emergency plan was reviewed? I will return to the question of where the standards are drawn from. I am trying to understand the extent to which standards for storage might be drawn or benchmarked against standards for transport? We heard at an earlier hearing about the evacuation requirements for an emergency situation involving perchlorethylene and my notes suggest that was an 800-metre evacuation zone. I am trying to understand whether the storage standards were the same as the transport standard?

Mr Lim: Our guidelines on emergency planning do not go into that level of detail. If you were to consider evacuation, then an emergency response guide would be used that would give guidance responses to specific dangerous goods. The emergency plan is an overall plan that talks about a global picture of the site, what can go wrong, what will be done to mitigate an emergency and guidance on emergency pre-planning and preparedness. For a particular product, these guides would provide some guidance on evacuation distances.

Mr DAY: To your knowledge, is there a specific Australian Standard on evacuation?

Mr Lim: I am not aware of one.

Mr Russell: In our guidance note that we issue to industry we refer to a number of references. We refer to the regulations themselves which provide the legislative background for requiring an emergency plan; the *Guidelines for the Preparation of an Emergency Plan*, which are published in Sydney. Within those guidelines are the *Guidelines for the content and organisation of emergency*

plans issued by the Australian Institute of Petroleum. We also refer the operator to *Emergency planning for industry*, a Canadian publication, and another publication called *Awareness and preparedness for emergencies at a local level*. We are also familiar with this document for the transport industry.

The CHAIRMAN: What is the name of that one?

Mr Russell: “*Dangerous Goods - Initial Emergency Response Guide*” which is an Australian Standard HB 76:1997.

Mr DAY: That looks like the one that we were shown last week. Can you put into context how that particular publication fits into the broad scheme of things as you see it?

Mr Russell: Lawrence Lim is more technically familiar with the standards but I will answer initially. This is the standard that we would expect to be used by the transport industry and the sort of thing that would be carried in the cab of a vehicle. For a site like Waste Control Pty Ltd, our requirement for an emergency plan would be somewhat different from that. We would expect the site operator, often with the help of an accredited consultant, to prepare a plan which would take into account the access to the site, the emergency services, the arrangements that they have made with the emergency services, the capabilities of the site and the particular safety features on the site including firefighting and alarm systems and so on.

The CHAIRMAN: Did you say that the number of the standard was HB 76?

Mr Lim: Yes, HB 76

The CHAIRMAN: Is there an equivalent to HB 76 that relates to storage and processing?

Mr Russell: Not as far as I am aware.

Mr MASTERS: Did the emergency plan that the operator of the site put in place address the issue of an evacuation should there be a fire?

Mr Lim: There would have been something in the submission about the plan.

Mr MASTERS: Are you not able to check the emergency plan of which you have a copy?

Mr Russell: I would like to have time to provide a detailed response to that question and give details of what was in the emergency plan. I have the information here but it would take far too long to find.

Mr DAY: Is it possible for you to give your view on how you saw the emergency being handled on the night? Was the response adequate and the amount of evacuation appropriate?

Mr Russell: I am only able to comment in part because our division is only part of the response team and we do not take a lead role. We are not the decision makers; we are part of an advisory group. We are specifically involved with the emergency response and we run a 24-hours-a-day, seven-days-a-week system. We get called out because most of my staff are chemists with considerable experience with regard to different sectors of the industry. Some chemists are more experienced with explosives, some are more experienced with major hazards of the petrochemical industries and others have general experience with chemicals, storage and transport matters. Our role in emergency response, and we were called out on the night of the fire, is to attend the Fire and Emergency Services Authority headquarters and be available to provide technical information as required. That is in fact what happened on the morning of 16 February.

Mr MASTERS: So your division was part of the hazardous emergency advisory team?

Mr Russell: Yes, it was.

The CHAIRMAN: At page 11 of your submission, you give a brief note on your staff members' attendance, as a member of the hazardous emergency advisory team coordinating the general response to the incident.

Mr Russell: Yes, I do.

The CHAIRMAN: We may come back to that. We will now go back to where you were before.

Mr Russell: I will refer back to page 5 of our submission. I do not propose to read from the submission but there are several important points on the implementation of the legislation by the Department of Minerals and Energy. There is no doubt that, at the moment, the Act gives significant powers to the chief inspector on explosives. We hope, and I will come to it later, that through the development of the new Bill, the same powers will be extended to dangerous goods.

Mr DAY: Is that Bill being drafted now?

Mr Russell: A cabinet submission has been made and it may well be considered by Cabinet this week. If it is not, it will be discussed at the next cabinet meeting. Cabinet approval for a new Bill was given in July 2000 but there was no urgent drafting priority assigned to the Bill and therefore, no work was done on it. With the change of government, we have had to make a new submission.

The CHAIRMAN: What priority did the Department of Minerals and Energy give the drafting of the legislation?

Mr Russell: In 1995 it was determined that the Explosives and Dangerous Goods Act 1961 was insufficient to deal with the nature of the dangerous goods industry as it is today. The problem is that the 1961 legislation, which was drafted in the late 1950s, was at a time when many of the industries that we now see in this State did not exist. The 1992 regulations do help. However, with regard to what we call major hazard facilities - the larger end of the industrial sector - we need modern primary legislation and a suite of subsidiary legislation. That is our proposal before Cabinet at this time.

Mr DAY: Therefore, your current proposal before Cabinet simply reflects what was given approval for last year, is that right?

Mr Russell: Yes, it is.

Mr DAY: Is it a matter of getting approval for drafting to occur?

Mr Russell: As I understand it, it is a twofold process. At the moment, the important thing is getting cabinet approval to draft the Bill and then it is most important that we try to get the urgent drafting priority so that we can get them assigned a parliamentary draftsmen -

The CHAIRMAN: I understand that this might be difficult, given that in 1995 the Department of Minerals and Energy had identified that there was a need for redrafting and perhaps a new piece of legislation relating to -

Mr Russell: Yes, in 1995 the thrust was to amend the 1961 Act.

The CHAIRMAN: Was it just to amend and not to replace the Act?

Mr Russell: Yes. Shortly after that, sometime between 1995 and 1999, it was determined that redrafting would not go far enough or be the best way to try to modernise a 40-year-old piece of legislation.

The CHAIRMAN: Was that in 1999?

Mr Russell: It was sometime in 1995 but I saw documents in 1999 that indicated that the department should push for a new Bill and cabinet approval was given in July 2000.

Mr DAY: The details, in broad terms, of what should be in a new Bill were presumably determined from 1999 through to 2000 and then once that work was done, it was taken to Cabinet in July of last year.

Mr Russell: Yes, it received cabinet approval in July.

The CHAIRMAN: What drafting priority did it receive in July 2000?

Mr Russell: It received no drafting priority.

Mr DAY: Obviously, once your current submission goes through Cabinet, it will be a matter of your relevant minister arguing in the overall drafting processes to get a priority. From my experience there will be a lot of competition.

The CHAIRMAN: Of course it will depend on the priorities of the day given by the Government.

Mr DAY: That is absolutely right.

The CHAIRMAN: When that matter went before Cabinet, what was the Department of Minerals and Energy's recommendation on priority?

Mr Russell: For this time around?

The CHAIRMAN: In July 2000.

Mr Russell: I think the term "high priority" was used in that cabinet submission.

The CHAIRMAN: Thank you.

Mr Russell: Going back to page 5 of the submission, I would like to put into context the department's role in relation to, if I may use the terminology, the dangerous goods industry. We administer all aspects of explosives, fireworks, fireworks displays and so on across the State but in addition to that, we deal with all matters related to the storage and transport of dangerous goods. At the present time, we license some 6 000 dangerous good sites in the State of which six or seven would be involved with the storage and recycling of waste products, similar to Waste Control. Of those 6 000 sites, some 24 are classed as major hazard facilities and typically they would be, for example, the larger processing facilities at Burrup or Kwinana. We have nearly 6 000 sites ranging from, for example, municipal swimming pools that use bulk chlorine through to retail outlets such as the local hardware stores and sites such as Waste Control. Each of those sites is licensed each year and they pay a fee for the licence. There is a compliance monitoring regime in place as many of those sites are not inspected with any great regularity.

The CHAIRMAN: What does that mean?

Mr Russell: It is a random inspection regime not based upon, to date, a risk management approach.

The CHAIRMAN: Therefore a risk assessment is not done of either the type of dangerous good or the capacity of particular enterprise or business to manage them in determining an inspection regime.

Mr Russell: Excluding the 24 designated major hazard sites which are dealt with in a completely different way, the sites are inspected based upon the knowledge of inspector and involvement with that site or some other factor. That "some other factor" may be that we target a particular geographical area of the State in which we go into that area for a period of time and inspect every site that we have on the register.

The CHAIRMAN: How many inspectors are there?

Mr Russell: In the area of transport and storage that covers all of the transport sector and the 6 000 storage sites but excludes the 24 major hazard sites, there are seven inspectors.

The CHAIRMAN: Seven people.

Mr Russell: Yes, including the manager.

Mr MASTERS: How are the inspections carried out for those 24 major hazard sites, which I assume include the Bellevue site?

Mr Russell: No, Waste Control is not a designated major hazard site. The major hazard facilities are subject to a significantly different regime. It is based upon a safety case or a safety report concept whereby the operators of the site must prepare a very detailed management plan for the site

dealing with all on-site and off-site risks. That is audited by us and we have a team of four currently looking at those 24 sites. We consider those sites to be of significantly greater risk to the public and therefore a completely different regime applies. We are one of only two jurisdictions in Australia that apply the Australian Standard for major hazard facilities at this time.

Mr MASTERS: Can you give me some indication of the criteria that determine whether a site is a major hazard site? I want to understand why the Waste Control site at Bellevue was not considered a major hazard site.

Mr Russell: Briefly, it is based upon the quantum of the material on-site. For example, a mine site that is using particularly hazardous materials may, in some circumstances, be classed as a major hazard facility. It takes into account such issues as the remoteness of the site and the relationship to public safety. The 24 sites are generally the large petrochemical sites, oil refineries and onshore gas installations - the very large end of industry.

Mr MASTERS: The 400 000 litres of mixed waste chemicals would have been a fairly small amount.

Mr Russell: It would not meet the criteria to be classed as a major hazard facility.

Mr DAY: I will take a broader view of the Waste Control site for a moment. You would be aware of some of the views that have been expressed about a situation developing on this site over the years which led to a potentially very dangerous situation. Putting aside how the fire might have started, we obviously know what happened on the night of 16 February. That has caused a lot of concern among the community, particularly around the Bellevue area. People have expressed the view that the situation that developed on the site - the accumulation of chemicals and so on - should not have been allowed to occur. On the other hand, some have expressed the view that it was a matter of how best to manage the processing, recycling and disposal of these chemicals, and if it was not done there, where would it have been done and would material have been dumped in the bush and so on. Can you comment on how you believe the site was managed over the years and whether you think, with the benefit of hindsight, things could have been or should have been done better in managing the risk on that site?

Mr Russell: Yes. You will see from our brief submission that we had a great deal of involvement with this site over the best part of a decade. In some years we visited the site very regularly and very often. You asked me about the general management of the site. One of the reasons we were so concerned about the site was the attitude of the site's management to what we consider somewhat basic safety requirements. We took the view throughout the 1990s that working with the company and keeping it operating was the best option. You have references that are on file which indicate that within the department there were considerations about the approach that should be taken on either closing down the site or keeping it open and trying to get the site to comply.

Mr DAY: If you had not taken the approach of working with the management to keep the site open in an acceptable way, what might have happened alternatively? What were your concerns about what would have happened if you had closed down the site?

Mr Russell: I was not around at the time, but my understanding from the records on file is that the fear - in part, it was passed on to us by the environmental agency - was that to close down the site would mean that much of the waste would be disposed of elsewhere. The unique feature of the facility was its attempt to recycle some of the products. In fact, that was the intent made known to us by the operators in the early 1990s.

With regard to the management of the site, some of the issues we were concerned with would, even today, be seen as relatively minor; that is, cleaning up twigs and leaves, cutting long grass and so on. That should be done; there is no doubt about that. In fact, we prosecuted the owner when our patience ran out. However, these were not rocket science issues; these were simple matters of good management. Similarly, there was the maintenance of the fence. We had to talk to the operator of

the site about a tree in the fence line. The fence stopped one side of the tree and started on the other side of the tree, and the tree formed part of the fence. I am new to this industry, but I am extraordinarily surprised that we would have that level of discussion with a site operator of this type. That is indicative of the approach to the overall management of the site.

The CHAIRMAN: How do you characterise that approach?

Mr Russell: From my reading of our records, we attempted over a long period to work with the operators to improve the situation. It was a decade of brinkmanship.

The CHAIRMAN: You said that the tree was indicative of an approach by management to the site. How would you characterise that approach?

Mr Russell: The management of the site would do the absolute minimum at any particular time to try to get compliance. There was a requirement for a vapour barrier on the fence line. It had only a certain number of sheets of fencing material and they were put up with gaps in them, so we had to talk to the site operator about the gaps in the fence. That is not a professional approach. I do not expect my inspectors to have to deal with industry at that level. Leaving a tree in the fence line is the sort of thing one would not expect, because the guidelines we issue are quite clear. One would expect that the underlying principles of safety on which the regulations are based would be well understood. That is indicative of the issue.

I referred to brinkmanship. Throughout the decade of our dealing with Waste Control, we would push hard. Almost at no stage during a 10-year period did the operator disagree with the requirements put on the site by our inspectors. It was always, "Yes; we will do that, but we need a little time", or "Can we do it in this way rather than that way?" If we pushed hard enough - it came to a crescendo with threats of prosecution - some work was done. You will see from the records we have submitted that in 1993-94, the product retained on the site was reduced quite dramatically because we were threatening prosecution at that stage. We put more and more pressure on the operator and did more site visits, and something was done. There is no doubt that the management of the site made improvements of varying degrees over the 1990s.

Mr DAY: How would you describe the degree of cooperation from the site's management?

Mr Russell: It is an interesting relationship because the operator often wrote to my agency, and to other agencies, thanking us for our understanding, cooperation and advice. We were not in a situation that I have seen before as a safety regulator in other industries whereby the industry is fighting tooth and nail against the provisions placed upon it by the regulator. In this case, somewhat unusually, the operator was saying, "Yes, I understand. Thank you; it will be done."

The CHAIRMAN: No conflict?

Mr Russell: Very little conflict. My understanding from the records was that if there were any disagreement, it was on a matter of timing, not on matters of substance.

Mr MASTERS: These days best management practices require time limits. I am interpreting you to say that BMP was not applied at this site because of the tardiness in implementing the measures that you had to repeatedly push forward.

Mr Russell: Yes, I could not disagree with that.

The CHAIRMAN: Would you say that sometimes you were being done over with kindness in its response? Did you think at any stage that the department's actions were less forceful than they might have been to ensure compliance, because you seemed to have this highly cooperative manager?

Mr Russell: Over a period of 10 years, some eight or nine inspectors visited the site; it was not just one inspector and one opinion. All of those inspectors wanted more to be done to the site. The file is characterised by fairly strong reports from a number of inspectors, often with recommendations for prosecution action to be taken.

The CHAIRMAN: However, at no stage was that taken up.

Mr Russell: That is correct.

The CHAIRMAN: That idea of brinkmanship, on the brink or coming to the brink, seems to have been a pattern again and again.

Mr Russell: It was correct up until the end of 1999 when the department's patience finally ran out. That was after the removal from the site of the stockpile of drums with funding from government. That occurred in July or August 1999, and in late 1999 my department became so concerned, or remained so concerned, that a decision was made to look to prosecution action. Then, in March 2000, inspectors visited the site to get evidence to take the matter to court. In mid-2000, we were advised by the Crown Solicitor's Office that we should not proceed because the evidence was somewhat flimsy in all but two of the alleged breaches. There is some difficulty in the legislation with our securing a prosecution in relation to the level of evidence that we must acquire; for example, when we are not certain what is in a particular drum. What is unusual about the waste management business is that sometimes the labelling is not of the same order as one would find in the production, wholesale and retail sectors of the dangerous goods industry. We needed to be able to prove in court that we were dealing with dangerous goods, that the photographs of the drums that we were tendering in evidence contained dangerous goods, that we could prove completely that they were dangerous, and so on.

The CHAIRMAN: Did you not sample them?

Mr Russell: That would have been an option. At the end of the day, we were able to satisfy the prosecutor that the marking of the drums and the evidence given by the management of the site was sufficient to convince a court that what was in the drums could be accepted as dangerous goods.

The CHAIRMAN: Was sampling done at any stage to confirm that?

Mr Russell: It would have required sampling significant quantities of drums. Again, it would have been possible, but a very difficult exercise because it would have required taking down the drums, which often were stacked three tiers high. I am not suggesting that it is not possible; I am suggesting that it would have been very difficult. The department then decided to pursue prosecution action in 2000; it did even more site visits and took even more evidence. In October last year, we believed we had enough evidence, which was accepted by our legal advisers. A summons was issued in December to the company for a total of 10 alleged breaches. I refer to that prosecution action at the end of the department's submission. The summons was issued on 14 December 2000. The fire occurred some seven weeks later. The court case was held in April, and the company was found guilty of all 10 alleged breaches.

The CHAIRMAN: How did it plead?

Mr Russell: It pleaded guilty.

Mr DAY: Your prosecution action had nothing to do with the fire. What do you believe you would have done if the fire had not occurred? After you secured a conviction, did you have any thoughts about what action you might take down the track?

Mr Russell: Yes, we did. The next step was to cancel the licence. We have submitted file records to the committee which show that on 13 February a recommendation was made by the case manager of this branch of the department to not issue a licence to the site. That recommendation was made during the prosecution action.

Mr DAY: Would you have cancelled the licence, so that the site therefore would have had to cease operating?

Mr Russell: It is my inference from reading the file history that the stuff was on the site and must be got rid of somehow. The dilemma was that it was on the site because there was no money to process it and get rid of it. That is a different situation from the situations we normally face when

applying the legislation. It is a rare occurrence. The dangerous goods industry is generally compliant with the regulations. However, there are provisions in the legislation, other than prosecution, that I term “smart tools” such as cancellation or suspension of a licence, or placing conditions on a site. Prosecution is a big stick that does not necessarily produce the outcome that we would like it to produce. Money is spent on a prosecution, which is extraordinarily time consuming, and in this case the \$200 000 fine would have been better spent at the site. One smart tool that I am talking about, for instance, is to starve a particular site of supply. It is difficult to do that in the waste management industry because of the nature of the supply chain. It is simpler, for example, with a non-compliant service station. In the case of a service station not meeting public safety standards, we could advise the supplier that the station is non-compliant and it is then an offence for the supplier to supply that service station. That is a smart tool because we would tackle the supplier, not the miscreant service station. Cutting off the supply chain is a much more effective and smarter tool. There is a difficulty in the waste management sector about who is the consignor. Do we start prosecuting a drycleaner for sending a drum of waste product to a site?

Mr DAY: There are obviously many different consignors.

Mr Russell: There are practical difficulties with them.

Mr DAY: As you said, you would not have renewed the licence; then what?

Mr Russell: We would have then issued a special, short-term licence under the legislation because dangerous goods were still at the site. If we got to that stage, the licence would have specified that no further product could come onto the site and we would have set up a monitoring arrangement so that we could prosecute for non-compliance of a licence condition. Again, we would have resorted to the courts. The history of our management of the site and our relationship with the operator indicated that closing down the site would have been a difficult option and prosecution was an unattractive option. It was preferable to try to work with the operator to establish the site as it should have been; that is, a short-term, transient storage site processing and moving a certain product off site, so that its being part of the chain of waste recycling would produce a better outcome.

The CHAIRMAN: There were eight years of brinkmanship and non-compliance and you were still trying to get some action! That is an inordinate length of time.

Mr Russell: I could not disagree.

Mr DAY: Until 1999, when you believed prosecution was necessary, the department formed a judgment that it was preferable to let the site continue to operate and to try to make it comply, given the other unattractive alternatives of illegal dumping, or whatever. Have I characterised that correctly?

Mr Russell: Yes. I have tagged several notes on the file in which the department used phraseology in internal documents such as the fact that the division was faced with two unpalatable options: prosecute and probably close down the site or allow the company to continue to operate. In the same submission from the director at the time -

The CHAIRMAN: Does that file note relate to the cabinet decision?

Mr Russell: No, it is an internal briefing note to the director general.

The CHAIRMAN: What date?

Mr Russell: It was 8 October 1999, folio reference 209 on file B. The committee has that document.

Mr DAY: Given that the waste had to be dealt with at that stage, and must be dealt with in the future, are you able to say, with your experience in the industry and of this site, how that material should be dealt with in future?

Mr Russell: Yes. The management of waste is an issue that has not been dealt with in a most strategic manner. It has crept up on us, to a degree, as a community in Western Australia. We are behind the times in dealing with waste management compared with Europe and possibly the eastern States. In Western Australia it has been a marginal business with very little overheads and not an attractive proposition. I believe we need a solution to that right now for the next 25 to 30 years. In my opinion that must start with the proper placement of a site. Unless a site is properly planned and located, we will always face the difficulties of ensuring public safety with the regulatory controls we can put in place. That includes the transport chain and closing the loop, as I have discussed with my staff, which means having control from the producer and user of the material through to the disposal of the material. I know that the environmental protection agencies are looking at some of these issues. In fact, the changes to what could be done with solvent waste brought this matter to a head in Western Australia some years ago, as I am sure the committee is aware. Our difficulty is that generally we receive an application from a site operator - not only a waste site operator - where dangerous goods are either stored, manufactured, processed, used or whatever, after planning permission has been given and after other approvals have been received. We can then go onto the site and apply our somewhat prescriptive technical regulations to only the dangerous goods on that site. Rarely do we have an opportunity to comment on the sufficiency and suitability of a particular site in a particular area. We try to get the best compliance we can using pretty crude tools, which compliance is very much related to the management on the site rather than, to use an analogy, getting in a helicopter and looking at the whole public safety risks associated with that site.

Mr DAY: Do you do that from the point of view of planning and approval before an operation commences?

Mr Russell: Yes, it must start with the planning cycle.

Mr DAY: Has that issue been addressed in the legislation you want drafted?

Mr Russell: No, it needs to be addressed in other legislation, not ours.

Mr DAY: Did you address that issue in your submission?

Mr Russell: I have not specifically referred to that area because I did not believe it was appropriate to comment on that in detail in our submission.

The CHAIRMAN: In your background comments in the submission, you gave a sequence of dates beginning October 1987 through to December 1987 and October 1989. You then make a general comment that throughout the early 1990s and from late 1993, incremental changes were made to the licensing arrangements for the Waste Control site in Oliver Street or its predecessor in Bulbey Street. You comment on a couple of occasions in the submission about approval subject to confirmation of relevant approvals from other agencies. Do you ever notify changes of licensing arrangements to - I shall run through a short list - local government authorities?

Mr Russell: No.

The CHAIRMAN: You would not advise them?

Mr Russell: No.

The CHAIRMAN: Did you notify the Environmental Protection Authority or the Department of Environmental Protection?

Mr Russell: Later on we were working more closely with the DEP, particularly in relation to licensing by the DEP of this same site and in the build-up to the cabinet submission for funding to remove those drums.

The CHAIRMAN: In recent times?

Mr Russell: Yes. At the beginning, before 1993, my recollection from file records is that a few documents were sent between the two agencies.

Mr MASTERS: However, there is no regulatory requirement that an application to your department for the establishment of a hazardous or dangerous goods site be referred automatically to the DEP and the EPA?

Mr Russell: There was an awareness that the matter was being considered by the environmental agency at that time and in the early part of our files one can see that documents were sent to it. I recall that the environmental agency was annoyed back in 1987 or 1988 that the Shire of Swan granted approval for the site before the environmental agency had granted approval.

The CHAIRMAN: Was that at the time of the shift to the Oliver Street premises?

Mr Russell: No, I believe that was the original Bulbey Street application by Austec Pty Ltd for nitromethane production.

Mr MASTERS: That is right.

Mr Russell: In answer to Mr Masters' question, there was relatively poor coordination between the various agencies; that is, the planning authority, the environmental agency and our agency.

Mr MASTERS: If there was no regulatory requirement to coordinate better, it is not only a breakdown in the communication but also a breakdown in the regulations, which required the chain of communication to be more effective?

Mr Russell: As far as I am aware, there is no regulatory requirement.

The CHAIRMAN: Continuing on that list, was the former Ministry for Planning notified of changes to the licensing arrangements?

Mr Russell: I do not believe there is any reference on our files to anything.

The CHAIRMAN: Did you have contact with the Department of Land Administration?

Mr Russell: No.

The CHAIRMAN: I am trying to get a sense of whether you would have been caused to contact any agency either by regulation, as Mr Masters suggested, or by accepted procedural practice?

Mr Lim: I could clarify that. In practice we now advise local authorities just as a matter of courtesy that we have received an application from a person or company to establish a dangerous goods store.

The CHAIRMAN: When did that practice start?

Mr Lim: A few years ago now; possibly back in the 1980s.

Mr MASTERS: Mr Russell, you referred earlier to a file note that your department made a decision on 13 February to close the site and not renew the licence but that it may be able to operate on a special licence?

Mr Russell: Yes.

Mr MASTERS: Would that decision of your department been passed on to the operator, Dr Claflin?

Mr Russell: Not at that time.

Mr MASTERS: I asked that because there was a fire two days later. I wonder whether we as a committee should be suspicious of the fact that your department made a decision on 13 February. It is clear that Dr Claflin was almost certainly in a frame of mind which would have required him to plead guilty to the 10 offences later in the year. However, I am curious about the fire two days after your department made a decision to close the site. Is it possible that someone from your department could have contacted Dr Claflin or he, by accident, could have contacted your department and found out that information although there was no formal way in which that knowledge was passed on?

Mr Russell: There is certainly no formal way. It was an internal memo addressed to me, dated 13 February. I did not see the memo until after I knew about the fire.

The CHAIRMAN: Which section in your department is that memo from?

Mr Russell: This is from one of my inspectors who had a close involvement with the site and was instrumental in the successful prosecution.

Mr MASTERS: The crown prosecutor was saying that there was not enough evidence for the 10 breaches of the Act, in particular the labelling of drums. Last week we received evidence from a former employee of Waste Control which said that whenever materials were delivered on site - essentially the day that they were delivered on site - every drum was assessed and an appropriate label put on the outside of the drum. Are you questioning the veracity of that statement or are you suggesting that the labelling was small or difficult to read?

Mr Russell: The difficulty was proving in a court of law that the label on the drum represented what was in the drum. There may have been a generic name. I did hear that evidence, and I do understand that there was some process by which waste received at the site was labelled. If there were doubts, it was sent back. Our difficulty, as I understand the advice from our solicitor, was that in a court of law we would need to prove what was in there. At the end of the day we relied on a statement given to us by Dr Claflin. It was tabled in evidence, so it was not in dispute. If we had not accepted in evidence the statement from Dr Claflin that that number of drums contained dangerous goods, my understanding is that we would have to have tested them.

Mr MASTERS: If drums delivered to the site were assessed and labelled within 24 hours, and a week later you saw those drums and the labelling on the outside, either the labelling was correct, in which case you did not have to prove that point in a court or law, or it was incorrect, in which case it was another breach of regulations.

Mr Lim: I was there in September and October when we took evidence on the site.

The CHAIRMAN: Was this last year?

Mr Lim: Yes. Although a lot of the drums were correctly labelled, a lot of the drums were not marked at all, so we had no idea what was inside. It may be an opportune time for me to present copies of photographs to the committee. These photographs were taken in September and October of last year. They give an overview of the site.

Mr MASTERS: Are you saying that you would question the claims that all drums and other containers were assessed and labelled appropriately within 24 hours?

Mr Lim: I would question that because some of the drums had been there for many months, even before Ms Irvine-Marshall was employed. A lot of them were covered by tarps. It would be very difficult to take them off and look at the labels. Some of the drums were badly corroded and unlabelled.

Mr MASTERS: Do you have a chemistry background?

Mr Lim: Yes, I do.

Mr MASTERS: Do you believe that there were chemicals on site that could have self-combusted?

Mr Lim: Not that I am aware of. Based on what we saw in September and October, I did not see any chemical that would self-combust.

Mr MASTERS: Do you have any expertise in combustible products?

Mr Lim: Just generally hydrocarbons and things; just general information, not detailed information.

Mr MASTERS: Not the nature of the chemicals or compounds that might result from the combustion or the toxicity?

Mr Lim: Yes.

Mr MASTERS: Were you aware at any stage of pesticides being stored on the site?

Mr Lim: Not at the time of the inspection. We saw lots of flammable liquids and certainly perchloroethylene which has been brought to your attention. There were some by-products of pesticides we were told about by Dr Claflin in October.

Mr MASTERS: “By-products” meaning that they had been rendered non-toxic?

Mr Lim: Low toxicity or not even toxic pesticides. There are lots of pesticides around that are not poisons.

Mr MASTERS: Did you at any stage hear or see whether mercury was stored on the site other than the small quantities in the laboratory?

Mr Lim: I was not aware of it.

Mr MASTERS: What about other toxic substances as opposed to dangerous substances?

Mr Lim: The only toxic substance that we would have seen there would be perchlorethylene. It was in abundance at the time.

Mr MASTERS: On 27 July 1999 there was a run-off of some liquid from the site. We have received mixed submissions about that. One set of submissions suggested that it was a liquid chemical run-off but another from a former employee said that it was simply a stormwater run-off that was only lightly contaminated with chemicals on the site. Do you have any detailed knowledge of what ran off the site?

Mr Lim: I do not.

The CHAIRMAN: At the time that Cabinet was discussing making a loan of \$100 000 to assist in the removal of the non-complying excess materials, did the department make a submission on that?

Mr Russell: We were aware of it. We did inform our minister on our involvement by advice dated 27 August. That advised -

DEP has taken the lead in this matter and has prepared a cabinet submission for finance assistance in dealing with the site.

There are details about the amount of money and the drums in question. It goes on -

... this Department has issued a written instruction to the operators to comply with the dangerous goods regulations within two months or face prosecution and/or licence suspension.

That was in August 1999. That is why we tried to initiate the first prosecution, even after the removal of those drums in early 2000. We kept on trying to work out how to get a successful prosecution. That was not until that inspection of September-October.

The CHAIRMAN: What was your recommendation to the minister?

Mr Russell: The recommendation to the minister was, first, to note the issue and endorse the action of the department.

The CHAIRMAN: Of the Department of Environmental Protection?

Mr Russell: No, my department - secondly, to note the action that we were going to write to the operator another threatening letter; and, thirdly, to be aware of the likely cabinet submission being put up by the DEP through its minister.

Mr DAY: Were you supportive of that submission?

Mr Russell: Yes, I believe we were.

The CHAIRMAN: That is what I was trying to get to.

Mr Russell: I believe my department was supportive of the proposal to reduce the stockpile as a useful away of reducing at least the risk.

The CHAIRMAN: Even though you knew at the same time you were likely to be proceeding fairly shortly afterwards, notwithstanding the removal of non-complying materials, with a prosecution of possibly other operational matters?

Mr Russell: Yes. My reading of the file is that the attempt to work with the operator to secure a successful outcome was not going to happen. Certainly a reduction of the number of drums on the site was a good idea from our point of view but we did not think it was the solution because it did not address our real issues of the good management of the site, the maintenance of the bunding, the separation and the way that the material was still stacked. Even with the removal of those drums off site, the problems still remained. I guess that was indicative of how far the boundaries of good management of the site had been pushed.

The CHAIRMAN: Mr Russell, I know that yours is not the lead agency nor wholly responsible for that process. I am still pursuing more information so that I might understand why in August 1999, although the Government decided to lend an organisation \$100 000, within two months the Government moved to prosecute it, which would result in a \$200 000 fine. I find that passing strange.

Mr DAY: From my recollection, and I think this is outlined in a copy of the cabinet submission that has been provided to us, the primary aim was not to lend the company money but to reduce the risk on the site, as I understand it.

The CHAIRMAN: In the form of a loan?

Mr DAY: The submission made to Cabinet was that supplementary funding be provided to the DEP to ensure that those drums were removed. As far as recovering the money down the track was concerned, it was by no means the primary issue. The primary issue was to reduce the risk on the site, was it not?

Mr Russell: I think it was. I gather from the records that we have submitted to the committee that the then Department of Minerals and Energy would have supported almost any option recommended to reduce the quantity of product on the site. The document reads -

It is important to note that under different circumstances the Division would have prosecuted or closed down the premises due to non-compliances with Dangerous Goods regulations. This stance was based upon Waste Control being active and willing to progress a program of upgrading.

We kept receiving information of programs. Our file is full of promises from the company that one weekend they would do this and the following weekend they would do that. They submitted work programs to us time and again. Some of the work was done. We were -

The CHAIRMAN: Ever hopeful?

Mr Russell: The paragraph concludes -

A decision has now been taken to bring this matter to a conclusion.

In August 1999, the Department of Minerals and Energy decided that certain action must be taken for the cancellation or suspension of the licence and prosecution action. It was not until December of the following year that that was successful.

Mr DAY: If I may comment? The principle of providing \$100 000 of taxpayers' money was not something that anybody liked doing at all. It was exactly the same principle as the \$7 million of taxpayers' money being used to clean up the Omex site in Bellevue where the responsibility rested in theory with the company that polluted the site but it was a matter of the realities of getting money out of the company. None was available in reality. Taxpayers' funds were provided to improve the

situation for the community by substantially reducing the risk. The principle in this case was exactly the same.

The CHAIRMAN: The second from right photograph in the top row of the photographs Mr Lim passed to us shows the front gate on which is the red canister.

Mr MASTERS: I am not sure that is the front gate. When we visited the site we went in through a gate on the left-hand side.

The CHAIRMAN: That was for deliveries.

Mr MASTERS: Looking at the amount of junk that is immediately behind the driveway, I do not think that any vehicle could get in there beyond one trailer length.

The CHAIRMAN: That is right, but this is the accepted entry to the office. Do you know if that is the canister or not?

Mr Russell: Mr Lim is not sure, but I have another inspector in the room who would be able to answer that question.

The CHAIRMAN: Would you just check with him.

Mr Russell: Yes. Mr Cunningham confirms that that is the canister in which the manifest should have been kept.

The CHAIRMAN: So the emergency response plan and the manifest would have been in there. That is the standard procedure, is it not?

Mr Lim: Generally it is just the manifest, which would tell people the location and the quantity of dangerous goods on site.

Mr MASTERS: It is a site map.

Mr Lim: Yes, with details of the storage.

The CHAIRMAN: When was the last time that you saw a copy of that or your department inspected that? Do you have a record of that?

Mr MASTERS: Do you have a responsibility to check?

The CHAIRMAN: If you cannot answer that -

Mr Russell: Can I take that on notice, please? I would certainly be able to confirm the date when we last inspected the manifest.

The CHAIRMAN: We will get to Mr Masters' question in a minute. However, I want to understand, firstly, when was the last time you saw it. Secondly, at any stage was any sampling done to correlate what was on the site and what the manifest listed as being on the site?

Mr Lim: We did not do any sampling.

The CHAIRMAN: You took that on face value and on the basis of the professional standards of the chemist employed by Waste Control Pty Ltd; is that correct?

Mr Lim: Yes.

Mr MASTERS: I have two quick questions. Which government agency declares or defines a site a Hazmat site?

Mr Russell: I am not sure - Hazmat site -

Mr Lim: Can you clarify what you mean by Hazmat site?

The CHAIRMAN: At page 11 of 13 of your submission, for example, the third last paragraph states -

The arrangement under which the Division operates is prescribed in the WestPlan HazMat document.

Mr Russell: The Hazmat document flows from the State Emergency Management Advisory Committee policy statement No 7, I believe, whereby the various agencies have responsibility for various emergencies. Therefore, marine oil pollution would be with what was the Department of Transport, and this type of emergency would be with the Fire and Emergency Services Authority of WA. In that Hazmat document, the agencies agree on their role in relation to any emergency.

Mr MASTERS: Are you aware whether there is a definition in any legislation in Western Australia of what are hazardous materials?

Mr Lim: There is - hazardous substances and dangerous goods.

The CHAIRMAN: Sorry, there are two definitions; one relates to hazardous substances?

Mr Lim: Yes.

Mr MASTERS: In your Act?

Mr Lim: Our Act refers to dangerous goods in particular, not hazardous substances.

The CHAIRMAN: Where do the definition and specification -

Mr Lim: Hazardous substances would come under WorkSafe legislation. Dangerous goods are really a subset of hazardous substances.

Mr MASTERS: The reason I am asking is that, as I understand the way in which FESA operates, if FESA goes to a site that has been declared a Hazmat site, it must be far more cognisant of safety and different techniques for fighting a fire and so on. I am just curious. If I had battery acid at home, could I go down to the local hardware store, buy a Hazmat sign and stick it on the front door of my house, for example? Is the opportunity so free?

Mr Russell: I am not sure, I am sorry.

Mr MASTERS: Finally, I am looking at the bottom right-hand corner of the photograph of the fence with all the gaps in it. Is the vapour barrier designed to stop combustible gases passing from one property to another.

Mr Lim: That is correct.

Mr MASTERS: I am now looking at the aerial photograph right in the middle. Prior to the fire, there were clearly quite a few trees around the site. You did not say - you will correct me if I am wrong - to the proponent or the operator that it must cut down those trees and fill the gaps. The fence could have been built around those trees.

Mr Lim: That is fair enough.

Mr MASTERS: It was the vapour barrier that was being requested.

Mr Lim: The fence had gaps, and it also had nail holes. They were like second-hand sheets; they were not put together professionally. They did not achieve what they were designed to do.

The CHAIRMAN: What were they made of?

Mr Lim: Tin.

The CHAIRMAN: Corrugated iron?

Mr Lim: Yes.

The CHAIRMAN: I refer again to page 11 of 13. In the second last paragraph of the submission, Mr Limerick states -

During the night, advice was given in relation to the properties of the chemicals thought to be at the site.

As part of our line of inquiry, we are trying to understand at what stage during this incident it became clear that a range of potentially dangerous chemicals were on site, and how that information was circulated through all the authorities involved. Can you be any more specific about that statement? During the night, at any time from 10.00 pm or 11.00 pm on the Thursday through to 5.30 am or 6.00 am on the Friday -

Mr Russell: I made the decision not to go into a great deal of detail about our role on the night because I thought that the FESA log and the FESA details would be far more specific, and I wanted to avoid duplication or any confusion. One of my inspectors was called and attended the FESA headquarters as soon as possible.

The CHAIRMAN: That was as part of the hazardous emergency advisory team?

Mr Russell: Yes. That inspector is in the room now. However, I think he arrived at about one o'clock in the morning, and for part of the team he provided advice. The advantage we had with that inspector was that he had been involved with this site and had been the primary inspector involved in the prosecution, with Mr Lim, and therefore had a reasonable working knowledge of what was on the site, based upon a number of inspections in the preceding six months or so. My understanding is that during the night that team considered responses in relation to the known products on the site. As Mr Lim said, certainly products such as the perchlorethylene on the site were well known. That would have been known to the emergency response people on the site.

Mr MASTERS: You do not see a need to ask that person who is here to double-check to make sure that he was not aware of pesticides, mercury or other toxic substances on the site? You are confident that the answer Mr Lim gave me a while ago -

Mr Russell: Mr Lim and Mr Cunningham did these inspections together, so I am very confident that Mr Lim is correct.

The CHAIRMAN: I am still trying to clarify when your knowledge of the range of chemicals was fed into the hazardous emergency advisory team's assessment and management. Would you say that was some time after 1.00 am?

Mr Russell: Yes, but I would prefer to call Mr Cunningham to give specific evidence about that.

The CHAIRMAN: You can check with him if you like.

Mr Russell: Mr Cunningham confirmed that he arrived at about quarter past one on the night of the fire and immediately gave evidence about the chemicals. However, the Department of Environmental Protection had been involved since much earlier in the night and was also aware of the details of the chemicals on the site. My understanding is that the DEP officers had at least the same knowledge that we had about the chemicals on the site at that time. It also had a very close involvement with Waste Control prior to the fire.

The CHAIRMAN: However, as far as you know, it would be hearsay that it passed on that information.

Mr Russell: Yes. I cannot confirm that it passed on that information.

The CHAIRMAN: Do you know whether there was any change to the management of the incident as a result of that information?

Mr Russell: Management of the incident?

The CHAIRMAN: Yes. Let me clarify why I asked that question. It has been submitted to the committee that initially the response was as per most factory fires or fires involving a business property or buildings and personal property; that is, that the first point of attack is to reduce the loss of property. Questions have been raised about whether that was a wholly appropriate response, given the nature of the chemicals on the site and the potential for a greater public health risk, or, indeed, a health risk to those involved in fighting the fire. Are you aware of a shift in the way that

incident was being dealt with that might have been caused by the advice that you gave to the hazardous emergency advisory team?

Mr Russell: No, I am sorry, I do not have any information in that regard.

The CHAIRMAN: Would you like to check with your adviser?

Mr Russell: Yes. I will submit into evidence what Mr Cunningham said. He said that he is not aware of any change in the way in which the response was managed as a result of his involvement with the HEAT.

Mr MASTERS: Because the Environmental Protection Authority or the DEP had already advised the HEAT of chemicals on the site.

Mr Russell: I need to check again.

The CHAIRMAN: Mr Russell, if you would relay that into evidence, that would be terrific.

Mr Russell: Mr Cunningham has advised me that, as part of the HEAT, DEP was involved, and it had that information. He is not aware that there was any change in the management of the response subsequent to our arrival at FESA headquarters. He also confirmed that, in his opinion, FESA was aware of the chemicals on the site at that time; that is, after one o'clock.

The CHAIRMAN: This is my last question on this line of inquiry. With the benefit of hindsight, which is a wonderful thing, do you think those assessments were appropriate, or was there an underestimation of the capacity of those materials to ignite and burn in the way that they did?

Mr Russell: Are you referring to the night of the fire or to our approach to the fire?

The CHAIRMAN: No, I am talking about the attempt to manage that incident from 11.00 pm on Thursday until the time the fire was effectively under control later the next day.

Mr Russell: Again, I am not in a position to answer that question.

The CHAIRMAN: Mr Lim, do you have a view about that?

Mr Lim: No.

The CHAIRMAN: Thank you very much for providing such detailed information. Do you want to add anything else in summary?

Mr Russell: No, thank you.

The CHAIRMAN: Mr Russell and Mr Lim, thank you very much indeed.

Proceedings suspended from 10.29 to 10.49 am