

ECONOMICS AND INDUSTRY STANDING COMMITTEE

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH,
THURSDAY, 6 SEPTEMBER 2001**

FIRST SESSION

Members

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

RAINE, MR KENNETH JOHN,
Manager, Pollution Response, Department of Environmental Protection,
141 St Georges Terrace,
Perth, examined:

TROMP, MR FRED,
Director, Resource Science, Department of Environment, Water and Catchment Protection,
9th Floor, Hartley Poynton Building,
141 St Georges Terrace,
Perth, examined:

HINE, MR PHILIP THOMAS,
Assistant Director, Pollution Prevention, Department of Environmental Protection,
PO Box K822,
Perth, examined:

CLARK, MS SHARON VICTORIA,
Environmental Officer, Department of Environmental Protection,
Westralia Square,
141 St Georges Terrace,
Perth, examined:

The CHAIRMAN: Good morning and thanks for coming today. I have to go through a couple of procedural matters just to confirm you understand each of your roles here. Going from my left to right, Will you each state the capacity in which you appear before the committee, please?

Mr Raine: I am appearing as an employee of the Department of Environmental Protection. My position is Manager of the Pollution Response Service.

The CHAIRMAN: Have you completed the "Details of Witness" form?

Mr Raine: I have.

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

Mr Raine: Yes, I did.

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

Mr Raine: Yes, I did.

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

Mr Raine: Yes, I did.

Mr Tromp: I am currently posted, following the machinery of government changes, to the Water and Rivers Commission at 3 Plain Street, East Perth. For the events that the committee is inquiring into, I was an employee of the Department of Environmental Protection, for which the business address is 141 St Georges Terrace, Perth.

The CHAIRMAN: Have you completed the "Details of Witness" form?

Mr Tromp: Yes, I have.

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

Mr Tromp: Yes, I do.

The CHAIRMAN: Did you receive and read an “Information for Witnesses” briefing sheet and guidance note regarding giving evidence before parliamentary committees?

Mr Tromp: Yes, I did.

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

Mr Tromp: Yes, I do.

Mr Hine: I am an employee of the Department of Environmental Protection at 141 St Georges Terrace, Perth.

The CHAIRMAN: Have you completed the “Details of Witness” form?

Mr Hine: Yes.

The CHAIRMAN: Did you receive and read an “Information for Witnesses” briefing sheet and guidance note on giving evidence before parliamentary committees?

Mr Hine: Yes.

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

Mr Hine: I did.

Ms Clark: I am an officer of the Department of Environmental Protection.

The CHAIRMAN: Ms Clark, can I clarify one point. You are an officer of the Department of Environmental Protection. What is your role?

Ms Clark: I am currently Acting Manager of the Contaminated Sites Branch of the DEP.

The CHAIRMAN: Did you complete the “Details of Witness” form?

Ms Clark: Yes, I did.

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

Ms Clark: Yes.

The CHAIRMAN: Did you receive and read an “Information for Witnesses” briefing sheet and guidance note regarding giving evidence before parliamentary committees?

Ms Clark: Yes, I did.

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

Ms Clark: Yes.

The CHAIRMAN: The committee hearing is a proceeding of Parliament and warrants the same respect that proceedings in the House require. Even though you are not required to give evidence on oath, any deliberate misleading of this committee may be regarded as a contempt of Parliament. Having made those foreboding statements, I welcome you and thank you once again for coming. The committee has received a submission under the names of Mr Tim McAuliffe and Fred Tromp from the department. Who is leading this presentation?

Mr Tromp: I am.

The CHAIRMAN: Do you want to make any amendments to the submission the committee has?

Mr Tromp: No.

The CHAIRMAN: Is it your wish that that be incorporated into the transcript of hearing?

Mr Tromp: If it could be, yes.

The CHAIRMAN: I do not know whether you have observed the committee's process before today, but the pattern we follow is that we will invite you now to talk to that submission if you like. If manageable chunks or particular areas are of interest to the committee, we might stop and have a discussion about them. Therefore, Mr Tromp, you might like to lead off.

Mr Tromp: Sorry, Mr Chairman, are you inviting me to read the entire submission?

The CHAIRMAN: No, certainly not. The committee has read it. I am really asking whether you want to frame your presentation or frame that submission.

Mr Tromp: I will make a very brief opening statement, which will take only a couple of minutes, on the basis that I assume the committee is familiar with our submission. I will make four broad points. First of all, with regard to the Department of Environmental Protection's enforcement approach, which has been queried, in most cases we will try for a negotiated solution with the proponent or the licensee, rather than move immediately into a prosecution or full enforcement approach. This is what the department believes the public and the Government expect of us. The exception would be when there has been obvious negligent pollution, and in that case we would seek very quick punitive action.

The second point is about this inquiry and the situation of the company, Waste Control Pty Ltd. The market for solvent recycling had developed into a situation in which a monopoly had been created. Although some measures can be taken to avoid this in the future, it must be borne in mind that the Western Australian market for this activity has always remained relatively small, and there is always the risk of a single operator undercutting competitors.

Thirdly, for most of these types of conflicts between industrial use and emissions and residential neighbourhoods, we believe that the real issue is fundamentally one of a planning conflict. We believe that urban planning should not allow residences to encroach on industry and into its buffers, and we have many examples on our files whereby this inevitably leads to conflict and complaints.

Fourthly, I point out, as we stated in our submission, that the Government and the department have put in place various measures to help avoid a repeat of the Waste Control situation developing. I further stress that these measures were under development well before the fire took place on 15 February this year. These measures include the new Environmental Protection (Controlled Waste) Regulations 2001, and we also have other proposed changes in a new waste management Bill that the Government hopes to put before Parliament in the near future. These measures will be supported by efforts to put in place extended producer responsibility or product stewardship. However, despite all these measures, we can never guarantee that a waste fire will not occur in the future as a result of an arson attack. Therefore, we believe that the key is to get the planning right so that the risks are reduced significantly; and then back that up with a robust regulatory approach. Those are our four main submissions.

The CHAIRMAN: We will go back to the second submission. You commented on the monopoly situation having developed in a relatively small market in Western Australia. It was submitted to the committee yesterday by the former general manager of Waste Control that in fact it did not have a monopoly, that it was in a very competitive-type market, and that it did not undercut competitors to maintain market share. Do you monitor prices as part of your understanding of the waste management industry?

Mr Tromp: No, the department does not do that. Those comments are largely gathered from my colleagues in the waste management division of the department, who certainly have monitored very closely the operation generally of the waste industry, and in fact facilitate it. It is certainly their observation that competitors were in the market in 1995-96, but the other operators eventually went out of the market because they could not compete with the prices being offered by Waste Control Pty Ltd.

Mr DAY: A view was also expressed that if attempts were made to increase the price for recycling and disposal of solvents and so on, that market just dried up and materials went missing - presumably dumped illegally or whatever. Is that a concern you have? Do you think that is a valid point?

Mr Tromp: I think that is certainly a very valid comment. In fact, that was a word that first came to mind when you commenced on this point. It was certainly part of the situation about which Waste Control Pty Ltd complained; that is, that a sufficient regulatory regime was not in place, and that raising the costs would simply drive the business away. Therefore, they were charging low prices. The Environmental Protection (Controlled Waste) Regulations are the response to that situation, in the sense that they provide a regulatory regime whereby people are, by law, required to operate in a particular way and to ensure that waste solvents of this type finish up at an appropriate facility. Therefore, that loophole has been closed in a more managed sense than simply trying to track down however many hundred operators there are who might be putting material down a particular drain.

Mr DAY: Are those regulations in preparation at the moment?

Mr Tromp: I will pass this to Mr Hine, who is in charge of those regulations.

Mr Hine: Those regulations were gazetted in March and came into force from 1 July this year.

Mr DAY: Do they appear to have been effective?

Mr Hine: It is a bit early to tell, because we are still in the phases of rolling them out and implementing them properly.

Mr DAY: Will they apply to all dry-cleaning businesses, for example?

Mr Hine: Yes, they will.

Mr DAY: Will those businesses be made aware of these regulations and have to comply with them?

Mr Hine: Yes.

Mr DAY: Have you had any reaction from the dry-cleaning industry to those regulations?
Speech Continues...

Mr Hine: The Drycleaning Institute of Western Australia represents about 40 per cent of the drycleaners in Perth. It is very supportive of these regulations and is helping and encouraging us.

The CHAIRMAN: What about the 60 per cent of drycleaners who are not members?

Mr Hine: They have received letters explaining their obligations. We are putting in place the administrative infrastructure.

The CHAIRMAN: The 60 per cent of the industry which is not part of the institute is characterised by small businesses on very tight margins who undercut the charge-out rate of association members. It has been suggested that they are less inclined to regulation and more difficult to monitor and ensure compliance.

Mr Hine: That is partly true, but the nature of the Environmental Protection (Controlled Waste) Regulations means that the businesses producing these sorts of waste must be licensed and will not be able to legally get rid of waste except through a licensed carrier. We will know where and to whom people are shipping waste.

The CHAIRMAN: What if they do not ship it?

Mr Hine: That will obviously be a trigger for us to ask them what they do with their waste.

The CHAIRMAN: Do the regulations track materials in and out?

Mr Hine: They track materials from producers to waste disposal sites.

The CHAIRMAN: Do they not track waste from the supplier of the primary cleaning product?

Mr Hine: Only 140 drycleaners operate in Perth. It is not a big number. We will have obvious targets for inspection and questioning if 80 or 90 drycleaners are routinely shipping waste and 20 or 30 are not. We will have the information base to be able to target people we think may not be doing the right thing.

Mr DAY: Do you have inspectors to examine sites?

Mr Hine: Yes.

The CHAIRMAN: How many inspectors do you have?

Mr Hine: We have four inspectors in that area.

The CHAIRMAN: Given that 60 per cent of the 140 operators -

Mr MASTERS: Those 140 operators are in Perth. How many drycleaners operate throughout the State?

Mr Hine: I do not know that.

Mr DAY: Will you enforce these regulations outside Perth?

Mr Hine: We will do that progressively. We will concentrate on Perth and later move to places like Bunbury and Kalgoorlie; the larger centres.

The CHAIRMAN: What impact will the regulations have on prices in the dry-cleaning industry?

Mr Hine: Prices should go up. Drycleaners will have to treat their waste properly.

The CHAIRMAN: Will that environmental cost which is not being borne at the moment have to be built into the charge-out rate?

Mr Hine: Yes.

Mr DAY: Where does the waste in country areas go?

Mr Hine: I do not know. It is plausible that some is going to landfill, but I would not want to comment on that.

Mr MASTERS: For the record, I visited a Busselton drycleaner two days ago. It stores its perchlorethylene waste out the back and ships it to Geelong when it has a full load. I suspect some waste goes to landfill and other undesirable resting places.

Mr DAY: Someone in Busselton is doing the right thing.

Mr MASTERS: We always do.

Mr DAY: I meant in respect of drycleaners.

The CHAIRMAN: We all know that Busselton people make that effort.

An operator in the general waste management industry submitted that an adequate monitoring or control regime for the transport of waste cannot be developed without an understanding of the supply side. I understand you make risk assessments. Would it be fair to characterise it like that?

Mr Hine: It relates to what is possible to regulate within the context of the legislation.

The CHAIRMAN: Does that mean resources?

Mr Hine: To an extent. It relates more particularly to the focus of our legislation, which is to prevent pollution. Regulating suppliers of raw materials goes to the side of our role. However, the controlled waste regulations allow us to offer licence fee discounts to people who are parties to an approved scheme, such as an extended producer responsibility scheme. There is a limited number of perchlorethylene suppliers. We want to sign them up to a deal whereby they take back the waste from the products they sell and direct it to a proper place. People who sign up to that scheme will

get a reduction in fees. We are actively trying to encourage people to work through a smaller number of key suppliers - about half a dozen or so - rather than deal with the hundreds of individual waste disposal operators.

The CHAIRMAN: Are the suppliers licensed?

Mr Hine: Not with us.

The CHAIRMAN: Who are they licensed with?

Mr Hine: If they store large quantities of dangerous goods, they may have dangerous goods licences. The activity of supplying is not a polluting activity that we would license.

Mr DAY: You mentioned that legislation is being prepared. Has that been under preparation for some time?

Mr Hine: Yes.

Mr DAY: Has it been drafted?

Mr Hine: Yes.

Mr DAY: Was approval for drafting given some time ago?

Mr Hine: Yes.

Mr DAY: Is it close to being ready for introduction into Parliament?

Mr Hine: It is.

Mr DAY: What will be the main effects of that legislation?

Mr Hine: It will provide the agency with stronger powers to investigate producer responsibility activities.

Mr MASTERS: How would you describe your department's dealings and professional relationship with the proprietor of Waste Control Pty Ltd, Dr Jeff Claflin? How would you describe his willingness or otherwise to meet the regulations and criteria laid down by your department?

Mr Tromp: I will make some opening remarks, and my colleagues who have experience with Dr Claflin may want to elaborate. Dr Claflin only recently became the sole owner of the company.

The CHAIRMAN: It was tendered in evidence yesterday that he is not the sole owner.

Mr DAY: He is certainly a majority owner.

Mr Tromp: We dealt with him as representing the company in isolation for the past six months of the licence period. Before that, we dealt also with Rob Mathers, one of the other directors of the company. I want to bring Mathers into the picture, because I spent some time negotiating the licence conditions with him. Those conditions were signed off and subsequently not complied with. From a professional point of view, we found dealing with Dr Claflin and Mr Mathers as licensees difficult. We were often promised things that did not eventuate. I am sure the committee has heard from Dr Claflin that the reasons for that were largely financial, because the company was always trading on the margins.

Mr DAY: Do you believe that?

Mr Tromp: From our knowledge of the company, it is probably a correct assessment. Nevertheless, many promises were not kept. We made a decision to prosecute the company for breach of licence conditions shortly before the fire took place.

Mr DAY: Was that decision to prosecute separate from that made by the Department of Mineral and Petroleum Resources?

Mr Tromp: Yes, that is correct.

Mr DAY: Were you going to prosecute separately?

Mr Tromp: Yes; we were going to prosecute for breach of the environmental licence conditions.

Mr MASTERS: Was that decision made in November 2000?

Mr Tromp: No, the decision to proceed with prosecution was made in early February, although I would have to check my notes. I came back from leave to press for that prosecution because I was concerned that the department was considering giving the company more time.

Mr MASTERS: Your submission says that a show-cause letter was sent to Waste Control in November 2000. We received evidence yesterday that the Department of Mineral and Petroleum Resources decided on 13 February, two days before the fire, to launch prosecuting proceedings.

Mr Tromp: That is not the decision to which I am referring.

Mr MASTERS: Were you working hand in glove with the Department of Mineral and Petroleum Resources during the decision-making process?

Mr Tromp: No. It was a separate action. We did not work with the Department of Mineral and Petroleum Resources. The decision was made purely from the Department of Environmental Protection's point of view.

Mr DAY: Were you aiming for a punitive outcome or to discontinue the licence?

Mr Tromp: The purpose of the prosecution was to have the company fined for not complying with the licence conditions to which it had signed on.

Mr DAY: Did you not go ahead with prosecution because of the fire?

Mr Tromp: We are considering the matter internally. We have been in negotiation with Crown Law for some time. Based on its advice, our present intention is to continue prosecution proceedings against the owners of the company rather than the company itself.

Mr MASTERS: Considering the financial status of the company, and assuming that the fire had not occurred, is it reasonable to assume that successful prosecution by the DEP would have effectively caused the company to close?

Mr Tromp: That is a matter of speculation; I am not certain about that. Certainly, I was aware that shortly before this incident took place, the company had employed an environmental consultant who carried out considerable work on this site. From information that I obtained from my officers, it seemed that considerable sums of money were being spent on matters that were not directly related to preventing the pollution of the environment; that is, the adequate building and maintenance of the bunding, which is supposed to contain the liquid materials.

Mr MASTERS: Will you give the committee an indication of the money being spent other than on pollution control? The committee has received evidence that not a great deal of money was spent on that site over the years.

Mr Tromp: I would have to refer back to the Department of Environmental Protection records to find out whether we had dollar signs attached to the consultants' work on the site. I cannot quote those dollar sums here and now.

Mr MASTERS: Were your dealings with Rod Mathers similar to your dealings with Dr Claflin? Did you have similar difficulties getting him to carry out work on the ground that he had promised?

Mr Tromp: Yes, we had identical difficulties. Rod Mathers had a more hands-off relationship with the company. He did not operate on the site in the same way that Dr Claflin did as the manager of the site. I know that Dr Claflin could be difficult and abrasive in his dealing with officers from my department, because I have heard anecdotes from officers who visited the site. I am not sure whether Mr Raine would like to add anything to that.

Mr Raine: Yes, that statement is correct. I have attended the site a couple of times since I first visited the site in July 1999 concerning a pollution incident. I have been to the site about four

times. It seemed that Dr Claflin did not think that the prevention of pollution was very important; for example, I asked him to install a system to take rainwater and filter it before it was discharged onto the property. On the first occasion I inspected that system I found that it was inoperative and that the pipes were disconnected. On the second occasion, the absorbent material inside the containers, which were supposed to absorb the hydrocarbons, had completely solidified and had become inoperative. When I asked him to do something about it, he only grunted. When I again asked him whether he would do it and whether he understood what I had asked him to do, he said it that it was not a good use of his resources. It was my impression that he considered environmental protection to be a secondary consideration.

The CHAIRMAN: Mr Raine, yesterday an officer from the Department of Mineral and Petroleum Resources described the relationship with Dr Claflin as one that was characterised by brinkmanship over a number of years. I do not know how long your relationship with Dr Claflin goes back.

Mr Raine: I will show my ignorance; I do not understand the word “brinkmanship”.

The CHAIRMAN: Mr Tromp has used the word “abrasive” to describe Dr Claflin; brinkmanship is a variation on that description. It was suggested to the committee that Dr Claflin would resist complying with requirements up to the last moment and do only the absolute minimum work necessary to avoid departmental action. He would then again resist complying with the requirements until the department was again about to take action, and then he would do the absolute minimum work necessary to avoid that non-compliance triggering action being taken by the department. Is it your experience that the relationship between the department and the manager was characterised by a series of peaks and troughs?

Mr Raine: Unfortunately, I cannot confirm that because I dealt with Dr Claflin only on the occasions when I was called to the site as the pollution officer, or when I inspected a follow-up. I did not have day-to-day dealings with him as a licensing officer. On one occasion I went to the site after I received a complaint that he had stored in drums the product called hydrofluoric acid, which is an extremely dangerous acid. As little as 200 milligrams has been known to kill people who have been exposed to it. On 16 November 1999, I inspected the site. I located four rusted drums at the rear of the premises within a bunded area that had the letters HF on them, which is the chemical abbreviation for hydrofluoric acid. At least one of the drums was so rusted that it had a large hole in it and I could see the plastic or teflon liner on the inside of the drum. Having that acid in that container on the premises was bad enough; however, someone had put a pallet on top of the drum with two more 200-litre drums on top of the pallet. If the drums had been full, they would have weighed some 400 kilos. I asked Dr Claflin why the drums were there.

The CHAIRMAN: Did all the drums contain hydrofluoric acid?

Mr Raine: I do not know about the drums that were on top. From memory, they were not marked. I could not believe that someone would put weight on top of drums that were already unsound. Although we did not have the power to do anything, on the basis of safety, I gave Dr Claflin instructions that the hydrofluoric acid had to be processed immediately. I asked the staff on the site whether they were aware that hydrofluoric acid had been stored out the back, because I was very concerned about it.

The CHAIRMAN: When you say that you did not have the power, is that because no pollution occurred at the time?

Mr Raine: That is correct. If the acid had been released and had escaped outside the bunded area, even legislation that covers the DEP may not have classed it as pollution. Although I am not a chemist, I quickly obtained some information about hydrofluoric acid and found out that it would react quickly with the sand and would not penetrate and cause pollution to the environment and cause pollution off the site. It was more an issue of safety.

Mr MASTERS: Did you advise WorkSafe of the safety issues?

Mr Raine: A number of safety issues that occurred on that day -

The CHAIRMAN: Would you refer to that particular drum for the moment.

Mr Raine: My notes indicate that I passed on a number of matters to the Department of Minerals and Energy.

The CHAIRMAN: Was that a licensing matter?

Mr Raine: It was a dangerous goods matter. I raised another matter with WorkSafe about a fire extinguisher that had been discharged near the distillation units.

Mr DAY: Was the matter of the hydrofluoric acid dealt with after you reported it?

Mr Raine: I was told that it was. Some time later, I phoned Dr Claflin and he said that hydrofluoric acid was not contained in those drums. He said that it was some other type of acid that had been marked incorrectly and that he had processed it.

Mr MASTERS: Would you describe Dr Claflin as a professional operator?

Mr Raine: I do not know of his professional status. He seemed to me to give an air that he knew better than anyone else.

Mr MASTERS: What about the way in which he operated the site?

Mr Raine: The site was the worst that I have ever seen in my short career in pollution management. I had worked for the department for only four months before I visited that site. However, I have been an environmental health officer for 15 years, and I have not seen a site like that. I was concerned about the amount of chemicals and drums that leaked.

Mr DAY: Would the DEP have preferred the site to have closed down if the business ceased to operate?

Mr Tromp: I will make two points. Mr Hine, who is a professional chemist, might care to comment on Dr Claflin's general tenor and his operation of the site. Mr Hine has been on the site a number of times and has spoken to Dr Claflin. I would then be happy to respond to the question asked by Mr Day.

The CHAIRMAN: We will deal with that question first; that is a good idea.

Mr Hine: It is difficult to know whether he is a cowboy, as he has been called, or whether that is all he could be because of his financial situation. My guess is that he is technically competent as a chemical engineer, but that he is not a good businessman. Those two factors combined can cause problems.

Mr Tromp: I will read an extract from one of our newsletters that we sent out about the closure of the plant.

The CHAIRMAN: What date is it?

Mr Tromp: It is dated 2 March.

Mr MASTERS: Are you referring to newsletters that were sent to the community?

Mr Tromp: Yes, they are newsletters that were sent to the community. The newsletter states that Waste Control provided an important service to the community because it received solvent wastes and, therefore, prevented dangerous illegal disposal. The objective was to bring the company up to an acceptable level of environmental management, so that a broader scale problem with solvent wastes could be avoided. Clearly, Waste Control did not meet the requirements of the regulating agencies, and both the DEP and Department of Minerals and Energy were undertaking prosecution action against the company at the time.

Earlier, Mr Masters made the point that perhaps taking the company to court and extracting a fine may well have resulted in the closure of the company. By the beginning of this year, the

department had formed the view that if that happened, so be it. From a risk management point of view, the department had been unable to get the company to operate in an environmentally acceptable manner. Our recourse was to go to the courts to prosecute the company. If the fine extracted by the courts had resulted in the closure of the company, that would have been something that the department and the community would have had to live with.

The CHAIRMAN: Why do you consider that the only recourse was to go to the courts when the department has the power to issue orders? If the Department of Environmental Protection and the Department of Minerals and Energy had operated in collaboration, the company might have been shut down by the enforcement of the appropriate standards. Over the past few days, the committee has heard about a long relationship with a business that continually failed to comply with its licensing requirements, even though those licensing requirements were changed and expanded by increment to include more dangerous substances. As that process of expanding of licensing requirements continued, the relevant departments failed to enforce those requirements. The departments were given more power, but they did not enforce what they were permitted to do. I do not understand why you say that the only recourse was to prosecute the company in the courts.

Mr Tromp: It is largely related to the structure in which our legislation works. I will make two brief points and then ask the committee to explore those points. First, the premises were licensed under the Environmental Protection Act. We have revoked the licence since the fire.

The CHAIRMAN: It is a bit late.

Mr Tromp: I understand that, but there was community concern that the company could begin its operations again. There is a common law presupposition that persons who are licensed under statutes have a presumption of continuing to be licensed unless some situation has been established in which they will not be licensed in the future. That is the legal advice I received, and that is the basis on which we have proceeded. We have tended to keep the licensing regime in place as a way to make the company do things. Mr Chairman, you have explained how we did that by expanding the licensing requirements to make them more specific. For example, we could tell a company that instead of storing its chemicals safely, it should make sure that its inventory was properly under control and so on. We made the licence conditions more specific.

The CHAIRMAN: More than that, the Government expanded the licence conditions to allow the departments to conduct other processes. We are expanding the range of materials and processes in operation at the site. From the evidence that has been provided to this committee, I agree with you about the legislation being made more specific and about how those operations were to be undertaken. However, I still cannot come to terms with the period of time over which this relationship existed between the regulators and the operator. I cannot come to terms with the decision to prosecute the company, which you say was the only recourse, when licensing and enforcement would seem to have been an option.

Mr DAY: Was the company given additional approval?

Mr Tromp: No, at the later stage of the company's operation, it basically recycled solvents, which is a distillation process.

The CHAIRMAN: We would have to go back to 1993. There was an expansion of its role from 1988-89 through to 1993.

Mr DAY: They started in 1989.

Mr Tromp: I would have to check the record. A separate company was set up originally, and then Waste Control came into the picture in 1993. Since that time, all it has done is recycle solvents through a distillation process. An informal approach was made by the company to also incinerate solvents on the site. The DEP indicated to the company that such an application would not be accepted until it had improved its current operations. I do not believe that from 1993 onwards there was an expansion in the nature of the company's operations. A build-up of inventory on the site did

happen from time to time, and we took action to deal with that in 1999. That build-up clearly posed all sorts of difficulties, both from a dangerous goods and an environmental protection point of view, because those materials were stored outside the bund. I am not sure that I accept that particular thesis.

Mr MASTERS: I will rephrase what the Chairman is trying to say. The committee received a submission yesterday from the former Department of Minerals and Energy, which said that it was within the department's power to say to Waste Control Solutions, "Okay, no more product enters this site until you have processed three-quarters of what you already have here." In other words, the department was saying that it could apply regulatory powers to make sure that a company did what it was contracted to do with the various people who supplied the quota. Why was it not considered a viable option for the Department of Environmental Protection to take to get Waste Control to do the right thing in terms of its licence?

Mr Tromp: The regime to ensure that the inventory remains reasonably small and manageable was built into the licence conditions negotiated during 2000. There is a requirement within the licence conditions for materials to basically not be on the site for longer than three months. That is the operative mechanism. We were attempting to force the operator, through the licence conditions, to maintain throughput at the plant and not to allow it to build-up.

The CHAIRMAN: This is a five or six-year relationship of failing compliance.

Mr Tromp: Yes, I accept the Chairman's point that this situation did go on for some considerable time.

The CHAIRMAN: I return to my original question: why, after five or six years, was prosecution considered to be the only or the best option? I do not know whether you have considered a range of other options, but I see no evidence of a collaborative will by the Department of Minerals and Energy and the Department of Environmental Protection to shut down this place for non-compliance over a long period, other than in 2000. A new pollution control officer characterised the site as the worst he had seen in his 15 years of experience. What happened over those five or six years?

Mr Tromp: I have attempted to explain that by saying -

The CHAIRMAN: I know you have attempted to explain it, Mr Tromp, but you are not dealing with the question: why did you decide that prosecution was the only option in 2000 when you could have used a range of administrative and enforcement options on that site during the previous six years?

Mr Tromp: In the same way as the Department of Minerals and Energy and the situation you described earlier in your presentation, we were trying to get the company to do the right thing through a series of processes, by working with them, looking at the licence conditions and what needed to be done, and trying to negotiate a way in which that could happen. I was trying to develop two points; I am sorry if I am taking too long -

The CHAIRMAN: No. Not at all.

Mr Tromp: There are basically two options under the licensing regime; we can either revoke the licence or we can prosecute for non-compliance. We took the decision at the end of the day to go down the prosecution route, although given the fire, it was obviously too late. I sense from you -

The CHAIRMAN: I suggest to you that the post-incident actions are really not worth discussing. I am more interested in the period before the fire - February 2001 - and back to 1995-96.

Mr Tromp: I sense from you that there were perhaps other options open to them in terms of closure and so on. Those powers are not available under the Act; we do not have the power to get someone to cease operating.

Mr DAY: From what you have been saying, my understanding is that you were seeking to encourage, direct and require the owner to actually manage things on the site appropriately over that period. Is that correct?

Mr Tromp: Yes, that is correct. I also explained in my opening statement why the department was doing that, because it was also a function of the department to facilitate the better handling of waste in Western Australia. The waste management division was keen for an operation of this kind to be maintained, so that we did not have to deal with the situation of hundreds of people putting material down drains, in creeks, and the like.

The CHAIRMAN: I think that is a critical point. There was a waste management division which was keen for an operation for managing potentially toxic and dangerous material, and there was a pollution prevention division whose task it was to stop pollution. I suggest that for a period within the department, the waste management division held sway, in spite of the mounting evidence to show that that was not going to be a viable, long-term path for the department to take.

Mr Tromp: I think that is probably correct, Mr Chairman.

The CHAIRMAN: I am not criticising people for wanting viable waste management in this State; in fact it is a thing to which we all must turn our minds. We have already heard from you guys this morning that a cost is involved. The community will have to turn its mind to that. I am still trying to understand why the department - with its balancing interests of waste management and pollution prevention - could not change the situation when it is clear, from the evidence before the committee and from the disaster in February, that there was non-compliance over a sustained period of time and there were continual pollution events. The relationship is characterised by brinkmanship by one of the major enforcement departments, or abrasiveness by you. I am just trying to understand why the waste management division, in its desire to keep the system operating, held sway for so long?

Mr Tromp: I think it is further explained by earlier comments that were made by both you and me, Mr Chairman, which was that when we dealt with a company, there tended to be a response for them to do something, but it was not quite enough.

The CHAIRMAN: Yes.

Mr Tromp: Also in 1999, as a result of one of the pollution incidents that occurred, we intervened by actually taking material off the site at a cost of \$100 000, which was held as a charge against the company.

The CHAIRMAN: In effect it was an operating loan.

Mr Tromp: Yes, in effect. It is not quite correct to say that progress was not being made and that the situation was not being dealt with. I realise that with the benefit of hindsight we should perhaps have moved in a lot earlier, but there were incremental improvements; there was reaction by the company to do certain things. However, it was never quite enough. I think that is the situation we were faced with. It took us some time before we considered that it had been enough. I will make two additional points. We do not have many instances of pollution events on file and it is yet to be determined, through the current investigations, how serious the pollution was over that period.

The CHAIRMAN: Representatives from the Water and Rivers Commission appeared before the committee yesterday. I do not know whether this information has been relayed to you, but those witnesses gave evidence about the testing that has been done since the incident in February. The Water and Rivers Commission has found sufficient levels of perchlorethylene at depths of eight metres to warrant a more thorough sampling and analysis of ground water and earth pollution. The evidence also suggested that it could be inferred from the depth of the perchlorethylene at eight metres that the pollution events had occurred continuously over a long period.

Mr MASTERS: And were not related to the fire.

The CHAIRMAN: That is right. We are talking about years.

Mr DAY: From my notes, they found a minor amount of ground water contamination. It is correct that they found sufficient evidence of contamination.

The CHAIRMAN: Sufficient to warrant further exploration because they are concerned about the extent of that contamination.

Mr DAY: At least from a precautionary point of view.

The CHAIRMAN: Yes. I can understand that everyone is being far more precautionary after the event. All people react that way. However, this preliminary testing suggests that this was not a one-off or sporadic pollution event, but was sustained over a long period. It must have been of some concern.

Mr Tromp: I have not yet seen those results. That work was done at the instigation of the Department of Environmental Protection as part of an investigation of the situation and the need for remedial action to be taken. I said I wanted to make two points. Could I have your indulgence? I think it is important that the committee take note that we made the point in our submission that -

The CHAIRMAN: Do you want to point us to where that is?

Mr Tromp: The function of the Department of Environmental Protection is not to prevent fires. That is clearly a function of the Department of Minerals and Energy and the Fire and Emergency Services Authority. This is relevant to the many questions we have been asked since the fire. Our focus was to ensure that the material handled on the site did not get into the environment - onto the ground and into the ground water. That was our prime focus. Even had the premises been in entire compliance with all our requirements, if a fire had occurred, it still would have been a disaster of the magnitude that it was. I do not deny for a moment that it was a fairly significant disaster. I am keen to break this nexus between all the effects of the fire and the activities of the department, because they are not actually correct in terms of our roles and responsibilities.

Mr MASTERS: I am keen to explore that a little further. I hope you are not suggesting that the fire on February 15 did not cause pollution. Clearly it did; did it not? I will be a bit more specific. The fire caused air, soil and ground water pollution and potentially caused surface water pollution.

Mr Tromp: Yes. There is no doubt about that.

Mr MASTERS: Okay, but you have just said that your department's role was not to stop fires. If fires lead to pollution, surely part of your role is to prevent fires and any other pollution-causing activity.

Mr Tromp: In relation to the activities of government departments and the measures that need to be taken to deal with the onset and prevention of fires and fighting fires, those responsibilities are clearly written into other legislation and that was not our function. The HEAT incident that was called was called by FESA.

The CHAIRMAN: That is in the same way as the situation involving the drum, which was earlier described by Mr Raine. The drum was clearly a potential pollution risk because of its degraded form and being exposed in the way that it was, but that was not your focus either.

Mr Tromp: Yes it is, in the sense that -

The CHAIRMAN: You do not have the regulatory power to deal with the drum sitting in a pallet, because it is not causing pollution.

Mr Tromp: Yes, but there is a requirement in the licence for the containers to be in a sound condition, because we do not want the material to escape into the environment.

The CHAIRMAN: Either leaking or catching fire.

Mr MASTERS: It is probably a good time for me to raise the issue of section 73 of the Environmental Protection Act 1986.

Mr DAY: Just before you get into that detail, I do not think Mr Tromp had an opportunity to answer the question I raised a while ago. My question was: what would your concerns have been had the site ceased operating, or would you have been happy for that to occur? I understand your explanation about the way you were seeking to operate and manage the site, but I will give you an opportunity to answer my question.

Mr Tromp: I still have two questions here, Mr Chairman.

The CHAIRMAN: Yes, you have two questions running.

Mr Tromp: I am prepared to answer that by saying that it was simply the lesser of two evils, because we were really faced with a devil of a choice.

Mr DAY: Okay. If the site had ceased operating, what would the consequences have been?

Mr Tromp: We would have had to deal with the situation which Mr Hine described earlier, which was of hundreds of people who had nowhere to take their waste -

The CHAIRMAN: Which we have now anyway.

Mr Tromp: Yes, but we now have a regulatory regime in place to help deal with that and to provide some stick for people to do the right thing. Prior to the fire, it would have been a carrot situation.

The CHAIRMAN: We have also heard from Mr Hine that not many people have been informed; it has not gone beyond the metropolitan area and we are still in the process of setting up the mechanisms to track it. It is not quite true to say that we have it all fixed now and that it was not fixed before.

Mr Tromp: No.

Mr DAY: I do not think that anybody said that. I do not think that Mr Tromp pretended that.

The CHAIRMAN: No, the regulatory regime is in place. I am using -

Mr Tromp: Sorry, Mr Masters asked a question about whether -

Mr DAY: Hang on -

Mr MASTERS: No, I will do that in a minute if you do not mind.

Mr DAY: Just on my question, is it accurate to say that you were motivated, in part at least, by a view that although the site was not operating optimally, it at least provided an important community service. Is it accurate to say that?

Mr Tromp: I am the wrong person to ask, because at the time I was the head of the pollution prevention division and I was keen to see the pollution prevented. Another officer was in charge of the waste management division, who was keen to see the waste outlet being maintained. There was a very unfortunate chief executive officer -

The CHAIRMAN: Who was it?

Mr Tromp: - who had to make those difficult judgment calls between the two competing requirements and other considerable pressure from both the company and his minister at the time.

Mr DAY: Were those two competing concerns within the Department of Environmental Protection actively discussed, and was a judgment made at a more senior level about which approach to take?

Mr Tromp: Informally, yes. I do not believe we would have records of that on our files, but this was not an uncommon discussion among us in relation to the continued operation of the facility.

Mr MASTERS: The CEO was Dr Bryan Jenkins. Who was head of waste management control?

Mr Tromp: I think it was Jim Malcolm at the time. There is no such division in the current department. The regulatory activities have been absorbed within the new division of environmental regulation, of which Mr Tim McAuliffe, who is with us today, is the director; and the policy functions sit within another division of the newly formed department.

Mr DAY: Is it the case that this business was well known to the chief executive officer because of all these issues?

Mr Tromp: Yes. The chief executive officer was very closely involved at a detailed level in all of these difficult decisions.

Mr BOWLER: You mentioned there were conflicting issues between the CEO and the minister.

Mr Tromp: No; I said there was considerable pressure from various sources including the company, and also discussions that the CEO had with the minister.

Mr BOWLER: Are you aware whether the minister put pressure on to take action or not to take action?

Mr Tromp: No; I am not aware of that.

Mr Hine: I happened to sit in on a number of meetings between the minister and the chief executive of the department. Although I do not believe the minister ever gave clear instructions to go soft on the company, nevertheless, it was quite clear that the minister's office was keen to maintain dialogue with the company, and to continue with the style of regulatory approach that we had been taking, which was cooperative and looking for a mutually agreeable outcome.

The CHAIRMAN: Did you say it was the minister or the minister's office?

Mr Hine: A bit of both; sometimes it was advisers and sometimes the minister was involved.

Mr DAY: Was that from the perspective of trying to ensure that an outlet was provided for this material, so it could be dealt with in some way - even if it was not optimal - rather than its being dumped in the bush?

Mr Hine: Effectively. In its specifics we are talking about Waste Control continuing to trade.

The CHAIRMAN: In your -

Mr MASTERS: Mr Chairman, I am trying to be patient here. When the minister or her staff gave advice that they wanted it resolved cooperatively, was there contrary advice from departmental staff including the CEO?

Mr Hine: Yes; on at least one occasion we sent a briefing note suggesting that we really did not believe this was not getting us very far.

Mr MASTERS: What was your recommended course of action?

Mr Hine: It would have been to stop negotiating, and either they take action or we would -

Mr BOWLER: What did the minister say on that occasion?

Mr MASTERS: It is "we" and "they". I thought you were talking about your department?

Mr Hine: Yes.

Mr MASTERS: To whom were you referring when you said, "they take action"?

Mr Hine: It is the company. Either the company did what we believed they needed to do or -

Mr MASTERS: That is to comply?

Mr Hine: - we would, in effect, be free to take more stringent enforcement action.

Mr MASTERS: Which is prosecution?

Mr Hine: Yes.

Mr MASTERS: Were other options open to you in that instance other than prosecution action?

Mr Hine: We had been through a series of section 73 directions in an attempt to relieve the pressure by taking drums away, and to get the company to take specific actions when there were particular spillages. However, that was not really achieving the outcome that we were looking for.

Mr MASTERS: Have you provided a copy of that direction - I presume it is a written direction - from your CEO or the then head of the waste management branch?

Mr Hine: All of that material is in the files.

Mr BOWLER: Can you say when that incident occurred?

Mr Hine: There were a couple of them. Ken might have that.

Mr BOWLER: Did you not say there was one incident in which you made a recommendation to the minister? Are you implying that the minister then overrode that recommendation?

Mr Hine: Chose not to respond is probably a better way of putting it.

Mr BOWLER: When was that?

Mr Hine: It was probably in the middle of 2000. I cannot be precise; I would have to find the -

Mr BOWLER: You recommended that the minister intervened, or took action to close it down?

Mr Hine: No. We were trying to negotiate with the company - this goes back to this brinkmanship. When it looked like we would start to pin them down, they would organise another meeting with the minister's office, which inevitably led to some delays and then an agreement to do some further negotiation.

Mr DAY: Under your legislation, did you require approval of the minister to take action to prosecute?

Mr Hine: We would do, eventually.

Mr BOWLER: Did you get a feeling of frustration that you were being thwarted in your efforts by Waste Control's bypassing you and going direct to the minister?

Mr Hine: Yes.

Mr MASTERS: And you advised the minister of your sense of frustration?

Mr Hine: Yes.

Mr BOWLER: On how many occasions?

Mr Hine: One very specific occasion that I recall.

Mr BOWLER: Is that the one we are talking about in the middle of last year?

Mr Hine: Yes.

The CHAIRMAN: Thank you for being as direct as that. You are head of which section?

Mr Hine: I am now in charge of what is called the licensing branch, which includes what was previously the pollution licence group. It now includes all of the waste licensing area as well.

The CHAIRMAN: In fact, some of that two divisional debate -

Mr Hine: That has now gone, yes. That was fairly recent.

The CHAIRMAN: Was that part of the Machinery of Government Taskforce review?

Mr Hine: Yes.

Mr DAY: Are there people from the former waste management division who would be able to speak from the point of view of that side of the argument?

The CHAIRMAN: Mr Hine was head of it.

Mr Hine: As it was?

Mr DAY: You were involved in the old waste management branch?

Mr Tromp: No, I was the assistant director of the pollution prevention division.

Mr DAY: That is what I thought. Are there people in an equivalent position to you in the waste management division who would be able to present their side of the issues to the committee?

Mr MASTERS: Jim Malcolm, presumably.

Mr DAY: Is he still in the department?

Mr Tromp: Yes.

The CHAIRMAN: Is there any chance of getting him here?

Mr Tromp: He is currently on leave. I am not sure when he will be back; it is not for very long.

The CHAIRMAN: This debate between ongoing operation and management and prevention of pollution is one of the critical issues in this incident; it is the trigger to how this whole regime operated. To understand how we give value to those various arguments, in my view as a policy maker and legislator, it is critical to understand the weight that we should give it in the future. It is my view that that debate, and the failure to go earlier into a different enforcement regime, ultimately led to the fire. It was one of the contributors to the fire.

Mr Tromp: I do not believe that statement is correct, with respect.

The CHAIRMAN: I do. You can have the view that you like.

Mr DAY: Could you express your view?

Mr Tromp: I explained earlier that the actions in relation to pollution control had nothing to do with the fire. There was a chemical store there. I think the Department of Minerals and Energy made the point in the past that withdrawing the licence would not deal with the problem; there would still be an unlicensed chemical store that would be even more dangerous from an active management point of view.

The CHAIRMAN: I can understand why you have this sort of separation. However, the reality is that a chain of events led to the incident in February in Bellevue. In my view, one of the contributing factors is that we did not shut the place down when it was patently clear that it needed to be shut down. If we had shut it down, we would not have had a fire. Whether you accept it or not, it is my view that it is one the ingredients in a long chain leading to this incident.

Mr Tromp: That was a decision made by the Cabinet, in effect, in terms of allowing the company to continue to trade.

The CHAIRMAN: How did the Cabinet make that decision?

Mr Tromp: When the submission was made for the money to take the drums off the site the cabinet submission clearly spelt out the various options available - those papers are with you - and the decision was made by the Government, I guess.

Mr MASTERS: With respect, every government agency that was consulted as part of preparing that cabinet minute agreed with the course of action, which was to keep the plant operating and to ship 100 000 litres to the eastern States. I am just a bit nervous, and disappointed, that you seem to be washing your hands at the bureaucrat level of having any responsibility for or influence in the cabinet decision.

Mr Tromp: I certainly would not want to do that, or to give that impression. I wanted to indicate that from the Government's point of view there was another framework in place which suggested that if we could keep this whole show on the road it would be so much better for everyone. We were working generally to that effect.

Mr MASTERS: I agree with you, but that was the recommendation of every government agency that was consulted.

The CHAIRMAN: That is precisely what we are saying.

Mr Tromp: I do not resile from the statutory duties with which the department is charged - not for a minute.

Mr MASTERS: I refer you to section 73 of your Act. I will quote selectively, but section 73(1) reads -

If . . . a condition of pollution is likely to arise or has arisen, an inspector or authorised person may, with the approval of the Chief Executive Officer -

- (a) give such directions in writing as the inspector or authorised person considers necessary to such person as the inspector or authorised person considers appropriate -

. . .

- (ii) to prevent the condition of pollution from arising or control or abate that condition if it arises,

I would have thought it is crystal clear that your department has the absolute power to stop pollution activities from occurring. I also believe that charges your department with the responsibility, for example, of going to other government agencies and to local government and saying they have a pollution risk in an area that on planning grounds is clearly not appropriate. Yet I am aware of a number of occasions on which your department has said that section 73 did not give you any worthwhile powers to control or otherwise determine the future of the Waste Control Pty Ltd site at Bellevue. I seek your response, because I am amazed at the lack of acceptance of the powers of section 73.

Mr Tromp: Mr Chairman, Mr Masters shares a common view with Hon Jim Scott who has also explored this issue in the Legislative Council. Very recently our current minister, in relation to section 73, explained why the department rarely uses section 73. If I read from part of the explanatory statement that was made by Hon Tom Stephens in the House that will perhaps explain the situation.

The CHAIRMAN: Was it prepared by the department?

Mr Tromp: Yes.

Mr DAY: But approved by the current Minister for the Environment presumably?

Mr Tromp: Yes. It is in fact a regime that the department has been operating under; it is in no way tied to the particular colour of the Government of the day. The statement read -

The Chief Justice of the Supreme Court in the Palos Verdes case in 1992 described the powers of section 73 as draconian.

If you read the section in the context of the Act it is draconian. I can explain that at greater length later. To continue -

As a result of this judicial opinion the DEP applies section 73 cautiously.

The section provides for action to be taken without recourse to an appeal. Appeals are built into almost every other provision of the Act. The way the Act is structured is that the authority - in this case the department - is entitled to take a series of actions, but nearly all of those actions are appealable; in other words, there is a process of review. This section does not provide for that. We interpret the decision of the court that it is clearly meant for situations that have to be dealt with in an emergency sense and cannot be dealt with in any other way.

The CHAIRMAN: What was the date of that finding?

Mr Tromp: That was the Palos Verdes case in 1992.

The CHAIRMAN: Has it since been tested?

Mr Tromp: I am not aware of that. It may have been.

Mr MASTERS: I do not believe it has been tested.

Mr DAY: That was an appealed judgment in 1992, was it not?

Mr Tromp: It was a Supreme Court judgment.

Mr MASTERS: It is also worth pointing out that that particular case referred to land clearance and its impact on water quality, native vegetation and so on. Therefore, it is a little unfair to compare that situation to the situation we have found ourselves in, for example, the day before the fire at Bellevue.

I asked the question before about why section 73 was not used to significantly reduce the risks of pollution at the Bellevue site in any of those five or six years leading up to 15 February.

Mr Tromp: It is not an enforcement policy in the Department of Environmental Protection when a licensee is under a licensing regime. We would normally try to deal with that situation, as the licensee would expect, through the licence conditions and the enforcement of them. On occasions we have used other sections of the Act to deal with situations on the site when we felt that it was called for. However, in this particular case we did not consider the threat to be so severe that the operation had to cease.

Mr DAY: Is it the case that you have not seen much evidence of pollution itself?

Mr MASTERS: I was just about to quote an example of pollution that we have just been given. Mr Raine talked about the absorbent material that is designed to take hydrocarbons out of stormwater before it leaves a site. Mr Raine advised that on the site he saw absorbents that had solidified and were therefore ineffective. It is not unreasonable to assume that it was going to rain after the date of that inspection by Mr Raine and therefore, it was likely that there was going to be pollution? Why did you not go to Dr Claflin, the operator, and say that if it rained one more time and there was run off from the site, that he would be polluting the surrounding environment and that under section 73, he could be ordered to fix it within 24 hours?

Mr Tromp: A number of statements have been made by Mr Masters which I am not sure are totally correct.

Mr Raine: On the day that I went to the site and found the absorbent material solidified in the drums, instead of allowing the water to run off the site, the rainwater had to be pumped back up through these drums and deposited onto a grassed area on-site. Therefore, if possible, it was likely that the water was not escaping immediately off the site and it was being filtered.

The CHAIRMAN: Where was it being filtered?

Mr Raine: It was being filtered on-site in some drums. I made them set up a jury-rigged system to take the hydrocarbon off the top of the water, to pump the water through the drums and through a peat moss absorbent and to then deposit it on a grassed area from the south to the eastern side -

Mr MASTERS: Therefore, you effectively directed them to take immediate action to overcome that problem.

Mr Raine: When I first went there in July 1999, one the first things Mr Tromp and I did, when I returned to the office, was to draft a section 73 notice. We stayed back that night and faxed it through to the company sometime after 6.00 pm and subsequently served an amended section 73 direction to make it legally binding. We required them to take immediate action to prevent the pollution from running off the site.

The CHAIRMAN: Had that been authorised by the chief executive officer?

Mr Raine: Mr Tromp had delegated authority to sign the one that we put through that evening and I had one of my officers deliver it by hand the next morning to Dr Claflin.

Mr DAY: When was that?

Mr Raine: That was on the night of 20 -

The CHAIRMAN: July 1999.

Mr Raine: Yes, it was July 1999 and at night. That was the first time I went there.

Mr MASTERS: You were happy to use section 73 in that instance and yet, after five, six or seven years of ongoing problems with that operator, you felt powerless to do anything about the big picture even though you were happy to use section 73 for the smaller, more intense pollution incidents.

Mr Raine: I will answer just to give more of an idea of what I saw on the day that I went there, 27 July, that made me so concerned. At the front of the premises, which would be the north eastern end, there was a concrete below ground sump in which the rainwater collected and from which it was then supposed to be pumped out and disposed of. When I got there, the fire brigade was there and it had taped off the site. There was some water in that sump and it was being pumped out by employees at the site into other containers, supposedly for disposal. However, I saw that one of those 1 000 litre containers was leaking and that the water was just running back down. It was a pretty futile process. There was evidence that some of the water from that area at the front had been trickling out onto a neighbouring wood yard therefore giving us an indication that possible pollution was happening. The large area in which the drums were stored was supposed to be bunded and was not bunded effectively. The drums were uncovered and material had leaked out of the drums and onto the ground. Therefore, when the rainwater flowed through that area, it picked up contaminants and took them down to the front. We served a direction on Dr Claflin to do four things. I do not recall them all word for word. One was to stop the discharge of water off the site through a system set up to pump the water back up. I made him put in something like a small, plastic-lined pond in which the water that first came out of the bunded area could collect to allow the hydrocarbon to float up to the top and be skimmed off. I cannot remember if it was on that day or a subsequent day, but we tried to get him to cover the drummed areas so at least the rain would fall outside the area of contamination. I cannot remember the fourth measure off-hand but they were all designed to alleviate the immediate pollution risk. That was when I stepped out of things because it then became a licensing matter which involved working through the licence to try to resolve the situation.

Mr Tromp: I would like to make two additional points. The explanatory statement by Hon Tom Stephens also pointed out a fact that Mr Raine has referred to. It reads -

Nor does section 73 provide a clear power to deal with on-site pollution. Legal opinion is divided as to whether "a condition of pollution" may be interpreted as applying to the situation of solely on-site pollution, and the point has not been judicially tested.

The CHAIRMAN: Have you ever sought to test that in the nine years since?

Mr Tromp: No, we have not, but it is certainly an issue in the DEP that we have not sought to use it for situations in which the potential is simply for something to happen on-site.

The CHAIRMAN: Have you sought to clarify the legislation so that it does not require testing in the courts?

Mr Tromp: I think we have asked for legal opinions on this and I guess all I can say, and I am not one hundred per cent sure, is that the opinion is divided and it would need to be tested.

The CHAIRMAN: I understand that there is a divided opinion. I am asking whether the department has ever been motivated, as a result of that decision, to seek legislative change that would make it absolutely crystal clear about when you could seek to prevent pollution.

Mr Tromp: We have been trying to do exactly that for some considerable time.

The CHAIRMAN: Since when Mr Tromp?

Mr Tromp: It would probably date back to about 1992.

The CHAIRMAN: Nine years ago.

Mr Tromp: That was the first five-year review of the Environmental Protection Act. This issue has been picked up and there have been successive consultation and drafts of the amendments of the Environmental Protection Act.

The CHAIRMAN: Which we have never seen.

Mr Tromp: We are hoping to see it introduced into the House in the very near future.

Mr DAY: Therefore, this issue will then be dealt with.

Mr Tromp: This issue is something that we are aware of and it is something that we have inserted into draft legislation to be clarified.

The CHAIRMAN: What sort of priority have you given that in advocating change as a matter of policy.

Mr Tromp: It is simply one amendment in a very large omnibus that has gone through - you may be aware - considerable stages of consultation and amendment.

Mr DAY: I think this is an issue that was raised by Dr Jenkins in a public meeting held in Midland. I recall it being held in about May; would that sound right?

Mr Tromp: Yes, and there are other aspects to this which have also prompted us to introduce the contaminated sites Bill.

I will make a very brief point that, at the end of day, whether we do it through a licence condition or section 73, the process will still go to court and extract a fine or noncompliance. Therefore, issuing a section 73 direction with which the company does not comply because it does not have the money, is the same as applying a licence condition with which it does not comply and it is then prosecuted for noncompliance.

The CHAIRMAN: Therefore, do you not have the option of suspension of licence on noncompliance?

Mr Tromp: Yes, a licence can be suspended or revoked.

The CHAIRMAN: Why would you need to go to the court to do that?

Mr Tromp: There are procedures that are worked into the Act that I touched on earlier - I am very mindful of the time Mr Chairman -

The CHAIRMAN: We will come back after the break, if you do not mind.

Mr MASTERS: I will ask one more question while it is fresh in our minds. Section 73 says that if a condition of pollution is likely to arise, that the Department of Environmental Protection can give directions to prevent the conditions of pollution from arising. If, say 24 hours later, nothing had been done, what is to stop the DEP going to the court and getting an injunction to force the application of whatever action is necessary to stop the pollution from occurring? Are you not trying to suggest that if I was, say, a major industry and I was polluting in a serious way, that I could do it for months and months until the court case was resolved?

Mr Tromp: I am not competent to answer that question.

Mr DAY: Presumably the court would need to be convinced and the other side of the argument would be to put the reasons as to why such an injunction would be -

Mr MASTERS: Exactly, but it is an option that has been used many times in law to prevent something deleterious from continuing, and then the big legal issue is resolved later on.

Mr Raine: Perhaps I can clarify something that might help you out. One of the other items that Mr Fred Tromp and I drew up was that Waste Control Pty Ltd had to remove contaminated soil from the wood yard and have it replaced with clean soil, which was done. Other bits and pieces were done but they were only done to a partial state of compliance and I knew that if it came before the court, it would be hard for a court to say that he had not really tried. Therefore, sometimes it is not a clear-cut situation.

The CHAIRMAN: I guess the point that has been made to us by the Department of Minerals and Petroleum Resources and you is that as a committee we are looking at - I am certainly struggling to understand - how long it takes before either that brinkmanship or the abrasiveness - however that relationship is characterised - has an accumulative effect and at what point do you say that this is over. That is the \$64 million question I suppose.

Proceedings suspended from 10.27 to 10.49 am.

The CHAIRMAN: Mr Tromp, can you state the two points you were trying to establish as the critical thinking drivers?

Mr Tromp: I do not want to say too much more on that, as we explored that at some length. The only thing I would add is that in the department there is a body of legal information, court cases and opinions which lead us to certain positions on an operational front. I have quoted the ones of which I am confident. However, there are other operative cases about which I do not know all the details that led the department to a certain philosophy.

Mr DAY: Your interpretation of the powers in section 73 of the Environmental Protection Act is no doubt based on the Supreme Court judgment in 1992 and you act on the basis of that legal advice?

Mr Tromp: Yes, essentially. The Bindoon tyre fire was a parallel situation, in which a pile of tyres looked very dangerous. We served a section 73 notice on the owner to clean it up but there was a fire anyway. We pursued the section 73 proceedings through the courts in that case, which was unsuccessful for a range of reasons. We are therefore keen to see the legislation fixed to deal with these issues rather than test them in court, which is not an adequate avenue anymore.

Mr DAY: Mr Raine, you said that Dr Claflin indicated that the drum of material labelled HF was not hydrofluoric acid. Given the quantity of it, is it likely that it was hydrofluoric acid?

Mr Raine: I do not know. There was a label on the drum stating that it was 70 per cent hydrofluoric acid. It could have been something else but Dr Claflin at a later stage told me it was aqua regia, which is a mixture of two other acids. If it was aqua regia, it was still inappropriate waste.

Mr DAY: It was at least inappropriate labelling. However, it appeared to be a large amount of hydrofluoric acid, if that is what it was?

Mr Raine: If it was but I just do not know the answer.

The CHAIRMAN: Mr Tromp, you talked about the level of experience accumulated over a long period of time in the department and the unsuccessful section 73 prosecutions that you pursued previously. Is it true that the department's behaviour and decisions it makes have been progressively less proactive because of your inability to get the courts to successfully prosecute?

Mr Tromp: No, I could not agree with that. It is difficult to explain in a forum like this with the time constraints we have, but it is very much a matter of horses for courses. We try to select the most suitable instrument for the situation with which we are dealing. As I indicated in my opening statement, the general philosophy, which we believe is supported by the Government and the community, is to always try to negotiate a good environmental outcome. It is our experience that

resorting to the courts is not always the most effective way of reaching that conclusion. I am not saying that we should not prosecute. We have a good track record of successful prosecutions. We in fact have an enforcement and prosecution policy that we follow in the department. However, the prime focus of that policy is to get the operator to do the right thing to ensure that the environment is okay. There are all these other punitive tools in the legislation, which Mr Masters pointed out, and they should be used when necessary, but we tend to select the one that is appropriate for the circumstances, such as a breach of a regulation, a breach of section 73 or a breach of licence condition. A range of issues come into play. The department is not shy about taking people to court when it believes it is necessary.

The CHAIRMAN: However, you said that the 1992 Supreme Court judgment described the use of section 73 as draconian, and you mentioned at least one failure to get a successful prosecution using section 73. Has that led you to believe that the onus of proof placed upon the department is so difficult that it limits your ability to use it?

Mr Tromp: We have a range of tools so that there is less reliance on section 73, because it is more uncertain and difficult to use. We rely more on licence conditions and hope to get the tool fixed up through the amendment Bill.

The CHAIRMAN: I can understand that you want to fix it up and that is a sensible thing to do given what you have said today. How long have you been trying to get that legislation changed?

Mr Tromp: The review of the legislation was completed in 1992.

The CHAIRMAN: When was it reported to government?

Mr Tromp: I am not sure of the exact dates; it may have been in 1994 or 1995. We produced drafting instructions and draft legislation after consultation, and we are currently on the twenty-first or twenty-second draft of the legislation in response to all of that consultation. We have in fact split off the contaminated sites and waste management aspects into separate Bills so that we can at least keep this legislation on the rails.

Mr DAY: Drafting was authorised some time ago and it is under way?

Mr Tromp: Yes.

Mr DAY: We had a submission from Michael Bennett of the Environmental Defenders Office (WA) who raised a couple of questions about the general area of regulation. One question was whether the Environmental Protection Act should be amended to provide security for compliance with licence conditions and other requirements. Are you able to express a view on that?

Mr Tromp: That is in the current draft section headed "Financial Assurances". If we have doubts about a company's ability to run an operation or about its financial capacity, we could get it to lodge a bond up-front similar to the way the Department of Mineral and Petroleum Resources does it with the operation in mines.

Mr DAY: That is proposed?

Mr Tromp: Yes.

Mr DAY: Secondly, should the requirement of ministerial approval for prosecutions to occur in tier 1 and tier 2 functions be retained? Presumably it was considered appropriate at the time the legislation was debated and enacted, but do you believe that requirement should remain?

Mr Tromp: The current draft removed the requirement of ministerial approval for prosecutions to proceed.

Mr DAY: There was approval to draft on the basis, presumably, that the requirement of ministerial approval be removed?

Mr Tromp: If my recollection is correct, the removal of that provision was as a result of drafting decisions made by the current Government, not the previous Government.

Mr DAY: There is another issue relating to the fire. Is it correct that there was a wood yard near by, and funding was provided to reimburse the value of the loss of some of that wood that had been affected by the pollutants as a result of the fire?

Mr Tromp: Yes, Mr Hine ran with this long saga.

Mr Hine: We replaced the wood that was lost; we did not give the owner money.

Mr DAY: What was the motivation for doing that?

Mr Hine: We became involved in that because in the initial stage of cleaning up adjacent businesses affected by fallout from the fire, a pile of wood was identified as having some material on it. Therefore, at our direction, Cleanaway Technical Services removed that wood from the yard and put it next to the Waste Control Pty Ltd site, on the ground that it was potentially dangerous if it were sold and then burnt. That wood was subsequently taken away to landfill. We took the view that replacing the wood was a reasonable thing to do, in the same context that we had spent money cleaning up surfaces and buildings that were affected by the fire.

Mr DAY: Were you concerned about ensuring that the contaminated wood was not burnt?

Mr Hine: Yes, that was the prime driver of our decision.

Mr DAY: Are you aware of any other damage to property around the site of the fire?

Mr Hine: Yes, buses were damaged, some of which we were able to clean. However, I understand at least one bus was so badly damaged it was written off. I concede that we appeared to favour some things rather than others. We took the wood away and actively intervened, rather than leaving it at the site and then making a decision later or having the owners follow it up through their own insurance, or whatever. I understand one cannot insure firewood. We therefore believed it was the right thing to do. It was not a large amount of money in the context of the rest of the clean-up.

Mr BOWLER: On the night of the fire you advised the Fire and Rescue Service that the nature of the fire warranted the initiation of the hazardous emergency advisory team. Are you represented on that team?

Mr Tromp: That decision was made by Mr Raine.

Mr Raine: It is probably relevant to explain how HEAT works through our department. The Fire and Rescue Service has overall control of any of these fires of hazardous materials. It forms a team with members from the Fire and Rescue Service, the WA Police Service, the Department of Environmental Protection and the Department of Mineral and Petroleum Resources. That team goes to Fire and Rescue headquarters to examine strategies for dealing with the event. I first became aware of this event when I received a phone call at 11.35 pm on the Thursday night from Mr Doug Hyde, the HEAT representative of the office of the DEP. He said that he had received a telephone call from Fire and Rescue that there was a fire in that area and he was concerned that it could be the Waste Control site, but it had not been identified as the Waste Control site by the Fire and Rescue Service.

I made a number of phone calls to start a pollution response, which would mean that I and another officer would go to the scene to deal with tactical issues. One of the phone calls was to the Police Department to ask if it had any information on the fire. The department said it was at Hazardous Waste Solutions, 1 Bulbey Street. I have phone records which, unfortunately, are not all that clear about which numbers were called, but the phone call was made some time between 11.35 and 12.00 - probably within 10 minutes of 11.35. I then rang Doug Hyde back, who is the HEAT representative, and said to please make it a HEAT incident. He made that happen through the Fire and Rescue Service.

Mr BOWLER: You went to the fire as soon as you could and took a video, which you have shown us. Were you surprised to know that hours later FESA was sending crews into the down plume area without breathing apparatus?

Mr Raine: It is a very good question. My experience of these incidents was fairly limited prior to Bellevue. When I rolled up there, with my experience I thought that the firefighters would know more about protective equipment and how to manage the scene than I would, so I did not pass any judgment. I was not aware at the time where all the firefighters were but subsequently, after we had installed bunding across the road and across a drain on the other side of Roe Highway, I drove around to Military Road where the Helena River crosses Military Road. There was a smoke plume there coming from the bushfire. A fire brigade officer, another officer and I walked the length of the river that way back up towards the scene, which was in an easterly direction. I thought it appropriate that I wore what is called an APR or a respirator, which does not supply air but is just a filter. I saw firefighters in the area who did not appear to have any respiratory protection. I thought it was not quite right, but I did not comment on it at the time. I would probably do differently in the future.

The CHAIRMAN: Did you notice whether the firefighters were from the volunteer or professional brigades?

Mr Raine: Unfortunately, I do not know the difference.

Mr BOWLER: Mr Tromp, earlier Mr Masters put to you that the cabinet decision to continue with the facility was supported by your department and other agencies involved. In your opinion at the time, what came first; Cabinet's decision and your acquiescence or your support and then Cabinet's decision?

Mr Tromp: Acquiescence to what?

Mr BOWLER: To the Cabinet's decision.

Mr Tromp: I still do not quite follow the question.

Mr BOWLER: You said that Cabinet decided to continue with the facility and that your department and other agencies supported that decision. What came first; the Cabinet's decision and then your support or first your support?

Mr Tromp: The cabinet minute laid out a number of recommendations.

Mr BOWLER: I have seen that.

The CHAIRMAN: Your department prepared that cabinet minute?

Mr Tromp: That is correct, yes.

The CHAIRMAN: What was the recommendation?

Mr Tromp: Our recommendation was to continue.

Mr BOWLER: Were the recommendations of other departments that it should continue?

Mr Tromp: Yes, on the understanding that the immediate danger from the excess stock would be removed; that is, the 1 000 drums would be removed. The purpose of the whole of the cabinet minute was to improve the situation.

Mr BOWLER: The removal of the 1 000 was your preferred option. Were there no other options put above that?

Mr Tromp: It was the department's preferred option.

Mr BOWLER: You would not have preferred that the whole thing be taken over and run properly?

Mr Tromp: From a pollution prevention point of view, that may well have been the case but it was a departmental recommendation.

The CHAIRMAN: That means in the balance of interests that the department weighed up internally and in discussion with the minister in preparation of the minute?

Mr Tromp: That would have been signed off by the chief executive officer at the time.

The CHAIRMAN: It would not have been done in isolation from the minister or her office?

Mr Tromp: No, it obviously goes up through the minister.

Mr MASTERS: For Mr Bowler's benefit may I read from attachment 10.1? On the fifth page on consultation, it states that the recommended approach has been discussed and agreed with Fire and Rescue Service, Water and Rivers Commission, Department of Minerals and Energy and WorkSafe. Because it is a cabinet briefing submitted by the Minister for the Environment, I assume it means that her department, meaning yourselves, had done that leg work and was trying to gain support or otherwise for the recommended course of action.

Mr BOWLER: I am trying to ascertain whether the minister's decision came back down to the department, saying that she intended to do this and what did the department think of that.

Mr Tromp: It was very much the other way around.

Mr BOWLER: So it was an upward decision?

Mr Tromp: Yes.

Mr DAY: That is usual with cabinet submissions. There is, not necessarily but usually, consultation beforehand.

Mr BOWLER: The consultation was the minister going back to the department with a decision, but the recommendation had been made earlier at a departmental level.

Mr Tromp: The recommendation had been formulated at the department level, put to the minister, who put it to Cabinet, which endorsed it.

Mr MASTERS: Then it came back again.

Mr DAY: On the issue of property damage, in view of the fact that we have had a submission from a property owner and the owner of a business on the corner of Military Road and Stanley Street, who submit that they suffered damage of over \$300 000 as a result of the fire - I understand it was a builders construction yard and sawmill - do you see any similarity between that and the issue of replacing firewood, which would have cost some money?

Mr Hine: If we had our time again, we would not have taken the wood away and we would not have offered to replace it. That is largely because of the approach taken by the people we were dealing with. As we had taken the wood away and we were physically unable to restore it to them because it had been taken to the landfill, we felt that it was appropriate that we replace that wood. We went through that discussion; in fact, our internal legal advice was not to do so. We had a meeting with the chief executive officer and we both took the view that it was the right thing to do. We did not believe it would then implicitly or explicitly give anybody else the right to expect recompense from government for something that was not the Government's responsibility.

Mr DAY: There were not the same public safety issues in respect of any other damage?

Mr Hine: That is right.

The CHAIRMAN: Were there any other approaches to you about damage?

Mr Hine: A few people did ring us. We directed them either to Waste Control or subsequently to the liquidator.

Mr MASTERS: The committee has not yet seen an inventory of the chemicals on the site. We have seen a list of what had been on the site at different stages over the years. However, we still have no clear idea of what was on the site at the time of the fire. Has your department at any stage seen an inventory that was reasonably recent or current prior to the fire?

Mr Hine: No.

Mr MASTERS: Do you have an indication one way or the other of whether mercury, other than a small quantity in the laboratory which was not burnt, was on the site?

Mr Tromp: I will ask Ms Clark whether mercury would have been looked for in the heavy metals suite.

Mr MASTERS: I am not asking about the sampling yet. I am asking if you have any evidence of whether prior to the fire mercury was present on the site?

Mr Tromp: My understanding is - Mr Hine may be able to support me here - we were not aware that mercury was on the site until after the fire, when a small quantity of mercury was discovered in the demountable adjacent to the house.

Mr MASTERS: That was not consumed, Mr Hine?

Mr Hine: Not to my knowledge.

Mr MASTERS: What about pesticides or biocides?

Mr Tromp: We were aware they had moved through the premises but we do not know what was on the premises at the time of the fire.

Mr MASTERS: What about lead, in particular in the form of lead batteries?

Mr Tromp: We had no such knowledge at the time of the fire, but we were subsequently informed and that formed part of the sampling regime.

Mr MASTERS: We have a submission of about 500 pages, which I must admit I have not had a chance to read as yet. Are you able to summarise in a few minutes what sampling was undertaken, for what reasons and what results you have achieved to date?

Ms Clark: Immediately following the fire incident, it was obvious that splatter in the form of a residue had been deposited on adjacent properties. The fire water had run off onto adjacent properties and had caused contamination of the soil in the surrounding areas. That led to contamination on the wood lot adjacent to the site and the damp land towards the Helena River, and it also flowed through the drainage system to a stormwater drain adjacent to the Bellevue Primary School. Samples of the firewater runoff were collected from the stormwater drain by Ken Raine on the night of the fire and the results were obtained 24 hours later. Samples of soil from the wood lot and the damp land were collected and analysed, and we received those results within about three or four days. While samples were being received, we were undertaking remediation with the school drain and the damp land to remove material. Swab sampling was done, and the results were received and provided to WorkSafe. They indicated that on the swab of the material there were no heavy metals or organics, and that included pesticides, PCBs and those types of contaminants. It picked up the mercury and the lead. That information indicated no immediate health risk. The Department of Health may be able to provide more detail on the swab results.

In terms of the soil, it was identified that the wood lot adjacent to the site, where the fire water had ponded because it is a lower lying area and a depression, was contaminated in the surface soils. That was also visible through staining and the soil becoming moist on the surface.

The CHAIRMAN: Will you please speak up a little, because I know some people behind are trying to hear you and it would help them if you spoke up.

Ms Clark: The samples from the wood lot indicated contamination above the level we normally use for assessing environmental or ecological risk, or requiring further investigation. They are essentially a trigger value that we use. One of those samples exceeded the level at which we would require further investigation for a health risk for industrial premises. That material has since been dealt with. The school drain was contaminated above ecological investigation levels. That was obviously a concern with the drainage to the Helena River. The damp land was the same. Those materials were removed as soon as practicable. These areas have been validated by collecting samples to confirm that the materials have been removed. The sample results were below the level that would trigger further investigation.

Mr MASTERS: Was any sampling conducted to determine what was in the plume? Were air pollution samples collected at the time of the fire or was there any more remote sampling of water or soils, or vegetation for that matter, to see if any nasty chemicals or elements had been moved a kilometre or more away?

Ms Clark: Following modelling of the plume in the area, we determined that the plume had probably moved across from the site. We undertook a series of investigations for polyaromatic hydrocarbons, heavy metals and dioxins. Those samples were taken from the site, 250 metres away, 500 metres away and up to 2 kilometres away in the Swan River area near the foreshore where the Swan River Trust building is situated. Those results show that there were no polyaromatic hydrocarbons or heavy metals above guideline limits and that the dioxins were within acceptable levels for a residential area, and were comparable with levels that had been previously found in Bellevue during another study.

Mr MASTERS: Suggestions have been made that some of the water contaminated with organic chemicals had found its way into the Helena River on the night. Were any samples of the Helena River water or sediments collected and analysed for appropriate components?

Ms Clark: We alerted the Swan River Trust and the Water and Rivers Commission of the potential pollution to the river. Following that - I think on the day after the fire, but I would need to confirm that - the Swan River Trust took samples of the Helena River in that area to have them analysed to confirm whether there were any obvious impacts to the ecosystem. The results from the survey were that there were no impacts. Subsequently, the Water and Rivers Commission installed bores near to the Helena River to confirm that.

Mr MASTERS: Can I interpret "no impacts" to mean no presence of chemicals that might have been derived from the site?

Ms Clark: That is correct. I would need to confirm the results of what it analysed.

Mr MASTERS: The Swan River Trust results are not in the documentation that you have provided to date?

Ms Clark: I do not know. I will need to confirm that. The advice received from the Swan River Trust was that there were no impacts on the river.

Mr MASTERS: Was there contamination of the river, but below the acceptable levels, or was there no contamination? When you say there were no impacts, could there be sub-impacting pollution?

Ms Clark: I would need to confirm this, but I do not believe that any volatile or heavy metals were found in the river, considering that the river is also a catchment system and could contain materials that have entered that system from other than the Bellevue site.

Mr MASTERS: If you could confirm that in writing and provide us with the results from the Swan River Trust, that would put a lot of people's minds at rest.

Mr MURRAY: We have heard there was contamination eight metres below the site. In time could that leach into the Helena River?

Ms Clark: In time, yes. With contamination at eight metres, it might migrate. There were two types of contaminants at the site: LNAPLs, which are light non-aqueous phase liquids, and DNAPLs, which are dense non-aqueous phase liquids. The contamination might have found what we call a preferential pathway in terms of discharging downwards, and that might result in contamination of the Helena River. We have no indication of that to date. An investigation of the site is currently being undertaken to try to identify whether there is contamination; and, if there is, it will be dealt with appropriately.

Mr DAY: You have mentioned the potential contamination of ground water, even though I gather the levels are fairly minor at this stage. Are there any other areas of concern?

Ms Clark: No. The geology beneath the site is quite varied. It is essentially clay, with some bedrock. Clay is not the kind of material that contaminants can flow through easily. It is not like the Bassendean sands that are found more on the Swan coastal plain area. Therefore, we consider at this stage that it would be fairly localised, but we are awaiting the results of the investigation to confirm that.

Mr DAY: Do any other areas of pollution concern exist as a consequence of this fire, whether in the air or elsewhere?

Ms Clark: No. The drain and the damp land were cleaned up to appropriate guidelines. The air quality monitoring has shown no exceedences of the standards to date, and the ongoing monitoring we are doing is showing the same.

Mr MASTERS: I believe that a reported incidence of corellas that had been poisoned was found not to be associated with the fire but was due to poisoned grain?

Ms Clark: I believe so. I am not familiar with the details of that.

Mr MASTERS: Was there any link between the fire and the death of those birds?

Mr Raine: I sent officers to where those birds were found, and those birds were sent for analysis. The Health Department eventually advised us that they had been poisoned by grain that had been contaminated by dichlorvos - a pesticide. That can be clarified with the Health Department to make sure it is correct.

Mr MASTERS: The implication is that there was no direct relationship with the fire?

Mr Raine: It is important to understand that when we first got that call, we thought there might have been a relationship, so it was investigated as such.

The CHAIRMAN: Ms Clark, have you established a chemical profile or footprint for the site?

Ms Clark: That is what the current investigation will do; so not to date.

The CHAIRMAN: Have you used the site manifest in any way to identify those chemicals that you might be looking for in your broader sampling?

Ms Clark: The information provided about the substances that had been on the site was used to determine the analysis regime for the sampling that we did off-site, and will also be used as a basis for the analysis on-site, as well as further interviews with Dr Claflin and previous employees to get a description of what was on the site.

The CHAIRMAN: I understand. It is not trick question. I am trying to establish whether anyone ever saw a manifest. If you had seen a manifest and had used it to match, then I would know that a manifest was in existence. We have not been able to establish that. Mr Raine, have you been able to find the manifest?

Mr Raine: No. I attended the premises on the Sunday following the fire, with another officer, and we entered the building at the front. Dr Claflin was there, and we asked for a manifest, which he did not have; so we seized two computers and a book that had truck movements in it. However,

unfortunately the information on the computers did not contain a register of the chemicals on the site, and the truck drum movement register was very vague. All it referred to was several hundred litres of mixed solvents, or something like that.

The CHAIRMAN: Are you aware of whether a manifest was produced, either on the night or on a subsequent occasion?

Mr Raine: I am not aware of whether a manifest was produced on the night, but other issues were spoken about on the night with regard to the chemicals were involved. On the Sunday following the fire, I and another DEP officer entered the site, and we went into the building in front. Dr Claflin was there, and we seized two computers and a file that contained drum movements on trucks. However, an analysis of the information on both the computers and the truck drum log did not provide us with a manifest of the chemicals on the site. The best we could get was mixed solvents and things that did not give us an indication of what chemicals were involved. During the brief break, there was discussion that a consultant who was employed by Waste Control Pty Ltd drew up a list of chemicals - I do not think you could call it a manifest - and that was available some days after the fire.

Mr MURRAY: On the night of the fire, did the FESA officers on the site ask you whether you knew what chemicals were on the premises?

Mr Raine: No.

Mr MURRAY: Did you offer that information?

Mr Raine: No. It is important to understand the sequence of events, because it has implications for questions that you may be seeking to clarify. On the way to the scene, I made a number of phone calls from the vehicle. One of those calls was to the Fire and Rescue Service to get wind direction trajectories. Another call was to officer Doug Hyde, who was on the scene before I was. He advised me that he had been told by Fire and Rescue that there was - from memory; I cannot remember the exact figures - 100 000 litres of perchloroethylene and 300 000 litres of white spirits. He had a discussion with the Fire and Rescue incident controller, and he gave an indication that he thought there were other chemicals on the site. This is not my evidence; I am repeating what I have been told. He said that Dr Claflin was there at the time and advised that what was on the site was just the two chemicals that I have mentioned. When Mr Hyde asked about the stuff up the back, apparently Dr Claflin said something along the lines of, "There is hardly anything up there", or "There is very little, or "It is not important. Mr Hyde's understanding then was that his input would not be accepted, so he then let me know over the phone that it was 100 000 litres of perchloroethylene and 300 000 litres of white spirits.

Mr MURRAY: Was Mr Hyde concerned that there was a bit of a cover up there?

Mr Raine: I think he was, yes. I am answering for someone else now.

Mr MURRAY: That is the feeling that you got?

Mr Raine: Yes.

The CHAIRMAN: Just to explore that a bit, I have the impression from other witnesses that there was a suggestion that the location and quantities of chemicals on the site were maintained, from my notes, on a daily basis. It might have been on a weekly basis, but my notes suggest a daily basis. I will clarify that later. However, your examination of the computer records and hard copy entries into a truck movement book would suggest that was not the case?

Mr Raine: If that is the information you have been given, it may be referring to what I think was called the drum movement book. However, as I said, it did not have detailed information about what was on the site and may have been there for 10 years in the old rusty drums that were unmarked. The computer hard drives were analysed by another officer of the DEP, in conjunction with the IT section, and the information that came from them was that the only thing on the hard

drive was quality management plans and things like that. There was nothing that would give an indication of the chemicals on the site.

Mr Tromp: There was a licence requirement for the licensee to record on a daily basis a whole range of detailed information on the material received.

The CHAIRMAN: Whose licence requirement was that? Was it the Department of Environmental Protection's or -

Mr Tromp: A DEP licence requirement.

The CHAIRMAN: How often would the DEP have checked compliance with that requirement?

Mr Tromp: I am not certain about that. To my knowledge, it was not complied with, and it is one of the issues that we are looking at.

The CHAIRMAN: Would your department record the times that inspections were made to confirm compliance with that licence requirement?

Mr Tromp: Yes. I can certainly provide that information.

The CHAIRMAN: The committee would be pleased to receive it.

Mr BOWLER: The committee received evidence that from about September last year onwards the manifest was maintained on a regular basis, and a copy of the manifest was kept in a box near the front gate, in a canister.

The CHAIRMAN: In a red canister.

Mr BOWLER: When you made inspections, did you check that?

Mr Tromp: That manifest was probably required by the Department of Minerals and Energy, I suspect, and I do not believe we would have checked that. That was not part of our requirement. I should also point out that the information we were seeking was not down to the detailed chemical level. This is probably one of the reasons that Mr Raine and the other people working on the computers had these difficulties, because the substance was simply described as a solid or a liquid waste, and from where the material had come, which would give us an indication of the nature of the material. Therefore, if it had come from a drycleaner, we would know it was perchlorethlyne; if it had come from a body shop, we would know it was gun wash, and so on.

The CHAIRMAN: Ms Clark, I refer to the chemical footprint that you might use as a base search template, if you like - things that you were looking for. The report prepared for the DEP by Cleanaway Technical Services, on page 3, at 2.3, "Chemical Storage Manifest" states -

A list of chemicals known to have been received at Waste Control is outlined in the following table (supplied by the DEP):

This might be the information that you got directly from Mr Raine's being able to sift through the records and compile a list of anything that was ever known to have been on the site, without knowing whether it was there on the site on the day. Is that how you got it?

Ms Clark: That is correct.

Mr MASTERS: The submission from the DEP on page 6, paragraph 23 states -

The broader waste management industry in Western Australia was not able to provide an adequate alternative, -

That is an alternative to Waste Control Pty Ltd -

due to some extent to the commercial practices of Waste Control Pty Ltd creating a false economy of scale in the industry.

Is Mr Tromp or anyone else able to indicate when the DEP realised that problems had arisen because Waste Control had effectively become a monopoly by undercutting prices, but was not, in turn, able to handle the products it was receiving?

Mr Tromp: I cannot answer that question.

Mr MASTERS: A year?

Mr Tromp: I really do not know.

Mr MASTERS: Who in your department would know?

Mr Tromp: I think the waste management people would know.

Mr Hine: Yes.

The CHAIRMAN: Mr Tromp, in the four points of your opening statement, you said that there was a small but viable market, but a monopoly situation had developed, and this had been, according to my notes of what you said - you can clarify this if you wish - brought about by an operator undercutting competitors. Is that the position?

Mr Tromp: That is my understanding and the advice that I received within the department, yes.

The CHAIRMAN: I asked you earlier whether you monitored prices within the market, and you do not. Therefore, that is really hearsay.

Mr Tromp: Essentially. The people in that division, like Mr Raine's people, move around the industry and talk to people. Obviously, a lot of information gets transferred in that general process. That statement is a distillation of the department's experience.

The CHAIRMAN: It has been put to us by another operator that that was the case anyway, so it is not just your view.

Mr MASTERS: I refer to pages 7 and 8 of the submission. There is a description of the site history. Paragraph 32 states that on 4 December 1989 a works approval was issued to Austech (Australia) Pty Ltd, and the next few paragraphs go through the history of what happened on the site. I would like to explore what requirement, if any - legal, moral, regulatory or otherwise - a government agency such as DEP should have, and does have, to notify both the local community and the local government body when companies such as Austech and Waste Control Pty Ltd seek approvals, and when there are broader issues of the community's right to know, community safety and so on. Does anything in the regulations require the DEP to formally notify local government - in this case the City of Swan - or was any process in place whereby DEP made sure that happened?

Mr Tromp: There are requirements in the Environmental Protection Act 1986 in relation to applications for works approvals and for licences. Perhaps I will just quote from the approvals section.

Mr MASTERS: What section is that?

Mr Tromp: It is section 54, and I believe section 57 deals with licences. However, the wording is essentially identical in both cases. Subject to a whole range of other things, the chief executive officer shall seek comments from any public authority or person which or who has, in the opinion of the CEO, a direct interest in the subject matter of that application. Therefore, on receipt of an application, an obligation is on the CEO to determine those two classes of people and to seek their views. We normally do that by looking at any particular decision-making authority that may exist; or the local government authority is provided with a copy of the licence application or the works approval application. If we are aware of any issue in the district for which perhaps a community-interest group has been formed, we will also involve that group in the process.

Mr MASTERS: It is more a reactive way of doing things. If an issue is already in the community, or with a group, you notify the public, but you are not proactive in telling the community that

400 000 litres of flammable liquid is in an area in which a small number of people live. I am not trying to apportion blame; I am speaking with hindsight. I guess I am interested in the proactive aspect of what you just read out.

Mr Tromp: Earlier in my opening statement, I also touched on planning being a key issue. If an application like this came up today, it would be referred to the Environmental Protection Authority and would likely be rejected because of the inappropriate planning in the situation. Therefore, we are looking a little bit with hindsight here at how the plant came to be established in that location. Perhaps the committee should speak to the city council about that.

The CHAIRMAN: Is there not a proposal before the DEP at present, though, for another plant?

Mr Tromp: At this location?

The CHAIRMAN: No, not at this location.

Mr Tromp: There is a consultative environmental review process for Brookdale, which is for an expansion of the current activities on the Brookdale plant.

The CHAIRMAN: To pick up some of the processes that cannot continue because of Bellevue's -

Mr Tromp: No, I do not believe so. It is not so much the solvent waste, but some of the other things.

Mr DAY: As far as the planning aspects are concerned, should changes be made to improve the situation as it is now, or were the planning failures, as you see them, because of the conditions that existed in 1989?

Mr Tromp: To a large extent, most of those problems have been remedied through amendments to both the planning legislation and the Environmental Protection Act to require planning schemes, for example, to be assessed by the EPA. That removes quite a large swath of the problems.

Mr DAY: Were those changes made about three or four years ago?

Mr Tromp: I am not sure.

Mr Hine: In relation to this place, the City of Swan, in particular, has copies of all the correspondence from the DEP and the DME, as I understand. Of course, the City of Swan also had to give planning approval separately.

Mr MASTERS: I appreciate that. However, I wanted to clear up in my mind whether any onus is on the DEP to notify local authorities of works -

Mr Hine: There is, and we do it.

Mr DAY: Was there any involvement of the DEP or EPA in 1989 prior to the initial approval being given?

Mr Hine: The EPA chose not to assess it, so it went straight to works approval.

Mr DAY: At the time in 1989?

Mr Hine: Yes.

The CHAIRMAN: Have there been no subsequent changes that would cause that consideration to be given again?

Mr Hine: Nothing to be referable, no.

The CHAIRMAN: The other question probably relates to DME's licensing, because although it may change some of the licensing arrangements, that would not necessarily impact on DEP's role under the Environmental Protection Act.

Mr Tromp: Yes, that is correct.

Mr MASTERS: I change the subject again. The committee is charged with making recommendations about the future. I commend the recommendations you have made in the last few pages of your submission. There are some very useful ideas. Could you tell us more about the concept of product stewardship and how it could be applied to ensure across-the-board responsibility for hazardous and other unacceptable products? Can you explain the term product stewardship and how it would translate into environmental protection?

Mr Hine: As we see it working, people who sell products such as solvents would not be able to simply sell the solvent and walk away, thereby passing on the responsibility for dealing with the waste that inevitably results from the use of those solvents to the user and the person they choose to dispose of it. Our idea is that the person who sells the solvent would take some responsibility by collecting the waste and ensuring it is disposed of properly. Responsibility for waste management would be concentrated in a small number of suppliers rather than dispersed to hundreds of users. Waste disposal would be much more manageable and controllable if it were the responsibility of the group that starts the chain of events. That is a simplistic explanation of what we seek to do. I mentioned earlier that one of the provisions in the controlled waste regulations provides people with an incentive - in the form of licence fee discounts - to engage in those sorts of schemes. It would make it easier for us, and for all concerned, to channel the waste through a few suppliers rather than multiple users.

Mr MASTERS: An alternative to offering a discount on licence fees is to pass regulations making the supplier legally responsible for disposal of waste. Suppliers would then be required to put in place mechanisms to ensure they received the waste product from the users. Are you aware of any mechanisms that would allow that to happen? One that springs to mind is buying a thousand litres of perchlorethylene at a price that is 20 per cent greater than normal, which is refundable when the waste is returned to the supplier.

Mr Hine: We try to encourage voluntary rather than regulated schemes because they tend to work better. It is usually more economically efficient to let the industry work out how to best go about things than for us to try to work it out for them. That is our initial approach. The committee should bear in mind that the agency is entering new ground with product stewardship.

Mr MASTERS: I know; I am exploring possibilities. I understand why you recommend a voluntary scheme; however, no voluntary scheme is attached to septic waste disposal. All the tankers that collect septic tank waste are connected to satellites, and the movement of those vehicles is tracked.

Mr Hine: The problem is that septic tank owners are individuals. There is no supplier that could be used as the pinnacle of a producer responsibility scheme. We found that users were very sensitive to the cost of disposal and if the price went up, they stopped getting their septic tanks pumped. The treatment plant suffered and had to further increase its prices. It was like a dog chasing its tail. The only sensible approach was to mandate pump-outs and introduce a prepaid voucher scheme. That was necessary for that problem. However, we do not want a one-size-fits-all regulatory approach. We prefer to operate voluntary industry schemes, which are usually more efficient, effective and cheaper and less demanding on our regulatory manpower base.

The CHAIRMAN: Has the sewage pumping-out scheme been successful?

Mr Hine: We think it is extremely successful.

Mr MASTERS: What can you do if, under a voluntary scheme, people still choose to dump their waste in the bush? How serious a threat to the environment is the dumping of solvents, perchlorethylene and other chemicals?

Mr Hine: That is the challenge we face. We would prefer to allow the voluntary schemes to handle the bulk of the waste properly and for us to provide a safety net enforcement regime that actively discourages people from doing the wrong thing. That is a challenge. We have been

working on regulations to create strict liability offences for the inappropriate disposal of waste. We are negotiating the terms of those with the Chamber of Commerce and Industry and similar groups. They see all sorts of legal devils in it.

The CHAIRMAN: Legal or economic?

Mr Hine: It is a bit of both. Their problems mainly relate to what they perceive as automatic noncompliances, which is a problem for us. We must obtain a balance between workable, simple regimes and ones that every lawyer can have a poke at. We are trying to establish a scheme for the disposal of liquids and gases that is akin to the Litter Act. The way we envisage it, the bulk of waste disposal will be handled through voluntary agreements, subject to auditing and other safety nets to make sure they work properly. We will focus on regulating the relatively small number of poor performers rather than over-regulating people who do the right thing.

Mr MASTERS: Are you able to give us some indication of the environmental seriousness of illegal disposals of some of these chemicals? What would be the environmental consequences if a quantity of solvent or perchlorethylene waste were dumped in the bush?

Mr Hine: It is difficult to say. In a purely technical sense, the damage is often fairly limited, but cumulatively it cannot be good. We take the view that it is an undesirable thing in itself, and we need to stop it happening.

The CHAIRMAN: Mr Tromp, is there anything you want to add?

Mr Tromp: No.

The CHAIRMAN: Mr Hine talked about tracing sources of pollution. Is that also a problem outside the regulated waste management industry? Is it an issue for all materials for which we seek to limit dispersal into the environment?

Mr Raine: The issue of illegal dumping is immense in the outer metropolitan area. Two interagency groups have been set up to stop the illegal dumping of things including building rubble, asbestos and medical waste. I am party to one group, and I sometimes proxy on the other.

The CHAIRMAN: Medical waste?

Mr Raine: Medical waste has been found on at least one occasion. The majority of dumping is littering that has little impact on the environment, such as building rubble. However, there are more serious incidences. Drums of thinners were recently dumped in the Gnangara pine plantation, which was of extreme concern to us.

The CHAIRMAN: Had they been poured out of or left in the drums?

Mr Raine: The thinners had been left in the drums, but one was leaking. The groups are hoping to combine all the powers of the different agencies to hit the problem in the right area. Some dumpings are a simple littering offences, such as someone dumping a trailer load of green waste, but other situations, such as the thinners, are environmental offences under our Act. The thinners were a top-of-the-tree offence. We are negotiating with the Western Australia Police Service to assist with forensic investigations in future instances of dumping. We want to be able to use fingerprinting to give us some more tools in the armoury to track down illegal dumpers.

The CHAIRMAN: This question might apply to both Ms Clark and Mr Raine. Is it possible to fingerprint chemicals?

Mr Raine: Yes.

The CHAIRMAN: Ms Clark's role deals with contaminated sites and Mr Raine's with pollution events and prevention. Would it be feasible to create a database of the fingerprints of particular chemicals so that chemicals could be followed through production, distribution, use and recycling and management? Would that be too big an ask?

Mr Raine: It would be too big. We would need huge resources. I have five officers who cover the majority of the State. It is not appropriate or possible with the current resources. The other difficulty is that chemicals degrade and change when they are left in the open environment. For example, the volatile components of thinners would evaporate. We would have problems trying to match thinners in a factory with those found in the bush. We are using these techniques in some of our investigations, and our results have been quite good. Although I do not think it would work in the big picture, it could work in specific instances.

Mr Tromp: The purpose of the regulations to which Mr Hine referred is to get around this analytical problem. It is a huge nightmare in terms of cost and the complexity of proving it in court.

The CHAIRMAN: I am wondering whether a system could be designed to manage 85 to 90 per cent of it. We are all trying to do our best. However, breaches will always occur, and I am trying to determine how we could limit or at least track them. The failure of the manifest at Bellevue raises questions about how we would do that.

Mr Hine: The sort of waste that went to Bellevue would have come under the controlled waste regulations. That tool would largely eliminate that problem. The regulations make it difficult for people to move waste materials without being tracked. We think that will largely fix that problem. It would be much harder for C and D waste, because the trucks drive off.

Mr MASTERS: C and D means construction and demolition.

Mr Hine: That is right.

The CHAIRMAN: I thought you were talking about the campaign for nuclear disarmament!

Mr MASTERS: I am confused about the difference between the terms Hazmat and Hazchem. Which government agency has the authority to declare a site a Hazmat or a Hazchem site, or some other permutation of those two abbreviations?

Mr Raine: The Western Australian Fire and Rescue Service is the hazard management agency in the event of an incident such as a reported spill or release. It acts under its legislation and, if the incident warrants it, activates plan called The Western Australian Hazardous Materials Emergency Management Plan - Westplan-Hazmat - which activates the hazardous emergency advisory team. The Fire and Rescue Services makes the initial call whether it is a hazardous material incident. Any member agency of HEAT can escalate it to a Hazmat or HEAT incident. For instance, if I rolled up at a scene and said based on my department's duties and concerns it should be a HEAT incident, I could activate that. That is permissible under WestPlan Hazmat.

Mr MASTERS: That is useful, but I am more concerned about the use of the terms "Hazmat" and "Hazchem". Does any legislation define what is a hazardous material or chemical and how the signs are to be placed on the front of premises?

Mr Raine: That is covered under the dangerous goods legislation, which specifies nine classes of dangerous goods and the appropriate signage, storage, separation containment and fire protection measures.

Mr MASTERS: Does the Dangerous Goods Act define Hazchem, as hazardous chemicals, or Hazmat as hazardous materials?

Mr Raine: As far as I am aware, it defines hazardous chemicals. The definition under WestPlan Hazmat, or hazardous material, is quite wide ranging and has even been extended to include salt or sugar if a large quantity is put into the environment; for example, a waterway. Hazchem is more precise because it covers precise chemicals.

Mr MASTERS: Where is that definition of hazardous material?

Mr Raine: It is in the WestPlan Hazmat. The Department of Minerals and Energy was formerly the enforcement agency for the Australian Dangerous Goods Code and state legislation.

The CHAIRMAN: Mr Tromp, I want your views about a couple of issues that Dr Claflin mentioned yesterday. I will read some extracts of his written submission -

Unfortunately, in 1998 the DEP and the Eastern Metropolitan Regional Council agreed to disagree on what could be accepted a land fill.

Do you know what he means by the term “agreed to disagree”?

Mr Hine: I was involved in that decision. A lot of the waste from Waste Control used to go to Red Hill landfill. The Red Hill landfill rethought the way it would analyse the samples of waste, which was relevant to the acceptance criteria that it had to work to under its licence, and it reached the conclusion that it was no longer prepared to accept that waste. Dr Claflin approached the Department of Environmental Protection to seek to overturn that decision. As luck would have it, I was acting in a position of waste management at the time.

The CHAIRMAN: Was that good luck or bad luck?

Mr Hine: I took the view that the company was more than entitled to adopt a conservative approach if it so chose, and that it was acceptable that it refused to change its opinion. The DEP controls landfills by telling the operators what they can and cannot take; however, if they choose to be more conservative, that is their business because they are private entities and we have no control over those decisions.

The CHAIRMAN: Dr Claflin’s submission further states -

The “Waste Acceptance Criteria - 1996” was being enforced, but unfortunately it was very poorly written.

Did he tell you what he meant by that?

Mr Hine: No, I suspect he was looking for leverage to exert his point of view over that of the representatives from the Red Hill landfill.

The CHAIRMAN: He made the point that although the waste acceptance criteria had been formulated in 1996, they were implemented in 1998. I suggested to him that the period from 1996-98 could have been a transition period. Is that what caused the delay between those two states?

Mr Hine: I am not convinced that that is the case because, in effect, once those criteria were written and signed by the chief executive officer, they became operative immediately. Perhaps Dr Claflin is arguing about the stricter application of those criteria at the landfill.

The CHAIRMAN: Dr Claflin referred to a TLCP leach test. What is a TLCP leach test?

Mr Hine: That means toxicity concentration leaching potential.

The CHAIRMAN: Dr Claflin said that that meant material that could be eaten safely could probably not go into the land fill. Would you agree with that statement?

Mr Hine: No, not at all. The principal concern we have with the disposable waste that goes to landfill is whether the stuff comes back out of the landfill in the form of leachate. That is why ultimately the decision about whether or not to accept waste rests on its potential to leach material that may find its way out of the landfill into the ground water or surrounding water ways. Those criteria are well developed and are consistent around the world. We apply similar criteria to everybody else.

The CHAIRMAN: Are you aware of any meetings between the then Minister for the Environment, Dr Claflin and other officers in August and September 1999 that dealt specifically with regulations regarding the monitoring of hazardous material?

Mr Hine: Yes, I attended those meetings.

Mr DAY: Is that what you referred to earlier?

Mr Hine: Yes.

The CHAIRMAN: Are you able to recall whether Dr Jenkins, the then CEO of the DEP, had given an indication to the minister that loopholes or deficiencies in the legislation would be closed immediately or were able to be closed nearly immediately?

Mr MASTERS: It was suggested that they could be closed by October?

Mr Hine: Yes, the CEO gave undertakings that the DEP would seek to address some of the regulatory deficiencies that Dr Claflin believed were the cause of his problems.

The CHAIRMAN: Did you believe that his arguments about the deficiency of the regulations were reasonable? In other words, did you agree with the submission that was made to the Government in 1999?

Mr Hine: It was hard for me to tell because I had just become involved in that area. I literally attended those meetings as a scribe at that stage.

Mr DAY: Presumably the deficiency he talked about related to the lack of regulation about control of waste for which regulations have now been put in place. It seems that regulations were developed.

The CHAIRMAN: Did those regulations come into effect in March this year?

Mr DAY: They were gazetted in March and came into effect in July this year.

Mr Hine: That is right. It is true that they took longer to apply than they should have, but there are reasons for that.

The CHAIRMAN: Why is that?

Mr Hine: Principally because of the lack of resources; people were doing other things.

The CHAIRMAN: Were the regulations delayed because of other priorities?

Mr Hine: That is right. I recall that at the time Dr Claflin pushed for us to consider other options that we explored but which did not seem practical. It took some time to resolve that issue because we got conflicting advice from Dr Claflin, other people in the industry and within our agency as to what was and was not possible.

Mr MASTERS: Mr Tromp, earlier you said that in February you made a decision internally to prosecute Waste Control. Do you know the date when that decision was taken?

Mr Tromp: That decision was taken on 9 February, which was some days before the fire.

The CHAIRMAN: Is that when you came back from leave?

Mr Tromp: I was on leave at the time but I came back into the office when there seemed to be an indication that the recommendation would be made to give Waste Control more time, another three or six months. I specifically came back and discussed the case with the case officer and the prosecution coordinator to ensure that we made a recommendation to prosecute.

The CHAIRMAN: Was that on 12 February?

Mr Tromp: That was 9 February.

Mr BOWLER: That was the day before the election.

Mr MASTERS: Are you aware of that decision being communicated to anyone associated with Waste Control prior to the date of the fire?

Mr Tromp: No, I do not believe that is the case.

Mr MASTERS: It could have happened.

Mr Tromp: Anything is possible.

Mr MASTERS: Are you aware of any communication?

Mr Tromp: I did not communicate that information in any way and I am not aware of any other person who would have done so.

Mr MASTERS: Is there any reason why you would have communicated that information.

Mr Tromp: None at all. It is probably the reverse, if anything, for the potential recipients of prosecution not to be aware of our activities while we gathered evidence.

The CHAIRMAN: Does Mr Peter Bell work for the Department of Environmental Protection?

Mr Tromp: No, he works with the DME.

The CHAIRMAN: Thank you. Mr Tromp, in one of your opening statements you said that there is no guarantee that a waste fire like Bellevue would not occur again as a result of arson. Do you have any evidence or reason to suggest that this fire was the result of arson?

Mr Tromp: No. The arson squad was brought into the case and it maintains an open file on this case. Through their inquiries at this stage they have not been able to determine whether it was arson or who the person involved might have been. That is a largely because the fire comprehensively destroyed the site. However, given the location of where the fire was believed to have started, on the basis of the evidence given by other people who saw it -

The CHAIRMAN: People who saw the fire?

Mr Tromp: From the people who saw the fire start. The fire started away from any operational equipment on the site.

The CHAIRMAN: Where do you think it started?

Mr Tromp: It started towards the rear of the drum store rather than the operational -

Mr BOWLER: On the northern side?

Mr Tromp: On the northern side of the drum store.

The CHAIRMAN: Did the fire start closer to the house?

Mr Tromp: Yes, closer to the house, but not in an area where there is an obvious source of ignition, as would have been the case around the still where there was electrical wiring, which might have caused a spark.

Mr MASTERS: Would a collapsing 44-gallon drum create a spark by rubbing metal against metal?

Mr Tromp: That is a possibility.

Mr MASTERS: Previously, we have asked other witnesses whether the chemicals had the potential to self-combust, and they advised us that they did not. Is that consistent with your understanding?

Mr Tromp: That is correct.

The CHAIRMAN: You also made a statement that the Bellevue incident, and maybe even the history of the plant, is an example of planning failure. Did you use the word "failure"?

Mr Tromp: I would have to check my notes, I may very well have said that.

Mr DAY: You talked about a planning conflict between industrial and residential premises.

Mr Tromp: I talked about conflicts between industrial and residential premises and I talked about there being a planning conflict. I do not think I used the term "planning failure".

The CHAIRMAN: You referred to a conflict of interest in planning. You made some comments about that in your submission. Do you want to say anything else on that matter?

Mr Tromp: No, except to reiterate my earlier point that if a proposal like that came up today, it would not fly.

The CHAIRMAN: The committee thanks everyone for assisting us today. We will continue our inquiries and we might write back to you if we want specific information. As I understand, the committee will follow up a couple of matters.