

ECONOMICS AND INDUSTRY STANDING COMMITTEE

BELLEVUE HAZARDOUS WASTE FIRE INQUIRY

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH,
WEDNESDAY, 7 NOVEMBER 2001**

Members

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

Committee met at 10.07 am

JENKINS, DR BRIAN ROBERT,
Director, Jenkins Environmental Management.

The CHAIRMAN: I reiterate and confirm your understanding of your role at this proceeding. You know that this committee hearing is a proceeding of Parliament and warrants the same respect that proceedings of the House itself require. Even though you are not required to give evidence under oath, any deliberate misleading of the committee may be regarded as a contempt of Parliament. You have previously completed the details of witness form and received and read an information for witnesses briefing sheet and indicated your understanding of all aspects of those materials.

When we last heard evidence from you, Dr Jenkins, the committee acknowledged that, although you requested time to make a statement, we did not have time for you to complete it. I propose to set aside the next 20 minutes for you to complete what you started. Members will then ask questions. Please commence your statement.

Dr Jenkins: In the previous evidence to the inquiry, I outlined the legislative powers relevant to dangerous goods facilities in relation to fire risk and pollution potential, and particularly the specific powers and responsibilities of the chief fire officer under the Fire Brigades Act and the chief inspector under the Explosive and Dangerous Goods Act in relation to fire risk. I also described the provisions of the Environmental Protection Act in relation to enforcement action relating to the part 5 provisions for Department of Environmental Protection licences.

I would like to describe some of the actions being taken in respect to waste management in the State over the period of interest, because that is very relevant to the issue of solvent regulations. I will also deal briefly with the development of those solvent regulations, which are now in force.

Some issues came up in the evidence presented by others that are worth addressing and commenting about because of their relevance to the context.

The CHAIRMAN: Which evidence?

Dr Jenkins: The evidence on the web site. Finally, I would like to indicate changes that I believe are required to reduce the potential risk of future incidents. They would be the most positive things that could come out of the inquiry. I am happy to respond to any questions.

As background in terms of the waste management situation in Western Australia, prior to 1994, the Department of Health was responsible for government regulation of waste facilities. The Office of Waste Management was established in 1994 and became the waste management division of the Department of Environmental Protection in 1995. Waste management responsibilities were a delegated authority under the Health Act; so that Act prevailed. The provisions really covered only public health and not environmental impact. The relevant staff from the Department of Health and the Department of Commerce and Trade who were looking at some of the waste facilities were transferred to the Office of Waste Management. There is clearly a need for development of a broader waste management strategy. This was the first time all the government personnel who had a direct responsibility for waste came within the same organisation.

One of the key issues was the management of landfills. The relevance of that to the inquiry is that licensing was introduced for landfills - so Redhill was licensed - and waste acceptance criteria were specified for landfill that did not exist previously. That has some implications for waste going into landfill. A number of landfill facilities that were operating poorly were closed and others were

commissioned to a much higher standard and Redhill was one of those. It is one of the best landfill operations that I am aware of in Australia.

Mr DAY: Did all that happened in 1994?

Dr Jenkins: The transfer of responsibility occurred in 1994. Required changes to the Act to introduce licensing of landfill sites started in 1996. Because there are hundreds of landfill sites in the State, that was progressively implemented over a number of years.

One of the key issues of concern in relation to waste management was liquid waste, not solvent waste, the principal concerns being septage, grease traps and waste oil. Liquid waste regulations were developed to deal specifically with those substances. The relevance is that one of the original proposals was trying to expand the regulations on the model already developed for solvents. I will deal with that later. That was found to be impractical. The septage regulations were geared around the bulk transport of the septage as the key point in the chain of management for those liquid wastes.

Work was also under way at the national level for the transport of controlled waste, but there were no regulations relating to controlled waste at the time. The major concern nationally was the interstate transport of these wastes. A lot of waste was going from Western Australia, and some was coming from the eastern States to facilities in Western Australia, although most of the flow was from the west to the east. National consistency was important.

There was also a need to look at the operation of Mt Walton. That was changed to full cost recovery. That represents a landfill of ultimate resort for intractable waste for the State. It is the only such facility that exists in Australia. Concern was also expressed about the operation of Brookdale. That was being heavily subsidised at the time and it was changed to a full cost recovery arrangement. The overall operation is subject to separate matters that are ongoing.

Not much work was going on with recycling. The waste management and recycling fund was established. That is relevant to some of the applications made by Waste Control Pty Ltd when it was trying to get funding for parts of its operations. The fund was based on a levy on waste going to landfill. That money enabled the Government to sponsor certain projects to improve waste management and recycling in the State.

I have mentioned the waste acceptance criteria. They were not in existence prior to 1996. The criteria were established in 1996 and revised in 1998 on the basis of the operation over that two-year period. There was also a series of policies for waste streams. Previously, people were looking only at the operation of landfill facilities and not the management of the waste streams. Draft policies were issued on that topic.

New legislation was proposed in 1997. The key change was transferring the powers currently with the Department of Health to the Department of Environmental Protection. However, it also involved coordinating local government waste management plans and specifically looking at industry waste planning and facilities and the concept of product stewardship rather than just the licensing landfill facilities. That is relevant to the mechanism for dealing with solvents that comes up later.

Solvents became a priority issue when Redhill no longer accepted non-recyclable residues in February 1999. That is when the drums accumulated on the Waste Control site. It is clear that part of the overall program of tightening up controls started to have ramifications in other areas of the waste management industry, in particular in relation to solvents.

Mr DAY: Who made the decision that Redhill would not accept solvent wastes?

Dr Jenkins: Criteria were specified by the department. The obligation on Redhill was to meet its licence requirements. Acceptance criteria were guidelines. Redhill put in place more stringent

requirements to ensure that it could meet its licence obligations. It had more stringent acceptance criteria than the departmental guidelines required.

Mr BOWLER: Who was that?

Dr Jenkins: The East Metropolitan Regional Council, which was the operator. That is at its discretion, because it is accountable to ensure compliance with its licence requirements.

Mr DAY: Was it predicted that solvents would build up as a result?

Dr Jenkins: Not specifically. There were certainly implications in trying to get waste away from landfill. There was also a push to give waste management recycling a boost. That was one of the reasons for having the landfill levy, an economic incentive and a fund to facilitate further waste management recycling in the State.

In August 1999, Mr Rod Mathers of Waste Control claimed at a meeting with the minister and department that large quantities of flammable solvents were unaccounted for. He was seeking greater regulation to ensure the proper treatment of those wastes. The department committed to investigate the claims in relation to what was happening with the waste being generated and to establish whether the liquid waste regulations could be expanded to cover solvents. We engaged Ron Powell, a former director of the DEP who was still doing consulting work for the department. He had 30 years of experience in waste management and pollution related matters. He found that the volumes estimated by Waste Control were not supported by the investigations he undertook. He also found that the solvents were generated by many small operators. Over 1 000 small businesses were generating solvent wastes, often in small quantities. They were generally dealing with 20 litres of waste. That meant it was impractical to use regulations that focused on the bulk transport of septage and oily wastes in dedicated tankers. We reviewed the regulations in other States and found that the issue had not been specifically addressed. If members were to look at what is happening with solvents in other States, they would find that they have similar problems to the Waste Control scenario. The issue has not been solved in Australia.

We also found that we have a limited number of suppliers of these solvents - there are only five or six in this State. The minister was advised of this in February 2000, and accepted the recommendation that a product stewardship approach, focusing on the suppliers, would be a more effective way of achieving regulation than trying to regulate more than 1 000 small businesses.

The DEP came back with a proposal to the minister in April and discussions commenced with the industry and the Crown Solicitor's Office in August. A discussion paper was released containing two components. Members are aware that the legislation relating to product stewardship had not been passed, even though it had been proposed. The proposal had general industry support, although I do not think industry invites regulation. It accepted that something needed to be done and a product stewardship was seen to be more appropriate than regulation. We put in place a system for licensing of solvent producers. That is the more onerous component, but it was available under the existing legislation. We also enabled exemptions from reporting and reduced fees if producers became part of the voluntary stewardship program run by the suppliers. That is effectively what has been implemented now.

Mr DAY: Was that 1999?

Dr Jenkins: No, the discussion paper was released in August 2000. Regulations came up in earlier discussions.

Mr DAY: Were these the regulations gazetted in March this year?

Dr Jenkins: Yes. A proposal went to Cabinet in November 2000 and they were approved by December 2000 for implementation in March 2001. It is an unusual concept regarding solvent regulation, but it is one that the industry endorses. The emphasis is on product stewardship rather than regulation of the small businesses.

A couple of issues have come up in previous evidence that are worth clarifying. One is the definition of pollution. This is central to the allocation of responsibility for some aspects of Waste Control within government. The Environmental Protection Act was design to deal with emissions from premises into the environment. The legal interpretation is that a waste must be offsite before it is considered pollution under the Act. It is not enough for a contaminant to be present offsite; it must also have caused direct or indirect alteration of the environment either to its detriment or degradation, to the detriment of any beneficial use or of a prescribed kind. That means prescribed by statutory policy or regulation. This is reinforced in section 65 on the pollution abatement notices, which refer to waste being or likely to be discharged from any premises into the environment, and in section 73, which refers to waste being discharged from any premises. This issue was crucial in dealing with onsite contamination. New legislation has been drafted to address that issue. The advice is that the Act does not cover leakage from drums on the site; it is only in offsite situations that action can be taken.

The offsite discharge of contaminated runoff on 27 July 1999 provided the first pollution event for the DEP to invoke section 73. That is what we did on that day. It is important in terms of the definition of the pollution under the Act. People have been using the definition loosely with regard to what can be considered onsite contamination, such as that at Waste Control, as opposed to offsite pollution, which enables some of the powers of the Act to come into force.

There also seems to be a belief that closure of the plant would have reduced the fire risk. This is important in terms of the decision making and the recommendations that went to Cabinet, which it accepted, and was adopted by the agencies. The fire risk was from the stored drums. Plant closure would have left the drums onsite and closure of the plant would have created a second pollution risk in that there would be no facility to recycle these solvents in the State and we would have had to deal with illegal dumping. If we had taken action to close the site, we would not have solved the fire-risk issue. That is important in the decision-making process.

Mr DAY: The drums would still have been on the site and the fire occurred in the stored drums.

The CHAIRMAN: That assumes you close it and do nothing with the drums.

Dr Jenkins: That was put in the Cabinet submission as one of the options. The Government would then remove the drums.

The CHAIRMAN: I am trying to follow the logic. If you shut the place as an operating facility, you have not removed the fire risk. Shutting the facility would have meant removing the facility.

Dr Jenkins: Not necessarily.

The CHAIRMAN: Inevitably.

Dr Jenkins: That is the key point. Waste Control would have been bankrupted and walked off the site.

The CHAIRMAN: There is a full stop in the sequence of logic. That does not address what the State does to manage that waste.

Dr Jenkins: With respect, those options were canvassed in the Cabinet submission.

There was also a suggestion that the DEP did not want the Department of Minerals and Energy to prosecute Waste Control. That is certainly not the case. The DEP has been very supportive of prosecution action by the DME. We share evidence and often provide critical detail to secure prosecutions. That occurred with the CSBP arsenic spill and the recent prosecution of Waste Control. We have no role in interfering in someone else's attempt to take action under their own legislation. That would be totally inappropriate.

There also appears to be suggestions that the DEP wanted to cover all the post-clean-up issues on its own. That is not the case. It was more the case that when DEP took one step forward to progress

the issues, other agencies took one step back. I spent much of my time contacting other CEOs to ensure they were contributing their resources to deal with the issues at Waste Control after the fire.

Mr DAY: Which other agencies?

Dr Jenkins: A range of other agencies, including WorkSafe, the then Department of Minerals and Energy, the Department of Health and FESA. About six or seven agencies would have had a role to play at that time.

Mr DAY: Was that prior to the fire?

Dr Jenkins: Both before and after. The suggestion made by others is that this was afterwards. A lot of coordination occurred prior to those events as well.

Mr DAY: Are you suggesting that agencies, other than DME, should have been more involved prior to the fire?

Dr Jenkins: I do not know whether I can make that call. I can certainly make it about the issues after the fire.

The last set of points I wish to make relate to what can be done to ensure it does not happen again. A number of things are needed. This is historical and some of the things have already occurred.

The assessment of zoning decisions is one issue. The facility is there because a zoning decision was made. There is a need to ensure land-use compatibility between waste facilities and nearby areas, particularly residential areas. We now have a mechanism to achieve that as a result of the amendments to the Environmental Protection Act in 1996, which enable the assessment of planning schemes and planning scheme amendments.

The CHAIRMAN: I am concerned about the amount of time we have for the number of issues we must get through. Can you table your recommendations? We are most concerned about your role and knowledge in a historical sense at this stage.

Mr DAY: How long will this take? It is worthwhile.

The CHAIRMAN: We will take it as tabled evidence.

Dr Jenkins: It will take less than five minutes.

Mr DAY: I would like to hear it.

Dr Jenkins: The second issue is the development of waste management precincts rather than having individual facilities. The Waste 2020 strategy recommended that approach. The department put it to the infrastructure coordinating committee of the Western Australian Planning Commission in December 2000, when the Waste 2020 strategy was released. One good example of that is the facility at Canning Vale that came into play recently. It has been assessed. It also represented an overall precinct.

The third item to be addressed is the recommendation about the definition of buffer criteria for waste facilities. There has been much debate about what is an acceptable separation distance. A good deal of work has been done in that regard. An industrial-residential buffer area separation distance draft policy was released in 1998. The final draft of a risk assessment and management document dealing with offsite individual public risk was released in July 2000. A consultation draft dealing with assessment of odour impacts was released in May 2000. Noise regulations were gazetted in 1997. The criteria from these documents were applied to the assessment of the regional resource recovery centre at Canning Vale to ensure protection of adjacent areas.

Mr DAY: Do you mean Brookdale?

Dr Jenkins: No, this is the new facility that is being constructed at the moment by the Southern Metropolitan Regional Council group. It includes a range of facilities, such as enclosed composting

and so on. Because it is being done on a large scale, the councils can invest in greater environmental and pollution control.

The next issue is achieving lifecycle management of problematic wastes. The present provisions in the Health Act address only public health concerns. There is certainly a need to deal with the overall strategy for dealing with product from the day they are produced, supplied and transported. We should not try to drive waste management recycling by licensing of facilities. Regulatory head power for managing problematic wastes and controlled products to cover the product life cycle is contained in schedule 2 of the draft waste management Bill, which was released for public comment last year. Legislation has been drafted to deal with that issue. I endorse that legislation.

The next issue that must be addressed is the management solvent wastes. The regulations have been put in place and they will go a long way in dealing with that issue. However, we need product stewardship as the key goal rather than as a device we have achieved as a voluntary alternative to regulation.

We must also deal with the treatment of solvents. Now that Waste Control is gone, there is no facility to treat wastes. Government must take action to establish a facility that meets all the risk management criteria, including the financial risk, which is clearly an important component for this and a range of other risks. An exercise with the company Tox Free has been conducted for perchlorethylene, which is a tricky waste. I understand that that is proceeding well. At least some new technology is being developed to deal with those wastes. However, that is only one of the waste streams. Action is required.

There is also a need for more onerous licensing arrangements. Where we have situations like Waste Control and a clearly demonstrated need for greater attention by regulatory authorities, we must have a mechanism for that to be achieved in a reasonable fashion. We have put forward the concept of supervised licences for poor performers. That is under discussions with industry at the moment. We would like to see that opportunity available. Most industry participants are trying to do the right thing. Some need a little more encouragement.

The CHAIRMAN: What is your role now?

Dr Jenkins: I do not have a role.

The CHAIRMAN: Are you referring to when you had knowledge of this?

Dr Jenkins: Yes.

The Environmental Protection Act should provide more powers. They have been proposed. I refer to closure powers. The Act does not provide for closure powers in relation to premises. In situations like Waste Control, closure powers would be desirable. The proposed amendments to the Act include a closure notice provision.

The Government must also address the issue of contamination on prescribed premises. As I mentioned earlier, pollution as defined in the Act is confined to impacts beyond the boundary of prescribed premises. There is a need to include onsite contamination, particularly in situations like Waste Control.

As I mentioned in my evidence the last time I appeared before the committee, there is need for a financial assurance requirement. One of the difficulties facing Cabinet is that, if there were a plant closure, it would involve a taxpayer-funded clean up. If there were bonds, guarantees or some other form of financial assurance, the Government and the taxpayers would not be put in that position.

We also need to increase coordination of regulatory agencies. As a result of the report about the Alcoa-Wagerup health issue to the Standing Committee on Public Administration, an interagency working group comprising DEP, DME, WorkSafe, and the Department of Health has been formed and is working. The department initiated a regulators' forum in March to cover a broader range of

regulatory agency roles. It was an attempt to ensure integration of responsibilities across all agencies.

The CHAIRMAN: Why did you believe that it was preferable to maintain Waste Control's operations when the DEP submission refers to it as an operation of continuous substandard performance?

Dr Jenkins: We were trying to get the operation to comply with the licence requirements. That is what the DEP was trying to do.

The CHAIRMAN: For how long did you pursue that objective?

Dr Jenkins: It was always the objective. It started in July 1999, when there was clear evidence of off-site pollution.

The CHAIRMAN: Not before that?

Dr Jenkins: Inspections occurred. However, if you are talking about the intense effort to bring the operation up to licence requirements, that was the first event that triggered powers in the Act that we could use to take more action than trying to achieve some of the more minor components of onsite bunding and so on.

The CHAIRMAN: The evidence suggests that there had been attempts by the DEP and DME since before 1999 to achieve compliance with licensing obligations.

Dr Jenkins: That occurs with many industries in Western Australia. I recollect a 1993 case. That was before my time but the files indicate that it was clear that there were potential breaches of the DME requirements. Certainly, there was an indication that, if no action was taken at that stage, DME would prosecute. There were not breaches of the Environmental Protection Act in 1993.

The CHAIRMAN: That was because of the advice you received that a drum leaking onto the ground within the site boundary was not a pollution event.

Dr Jenkins: That is not pollution as defined in the Environmental Protection Act.

Mr MASTERS: Do you have a copy of the Act?

Dr Jenkins: Yes.

Mr MASTERS: You have raised some issues about which I have concerns. Where in the Act does it state that pollution must be offsite?

Dr Jenkins: I said that the definition in section 3 -

Mr MASTERS: Please give me the page number.

Dr Jenkins: It is page 9. It states -

“pollution” means direct or indirect alteration of the environment

- (a) to its detriment or degradation;
- (b) to the detriment of any beneficial use;
- (c) of a prescribed kind.

Section 65 states that if the CEO -

is satisfied that any waste . . . is being emitted from any premises into the environment.

Mr MASTERS: Please refer to the definition of the environment that excludes onsite environmental values.

Dr Jenkins: That is not in the Act; it is not clarified that way.

Mr MASTERS: I have written down the words twice. You are saying that waste or pollution must be offsite.

Dr Jenkins: I am not expressing my opinion; I am expressing the opinion of the Chief Justice, who made a decision in relation to these matters in other cases.

Mr MASTERS: You are referring particularly to the Palos Verdes case.

Dr Jenkins: That is one of the relevant judgments.

Mr DAY: There are others.

Dr Jenkins: I cannot provide the details. That is the prime case. The advice we received from Crown Law was that the department did not have the legal authority to deal with those issues onsite. Members would have seen the detailed argument in the contaminated sites legislation public discussion paper.

The CHAIRMAN: We are struggling with the notion of the interpretation of “onsite”. It has been put to the committee in evidence that ground water sampling to some depth is showing evidence of historical pollution events. It is quite likely, not definitively, linked, at least in part, to this site. At what point does onsite become offsite if it involves a drum leaking into the ground water?

Dr Jenkins: I provided one case earlier in the evidence in relation to July 1999. There was clearly contaminated stormwater coming off the site.

The CHAIRMAN: That is the surface. We are looking at a history of pollution events, because the depth of the material found in the sampling suggests historical pollution events.

Dr Jenkins: If you have ground water contamination going beyond the site boundaries, I believe - not that it has been tested - it is a reasonable interpretation.

The CHAIRMAN: The site does not go from the boundary to the core of the earth. We are not talking about absolute surface to earth core ownership and control that excludes you from understanding what is going on underneath the surface of the site. At what point does offsite come into it?

Dr Jenkins: I am giving the committee the legal advice we received that the ground water would need to cross the boundary of the site before it was considered to be pollution. Even then, it would have to be at a level that was detrimental to the environment, to beneficial use or exceeding a prescribed value to be defined as pollution under the Act. We have been trying to change that.

Mr MASTERS: Is that since 1991 and the Palos Verdes case?

Dr Jenkins: I cannot comment about 1991.

Mr MASTERS: When did you commence employment with DEP?

Dr Jenkins: In 1994. We have been attempting to do that since then. We have been trying to get the contaminated sites legislation up.

Mr MASTERS: Why were you not able to modify this Act after seven years to redefine terms such as “pollution” and “environment”. Surely it would be simple and would not have required a rewrite of the Act and a new Act such as the contaminated sites legislation.

Dr Jenkins: Your advice is inconsistent with the advice we received. We tried to cover the issues of the pollution and environmental harm. Environmental harm is the concept now widely used in other jurisdictions. Members are aware of the debate about environmental harm to cover the broader issues of pollution. Specific clauses relate to onsite contamination. They are still being debated with industry, which has raised strong objections to those clauses. The legislation has already been drafted. It is a matter of taking something into Parliament. There have been many versions.

Mr BOWLER: Did the DEP draft them?

Dr Jenkins: No. Parliamentary counsel must do that.

The CHAIRMAN: Did you give instructions?

Mr DAY: The process is that Cabinet gives approval for drafting.

Dr Jenkins: That was done and Bills have been taken to Cabinet. They are still being debated. Writing environmental regulations that everyone is happy with is a major challenge. We were able to get some changes through in 1996 and 1998. Others are still being debated.

Mr DAY: Are they the real issues - the complexity and divergent views in industry and the community and difficulty in reconciling them? Is that the core of the issue or is it something else?

Dr Jenkins: It is more the political aspect you are talking about; that is, getting acceptance. In terms of having a legal framework, that has been defined and put forward and debated in public, but is not yet law.

Mr BOWLER: You say you wanted changes. Who was blocking them?

Dr Jenkins: A range of interest groups had concerns.

Mr BOWLER: Who blocked the proposed amendments to the legislation?

Dr Jenkins: There has to be sufficient agreement at the political level for that to occur. I am not necessarily involved in those decisions about what happens at the political level.

Mr BOWLER: Are you saying that it stopped at the political level?

Dr Jenkins: There have been nine drafts of contaminated sites legislation trying to accommodate a range of concerns. They are still being debated. There were 20 drafts of the Environmental Protection Act to accommodate all the interests. It is not straightforward. The interpretations have legal implications for a range of people.

Mr BOWLER: They certainly do when we have a situation like Bellevue.

Mr MASTERS: I am very confused. On the one hand, the witness is saying that industry was putting pressure on the Government; therefore, there were political implications. On the other hand, he is saying that there were legal ramifications. Surely the legal ramifications would have been resolved before discussion papers were released or draft legislation was produced. This is my interpretation of these comments. Why could the legal ramifications not be resolved at the early stages of this process? Why do you keep using the term "legal ramifications" or "legal complexities" after the draft legislation was released and after the industry groups started expressing concerns? Are they not mutually exclusive?

Dr Jenkins: No, I do not agree at all. One tries to draft a piece of legislation to deal with a particular problem. It goes out for discussions with a range of stakeholders. There is then interpretation of how those clauses might apply beyond the circumstances they were intended to address. That is the key issue. How does one ensure that the legislation deals with the issue of specific concern and does not raise a range of other unintended issues?

Mr MASTERS: Surely pollution is pollution.

Dr Jenkins: There is a very clear legal definition of -

Mr MASTERS: I refer to the Palos Verdes case. I understand that that was before your time. My understanding is that the DEP was trying to convince the court that pollution in this instance comprised pushing vegetation into the Wilson Inlet; in other words, that was the definition of pollution. I am not surprised that that case was thrown out. That was not a very good case of pollution. However, when we come to contamination of ground water and soils at a site such as Waste Control or Omex or many other sites, surely there would have been reasonable justification for the DEP to take those cases back to the court to get a decision on completely different situations from pushing vegetation and sand into an area of natural water.

Dr Jenkins: The 1986 definition of pollution specifically included environmental degradation. Vegetation clearance was considered by the department as environmental degradation. However, the court used the Oxford dictionary definition of pollution to indicate that it relates to chemical contamination. It said that the definition in the legislation, even though that was the intent of the Act, was not appropriate. Hence, the concept of environmental harm was developed in relation to the proposed changes to the legislation. Members are aware from the discussions we have had previously about the Bill that when one refers to the concept of environmental harm, there is a range of implications that must be considered when drafting legislation.

The CHAIRMAN: Why was there no testing of that Oxford dictionary definition?

Mr BOWLER: He said that when they tried to change it they were blocked at the political level.

Dr Jenkins: There is ongoing debate about how best to draft these things to achieve the environmental objectives and not have other adverse consequences associated with the legislation.

The CHAIRMAN: I do not know the history of this. I do not fully comprehend why no test cases were pursued to explore further the court's interpretation in circumstances beyond the bulldozing of native vegetation into an inlet.

Dr Jenkins: One must consider what we are required to do in terms of taking a case for prosecution. It is rare to do a test case. One must have prime facie evidence of a breach of the Act. If the Chief Justice of the Supreme Court has handed down a decision on an issue, not many people in Crown Law will advise that prosecution is the appropriate way to test legislation. They will advise that if you go back to court, the argument will be that the Chief Justice has handed down an interpretation and you will be thrown out. That would be a waste of taxpayers' money.

Mr MASTERS: Are you saying that once the Chief Justice has made a decision, that is inviolate?

Dr Jenkins: I did not say that.

Mr MASTERS: You are implying that.

Mr DAY: It is commonsense. Government agencies must act on the professional advice of Crown Law, which gives advice to government agencies about these issues. If they run off and prosecute people without good reasons, the courts will come down on them like a tonne of bricks. I understand the risk.

Mr MASTERS: I appreciate that. I have been a law enforcement officer for three and a half years. The definition of pollution as contained in the Environmental Protection Act - perhaps Dr Jenkins can indicate whether that has been amended since 1976 -

Dr Jenkins: I believe that that is the original definition.

Mr MASTERS: I understand why the definition of pollution did not apply in the case of Palos Verdes. I do not agree that this was a weak definition that would not have applied in a situation similar to Omex, Bellevue and a wide range of other chemical contamination or pollution incidents.

Dr Jenkins: You may hold that view, but that is not the legal interpretation. The advice we received was that, if we wished to clarify the legal interpretation, we should change the law. That is what we have been trying to do.

The CHAIRMAN: In August 1999, the DEP prepared a Cabinet submission on behalf the Minister for the Environment regarding compliance problems and options for management of the Waste Control site. Members understand from other evidence that six options were prepared. Option one was to do nothing; option two was to provide the company with financial assistance to enable it to make the plant compliant; option three was to provide no assistance and the company would go into liquidation and the Government would take over responsibility for the subsequent clean-up; option four was to provide no assistance and the company would go into liquidation and the Government would decommission and clean up the site and relocate essential plant; option five was to provide

no assistance, liquidation and government decommissioning and clean-up and establish a new site at the Forrestdale liquid waste treatment facility; option six was that the DEP would cause some of the waste to be removed under the section 73(4) of the Environmental Protection Act and recover cost from Waste Control when profitability returned. I understand from the unsigned copy of the cabinet submission we have that the department prepared these options for the minister and recommended the sixth option. Is that your recollection?

Dr Jenkins: Yes.

The CHAIRMAN: Briefly explain why you picked the cheapest option?

Dr Jenkins: A number of factors relate to that. One is certainly the cost to the Government. We believed that the polluter should pay to deal with the issues. The first five options effectively meant the Government would pay. We are talking about a seven-figure sum. There were discussions with Treasury about what it would accept.

Mr BOWLER: Did you have direct discussions with Treasury.

Dr Jenkins: Yes.

The CHAIRMAN: What was Treasury prepared to accept?

Dr Jenkins: Option six.

Mr BOWLER: If Treasury had told you to do what was best for the environment and Western Australia, which option would you have picked?

Dr Jenkins: Given the circumstances at the time, I still think option six was the best solution. If Waste Control had been able to implement the changes as required to comply with the licence -

The CHAIRMAN: Given all the circumstances since, do you still believe that?

Dr Jenkins: Yes.

The CHAIRMAN: The facts do not seem to bear that out.

Mr DAY: He said "given the circumstances at the time". Do you want to add further comment about why it was the best option in your view?

Dr Jenkins: There were two significant pollution management and risk issues. We are talking about the broader issue of the fire risk. Our concerns were about pollution; others have the responsibility to deal with fire risk. Removal of the drums was the key factor in dealing with pollution. This provided the quickest way to remove enough of the drums to reduce the risk to what our colleagues were saying was acceptable. It also meant we would still have had a facility that would take the recycling and other solvent wastes, which have clearly been a problem since the fire. We have the problem of closure of the plant. Members are aware of action taken by the DEP with regard to illegal disposal of solvents at Gnangara. There was justification for an option six at that time.

Mr BOWLER: If you are not concerned about the fire risk, what is the difference between 1 000 drums and 2 000 drums?

Dr Jenkins: You should ask the people who assess those risks; that is, the Department of Minerals and Energy and the chief fire officer.

Mr BOWLER: Why did you want 1 000 drums removed?

Dr Jenkins: There was a licence condition about the number of drums they could have onsite. They had exceeded that number and were therefore in breach of the licence.

Mr BOWLER: Why have the licence conditions? Do not hide behind the legality. Why worry?

Dr Jenkins: The concern related to the storage of drums on the site for a long period. That would cause leakage of the chemicals. We could see leakages from a number of the drums. They had

been there for some time and they were rusting. They needed to be removed and Waste Control had done nothing about it. The best thing to do was remove the drums to resolve the leakage risk.

Mr BOWLER: Rodney Mathers told the committee that removing the drums was one issue. However, Waste Control had been asking the DEP for years - it had had no response from you or the Government - to introduce legislation to ensure there was no dumping around Perth and the rest of Western Australia. If that were to happen, Waste Control could start operating profitably. That did not follow the \$100 000. He said it was a waste of \$100 000; it was a stopgap measure if the rest of it did not happen.

Dr Jenkins: I went through the developments relating to the solvent regulations because he claimed there was a lot of unaccounted for waste. He raised that in August 1999 to the best of my knowledge.

Mr BOWLER: He had been trying to get the legislation in place since 1993. He wrote to Richard Court about the issue before he became Premier.

Dr Jenkins: I am not aware of correspondence in 1993. As I said earlier, in 1997 we put out a proposal for waste management legislation that would incorporate the product stewardship concept. We do not disagree with that approach to waste management.

Mr BOWLER: Mr Mathers told us that, in January 2000, the non-delivery by the Government and the DEP was placing everything in jeopardy.

Dr Jenkins: We disagree. As I said, we committed to do two things in August 1999: first, to test his claims that wastes were being illegally disposed of - that was the Ron Powell exercise. Mr Powell spoke with industry participants and other waste treaters. He knows the industry well; he had been working in the area for more than 30 years, so he knows what to look for. He made estimates of the wastes. That is in the papers submitted to the committee. That did not indicate a large amount of unaccounted for wastes.

Mr BOWLER: It would have taken half an hour and a phone call to a producer of these chemicals and go back to Waste Control to establish its volumes and subtract the two to establish what was being distributed and what was being poured down drains illegally throughout Western Australia.

Dr Jenkins: It is not as simple as that. The solvents are used up during the production process. The amount that comes in is not necessarily the same as the amount that goes out. Chemical changes occur. To do that, one must estimate what happened during the production of those wastes. That is what Ron Powell did; he went to all of the -

The CHAIRMAN: Even accepting that argument, it is an inexact science.

Dr Jenkins: Yes. However, if you are claiming that a large volume of material is going into the environment, you can establish that.

The CHAIRMAN: It has been put to us that you had one submission from an industry stakeholder seeking regulations to tighten up the controls and, by so doing, make its business profitable. It was stated that you set parameters for alternative research to discount that argument.

Dr Jenkins: No. We were trying to work out what needed to be done to deal with solvents. It is clearly an issue that must be addressed; there is no question about that. We promised to investigate the claims and whether simple amendments to the liquid waste regulations dealing with septage could be modified to deal with solvents. I outlined in earlier evidence the outcomes of those two processes. There was no indication of widespread disposal of solvents from industry. That is not the case. In addition, we could not change the liquid waste regulations to deal with solvents without being unduly draconian. We put in place an alternative scheme based on voluntary product stewardship - we did not have the product stewardship legislation at that time - to effect what was being requested. That required a degree of negotiation with industry and Crown Law to establish what was legal. That was done as expeditiously as possible.

Mr BOWLER: What was going to change after you removed the 1 000 drums to prevent it happening again?

Dr Jenkins: If Waste Control complied with the licence requirements, which meant -

Mr BOWLER: It had been trying to for seven or eight years.

Dr Jenkins: The dramatic change that occurred was its inability to dispose of the solids and sludges cheaply at Redhill.

Mr BOWLER: What was going to change after you removed the 1 000 drums?

The CHAIRMAN: It is not correct to say that because there was a history of noncompliance over a much longer period than following of closure of Redhill. There was a history of noncompliance with DME and DEP criteria. It did relate to different licence matters, but it was still noncompliance, over a much longer period. Although you say that this was only about the closure of Redhill, the solvents and the behaviour following that, it is clear from departmental evidence that there was a long history of noncompliance.

Dr Jenkins: The evidence that I have provided and the evidence of my officers associated with this indicates that prior to the events when we took extensive action in 1999, there were two or three incidents related to the Environmental Protection Act. The situation in relation to DME and the dangerous goods legislation requirements may be a different story. I have heard concerns expressed about the operations on the site. However, that is a WorkSafe matter, not a DEP matter.

The CHAIRMAN: I do not fully accept that interpretation. Part of the problem with this site - I have said it to a number of witnesses - is that government agencies were operating in silos taking no holistic approach. They were constructing an interpretation of their limitations on the basis of early 1990s case law and being frustrated by the lack of ability to get any Government to change the legislation or to give it a priority. I do not accept your saying that you were representing the DEP and that the problem emerged only following the closure of Redhill. It is my opinion that the silo mentality within agencies over a long period contributed to the incident earlier this year.

Dr Jenkins: There will always be a need for coordination of regulations. In my comments, I said there was clearly a need for that. If you also look at the powers available and the consultation that occurs, there had been ongoing consultation with the other agencies. I am aware of the 1993 incident. A series of meetings was held. In terms of taking legal action, there was a very clear indication at those meetings that, if any legal action was to be taken, it would be launched by DME.

The CHAIRMAN: It is interesting that a couple of officers from the DME have provided evidence about the level to which that advice and knowledge about this facility was reported. It certainly did not go to the executive director or from the department to the minister.

Dr Jenkins: That is not necessarily a silo-mentality problem; that is a failure within a silo.

The CHAIRMAN: It is part of the failure to share information that would allow people to understand this in a holistic way. It is another piece of the evidence that leads me to that conclusion.

Mr BOWLER: You have not answered my question on the removal of the drums. What was going to change to prevent another build-up? That did happen.

Dr Jenkins: We had commitments from Waste Control at the time that it would comply with its licence requirements. It provided a schedule of implementation. There was evidence in front of us that the build-up would not occur again. The reason for build-up the second time was the breakdown of one of the stills. Dr Claflin said that the company was undercapitalised. It could not get additional funds to repair the still, so the substances built up again. That is when the agency said that enough was enough.

Mr BOWLER: Both directors of Waste Control have said that, without assistance from the DEP and the Government to force industry to dispose of waste in a controlled manner, Waste Control

could never charge enough to make its business profitable. It would always have problems. The directors had been telling you that for some time. Is that correct?

Dr Jenkins: They told us that. We undertook a number of investigations of our own. Many waste management companies wish to have a guaranteed market by regulation. Members should look at the issues Waste Control was raising. We discussed them with its competitors. The advice we received was that Waste Control had been aggressively undercutting its competition to increase its market share. The prices it was charging were not sufficient to do the job properly.

The CHAIRMAN: Why did you think spending \$100 000 to remove some of the drums would provide a long-term solution?

Dr Jenkins: I did not say that. We had a dangerous situation with leaking drums and the potential for pollution.

Mr DAY: I refer specifically to the removal of a number of drums. Is it true that had the 1 000 drums not been removed prior to the fire, there would have been that many more drums on the site at that time?

Dr Jenkins: That is entirely correct.

Mr DAY: Are you clearly of the view that if they had not been removed there would have been another 1 000 drums on the site that would have caused a bigger conflagration?

Dr Jenkins: Yes.

Mr DAY: In his presentations to the committee, Mr Mathers indicated that at a meeting with the then Minister for the Environment - I think you were present and that it was held towards the end of 1999 - he was promised that the regulations Waste Control was seeking would be produced and put into effect within six weeks. Do you agree with that description of the situation?

Dr Jenkins: I said in earlier evidence what DEP committed to do at the August 1999 meeting. First, we agreed to test Waste Control's claims about the unaccounted for waste. Second, we would investigate whether it was possible to change the liquid waste regulations to cover solvents. That is what we did. We did not say we would make the changes as Mr Mathers is claiming we did. When we found we were dealing with small quantities and a large number of small businesses, we realised that the liquid waste regulations would not be suitable to deal with solvents. That is when we came back to the minister with an alternative strategy. Waste Control was made aware of those circumstances. We then started negotiations with the solvent industry and Crown Law about how to frame the alternative regulations.

Mr DAY: Was there a promise that new regulations would be in place in six weeks?

Dr Jenkins: No.

The CHAIRMAN: Mr Mathers gave us detailed evidence about meetings and correspondence that flowed from that. He was able to produce notes of meetings and agreed outcomes. He also made notes after they had been distributed that the department had not responded about any matter it did not think was an agreed outcome. He was also able to show in that evidence that at the July 1999 meeting -

Dr Jenkins: It was the August 1999 meeting. The spill happened in July.

The CHAIRMAN: He circulated notes about agreed actions resulting from that meeting and he recorded no disagreement about that.

Dr Jenkins: I am not sure to which document you are referring.

The CHAIRMAN: The one that said the Government had agreed to introduced regulations immediately. Do you have any recollection of that?

Dr Jenkins: As I said, I stated my recollection about the DEP's commitments. I believe that is consistent with my notes. A department cannot commit to providing regulations within several months.

Mr BOWLER: Was the minister at that meeting?

Dr Jenkins: It is not in the hands of the minister; it must go through Parliament.

Mr BOWLER: The minister can give an indication that an attempt would be made.

Dr Jenkins: And it was. We tried to establish whether the liquid waste regulations that were introduced to deal with septage could be modified to deal with solvents. I have explained why that is not possible - we were dealing with small quantities and large number -

Mr BOWLER: But you were also dealing with only one or two manufacturers. Why not impose the cradle-to-grave fee on the manufacturers?

Dr Jenkins: The DEP does not have the ability to impose a fee; that is unconstitutional. Only the Commonwealth Government can do that. This State does not have legislation dealing with product stewardship; even though it has been proposed, it does not exist. There is no power in the Environmental Protection Act to impose controls on suppliers.

Mr BOWLER: We are talking about legislative change to allow that to happen.

Dr Jenkins: I am talking about a much broader waste management issue. Within the constraints of current legislation, we have said we will introduce regulations for those industries, but include exemptions and reduced fees for those who participate in voluntary stewardship agreements. That was a way of achieving the outcome that everyone agreed was the right way to go for suppliers within the constraints of the current legislation.

Mr DAY: As far as the ongoing management of the site is concerned and given that concerns had been expressed for a number of years, can you summarise why Waste Control was allowed to continue to operate.

Dr Jenkins: Prior to the build-up of drums in the 1999 case, the licensing incidents that occurred were not of a magnitude that warranted more action than that required to ensure compliance.

Mr DAY: I understand that it was considered better to allow the site to continue operating despite the problems rather than move to the alternative. Is that your understanding?

Dr Jenkins: That is part of it. As I mentioned in my previous evidence, Crown Law advises that taking steps to put people out of business should be done only when one has hard evidence of major problems. Prior to the problems in 1999, there was not the level of evidence to suggest that Waste Control should not have been allowed to continue to operate. It was required to improve its operations, but the evidence was not sufficient to put it out of business.

Mr MASTERS: I strongly support Dr Jenkins in one respect. The study commissioned by the DEP involving Ron Powell's assessing whether Waste Control's claims were true was entirely responsible. It needed to know whether there were pollution problems before it committed public funds to resolve those problems. That was a very responsible course of action. Did the DEP advise Waste Control in writing that the liquid waste regulations would not be suitable and could not be applied to solvents and perchlorethylene?

Dr Jenkins: I would have to check the written record. It would have been advised in meetings, if not in writing. The committee has all the files; I do not have access to them. Waste Control would have been advised. Meetings were held often with the minister and we provided detailed briefings notes.

Mr MASTERS: You said that after the 1 000 drums were removed at a cost of \$100 000 to the taxpayers -

Dr Jenkins: No.

Mr MASTERS: That is my interpretation. In theory it was to be repaid.

Dr Jenkins: A deed of agreement was signed by Waste Control and the Government regarding repayments.

Mr MASTERS: The taxpayers pick up that tab.

Mr DAY: Presumably the money is still being sought from the liquidator.

Dr Jenkins: Yes. We were able to use that deed of agreement.

Mr MASTERS: I have questions to ask.

Mr DAY: I simply wanted clarification.

Mr MASTERS: We are running out of time.

Mr DAY: I wanted clarification that the funds are still being sought.

The CHAIRMAN: How would Dr Jenkins know that? He is not in a position to know.

Dr Jenkins: I did institute the proceedings by authorising a liquidator to be appointed.

The CHAIRMAN: When was that?

Dr Jenkins: I cannot provide an exact date, but I think it was March or April this year.

Mr MASTERS: After the 1 000 drums were removed, Waste Control requested that the DEP introduce some sort of financial penalties for distributors or others -

Dr Jenkins: Waste producers, not the distributors.

Mr MASTERS: The users -

Dr Jenkins: It was the producers of the waste.

Mr MASTERS: Waste Control wanted the DEP to raise more money and give to the company and it would process the waste. Why did DEP not accept that Waste Control simply needed to increase its prices? I appreciate that at that time the officers of the DEP were not in the business of being in business; that is for the private sector. Nonetheless, the bottom line was that Waste Control needed more money to process the waste it had on hand and any future waste. Without that extra money, it would have to close its doors. It was simply asking DEP for money via regulation. Did you ask Waste Control why it did not simply increase its charges?.

Dr Jenkins: That was raised in discussions, but we had no statutory power to do anything.

Mr MASTERS: I am not asking whether you had that power; I am asking whether you raised it with Waste Control and got an answer that satisfied your concerns that it was not destroying its viability by charging too little.

Dr Jenkins: That was raised, and the company argued differently. Mr Bowler has outlined the argument the company used; that is, if it raised its prices there would be more illegal disposal.

Mr MASTERS: The committee has been told by other industry players that Waste Control so undercut the price that it was impossible for anyone else to get into the business. You have told us that Ron Powell's study indicated that there was not a significant amount of waste going into the environment. I can only conclude that you were spun a line - I am not blaming you - and you believed it. Waste Control told you that, if it increased its price as another option, the environment would be harmed as a result. That is a problem.

Mr MURRAY: At what point is the cost too great? At what point do people start to dump illegally? There must be a line.

Dr Jenkins: Regulations have been put in place. They were enacted in March. We had a major event of illegal dumping by people who were trying to avoid the costs associated with compliance.

That relates more to compliance with the regulations rather than the price of the treatment. The price of treatment has gone up, because the only treatment available is interstate. We now have hard evidence that illegal disposal is occurring either because of the regulation or high prices.

Mr MASTERS: I wrote down what you said, and I hope my notes are accurate. You said that in 1999, Redhill ceased to accept non-recyclable waste. Is that correct?

Dr Jenkins: I think I would have provided other qualifiers.

Mr MASTERS: Of course. If something is non-recyclable, how does one dispose of it other than in landfill? Surely you are not suggesting that the Redhill facility should accept recyclable wastes.

Dr Jenkins: Redhill has a recycling facility.

Mr MASTERS: Not for these materials.

Dr Jenkins: Redhill does accept recyclable materials; it has a recycling facility.

Mr MASTERS: Why would you say that Redhill ceased to accept non-recyclable waste when, by definition, non-recyclable waste is non-recyclable? How do you get rid of it?

Dr Jenkins: I was referring to the non-recyclable waste from Waste Control. There was a range of sludges that it could not recycle. Redhill stopped accepting them because it did not meet the criteria.

Mr MASTERS: The committee has received a submission from the East Metropolitan Regional Council saying that it got tough about controls because of outstanding issues regarding the consistency of the waste. In other words, Waste Control was supplying materials that the Redhill site was not allowed to accept, either under DEP regulations or according to its guidelines. The stimulus for getting tough with Waste Control was a number of safety incidents in 1998 relating to the acceptance of materials. In other words, Waste Control was trying to get rid of waste that was not allowed to off-load. Is this not simply another example of Waste Control pretending that the regulations did not exist and trying to circumvent them? I appreciate that you are trying to sheet some of the blame for problems on Redhill.

Dr Jenkins: I am not.

Mr MASTERS: That is the way it sounds. I want to reinterpret your words and say that Redhill was simply responding to the poor and illegal management actions of Waste Control.

Dr Jenkins: I have no problems with the actions taken by Redhill. It had to meet licence requirements. It was doing what it had to do with regard to the requirements.

The CHAIRMAN: Was that 1998 reference part of the chain of events of mismanagement and noncompliance by Waste Control?

Dr Jenkins: It is hard to work out exactly what was going on at the site. There was clearly a build-up of sludges that it could not dispose of that it previously had been able to.

The CHAIRMAN: It was said earlier that the 1999 incident triggered your view that the company was not complying. Did the 1998 incident also cause you to believe that?

Dr Jenkins: That did not involve the DEP directly; that involved negotiations between Redhill and Waste Control.

The CHAIRMAN: So, you were not aware of that.

Dr Jenkins: I did not say that.

The CHAIRMAN: I am not asking whether you thought it was a matter between two other parties. Did you think it was a symptom of Waste Control's failure to comply with licence requirements?

Dr Jenkins: I put it slightly differently. We were trying to tighten up and improve waste management throughout the State. As we tightened up in one area, we started to find problems this

other areas. That is a symptom of tightening up all of the waste acceptance criteria. It is not the only incident.

The CHAIRMAN: I accept that, when you squeeze something, it pops out in other areas.

Mr BOWLER: Mr Powell investigated Waste Control's claims and they were disproved. We can assume that Waste Control was getting the vast bulk of the waste.

Dr Jenkins: That is correct.

Mr BOWLER: Why did it not simply increase the price if it was going broke?

Dr Jenkins: That is -

Mr BOWLER: Did you ever ask yourself that question?

Dr Jenkins: Waste Control told the DEP that if it increased the price, there would be an upsurge in illegal disposal.

Mr BOWLER: Surely that must be right, otherwise it would have done that. You are saying that very few people were dumping. Therefore, it could have tested the market by increasing the price. Obviously it did that, and every time it increased the price the volumes dropped off.

Dr Jenkins: There is another factor: Cleanaway, ERS and others would have moved in.

Mr BOWLER: Was the gap between Waste Control's price and the prices charged by the other two substantial?

Dr Jenkins: I do not know the exact amounts. It was sufficient that it did not do much business.

Mr BOWLER: Hardly any.

Dr Jenkins: Yes.

Mr BOWLER: Why not increase the price, but still be the cheapest?

Dr Jenkins: That question should be asked of Waste Control. To be fair, the DEP is not the arbiter of the price of waste treatment.

Mr BOWLER: But you are controlling the system, and it is failing?

The CHAIRMAN: The answer is that it needed regulation.

Dr Jenkins: That is what we provided.

Mr MASTERS: Regulation was merely another way to make it more profitable. Did DEP force Waste Control to address the issue internally of what would happen if it increased its price by 10 or 20 per cent to make its operation more profitable. I understand what Dr Jenkins said about more waste being dumped in the environment. That was Dr Jenkins' concern, not Waste Control's. It could process 80 tonnes a year instead of 100 tonnes, but that could be significantly more profitable.

Mr DAY: I refer to a theme that came through in evidence from current DEP officers involved in pollution prevention. The view was expressed that there was a conflict of views, or priorities, between the waste management division and the pollution prevention division. It is not surprising that they would have different views or priorities, because they are very important activities that need to be fulfilled. Do you agree that it is reasonable to say that there were conflicting views in both divisions? Was it your role as CEO of the organisation to balance out those views?

Dr Jenkins: I am not aware that there were conflicting views. It is valid and it was expressed in the cabinet papers that multiple objectives had to be achieved. All the work within the department was carried out in an open-discussion basis. Clearly, it was my call at the end of the day to provide advice to the minister about what action was considered appropriate. I had to sign off on recommendations to the minister.

Mr DAY: Can you make any further comment about that issue of balancing competing priorities or objectives?

Dr Jenkins: We were trying to find a solution that would reduce the pollution potential and ensure that we did not increase illegal disposal. Option six did both.

The CHAIRMAN: Did you seek permission from the minister to prosecute Waste Control?

Dr Jenkins: A show-cause letter went out in November 2000.

The CHAIRMAN: Did you seek the minister's approval?

Dr Jenkins: That comes at a later stage. Waste Control was in the process of responding to that letter when the fire occurred. The minister was not given that opportunity to act in the prosecution process. The first step is the show-cause letter. Crown Law is approached for advice about the existence of a prime facie case. If there is, the case is put together and it goes to the minister.

The CHAIRMAN: How many times did you send show-cause letters to Waste Control?

Dr Jenkins: I think there were at least two, but I would have to check that.

Mr DAY: Do you think the legislation should be change so that ministerial approval for prosecution is not required?

Dr Jenkins: That is in the proposed changes to the Act.

The CHAIRMAN: Do you have any knowledge of officers from the minister's office being involved in the negotiations with Waste Control about its compliance with make-good orders or show-cause letters?

Dr Jenkins: Not show-cause letters. If there are appeals, the appeals convenor - who is in the minister's office - has a direct responsibility to sort out how to deal with the appeal. DEP provides advice to the appeals convenor and he consults with a range of players and then supplies advice to the minister.

The CHAIRMAN: Are you aware of anyone else being involved?

Dr Jenkins: Ministerial staff would have been involved in requesting information for the minister and attending meetings.

The CHAIRMAN: Were there direct negotiations between those policy people or advisers and Waste Control?

Dr Jenkins: Not to my knowledge.

The CHAIRMAN: The DEP submission to the committee makes reference to support for the cabinet minute of September 1999. Is that correct?

Dr Jenkins: Yes.

The CHAIRMAN: The DEP submission also makes reference to the number of agencies that supported the DEP's position. However, it makes no reference to the role of Treasury. Why is that so given that you said that one of the key agencies in determining preferred option six was Treasury?

Dr Jenkins: I do not believe that Treasury wished to be associated with the technical decision, because it provides advice directly to Cabinet about what should happen financially.

The CHAIRMAN: In the absence of a financial consideration, was option six the best technical option?

Dr Jenkins: To deal with the immediate situation -

The CHAIRMAN: No to deal with -

Mr BOWLER: Are we talking about the long term?

Dr Jenkins: From a long-term perspective, much more had to happen. That was part of the negotiations with Waste Control to bring it into compliance with the licence. There was clearly a need for regulation, and that was happening. There was also clearly a need for waste management legislation, and that was happening. To achieve a long-term solution, we needed a higher standard of waste management facility in Western Australia.

The CHAIRMAN: Even in the absence of a financial consideration driving the thinking, the best option of the six in the short term was still option six.

Dr Jenkins: Yes.

The CHAIRMAN: Who prepared that range of options?

Dr Jenkins: An internal meeting was held to discuss the range of option that should be put forward. I was present at that meeting, along with the pollution prevention officers and the waste management officers.

The CHAIRMAN: Mr Mathers said that he prepared those options.

Dr Jenkins: That is not true.

The CHAIRMAN: Did he express an opinion?

Dr Jenkins: We certainly raised a range of options with him. However, he did not prepare them.

The CHAIRMAN: Did he express an opinion about a preferred option?

Dr Jenkins: Not to my recollection.

The CHAIRMAN: Are you saying that you never discussed with the operators what they thought was the best technical outcome?

Dr Jenkins: We were looking at an enforcement action. We were considering what met the intent of the Environmental Protection Act.

The CHAIRMAN: You were talking about giving a loan to a company that was not complying. You did not ask what was its preferred option.

Dr Jenkins: I said we discussed the options; we did not ask for a preference.

The CHAIRMAN: Why did you discuss it?

Dr Jenkins: We had to ensure that the company was prepared to repay the money.

Mr BOWLER: What about options one to five?

Dr Jenkins: In what respect?

The CHAIRMAN: If you were concerned only that it was prepared to repay the money -

Mr BOWLER: Why bother having six options; why not have only one?

Dr Jenkins: There was no point in having option six if the money was not going to be repaid.

The CHAIRMAN: Was that its preferred option?

Dr Jenkins: No; I think its preference was option two. This was an enforcement action under section 73(4) of the Environmental Protection Act; it was not a loan. For Mr Mathers to call it a loan -

The CHAIRMAN: It was characterised as a remedial action involving the Government recouping that amount when the operation became profitable.

Mr MASTERS: Was there a Treasury briefing note accompanying your DEP briefing note on the six options?

Dr Jenkins: I am not aware that I saw the Treasury note. Often they went directly to the Cabinet and not to the agency.

Mr MASTERS: I would like the research staff to establish whether a separate Treasury note was submitted.

You talked about the waste landfill levy. That was designed to provide an economic incentive to move away from landfill. The cost of landfill is about \$70 a tonne. What is the levy?

Dr Jenkins: It is \$3 a tonne.

Mr DAY: That is in the metropolitan area only.

Dr Jenkins: That is correct. That is for putrescible waste. It is \$1 for inert waste.

Mr DAY: Can it be spent anywhere in the State?

Dr Jenkins: Yes.

Mr MASTERS: A company called Ecologic was trying to establish itself a business in the Kwinana area.

Dr Jenkins: It had established itself and had been operating longer than originally intended.

Mr MASTERS: Therefore, it is not fair to compare the operations of the two businesses; that is, Ecologic and Waste Control?

Dr Jenkins: They were dealing with totally different wastes. It was dealing with chlorinated hydrocarbons. It involves a very expensive treatment. It is very useful in that almost all chlorinated hydrocarbon waste in the State was treated there.

Mr MASTERS: But we are comparing chalk with cheese.

Dr Jenkins: Yes.

Mr MASTERS: You referred to zoning decisions and the obvious need for change. I agree. When DEP is approached by someone for a licence for a proposal such as this, what onus, if any, is there on the DEP to seek advice from the local authority?

Dr Jenkins: That is specified in the Act.

Mr MASTERS: Does that mean that advice must be obtained or does it simply mean that the local government authority must be notified, but if the DEP so chooses it can ignore the authority's view?

Dr Jenkins: I would have to check the sections of the Act. There is a requirement to consult, but not necessarily to agree with key players, and local government would be a key player in a zoning decision.

Mr MASTERS: It is somewhere in the Act.

Dr Jenkins: I can find it. All licences and works approvals are advertised and open to appeal. If local government is unhappy with the outcome, there is an appeal process about any decision made by the department. That is publicly advertised every Monday.

Mr BOWLER: The DEP said that options three and five are feasible but not preferred. Why?

Dr Jenkins: The issue in relation to option three -

Mr BOWLER: Is it because of the cost?

Dr Jenkins: It relates to government operations.

The CHAIRMAN: Option three is that no assistance is provided and the company goes into liquidation and the government takes over the site until a buyer for the business is found. Option five is no assistance and the company goes into liquidation. Once the site is abandoned, the Government can decommission and clean up the site and establish a processing still at the Forrestdale liquid waste treatment facility. Why is that feasible but not preferred?

Dr Jenkins: There was concern about who in government would operate the facility?

Mr BOWLER: Who was operating Forrestdale?

Dr Jenkins: The DEP had the responsibility for operating Forrestdale. However, there was a concern within the DEP since it had been at Forrestdale. The current Forrestdale CER states a desire that it be handed over to an operating agency rather than be controlled by the regulator. Having a regulator in charge of a waste facility was not a situation the department desired. It was a conflict of interest. No other government department was prepared to take on the waste control site and operate it.

Mr BOWLER: Was it cumbersome to have many of the areas covered by the DME and the rest by DEP? Should it be a one-stop shop?

Dr Jenkins: There could be advantages in having areas in which both responsibilities reside within the one agency. There were certainly discussions three or four years ago about that very issue. We had discussion with the CEO at the time. He was trying to work out what parts of the agency should be within the DME. He had discussions over six to nine months about whether the dangerous goods division should come to the DEP. We would have been comfortable to take on that responsibility.

Mr BOWLER: What do you think?

Dr Jenkins: I was comfortable about that integration, but it was not my decision.

Mr BOWLER: Having been involved in the industry and having liaised with that department, if you were starting from scratch, what would you do?

Dr Jenkins: I gave an indication earlier that there should be greater coordination -

Mr BOWLER: Would you keep them separate?

Dr Jenkins: It depends on the circumstances. There is sufficient overlap between the dangerous goods requirements and the Environmental Protection Act. There would be advantages in having them in the one agency when dealing with issues such as Waste Control. The DME deals with a range of other facilities through the chief inspector where there is no overlap. They are separate facilities.

The CHAIRMAN: There is no exact science for the distribution of responsibilities, either.

Dr Jenkins: No. There are complementary activities. If they were together, it could be made to work.

Mr DAY: Do you wish to make any other brief points?

Dr Jenkins: I have had an opportunity to cover the main points. I thank the committee for that opportunity.

The CHAIRMAN: Thank you for reappearing and enduring this process again. I understand it is a gruelling process. The committee appreciates your candid approach to some direct and difficult questioning. Thank you for your submission.

Committee adjourned at 11.48 am