

**STANDING COMMITTEE ON
ENVIRONMENT AND PUBLIC AFFAIRS**

PETITION 59 — BIO-ORGANICS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 29 MARCH 2016**

Members

**Hon Simon O'Brien (Chairman)
Hon Stephen Dawson (Deputy Chair)
Hon Brian Ellis
Hon Paul Brown
Hon Samantha Rowe**

Hearing commenced at 10.06 am

Mr JASON BANKS

Director General, Department of Environment Regulation, examined:

Ms AGNES TAY

Acting Director, Strategy and Reform, Department of Environment Regulation, examined:

Mr PETER SKITMORE

Director, Environmental Sciences, Department of Environment Regulation, examined:

Ms KERRY LASZIG

Acting Executive Director, Licensing and Approvals, Department of Environment Regulation, examined:

Ms GERMAINE HEALY

Acting Director, Compliance and Enforcement, Department of Environment Regulation, examined:

The CHAIRMAN: Just before we commence I would like to acknowledge members of the public who have joined us. As I think I have said on a previous occasion to those of you who have been here before, we welcome your attendance because it reassures us that we are looking at matters that are of concern and interest to the wider community, so it is important that you be here for that reason, but also to ensure that, to the largest extent possible, the proceedings of the Parliament are open and available to the public at large, and this is a proceeding of the Parliament. That then leads me to my second point, which is where we again value your attendance, and that is to make sure that any proceeding of the Parliament, although it may be observed, is not interrupted by outside influences, so I thank you for your forbearance in making sure that we can get on and do our job without any interruption. Thank you once again for being here. I also welcome our witnesses, and we will now formally commence.

On behalf of the committee, I would like to welcome our witnesses to this hearing this morning. You will all have signed a document entitled "Information for Witnesses". Have you all read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. I would ask that in order to assist the committee and Hansard that if you quote any document that you may refer to during the course of the hearing, could you also give us the full title and otherwise identify that document for the record. I remind you that your transcript will become a matter for the public record. If, for some reason, you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt and may mean that the material published or disclosed is not subject to parliamentary privilege.

Turning now to you, Mr Banks, would you like to make an opening statement to the committee?

[10.10 am]

Mr Banks: Thank you very much for the invitation to appear before the committee again. I think it is roughly 12 months since we were last here and things have moved on somewhat since then. In anticipation of today's hearing we have prepared some information both related to the historical aspects of the regulatory decisions that have been made on that site and also the contaminated sites decisions. We also wanted to provide you with an overview of the operation of the controlled waste regime and also our regulatory compliance roles both in terms of contaminated sites and licensing more broadly. Also, we are currently undergoing a reform process and one of those aspects involves the development of environmental standards, which I think is germane to the committee in terms of the environmental standard for composting, so we thought that may be of interest to you as well. So if I may, I will submit those documents to you.

The CHAIRMAN: They are each contained in these large two-ring binders?

Mr Banks: Yes.

The CHAIRMAN: We will receive that as a consolidated tabled paper.

Mr Banks: Other than that, we are here to answer your questions.

The CHAIRMAN: Thanks very much for that. As I indicated, we do have a large number of questions that we want to go through, so we will get into them without any further delay. In 2002, what was the department's usual process for verifying infrastructure compliance with works approvals and other standards before a licence to operate was issued for a prescribed premises?

Mr Banks: If I may refer that to Ms Laszig.

Ms Laszig: The department's usual process would have been to receive a compliance document from the holder of the works approval stating that they had complied with the conditions of the works approval.

The CHAIRMAN: Was there normally an inspection by your officers?

Ms Laszig: It was not always. Sometimes it may have been undertaken, but it was not routine practice.

The CHAIRMAN: How did the department verify that Bio-Organics was compliant with its works approval conditions?

Ms Laszig: I am afraid that I cannot recall from the file what the specific documentation was.

The CHAIRMAN: Perhaps you could take that on notice, if you would, and we will follow that up later. How does the department verify compliance with works approval conditions now in 2016?

Ms Laszig: The department would still require submission of a compliance document as a condition of works approval. In some cases the compliance document goes beyond a mere statement from the holder of the works approval that they have complied with the conditions. For example, recent works approvals granted for landfills require certification by qualified engineers that the construction of the landfill liner has met the standard specified in the works approval.

The CHAIRMAN: Would it be difficult, in fact, for an officer to go out and verify after installation that it had happened? Would you be better off getting advice from an engineer?

Ms Laszig: Yes, particularly for engineering works, largely because when something has been completed, a simple walk-across site inspection will not give one an indication, in many cases, of whether the liner has been properly constructed. It is the engineering supervision and the tests that are done during construction that would provide, I suppose, the assurance that the standards required had been met.

The CHAIRMAN: Thank you for clarifying that. Is infrastructure ever inspected by DER after a licence to operate has been issued?

Ms Laszig: May I just clarify? So are we saying do we ever inspect compliance of premises or are we looking —

The CHAIRMAN: Yes.

Ms Laszig: Yes, the department does have a compliance program. If I may, I will pass over to my colleague Germaine.

Ms Healy: Absolutely. DER undertakes an annual compliance program across all of the prescribed premises that it regulates. As part of that compliance regime it would look at a number of aspects, including infrastructure maintenance. Particularly when the licence is operational and the premises is active we would look at verification for infrastructure integrity et cetera.

The CHAIRMAN: How many staff have you got looking at how many premises?

Ms Healy: If I can refer to Kerry for our current number of prescribed premises.

Ms Laszig: It is in the order of 950 licensed premises.

Ms Healy: And we currently have a central compliance team of 10 officers working out of Perth on an annual inspection program.

Mr Banks: We undertake about—what did we do last year?

Ms Healy: The annual program generally runs around a third of the premises over a three-year cycle. Last year, there were about 330 prescribed premises inspections.

The CHAIRMAN: Generally, would prescribed premises receive a visit triennially?

Ms Healy: Very much so, depending on the activity.

The CHAIRMAN: Would that frequency vary if you had an established premises that was running well as opposed to a premises that you had some doubts about?

Ms Healy: It can vary, so we have our standard inspection frequencies but, certainly, it can increase in frequency depending on what we come across.

The CHAIRMAN: Why did it take until 2014 to identify problems with the hardstand at Bio-Organics?

Ms Laszig: I suppose part of what led to the questions about the hardstand was that there was a spill incident in about August 2013, which is documented in the department's original submission. That led to some groundwater monitoring being undertaken and monitoring data being reviewed that identified evidence of nutrient contamination of groundwater. So then the question becomes: where did that come from and why? And that is where focus goes onto infrastructure integrity. It would be a similar process if, for example, hydrocarbons were found in groundwater near a service station. The first question that is asked is: what is leaking and where has this come from?

The CHAIRMAN: What was the identified problem with the hardstand? Just for the record again.

Mr Skitmore: The licence amendment of late 2013 required testing of the hardstand and as part of that process the hardstand criteria back in the works approval was considered, which needed a compact layer of a certain thickness and certain permeability. So the permeability requirements were 10 to the minus nine, and the hardstand did not pass the 10-to-the-minus-nine test for all the tests that were done at that stage. It was not until those engineering tests were done that the permeability of the hardstand was identified as being substandard.

The CHAIRMAN: You mentioned the 10-to-the-minus-nine measure of permeability, which I am not naturally familiar with; what was the finding of permeability when it was tested?

Mr Skitmore: It varied across various samples. From memory, about eight samples were taken and most of the samples were 10 to the minus seven or 10 to the minus eight. Also the thickness of the pad was not to the required thickness for most of the samples.

Hon PAUL BROWN: Mr Skitmore, can I just follow up on that one? Prior to that testing, when was the previous testing done?

Mr Skitmore: I am not aware that there was any previous testing actually done.

Hon PAUL BROWN: Of the hardstand at any stage?

Mr Skitmore: Of the hardstand. There may have been some testing as part of the earlier compliance. We have a question on notice, so we can check the file for that.

The CHAIRMAN: Presumably, though, there would have been some certification from the operator or their engineer that the hardstand was compliant when it was first installed?

Mr Skitmore: There was. My understanding is that there was a compliance letter, a compliance certificate, certifying that all the requirements of works approval had been met, yes.

The CHAIRMAN: I want to ask now about the licence amendment in December 2013 which added liquid waste facility to the Bio-Organics licence. What is the difference between a liquid waste facility and a compost facility in terms of infrastructure and process?

Ms Laszig: In a way it depends on the process that is being undertaken at the liquid waste facility. Certainly, Bio-Organics was in fact already receiving liquid waste but did not have that category on its licence. The amendment of December 2013 formalised and, if you like, controlled the acceptance of liquid waste by putting restrictions on the types and quantities that could be received; whereas, prior to that there were no restrictions and there was no regulation of that aspect. The licence was silent on the receipt of liquid waste aside from the ability to approve trials of biological activators.

[10.20 am]

The CHAIRMAN: So prior to December 2013 they had approval to receive liquid waste for trials?

Ms Laszig: They had the ability to seek approval for trials of biological activators.

The CHAIRMAN: And they had that approval?

Ms Laszig: It was a condition of the licence, yes. In other words, if I may refer to slide 5 in the tabled pack, one of the conditions of licence reads —

“The licensee shall only use biological activators that have been approved in writing by the Director”

At our session about a year ago we discussed the approvals that department had granted for trials of various biological activators.

The CHAIRMAN: And that covers the liquid waste that we are referring to?

Ms Laszig: The approvals given were for small quantities of material which were well below the threshold of prescribed premises category 61, which is for liquid waste acceptance. People receiving small quantities—the threshold is 100 tonnes a year—would not meet the definition of prescribed premises and therefore require regulation for that activity under the Environmental Protection Act.

The CHAIRMAN: You have some liquid waste being accepted on that basis; would a green composting facility automatically have the necessary infrastructure to become a liquid facility or would it need further enhancement?

Ms Laszig: They would not necessarily or automatically have the required infrastructure.

The CHAIRMAN: Did Bio-Organics have the required infrastructure?

Ms Laszig: At the time the licence was amended there were also requirements, I suppose, placed on Bio-Organics to demonstrate that their infrastructure met the required standards. That was the testing of the hardstand that my colleague Mr Skitmore referred to earlier. I suppose that there was

verification required, but the reality is that Bio-Organics was already receiving quantities of liquid waste significantly above the prescribed premises thresholds for liquid waste facilities.

The CHAIRMAN: And then of course a little while later, as Mr Skitmore has reminded us, it was found that the hardstand, for example, was not up to the standard required.

Ms Laszig: That is correct. That was one of the grounds that led to revocation of the licence in June 2014.

The CHAIRMAN: Before being licensed as a liquid waste facility by the licence amendment in December 2013, did the department inspect the Bio-Organics premises and its operations?

Ms Laszig: There were a small number of inspections on record. In my review of the files, I could locate three inspections and I would like to confirm the dates, but it is in the order of 2005, 2007 and 2010.

The CHAIRMAN: That is probably along the lines of the triennial routine inspections that we were discussing earlier.

Ms Laszig: Yes, although there was not a formalised inspection program at that time of the sort that my colleague Ms Healy was describing.

The CHAIRMAN: What I am driving at with this question is, was it considered, at that time—in December 2013—that a physical inspection was necessary, or was it assumed through recourse to other information that the necessary infrastructure and procedures were in place?

Ms Laszig: Inspections had been undertaken at that time. Sorry, I am talking about the period prior to 2013 when I am talking about the old inspections. It is fair to say that with all the stockpiles of compost on the premises and the pond full, it would not have been possible to visually identify the integrity of the infrastructure, which is why the testing requirements were imposed so that there could be an understanding of the integrity of the infrastructure.

The CHAIRMAN: I understand that there were instances of noncompliance of licence conditions known to the department prior to 2013, such as the failure to appropriately treat acid sulphate soils and the intake of excessive volumes of liquid waste by way of example. Is that correct?

Ms Laszig: With respect, there was no condition on the licence around the treatment of acid sulphate soils. There was certainly an inspection undertaken. In fact, the focus of the 2005 inspection was on their handling of acid sulphate soils, but the licence itself did not place specific requirements on the treatment of acid sulphate soils.

The CHAIRMAN: So in that sense then, they had not failed to comply with licence conditions but their handling of that acid sulphate soil, for example, was inadequate?

Ms Laszig: That would be correct, yes.

The CHAIRMAN: Presumably, that was taken into account when it was decided to amend the licence in December 2013—that record?

Ms Laszig: I am not aware of the degree to which they were still treating acid sulphate soils at that time.

Mr Skitmore: I can answer that question in part. The December 2013 licence amendment restricted the type of waste that could be taken onto the site and acid sulphate soils was not one of the wastes listed as being licenced to take onto the site.

The CHAIRMAN: In that sense, are you indicating that the consideration of the past record regarding acid sulphate soils was not relevant?

Mr Skitmore: I could not answer that question. All I can say is that the 2013 amendment actually specified “these are the types of waste that you are specifically allowed to take on site”, which

meant no other waste was allowed to be taken on site, of any type, and that included acid sulphate soils.

The CHAIRMAN: The purpose of the question is, in large part, about prior record as a reliable operator in this instance. Track record, one would think, would be taken into account when a decision to amend—in this case, greatly expand—the licence was taken. I am just wondering how much weight would be given to past record, in that sense, when you are considering the amendment of a licence.

Mr Skitmore: In answer to the direction that you are heading, I think that the licence of 2013 significantly constrained the operations of that facility, taking into account the issues that were extant at the time. That included the adequacy of the infrastructure. The 2013 licence amendment required a whole series of questions about pad thickness, permeability, pond thickness and pond permeability and there were a whole lot of other issues as well. It was a licence that considerably constrained the operation and focused it on lower risk activities that had been carried out in the past. Whether it was specifically in relation to acid sulphate soils, I could not say.

The CHAIRMAN: In that sense, the licence amendment in December 2013 was to actually rein in what was going on already at the site, rather than allow them to expand their operations more?

Mr Skitmore: I think that is a good summation.

The CHAIRMAN: With respect to that amended licence, did it have any conditions regarding the use, handling or storage of liquid waste at the site?

Mr Skitmore: Yes, it did. It limited the type of liquid waste and it limited the amount of liquid waste on a 28-day period, and I think on a total annual period.

[10.30 am]

The CHAIRMAN: That is the quantum of the waste; what about its use, handling and storage on site?

Mr Skitmore: You have copies of the licence; I do not have a copy of the licence before me. That information would be in the licence. Generally, I do not think the waste was stored. There was only one type of waste that was stored, which was stored in a HDPE-lined facility. That was the only one I am aware of that was actually stored. The liquid waste that came onto site, my understanding is that it was applied directly to the compost windrows. So there was no storage.

The CHAIRMAN: If we have got any further questions on that, we will probably follow up out of session. The conditions of the amended licence allowed specified controlled waste to be used in the composting process. Why did DER decide that these wastes were okay for Bio-Organics to use, noting that some of them are categorised as high risk in the draft environmental standard for composting?

Mr Skitmore: I am not familiar with the waste that you are referring to that is categorised as high risk.

The CHAIRMAN: Again, we might stand corrected by your advice, but I understand the included wastes were grease, waste, vegetable oils and derivatives, production inks, dyes, resins, adhesives glues, wetting agents, dilute phosphoric acid, non-toxic salts, wastepaper and paper sludge, malting and brewing waste.

Mr Skitmore: Yes, those were the wastes that were permitted at the time. Those are the waste classifications within which the wastes that they received were classified at the time. It does not necessarily mean that they were receiving the material that fits that—sorry. The waste is classified as certain types of waste. Within that, there may be the waste stream that they actually received but it does not necessarily mean, because one of the classifications was latex adhesives et cetera, that

they were receiving that material. They were merely the classifications of that waste grouping in the controlled waste classification criteria.

The CHAIRMAN: I understand that, specifically within those categories, liquid food waste and liquid food processing wastes and grease interceptor trap waste are classified as high risk. Would they have been included?

Mr Skitmore: They certainly were included. The question really comes about to high risk. Those materials would not constitute a high environmental risk. They are basically organic material that would compost through the composting process.

The CHAIRMAN: I want to come back to some questions about control versus high risk in a little bit. Perhaps you could discuss also, does the department intend to develop template licences for composting facilities and liquid waste facilities?

Mr Banks: We are basically going through a reform process and a new licensing approach. It definitely will not be templated as such; it will be informed on a risk-based approach. We have worked quite extensively in the development of a compost environmental standard, which is certainly a first for us, and worked extensively with industry. I think what that has informed us is that really there needs to be a site specific assessment for the premise, but within the confines of an agreed sort of risk assessment framework. That is what we are working to.

The CHAIRMAN: I have some questions about compliance now; possibly Ms Healy might want to field these. We are interested in how the department's compliance and inspection regime works, so just a couple of questions about that. Are inspections normally announced or expected by the operator?

Ms Healy: As part of the annual program they are announced inspections, so operators are given advanced notice that DER inspectors will attend the site. They are given a scope, generally, of the inspection, of what it will cover. It will also look at previous annual environmental returns and various aspects, particularly when you have, for example, a more complicated industry that might have multiple categories; it may have a power station and a landfill and a mine site, for example—have multiple categories. So as part of the annual program, yes.

The CHAIRMAN: Why do you let them know you are coming?

Ms Healy: I suppose the annual inspection program is quite a formalised state of affairs, rather than inspections as a result of complaints or incidents that may occur. It really is kind of the rubber glove, I suppose is the word that I use, in terms of: we look at all aspects of the operation, particularly in the regional context for example, in order to ensure that the appropriate people are on site. We provide that notice. They are quite in depth, they can take anything from a half a day to a number of days, depending on the complexity of the premises that we are inspecting. We want to ensure that the correct people are on site and that we have access to all aspects of the operation.

The CHAIRMAN: I think we have already discussed how often inspections occur. Have you got anything to add about that routine?

Ms Healy: I think we have covered off, in particular it is on a three-year cycle at the moment, as Mr Banks alluded to. It averages out at around 330 to 340 prescribed premises inspections annually.

The CHAIRMAN: That is the general workload. What about additional inspections that may be indicated by complaints or something coming to notice?

Ms Healy: As part of our incident and complaint response, for example, we might have inspectors on site as a result of information that we have received, or in response to incidents that may have occurred, particularly in respect of the legislation. For example, section 72 allows for companies to notify us of any incidents that they have had on site. This may result in additional inspections, but they are not covered under our annual program; they happen above and in addition to what we do under the annual program.

The CHAIRMAN: They are incidents reported by operators. What about those reported by, say, the public or some other means of a problem coming to notice?

Ms Healy: Current practice is if we receive complaints that may result in a number of site inspections depending on what has been complained about and what information we have as part of our investigative process, we may require a number of repeated site visits depending on what information we are acting on.

Hon STEPHEN DAWSON: In relation to the notice given when inspections are about to occur, what is that notice period? How much notice are companies given?

Ms Healy: It can vary. Generally, six weeks is probably the average, so four to six weeks is probably average, depending again on the complexity of the operation.

Hon STEPHEN DAWSON: Just to confirm then: in your earlier comments you mentioned 10 officers in your unit. Are they the same 10 officers then who undertake the annual inspections but also would deal with complaints, or would deal with when a company has indicated they have had an incident? Is it the same 10 staff or are there officers who do those jobs?

Ms Healy: There are additional staff. Those 10 staff are focused on the annual inspection program; however, they form part of our compliance and enforcement grouping, which includes our incident response, which are the pollution response guys, as well as our complaint response. They are all in the one group and certainly the cross sharing of information is current practice.

Hon STEPHEN DAWSON: Probably by way of supplementary, are you able to give us an indication of how many staff are involved in that whole unit?

Ms Healy: Sure.

Hon STEPHEN DAWSON: Thank you very much.

The CHAIRMAN: Have you got enough staff to do what you need to do?

Ms Healy: Certainly for the last number of years, I think, we have set quite rigorous targets and we have worked hard to achieve those targets in inspection. Though I sit here and say we have enough staff, particularly in the compliance space, but —

The CHAIRMAN: I have no doubt that you work assiduously to do great things with the limited resources you have got, and we recognise that resources have to be finite, but environmental inspection and safe guarding is a very important thing for the community at large, as you would agree. Do you need more troops to do that?

Mr Banks: I think one thing that we have done is we have brought together probably the three core functions which were previously disparate across the agency. They have all come together in the compliance and enforcement area. That is our pollution response people, which means our 24-hour pollution response line—attend incidents and support FESA in terms of toxic fumes coming off fires and that sort of thing. They are quite highly trained in terms of their pollution response. We have an extensive team of investigators—I think about 16 investigators—and many of them are former police trained who actually prepare briefs of evidence and follow that line of inquiry. The team that Germaine formerly led was the compliance inspection people that sort of bridged the gap between environmental science and also the enforcement regulatory compliance ambit. I think we are actually well positioned on the compliance front. We report annually on our compliance program. It is certainly hitting our KPIs; it is one of our positive messages there.

The CHAIRMAN: In terms of the total number of staff expressed in FTEs or however, could we perhaps obtain that by supplementary information please?

Mr Banks: Yes.

The CHAIRMAN: Thanks for that.

[10.40 am]

Hon PAUL BROWN: The triennial inspection program or routine, is that determined by the level of resources and staffing? You have your inspectors and you know how many they can get around in a year, two years or three years. Is that determined by the staffing or is the staffing determined by the process?

Ms Healy: It is not determined by the staffing levels; in fact, it is determined by the licensed premises and the activities on the licensed premises and the inherent risk associated with them. That is why it is a three-year program. Those industries are those prescribed premises that have multiple categories. As I described earlier, they might receive more frequent inspection than the single category operations that we regulate. It is not dictated by our resourcing, it is dictated by the licensing loading and how that breaks down.

The CHAIRMAN: Of course we are focusing essentially on one establishment here, but perhaps you might give us an indication of those 900 or so prescribed premises, in general terms. What are they, apart from composting facilities?

Ms Healy: No worries. They are generally broken up. I might refer to Kerry in our licensing.

Ms Laszig: They would range from anything from abattoirs, feedlots, food processing premises—wineries are in there. Also things like sewage treatment plants, landfills, mines and ports. All up, there are 89 categories of prescribed premises that cover the large range of industrial types that we have.

The CHAIRMAN: Your officers obviously have to be familiar with a very broad range of activity.

Ms Laszig: We are structured within the licensing and approval side according to industry sectors, so we have a waste industry sector, which is where composting would fall, along with landfill, wastewater treatment plants, and process industries, which is everything from the alumina refineries, the cement manufacturers, through to wineries and the animal industries, so it is a very broad range of different industry types; and then the resource sector, which is focused on mining and bulk handling through ports.

Hon PAUL BROWN: And every one of those facilities can expect at least one visit every three years—at least one?

Ms Healy: Yes, that is correct.

The CHAIRMAN: Let us zero in, again, on the Bio-Organics facility. We have already discussed the regularity of inspections and their frequency. I want to touch briefly on what aspects of the operations were inspected. Specifically, is the feedstock or the compost product tested?

Ms Laszig: As a matter of routine, the compost product would not have been tested. The inspections would have focused primarily on compliance with the licence conditions, so an assessment of the operations against the requirements of the licence conditions. That may include things like where the licence conditions require that a complaints register is maintained; for example, the officers would typically want to sight the complaints register while they are doing the inspection.

The CHAIRMAN: In this case what we had was noncompliant infrastructure and large amounts of non-approved waste going through the facility, but that was unnoticed until very late in the day. I wonder whether the regular inspections need to be sufficient to notice that sort of thing happening.

Ms Laszig: It is not clear from the record why action was not taken earlier in relation to the fairly significant quantities of liquid waste that were being received at the premises without being authorised through the licence. Certainly, the earliest record that I could identify of observing that there seemed to be some discrepancy between the small quantities of approved biological activators and the quantities of liquid waste received was back in 2007, and I am now referring to page 6 of

the slide pack that was tabled today. The record shows that the then Department of Environment and Conservation wrote to Bio-Organics noting that it had become aware of possible discrepancies and requesting details of specified wastes and copies of approvals by a particular date. In my review of the records I could not locate any response to that letter on the records. The next mention of that was when this matter was recorded in the department's incidents and complaints management system, which is an electronic database. There was a comment that the incident was closed in January 2008, noting "cannot pursue breach of condition as licence has incorrect premises details; licence will need to be amended; need to check annual waste receivals and possibly look at requiring this to be reported under licence." Now, I could not locate an amendment to the licence to that effect and it is not clear from the record why not.

The CHAIRMAN: Two questions arise in my mind as a result of that. Firstly, it would seem that on that occasion one might ask what is the point of an inspection that uncovers possible discrepancies if it is not followed up? That immediately comes to mind. Would you care to respond to that?

Ms Laszig: As I said, from looking at the record, it is not clear what happened. Beyond what I have quoted, there is nothing to indicate why it was not followed up further. Certainly, the department has identified that its record keeping around licence amendments generally, which includes applications to amend licences from the licensees themselves, has not been systematic, until approximately nine months ago when there was much more systematic record keeping so that amendment applications are closed out.

The CHAIRMAN: Thank you for that information. Here is a specific case in which responses, speaking dispassionately, were inadequate. I am sure you would acknowledge that. That might be an isolated instance or it might indicate a systemic problem. In either case, we are now nine years down the track. Has the department got procedures in place to make sure that this sort of oversight does not recur?

Ms Laszig: The department has significantly improved its procedures, as I say, of record keeping around licence amendments and following through and ensuring that these risk matters are closed out.

The CHAIRMAN: How do you ensure that? What changes have there been?

Ms Laszig: We are using the department's industry licensing system to systematically record all the amendments and take them through to close out, if you like.

The CHAIRMAN: The second question that arises there with this specific incident is that even though no action was apparently taken, the remedy appears to be, from the brief note that you found on file, that having identified a discrepancy—that is, taking in extra waste that they are not allowed to take in—the reaction to that seems to be to change the licence to fit the compliance, rather than to ask why they were doing this and to take action against them. Could you respond to that observation?

Ms Laszig: Certainly, from the specific comment here, the remedy, obviously, that the officers were thinking of at the time was to amend the licence. The department is, as part of its reform package, looking far more at risk-based decision-making and ensuring that any decision that is made is appropriately grounded in assessment of the circumstances and what the appropriate risk-based decision was.

[10.50 am]

The CHAIRMAN: It seems to me that if you establish a regime for dealing with controlled and hazardous waste, and people have to be licensed as a result of an application process to do that and they are given conditions, and then they are found not to be complying with the conditions, surely the response would be to take some action against them, rather than change the conditions to suit what they have been doing? That is the obvious question that arises in my mind. Maybe that is

unfair, I do not know, but that is what I am getting at here. It just seems incongruous that we have a resourced compliance area, and we have had for years, and when a discrepancy is detected we do more than turn a blind eye to it; we actually accommodate it!

Ms Laszig: Certainly with respect to the 2013 amendment that we were talking about earlier, that flowed after the department had formed the view that the licence condition around the use of approved biological activators was invalid in the sense that it contained a secondary approval. The department's view then was that the best way of reining in and responding to what was happening was in fact to amend the licence and impose enforceable valid conditions, having formed the view around the invalidity of the particular condition that really opened the door for the use of the approved biological activators.

The CHAIRMAN: I ask you to clarify that because, according to what Mr Skitmore told us earlier, in fact the amendment to the licence was actually to impose conditions and restrictions—to rein in possible or indeed demonstrated poor practice. That is why I ask, because at face value the very brief file note actually does not come across that way.

Ms Laszig: I would agree with you to that extent; I am merely quoting what was on the record.

Hon STEPHEN DAWSON: In relation to compliance and when a facility is inspected, Ms Laszig, I think you used words to the effect that inspectors would want to see the complaints register when they go to a site. Do they not always see the complaints register if they visit?

Ms Laszig: I suppose I made the comment in the context of what the licence conditions were, and I was using that as an example. If the licence required a complaints register, which many of the licences do, one of the things that the inspectors would check is that it is actually in existence, so it was provided in that context.

Hon STEPHEN DAWSON: So perhaps, maybe to you, or maybe to Ms Healy, is there a checklist when your officers go out and visit a licensed premise, depending on what the premise is licensed for?

Ms Healy: Yes, there is. In particular, it is probably worth adding that the department's predecessor, the Department of Environment and Conservation, commenced this formalised inspection program in 2009–10 and 2010–11—the kind of formalised program commenced towards the end of 2009–10 and then more formally in 2010–11. As part of that process, yes, there are formal checklists and templates about what we look at on inspections, so, as Ms Laszig alluded to, a complaint register might be one of 30 to 35 conditions that may be on the licence that would be looked at as part of that process.

Hon SAMANTHA ROWE: Would not all of the licences require a complaints checklist?

Ms Laszig: The majority of them would require some form of recording of complaints, but I suppose the degree of detail might vary depending on the facility and its history; so, something that has a long history of receiving complaints might have much more intensive recording requirements.

Hon SAMANTHA ROWE: Are you able to give me an example of one that would not require a complaints register?

Ms Healy: It depends; if you look at the more regional and remote mine sites, for example—depending where we do not have major urban density around them—it might not necessarily require it. Throughout its reporting it may require that, but there might not be a formalised condition in the licence that requires the maintenance of a complaints register. I am thinking in more regional and remote mine site operations—they come to mind first—but depending obviously on the location, I think, primarily.

The CHAIRMAN: Let us talk about waste. What is the difference between controlled waste and hazardous waste?

Ms Healy: I am probably best to lead on that one. If I may refer the committee to slide 19 in the submission we have provided. The controlled waste regulations basically—if we move to slide 20, “controlled waste” is defined as any matter that is listed in schedule 1 of the controlled waste regulations. Schedule 1 of the controlled waste regulations comes down from the national environment protection measure, at a commonwealth level, and is also informed by the Basel Convention, which is a list of waste streams. Why wastes are classified as controlled wastes can be based on a variety of factors. They can be straight chemicals and heavy metals, depending on, whether, you know, they are organic solvents, lead, mercury, and they can be classified by the generation industries. We have a number of categories in there, like waste from grease traps, waste from the production or formulation or use of wood preservatives, so it is classified by the process that generates it. They only have standard, very clear, waste types, like sewage, tyres, acids and asbestos. So there is a variety of how something can get classified as a controlled waste. Under the current regulations, if you move to slide 21, DER provides, further information to try to—again, schedule 1 is a list of chemicals and compounds or a list of waste. So we try to provide further information about how to classify that material. It comes back to the point that Mr Skitmore made earlier about acids—it is a very, very straightforward list in schedule 1. However, when you go through the categorisation, it can cover a range of material. It groups the controlled waste into 15 broad categories and endeavours to assign codes to each specific waste stream. Under “Acids” you will see there are up to 10 different types of acids that can fit in that definition. Slide 22 gives you a snapshot, for example, of the controlled waste movements in Western Australia in 2014–15. Quite a wide range of chemicals, compounds and minerals were transported in that year, for example. The majority falls into three broad categories. Our sewage and septic waste, our waste from grease traps and oils; that is the majority of controlled waste that is being transported around Western Australia.

The CHAIRMAN: By weight, for example, we have a total volume in tonnage statewide of 1 040 000, and of that 481 000 tonnes of sewage, 197 000 tonnes of oils, 92 000 tonnes is waste from grease traps, and then you have all of the others. Although, perhaps, 1 336 tonnes of pesticides is not a huge tonnage in the overall percentages, it sounds like a lot of pesticides.

Ms Healy: It is very similar when you look at, say, the more heavy metals and the leads and whatnot; there are very small movements. Mercury, for example, has very small movements, but from an environmental perspective, it is quite a high risk material; but then our more significant volume is in our grease trap and sewage.

The CHAIRMAN: That then leads perhaps onto the question: what is hazardous waste as opposed to controlled waste? Obviously some of those things could be hazardous in certain circumstances, but what is the difference, if any, between controlled and hazardous waste?

Ms Laszig: Some of the controlled wastes, or the wastes that are currently regulated under the controlled waste regulations, were previously regulated under liquid waste regulations, whereas “hazardous” implies having properties that are inherently what it sounds like: “hazardous” pose a risk of harm to human health or the environment, particularly as they become more concentrated. But it is certainly not the case that all controlled wastes are hazardous wastes.

[11.00 am]

The CHAIRMAN: What I would interpret from that is that we have a whole range of controlled wastes and depending on how hazardous they might be to the environment or to people, we have a range of ways of how they may be disposed of, transported and so on. Is that correct?

Ms Laszig: That is correct. For example, a lot of what we refer to as grease-trap waste is actually waste from restaurants, kitchens if you like, and the wastewater treatment plant provider does not want some of those oily, greasy wastes in the wastewater treatment plant because it can affect the process, so they are required to separate the oil component from the kitchen, if you like, and dispose of that separately. That is a category of controlled waste.

Ms Healy: It is worth noting as well that controlled waste can be disposed of to a number of activities. For example, with septage and sewage, primary disposal is through a Department of Water licence for sewer discharge points, so the majority of that material is discharged to sewer for the bulk of controlled waste moving.

Hon BRIAN ELLIS: From my understanding then, controlled waste becomes hazardous if the volume gets too high. Is that in all categories or just some?

Ms Laszig: It is probably more about the concentration of the contaminants. I am going to use an example we talked about, which is lead. At very low concentrations substances containing lead would not be hazardous in the way that higher concentrations of lead might be. Let us take soil. If soil becomes contaminated with lead, there are levels at which—low levels, but nonetheless detectable levels—there is no problem with people living on the site. Then there are high levels where you would not want children playing in their backyard soil, but it is no problem at a commercial or industrial premises. Then you get levels beyond that that become harmful to people's health and the environment, and require remediation. So, it is the concentration of the substance, it is not just the name of the substances, if you like.

Hon BRIAN ELLIS: I would have thought the regular monitoring of the levels would be fairly important then, because —

Ms Healy: The levels transported or the levels in the —

Hon BRIAN ELLIS: The levels in the controlled waste that you talk about. Say, lead, if it suddenly goes up in the year that it is not being tested, it might be three years before you find out on the inspections you are given as a time frame?

Ms Laszig: I think we are saying, I suppose, that the bulk of the controlled waste that was received at the Bio-Organics premises, for example, is the grease-trap type, which is what we have described as coming from restaurant kitchens, from pre-preparations, so it is by its nature very different to the more extreme example that I just gave of lead contamination.

Hon BRIAN ELLIS: I suppose I was speaking generally just on your time frame of checks of three years; the level could get quite high. It is not just Bio-Organics, but anywhere.

Ms Laszig: I suppose where a premises is regulated to take specific types of waste at specific quantities. I will perhaps refer to the 2013 amended version of the Bio-Organics licence. They were also required to report to us on an annual—most licences contain annual reporting requirements where proponents are required to report to the department on compliance with licence conditions themselves. So, it is not purely the physical site inspection that is used to check on compliance, but it is also the review of the annual returns that they are required to make.

The CHAIRMAN: That might include ongoing testing of a bore sample or something like that, depending on what the premises was.

Ms Healy: If I can direct the committee to slide 19, it talks to the fundamental aspects of the controlled waste regulation regime. First and foremost that relies on the holder of the waste, or the waste generator, to appropriately describe the characteristics of that waste. It then obviously relies on the carrier to appropriately categorise it correctly, and then, obviously, the back end is the waste facility to demonstrate that they have accepted that particular material. But it is inherent in the controlled waste regulations for the waste holder to describe that waste correctly, particularly around contamination levels or concentrations, depending on that. As you see from going through the controlled waste categories, we have got broad brush strokes of acids. We try to require further information from the waste generator, and the carrier is dependent on the waste generated in particular to appropriately describe that material, particularly in respect of concentrations and any potential characteristics of the waste.

The CHAIRMAN: Would it be the case that the controlled waste that we have been discussing in all its forms has prescribed disposal methods?

Ms Healy: It varies depending on the waste treatment in particular. As I said, the majority of the controlled waste transported is disposed to sewer point. Some of it is fed back into wastewater treatment systems. So, it can vary. Again, we talk about liquid waste facilities; depending on the process, there are a number of treatments available.

The CHAIRMAN: What government agencies are involved in regulating treatment and disposal of controlled waste, apart from yourselves?

Ms Healy: There is obviously ourselves from the part V licence perspective and there is the Department of Water in respect of sewage and septage disposal. We can cross over with the Department of Mines and Petroleum at the front-end in the dangerous good regulation space, particularly around the hazardous waste in terms of the characteristics there. They have a role to play at the front-end in the product space. In terms of the disposal, I might—is there anything there in terms of the other disposal options, Kerry?

Ms Laszig: It would predominantly be the Department of Environment Regulation regulating the transport and disposal of this type of waste. If I may, the one other thing that the department has done as a result of reviewing the Bio-Organics matter is that it has significantly, if you like, closed the loop between its controlled waste tracking space and its part V, division 3 licensing of prescribed premises to ensure that before a premises is listed as a disposal facility in the controlled waste tracking system, it holds the correct form of licence to allow the material to go there, which was not something that was done at the time in 2007 when the department was identifying possible discrepancies.

Ms Healy: I suppose that comes, if I may, to the controlled waste tracking system. It is a user-based system that the department provides to enable compliance with tracking requirements, both from the carrier and disposal site, and as Ms Laszig alluded to there, there are a number of reforms that have been put in place specifically around the uploading of facilities into the controlled waste system. It is simply a tracking system—that is where the disconnect was before. It is reliant on information entered by the carrier and disposal site. Certainly, DER's oversight of the information contained in that system has increased significantly in terms of monitoring on a quarterly basis to look at trends, which is where we get our graph on page 22, so we can look at the changes in controlled waste movements around the state and proactively identify any issues. Then, further linking to our part V regime we link up on annual reports in terms of controlled waste moving into our part Vs and monitor that, and communicate that regularly to our licensing regime.

The CHAIRMAN: You have already alluded to it. Perhaps this might be a good moment, Mr Banks, to ask you if you have any further observations you wanted to bring to notice about your controlled waste tracking system, which you were starting to discuss. What can you tell us about that?

[11.10 am]

Mr Banks: I think we may have covered it quite well. This situation did throw up some shortcomings in terms of what was being done with the oversight and the linkage between our part V licensing and the controlled waste tracking, and we think that we have moved to close those gaps.

The CHAIRMAN: Yes. I notice that in the tabled paper you gave us on slides 23 and 24 there is some further discussion that we will take on board, but one of the matters that we highlighted just now was a case from 2007–08 whereby there clearly was a gap between something being detected and, in review, the adequacy of response is that the controlled waste monitoring program intended to address those sorts of issues.

Ms Healy: Very much so. In terms of the information in the system, it is probably worth adding as well that as part of our annual compliance program, the prescribed premises inspection program is one of multiple inspection programs that we run, one of which is obviously focused on controlled waste transportation as well, so there is an additional there in terms of inspecting our carriers, in particular about controlled waste movements. The improvements that I talked about on slide 24 in particular relate to how we are monitoring the information that industry is entering into the controlled waste tracking system. That is complemented by our additional programs like our annual compliance program, which looks at controlled waste transportation.

The CHAIRMAN: Okay. In the points raised in that part of the submission, there is discussion there about vetting protocols in waste facilities before they are listed to ensure the correct authorisations are in place to allow them to accept the controlled waste. Secondly, monitoring of controlled waste volumes transported on a quarterly basis to examine trends and proactive identification of issues; and three, the monitoring of waste facilities, both licensed and unlicensed to ensure statutory thresholds and capacities are being adhered to. That is reassuring to hear that, in view of the specific matter we are examining. How do we make sure that that controlled waste monitoring system is achieving those things? Is it going to be able to proactively detect problems, such as the historical Bio-Organics issue, or is it going to be the case that we find out after the fact and then have to go back and examine why it failed?

Ms Healy: I think if we were undertaking one of those three activities in isolation, there still would be some risk there, but we are coming at it from a multiple-faceted approach where the upfront vetting, the checks and balances at the front end for a facility to get into the controlled waste system, are quarterly monitoring for that proactive vision of looking forward, where we are seeing increasing trends in particular waste streams, and then closing that loop and linking that to part V, I think the risk is significantly reduced to assist that.

Mr Banks: I guess on top of what is being done there, which was sort of done intermediately in response to these processes we put in place to address it, I think the work has been done in terms of our reform program, and the development of the environment standard complements this significantly because it actually is probably the bit of the puzzle that has been missing to date in terms of the appropriate regulatory controls over this type of activity. The agency has not had published positions on how these matters should be regulated and I guess, as I say, this will be a first for that. I think there is an acknowledgement that, to some extent, liquid wastes do serve a useful purpose in composting processes at times, but that does not mean they should be a substitute for a liquid waste dump. I think what we are talking about here is: when is it an appropriate use of a waste stream to produce a credible product, or when does it slip into something else and turns into a sham or is just actually a liquid waste dump by another name?

Hon PAUL BROWN: That brings me to a question I have written here, while we are still on controlled and hazardous waste. Specifically for the Bio-Organics site or composting in general, but particularly for Bio-Organics, at what point does a controlled or hazardous waste become compliant as a compost that can be distributed?

Mr Banks: I will come at that from one perspective, I guess, in terms of there is an Australian standard which has within it some pathogens and that sort of thing, so we have looked to condition that in our environmental standards to protect small-use customers. But we do not think that control necessarily needs to extend to all users of compost and so on, on an industrial scale or on an agricultural scale, then those protections, we believe, can be adequately addressed through contracting.

Hon PAUL BROWN: Prior to the 2013 amendment, which obviously restricted Bio-Organics, you had blood products, animal manures, acid sulphate soils and other products going in there. How do you satisfy yourself that what is being distributed is actually a compost? I know there are standards, but how do you as an agency or department comfort yourself and comfort the public that what is

actually being distributed as a compost is no longer a hazardous or controlled waste and that it has been properly processed?

Mr Banks: I guess that is the position I was articulating. Basically, we will look to protect small-use customers that are taking small quantities off prescribed premises, but when it comes to industrial or large commercial exchange, then we believe that can adequately be dealt with through contract. They can do the contract specification; they can have the testing regime. Really, that responsibility is passing between the producer to the purchaser and we would expect not to have to directly intervene and regulate in every contractual arrangement.

Hon PAUL BROWN: So how do you protect those small users then?

Mr Banks: That is what is in this draft guidance statement. Prior to that there has been basically no product testing regime that I am aware of applied within part V. It is actually a general sort of approach from the perspective that the regulation was limited around the prescribed premise and not so much in terms of the discharge off the premise through the sale of the product. But in my view we have scope to venture into that and there will be circumstances where it is appropriate for us to do so.

Hon PAUL BROWN: Okay.

The CHAIRMAN: Where you have a situation as with composting where you would have bio-activators, which would by definition, I think, be controlled wastes, being used in a manufacturing process to produce an end product—that is, compost—which is deemed to be acceptable for sale on the open market. We have taken some raw materials which may themselves be problematic—this probably happens on a whole range of other manufacturing processes as well—but at the end of the day you have a product that can be put on the pallet for sale at Bunnings or the garden supply shop for sale to the general public. It has gone from being a controlled waste to a marketable product and your department's involvement, where does that actually finish?

Mr Banks: At the moment it does not even start. We do not even control the product specification coming out of compost facilities. What we are proposing to do is start to control that for small-use customers where there are direct purchases of small quantities and leaving the commercial space to be dealt with through contracts.

Hon PAUL BROWN: What is a small quantity?

Mr Banks: I think I said five cubic metres, so it should capture most household residential. Our view is that above that, the commercial operators can contract themselves to protect themselves, but we accept that small-use customers may not be in a position to be able to contract to protect themselves from the spec. But other than that, we cannot identify it for them. Perhaps some coverage by consumer protection or some other body, that there is actually anything in place to regulate the product standard.

[11.20 am]

Hon PAUL BROWN: Sorry about using company terms, and it is not meant to disparage anyone, but a large organisation like Richgro or Soils Aint Soils would have their own process or standards in place to make sure that they are not liable for any contamination.

Mr Banks: It is definitely a regulatory scope question. If you have said that the operators will operate them and provide some quality assurance over their product, getting the government to step in to further regulate that space unless they think it is clearly demonstrated it is needed, I would assert that it is probably not warranted at this point. But we acknowledge that for this issue in particular throughout this instance and maybe for some broader context, it is not just waste but it is also product. We deal with products that are probably far more hazardous than some of the waste streams. If you think about your metal concentrates, when we regulate processing of lead concentrates and other things like that, we are applying similar thinking to that in terms of when

that is leaving the boundary of the premises and what controls we can put in place to afford protections to the community or consumers.

The CHAIRMAN: Just to return to our case at hand, though, and we are talking about the point of receipt—in this case, waste feedstock—would waste feedstock have to be tested by the producer of the waste so that the firm they are supplying to knows what they are getting?

Mr Banks: Agnes, I might pass that to you because that has probably been discussed with industry.

Ms Tay: If you are talking about what we are looking at in terms of future regulation of this process, there are a number of issues in terms of the testing of receiving feedstock. I think there is that linkage with controlled waste carriers as well, when they have to actually declare what is being carried. In terms of categories that are already controlled waste and there is a carrier tracking system, that should automatically happen. I am not sure because I am not a scientist in the practice; I do not know the ins and outs. I do not know how much liquid waste would not fall into this category of controlled waste, in which case they should be able to identify direct in terms of their own contracting arrangements if they are taking liquid waste from other third parties that are not in a controlled tracking space. There is essentially a potential area, when it is a liquid waste and it is not controlled waste, in which case, the receiving party, being the composting facility, would have to satisfy itself as to what it is receiving.

The CHAIRMAN: Would a compost operator, such as a former Bio-Organics, have to test their waste before they incorporate it into their processes?

Ms Tay: The liquid waste?

The CHAIRMAN: Yes.

Ms Tay: We have not addressed that in terms of the draft environmental standard as a requirement as such because there is quite a high threshold that the draft standards establish for the receipt of liquid waste in terms of requiring, I suppose, that issue of the liquid waste having to be of benefit other than solely providing moisture content to the process. They need to demonstrate why that liquid waste might be of benefit to the composting product and also to specify the quantity of the ratio of liquid waste to other solid and feedstocks to be specified as a control on the licence. The draft standard is trying to constrain the use of liquid waste both in terms of the type and how it might benefit the product as well as the volume and have both of those metrics specified in the licence conditions.

The CHAIRMAN: That is looking at the prospective. Now to go back to the historic and Bio-Organics. I take it they have just received a broad category of liquid feedstock without a requirement under licence approval to test it or do they just accept a broad category?

Ms Laszig: Certainly prior to December 2013, apart from the limited trial approvals, there was no authorisation under the licence to accept any liquid waste so I suppose it follows that the licence did not go to testing requirements for something that they were not authorised to accept.

The CHAIRMAN: Are there any national guidelines or standards about treatment and disposal of controlled wastes or do we do our own?

Ms Healy: The transportation of controlled waste regulations are based largely on the national environmental protection measure. Again, that is very much focused on the transportation aspect and not solely on the disposal options.

Ms Laszig: In a way, the range of controlled waste types is so large that different treatments are required for different types of controlled waste so, for example, the sewage and septic stream is generally treated in the same way as sewage in deep sewer areas as it goes to a waste water treatment plant and is treated through a biological process there whereas, for example, acids and bases might be treated through a chemical neutralisation process to get the pH to neutral and perhaps drop out any other contaminants and any inorganic salts that might be present. It is not the

case to say that there could be one treatment process that would treat the wide range of controlled waste categories that there are. Some controlled waste—actually, solid wastes—end up going to hazardous waste, a specially categorised hazardous waste landfill.

The CHAIRMAN: I will preface this next question by noting that we have already had some discussion on the current and the prospective. The 2013 Hazardous Waste Data Assessment report prepared for the commonwealth Department of Sustainability, Environment, Water, Population and Communities stated, in part, on page 39 that Western Australian waste disposal data is not accurately recorded. I am obliged to ask: is treatment of disposal data recorded in WA for all or any controlled waste?

Ms Healy: My understanding of that commonwealth report was that it focused on general waste streams and not specifically controlled waste. So it focused on our municipal and our solid waste streams, like your general solid waste and construction and demolition waste. I stand to be corrected but that was my understanding of that commonwealth report, so it was not focused on controlled waste specifically.

The CHAIRMAN: From that point of view, the reference might be taken out of context because we are looking at controlled waste.

Mr Banks: Yes.

The CHAIRMAN: Are we now recording the disposal of all controlled waste?

Ms Healy: As I said, the regulations are built around the tracking of controlled waste. I believe the regulations commenced back in 2000. They replaced the liquid waste regulations back in the mid-2000s—towards the end, I think. I can get that information. It has always been recorded in terms of the carrier and the waste generated describing the information in respect of controlled waste. That information, our controlled waste tracking system—the online platform, in particular—has been in operation since 2009 in various iterations.

Ms Laszig: It is probably fair to add that some categories of controlled waste do not require tracking, one of which is asbestos waste. So there are requirements under the controlled waste regulations for how the material is to be transported and disposed of but that waste does not have to be tracked through the controlled waste tracking system.

Hon STEPHEN DAWSON: Can I just ask why not? Why do we not track asbestos?

Ms Healy: There are very prescriptive regulations within the controlled waste regulations that relate to asbestos. Those provisions of the controlled waste regulations apply to asbestos and the remainder of the regulations do not.

The CHAIRMAN: I am proposing that we take a five-minute comfort break for those who may require it. We will suspend this hearing just now for a short interval.

Proceedings suspended from 11.29 to 11.41 am

The CHAIRMAN: We will recommence our hearing at this stage. I want to ask you a couple of questions now about biological activators with regard to the Bio-Organics site. What was the department's preconception about the waste that would be used as biological activators?

Ms Laszig: The department understood that as being waste that would have enhanced the composting process, so the aerobic breakdown of the green waste, and would have added, I suppose, nutrients to get the right nutrient balance for the bugs to work on in the composting process—the microbes that are doing the composting. Sometimes biological activators can be as simple as adding types of fertiliser to green waste to help enhance the breakdown. It is about getting the nitrogen–phosphorous balance right and also basically giving the bugs the food that they need to do the work.

The CHAIRMAN: Were any specific types of waste contemplated?

Ms Laszig: Not that I could locate in the records. Certainly there was mention in the original works approval application for Bio-Organics, which was included in the department's original submission to the committee, that there would be the use of a microbial accelerator, which again is having the effect of enhancing the biological breakdown of the waste in the composting process. That is mentioned on slide 5 of today's submission, and the original works approval application was attachment 1 to the department's written submission to the committee.

The CHAIRMAN: Thanks for that. Given that planning approval, as opposed to your approval, was given for a green waste composting facility back in 2001–02, why did the department approve biological activators that were not green waste to go there?

Ms Laszig: The department approved trials, as I said, of material. As to exactly why, I am afraid the record does not show the decision-making.

The CHAIRMAN: In giving your approval for anything, would you normally have regard for planning approvals or is that the responsibility of the operator or the local government?

Ms Laszig: Yes, we would normally have regard for planning approvals. The record certainly shows that in 2010 the department did have regard for the planning approval. This is slide 7 of the pack that we tabled today. The department received a licence amendment application from Bio-Organics in August 2010 requesting an amendment to its licence to permit the acceptance of animal materials and other animal wastes for composting. In October 2010, the department advised Bio-Organics that it would not be considering or making a decision on that application in accordance with section 59B(7) of the EP act because that was contrary to the planning approval for the premises.

The CHAIRMAN: And then later, I understand, in 2011, there was a further application to amend the licence to include a range of controlled waste categories. Can you tell us about that?

Ms Laszig: Certainly. That is correct. That application was received in July 2011. The department consulted the shire on that amendment application and subsequently in September notified Bio-Organics that it intended to refuse to amend the licence on the grounds that the proposal was inconsistent with the planning approval. Bio-Organics was afforded 21 days to make representations on that intention and the record then shows that Bio-Organics, in early October, requested an extension to make its representations. The 21 November date is my calculation from the letter, rather than being a specific date. The reason given was that it wished to obtain copies of the current planning approval from the shire.

The CHAIRMAN: What happened then?

Ms Laszig: The record goes silent at that point. Certainly the department did not receive any representations from Bio-Organics. Equally, there is nothing on the record that shows that the department formally refused to amend the licence as per the application.

The CHAIRMAN: So that matter did not progress beyond that point?

Ms Laszig: Beyond that, no.

The CHAIRMAN: The licence amendment, as requested by Bio-Organics, was not granted.

Ms Laszig: It was not granted, correct. It would be that those inquiries would have been made approximately 10 years from the original planning approval. The department understands that the planning approval was granted for a finite period of time, so it is possible that —

The CHAIRMAN: Probably about the time they found that it had expired anyway.

Hon PAUL BROWN: Just while we are talking about trials, when the department approved the trials for the biological activators or similar, usually when you do a trial, you approve a trial for a defined outcome and there is evidence or conclusions provided that the process works or was beneficial. Was anything provided to DEC, as it was then—I think it was DEC; it might have been

DER—by the operator to say that those biological trials were beneficial or not, and therefore would it give you confidence to continue such trials?

Ms Laszig: There was nothing on record regarding the outcome of the trials that they were requesting, but I will draw the committee's notice, if I may, to one of the documents contained in the pack that was circulated today. I refer to the section of the file tagged "3". The document is the preliminary site investigation report and sampling analysis plan prepared by Douglas Partners under the terms of the investigation notice. In the appendices to that document there are copies of all the written approvals that the department gave for the biological activator trials. Bear with me; there is a lot of departmental correspondence lumped in. It is appendix B of that Douglas Partners' document.

[11.50 am]

Hon PAUL BROWN: Without having to go through all that—I am sure you know it backwards—did the department specify that information had to be provided back to the department on those trials?

Ms Laszig: No, the department did not specify that information needed to be returned. It was simply that the trial was approved and for most of the letters there was a comment that, should the department—in this case it was the Department of Environment Regulation—deem odours as a result of the incorporation of whatever the biological activator was, to be unacceptable, then its use should cease immediately.

The CHAIRMAN: Going back to planning approvals, we have seen how the department responded in 2011 to an application to amend Bio-Organics' licence, which was not progressed because of a lack of planning approvals. What was the situation then in December 2013, when the operations of Bio-Organics were in fact accommodated, at least to the extent that they were accommodated? What happened to the consideration of planning approvals then?

Ms Laszig: The department was aware that by that point the planning approval for the facility had expired. However, the Environmental Protection Act, as it currently reads, or under the terms of the Environmental Protection Act, the grounds that would allow the department to suspend or revoke an EP act licence do not include that a relevant planning approval has expired.

The CHAIRMAN: Indeed, that would be up to the operator in the first instance, one would think. Did you have any contact from this time, along the lines of why you are giving approval to do it?

Mr Banks: I am certainly not aware of us having contact in that regard. There may have been some discussions at officer level, but there were officer exchanges going on in terms of managing the issues that were emerging from the site. The December 2013 amendment was a unilateral amendment by the department to bring the premises into some form of regulatory control. It was not an amendment to broaden the scope of their operation, and without that amendment, the passage that we went down in terms of a proposal for suspension followed by a subsequent proposal for revocation and a subsequent revocation, could probably have never occurred without us having amended the licence in December and obtained the required information to then form a view that the operation was in such a state that in my view the revocation was justified, warranted and appropriate in the circumstances.

The CHAIRMAN: A few other questions that then arise in my mind are possibly best directed to the shire, if they were aware of the situation we have just been discussing, so we might take that up separately.

Mr Banks: We would not move to enforce the lack of planning approval, I guess, is the clarity that I would like to provide. That would be another authority—most likely the shire.

The CHAIRMAN: In previous evidence, some time ago now, the department advised that there were concerns that Bio-Organics did not apply the appropriate treatment to neutralise acid sulphate soils. I think that was back in 2005. What is the potential environmental impact of such a failure?

Ms Laszig: The failure would be around inappropriate neutralisation of acid sulphate soils. If I may, acid sulphate soils are a naturally occurring material, and in most cases they occur in a low-oxygen environment, such as under the watertable. The potential environmental problem arises when those soils are disturbed and exposed to the oxygen in the air, which the sulphide materials in the soils then react with to basically form sulphuric acid, and that acid can then dissolve naturally occurring metals, such as iron, arsenic and aluminium, in the soil and mobilise them so that they can move. The treatment is simply neutralisation—something like the application of agricultural lime to basically neutralise the acid as fast as it is generated so that the other consequences of dissolving the metals do not occur.

Hon PAUL BROWN: And the lime is just mixed in?

Ms Laszig: The lime is just mixed in. So that is commonly done across development sites along the Swan coastal plain because the soils are widely occurring naturally across the Swan coastal plain.

The CHAIRMAN: Did that mismanagement of acid sulphate soils by Bio-Organics result in closer regulatory scrutiny and monitoring by the department?

Ms Laszig: Not in terms of licence amendments. Certainly, there is correspondence on record between the department and Bio-Organics related to the acid sulphate soil management plan, and there were some reviews of those plans conducted and some advice provided. But it is probably fair to say that a lot of acid sulphate soil management, including at development sites, is not something that is regulated under part V, division 3 of the EP act. It is generally the department acting in a technical advisory role and there are usually things like conditions on planning approvals that relate to the disturbance of those soils and management of that disturbance to avoid the consequences that I described earlier.

The CHAIRMAN: If you had similar circumstances arising today—similar, that is, to the 2005 occurrences—how would the department respond, say with another operator?

Ms Laszig: I would expect the department to, I suppose, assess the environmental acceptability, the risks of what is going on. We are talking of a circumstance where someone has started to do something that is not explicitly authorised or controlled under their licence. The department would look at it as a materiality issue rather than just—you know, it is not authorised by the licence, and therefore you can never do it. But there would need to be an assessment of the environmental acceptability of what they were proposing, so I would expect that the department would either amend the licence to authorise and put appropriate regulatory controls on that activity, where the risks were deemed to be environmentally acceptable, or, if there were some ambiguity in the licence as to what they could and could not do, that the licence would then be made crystal clear that certain types of waste are not permitted to be accepted at the premises.

The CHAIRMAN: The department also gave evidence that about 95 per cent of the 87 million litres of controlled waste accepted by Bio-Organics was grease trap waste, which comprises around—I think I am quoting accurately here—90-odd per cent water with some rubbish in it and some lipids, so in terms of a potential substitute for water content, it has that role. But grease trap waste, the committee understands, is also classified as a high-risk substance in the draft composting environmental standard that has been produced. So, in that sense, is it correct to say that grease trap waste is an acceptable substitute for water in a green composting process or does it add some other element?

[12 noon]

Ms Tay: If I may, committee, in terms of the classification of the feedstock categories in the draft composting standard, in section 5 of the current draft that was recently issued for another round of

public consultation, the categories of risk feedstock have been primarily rated in terms of their risk of odour in that section and then the treatment—the use of liquid waste is a separate standalone issue. So I think even looking at the document now, there is some clarification we could do to improve that, but the feedstock classification in the table where they are rated low to high risk have been done primarily for the purposes of their risk of odour and the use of that feedstock and then how the composting treatment might need to be better controlled to mitigate the risk of odour arising, and that is from a public amenity perspective. Then liquid feedstock in terms of the acceptability is treated as a standalone issue in the draft standard, which I previously mentioned, about how there are two thresholds that need to be demonstrated and one of them is the benefit to the process and the specification of the ratio. So, I hope that clarifies the question.

The CHAIRMAN: Is it only the question of odour that we are talking about here?

Ms Tay: No. It is treated in two ways, if I can put it that way. So, the acceptance of—if liquid feedstock be accepted, then there is a rating in terms of odour risk, but you have to first demonstrate that liquid feedstock can be used in the process in the way that the draft standard expresses the two requirements.

The CHAIRMAN: It is our understanding that grease trap waste requires a different treatment, a longer time at 55 degrees, to nullify or counter the risk of reinfection. I think that is really what we are getting at here, which comes back to that theme of the controlled, possibly hazardous, waste going in and then re-emerging as part of another product. So, in that sense, it is hardly just water.

Ms Tay: No, and that is why the draft standards says that liquid feedstock has to have some other requirement to it other than just adding moisture to the process, and then your question about, well then, the safety of the end product because they are receiving something that may need a different type of treatment to the process. That was what Mr Banks referred to earlier about the testing for products that are available for sale to small retail customers. So, we are trying to take it at the acceptance level in terms of: is this actually something that is going to be of benefit to the process, as opposed to a substitute for moisture, and also at the end point where we are testing for product safety in terms of pathogen and contaminant limits for a sector of the market where they are being sold for small retail customers?

The CHAIRMAN: It just occurs to me that if a controlled substance as in part of the disposal chain, whether it be treatment, turning it into compost, whatever, then emerges from a part of that process possibly still as a pathogen, then it has not been dealt with or disposed of satisfactorily.

Ms Tay: No, there is a number of things that we could have looked at. One is perhaps either process controls in terms of the duration and the heat to be applied and those sorts of aspects of the composting process, but they are quite difficult to demonstrate. Compliance and enforcement would have to be there at the right time and determine how long did the operator have that in the process for, and, from a compliance perspective, it makes it very difficult for the department to establish a breach as such. The end point testing regime is trying to make it a lot clearer both in terms of what the operator needs to demonstrate and also in terms of evidence gathering and to say, “Well, that product does not actually meet the testing requirements.” So we did consider, I suppose, a much more overt approach in terms of controls on the operating process, but they are quite difficult then to go back into and demonstrate whether or not an operator has —

The CHAIRMAN: So we are looking at a testing process or a testing point before it proceeds further down the chain?

Ms Tay: Correct.

The CHAIRMAN: Let us turn then to the other five per cent of the waste use biological activators. That has dealt with the 95, largely water. The other five per cent, equating to more than five million litres, was waste other than grease trap waste and that would have included a whole lot of controlled waste categories, presumably: B100 acids, non-toxic salts, paints, resins, inks, organic sludge, oils,

putrescible and organic wastes, industrial wash water, a whole range of things potentially. Now, we have been trying to reconcile that list, and it is a longer list than I have just described, with your department's submission that none of the controlled waste used in biological trials could be classed as hazardous. I am just trying to reconcile your statement with what in fact was in, although a small percentage, but certainly a fair quantity of otherwise apparently hazardous or controlled waste categories.

Ms Laszig: Certainly, the department's statement relates to 12 or so approved biological trials. So those were the things for which written approval was given in accordance with the licence condition that provided for the trials of biological activators as opposed to the range of wastes that were received that were not mentioned in the licence prior to December 2013. The department's statement went specifically to the small quantities of waste and they were listed in the department's original submission to the committee as one of the appendices. Appendix 23 of the department's original written submission contained the listing of the approved trials. The statement in the department's submission related to the trials that it had authorised rather than the wastes that we now know were being accepted by Bio-Organics at the facility.

The CHAIRMAN: What happens to products like manufacturing waste, gel, waste coolant, blood products and phosphoric acid in the composting process? Does it break down during composting or is further treatment required to make it safe before it is incorporated into compost?

Ms Laszig: Certainly, a composting process is a recognised way of, if you like, rendering certain types of animal wastes, including carcasses, safe. It is quite common for something like a piggery to dispose of its animal mortalities through a composting process at its premises. So it is a biological treatment, if you like, of those wastes in much the same way as sewage is rendered safe through the biological treatment process of a wastewater treatment plant or sewage works. Obviously, depending on the nature of the feedstock, some might need higher temperatures or longer times at a particular temperature to make sure that the waste is pasteurised, if you like, with the pathogens being killed off. I think there was mention of dilute phosphoric acid. It is my understanding that the phosphoric acid component—phosphorous is a key nutrient in fertilisers and composts to help plants to grow—would actually be used in that case to give an infusion of phosphorus into the process.

The CHAIRMAN: DER also gave evidence that it concluded in 2013 that the licence condition relating to biological trials was invalid and not effective. The committee understands it was invalid because it involved secondary approvals. How was it ineffective?

[12.10 pm]

Mr Banks: I guess I can talk to that. Even if it was invalid to grant secondary approvals, it was ineffective because of the process that was gone through, with the limited amount of secondary approvals that were considered and granted relative to the quantity of material that was received on-site. I guess that is, in my mind, why it was ineffective. Even if that condition was invalid, it still was not an effective control on stopping what controlled wastes went to the premises, which I guess is manifestly what was attempted to be done in December in terms of putting really quite more specific controls on them.

The CHAIRMAN: In fair point, it was manifest.

Mr Banks: Yes.

The CHAIRMAN: The department also told the committee that the inclusion of biological activators on the licence led to confusion about the types and volume of waste that was allowed. How did that create difficulties for the department?

Ms Laszig: I suppose in the sense that had the licence been amended each time to specifically authorise whatever it was that was being approved and a finite bound was put around it, it is then evident on the licence as to what can be accepted going forward, whereas the secondary written

approvals are just one piece of correspondence in files for the premises that run to several volumes that are an inch and a half thick. It is not as easy to keep track of, if you like, or to audit compliance with during the periodic inspections of the premises.

The CHAIRMAN: Are secondary approvals such as those given to the biological trials allowed now?

Ms Laszig: No, they are not. The department is very careful in the way it grants approvals that it does not require something to be submitted for a secondary approval. But the department's preference would be that it actually amends the licence to be explicit as to what the approval is.

The CHAIRMAN: Can we turn now to the draft environmental standard for composting from June 2015 and any other related regulatory reform? Can you outline for the record the requirements of the draft standard in relation to infrastructure and construction specifications, the requirements relating to waste feedstock and what waste previously accepted by Bio-Organics might be unacceptable under the draft standard? I just invite you to give that overview.

Mr Banks: I might refer to Ms Tay because we have been on a process for the last 12 months in terms of working with industry and also through public consultation processes to refine this, and we have recently reissued a further one because it has changed so substantially through that process that we thought we would conduct another round of public consultation.

Ms Tay: If I may, committee, the draft that was first issued by the department was in June last year. It did go through some degree of public consultation period, and that consultation period closed in November. At the same time we were asked by affected industry members, as well as the WA Local Government Association and the Waste Management Association of Australia, to convene an industry working group to provide comment on the draft standard as well. We met with about 13 or 14 representatives of different parties four times between the period of, I think, September and November last year. As a result of that, we looked at a number of aspects of the standard that was issued in June and revised that approach quite considerably. A revised draft was published in March this year. In looking at the revised draft, we also took in technical advice from the Department of Water in terms of hydrogeological aspects, particularly to be quite specific about when certain things would be required in light of geological conditions and things like risk to groundwater. The Department of Water was best placed to give us some, if you like, broader inputs in those issues. In response to your questions about how the draft standard addresses things, I have noted three items down so I may have missed a couple.

The CHAIRMAN: The first one was: will there be infrastructure and specs?

Ms Tay: The infrastructure requirements are now very clearly risk-based infrastructure requirements in that the original draft had a very blanket infrastructure requirement. I think it was very much acknowledged that not all sites pose the same environmental risk. The draft standard has been revised to identify the risk to surface water bodies, as well as to groundwater, and then it goes through, if you like, a series of considerations, including the soil type, to determine what type of infrastructure would be required. Those infrastructure requirements vary from the 10 to the minus 9 requirement. If we had applied that standard to Bio-Organics today, we would still have that requirement to be asked of them, given the depth to groundwater and the location of their premises, as well as, I suppose, acknowledging that there are some areas in the state where groundwater is not present—we have some locations where at 35 metres you still will not hit groundwater—and that perhaps there might be natural geological barriers that may not require engineered hardstanding as well. We tried to, if you like, identify the type of risk factors that would be considered to then require an infrastructure requirement. They are addressed through the standard now, in terms of hardstand requirements, and the requirements for the leachate collection system, in terms of pond requirements and those other requirements in terms of drainage of stormwater, are also trying to reflect a similar type of risk-based approach.

The CHAIRMAN: Say, for example, in the case of infrastructure and construction investigations, designed to retain wastes on site rather than allow them to escape into surrounding properties or indeed the groundwater?

Ms Tay: Correct. Where you have a higher risk rating, the leachate collection system —

... must include strategically located cut-off drains, bunds, and site works for water collection that must ensure that:

- (a) surface water must be diverted so that it does not come in contact with the operational areas;
- (b) leachate (including contaminated surface water or stormwater) does not leave the composting facility or contaminate the underlying land, groundwater or stormwater system or surface waters;
- (c) leachate is directed into the leachate storage infrastructure;

So, it is quite specific in terms of some performance requirements. One of the issues that industry raised was perhaps not restricting how they might address these requirements, for example, specifying concrete bunding. Maybe we might be able to address it in other ways, including site works predominantly in terms of the drainage water and those sorts of things. We tried to make sure there were quite clear performance requirements and gave examples as to how those performance requirements could be met.

The CHAIRMAN: When do you think the draft standard might be available or might be finalised?

Ms Tay: We have put it for another 14-week period of public consult, because, as Mr Banks referred to, there has been quite considerable change in terms of, I guess, additional details and considerations. We should be able to finalise that very promptly after this second round of consultation.

Hon STEPHEN DAWSON: Sorry; when does it end?

Ms Tay: I think that closes mid to end June.

The CHAIRMAN: I would not ask you to contemplate where exactly it is going to land, but could you discuss briefly the requirements that the standard might exhibit in relation to waste feedstock, which is something we have been talking about a lot today?

Ms Tay: Sure.

The CHAIRMAN: By that, I mean any limits on the types of waste, operating methods, storage standards and that sort of thing.

[12.20 pm]

Ms Tay: The waste feedstock section in the revised draft standard has had some change, but probably not as considerable change as the infrastructure section of the draft standard. We do specify a list of unacceptable feedstocks in that document. They include things like untreated septage and sewage, so where it is just raw septage and sewage that is not to be accepted. We also included hazardous waste and a definition of hazardous waste.

The CHAIRMAN: Would it include any waste previously accepted by Bio-Organics that now might be excluded under the standard?

Ms Tay: Unfortunately, I am not familiar with the history of Bio-Organics, and I may have to refer that to Ms Laszig. But I think the intention is that the risk of feedstocks, whatever they may be, are actually assessed in terms of the risk of the site and the capability of the infrastructure to deal with the risk of the feedstock. It is intended to be a much more overt risk-based approach rather than, I think, some of what I have certainly seen on our records in relation to Bio-Organics.

The CHAIRMAN: Have you got anything to add?

Ms Laszig: I am afraid I would like to take that on notice, please, because I am not sufficiently familiar with the revised draft. I have had a look at the revised draft standard —

The CHAIRMAN: Could you give us a little feedback about that?

Ms Laszig: Yes.

The CHAIRMAN: As I say, I have already acknowledged that we do not want to require you to pre-empt where the standard might land, but with reference to what previously went on at Bio-Organics, it would be useful to know what we have learnt from that in relation to possible feedstock being excluded because it is unsuitable for composting or it is hazardous or a combination of both. We will look out for that, perhaps, on notice.

Ms Tay: Certainly, but in more general terms what I would note is that the restrictions on liquid waste are very clear in the draft environmental standard, and the requirements as to demonstrating how liquid waste would be used in the process is certainly something that would probably be quite difficult for Bio-Organics to satisfy. If I may add that the Department of Health has also reviewed the draft environmental standard that was published in June, and we did take on their comments as well, particularly in relation to the pathogen and contaminant limits as well. Again, that end product testing is certainly something we did not have before, as Mr Banks referred to. It is also something that other jurisdictions in Australia do not have in their documents either. They may recommend compliance with AS 4454, which is the Australian standard which applies for composting processes. Unhelpfully, that standard also says it is not to be used by regulators, so we are encouraged not to apply it as one of our documents. But certainly the product testing limits are reflected in our document.

The CHAIRMAN: I just have a couple of other categories of questions that we would like to clarify with you while you are here. I appreciate we have gone a little beyond the advertised hour, but as with ripping off the proverbial bandaid, let us get on with it. A couple of questions in relation to the provision of information to the shire; in this case, the Shire of Serpentine–Jarrahdale. You have probably noted in there, the transcript of their evidence some time ago, that they raised a couple of matters. They were concerned that the department had refused to confirm whether Bio-Organics was meeting its licence obligations for environmental monitoring and waste approval—a piece of information that would seem relevant to the shire’s role in its planning processes. Secondly, that the department refused to provide information to the shire about the amount of controlled waste going to Bio-Organics on the basis that it was restricted information. On those couple of comments, can I ask you to respond?

Mr Banks: In terms of the specifics, I am not aware of the first point in regard to correspondence where they requested that and it was refused to be provided. In relation to the second, I believe they did request for controlled waste tracking data and I thought that was provided ultimately through a freedom of information process. I guess what is important, though, from our perspective is that the shire is not afforded any status other than a stakeholder in terms of this process. They are not a co-regulator. We have obligations around information. Some of it that we receive is commercial-in-confidence. Quite often the claim made by parties that submit it to us around what is commercial-in-confidence is probably broader than what we end up getting to, but it is not a free process where everything that we receive is automatically published or publicly available; I guess that is the starting point. The shire does not sit in any different category to any other stakeholder from that perspective. I appreciate that it may have been somewhat frustrating from their perspective, but that is pretty much where it lands.

The CHAIRMAN: Thanks for that frank response. This is a difficult area because it would seem to me that the local authority would have more than a passing interest in the sorts of materials that were being brought into the shire, utilising its roads in ways that may impact on the amenity of an area.

Mr Banks: Absolutely.

The CHAIRMAN: Would you like to expand on your comment on that?

Mr Banks: Sure. I guess that is on one side. On the other side we provide an advisory service to local governments for the purposes of their planning decisions. I would respond, even to that shire, perhaps twice a week at least probably in relation to planning matters that are occurring in their region. It is personally, in terms of correspondence going across my desk, responding to matters that they are asking about. We acknowledge that role. We have got a published guidance statement called “Land Use Planning” and it clearly articulates what the department sees as its role in land use planning. One of those services is to provide advisory services to local government to help them inform their decision-making.

The CHAIRMAN: Certainly the amount of controlled waste—we are talking about millions of litres here—would that not be a fair enough question for a shire to ask you?

Mr Banks: Again, it is not a publicly available database.

[Interruption from the gallery.]

The CHAIRMAN: Order! Where, then, would a shire obtain that sort of information?

Mr Banks: I am quite sure we did provide it. I am quite confident that it was ultimately provided.

Hon PAUL BROWN: You said that was through an FOI request.

Mr Banks: Yes.

Hon PAUL BROWN: That is a lengthy, elongated process for a local government to go through.

Mr Banks: Sure.

Hon PAUL BROWN: They would be impacted in a very short time frame, one would think, if they are asking for that information.

Mr Banks: Agreed. I think, from my perspective, that is a broader question. There is the operation of the information provisions and also the operation of, I think, section 120 of our act, which is quite explicit in terms of creating an offence upon me and my officers if we release information that is commercial-in-confidence. This is information not that we have submitted, but that third parties have submitted to us. You may have noticed there was some commentary about the veracity of the information that then emerged publicly as well. Again, it is information that was submitted to us. We undertake some attempt to verify, but it is not absolute. We are dependent on third parties and it is information we are collecting and holding, not our information that—I guess that is why the issues emerge in terms of why go through an FOI process.

The CHAIRMAN: Let us proceed now to the current situation. I am referring here to the Bio-Organics site and surrounds. What is the current status of groundwater testing?

Mr Banks: If I may, Mr Skitmore might be able to provide a far more comprehensible answer than I can.

[12.30 pm]

Mr Skitmore: Through the Contaminated Sites Act, an investigation notice was issued. Earlier on, the site was classified as possibly contaminated and investigation required, on about 10 December 2013. Subsequently, an investigation notice was issued. Under the investigation notice, there were requirements for a sampling and analysis plan. There is a copy of that document in our submission package. As part of that sampling and analysis plan, there was a requirement for four quarterly sampling events. The first one is an iterative process where you drill pilot bores and the water quality from the pilot bores informs where the monitoring bore goes. You make sure you put the monitoring bores in the correct location. In the submission there is quite a lot of detail on the number of monitoring bores. There is something like 21 monitoring bores that are part of that

process. The first of those monitoring events was undertaken in November 2015. There will be three subsequent monitoring events that will finish around about November 2016. Through that process, the department will be informed of groundwater monitoring results from a properly constituted and compliant-with-guidelines monitoring program, both in terms of where the bores are and the way in which the bores are sunk, the way the samples are taken and the way they are analysed et cetera. That will be provided in a report to the department from the groundwater monitoring consultants. That will also be subject to a mandatory auditor's review where an independent auditor goes through that document and provides comments on that. The first of those monitoring events was November. We have an interim submission on the monitoring results and there is reference to those in this document. We are still awaiting the final report with the auditor's final notes and recommendations on that. We envisage that we will be receiving that fairly soon, but we do not know exactly what date.

The CHAIRMAN: Without prejudice to the final outcome, are you able to advise if you have identified whether there has been contamination of the water at the Bio-Organics site and neighbouring properties?

Mr Skitmore: Again, the document that we have submitted makes comments on this. There are nutrients in the groundwater. There are various levels of nutrients at various locations. In the document here we have made statements of fact, not interpretation, because we are waiting for the auditor's report on that. I would not like to pre-empt the auditor's report, but essentially there are still elevated levels of nutrients in the groundwater near the facility. I would not necessarily put those into the category of contamination; they are elevated levels of nutrients in the groundwater.

The CHAIRMAN: That was my next question: contamination is a matter of degree, is it not?

Mr Skitmore: Yes, and contamination might relate to drinking water standards, stock water standards, short-term irrigation standards, long-term irrigation standards or non-potable water guidelines, so there is a whole range of guidelines that you would then need to interpret these data against.

The CHAIRMAN: If this is a premature question, please tell us. Have you identified the source of any of that contamination?

Mr Skitmore: There is one sampling event. I think it is premature in terms of the total program to answer that particular question. It is a complex issue and there are questions of regional groundwater quality, and it is in a farming situation. When you have adjacent farming paddocks, that complicates the situation in terms of nutrients in the groundwater in that area. There will be further analysis of the sampling event by both the consultant and the auditor to address that issue.

The CHAIRMAN: We have a couple of farmers on the committee but I think those of us who are not quite as agrarian could well understand that the presence of elevated nitrogen and phosphorus levels, for example, could arise through regional agricultural activities. Is there any other sort of fingerprint available when testing water to identify the source of contamination a bit more precisely—for example, some of the other contaminants, perhaps metals or other elements that might be present as contaminants? Perhaps in identifying those be able to pinpoint a bit more where they have come from.

Mr Skitmore: In the report, the consultant and the auditor are saying that there needs to be further examination of the data from the groundwater monitoring to put it into the regional context that this sits to be able to answer that question. For argument's sake, in this particular area there are naturally occurring elevated levels of aluminium and also of iron. In this particular locality there are also medium-to-low-risk acid sulphate soils. The issue is not clear and it is not unequivocal, and we are waiting for the further investigation and the analysis of that work.

The CHAIRMAN: Would it be possible, if not likely, that some of the known feedstock that was employed at Bio-Organics could leave a more unique footprint in the samples that might prospectively give us a more definitive result in due course?

Mr Skitmore: The analysis of the data may be able to do that. I could not answer that question at the moment.

The CHAIRMAN: Has the neighbouring Bio-Organics vineyard, I believe it is called the Castle Lion Vineyard—at least the site, I do not know whether they are operating there anymore—been tested for contamination as well?

Mr Skitmore: There was some limited testing of groundwater discharge that may have been from that facility, that was done some time ago, but there has not been any testing done of the vineyard. It is not a prescribed premises and therefore is not regulated by the department; it is an agricultural pursuit.

The CHAIRMAN: When I am referring to testing of the Castle Lion Vineyard property, I am not referring to them as the authors of any contamination but as the victims. Seeing that it is an adjacent property, would there not be any pilot samples taken from them?

Mr Skitmore: My understanding of the groundwater flow is that it is not in the direction of the vineyard from this facility in question. The groundwater flow is primarily west to east from this location.

The CHAIRMAN: Where is the vineyard located?

Mr Skitmore: It is to the south.

The CHAIRMAN: We might follow up at an operational level with some further information about that.

Mr Skitmore: I refer you to page 18 where there is a historical photograph of the composting facility. You can see “Lot 6 Vineyard” to the south of the premises. If you superimpose an arrow over the composting facility from the west to the east—that is, from the left-hand side to the right-hand side—that is the predominant groundwater flow.

The CHAIRMAN: We have recently received some information that gave rise to the question, which I will read out in part. This is talking about the subject that I have just raised, the letter states —

The original Works Approval for the composting facility in 2000 stated, the leachate dam collects liquid waste run off from the compost pad then runs via “V” drains into the catchment dam where it will be held before being applied to the newly formed compost windrows or onto the **neighbouring vineyard**. We believe —

That is the author of the letter —

an expensive irrigation system was brought in from Israel to irrigate the vineyard.

The western edge of the vineyard borders on the Jandakot Underground Water Pollution Control Area, Priority 2, a source of Perth’s drinking water.

Castle Lion Pty Ltd went into Supreme Court Ordered Liquidation on the 5th April 2013.

We strongly believe —

Again, “we” is the author of the letter —

the vineyard Lot 6 ground-water area should be tested for contamination. We also believe that the vineyard has not produced any grapes over the last few years suitable for wine production.

The Department of Environmental Regulation needs to fully answer this question of groundwater testing on Lot 6 the vineyard.

In view of that, I will pose the question again. If you are able to respond, perhaps not in relation to a moving water plume, but in relation to wastewater being applied directly to the vineyard land because that might be another site of possible contamination.

Mr Skitmore: The department has no information—certainly that I am aware of—that wastewater has been applied to the vineyard.

The CHAIRMAN: Via this hearing I bring that to your attention. We will be able to provide a redacted version of the information that we have received—if you could perhaps respond to that matter.

[12.40 pm]

Mr Banks: That would be great.

The CHAIRMAN: Now we are providing you with something on notice.

Related to the groundwater testing and without having those full results that you have referred to, Mr Skitmore, what happens to the site now? Will remediation work be required?

Mr Skitmore: We need to complete the groundwater investigations before those sorts of decision could be made. So it will not be until November of this year that we will have the final fourth quarter and then the consultant's report on the analysis of that work.

The CHAIRMAN: That is when you will contemplate that question?

Mr Skitmore: That is when we can look at the quality of the groundwater in terms of where there is an environmental risk associated with that groundwater and in terms of whether there is anything that needs to be done to address that.

The CHAIRMAN: Putting aside the question of groundwater, which we covered extensively just now, would there be remediation work required to that site now because of any —

Mr Skitmore: I think the question of the word remediation presumes that there is contamination sitting on the ground or in the ground that needs to be removed. We are not aware that that is the case from the data that we have.

The CHAIRMAN: We received information via the shire's evidence, which, again you would have seen over a year ago now. I think that residents and employees of the shire reported recent truck movements at the site with the appearance that material is being deposited at the site. Do you know if that is correct?

Ms Healy: I can probably talk to that. We have also received reports of material being brought onto the site. We have maintained regular inspections on the site of the issuing of the closure notice on 27 June 2014. The closure notice allows for the bringing of sand onto the site to finalise the existing compost on the site. We also have received reports of green waste travelling down. If I can refer you to the map on page 18, you can see there is an access road to the left of the premises that accesses the vineyard. Our inspectors understand that green waste is being transported to the vineyard for the purposes of mulching. The vineyard, as Mr Skitmore alluded to, is not part of the prescribed premises and is therefore not subject to the requirements of the closure notice.

The CHAIRMAN: To receive green waste, they do not need any —

Ms Healy: It is compost.

The CHAIRMAN: It is just compost. The shire also expressed concern that material from the site is being dumped elsewhere in the shire. You have just mentioned the green waste going across the road to the former vineyard. Are you aware of any other removal of material?

Ms Healy: In compliance with the closure notice, Bio-Organics have progressively been removing the material from the site. I will probably refer to Mr Skitmore to talk to the testing of the material that was undertaken prior to removal.

Mr Skitmore: As part of the department's work in relation to this issue, we did have the compost material tested. There were two types of tests done. One was a leaching test where the compost material was leached in a slightly acidic solution to determine what the quality of the leachate coming out of the compost would be. In other words, the material was put into a solution and allowed to leach material from the compost into water and then that water was analysed. From that leachate testing, there were nutrients—yes—but there were no other elements of concern or contaminants of concern in that leachate. The other sort of testing that was done was to obtain a sample of the compost and to determine what the total constituents of all the various compounds were in that total amount. In other words, it was not a leach test, but tested what was in the material. Apart from elevated levels of nutrients—being phosphorus and nitrogen—there was nothing in that compost which was of concern in terms of its environmental risk. It is compost.

The CHAIRMAN: Mr Banks, I do not know to whom you would refer this question. In contemplating, perhaps, if Bio-Organics or its former principals were to apply for a new licence for composting activity, presumably, the department would take into account their history for noncompliance when assessing the application. My question is: can a licence application be refused on the basis of previous noncompliance of the operator?

Mr Banks: I believe it can and have I ever done a refusal on that basis? Sorry, I have to scan my memory. No, I do not believe I have done a refusal on that basis, but it is my view that prior bad conduct would be sufficient grounds—not necessarily in this particular circumstance; if the circumstances were sufficiently extreme—to potentially refuse. The other thing that is probably worthwhile noting is that, without a planning approval, as was pointed out before by Ms Laszig, we do not even need to determine the application. It will just not be determined. If there is no planning approval in place, our practice is not to determine an application for environmental licence. So it will probably not even get to needing to be refused.

The CHAIRMAN: That would involve communication with the relevant local government.

Mr Banks: But, as I say, there is a regular —

The CHAIRMAN: Again, the relevant local government might ask you for information about what materials are being applied for.

Mr Banks: Generally, how that exchange goes is whether or not they have applied for a licence or a works approval. What we do is we then go through the assessment process. We will take the assessment process up to basically an intention to grant or refuse and advise the local government accordingly so that they are well-placed to make their decisions. That has not been the historical practice but I can assure the committee that that is the current practice and that is happening on a regular basis. We have a designated officer that is full-time tasked to provide planning and coordinate planning advice across the department for local government authorities and others.

The CHAIRMAN: I will perhaps conclude with a question here that deals with the general, because we have done a lot of dealing in this matter about a specific entity. It occurs to me that in managing a waste disposal facility, be it Bio-Organics or indeed, in a range of commodities or other disciplines, that the department could have a little bit of a conflict between these two elements. On the one hand—this is what we have been talking about all this time—there is the requirement of DER to make sure that people comply with proper licence condition in order to protect the environment and the public. But on the other hand, you have also got over 1 million tonnes per annum of waste product, which we have to do something with. Is there a conflict there with the department in the sense that you have to be actually looking to facilitate people who want to deal in waste management, which perhaps works against the first aspect I mentioned?

Mr Banks: From my perspective, I would not describe it as that, other than, for example, in moving to revoke this licence, I was cognisant of the implications that were going to be for waste disposal more broadly across the sector, and whether the sector had capacity to absorb this waste. The last thing we would have wanted is it ending up in a worse place. To that extent, I had a mind to it, but in terms of the fundamental things, I think that is an economic question, to be honest, at a primary level and waste markets will drive those outcomes. If you give them low-cost outcomes, such as this may have been, then they will migrate to that. If the higher cost solution is necessary to prevent environmental harm from occurring, then, ultimately, that is the outcome that should occur.

The CHAIRMAN: Thanks for that. Have you got any final remarks you would like to offer, Mr Banks?

Mr Banks: No, just thank you again for the opportunity to come down and clarify the department's evidence in relation to this matter. Thank you.

The CHAIRMAN: In turn, we have covered a lot of material today and gone a bit over the time we initially guesstimated. Thank you very much for bringing your officers here today. You have all been of assistance to our inquiry and we thank you for that. That will bring our hearing formally to a close. I will bid you all good day.

Hearing concluded at 12.50 pm
