

**STANDING COMMITTEE ON
ENVIRONMENT AND PUBLIC AFFAIRS**

PETITION 59 — BIO-ORGANICS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 22 APRIL 2015**

Members

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

Hearing commenced at 9.52 am**Mr ALAN CLARKSON****President, Serpentine Jarrahdale Ratepayers and Residents Association Inc, examined:****Mr MALCOLM DEMPSEY****Owner, examined:****Mr BARRY O'NEIL****Resident-Landowner, examined:****Mr LOVRENC (MICK) LEVKO****Adjoining Owner, examined:**

The CHAIRMAN: Good morning, ladies and gentlemen, and to our witnesses, welcome. On behalf of the committee, I would like to thank you for being here. Each of you will have signed a document entitled "Information for Witnesses". Have you all read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: Thank you. These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, if you quote from any document, please identify the document by its title. The microphones are pretty good at picking up directional sound, but please avoid putting papers or anything else over them. 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 would advise that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Mr Clarkson, as the principal petitioner, would you like to make an opening statement to the committee to supplement the submission you have already provided?

Mr Clarkson: Thank you. On behalf of members of the Serpentine Jarrahdale Residents and Ratepayers Association Inc, I wish to register our concerns regarding the operations of Bio-Organics and the possible failures of the state government authority whose role it is to monitor such activities and protect the health of the environment and community. The Serpentine Jarrahdale Ratepayers and Residents Association is an advocacy group whose primary aim is to represent all ratepayers and residents within the Shire of Serpentine-Jarrahdale. We act to safeguard the values, economic interests and environment of our shire. The ratepayers' association has been instrumental in the formation of various stakeholder groups within the shire, and is currently represented on those for landfill operations, quarries and business parks. We are supportive of new and existing industry that may increase employment opportunities with the shire, and ask only that our community and environment is rightfully protected.

We first became aware of the magnitude of issues surrounding Bio-Organics some two years ago when approached by Mrs Nancy Scade, who is a neighbour of Bio-Organics. She had received threatening letters from lawyers representing that business following concerns she expressed at an open meeting of the Serpentine-Jarrahdale council regarding the potential impact on groundwater from operations at the Bio-Organics site. Mrs Scade was extremely distressed by the content of the

correspondence and feared for the future of her property. Upon visiting and talking to other residents within the immediate area, it was apparent that many had suffered prolonged and deliberate harassment in the form of legal threats, photographs taken of residents going about their own business on their own properties, telephone calls at odd hours of the day and night, and, in one case, large metal structures placed just inside the boundary of the Bio-Organics property. These structures were covered with very offensive graffiti and were visible only to the adjoining neighbour.

Whilst the ratepayers' association has been involved with the problems surrounding Bio-Organics for only approximately two years, discussions with residents near and adjoining the site make it clear that they have suffered the effects of operations on the site for many years. Our experience in this case has led us to question whether the DER has acted as a true regulatory authority. Their reliance upon data provided by consultancy companies, largely made up of ex-DER officers and engaged by Bio-Organics, whose role was to support Bio-Organics' commercial objectives, leads us to conclude that there has been little more than self-regulation in its most ineffective form. It was only when the Shire of Serpentine–Jarrahdale engaged their own independent consultant did the shire, local residents and the ratepayers' association have access to meaningful and accurate data from groundwater testing.

The council and community had been aware of the potential seriousness of contamination, but were unable to obtain information from the DER as to what substances were being transported into the shire and dumped, despite the constant stream of tankers into the site. The DER blocked access to this information, claiming it was a matter of protecting confidentiality of a commercial process. This was despite numerous complaints about odour, noxious dust and fumes, which regularly extended into neighbours' properties and affected the health and wellbeing of occupants.

The company has confused the issue by making unsubstantiated claims against neighbours, alleging that they were responsible for any contamination and requiring that testing of unaffected materials was carried out. We believe that had the DER played a stronger role in monitoring the operations of this company, and in responding to the many complaints, that the degree of conflict between community members on both sides of the argument may not have reached the eminence it has.

It must be noted that at the first date of the hearing the DER deliberately made mention of contaminants which we know can be produced by fertilisers on pasture, although they failed to make reference to the heavy metals and total organic carbons which have been found in the groundwater at levels grossly in excess of what might normally be expected in this largely rural location.

We are grateful for the opportunity to have this matter investigated by your committee and look forward to an outcome which may improve the way commercial operators coexist within communities. Thank you very much indeed.

[10.00 am]

The CHAIRMAN: Thank you on behalf of the committee, Mr Clarkson, for that statement, which I think has facilitated things by answering a number of questions that we had in the pipeline, so thanks for anticipating those. It does give rise though to one or two more questions, which we will come back to in just a moment. You are accompanied by a number of other members of the community with an interest in this matter. I am going to go in turn now and invite them to briefly explain what their interest is in the matter we are looking at. I will start with you, Mr Levko.

Mr Levko: Being a former neighbour of the Bio-Organics facility—my parents are still neighbours—we were strongly affected by the facility and its operations for many years. This was especially evident in the last several years before its closure, with an enormous increase in liquid waste tankers, foul odours, heavy road use inside and outside of permitted hours and noise from the

facility, and also health effects such as nausea and headaches when the foul smells overwhelmed our property.

We have endured a lot over the past few years. The impact of the facility affected my family mentally, physically and socially. We no longer had gatherings at the family farm in case the putrid smell overcame the property, and often had friends and family leave, asking how we could live with these smells. I would often come home from work and go out for dinner as the sewage-like smells would get stuck in the house, which made it too uncomfortable to eat. We also had to lock all the windows and doors in the house to try to stop the smells entering the house, which made it an uncomfortable lifestyle.

We have made hundreds of complaints to the DER and shire over the last several years about the sickening smells from the facility, and raised concerns about possible pollution to local groundwater and our drinking water catchments, with the liquid waste tankers bringing tens of millions of litres of waste onto the site. I have even written twice to the Minister for Environment, Albert Jacob, asking for help to restore our once peaceful rural lifestyle. I believe it was unfair that we had to put up with the vulgar smells, which ranged from sewage-like smells, rotten milk-like smells, to chemical-like smells, but were never informed of what was entering the site, as it was a secret recipe. We were only once notified of a “trial” for three months in late 2006.

I believe the Serpentine–Jarrahdale shire moved to cease the operations due to its lack of a development approval, but the site continued to run, which raises the question: why did the DER not revoke the licence at this stage? It seems we and the local community were innocent victims and had to live in the backyard of what seemed to be a liquid waste dump, due to the lack of control and regulation of controlled waste by the DER.

The CHAIRMAN: Thanks very much for that, Mr Levko. Mr O’Neil, I understand you also have a perspective; if you would like to share that with us briefly, we would appreciate it.

Mr O’Neil: I would like to state that Bio-Organics was an environmental disaster from the beginning as there was no environmental impact assessment carried out on the site which would have highlighted the shallow watertable; the distance to the Jandakot water mound; the direction of the prevailing winds, allowing possible airborne pathogens to settle on roofs in the area, contaminating drinking water; and the possible contamination to bore water as there is no scheme water in the area.

Over the years, the surrounding residents have been ill-informed by the Department of Environment Regulation about Bio-Organics’ operations; one may say “being kept in the dark”. During the last 14 years, we have had to put up with a putrefying, nauseous and obnoxious stench all times of the day and night, affecting our eyes, throats, nasal breathing and itchy skin, all requiring medical treatment. There have been a lot of occasions where we had to close up the house and stay indoors or leave our home because the stench was so strong. We are appalled and disgusted with the overall responsibility of the Department of Environment Regulation regarding the compost facility. Over the years, a lot of surrounding residents have been intimidated by the Avila family, Bio-Organics, by one form or another. Thank you.

The CHAIRMAN: Mr O’Neil, if you could just round that out by indicating where you and your family reside.

Mr O’Neil: Our property and house are 270 metres to the west of the composting facility. We get the full impact of the easterly winds. You can see from the picture on the screen we are the first one near the access road.

The CHAIRMAN: So immediately to your west there are properties owned by the Avilas —

Mr O’Neil: To the east, I am sorry.

The CHAIRMAN: I beg your pardon; the Avila property is to the east. Just for the record, you have identified your address, and we are now contemplating an aerial photo of the area. Again, my colleagues will no doubt have some questions for you in a moment.

I want to turn now to you, Mr Dempsey. You have a particular involvement in this issue. Perhaps if you would like to make some remarks to us, we would be glad to receive them.

Mr Dempsey: I will just go back into the history: my father was a farmer, a wheat and sheep cockie. There was a guy who owned this block, lot 7, which is at the bottom right-hand corner of your screen. It is shown there as a nice little bush block at present, but it is not. When I bought it, he had stock running on there. Miggsy got sick. He was looking to buy an apartment near our golf course in South Perth and he asked me if I knew anybody. I went and had a look at it and I said, "Miggs, I'll buy it." His son and daughter-in-law stayed on as tenants to look after the place for me. Unfortunately, within a couple of years, for all the same reasons that Mick and Barry mentioned, the tenants moved out because they could not stand it. We got rid of the stock a couple of years prior. Since then there has been no stock on there. There are reports that say we have elevated levels of nitrogen and all that, and that it is typical of farming and those sorts of things, but we have not put fertiliser on this property since I bought it. We have not been able to run stock; the water has been poisoned. We had a soak in the bottom corner right next to their leachate dam—I have photos if you want to have a look—but it is just a putrid green colour. You would not put anything in that sort of water, let alone feed stock from it. They also mention in one report that we had high levels of nitrogen and phosphorous that were consistent with fertiliser history in the area. Like I say, we have not applied fertiliser since 2006. It also mentioned arsenic, chromium, nutrients, TPH, PAHs, phenols—whatever all that means. The long and the short of it is that the property sat vacant for two and a half years because we could not lease it. It is an investment property. I am a valuer by trade. I looked around for sales evidence in the area and there is none, whether that is consistent with this operation next door and people have tried to sell and have not been able to.

I first noticed that we had been contaminated when I had contact from Dan Avila, on Tuesday, 27 August.

The CHAIRMAN: What year was that?

Mr Dempsey: That was 2013. We agreed to lease it to him at the time, because the property was vacant. He was going to run some cattle through there and they were prepared to pay me \$500 a week, and they also wanted the option to buy. Two days later I also got a letter from the DEC, coincidentally, and enclosed was a form 1(R.6) and a report of a known or suspected contaminated site. I sent back a request asking for complaint/samples so I could forward to the neighbour so he knew what was required to rehabilitate. I was told the form 1 had to be completed, then a formal inspection would be undertaken to identify the scale of contamination, and they would then get him to remediate the site. I sent back a note saying that I did not want my property to be on the register of contaminated sites. As a valuer by trade, and a real estate agent, I know that is poison; the value of the property just becomes nil. The response I got was that the results show contamination and the site was now identified as contaminated, and if I did not do it, it would be ID'd as a contaminated site in any case. It also went on to say that the adjoining property was in breach. Anyway, the agreement with him fell over when all of this happened.

[10.10 am]

We were never told what contamination was there or how we had to go about rehabilitating. The last correspondence—there has been numerous correspondence—said that the contamination had not been improved and they needed more time to assess it. The last correspondence had the neighbour complaining about me putting down some soil. We stockpiled some dirt on site which was treated with some lime. We had numerous soil tests and treatment done before we put it there. At the time I did not realise that I needed a permit to put soil there. We did not spread it or do anything with it; it was just going to be a line that we could treat the firebreaks with so there would

be some trafficable roads through what is quite deep sand. The long and the short of it is that the last three or four times we have had the sand, we have had to get it removed.

The CHAIRMAN: Was that acid sulphate soil?

Mr Dempsey: Originally it was treated for that, yes, but it was minor acid sulphate. We treated it while it was stockpiled there and then it was taken away, and it was treated and tested by the guys before it was taken anywhere, because they will not take it unless it is confirmed.

The CHAIRMAN: So it was put there for treatment with the intention of moving it somewhere else?

Mr Dempsey: No, it was put there after it was treated. We mixed lime and other stuff with it as well when it was there.

The CHAIRMAN: But it has since been removed, has it?

Mr Dempsey: We have taken it away, yes.

The CHAIRMAN: Why was it removed?

Mr Dempsey: Because we could not get a retrospective permit from the Serpentine–Jarrahdale shire to leave it there, and with all this going on, it was a lot easier to take it away.

The CHAIRMAN: Mr Dempsey, I just want to clarify this point: it was DER that contacted you to advise of a potential contamination issue —

Mr Dempsey: Yes.

The CHAIRMAN: — not a complaint from you to DER?

Mr Dempsey: No, apparently one of my neighbours was walking his dog through the back block and noticed the spill. He is the one who reported it; I never knew anything about it.

The CHAIRMAN: I think it was well reported publicly at the time that there was liquid waste of some sort flowing through a drain onto your property; is that what happened?

Mr Dempsey: There is a culvert into the back corner that comes from a main storm drain. Along this boundary here on the photo, it actually shows a drain that belongs to the Serpentine–Jarrahdale council. It runs on the inside of the Avilas’ vineyard. Then it shows the same drain running alongside the inside of my back boundary. That drain has since been covered over and apparently is now an agricultural drain at the bottom of it. That is collecting the run-off from underneath the vineyard. There is then a drain, which again has been covered over—not by me—which links up to this drain here, which is the main drain, and it comes in through my boundary on this corner here, inside my boundary and then out through Kargotich’s land. His leachate dam is right about there somewhere, and my little stock dam is about there—in the old days, I could probably throw a cricket ball that far. There is a road over the top of this drain that goes nowhere really. There is a culvert that goes underneath it, and in the middle of that culvert is a pipe, which is quite well concealed, but apparently that is all legitimate, to link up with this agricultural drain. There was another pipe that ran out straight as an overflow from his leachate dam, apparently, that went straight into this dam, and that was about a metre off the bottom of this storm drain. That was just a straight overflow from his leachate dam. At the last meeting I listened to somebody raise the point about how there could have been contaminants in the drain which overflowed back up this pipe and into this dam and contaminated his property, and I thought, “Yeah, good on ya.” That is a metre off the thing, and I have never seen a metre of water in that drain in my life, so I do not know how the water got up there. I do not know if that answered the question.

The CHAIRMAN: It is further information. How would you describe your dealings with DER? Has it been a useful relationship from your point of view, or has it been frustrating?

Mr Dempsey: We get notices to say that the property is contaminated and then we say, “Why is it contaminated?” We bought this property and it has been contaminated. We had nothing to do with that. The next-door neighbour is allowed to carry on an operation which has morphed from compost facility into some chemical waste dump and polluted and made it unbearable for everybody else to live around there and/or operate anything else around it. We put a pile of sand on there which was easy to take away, and we got numerous reports to say that in no way could that have contaminated anything. We got the full investigation, and did the soil tests, and I have notices somewhere in here—I am willing to leave the whole file of correspondence with you. They were all over me. My history with DER goes back some way because the soil we took to that site came from the South Perth development we did. We had to dewater that site—this is the double standards we get with the DER. We were intercepting water, and we sheet piled to our boundary—this is an aside—and the water was coming into our site. It must have been coming under the elephants’ cage in the Zoo because it had some nutrients in it. So we had to filter that water, two million litres a day, before we could pump it into the storm drain. That cost us the best part of \$1 million and delayed us probably nine months. These guys dump on a sandy base with no treatment, no lining on the dam, no concrete hardstand to mix all this mush with; it goes straight on deep, sandy soil with the watertable a metre below. And the response we get from DER is less than satisfactory.

Hon BRIAN ELLIS: So you are assuming then that the poisoning of your water has been from that dam or the drain spillage?

Mr Dempsey: No, I am saying it is straight—if I had a bowl of sand here and I tipped that water into it, it is just going to go straight across the bottom of whatever I put it in. The watertable is a metre below the surface. All this soil testing they are doing is drilling little holes two metres deep. What happens 10 metres down when it hits bedrock where all that water is? There are 100 million litres a year going straight into the groundwater table. I do not know where that is going, but it obviously has something to do with polluting a lot more than just this little area here.

Hon BRIAN ELLIS: That is what I was getting at; that is how your water was contaminated.

Mr Dempsey: Yes, it is just the groundwater; it has nothing to do with water running over his property and into my drain. My watertable is the same as his, obviously 100 metres apart.

Hon PAUL BROWN: It is leaching through the pad.

Mr Dempsey: It is straight through the groundwater table, yes, I would think.

Hon BRIAN ELLIS: And you have had that water tested?

Mr Dempsey: We have had it tested, yes. We had Andre Stass, who did the work for the shire as well, do some testing for us.

Hon BRIAN ELLIS: What were the results of that? I am just wondering what poison is in the water.

Mr Dempsey: In the water? They reckon it is not unfit for stock water. They said the results indicated elevated levels of nutrients as well as the exceedance of metals copper, lead, zinc, aluminium and iron.

Hon SAMANTHA ROWE: Did they say it was okay to run stock with that water, or that it was not?

[10.20 am]

Mr Dempsey: DER did; they said it did not affect me and that there was no reason I could not continue to run stock and all of that sort of stuff.

Hon SAMANTHA ROWE: But you did not feel the water was appropriate?

Mr Dempsey: I have a photo here; you can have a look at it yourself. I do not know if you can see it, but that was the dam.

Hon SAMANTHA ROWE: The green?

The CHAIRMAN: Just describe the photo for us, for the record if you could.

Mr Dempsey: It is just a cesspool, basically, and it smelt like pig shit—excuse the language. It was just green sludge.

The CHAIRMAN: Where was that pool?

Mr Dempsey: That pool is the one right here, right next to his boundary. My little soak is there; his leachate pond is there, just 50 metres the other side of the boundary.

The CHAIRMAN: That is his leachate pond; what does your water look like?

Mr Dempsey: That is mine.

The CHAIRMAN: Oh, that is yours?

Hon SAMANTHA ROWE: Yes. And DER said that was suitable for stock?

Mr Dempsey: That was suitable for stock. They were saying the groundwater was suitable for stock too, but that only has a little bit of arsenic and something else in it.

Hon BRIAN ELLIS: So that is your only water supply?

Mr Dempsey: That is the only groundwater supply, without running troughs from the bore, yes.

Hon PAUL BROWN: Did DER give you any opinion of where that contamination came from?

Mr Dempsey: No, they are in the process of conducting further tests. They have the adjoining owner currently going to knock on everyone's door to come around and drill his own holes to then let them know what has gone on there.

Hon PAUL BROWN: What date is that letter? Is it recent or was it from 2006 or 2010?

Mr Dempsey: The last letter I got was from 10 February 2015, which states that laboratory analysis indicates elevated levels of nutrients as well as exceedance of metals—copper, lead, zinc, aluminium and iron. I sent them another letter, but I have no response to that yet. I still want to know how it is contaminated and who is going to fix it up. As far as I am concerned, they let these people operate and nobody was there to umpire what was going on.

Hon PAUL BROWN: Mr Clarkson, your statement on behalf of the ratepayers' association says —

We are supportive of new and existing industry which may increase employment opportunities within the Shire; and only ask that our community and environment is rightfully protected.

If DER were actively overseeing the behaviour and business management of Bio-Organics and making sure that they complied with all the regulations and works conditions, you would be supportive. It is not really Bio-Organics as such as a business, as much as some of the behaviour might have been reprehensible with regard to signage and things like that, but really it is DER that you have a real complaint against about the fact that they did not follow procedure, they did not do oversight, they basically allowed a contamination to continue and did not pull the plug on them early, for want of a better word. It is not the industry or the business as such; if there were a proper pad, a proper leachate, proper drainage, it would have been acceptable. It is not actually the composting business, but really the way the regulator has behaved in this.

Mr Clarkson: Could I answer that, as you have directed it at me? The way the DER and other government departments operate these days is that they have private consultancy companies now largely made up of ex-DER officers, and these are the people who want investigating. They supposedly have the credentials to advise Bio-Organics. Having said that, Bio-Organics in our opinion behaved more than badly; they absolutely grabbed hold of this opportunity. They should have been advised by their own consultants not to allow this to happen. This was done completely

with the agreement of the DER. As I say, these ex-DER officers and other consultants are appearing all over the place. We operate in a lot of other quarries and areas, and these ex-DER officers who were once policing these very operations are now appearing there as though they work for these companies. It is a complete conflict of interest and the whole thing wants investigating and rejigging otherwise this will happen again. There was bad behaviour on all parts, but not by these people; they are completely innocent in it.

Hon PAUL BROWN: So basically you are saying that the fox is in charge of the henhouse?

Mr Clarkson: Absolutely.

Mr Dempsey: The other big problem with that was that there were a lot of complaints going into DER, but people who live out and around there did not have the means of the people with deep pockets who own this operation, and they had a heavy-hitting lawyer who was sending threatening letters every time somebody stuck their hand up. That is probably why the number of complaints dropped off; people were scared.

Hon PAUL BROWN: The level of complaint in 2013 really spiked. It was rather low, maybe because of what you are alleging there. Why then in 2013 did those complaints reach the heights they did?

Mr Dempsey: I think the spike then is when my tenants moved out; that is, the former owner's son and daughter-in-law. That must have been when they were putting a lot more uncontrolled —

Mr Levko: There was a huge spike. You would see the odd tanker and the smells would come and go. Then come 2013, or a little before that in 2011, these tankers started to arrive. All of a sudden a cul-de-sac with four houses on it had easily 30 tankers a day entering the site. All of a sudden there was liquid waste coming in by massive volumes.

The CHAIRMAN: Was the extra traffic really noticeable?

Mr Levko: We live in a cul-de-sac that is a kilometre long and has four houses on it. Normally, if you saw a car you would call the neighbours to see if everything was okay down the end because it was that quiet. We had what was almost like a highway; there were 30 trucks coming in, just tankers some days.

Hon PAUL BROWN: On the map there, where is the house you are talking about in relation to the cul-de-sac?

Mr Levko: We are just north of the property. Like I say, there are two houses on the entrance, so we never see their cars coming down the road. All of a sudden we had tankers flying down, and with the tankers came the smells.

The CHAIRMAN: You are saying that is what led to a spike in the number of complaints?

Mr Levko: By all means, because if one truck a day was coming, the smell would be less intense, but when you got sometimes 30 trucks—I actually set up CCTV because I felt uncomfortable with the owners of the property once a couple of things went on, and we felt intimidated. I could go over that CCTV and count the trucks, go onto a website of Western Resources and figure out the capacity of each truck. I do not know if the trucks were full, but some days the capacity of the trucks was over 300 000 litres a day. If you are going to see where the contamination is coming from, that has to be the one that is highlighted.

The CHAIRMAN: Mr Clarkson, in your capacity with the association, were you aware at this time that the number of complaints had accelerated?

Mr Clarkson: As I say, I have had contact with these people over the past couple of years and, yes, we certainly were. What they used to report to us, as they have said in their statements, was that it was impossible to live there at times, so we were well and truly aware of it.

The CHAIRMAN: If there was a noticeable increase in activity—activity apparently not sanctioned by licence or other approvals—and there was a spike in the number of complaints from local residents observing all of this increased activity, and the odours and everything that goes with it, did the association have any contact with DER at that time about the issue?

Mr Clarkson: Yes, on numerous occasions.

The CHAIRMAN: What was the nature of the response from DER?

Mr Clarkson: Well, the stock standard one on odour issues—we have landfill issues as well—is that they would say to contact the council, that this was their problem. It would be that type of response. But, honestly, it just went nowhere with the DER at all. I had contact with one of the people who gave evidence here on behalf of the DER the other day, and it just went nowhere. I would say that the complaints fell on deaf ears.

[10.30 am]

Hon STEPHEN DAWSON: Mr O’Neil, in your statement you talk about having to put up with putrefying, nauseous, obnoxious stench all times of the day and night, and that it affected your eyes, throat, nasal breathing and itchy skin and required medical treatment. What did the doctors, the Department of Health or DER say about why you or people in your household were getting sick?

Mr O’Neil: After we experienced this—it was not just our family—of course you go to the doctors and get medication for it, or you go to the chemist to get treatment for the problem. We explained this to the DER, or the DEC back in those days, and it just fell on deaf ears. I have been following this whole show from 2000 when it first started. I mentioned in my statement that I said to the inquiry that Bio-Organics illegally set up a phosphoric acid tank there, which was supplied by BP in Kwinana. This was back in 2004. We all started to get stinging eyes from that and we sought treatment from doctors for that. We found out that they were putting this phosphoric acid in. I sent letters to BP’s legal department in Melbourne. The shire did not know about it. Nobody had submitted an application or sought permission from the shire to put this tank in there. We were under the assumption that the tank with the phosphoric acid was then removed. Many people do not know too much about phosphoric acid, but when they make fuel, it is in the burning in the chimneys—they call them the crackers. They mix it with diatomaceous earth, which was used in the old swimming pool filters. When that gets all clogged up, they have to drop it all out and redo it again in the chimneys. This diatomaceous earth, with the phosphoric acid, was taken to Bio-Organics and put in the tank, which we believe was paid for by BP. After myself and a couple of other people wrote a letter to the BP legal department in Melbourne, we thought it was all over. But then we found out when the amended licence was issued in 2013, and amended by the director of the DER, Alan Sands, the phosphoric acid was mentioned in it, so it had been running there all that time. The shire did not know about it. These are the things that have been happening. As I mentioned in my statement, there was never a formal environmental impact study assessment carried out on that particular site. If this had happened, people would have realised that the water level is about a metre below or, in the winter, at surface level. None of that research was carried out, let alone a study on the prevailing winds and so on.

This matter is very complicated; you have to read through the history. Alannah MacTiernan actually gave them permission to run a green waste facility—green waste only—with a 10-year limit. After the 10 years it had to cease and be reapplied for. It was all centred on green waste, and green waste only. About a year after they started they were bringing in urea in big bags to mix in to get some nitrogen into it, because you need a fair bit of nitrogen to get the action of composting going. We were never told, from the DEC in those days, what was happening. It is like I have said here: we were kept in the dark; nobody knew. I think Mr Levko said he received one letter, which none of us did, that over the next six or seven months the residents may experience sore eyes and throats. None of us around my way ever received that kind of correspondence. The problem is that over the

years—we are talking 14 years—the changeover of staff in the then DEC meant that you would talk to an officer, and then try to get back to that same officer and he would be gone and there would be someone else handling the matter. This is how it continued over those years.

Hon STEPHEN DAWSON: Can I just go back to the health issue for a second? Mr Levko, you also mentioned the health issues in your statement. When you told the DER that you were experiencing these health issues, how did they explain them away? Did they ever do a health impact study?

Mr Levko: They did a smell study where they came out. When I say that the smells were bad, they were that bad that my wife would smell them and get instant nausea and headaches. Sometimes they were that strong that they could make you physically ill, make you start dry-retching. It was properly disgusting. There is no hiding that that was the case. The officers had gone out there and were smelling it and they did a big smell survey over X amount of time with winds going in different directions.

Hon STEPHEN DAWSON: So they measured it?

Mr Levko: Yes.

Hon STEPHEN DAWSON: Did they agree with you that there was an impact?

Mr Levko: I am quite positive that they did.

Hon STEPHEN DAWSON: Did they put extra conditions on the licence or was any action taken?

Mr Levko: No, the licence seemed to just drag on and drag on. I do not understand how it dragged on, whether it was just the bureaucracy in the department or whatnot and it is that hard to make anything happen whatsoever, but it took a really long time for anything to happen. I think when it hit *The Sunday Times* front cover is when the ball really started rolling for us. Then the amended licence came out and inevitably there was the closure of the facility, which has brought our lives somewhat back to normal.

Hon BRIAN ELLIS: Did your doctors agree with you that that was where your health complaints were coming from? On top of that, did you get any certificates from the doctors to give to the Department of Health?

Mr Levko: No, we did not. It is pretty hard to go to a doctor and say, “Look, I’ve been smelling sewage at my place, I’ve got a headache.” He might say, “Drink some more water and have a Panadol.” If you were out there, and a lot of the officers were, and you smelt it for one second, you would know exactly what I am talking about. I used to come home from a 12-hour shift and my wife would make me dinner. I would sit down at the table, get up and drive to Fremantle to have dinner because I could not eat it, the smell was that bad. It was in the house; there was nothing you could do to get rid of it. We used to sleep with our windows shut. I used to sticky tape the little bit of glass on the toilet vent because the smell was that strong some nights it would flow through there into the house.

The CHAIRMAN: How long did you put up with that?

Mr Levko: Years. Like I say, mentally it almost breaks you. You would have people coming around and their kids would go, “Oh wow, the farm, the ducks, the sheep” and start running around. All of a sudden the smell would come and the kids would start coughing, and they would say, “I’m getting my kid out of this. How can you live like this? This is going to make you ill.” It was embarrassing.

The CHAIRMAN: How are things for you now?

Mr Levko: They are actually quite good now. There has not been any liquid waste there for well and truly over six months.

The CHAIRMAN: And you and your wife have noticed a difference?

Mr Levko: The smell dramatically started decreasing a couple of weeks after liquid waste stopped entering the site.

The CHAIRMAN: It is obvious then that you put that down to the waste not being there.

Mr Levko: That is exactly where it was from. It is not a question, it is a statement: that is where the smell came from.

The CHAIRMAN: We are approaching the end of the time we have available this morning in this ongoing matter, because there are a number of other matters we have to move on to as well. But I must come back to your statement here today, Mr Clarkson, and to a couple of questions that arise out of that. In the penultimate paragraph of your statement you refer to an earlier hearing at which DER were present and —

... made mention of contaminants which we know can be produced by fertilisers on pasture although they failed to make reference to the heavy metals and total organic carbons which have been found in the groundwater at levels grossly in excess of what might normally be expected in this largely rural location.

Our committee and my colleagues understand the context that it is not unusual to find higher than average levels of nitrogen in an area which is used for agricultural purposes and receives fertilisers anyway. We understand that point. But the other point is that you are suggesting that perhaps the presence of other contaminants, heavy metals and the like, has been underplayed. If that is true, would you like to expand a little on that point?

[10.40 am]

Mr Clarkson: I sat in here of course when the DER officers were giving their evidence. But that was certainly the outcome. Everybody knows down there that we do have nitrates, but we had total organic carbon, something like 400 or 500 times the recommended amount. This is derived from that operation, we believe, from Bio-Organics. There were heavy metals in there and only up until a couple of weeks ago we could not find out what they were bringing over our roads; even the council could not find out when they asked. I suppose what it points to is that the DER deliberately hid this stuff and I heard it at the last hearing here that they are still hiding it, and they are hiding it for some purpose. I would say it is because they know that they have been a huge part of the problem.

The CHAIRMAN: Thanks for making that point, which we can examine. The other question I have for you is not related immediately to the petition. Your petition expressed concern about actions taken by Bio-Organics. That has been canvassed here and elsewhere in relation to the contamination of the Bio-Organics site in Oakford and neighbouring properties, and that is what we are discussing. You also asked us to look at the actions taken by Bio-Organics, and that is certainly happening; the Department of Environment Regulation, and indeed there has been a lot of discussion of that; and the contaminated sites committee. The other agency there which perhaps needs a mention is the local government. Can you comment on the Shire of Serpentine–Jarrahdale's involvement in all of this? Has that been adequate?

Mr Clarkson: I suppose. Just to explain very briefly, ours is a hugely growing shire down there and there has been an enormous amount of cost put on the shire. I believe that in a lot of cases they just never had the money or the manpower to address some of these issues; that was certainly the case. But it was not until the shire engaged a private consultant to do a minimal amount of tests on Mr Dempsey's land that the real problem in this whole issue came out. The odours and so on were bad; they were life-destroying issues for these people here, and there is no doubt about that. But the big issue is groundwater impact, and we are yet to see just how far that goes. There have been huge spikes in Peel–Harvey, which ultimately the Serpentine runs into, and the Berrigan drain and the drain where all this stuff was allowed to go, we believe deliberately, into the environment. It could not have been missed.

The CHAIRMAN: I think it is fair to say that what our committee was staggered to find was that in 2001 ministerial approval was given after an appeal had been upheld for 10 years, for very strictly quarantined operations, specifically green waste composting alone. We reviewed the correspondence from the minister of the day and that seems pretty clear. Yet we have had all of these problems with odour and impacts on residents and so on, and a massive increase in trucking movements. We have since found out that tens of millions of litres of waste was involved, and all of this after the 10 years was up anyway. The association would be close to the shire on this. How was it that this was not picked up by the shire, that there were things going on there that had never been approved?

Mr Clarkson: That is something I suppose you would have to ask the shire.

The CHAIRMAN: Very diplomatically put, and we probably will.

Mr Clarkson: I would be speaking out of turn if I were to try to answer that. We have been involved in this for only the past two years, but the simple fact of the matter is that the DER allowed liquid waste to go in there in a facility that was not engineered to take it. There was no bunded hardstand that would contain this stuff. As we understand it, there was no properly lined pond. But worse than that, the enticement to take liquid waste in there for the monetary gain was so great that they let millions and millions of litres—we will probably not know the full amount—go out into the environment and onto the neighbours' properties. They are the facts of the matter.

The CHAIRMAN: Thanks for that, Mr Clarkson.

Hon PAUL BROWN: We have been talking about elevated levels of nitrates consistent with agricultural enterprises in the area. Just clarify for me, because in my opinion it does not look like there is too much agriculture going on in this area anymore; it seems to be mostly residential. There is the odd chook farm and egg farm there and a vineyard of sorts. So when we are talking about elevated levels of nitrates consistent with agriculture—I know that you had some stock on there previously—what other agriculture is going on in that area? To me it looks like it is residential.

Mr Levko: We have a veggie patch!

Hon PAUL BROWN: How big is the veggie patch?

Mr O'Neil: I ran three horses at the back of my property, but they have been there for about only five years.

Mr Dempsey: There is a 10-acre market garden just the other side of my block.

Hon PAUL BROWN: But that is downstream?

Mr Dempsey: Yes, that is downstream.

Mr Levko: There are a couple of farms with a couple of cattle running on them; we have a couple of cattle on ours.

Hon PAUL BROWN: But not large scale? I am basically trying to get you to support the premise that I am putting, which is that agriculture is not an enterprise that is going on in that area any further. It might have been years ago some grazing and pasture farmland; it was not cropping land or anything like that.

Mr Levko: Yes, just for cattle. The Kargotichs had a bit of a dairy farm there.

Hon PAUL BROWN: Coogee is just down the road; I know the area pretty well. So, basically agriculture is not an aspect which is a day-to-day priority in that area; it is residential and hobby farming at most.

Mr Levko: Lifestyle blocks.

The CHAIRMAN: We are just moving now to where we have to wrap this up, but there are two threads that do need to be tied up. The petition referred also to the Contaminated Sites Committee. Having made some preliminary inquiries, it appears that the Contaminated Sites Committee per se has not really been involved with this at the point where all of the incidents were happening. Was there anything specific you wanted to raise about the Contaminated Sites Committee?

Mr Clarkson: The DER?

The CHAIRMAN: No, the Contaminated Sites Committee.

Mr O'Neil: The one that was set up by Minister Jacob.

Mr Clarkson: It was set up probably before I heard the statements of the two people from the DER who you would have thought would have been thoroughly briefed on it, and it did not attend any of those matters. As I say, there are so many things there that were discovered in that groundwater that were not raised here by these people. You can only say it is a deliberate attempt to minimise the problem.

The CHAIRMAN: My final point I wanted to tie up was with you, Mr Dempsey. Can you clarify for us the status of your property at the moment? Has it been classified as possibly contaminated, investigation required?

[10.50 am]

Mr Dempsey: It will be until it is cleared. Without any evidence to the contrary, the first correspondence from them states that results show contamination and site is now identified as contaminated. It adds that if I did not send back the form 1(R.6), the site would always be ID'd as contaminated, and the adjoining property is currently still in breach. Until such time as we have clearances, it is always a shadow over the property.

The CHAIRMAN: This is probably a difficult forum. We might follow that up out of session just to clarify that point. Perhaps if you can discuss that with our staff. It is a bit hard to go through your records now.

Hon BRIAN ELLIS: Will you be doing any testing yourself to see what is happening with those contaminants? I would imagine that in sandy soil they will leach away fairly quickly over a couple of years. Unless you have returned that form, no-one will be testing.

Mr Dempsey: The DER have put the onus on the Avilas to do the testing of all the neighbours.

Hon PAUL BROWN: Has that actually happened?

Mr Dempsey: No, I have not had a knock on my door yet to say they want to come and drill a hole on my block.

Hon BRIAN ELLIS: So you need someone to enforce that?

Mr Dempsey: Of course, but they have left it to the Avilas to do their own soil testing. How does that work?

Hon PAUL BROWN: Have you had any written communication from DER to say over what time frame that is supposed to happen? Are we talking over the next six months or 12 months?

Mr Clarkson: I think they said 12 months.

Mr Dempsey: I have got it there somewhere, but the last letter I got from them was dated 17 February 2015.

The CHAIRMAN: Mr Dempsey, can you identify that letter?

Mr Dempsey: It is a letter from Andrew Miller, Acting Senior Manager, Contaminated Sites, dated 17 February 2015.

The CHAIRMAN: Can I ask you to table that letter so that we can take a copy of it and extract the information?

Mr Dempsey: Yes. Basically it says —

DER obtained a surface water sample from the outflow of the culvert drain on the northern boundary of Lot 7 ... on 2 August ... laboratory analysis indicated elevated nutrient concentrations as well as minor exceedances of metals above assessment levels ...

- Cadmium and nickel ... above Groundwater Investigation Levels for fresh waters.
- Copper ... above Groundwater Investigation Levels for fresh waters; and criteria for long term irrigation.
- Arsenic in the sample was reported above Groundwater Investigation Levels for fresh waters; criteria for long term irrigation; and criteria for the non-potable use of groundwater.

There were no exceedances of the 'Livestock drinking water guidelines' (ANZECC & ARMCANZ 2000).

As you would be aware, the property ...

That is, Bio-Organics —

... was classified as *possibly contaminated – investigation required* on 10 December 2013. DER subsequently issued the site occupier (Bio-Organics Pty Ltd) with an investigation notice on 2 October 2014 requiring ... the source and extent of potential impacts to groundwater. An appeal against the investigation notice was lodged with the Contaminated Sites Committee ... on 23 October 2014. Until a determination is made by the Committee the investigation notice is suspended. The appeal is set to be considered by the Committee on 25 February 2015.

If you have any further queries ... contact ...

Hon PAUL BROWN: Effectively, the action has been suspended because of appeal at the moment.

Mr Dempsey: They are waiting for more information, yes.

Mr O'Neil: Mr Chairman, could I just add one quick point. All of us in the area received a letter to say that we were not to use the bore water for drinking or to even fill swimming pools. We have never had feedback from that particular letter. All the surrounding residents received that letter from the director of the DER, advising people not to use the water for domestic purposes. They indicated that it would most probably be all right for stock use.

The CHAIRMAN: We would be interested to see that letter. Do you have a copy of it in your possession?

Mr O'Neil: I do not have it here but I could send that through to you.

The CHAIRMAN: Possibly as a follow-up you might like to provide that as supplementary information. We would be very interested to examine that and perhaps ask some more questions.

Mr O'Neil: Yes, I can do that.

The CHAIRMAN: That is probably a good point upon which to draw these proceedings to a close. I want to thank each one of our witnesses for their attendance here today and thank them very much for giving up their time. In turn, we will hopefully be able to add some value to clarifying the matters that have been brought to our attention by your petition. For now though I declare this meeting closed and bid you all a good morning.

Hearing concluded at 10.56 am
