

ECONOMICS AND INDUSTRY STANDING COMMITTEE

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH,
WEDNESDAY, 19 SEPTEMBER 2001**

FIRST SESSION

Members

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

Committee met at 9.05 am

JENKINS, DR BRYAN ROBERT,
Director, Jenkins Environmental Management,
examined:

MALCOLM, MR JAMES WILLIAM,
Director, Special Projects, Department of Environmental Protection,
examined:

The CHAIRMAN: Welcome to this reconvened hearing of the Select Committee on Economics and Industry into the Bellevue incident of 15 February 2001. This is a continuation of the hearings held throughout August and September. At this stage we propose to take evidence until about 11.15 am. Thank you for agreeing to come and contribute to this inquiry.

The committee hearing is a proceeding of Parliament and warrants the same respect that proceedings in the House itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as contempt of Parliament. Having said that, welcome. Mr Malcolm, have you completed the "Details of Witness" form?

Mr Malcolm: Yes.

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

Mr Malcolm: Yes.

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

Mr Malcolm: Yes.

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

Mr Malcolm: Yes. I am appearing as an employee of the Department of Environmental Protection. I could explain the history of my employment in relation to the committee's work, if that would be helpful.

The CHAIRMAN: Can you confirm that you are the former director of the waste management division of the Department of Environmental Protection and formerly director of projects.

Mr Malcolm: I was director of waste management and later director of special projects.

The CHAIRMAN: Welcome, Dr Jenkins. Have you completed the "Details of Witness" form?

Dr Jenkins: Yes.

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

Dr Jenkins: Yes.

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

Dr Jenkins: Yes.

I am appearing before the committee in relation to my former role of Chief Executive Officer of the Department of Environmental Protection.

The CHAIRMAN: Thank you very much. You may not have had the opportunity to see the submissions made to this inquiry.

Dr Jenkins: No, I have not had that opportunity.

The CHAIRMAN: Some of the questions we will refer to relate to the department's history with the site, during a substantial period of which you were the Chief Executive Officer of the Department of Environmental Protection. If matters arise that cause you to think you need to check facts or issues I have no difficulty with allowing you to either write to the committee at a later date or appear before it again.

Dr Jenkins: Thank you.

The CHAIRMAN: Mr Malcolm, can you give us a starting point. Was your first involvement with the Bellevue site as director of waste management?

Mr Malcolm: I was aware of the firm Waste Control Pty Ltd from my commencement as director of the waste management division in July 1998 when I took up the position. However, I was not aware of any significant problem. When the previous director handed over the reins, Waste Control was not among the issues that were raised. I became aware of the problems almost at the same time as the rest of the agency, when the problematic stockpiles of material were identified.

The CHAIRMAN: What was the nature of the concern then?

Mr Malcolm: It was a concern of the agency as a whole that Waste Control seemed to be accepting waste onto its premises that it did not have the capacity to treat; therefore, the wastes were accumulating.

The CHAIRMAN: What was your response to that issue?

Mr Malcolm: The response of me as director of the waste management division was minor in that context because the issue was more a regulatory one. I was part of the corporate executive that was considering that problem and the need to take action.

The CHAIRMAN: When you say "regulatory", do you mean it was more to do with pollution prevention than waste management?

Mr Malcolm: The issue certainly related to waste management, but the powers under which we were looking to take action were related to the licensing provisions under which the facility operated and they were handled by the pollution prevention division.

The CHAIRMAN: It was put to us that the relationship between the department and the company has been described variously as one of brinkmanship, as being abrasive and in various other ways and that the waste management division's view that it is better to have an operating facility of some sort than no operating facility held sway, largely due to waste management's view about that. Would you describe it that way?

Mr Malcolm: No, I have had the opportunity of reading the draft transcript of the evidence given when the department presented its submission. It is certainly not my view that there was a polarised debate from waste management division saying the facility must remain at all costs and the pollution prevention division saying that it must be closed. That was not the nature of the debate. We were all aware that there were problems associated with closing down the facility and with keeping it open and that the issue was not simple. The debate was much more collegiate than partisan.

The CHAIRMAN: Yet a number of other people have characterised the relationship as being one of "silos" of policy and thought.

Mr Malcolm: I do not have that perception.

The CHAIRMAN: Would that be possible because your view was in the ascendancy and you did not believe anyone else had another view?

Mr Malcolm: No, I do not believe so. It was clear to me that there were attractions in closing down the facility, but by closing it down we would be left with what do we do with it?

The CHAIRMAN: Were you ever in favour of closing it down?

Mr Malcolm: That was one option considered.

The CHAIRMAN: Were you as a professional officer ever in favour of closing it down?

Mr Malcolm: Yes, I think I was.

The CHAIRMAN: When was that, approximately?

Mr Malcolm: During the debate.

The CHAIRMAN: Was it in 1998, 1999 or 2000?

Mr Malcolm: I cannot put a date to it, but I recall that during the debate there were pros and cons. It was a matter of finding a balance rather than a clear weight of preference one way or the other.

Mr BOWLER: Was that debate prior to or after removal of the 1 000 drums by the State Government?

Mr Malcolm: It was prior to that. Once the drums had been removed the process of removal was drawing to completion prior to the events leading up to the consideration for prosecution and the fire. I suppose there was not much time between those for further debate.

Mr BOWLER: There was long enough for the number of drums to increase to the number it had been previously, was there not?

Mr Malcolm: I could not comment on that because I was not involved at that level of detail.

The CHAIRMAN: In making your assessments about how to deal with the company whose relationship with the department and general performance had been problematic for at least a number of years, did you not seek to understand what was occurring on that site as part of informing yourself about what policy line you should take? Is it fair to ask that?

Mr Malcolm: No, I think I was endeavouring to suggest that the process of removing the 1 000 drums from the site and the decisions leading up to that were something with which I was reasonably closely involved. By the time the issues went beyond that, we were almost at the stage where I had become director, special projects, so I was not working in that area any more.

The CHAIRMAN: Were you still part of the executive of the department?

Mr Malcolm: Yes.

The CHAIRMAN: As Mr Bowler said, not long after the Government provided operational funds to remove the 1 000 drums it is almost as though they were taken out on one truck, driven around the block and brought in the other gate. Are you saying that you are not aware of any monitoring of that?

Mr Malcolm: It was not part of my role to do that so I cannot tell you what happened. It is for others to do that.

Mr BOWLER: Dr Jenkins is shaking his head. What do you have to say about that?

Dr Jenkins: I had discussions with the principal research officer before today to go through some of the issues raised with me. Many of the questions are being put in a context that is totally inappropriate to the situation and you are coming to misleading conclusions.

The CHAIRMAN: With all due respect, you have not seen the submissions the committee has seen. The views and opinions of a range of people may not align with the perspective it seems you

are going to suggest must be adopted. You do not need to interpret what perceptions we have, but present the facts as you know them.

Dr Jenkins: That is what I would like the opportunity to do.

The CHAIRMAN: Perhaps you can respond to Mr Bowler's question first.

Mr BOWLER: You were shaking your head when the Chairman indicated the 1 000 drums came back within days or weeks.

Dr Jenkins: That is not accurate.

Mr BOWLER: Was it over months?

Dr Jenkins: It would have taken about another 12 or 18 months approximately for the volume of drums to build up to the level at which they exceeded the licence condition associated with the Waste Control site.

The CHAIRMAN: Thank you; that is a much more precise answer.

Mr BOWLER: Do you want to start on that process, Dr Jenkins.

Dr Jenkins: Thank you very much; I appreciate that opportunity.

The CHAIRMAN: We will try to maintain some sequential examination of events. We have been talking to Mr Malcolm about that discussion within the department on its relationship with the company and the debates on waste management's view that it is much better to have an operating facility than not have one. Was it in any way in conflict with the pollution prevention risk assessment that says that if the sort of operation at Waste Control were continued we would have a problem? Can you talk about that for a moment?

Dr Jenkins: I wish to cover both the legislative situation and the events leading up to the cabinet decision.

The CHAIRMAN: We will reach the legislative situation shortly. I would rather you dealt with the circumstances within the department.

Dr Jenkins: The key items that faced the department leading up to the cabinet decision, involved accumulation of a drum stockpile. This had become a recent concern because Waste Control was unable to landfill the residues after solvent recycling. I do not know how familiar you are with the process. The company took in a range of solvents and recycled much of them and had residues at the end of that process of which they had to dispose.

The CHAIRMAN: The disposal to landfill did not cause the history of poor performance and agency intervention. It would be improper to suggest that the closure of the Red Hill landfill was in some way a trigger for -

Dr Jenkins: To the contrary, it was a major issue.

The CHAIRMAN: I am referring to it as a trigger for poor performance by the company. It is clear from the evidence that -

Dr Jenkins: That caused the stockpiling of the drums. From the brief discussions I have had with people who provided evidence, much of the information that will assist the committee to get a better appreciation of the circumstances is not before the committee.

Prior to the landfill, from the department's perspective the issues that were of concern in relation to the facility were relatively minor issues with respect to the adequacy of the bunding on site. However some specific issues were of concern to government that related to the management of dangerous goods on site.

The committee needs to be careful when working out which concerns were paramount in the Government's perspective at different times during the history of Waste Control Pty Ltd. Prior to

the accumulation of drums on the site, there was not a major environmental protection concern about the site.

The CHAIRMAN: Why was that?

Dr Jenkins: Because Waste Control was complying within a reasonable extent of its licence requirements.

The CHAIRMAN: What does “within a reasonable extent” mean? Does it mean there were no breaches?

Dr Jenkins: I did not say there were no breaches.

The CHAIRMAN: What does it mean?

Dr Jenkins: When one looks at the inspections that occurred, there were minor issues in terms of adequacy of containment, and issues that were of concern to dangerous goods inspectors that were being handled by the Department of Minerals and Energy. When one looks at intensity of activity of the departments associated with the site, the event that triggered the concern, which was the stockpiling of drums, related to the requirements for landfill criteria. I would like to take the committee through the history in the improvements in waste management that led to a tightening up of landfill criteria. The Red Hill landfill site, which had previously taken that material, stopped taking the material.

Mr MASTERS: Roughly when was that?

Dr Jenkins: I would have to check on that, but 1998 was the sort of time period when that was occurring. The situation was that the drum stockpile was accumulating, and Waste Control was unable to deal with the residue material. It was still able to deal with the solvent that could be recycled. There were about 2 200 drums on the site, and its licence was for 1 600. It was starting to get a stockpile.

The CHAIRMAN: When you say that it exceeded the licence limit, are you talking about the 1986 or 1987 limit?

Dr Jenkins: It would have been in the mid-1990s. I would have to check the licences to give you the exact date. Certainly, as far as the volume of material on site was concerned, if Waste Control had started to stockpile drums it meant there was the chance of splitting drums and a chance of leakage, and there would have been a pollution concern with offsite contamination.

The CHAIRMAN: You talked about the licence conditions at the time -

Dr Jenkins: This was in 1998.

The CHAIRMAN: I understand that the licence issued to the company in the year beginning 1997 may not have allowed it to operate with the splitting down of drums. Are you aware of that sort of detail?

Dr Jenkins: When you say the “splitting down” what do you mean?

The CHAIRMAN: You just described the splitting of drums, so that Waste Control could manage its accumulated stockpile.

Dr Jenkins: As I said, the operation was one of removing the solvents that could be recycled and then trying to process them. Waste Control had some stills to process some of the waste, but it still had some solid residues it was putting into landfill. That would have been the situation in 1997 to the best of my recollection. That process would be the same. I think the change that triggered the problem with the accumulation of drums at that stage was the inability to deal with the residues by landfill. It was an important change in the operational requirements in relation to Waste Control.

Mr MASTERS: It is important - we do not have a huge amount of time this morning - for you tell us why that change was brought in? Dr Claflin from Waste Control said he felt that the change that prevented him from disposing of those solid residues was unfair and scientifically unjustified.

Dr Jenkins: The specification in the landfill criteria document was prepared by the department in 1996 and then upgraded again in 1998. I know that you have not given me the chance to go through the history, but if you understand the context of the overall history of waste management, you would have a better understanding of this.

The CHAIRMAN: Are you talking about this site or generally?

Dr Jenkins: Across Western Australia. There had been no licensing of landfills prior to the department's involvement. Licensing was introduced in 1996, and waste acceptance criteria were defined. They were put out in a draft and were then revised. The Red Hill facility was particularly concerned about what it could accept in landfill. It used more stringent criteria than the criteria promulgated by the department.

Mr MASTERS: Why were you so concerned about Red Hill? It is my understanding that it is a class 3 or class 4 site?

Dr Jenkins: Red Hill has class 4 and class 3 cells.

Mr MASTERS: I understood it was the best operating landfill site in Western Australia with the best ground and hydrological conditions?

Dr Jenkins: That is entirely correct. Red Hill would not accept the waste at its landfill.

Mr MASTERS: Was that because of the change in your regulations?

Dr Jenkins: No; as I said, Red Hill had a waste acceptance criteria that were more stringent than those set by the department. The department set the minimum standard. It is entirely up to the landfill operators. They are held responsible under their licence. They were being licensed, when they had not been licensed before, to specify under what criteria they would accept waste. The argument that Dr Claflin had was with Red Hill's criteria and not with the department's.

Mr MASTERS: This is opening up a new area for us.

Dr Jenkins: That is what I am saying; it would be much better to go through the broader history.

Mr MASTERS: It is making it difficult for us to understand. Basically, you are saying that that decision by the Eastern Metropolitan Regional Council that ran the Red Hill landfill waste site caused the build up of drums. Yet on the night of the fire most of what was burnt was liquid and not solids.

Dr Jenkins: There are liquids on the site as well as solids on the site.

Mr MASTERS: The liquids would not be disposed of at Red Hill. You are saying that the build-up of drums was caused by Red Hill's decision and there was a logical explanation for the build-up of solids. However, it is my understanding that most of those solids remained after the fire, and it was the large volume of liquids that was burnt. I cannot see the link between the two.

Dr Jenkins: Life is even more complicated than the simple picture that you have painted. We can come to that. It is difficult to answer random questions without going through the overall process.

The CHAIRMAN: Yes. The difficulty for us is that you are here because we have a couple of particular areas of interest, and we appreciate that you have made yourselves available. However, we have a good understanding of some of the context of that -notwithstanding your desire to fill us in on that again. We have particular questions that relate to the department's relationship with this facility over a long period. The operating behavioural practice has been characterised by a range of people, including some of your former officers, as highly problematic and often in the breach of licence conditions rather than in compliance. We are trying, without all of the context, to hone in

on a couple of those critical points and what was driving the thinking that Waste Control should continue to be propped up and kept going. I refer to the cabinet submission that discusses a range of options - departmental reference 0600 according to a handwritten note - dated 18 August 1999 from the pollution prevention division naming officer Stephen Watson and Jim Malcolm as being involved in its preparation. I would imagine you would have signed off on this ministerial briefing note?

Dr Jenkins: That is true.

The CHAIRMAN: It is interesting that it does not have an option 1, but refers to options 2 to 6.

Dr Jenkins: Option 1 was to do nothing.

The CHAIRMAN: The table shows the historical difficulties and the new operating regime in which the organisation now found itself. We can see the problems of stockpiling, non-compliance, the difficult relationship, and the waste management objective that the department was pursuing. All those things are embedded in this table in many ways. All those thoughts come to bear when one looks at the range of options that were presented to Cabinet.

Dr Jenkins: Multiple objectives were being considered.

The CHAIRMAN: Exactly. I am trying to give you some information that might give you an understanding that we have material before us that allows us to understand the complexity and multidimensional nature of the problem you were dealing with. Although some of the context might be important, I do not think we have the time or the desire to go through all of it.

Dr Jenkins: You may need to know some of it otherwise you may come up with wrong conclusions about what needs to happen.

The CHAIRMAN: I am happy to do that. There are six options ranging in cost to government. I suppose the cost of option 1 "do nothing" was zero?

Dr Jenkins: No, that was not a costless option.

The CHAIRMAN: No?

Dr Jenkins: The major concern was that if nothing was done the business would go broke and the Government would end up with both the waste management and contaminated site problem.

The CHAIRMAN: We already had some experience of that nearby.

Dr Jenkins: Yes, with a different sort of recycling facility.

The CHAIRMAN: Yes, but one that had caused some difficulty in terms of compliance.

Dr Jenkins: If the Chairman is referring to the Omex site, those problems arose before there was an Environmental Protection Act. In relation to Omex, they were all pre-1986.

The CHAIRMAN: I do not see a cost analysis for option 1, which is to do nothing, in this cabinet briefing note. However, I assume that in your assessment you looked at things like the social cost, the environmental cost and the cost to industry.

Dr Jenkins: That is right. We considered a range of issues.

The CHAIRMAN: How would you characterise the social cost, for example?

Dr Jenkins: I believe you have the table there.

The CHAIRMAN: Are you familiar with it?

Dr Jenkins: Yes, I am. I do not have a copy in front of me and it is going back a while. It may be worth continuing with some of the situational remarks before proceeding with the actual discussion here. You need to understand that context, and it is clear from some of the members' comments that I am raising some issues that are not in the minds of the committee. If Waste Control were to continue to trade, those drums needed to be removed. Waste Control depended upon the flow-

through of the drums from which they could recycle the solvents to generate income. They were getting some of it from waste fees and some from the recycling of solvents. Waste Control took in some of the waste for free because there was enough money in the recycled solvents. However, I am certain someone would have mentioned that, and I am pretty certain that my colleagues would have indicated that the financial viability of the operation was somewhat doubtful. We had confirmation of that from their bank managers.

The CHAIRMAN: Was that because of the charge-out rates or the nature of the operation?

Dr Jenkins: There would have been a change in its cost structure when it got to the stage that it could not dispose of the solids at the landfill. However, even without that ability, I certainly think that Waste Control's cost structure was such that it did not have enough resources coming in to cover the treatment of all of the various wastes.

Mr BOWLER: After that did Waste Control's solids go to the eastern States?

Dr Jenkins: That is where the drums went. The 1 000 drums that contained those residues went to the eastern States for treatment. The concern we faced was that as Waste Control had exceeded its drum limit, the drums needed to be removed, so that, firstly, it would be brought back into compliance and, secondly, it could trade again. They were the two issues. From the department's perspective, the licence breach was in relation to the volume of drums on site.

Mr MASTERS: Was Waste Control told it could not trade until the number of drums had dropped?

Dr Jenkins: Waste Control was told it could not accept any more drums on site. If Waste Control went into liquidation, which was certainly a possibility, the Government would not only lose the waste treatment facility - which you referred to - but would also inherit a contaminated orphan site with an expected liability in excess of \$1 million to government. If any action was taken in relation to the site either in terms of the site becoming an orphan site or some form of financial assistance -

The CHAIRMAN: What is an orphan site?

Dr Jenkins: That is the definition that is used in contaminated site descriptions where there is no owner of the site. Waste Control was unable to get commercial financial assistance. We had spoken with the ANZ Bank Ltd which was its banker at the time. Clearly the concern was that the company would go into liquidation and the Government would be left with a major liability. A lot of the discussions were then about what were the objectives the department was trying to achieve. From my recollection, the department's objectives were to ensure that the environment was protected by taking measures to prevent pollution, and to attempt to allow Waste Control to trade out of its present difficulties reinforcing the principle that the polluter pays and therefore reducing government liability.

The CHAIRMAN: I understand that. Frankly, that is an admirable objective in some ways. It is a positive view about waste management and the management of the whole material and waste chain.

Dr Jenkins: That is correct.

The CHAIRMAN: However, in the context of the history of this company, it would seem a wildly optimistic approach to take. I still cannot come to terms -

Dr Jenkins: Mr Chairman, if you look at the issues from the department's perspective of the inspections that were undertaken prior to that time, there were some issues in relation to bunding, which were fixed.

The CHAIRMAN: How long had they be going on?

Dr Jenkins: I would have to check the dates, but I believe an inspection was undertaken in 1993 when bunding was required, and there was one in 1996. About once every two or three years there was a problem that required fixing. If one looked at the intensity of effort after that, there would be

inspections of the Waste Control site in some cases on a daily, weekly and monthly basis. The problem from our perspective, and when it became a priority issue, was when there was no ability to remove the residues.

The CHAIRMAN: Yes. However, this is 1997 and the department was trying to make that assessment within the context of the objectives you have just talked about. I am putting to you that in at least three and maybe four years there was non-compliance with either Environmental Protection Act requirements or licensing requirements. Although you might not have been directly aware of it, or it did not come into your thinking, the Department of Minerals and Energy licensing -

Dr Jenkins: I would not presume that, Mr Chairman. Meetings were held between the various agencies. I know from going back through the records there was one in 1993.

The CHAIRMAN: If that is true Dr Jenkins, it is not just an isolated incident every year or so. It is clear that when you put them together -

Dr Jenkins: Mr Chairman, you have denied me the opportunity of talking about the legislative provisions, and you are now making assumptions about the department's position in relation to other regulatory requirements.

The CHAIRMAN: No; I am just -

Dr Jenkins: It is not the department's responsibility to implement the Department of Minerals and Energy's requirements in relation to dangerous goods. If the committee looked at the historical record prior to 1998-1999, it would find that the major concerns were in relation to dangerous goods management. From the department's perspective there were one or two issues of concern. However, to characterise it as ongoing non-compliance with the Environmental Protection Act, and consistent with the performance and issues that we were concerned about in 1998-1999, is not a reflection of reality.

The CHAIRMAN: One of your officers who was here the week before last characterised the relationship over a number of years as being one in which the department would identify the deficiencies in operation and the company would do the absolute minimum necessary to avoid further action, but it was still not fully compliant. We have had that from two agencies, Dr Jenkins, so please do not tell me that I cannot put those things together. I have done, and I will continue to do so. I reject your suggestion that we can deal with these things in isolation.

Dr Jenkins: I am not suggesting they can be dealt with in isolation. Please do not put that implication on what I said.

The CHAIRMAN: I will not accept the suggestion that we cannot choose to examine the relationship between the two prime regulatory agencies -

Dr Jenkins: I am not suggesting that either, Mr Chairman.

The CHAIRMAN: Let me finish - and begin to understand the extent to which that informed your thinking by 1997 or 1998. I was directing my questions to understanding the extent to which the experience of both agencies acted as a cumulative knowledge about the operation of the Waste Control facility. Each time I ask about that, with due respect, you return to specific Department of Environmental Protection perspectives and responsibilities.

Dr Jenkins: I offered to give a broader overview before, but you declined to allow me to do so. If you wish I will continue regarding the situation that occurred in 1998-99. Many meetings occurred between the then Department of Minerals and Energy and the Department of Health. Discussions were held about what should be the appropriate way forward. The fire brigade was also involved. The cabinet minute indicates there was concurrence across agencies regarding the approach taken. There were certainly concerns across those agencies. They were trying to work out the way

forward. You need to understand the powers available under the legislation. I am happy to give you a briefing about the powers.

Mr MASTERS: Do you mean the powers under section 73 and others?

Dr Jenkins: I am referring to powers under the Fire Brigades Act, the Explosives and Dangerous Goods Act and the Environmental Protection Act.

Mr MASTERS: With respect, we should be asking you about the Environmental Protection Act rather than getting advice from you on other agencies. We have had submissions from all those other agencies.

Dr Jenkins: If a department is to take action, it must be within that department's powers. If other agencies have more direct powers - this relates to the fire - there are specific powers under the Fire Brigades Act whereby a fire brigade can close down a site if there is a fire risk and under the Explosives and Dangerous Goods Act, the Department of Mineral and Petroleum Resources can do the same. The Environmental Protection Act does not provide the same powers.

Mr MASTERS: Mr Chairman, this is a good time to ask Dr Jenkins about section 73 of the Act.

Dr Jenkins: I would like the opportunity to provide the overall context. We are jumping around all over the place. I have with me a framework to give you an understanding of the major legislative conditions.

Mr MASTERS: The committee has a pretty good understanding of the various powers of the agencies. However, individual members of the committee have specific questions. For example, I would like to ask you a specific question about section 73 of the EP Act. I cautioned you earlier that we have limited time this morning. How much time do you need to provide this broad-ranging information?

Dr Jenkins: It would probably take me 10 or 15 minutes to go through the issues.

The CHAIRMAN: If you can bring it down to 10 minutes we will take it if you think that will facilitate the committee's focus.

Dr Jenkins: It is important because a number of questions have been raised today to which the answers are in a much broader context within government rather than necessarily within the department. That is very important.

The CHAIRMAN: We are well aware of those.

Mr MASTERS: With respect, we have heard submissions from all other government agencies. Surely we have invited you here today to talk to you in your capacity as former head of the Department of Environmental Protection. I want to ask specific questions about the Department of Environmental Protection.

Dr Jenkins: I am happy to answer any questions the committee wants to put to me. Sometimes you must understand that the way the department responds relates to its role within government compared with other agencies. There was much discussion between the various agencies about what was the appropriate action. The action put to Cabinet was agreed by various agencies.

Mr MASTERS: We appreciate that. We know that. We have heard other submissions indicating that.

Dr Jenkins: The initial line of questioning tended to imply that there was a dispute between waste management and pollution prevention. That had nothing to do with the situation.

The CHAIRMAN: It is not for you, Dr Jenkins, to make that assessment.

Dr Jenkins: With all due respect, as they were both divisions within my department I would be very aware if I was hearing conflicting advice from my various divisions.

The CHAIRMAN: It is not for you to make that assessment. This committee will inquire into what it likes and will choose to do that how it likes.

Dr Jenkins: That is your prerogative.

The CHAIRMAN: Absolutely it is. The committee wants to test material and evidence it has heard. I would rather you did not try to act as a filter for that and deal with the issues we are pursuing please.

Dr Jenkins: I had lengthy discussions with the principal research officer about two areas in which the committee is seeking specific advice. I have prepared material to assist the committee in that regard and I would be happy to provide it to the committee.

Mr MASTERS: We must allow Dr Jenkins to go ahead, but I am concerned we will hear his version of the history of the world. I have specific questions.

The CHAIRMAN: Will you start Dr Jenkins.

Dr Jenkins: The range of powers within agency responsibilities is important in terms of the legislation. The legislation determines who has responsibility for dangerous goods, fire risks and pollution prevention. I want to talk about provisions in the Environmental Protection Act in relation to enforcement action - this will relate to Mr Master's question - because that covers what can be done; the regulatory provisions in relation to waste management that have been grossly inefficient in this State, but are gradually improving; and some of the changes needed to fix those problems, which is within the terms of reference of the committee. Responsibilities and powers covering siting of facilities is a planning responsibility, in this case the Shire of Swan, which made the original zoning decision. Transport and management of dangerous goods is covered by the Chief Inspector of the Department of Mineral and Petroleum Resources and control of hazards in the work place is a WorkSafe matter. Fire risk is covered by specific provisions handled by the chief officer of the fire brigade. Environmental Health is covered by the Executive Director of the Department of Health. Discharge of waste causing pollution, which comes under section 74 of the Environmental Protection Act, is covered by the Chief Executive Officer of the Department of Environmental Protection. Under the Explosives and Dangerous Goods Act, the specific powers of the chief inspector allow him to impose such terms, conditions, restrictions and prohibitions with respect to a licence as the chief inspector may see fit to impose in the interests of safety of life and property.

If the committee is concerned about risk issues it is very much the responsibility of the Chief Inspector of Mines. He can give directions with respect to any premises on which dangerous goods are stored or proposed to be stored for the purposes of ensuring public safety and for the safety of any occupants in or on those premises. I am quoting directly from the dangerous goods regulations.

The CHAIRMAN: We have had this presented to us by the Department of Mineral and Petroleum Resources.

Dr Jenkins: The inspector may inspect, make inquiries, take samples, remove explosives or dangerous goods. He can do that without necessarily going through the process the DEP went through with Cabinet. With the consent of the minister, the inspector can destroy or render harmless or give directions for the destruction of rendering harmless explosives or dangerous goods. The Department of Minerals and Petroleum Resources has the power to do that without necessarily going to Cabinet. The Environmental Protection Authority does not. Under the Occupational Safety and Health Act the WorkSafe inspector can stop any activity. There are no powers under the Environmental Protection Authority for the DEP to stop activities on a site.

Under the Fire Brigades Act the chief officer shall at all reasonable times have free access to any premises and if in his opinion there exists in or on any premises any potential danger to life or property from fire or hazardous materials he may direct or order the owner-occupier of such

premises to abate such danger within reasonable time as named in the requisition. There are very specific powers in relation to fire risk.

Under the Health Act the Executive Director of Public Health may make such orders as he may think fit to improve the condition of closing and prohibiting the further use of any place for the reception, utilisation, or deposit of sewage, refuse matter or rubbish. Under section 65 of the Environmental Protection Act, if satisfied that any waste is being or is likely to be discharged, has caused or is causing or likely to cause pollution, the CEO may cause to be served a pollution abatement notice. Under section 73, if any waste has been or is being discharged on any premises otherwise than in accordance with a works approval or licence or a requirement contained in a pollution abatement notice or a condition of the pollution is likely to arise or has arisen, give such directions in writing as the inspector considers necessary to remove, disperse, destroy, dispose of or otherwise deal with waste which has been or is being discharged or to prevent the condition of pollution from arising or control or abate that condition if it arises. A range of powers exist within government to deal with those circumstances.

The structure of the Environmental Protection Act 1986 gives the DEP the ability to impose licence conditions, notices for pollution abatement and prosecution if conditions are not met or actions not taken. It is a simplistic piece of legislation. We set a condition and if there is non-compliance a pollution abatement notice can be given. If there is non-compliance with that the next step is prosecution.

The CHAIRMAN: Are you saying that a licence cannot be cancelled?

Dr Jenkins: No; I did not say that. A revocation process is in place. Licence conditions under section 62 of the EP Act allow the department to install pollution control equipment or require the installation of pollution control equipment and operation of pollution control equipment, take measures to minimise pollution from an activity, ask for the requirements for monitoring equipment to carry out a monitoring program, and require the reuse of waste or make available for reuse waste from the site or make specifications in terms of operating equipment for controlling pollution. Of course, the licence and licence amendments are subject to appeal to the minister. Some of the other powers under the other legislation cannot be appealed.

The CHAIRMAN: Did you ever cancel a licence that your department issued?

Dr Jenkins: The department certainly threatened revocation in some cases and in some examples that has been appealed. I would have to get the details.

The CHAIRMAN: Is the answer, no?

Dr Jenkins: As I said, the decision on revocation is subject to ministerial appeal. The decision is not the DEP's decision.

Mr MASTERS: It was a specific question. Have licences been revoked?

Dr Jenkins: The Chairman asked whether I had revoked a licence.

The CHAIRMAN: That is right.

Mr MASTERS: Is the answer still no?

The CHAIRMAN: Do you give notice of revocation?

Dr Jenkins: We must show cause.

The CHAIRMAN: Have you personally given notice of revocation of a licence?

Dr Jenkins: We have given notice for someone to show cause for requirement.

The CHAIRMAN: That is another step back from giving notice of revocation. Does it mean to show cause why the DEP should not give a company notice of cancellation of a licence?

Dr Jenkins: That is a requirement of the Act.

The CHAIRMAN: Did you ever take that action in regard to the Bellevue site?

Dr Jenkins: We had a number of cases in which show cause letters were written to Waste Control.

The CHAIRMAN: Over what period?

Dr Jenkins: I would have to check the dates. I do not have access to that material. It would have been mid 1999 to 2000.

The CHAIRMAN: Was it only in the past couple of years?

Dr Jenkins: As I said, the prime concern for the department did not arise until 1998 when the issue of disposal of the solids became a problem because they could no longer be landfilled.

The CHAIRMAN: You have not had cause to issue a "show cause that the DEP should not revoke a licence" prior to 1998?

Dr Jenkins: That is correct. In some of the discussions that occurred between the various departments, the then Department of Minerals and Energy had indicated in 1993 that it was interested in proceeding with prosecution under the dangerous goods legislation.

The CHAIRMAN: That was also the case a number of other times afterwards.

Dr Jenkins: That is something you should ask that department. We were in contact with DME on the overall approach and in getting cabinet decisions on how to proceed with the Waste Control issue

The CHAIRMAN: Were you aware of or can you recall that between 1993 and 1998 your department wrote or requested that Waste Control do such things as are necessary to comply with its licence requirements?

Dr Jenkins: As I mentioned earlier, I think, once every two or three years as a result of inspection, an issue would have required work by Waste Control to bring it into compliance.

The CHAIRMAN: Did you say once every two or three years?

Dr Jenkins: There was a case in 1993 and in 1996 from memory, but I would have to check that. From recollection, instances arose in which bunding, in particular, was the major concern.

Under the pollution abatement notice, if waste is being discharged or is likely to be discharged and does not meet a standard or has caused or is likely to cause pollution, a PAN must specify the reason and measures to prevent, control and abate pollution. There is an issue with a legal interpretation in trying to apply PANs - I think Goldbar Holdings is involved - when the department is required to be very specific about what is required.

The CHAIRMAN: Mr Malcolm is confirming that by nodding his head.

Dr Jenkins: Non-compliance is an offence. Before action can be taken against the person on whom the abatement notice has been served, he must have an opportunity to show cause and can appeal to the minister. That process is required to obtain a ministerial stop-work order. That is a very long and protracted process. Every time a licence for Waste Control was changed or amended its management would appeal.

Mr BOWLER: Did Waste Control appeal direct to the minister?

Dr Jenkins: That is right; it is the process under the Act.

Mr BOWLER: How many times did Waste Control appeal?

Dr Jenkins: I could not tell you offhand.

Mr MASTERS: Was it once a year?

Dr Jenkins: We shortened the licence period at one stage. One step short of revocation is issuing a three-month licence. Revoking licences and putting people out of business was not something the Crown Solicitor advised we should do frequently. It should be done as a last resort.

Mr BOWLER: How many times did Waste Control appeal? How many times were those appeals approved?

Dr Jenkins: There would have been some modification to the licence as a result of the appeal process.

Mr BOWLER: Were they granted?

Dr Jenkins: Often the people would sit down and say that they could achieve the environmental protection requirement by a different means that was more acceptable to Waste Control. So the same outcome was achieved, but with something that could be more readily met.

Mr BOWLER: Were you or your staff involved in that appeal or was it handled by the minister and ministerial staff?

Dr Jenkins: The department was certainly involved in the appeal process?

Mr BOWLER: Did you make a recommendation?

Dr Jenkins: There was a requirement under the Act for the minister to obtain the advice.

Mr BOWLER: Did you make a recommendation on each appeal?

Dr Jenkins: Yes.

Mr BOWLER: Did you always recommend the course the minister took?

Dr Jenkins: It usually involved discussions with the appeals convenor rather than with the minister. The minister came in after there had been agreement between the appeals convenor, the company and the department.

The CHAIRMAN: Did a form of mediation occur?

Dr Jenkins: That is right. Many of the conditions had to be negotiated. We were trying to achieve an environmental outcome. Companies were trying to ensure that they kept their costs to a minimum.

Mr BOWLER: Did the minister rubber-stamp what was agreed to at the negotiating table?

Dr Jenkins: That would be a reasonable description of what occurred in most cases.

Mr BOWLER: Could you say it happened in all cases?

Dr Jenkins: You would have to check the records. In most cases the minister did not get directly involved.

Mr BOWLER: Mr Malcolm, you are shaking your head.

Mr Malcolm: I am aware that the appeals process is one in which the appeals convenor negotiates with the various players, and then takes the suggested solution to the minister. However, the minister does not always accept that suggested solution and may well send it back for more work.

The CHAIRMAN: Did that occur in relation to Waste Control Pty Ltd?

Dr Jenkins: There certainly were negotiations of conditions. When one looks at the way the conditions changed, there were variations in the conditions so that we achieved the environmental protection outcome but in a way -

The CHAIRMAN: I asked a very specific question. You are again failing to understand why we are asking these questions.

Dr Jenkins: Please elaborate.

The CHAIRMAN: I understand the system. We have listened to you on that. I asked whether there was an occasion when the minister rejected the proposal coming out of that discussion-appeal process in relation to Waste Control?

Dr Jenkins: Not to my knowledge. When one looks at section 73, which covers waste being discharged otherwise than in accordance with the licence condition, the chief executive officer can give directions to deal with waste. One specific component of that, which we used on two occasions in 1999 after the fire, was that the CEO can cause waste to be dealt with and to recover costs. That was the way that the cabinet decision was framed in providing the \$100 000 to the department to fulfil a section 73(4) requirement and to recover the costs from the company. Similarly, section 73 was used for the clean up after the fire.

The CHAIRMAN: Before you move on I will pick up on one point. Did you say that the Crown Solicitor's advice on cancellation of a licence was that the department should use that as an action of last resort?

Dr Jenkins: That is right. It is a draconian power to have.

The CHAIRMAN: This is a matter of opinion, I would suggest.

Dr Jenkins: That is their advice.

The CHAIRMAN: Was it their advice it is a draconian power?

Dr Jenkins: Correct.

The CHAIRMAN: When you ask the Crown Solicitor for advice, do you inform them of the risk assessment on pollution that is causing you to come to that view?

Dr Jenkins: Yes. There is a very frequent working relationship between the Crown Solicitor's office and the department on these sorts of issues.

The CHAIRMAN: I am trying to understand the extent to which the Crown Solicitor's office might reduce it to a legal question of whether a case will succeed on the basis of case law precedent versus your real concerns based on risk assessment?

Dr Jenkins: When one considers some of the history of court determinations in relation to the Environmental Protection Act, there has been a tendency to read down the provisions of the Act.

Mr MASTERS: With respect, other people who have appeared before the committee said that section 73 of the Environmental Protection Act was considered to be the appropriate section of the Act because of the Palos Verdes decision in 1992 or 1993 that relates to the need for a better definition of pollution and a range of things. Section 73 clearly says that the CEO has the power to prevent the condition of pollution from arising; it is simple and straightforward.

The CHAIRMAN: Would you agree with that?

Dr Jenkins: It is not quite so simple.

Mr MASTERS: I am reading the Act of the Parliament. Section 73(1) says that if a condition of pollution is likely to arise an inspector may with the approval of the executive officer give such direction to prevent the condition of pollution from arising.

Dr Jenkins: Yes; the word "likely" is a key component of that.

Mr MASTERS: I am not saying that there is not some legal debate about that.

Dr Jenkins: We used the powers of section 73 in relation to the implementation of the cabinet decision and in the clean-up of the site after the fire.

Mr MASTERS: Why would you not have thought about using section 73 to close the facility down once you had come to the conclusion that it was no longer sustainable because of various risks that it posed to the natural and social environment?

Dr Jenkins: We already had the trigger that Waste Control was in breach of its licence. We could have taken the “do nothing” solution, and Waste Control would not have been able to continue to operate. We did not need to go to that power.

Mr MASTERS: So you would not have re-issued the licence?

Dr Jenkins: No; Waste Control would have gone bankrupt. It would not have been able to continue business.

Mr MASTERS: Yes.

Dr Jenkins: We already had that situation, so why invoke another power?

The CHAIRMAN: I would have thought the department was not responsible for its balance sheet; the department was responsible for assessing the likelihood of its causing pollution?

Dr Jenkins: Exactly.

Mr MASTERS: If Waste Control went bankrupt and that prevented a pollution risk from continuing -

Dr Jenkins: That would not have solved the problem because the problem was the drums on the site. If Waste Control had gone bankrupt the drums would still be there.

Mr MASTERS: Yes. However, you are telling us that for the most part the drums contained solid waste because they could not be disposed of.

Dr Jenkins: No; I did not say that.

Mr MASTERS: That was the inference.

Dr Jenkins: No. I said very clearly that the build-up was because the residues could not be disposed of.

The CHAIRMAN: The solid residues?

Dr Jenkins: Yes. Waste Control still had liquid wastes on site. It had a mixture of liquid and solid wastes on the site.

The CHAIRMAN: The evidence is that the majority of the build-up was liquid waste and not solid waste.

Mr MASTERS: That is certainly my understanding.

Dr Jenkins: That is not my understanding. When one looks at what occurred at a later stage, post the cabinet decision in the second build-up, one must be aware that one of Waste Control's stills was not functioning, so there was a build-up of both solid and liquid waste on the site. That was the second time around, and when we took action against them.

Mr MASTERS: It is not the solid wastes that will leak and contaminate ground water - because they are solid. Correct me if I am wrong.

Dr Jenkins: These are residues. Some of the residues are solid and there is also some liquid in the drums.

The CHAIRMAN: Some sludge?

Dr Jenkins: Exactly. There was some flammable material in that waste.

Mr MASTERS: Surely the risk of pollution, be it from a fire or from ground water contamination or whatever, would be significantly lower with the solids that were on that site prior to the fire rather than the liquids? I would have thought the liquids were the focus of the department's attention in terms of safety to life, limb and environment.

Dr Jenkins: The licence conditions refer to the total number of drums and whether there was material leaking off site; that related more to the build-up of drums. Waste Control was stacking drums, which can cause structural damage to the drums.

Mr MASTERS: You are pointing the finger - I can understand why - at the Red Hill landfill facility, which decided it would not take certain categories of solid waste.

Dr Jenkins: Do not misinterpret; I am not pointing the finger at Red Hill.

Mr MASTERS: Part of the understanding of the situation prior to 15 February, and part of the picture, is the inability of Waste Control to get rid of the solids, yet you are saying that the build-up of solids and liquids was a significant contributor to the problem. I am having trouble understanding - other than the physical storage problem - what the solids meant in terms of the risk to the environment and the risk to life and limb of people living around the site and the site workers. Should the focus of the Department of Environmental Protection not have been on those liquids rather than on the solids?

Dr Jenkins: With respect, the issue was the overall management of the site and its potential for pollution. When we look at what is going into the ground water system or into stormwater, quite often we are more concerned with the sludges being mobilised. That is because a lot of the volatile material will evaporate. There is a range of arguments about which is more important than the other. I would not wish to say that we could ignore the solids accumulating on the site as a pollution issue.

Mr MASTERS: I am not asking you to ignore them. However, if one compared the various aspects of environmental risks I would have thought the risk posed by the liquids would be far greater than the risk posed by solids in the short to medium term.

Dr Jenkins: If they evaporated, they would not be a problem to ground water and surface water. We had a mixture of concerns. I would not wish to attribute one as being of greater or lesser concern than the other.

The CHAIRMAN: Evaporation is not a pollution incident, is it?

Dr Jenkins: It can be at certain concentrations.

The CHAIRMAN: Not in terms of breathing?

Dr Jenkins: It would be a WorkSafe issue or a public health issue.

The CHAIRMAN: I am trying to understand why you would say that about the liquids.

Dr Jenkins: Both are significant.

Mr MASTERS: We are running out of time, and I have one more question.

Dr Jenkins: Can I finish the issue of the legislation, because it is important. One of the key issues relates to section 62, and I went through that specifically. The focus in the way the Act was framed in 1986 was on controlling the discharge of emissions. When one looks at the issue in terms of installing, operating, monitoring and so on of pollution control equipment we have recommended changes to the Environmental Protection Act to deal specifically with the sorts of concerns that we had at Waste Control, where we were limited. A risk assessment power needs to be incorporated in the Environmental Protection Act so that we can require risk assessments to be undertaken.

Mr MASTERS: You have that power.

Dr Jenkins: No.

Mr MASTERS: The ammonium chloride sulfate importation into Kwinana was primarily assessed on the basis of risk.

Dr Jenkins: You are talking about part IV and not part V of the Act.

Mr MASTERS: I think you are trying to bamboozle me with gobbledygook.

Dr Jenkins: I am not at all. We get advice on what we can and cannot do in relation to part V of the Act, which is the licensing. We get our advice from the Crown Solicitor and also from other legal advisers. You will see in the changes proposed to the Environmental Protection Act, which have been in front of politicians for at least three or four years now, that there is a need for a risk assessment requirement in relation to section 62 and also for operation and maintenance controls over the facilities. This is not just pollution control, but operational controls.

Mr MASTERS: Are you saying that if a company like Waste Control wanted to renew its licence for the treatment and disposal of solvents, acids and everything else, you could not conduct a risk assessment?

Dr Jenkins: I am saying that we could not put in place a licence condition in relation to risk assessment under section 62.

Mr MASTERS: I am not asking you that. I am asking whether the department could undertake a risk assessment associated with the renewal or continuance of that licence.

Dr Jenkins: We can under part IV, but not in relation to setting a condition for the management risk.

Mr MASTERS: You are missing the point.

Dr Jenkins: No; I am not missing the point, because there is a very important difference between the department undertaking a risk assessment and being able to control risk through licence conditions under the Environmental Protection Act. Two very different functions are involved; and I am talking about the latter, not the former.

Mr MASTERS: Are you saying that if you did an internal risk assessment and found that certain things had to be done in order to reduce or eliminate that risk, you could not incorporate those new conditions into the licence?

Dr Jenkins: Not unless it involved the installation, the operation or the monitoring of pollution control equipment. It is a distinct limitation in the provisions the department can provide under licences.

The CHAIRMAN: What other things might you want to do?

Dr Jenkins: When one looks at some of the issues relating to Waste Control - this also came up with the Wesfarmers CSBP Ltd spill - the problems related to operation and maintenance of the actual equipment - the process equipment. We do not have the powers under section 62.

The CHAIRMAN: Are you saying that pollution control equipment is not process equipment?

Dr Jenkins: That is right.

The CHAIRMAN: Why is equipment that contains any material not equipment for the purposes of process and containment?

Dr Jenkins: The Act is specific in the way it is framed. In 1986 they were looking at emission control. What you are citing, and is clearly what we believe would be appropriate, is that we would be much better off trying to control pollution through the operational process. However, we do not have those powers under section 62 of the Act to do that. That would be relevant in the case of -

The CHAIRMAN: Have you tested that at all?

Dr Jenkins: We have tested it with Crown Law.

The CHAIRMAN: Yes, but they are the people who say you cannot cancel licences because that is draconian on the basis of legal precedent and not on pollution risk assessment.

Dr Jenkins: No. We cannot sustain what we are doing if, in the courts, our decision falls over in a legal challenge. There have been examples in which there have been legal challenges and the Act has been watered down because of it.

Mr MASTERS: Was the most recent instance the Palos Verdes decision?

Dr Jenkins: There was also Goldbar Holdings Pty Ltd. I do not have the details, but it relates to a pollution abatement notice in which we tried to undertake investigations.

The CHAIRMAN: We will follow it up. If we go for another five to 10 minutes with you and Mr Malcolm could we get your agreement to come back later if possible?

Dr Jenkins: I am happy to do that, because I would like to put a range of issues before the committee.

The CHAIRMAN: We have a substantial amount of work to get through.

Dr Jenkins: That is right. The issue is not straightforward.

The CHAIRMAN: We understand that very well.

Dr Jenkins: Section 65 has appeal rights and no ability to require investigation; that relates to the Goldbar Holdings judgment. The CEO must be specific in a pollution abatement notice otherwise it can be challenged in court and the pollution abatement notice thrown out. Pollution abatement notices have been used in a lot of cases, particularly by local government, in which legal challenges have been raised and we have had to withdraw the notice. It is not a straightforward instrument. There is a proposal to change the legislation to enable investigations to be specific; it will add another provision to section 65. That will be incredibly valuable in dealing with a lot of situations similar to that of Waste Control. Section 73 has no appeal rights. It is the only provision in the Act which does not; it is designed for emergency situations.

Mr MASTERS: Where does the Act say that it is to be applied only in emergency situations?

Dr Jenkins: That was the design of the legislation. It is considered to be draconian. That is the court interpretation after Palos Verdes, which you made reference to.

Mr MASTERS: In the Palos Verdes case, a bulldozer pushed material into water and there was an attempt by the then Department of Environmental Protection to define that as pollution.

Dr Jenkins: There are other aspects of the Palos Verdes case that relate to the application of section 73 and not just to the definition of pollution. More than one issue came out of that case.

The CHAIRMAN: One of the aspects that you are referring to is the view in the judgment that that section of the Act was a draconian statute.

Dr Jenkins: Correct. However, another significant issue relates to the recovery powers. The one thing that section 73 provides, which is quite unique under the Environmental Protection Act, is that section 73(4) enables the CEO to undertake the work and then to recover the costs. All other provisions of the Act have either appeal provisions or require the department to take enforcement action such as prosecution if people fail to comply. Section 73 is the only section by which the department can step in and fix the problem. That is particularly important in the case of Waste Control. Mr Chairman, you made reference to the willingness of Waste Control to do the minimum amount it considered necessary. We had got to the stage where the minimum amount was not enough, so we used section 73 in those circumstances. Section 73 has a major deficiency that I want to bring to the committee's attention. I do not know whether you have got into the concerns about costs associated with the fire at Waste Control. We had some experience of this through another fire that occurred in very similar circumstances a few days after prosecution proceedings were intimated. This is the Bindoon tyre fire case. We had an extremely successful prosecution against a \$2 company. However, it had sufficiently shielded its financial arrangements so that we could not recover the cost to government, which was in the order of about \$600 000. We won the

case and got \$2, but the Government was still out of pocket. One of the issues that is particularly important and very relevant to the Waste Control case is the need for a financial assurance provision in relation to certain pollution risks. This sort of facility should require financial assurances, so that government is not so constrained - as we were - in deciding what decisions it will take to cabinet and undertake. If there had been financial assurances that if the company went bankrupt we could deal with the problem on site, we would not have had to go down the path of section 73(4). It would give government a much greater ability to deal with those situations without the taxpayer having to bear the liability.

The CHAIRMAN: We want to talk about some prospective changes to law. I know hindsight is a wonderful thing, but we would not be in the position we are in with Waste Control if the various agencies that had knowledge of the behaviour and operations of that company over a period had in some way been able to accumulate that knowledge and use it to inform their enforcement procedure. There still appears to have been some isolated experiences either within the then Department of Minerals and Energy, public health, the local government authority or the Department of Environmental Protection that did not accumulate anywhere sufficiently to highlight government agency behaviour.

Dr Jenkins: In terms of the Department of Environmental Protection response, the issue became a significant issue for the Department of Environmental Protection.

The CHAIRMAN: Is that after Red Hill changed its criteria?

Dr Jenkins: Yes. Prior to that if you looked at the relative risks associated with Waste Control compared to all the other risks that the department is prepared to manage, it would have been a low priority situation. However, because it involved the combination of waste facilities, Red Hill and Waste Control, clearly something had to be done. It was not just the operational practice which was of concern to dangerous goods agencies; an environmental issue had to be dealt with.

The CHAIRMAN: I have a different view already on the basis of six or seven years of experience of a range of government agencies which -

Dr Jenkins: I am referring to the department's perspective.

The CHAIRMAN: I know. That is the point I am making.

Mr MASTERS: That is the problem.

The CHAIRMAN: It is the problem.

Dr Jenkins: As soon as we were aware of it being a priority issue we issued a section 73 notice.

The CHAIRMAN: It is coming up to 10.30 am. This has been a difficult but extremely useful hour. I very much appreciate both of you making yourselves available and ask that, when we fix a next hearing date, we can do that in discussion with you so that it is at a mutually agreeable time. We would very much appreciate it if you could come back.