



LEGISLATIVE COUNCIL

GENERAL PURPOSE STANDING COMMITTEE NO. 5

MEMORANDUM

To	Hon Ian Cohen MLC Hon Richard Colless MLC Hon Kayee Griffin MLC Hon Sylvia Hale MLC Hon Don Harwin MLC Hon Henry Tsang MLC Hon Tony Catanzariti MLC	cc:	Hon Don Harwin MLC Hon Peter Primrose MLC Hon Jan Burnswoods MLC Hon David Clarke MLC Hon Robyn Parker MLC
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From Tanya Bosch

Subject Answers to Questions on Notice – Environment

Date 29 October 2004

Reference

Please find attached a copy of the answers provided to the questions taken on notice by the Hon Bob Debus MP, Minister for the Environment at the Budget Estimates hearing on Friday 17 September 2004.

Tanya Bosch
Director, Budget Estimates



MINISTER FOR THE ENVIRONMENT

The Director
General Purpose Standing Committees
Parliament of NSW
Macquarie St
SYDNEY NSW 2000

28 OCT 2004

LEGISLATIVE COUNCIL
COMMITTEES

29 OCT 2004

RECEIVED

Dear Director

I refer to questions taken on notice during the Budget Estimates Hearing with General Purpose Standing Committee No 5 on Friday 17th September 2004.

Please find responses to the questions taken on notice at the hearing attached.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Bob Debus', written over the words 'Yours sincerely'.

BOB DEBUS

GENERAL PURPOSE STANDING COMMITTEE NO.5
QUESTION 5 TAKEN ON NOTICE DURING THE HEARING
17 SEPTEMBER 2004

QUESTION NO 1

The Hon. Robyn Parker: In terms of Waste Services, in the 2002-3 annual report it says that 23 consultancies were issued at a total cost of \$735,820. Can you detail each consultancy by company, name of person or persons carrying out the consultancy and the amount paid for each consultancy?

Mr Bob Debus: I think by way of preliminary observation I should point out that Waste Services is not within the budget sector of my portfolio.

The Hon. Robyn Parker: But it is part of your portfolio and the department.

Mr Bob Debus: Yes, which means that I can talk to you about matters of policy, but I do not believe that I am obliged to talk to you about detailed matters for the budget of Waste Services, which is a statutory authority; it is off budget.

The Hon. Robyn Parker: Who pays for it? Where does the money come from?

Mr Bob Debus: It is a statutory corporation. I am not entirely refusing...

The Hon. Robyn Parker: Which comes under your department?

Mr Bob Debus: Under my portfolio. I am not entirely refusing to answer questions. If you want to give me some, and I can take some questions on notice. Self-evidently, that would be an appropriate question to take on notice.

The Hon Robyn Parker: There might be another occasion. We have an opportunity to call people back and have supplementary hearings. Perhaps there might be another occasion when we can get someone to come along.

Mr Bob Debus: The same rules would apply.

NOTE: NEED TO ADD REST OF TRANSCRIPT IN HERE.

ANSWER:

Details regarding Waste Service consultancies can be found in the Waste Service NSW Annual Report 2002/3.

QUESTION NO 2

The Hon. Robyn Parker: My understanding is that non-compliance was notified in January 2002, yet it took until 2004 for some action. That was the question: why did it take two years?

Ms Corbyn: Simon, do you have some information on the timing?

Mr Smith: No.

Ms Corbyn: I am not aware that we were actually notified in 2002. I will have to take that on notice and come back with the timing. However, I am aware that we have taken some strong investigative steps to actually understand-

The Hon. Robyn Parker: Perhaps you can come back with the timing?

Ms Corbyn: Yes.

ANSWER:

Waste Service NSW notified the Department of Environment and Conservation of the non-compliance with the immobilisation approval for treated solid waste on 1 October 2003, and in its annual return dated 21 October 2003.

The Department commenced the process of investigating this matter from that date.

QUESTION NO 3

The Hon. Robyn Parker: Just on a point of clarification, we are talking about non-compliances in 2002. You were talking about breaches. The non-compliance report I have here states in fact that there is a potential breach from the accepted sludge from the Lidcombe waste plant. So you have already admitted-

Ms Corbyn: There was a breach of a licence.

The Hon. Robyn Parker: So you did know it?

Ms Corbyn: There was a breach, which is why we issued the \$5000 penalty infringement notice.

The Hon. Robyn Parker: In 2002?

Mr Bob Debus: No.

Ms Corbyn: No, I am sorry, that is in 2004.

The Hon. Robyn Parker: But you did know about it in 2002.

Ms Corbyn: As I said, I will have to come back to you on that.

The Hon. Robyn Parker: Yes, but you did know about it in 2002.

Ms Corbyn: I am not aware of that.

The Hon. Robyn Parker: Well, I think you did.

Mr Smith: Every licensee that we regulate submits to us every year an annual return that says whether it has complied with the licence conditions. I am not familiar with the 2002 annual return from Waste Service, but it not unusual, because of the kind of transparent system we have, for people to report matters of non-compliance. My belief is that the matters that led us taking action this year were not the same as earlier matter, they were more serious, and that led to us taking the significant action that we did take.

The Hon. Robyn Parker: This annual return was received on 22 January 2002.

Ms Corbyn: We will need to take it on notice, from my perspective. We get annual returns, obviously, each year and we do have a process of going through when people are actually required to declare whether they have been in compliance or not in compliance. We generally assess each annual return and determine what appropriate action might be taken. What I was referring to was actually the most recent incident against which we issued a \$5000 penalty infringement notice, which was about a breach of a licence condition

and approval process for any immobilisation process associated with the liquid waste treatment facility.

ANSWER:

Waste Service NSW notified the Department of Environment and Conservation of the non-compliance with the immobilisation approval for treated solid waste on 1 October 2003, and in its annual return dated 21 October 2003.

QUESTION NO 4

The Hon. Robyn Parker: Can you tell me whether the material contained thousands of litres of toxic organochlorins?

Ms Corbyn: It is my understanding that it was actually solid waste. I do not have the composition of the waste with me.

The Hon. Robyn Parker: Can you provide that as well?

Ms Corbyn: We certainly can. I will take that on notice.

ANSWER:

This material did not contain "thousands of litres of toxic organochlorins." All laboratory results for the organochlorine content of that sludge were well below the solid waste classification limit of 50 parts per million, except for testing in April 2004 which showed levels that exceeded the classification limit. The EPA are finalizing their regulatory response.

QUESTION NO 5

The Hon. DAVID CLARKE: Minister, in dealing with this 40,000 tonnes of waste, did it contain 7 to 15 per cent oil concentrations?

Mr SMITH: I can respond to that. This was the fundamental issue. The waste contained too much oily material, which meant that the normal process used to stabilize the material did not meet up to the hardness specification that was required. This oily material is just a regular kind of oily and waste material that would come from various industries that would send their waste to the liquid waste treatment plant. When you mix that the oil with the cement, the strength that is necessary is not there. The worry is that ultimately that might lead to some of the oil not being contained within the matrix of the solid material. But the good thing is that what has happened since then as a result of the strong action we have taken is that Waste Service has modified its receiving processes so that oily waste is separated out well before it can find its way into that material.

The Hon. DAVID CLARKE: It is good to hear that, but getting back to this particular incident, it is correct that there was a 7 to 15 per cent oil concentration?

Mr SMITH: I think it was closer to the 7 than to the 15.

The Hon. DAVID CLARKE: That was grossly in excess of the 1 per cent that is allowed on Waste Service's licence, would it not?

Mr SMITH: It was higher than the required level. That is why we had to-

The Hon. DAVID CLARKE: Well, according to your figures, it was 700 per cent higher, in fact.

Mr SMITH: Yes, it was higher.

The Hon. DAVID CLARKE: Did it not involve illegal dumping of oil?

Mr SMITH: No.

The Hon. DAVID CLARKE: You say not?

Mr SMITH: Well, it depends what you mean by the term "illegal dumping".

Mr BOB DEBUS: Well, that is just a piece of rhetoric. "Illegal dumping" in ordinary person's language refers to something done surreptitiously, in the dead of night and in a place where dumping is not allowed. In this case, we are talking about an inadequate process that was nevertheless following through a perfectly reasonable and conventional methodology.

The Hon. DAVID CLARKE: But illegal dumping can also involve dumping something that is forbidden to dump. This was in excess by 700 per cent of what was allowed under Waste Service's licence.

Mr BOB DEBUS: Well, you can play with the words as much as you like, but illegal dumping is not, in my view, in any way an adequate characterisation of the breach that we all agree occurred.

The Hon. DAVID CLARKE: I see. So these 40,000 tonnes of waste can come in. They are in excess, as far as the oil concentration is concerned-in excess of the law-by 700 per cent and you think that I am playing with words.

Mr BOB DEBUS: I do think you are playing with words. You are manifestly playing with words. We have some more information.

Ms CORBYN: I might be able to do just a bit of clarification in terms of the timing, and we will follow up with the specifics. But it is my understanding that the EPA was notified by Waste Service of non-compliance. It was in late October 2003 and we did, in November, very shortly thereafter, ask Waste Service to investigate how that happened. Early indication that we had were that there might have been some trouble with some particular loads because of the way the trucks actually come into the plant. That investigation was undertaken by Waste Service between November and March. It was in March 2004 that we then understood that we were advised that the problem had gone back to 2002. We will have to clarify that because I do not have all the details of the date, but the way the process works, we do require that. Those investigations can take some time. Depending on the significance of the issue, that can dictate part of the timing of the follow-up. But, as I said, we will take that on notice as to why.

ANSWER:

Waste Service NSW notified the Department of Environment and Conservation of the non-compliance with the immobilisation approval for treated solid waste on 1 October 2003. There was no delay. The Department commenced the process of investigating this matter from that date.

QUESTION NO 6

The Hon. David Clarke: I will refer to a few more alleged breaches in relation to this issue. Do you believe, prima facie, that there was a breach of section 115 of the Act – disposal of waste, harm to the environment? Do you think, prima facie, that there was a breach of the Act?

Ms Corbyn: We certainly thought that there was breach of the legislation. I am not aware of the specific section under the Act for which we determined that. But we would have done an analysis of the various provisions in the legislation and then made clear decisions under section of the Act we thought it most appropriate to bring a legal action.

The Hon. David Clarke: Would there have been a written assessments?

Ms Corbyn: Not necessarily, no.

The Hon. David Clarke: Would there be any documentation on your assessment of whether or not these provisions were infringed?

Ms Corbyn: Not necessarily, no. We would be looking at the most appropriate section of the Act to consider, but there is not necessarily a written assessment as to under which provision of the Act we were bringing that infringement.

The Hon. David Clarke: Would you take that questions on notice and produce any such documentation, if it exists?

Ms Corbyn: I would certainly review it and determine whether we prepared a written assessment.

ANSWER:

Section 115 of the Protection of the Environment Operations Act applies if a "person wilfully or negligently disposes of waste in a manner that harms or is likely to harm the environment". The facts did not support a breach of this nature. Consequently, no written assessment was prepared under Section 115 of the Act.

QUESTION NO 7

The Hon. David Clarke: Breaches of these sections are more than “technicalities”. So returning to section 143, would you say that there was no breach of that section?

Ms Corbyn: I do not believe we could make a judgment like that at this table?

The Hon. David Clarke: Would you have made a judgement at the time?

Ms Corbyn: As I said, we would have made a judgement at the time as to which was the appropriate section of the Act under which to bring action. When there is a particular breach of a licence or an immobilisation approval there is no requirement to necessarily bring responses to that as well.

The Hon. David Clarke: What about section 144?

Mr Bob Debus: I put it to you that a comprehensive and patient explanation of the process of prosecution and remedy has been put before you. You can go through every section of the Protection of the Environment Operations Act and ask officers whether they think it was breached, but you will get the same reply as has been given now, with clarity, on a number of occasions.

The Hon. David Clarke: There should be more clarity if there are documents that set out your assessment of whether these sections were breached, and you have undertaken to produce those if you have them.

Ms Corbyn: If we have a written assessment, other than legal advice, I am certainly happy to bring it forward.

ANSWER:

Section 144 of the *Protection of the Environment Operations Act 1997*, states that “a person who is the owner or occupier of any land that cannot lawfully be used as a waste facility and who permits the land to be used as a waste facility is guilty of an offence.”

The facts did not support a breach of this nature and consequently no written assessment was prepared under Section 144 of the Act.

QUESTION NO 8

The Hon. Robyn Parker: Right. Are you saying that there was no variation and the EPA did not advise Orica that it was diverting waste to them?

Ms Corbyn: I will take that question on notice, I am sorry? I do not know the specific.

The Hon. Robyn Parker: How long did it take to issue a variation of the licence?

Ms Corbyn: I will have to take the question on notice. I do not know the answer?

Mr Smith: To help us respond, may I clarify whether the questions is related to the period during the two weeks of the Olympics?

The Hon. Robyn Parker: Yes. It was a five-week period. I assume that the order covered the Paralympics as well, or whatever. The period is from 1 September 2000.

Mr Smith: Are you asking whether there was a variation to the licence of Orica?

The Hon. Robyn Parker: Yes, and when was it issued?

Ms Corbyn: We will take that on notice. I do not know the answer

Ms Corbyn: I took a question on notice and I have got some additional information – a question on notice about what happened with the waste associated with the Olympics and the liquid waste treatment facility. I have received some advice that there may have been some waste that was diverted to Orica during the Olympics. We have taken that on notice and we will provide that information. I would not wish to leave the impression that there was no waste, so we will provide that information.

ANSWER:

On 1 September 2000, the Environment Protection Authority issued a notice (Notice No. 010937) to Orica Australia Pty Ltd to permit the temporary storage of liquid waste diverted from the Waste Service NSW Liquid Treatment Plant for a period of 5 weeks. After the Sydney Olympics, this liquid waste was gradually returned to the Waste Service NSW Lidcombe Liquid Treatment Plant for processing.

QUESTION NO 9:

Ms Hale: I understand the Dunphy Wilderness Fund has acquired more than 50 properties, protecting more than 70,000 hectares of wilderness. Can you provide a cost per hectare of the fund acquiring the land? How much has it cost the fund to acquire the 70,000 hectares of wilderness?

ANSWER:

I am advised that as at 30 June 2004, 68,000 hectares of land had been acquired at a cost to the Dunphy Wilderness fund of \$9.58 million (including land and associated costs). This equates to about \$141 per hectare.

QUESTION NO 10

Chair: Can you give an indication of the total budget for the production of the alpine resorts plan?

ANSWER:

Matters relating to the alpine resorts plan should be addressed to the Hon Craig Knowles, Minister for Infrastructure and Planning, and Minister for Natural Resources.

QUESTION NO 11

Chair: I would like to move to another area, and that is the potential Illawarra Escarpment National Park. Minister. Could you explain whether any budgetary resource has been put into the investigation of that project? Is it something that we could see come to fruition? My question comes from a direct request from the people of the Illawarra.

Mr Bob Debus: I am certain it is funded. I do not know whether we have sufficient detail in the papers before us to be able to tell you which walking tracks and lookouts and plans of management will be put into effect.

Chair: I am talking about the overall concept of the Illawarra Escarpment National Park. We know that there have been projects that have been effective, but we are looking at the whole concept of that escarpment.

Mr Bob Debus: That was announced as part of the unbroken chain of national parks from the southern suburbs of Sydney to the northern suburbs of Melbourne. I think there needs to be formal gazettal of several pieces of land, particularly some Sydney Catchment Authority land, which may not yet be complete. We could find out the detail that for you.

Chair: I would appreciate that detail, Minister.

Mr Bob Debus: We will take that on notice—assuring you generally, however, that money is allocated, both this year and for some years into the future, for the upgrading of park facilities and the preparation of plans of management; and that appropriate programs are under way to gazette pieces of land that are in various tenures to bring about the formal reservation.

ANSWER:

As promised before the 2003 election, the Government has allocated \$2.34 million in recurrent funds over the next 3 years and \$920,000 per annum thereafter, for the establishment of new additions on the Illawarra Escarpment. These additions will more than double the size of the Illawarra Escarpment State Conservation Area and will make a significant contribution to the protection of high value habitats on the Escarpment.

Part of the commitment to create an unbroken chain of reserves from the Hunter Valley to Victorian border, are the proposals to add lands to Heathcote National Park, Dharawal State Conservation Area and Bargo State Conservation Area and to reserve part of the Metropolitan Catchment lands as State Conservation Area. The Heathcote lands have been gazetted and additions are expected to be reserved in the next two years.

In relation to the remaining areas of the Illawarra Escarpment, the Department of Environment and Conservation has worked very closely with the Department of Infrastructure, Planning and Natural Resources and Wollongong City Council in developing the draft Illawarra Escarpment Strategic Management Plan which was one of the recommendations arising from the 1999 Illawarra Escarpment Commission of Inquiry.

QUESTION NO 12

The Hon. David Clarke: Ms Corbyn, it is true that in March 2001 the EPA issued a clean-up notice to Waste Service for its Eastern Creek landfill?

Ms Corbyn: I will have to take that on notice. I do not know the detail of individual clean up notices across the board.

The Hon. David Clarke: Will you also take on notice that a clean up notice was issued for polluted water being discharged to a creek and for leachate discharging into a stormwater dam and onto an adjoining parcel of land?

Ms Corbyn: At which site?

The Hon. David Clarke: At the same site.

Ms Corbyn: At Eastern Creek?

The Hon. David Clarke: Yes.

Ms Corbyn: I will have to take that on notice, because I do not know the detail of 2001 clean-up notices.

The Hon. David Clarke: And can you take on notice why it was there was no fine issued for that, apart for \$320 for what I think is an administrative cost of issuing a clean-up notice?

Ms Corbyn: Yes, I will take that on notice. Could I explain generally that clean-up notices are a regulatory instrument for which we have an administrative fee. They do not attach fines, So, generally, you would not expect necessarily to have a fine associated with a clean-up notice.

The Hon. David Clarke: Can you also take on notice whether you had the power to issue a fine, in addition to that clean-up notice?

Ms Corbyn: I would be happy to.

The Hon. David Clarke: And, if you did have that power, why you did not issue a fine on that occasion? And, if the facts are as I say, what fines have you imposed on private sector landfill operators for similar offences?

Ms Corbyn: I would be happy to take that on notice.

ANSWER:

On 15 March 2001, the Environment Protection Authority issued Waste Service NSW with a clean-up notice under Section 91 of the *Protection of the Environment Operations Act 1997*. The clean-up notice required Waste Service NSW to immediately install measures to prevent water pollution

occurring. Following an investigation, the Environment Protection Authority issued Waste Service with two penalty notices for this incident.

The Department of Environment and Conservation has a number of regulatory tools, these include clean-up notices, pollution reduction programs, on-the-spot fines and strategic prosecutions. The Department uses the most appropriate regulatory tool that suits the specifics of each circumstance in accordance with its prosecution guidelines.

Details of prosecutions completed by the EPA are available in its Annual Reports.

QUESTION NO 13

The Hon. David Clarke: Thank you for that clarification, Minister. Ms Corbyn, did you become aware in late 2003 that landfill gas-methane-had been detected on properties neighbouring Waste Service's Eastern Creek Landfill?

Ms Corbyn: I am not sure of the date, but I am aware that we are dealing with landfill gas-not only on Waste Service sites but also on Collex sites. In particular we have taken what we believe to be a consistent approach when dealing with landfill gas.

The Hon. David Clarke: So you will take on notice my specific questions on the Eastern Creek landfill?

Ms Corbyn: I can give you some further information on that.

The Hon. David Clarke: Thank you.

Ms Corbyn: We have required Waste Service most recently to monitor landfill gas levels and to implement landfill gas extraction measures to address the offsite migration of landfill gas. We also worked with Waste Service, which voluntarily brought forward quite an extensive program for dealing with offsite migration of landfill gas at that site, and I am aware that they had actually spent about \$1 million to bring that program forward. I am also aware, from discussions that I have had with other waste industries, Collex for example, that we have had similar sort of situation at their Riverstone site, where they had a very similar problem with offsite migration of landfill gas. And we have also required Collex to monitor and implement control measure similar to those of Waste Service. So I am happy to take on notice the date aspect of the question.

ANSWER:

The Environment Protection Authority received advice about landfill gas methane on a neighbouring property to Waste Service's eastern Creek landfill in early November 2003.

QUESTION NO 14

Chair: Could you confirm the variation in the budget now available for managing threatened species under the Threatened Species Conservation Amendment Bill as opposed to the resources allocated to managing threatened species under the current Act?

ANSWER:

There is no variation in the budget proposed as a result of the *Threatened Species Legislation Amendment Bill*. The costs of implementation will be met through existing resources and budget allocations.

Minister Knowles and I have announced a special allocation of \$700,000 for biodiversity certification in the Far North Coast priority area as part of the Planning Reform Fund. Funding for the other priority areas of the Greater Metropolitan Area, Lower Hunter, South Coast/Illawarra and the Sydney-Canberra Corridor is currently being considered