

**INQUIRY INTO PERFORMANCE OF THE NSW
ENVIRONMENT PROTECTION AUTHORITY**

Name: Name suppressed

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Partially Confidential

Submission to Inquiry into the performance of the NSW EPA

I have some areas of concern, and one of praise for the EPA:

Topics:

- Ground contamination at the Bunnings site
- Ground contamination at the Electrolux site
- Conflict of interest for site auditors
- Lack of scientific rigour in position on mercury testing
- noise study at port botany

Bunnings Site - Ground Contamination

- My primary concern with this site is the EPA's CLM team and their unwillingness to investigate concerns raised by community members.

Site location - 25-49 smith street, Hillsdale, the bulk of which is lot A DP 24380 & lot 3 DP 373787

- At a meeting with two EPA representatives () on the 5 December 2013, concerns were raised over: -
 - (a) The unwillingness of the landowner to report the presence of Phase Separated Hydrocarbons (PSH) to the EPA, which is a mandatory reporting trigger
 - o Refer to Appendix A for more details on Bunning's breach of the CLM Act, and the EPA's inactivity
 - **EPA's response at the meeting:** The representatives acknowledge that Bunnings have yet to report to the EPA any contamination on the land. believes that there is no duty to report and does not accept that a mere presence of PSH is enough to trigger the duty to notify – This is specified on the *EPA's Guideline on the duty to notify contamination* (pg 11) is that "separate-phase contamination of groundwater if found, requires notification **regardless** of the concentration in the groundwater." refers to 2.3.4 in conjunction with 2.5 of the Guidelines (Situations not intended to be captured in the duty to report).
 - (b) The reliance the EPA place on Site auditors who are paid by land owners.
 - o The Site Audit Report (SAR) by in September 2013 (Project Number: AS121487, Audit Number: GN 268) was commissioned by Bunnings for a proposed Bunnings Warehouse in Hillsdale.

- o The EPA has not actually looked into the contamination issue on the site, as they rely heavily on the SAR and SAS, despite having brought to their attention the faults with the reports.

- See (c)
- **EPA's response at the meeting:** They mentioned that they are not involved in the planning process i.e. the EMP

(c) Conflicting Site Audit Reports by the Site Auditor,

- o Refer to Appendix B for more details on the contradictory statements made by in each of his reports.

- **Regarding PSH:** His 2008 report indicates that PSH found before 2007 has been successfully remediated, but his 2013 report shows that from tests done in 2012, concentrations of PSH were higher than what it was in 2008. This could indicate that the levels of PSHs could be increasing rather than successfully removed by remediation.
- **Regarding PAH:** His 2008 report suggests that levels have been reduced and risk is low. However, in his 2013 report, he recognizes that PAH were detected in high concentrations by testing done in 2010. He discounts the discovery of PAH in 2010 these PAH were not detected by further testing in 2012. We queried the EPA on how PAH could disappear without any remediation done, between 2010-2012.
 - o **EPA's response at the meeting:** The representatives highlighted that the difference in values of contamination detected from 2010 to 2012 would only be alarming if it was significant.
 - o However, total PAH was discovered in 2010 was a maximum of 23.8 ug/L (8x the trigger value of 3 ug/L). Testing done in 2012, 23.8 ug/L magically fell to 0. ***Is this insignificant?***
 - o EPA misrepresent data and are generally unwilling to help
 - Referring to wrong column in charts during meeting
 - Reverting to simple stance that EPA relies on the independent site auditor, and if site auditor says its ok, then its ok

(a) Lack of accessibility and transparency of raw data supporting the findings in the consultant's contamination reports

- o Cavvanba Consulting was commissioned by Bunnings in 2010 to do a review of contamination issues on site. The report refers to Groundwater Sampling Results and Field Observations (raw data) used to support its findings. The raw data was not appended to the report. At the meeting we requested to see the raw data which was believed to be held by the EPA.
 - **EPA's response at the meeting:** That they did not have authority to release the results, but later suggested that they would.
 - o Following the meeting, HERAG (local resident action group) President had email correspondences with [redacted], to which a link to the raw data was provided.
 - The link was not included and [redacted] was informed.
 - o At an Orica meeting in of December 2013, HERAG President spoke to [redacted] and chased him up on the raw data, [redacted] was surprised that it had not been released. commenting that it may already be in herags in box, 'it was going upstairs and just needed a click of a button'
 - To date, HERAG have not sighted the raw data despite a number of follow ups via email.

Electrolux Site

- My concerns with the Electrolux site are the levels of residual contamination off site and the potential influence that [redacted] and his associates have had over the process, both within the EPA and in other government agencies.
- Contamination:
 - o Site location 32 page st, or referred to as the corner of page and holloway st, pagewood
 - Lot 201 DP 788578 in Pagewood.
 - o in October of 2003 the EPA are involved in testing of the Site
 - o The land was declared "significantly contaminated" on the 31st of Aug 2005 by the then DECCW.
 - o In the time that has elapsed since, the EPA have been unsuccessful in having anybody clean up the off-site impacts of the contamination.
 - the chemicals of concern are
 - TCE - tri chloro ethylene
 - PCE - per chloro ethylene
 - Both were used in the manufacture of water heaters on the grimwald site (which later was owned by electrolux, hence the name)
 - o Both TCE & PCE have travelled from the site into the surrounding residential areas and are now located under homes.

- Some residents in the area have noted their tendency to become sick often
 - refer to Appendix C - extract from RAP showing off site contamination
 - I am concerned that the EPA have Allowed a RAP that:
 - only addresses a portion of the onsite contamination
 - does not address off site contamination at all.
- Peripheral activity of _____ that raises question about inappropriate influence being placed upon the EPA CLM team.
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 - _____ has publicly claimed it was he who invited Tony Kelly in to rezone the land, inviting him personally. We also have correspondence to that effect. Refer to Appendix D
 - Tony Kelly proceeded to rezone land against his department's wishes, without community consultation and whilst it was still contaminated
 - The Land at the time was owned by _____ – according to the recent book _____ was a shareholder of
 - Despite the site being contaminated, Botany council have aggressively pursued the rezoning of the land from industrial and port restricted, to the current zoning, allowing up to 7 story residential, ignoring concerns raised by Sydney ports, Residents and business people
 - when the land was subject to the three ports SEPP (meaning it could only be used for port related) Botany council lobbied DoP almost immediately to have just that parcel of land released from the ports SEPP
 - Botany council have been unwilling to release any of the plans they have had relating to this site from many years back
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Polluters

- A number of occupants of the Botany industrial Park have licenses with the EPA. One of the licences refers to mercury vapour in air measured at the boundary of the site.
- My concern in this matter is the inability of the EPA to provide any scientific support for their positions that the measure of mercury at 2m above the ground is manifestly the same as when measured at absolute ground level.
 - Mercury vapour height above absolute ground level – see email.
 - Mercury vapour is heavier than air. The height at which we measure concentrations of mercury in air impacts the result
 - The EPA has chosen that “ground level” means 1.8 to 2.0 metres above the ground when measuring mercury in air around the Botany industrial park.

- o The EPA have put forward the view that the difference in concentration from .1m or so above ground level and 2m above ground level is negligible
- o When I have challenged them to scientifically support this assumption they have been completely unable to do so.
 - Refer to most recent email showing that (Appendix E)
 - The EPA had no data to support the claim when they made it
 - Even now, they are relying on opinion, not data and are using vague terms rather than scientific terms to describe the potential difference in concentration between absolute ground level and 2.0 m above ground level.

Use of Consultants

- I think it can be taken as 'given' that it's not good for developers to donate to decision makers as it may influence the decisions made. In 2009, law was passed to prohibit such activities.
- Is this not also true for private contractors who are requested to produce reports claiming that sites are now useable for the intended purpose?
- In a hypothetical situation; If an auditor takes a job, then says 'no, the site cannot be used for what you want to do with it' how many more jobs is that auditor going to get from that landowner? how long until that site auditor has a reputation for telling the truth, and as a result would be avoided by landowners who have reason to believe their site may require remediation but don't want to spend the money on it? Would we find that Auditors who are open to bending the truth a little tend to get more business?

Noise

- o Port Botany noise assessment
- o Not a complaint, but praise for _____ of the EPA. Just to let you know I'm not against the EPA.
- o _____ did a great job of
 - Community consultation
 - Courteous and professional behaviour
 - The team made one simple mistake on the July 2013 analysis of data,
 - This allowed for an incorrect conclusion
 - I challenged the conclusion and _____ and other members of the EPA noise team took on board the concerns, analysed the data I asked them to look at (instead of the subset they had originally chosen) this enabled the error to be discovered.
 - The EPA arranged a private briefing for myself and the resident at whose house the testing was carried out,
 - They then produced a new press release.