

15 April 2013

To the Botany Community

I am writing this open letter to the residents of Botany to reassure them of the full independence of the NSW Environment Protection Authority (EPA) as a regulator in light of recent claims made by the Greens MP, Cate Faehrmann, and recent reports in *The Sun-Herald* ('EPA too close to Orica over media release on mercury' – *The Sun-Herald*, 14 April 2013).

These comments are misleading and disappointing.

Stakeholder engagement is integral to our regulatory work and the EPA is committed to transparent engagement with all our stakeholders in order to achieve a healthier environment. However the EPA's role as a regulator and its professional opinions are not dictated by any business or community stakeholder group and it is offensive to suggest that is the case.

The EPA has **not** sent a media release to Orica for approval or comment. The final version of a media release announcing the EPA's independent review of mercury contamination in Botany was sent to Orica at the same time as it was sent to media. This is standard procedure.

No comment was sought from Orica on the content of the media release and none was received.

The EPA has established the Independent Panel to review information around historic mercury emissions at Botany. We understand that there is concern in the community about off-site mercury impacts and are committed to further testing in the Botany area.

If you have any concerns about these claims, I encourage you to contact us via the EPA's Environment Line on 9995 5000 or info.botany@epa.nsw.gov.au.

In the interests of transparency, I have attached questions sent to us by the Sun Herald last week and our full responses.

Yours sincerely



Barry Buffier
EPA Chair and CEO

EPA responses to *The Sun-Herald*: Friday 12 April 2013

Sun Herald question

The allegations are of a too cosy relationship between Orica and the EPA, the media release being sent to them before it was released publicly, the use of Orica's phrase about the Hg Recoveries proposal lacking scientific rigour being picked up and used by the EPA, and the texting between EPA officials and Orica.

Answer

The EPA is a strong independent regulator and its relationship with Orica, as with all of its licensees, is professional and at arm's length.

Orica never has and never will dictate the EPA's role as regulator or its professional opinions and it is offensive to suggest otherwise.

The EPA has taken regulatory action against Orica on a number of occasions and currently has seven prosecutions before the Land and Environment Court awaiting sentencing.

No draft of the media release announcing the EPA's independent review of mercury contamination in Botany was sent to Orica from the EPA for any type of approval or comment.

The final version was sent to Orica at the same time that it was sent to statewide media (with a three-minute delay caused by the processing time of the AAP web page).

No comment was sought from Orica on the content of the media release and none was received.

Hg Recoveries Pty Ltd

The EPA's own experts reviewed the Hg Recoveries proposal in the scope of works and came to its own independent conclusions that the proposed investigation lacked scientific rigour.

This was based on a number of concerns, including the lack of project plan and structure that would satisfy the EPA.

Orica's opinion on this matter was their own and did not influence the EPA's position or conclusion.

Mr Helps has raised the issue of the EPA's independence and its relationship with Orica so it is worth noting that he has a potential commercial interest in recovering mercury from the site or the area.

The EPA has maintained an open dialogue with Mr Helps over the last seven months, including responding to his frequent emails, evaluating his testing results and providing information in response.

This has taken considerable time and resources which could have been otherwise directed to progressing the Independent Review and other regulatory tasks.

The EPA is in regular communication with local residents and initiated this independent review to address their concerns and it is disappointing to be accused by Mr Helps of not being open and honest.

The professionalism and independence of the EPA is paramount in all of its regulatory interactions and will stand up to external scrutiny.

[Natalie: We are not sure what you mean by 'texting between EPA officials and Orica']

Sun Herald Question

The second part is the admission that the EPA knew about Orica flushing its pipes towards Penrhyn Estuary some years ago, but no-one being told about this. This came up after my story revealing the report of elevated levels of mercury in the soil in the estuary.

Answer

In 2001 Orica undertook to remediate the Springvale Drain, which leads to Penrhyn Estuary, as part of an approved remediation process regulated by the EPA under a Voluntary Investigation and Remediation Agreement under the Contaminated Lands legislation.

The remediation activities required the submission of an Integrated Development Application under the planning legislation, which included a consent issued by Botany City Council and approvals from the EPA and Department of Land and Water Conservation.

The remediation was discussed with the community at a number of community liaison meetings and is detailed in the agenda for the meetings held on 14 March 2001 and 18 September 2001 and a site visit was also undertaken by some members of the CLC.

Studies regarding the level of contamination in the estuary are publicly available, including recently as part of the Development Application for the Port Botany expansion.

Penrhyn Estuary is the subject of a fishing ban as it has known levels of contamination. The NSW Government has never sought to hide this information.