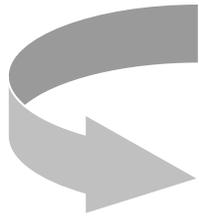


**COMMUNITY ALLIANCE FOR
POSITIVE SOLUTIONS (CAPS) INC.**



P.O Box 69, Yarloop, WA 6218
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Mr. Ian Cox
Senior Investigating Officer
State Ombudsman
PO Box Z5386
St Georges Tce
Perth 6831

7 November 2005

Dear Mr Cox

Regarding your letter of 13 September 2005 concerning our complaint about the DOE, we have followed your recommendations to provide details, dates and evidence. As we had previously stated, the Department of Environment fined Derby Industries in Hazelmere \$12,500 each for two incidents (for a total of \$25,000) following complaints of residents about bad odours from the plant. However, no fines for odour have been given to ALCOA Wagerup in the past 9 years since the liquor burner went online, even though thousands of complaints had been made by residents (see *Report of the Standing Committee on Environment and Public Affairs in Relation to the Alcoa Refinery at Wagerup Inquiry*).

Upon further investigation, we have uncovered a number of documents to support our complaint, including evidence that:

- ALCOA has lied about events at the Wagerup plant that occurred at a time when complaints had been made, but there was no followup by the DOE in their process. (*see Complaints*)
- ALCOA has provided less and less information relevant to each individual complaint over the past few years, and instead has sent blanket statements. The DOE has permitted this. (*see Complaints*)
- During the lead up to prosecution of ALCOA over the dust event in 2002, a key DOE investigator was pulled off the case under questionable circumstances. (*see Dr Ottaway*)
- The DOE has not required licensing of several sections of the Wagerup plant which are the major contributors of VOC's, and therefore these emission sources are not monitored. (*see Licensing*)
- The DOE did not advise the community of ALCOA's license renewal in its "Monday Advertisement" as is required by the Act. (*see Licensing*)
- The DOE's Tripartite process has been unsatisfactory. (*see Tripartite*)

Yarloop
Waroona
Hamel
Harvey
Cookernup
Wagerup
Other
Impacted
Areas

We will endeavour to supply evidence for each of the aforementioned statements. Each section of this document will refer to attachments which are numbered for easy reference. In regards to your 12-month policy, we have included some documents from previous years solely for the purpose of displaying the changes in ALCOA's methods of response, or the DOE's lack of response, over the past few years.

COMPLAINTS

A chart is attached which summarises the complaints and outcomes that we have included as evidence for this document. The chart and the full copies of the complaints are included in Article 2.

We want to draw your attention to Article 1, which is of primary importance. Included is the complaint by Ray Ritchie to the DOE dated 15 June 2005. As is the usual process, the complaint was forwarded to ALCOA who, in turn, stated that things were running steady and stable at the time of the complaint. When asked for likely cause of the reported impacts, ALCOA referred to an attached form statement which has become their blanket protocol for dealing with complaints – the Wagerup Refinery's Ongoing Emission Reduction Programme. However, if you will turn your attention to the attached internal maintenance report from ALCOA which we obtained, **there was an event of dust being released to the atmosphere on 15 June 2005**. ALCOA has lied to the DOE and the complainant, and the lack of followup in the DOE process allows these events to slip right under their nose. So, in essence, the complaints of the residents are passed on from the DOE to ALCOA, and the DOE allows ALCOA to have the final say, no questions asked.

You will notice in the following chart (Article 2) and the other complaints by residents (just a few of many that are made), that the response from ALCOA and the DOE has evolved over the years, yet has just changed form from one way of saying "no problem" to another. There is no other main industrial source of pollution in this area, yet ALCOA has repeatedly claimed that they are not responsible for the impacts to the complainants. The DOE has been ineffectual in their role as watchdog and prosecutor. In 2002/2003 they did not even respond to Mrs Kilgour's complaints.

Attached with his complaints from 2004 is a letter from Glen Turner dated 30 September 2005, detailing his frustration with the DOE complaint process. We would like to point out that many people have stopped complaining because of their dissatisfaction with this process. As well, ALCOA has bought up almost all of the 100 properties in Area A, and a number in Area B. All renters of ALCOA-owned properties must sign a lease agreement that states that they cannot make complaints against the company for dust or noise or "loss of quiet enjoyment." So the majority of people in the impacted zone are gagged.

We submit this evidence to support our claim that the Dept of Environment has been turning a blind eye to ALCOA's emissions, and subsequently, there have been no fines for odours or toxic emissions for the past nine years. The only fine was handed down for dust pollution from the red mud lakes.

DR OTTAWAY

Article 3 includes information concerning Dr. John Ottaway's involvement in the red dust investigation. We have attached a statement by resident John Harris outlining the series of events surrounding the investigation of the red dust pollution in 2002, which led to the prosecution of ALCOA in 2004. Mr Harris' letters to Dr Ottaway and Judy Edwards concerning Dr Ottaway's removal from the case are attached, as are the responses. An email from Tony Hall concerning the red dust event is also included.

Dr Ottaway was the DOE investigator for this event. It is our understanding that upon gathering information about the event Dr Ottaway pushed for a prosecution of ALCOA. He was then pulled off the case. Eventually the case was heard; however, Dr Ottaway was prevented from attending the court case by his supervisors. He took annual leave so that he could attend.

LICENSING

Article 4 consists of documents relating to issues around the licensing of ALCOA by the Dept. of Environment. In the EPA document that was recently leaked to Four Corners, the EPA stated that "odours are associated with VOC (volatile organic compounds) emissions". However, as stated in ALCOA's ERMP (ERMP appendices pg. 21), the slurry tank vents are "considered to be the *most significant source of VOCs*". **The slurry tank vents are not licensed and therefore, do not require compliance monitoring.** In the ERMP, ALCOA indicates that they plan to reduce odorous emissions by modifying the operation of their cooling towers. However, the ERMP also states that "the existing cooling towers are not licensed sources and therefore do not require compliance monitoring" and that "there is no on-going monitoring proposed at this stage" (ERMP, Air Quality Management Plan, pg.20).

The Department of Environment is allowing ALCOA to self-monitor, and in the cases stated above, ignore the monitoring of the most significant sources of odours and VOC emissions.

Tony Hall's appeal against the license is a relevant document that outlines the problems with the DOE license/appeal process. (This document also details shortcomings of the Tripartite process and can be referred to in the next section.)

Mr Hall has also stated that as stakeholders, we all should have been given a copy of ALCOA's most recent draft license for comment. Instead, the DOE did not seek our input because we did not participate in the Tripartite. This is a blatant disregard for due process and DOE policy. We were not advised that the license had been renewed and the DOE did not advertise the license renewal in its "Monday Advertisements" as is required under the Act. Mr Hall was fortunate enough to find out about the license through other sources, otherwise he would not have been able to appeal within the 21 day limit.

TRIPARTITE GROUP

You suggested in your letter that the Tripartite group was an avenue to address matters concerning breach of licensing conditions. However, community members who have

participated in the Tripartite process have found it to be highly unsatisfactory. Article 5 is Tony Hall's letter of resignation from the Tripartite which clearly explains the problems he and others have experienced with the process.

We also point out that a summary of minutes from the Tripartite group is printed regularly in the Harvey Reporter. It states that a full meeting report is available in the Community Programs section of the Department of Environment website <http://community.environment.wa.gov.au>. However, no such report can be found on the website.

CONCLUSION

In conclusion, we feel that the Department of Environment has failed to act equitably and sufficiently as a regulatory body, and therefore fails to realise its duty of care to the community. They have fined a small business for breach of license over two day's of bad odours, while being satisfied that complaints from residents impacted by ALCOA are addressed sufficiently by ALCOA, and then laid to rest. This situation is very similar to one described by Michael Southwell, former writer for The West Australian. In 2002 he "reported an inquiry into a regulator that prosecuted a small family factory on the same day that it decided not to prosecute a multi-national releasing pollution flows exceeding emission limits by 700%."

This statement was printed in a report called "Regulatory Capture: Causes and Effects" by G. McMahon. The term *regulatory capture* refers to the process of corporations, industries, and officials *capturing*, or gaining the protection of, the bodies who are supposed to be overseeing their regulation. The shift of Department of Environment and Department of Health employees to jobs at ALCOA could well support this process. **When the DEP became the DOE in 2003, Tim McAuliffe, former director of environmental regulation, walked out of his job at the department and into a job at ALCOA.**

McMahon also related a story about a mining inspector who, after continually reporting breaches of environmental conditions, was allegedly forced to transfer to a lower level position in another department. This is somewhat similar to what has happened in Dr Ottaway's case.

Considering the lack of equity in prosecution, the lack of followup in the complaint process, the manipulation of Dr Ottaway's involvement in the prosecution of a license breach, the insufficient licensing and self-monitoring of ALCOA's operations, and the unsatisfactory process of the Tripartite group, there appears to be a collusive relationship between the Department of Environment and ALCOA. We would like to have this investigated by the Ombudsman.

Yours sincerely,

Vince Puccio

Merv McDonald, AFSM

Co-chairs, Community Alliance for Positive Solutions Inc.