



Our ref: CORP F2019/000538

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2 December 2019

Dr Susan Close MP
Member for Port Adelaide
Unit 1, 11 Lipson Street
PORT ADELAIDE SA 5015

Dear Dr Close

Determination under the *Freedom of Information Act 1991*

I refer to your application made under the *Freedom of Information Act 1991* which was received by Primary Industries and Regions SA (PIRSA) on 31 October 2019, seeking access to the following:

“Copies of briefings, minutes, agendas and any attachments prepared for the Minister for Primary Industries and Regional Development relating to fish deaths in Port Pirie.”

Timeframe: 1/01/2019 to 31/03/2019

Accordingly, the following determination has been finalised.

I have located two documents that are captured within the scope of your request.

Determination 1

I have determined that access to the following document is **granted in part**:

Doc No.	Description of document	No. of Pages
1	Minute from Chief Executive, PIRSA to Minister for Primary Industries and Regional Development dated 8/2/2019 re Acid Spill and Fish Kills at the Nyrstar Smelter in Port Pirie	3

The information removed from the above document is refused pursuant to Clause 4(2)(a)(i) and (b) and Clause 6(1) of Schedule 1 of the Freedom of Information Act.

The information removed is identified as follows:

- Clause 4(2)(a)(i) and (b): The redaction on page 2 and the second and third dot points on page 3
- Clause 6(1): The redaction on page 3 from the field titled “Mobile and Landline”

Clause 4(2)(a)(i) and (b) states:

“4 – Documents affecting law enforcement and public safety

(2) A document is an exempt document if it contains matter the disclosure of which –

(a) could reasonably be expected –

(i) to prejudice the investigation of any contravention or possible contravention of the law (including any revenue law) whether generally or in a particular case;

and

(b) would, on balance, be contrary to the public interest.”

In addressing the public interest requirement for the Clause 4 exemption, I have balanced the following factors:

In favour of the public interest:

- Meeting the objects of the Act favouring access to documents.
- The importance of transparency and openness and the interest that the public has in the government’s decision-making processes.
- Ensuring compliance with legislative requirements on environmental matters.

Contrary to the public interest:

- The document contains information and evidence being considered as part of an investigation by the Environment Protection Authority (EPA) into whether there has been any breach of provisions of the *Environmental Protection Act 1993*. A regulator should be able to carry out its legislative functions and investigate matters that may lead to legal action being taken without fear of the information being prematurely released, prior to its findings.
- Should prosecution action be pursued, the release of this information could jeopardise or circumvent standard Court processes such as document discovery with the defendant. Accordingly, it is not in the public interest for the release of information whilst legal matters are pending or outside of normal legal processes.
- Should the findings reveal any allegations of wrong-doing, disclosure of this information could reasonably be expected to prejudice the possible contravention of the law.

After weighing up the above factors, I have determined that disclosure of this information would, on balance, be contrary to the public interest.

Clause 6(1) states:

“6 - Documents affecting personal affairs

(1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).”

The information removed pursuant to Clause 6(1) consists of the telephone numbers of a Departmental staff member.

Accordingly, it is considered that disclosure of this information would be an unreasonable intrusion into the privacy rights of the individual concerned.

Determination 2

I have determined that access to the following document is **refused**:

Doc No.	Description of document	No. of Pages
2	Parliamentary Briefing Note dated 7/2/2019	3

Access to the above document is refused pursuant to Clause 17(c) of Schedule 1 of the Freedom of Information Act which states:

“17 – Documents subject to contempt etc

*A document is an exempt document if it contains matter the public disclosure of which would, but for any immunity of the Crown –
(c) infringe the privilege of Parliament.”*

The document consists of a briefing note which was specifically prepared for the purpose of use in proceedings in Parliament. Disclosure of this information would infringe the privilege of Parliament.

If you are dissatisfied with this determination, you are entitled to exercise your right of review and appeal as outlined in the attached documentation, by completing the “Application for Review of Determination” and returning the completed form to:

Freedom of Information Principal Officer
Primary Industries and Regions SA
GPO Box 1671
ADELAIDE SA 5001

In accordance with the requirements of Premier and Cabinet Circular PC045, details of your application, and the documents to which you are given access, will be published in PIRSA’s disclosure log. A copy of PC045 can be found at http://dpc.sa.gov.au/data/assets/pdf_file/0019/20818/PC045-Disclosure-Log-Policy.pdf

If you disagree with publication, please advise the undersigned in writing within fourteen calendar days from the date of this determination.

Should you require further information or clarification with respect to this matter, please contact Ms Lisa Farley, Freedom of Information and Privacy Officer on 8429 0422 or email PIRSA.FOI@sa.gov.au.

Yours sincerely



Darren Humphrys
Accredited Freedom of Information Officer
PRIMARY INDUSTRIES AND REGIONS SA



Minute to
Minister for Primary Industries and Regional Development

Ref: A3936437



For	Noting
Critical Date	As soon as possible
Subject	Acid Spill and Fish Kills at the Nyrstar Smelter in Port Pirie

Synopsis

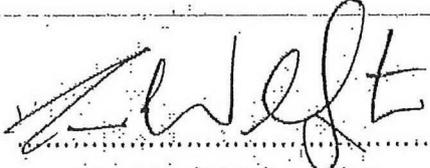
Following a sulphuric acid spill incident at the Nyrstar smelter in Port Pirie, localised fish kills in nearby mangrove habitat have been reported by a commercial fisher. A summary of the incident and ongoing management actions being undertaken by PIRSA and the Environment Protection Authority has been provided for noting. A PBN has been prepared should it be required.

Recommendations

That you:

1. Note the information provided in this briefing.

NOTED

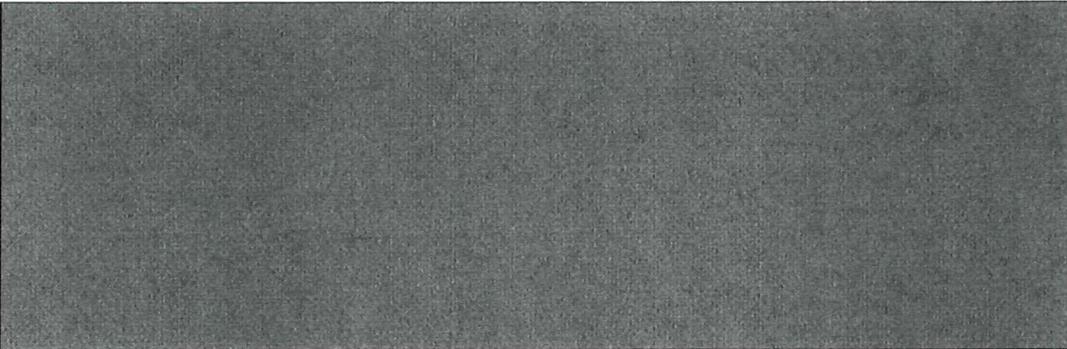

 Hon Tim Whetstone MP
 Minister for Primary Industries
 and Regional Development
 13/2/2019

Ministerial Comments

Background

- Nyrstar Port Pirie Pty Ltd (Nyrstar) holds an environmental authorisation under the *Environment Protection Act 1993* for activities including (but not limited to) chemical storage and warehousing facilities, and ferrous and non-ferrous metal melting works. That Act is administered by the Environment Protection Authority (EPA).
- On Saturday 2 February 2019, a commercial fisher informed PIRSA of an acid spill that had occurred at the Nyrstar lead smelter in Port Pirie, which had caused some fish deaths in nearby mangrove habitat.
- PIRSA immediately contacted the Environment Protection Authority (EPA), who informed PIRSA that Nyrstar had reported the incident to the EPA on Friday 1 February 2019.
- PIRSA have a FISHWATCH hotline (1800 065 522) for community members or the seafood industry, including fishers, to call if they notice a large number of fish that are dead or dying.
- PIRSA generally lead fish kill investigations in South Australia with the primary aim to rule out infectious and notifiable disease, which may require an emergency response and can affect trade and market access for our seafood industry.
- PIRSA investigate on average 15-20 fish kill reports each year to determine likely cause (e.g. disease, pollution, human health issues). However, the large majority of fish kills are caused by natural events (extreme weather, drought tides, blackwater events from high rainfall and other environmental factors). If pollution or human health issues are suspected or confirmed, then the appropriate government agency is notified, for example the EPA or SA Health.
- In this case, the fish kill is likely attributed to the sulphuric acid spill from Nyrstar, so EPA is the lead investigator for this fish kill event.

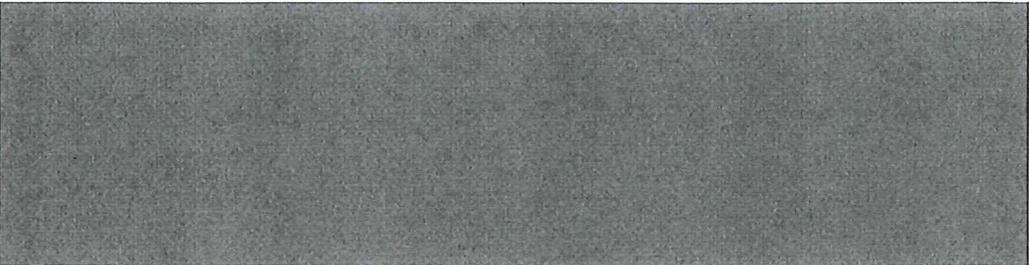
Discussion

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- On Sunday 3 February 2019, PIRSA Fisheries Officers travelled to Port Pirie and again on Monday 4 February 2019 to assess the reported fish kills and take samples. However, poor weather conditions including high winds prevented vessel and drone use in the area on both occasions.

Farmer and Stakeholder Impacts/ Regional Business and Stakeholder impacts

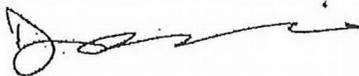
- The acid spill and subsequent fish deaths may cause concern among the recreational and commercial fishing sectors, and conservation groups.

Management of key risks

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Consultation and engagement

- Upon receiving the reported fish kill, PIRSA immediately contacted the EPA, who advised that Nyrstar had reported the incident to the EPA on Friday 1 February 2019.
- Nyrstar and the EPA are continuing to monitor the area, and PIRSA is liaising with EPA officers regarding the incident and associated fish kill event. EPA have contacted the commercial fisher for information that may assist their investigation.
- Fisheries Officers will continue to monitor the area if any further reports of dead fish occur, weather and sea conditions permitting.



for

CHIEF EXECUTIVE

Primary Industries and Regions SA

8/2/2019

CONTACT	Sean Sloan
POSITION	Executive Director
DIVISION	Fisheries and Aquaculture
MOBILE and LANDLINE	
PREPARED BY	Shane Roberts