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6.1 Deputy R. Labey of the Minister for the Environment regarding possible water pollution breaches emanating from the Horizon construction site: [UOQ.1/2019]

Will the Minister update the Assembly on investigations into possible water pollution breaches, emanating from the Horizon construction site on the Waterfront and provide information on the results of toxicology tests on water samples?

Deputy J.H. Young of St. Brelade (The Minister for the Environment):

I thank the Deputy for this important question. Obviously, I am constrained in what I can say, but what I can say on the record, a full investigation is currently underway into an alleged breach of the Water Pollution (Jersey) Law 2000 at the Horizon construction site on the Waterfront. The investigation is being led by the environmental protection team and that followed the first call to their hotline, which is the normal route of notifying pollution incidents, which was received on 21st February. Obviously, as we have seen in the media, every high tide of a certain dimension has continued that exposure to that risk. Both myself and the officers that support me, we do need to follow the protocols that are required of us for any investigation of alleged criminality, which are set by the Attorney General. Obviously, I am conscious that if we were to fail to do this, it could threaten the integrity of that investigation and may prejudice our position if any case did come to the court. Therefore, I regret that, at the moment, I am not able to give details of the results of that testing, or the information being obtained as a part of it. But what I can say is that the incident is being treated as extremely serious by the officers, it is top priority. They have visited the site on many occasions, obtained relevant evidence physically and in witness statements. A case file will be prepared and forwarded to the Attorney General's officers, as required under the protocols. I can assure Members that the officers are dealing with this appropriately under full and due process. As soon as I am able, I will update Members with more detail.

6.1.1 Deputy R. Labey:

Until charges have been brought, the Minister is at liberty to tell us and the public - and there is considerable public interest in this - if a pollution incident has occurred and what was the scale of that pollution, what were the results of the water samples? Until charges have been brought against an individual, or a corporation, or a company, he is at liberty to give that information. I will check with the Solicitor General, if I may, but the public deserve to know. It is on a public tip-off that this started and they deserve to know if a pollution incident has indeed occurred. Not who is responsible, but if one has occurred.

Deputy J.H. Young:

I would be happy to hear from the Solicitor General, if I could, after. My answer that I have just given is based on the advice that I have received from professional officers that I have no reason to doubt. What I can say is that I get frequent reports, as Minister, of where contaminant materials have been detected in water in the Island. For example, the small team, it is quite normal for them to follow up such reports - and there are very sophisticated testing regimes - but interpreting those results can be really quite complex scientific matters. Obviously, I am not an expert in the matter, but I imagine that whether or not an incident crosses a line as far as exceeding pollution limits and in accordance with the circumstances, I would not be able to say. I would want to look at the detailed evidence for him. I accept it is an unsatisfactory situation. I do not like that. One of the things I want to do and I have asked the officers, is that in future, all of the detections of contaminant materials in water, I want to have those published

regularly. So, for example, I can tell the Deputy, I have got a list here, which I received this morning - bearing in mind, I only got his question at 8.30 a.m. this morning - of the 81 incidents that have occurred from 1st January, so far, this year. Those levels in those reports are named and the contaminants and all of those are currently subject to follow up and investigation. But this one, obviously, has been given very top priority, and it is *prima facie*, it does look as if it has got to be regarded as a potential case for reference to the Attorney General. Perhaps I can ask the Solicitor General to confirm ...

The Deputy Bailiff:

Well, no, I am afraid not. This is effectively a question that is to be treated as an ordinary question and there is no facility for asking for advice from the law officers during question time, which in effect this is.

6.1.2 Deputy M. Tadier:

It is worrying to hear about the 81 cases that the Minister cites, because there is an environmental cost to those cases and those incidents of pollution, but there is also an economic cost, which somebody has to pick up. I would be very interested to find out whether, or not, the polluters ultimately are the ones who pay, or whether it is the public who pick up that bill. With that in mind, is the Minister minded to bring forward an overarching ecocide law as exists in other countries, which deals generally with matters such as the destruction of flora, fauna but also the poisoning of air and water courses and resources, so that we can move forward on this very important issue?

Deputy J.H. Young:

I think the Deputy is absolutely right to put the incidents of what is taking place at the Horizon development in the broader context of environmental pollution. There is no question there is a significant issue about how we are regulating pollution incidents. I refer to that list of 80, there is one on those, which is an extremely high level, which has received publicity. The others do look as if they are within normal bounds of detection. This information is regularly produced by Jersey Water. Jersey Water, I think as was said in earlier questions this morning, do have a commitment to do monitoring of about 30-odd stations around the Island and report their detections. Those detections are important, because that sets the regime they have to do to extract these pollutants from our drinking water. I think this is the information, the 80 of those incidents, they are either in streams, or affecting reservoirs and so on. I do absolutely agree that there is a gap in our legislative base and so, last week, I was very fortunate to go on holiday out of the Island to Iceland and I discovered about the regime they have there, which is similar to the sort of legislative base that the Deputy has proposed. We do not have that in Jersey. We rely on individual laws and in this case, obviously, it is the Water Pollution Law; therefore, in terms of dealing with that, we have to focus on exactly what the powers are in the law, what the rules are, but nonetheless there is, in my view, a strong case for an overarching regime. I will say, while I am on my feet, Jersey Water have sent me a letter, expressing concern that the Water Plan that was produced between the previous Minister and the Jersey Water company in 2016, which highlighted this importance of more resources being put into water quality in catchment areas ...

The Deputy Bailiff:

Minister, you are well over the 90 seconds normally allocated for an answer. I have allowed you to take rather more time in the light of the fact this is an urgent question, but if you could bring your answer to a close on this particular one, because there are a number of other Members who wish to ask and there is a limited time available to us. Very well, I am allowing more than twice the amount of time that has been allowed for the other individual questions,

because of the nature of this question and that I think will allow me to call on Deputy Morel, Deputy Higgins, the Deputy of St. Martin, the Connétable of St. Brelade and Senator Ferguson before reverting for a final supplementary. But that is the ...

Deputy R. Labey:

Before you do that, Sir, could I respectfully challenge your ruling on not asking the Solicitor General at this juncture? This is an item of considerable public interest. We got a statement last night from the Communications Unit, which was wholly unsatisfactory and posed more questions than it answered. Thankfully, the Bailiff allowed me to ask this urgent question, so that we could question the Minister on this and I think the Minister should have voluntarily come to this House on such a topical issue of public interest with a statement, so that we could ask questions on it. We just have one question for the Solicitor General. Deputy Young is happy for me to ask it and it is just this: as no charges have been laid yet, is the Minister at liberty to explain the extent of any pollution that has occurred?

The Deputy Bailiff:

I am sorry, I appreciate the reason that you ask me to vary my ruling. It has been the consistent ruling of the Presidents of the Assembly that legal advice cannot be sought during the course of a question. If that were not the case, then legal advice could be sought during all of oral questions and we could end up with a lot of supplemental questions being asked of the law officers, to test the legality, or the legal force, of answers. So, I do not think I am in a position to vary my ruling, Deputy.

Deputy R. Labey:

I do not suppose you, as the President in the Chair, would care to answer my question?

The Deputy Bailiff:

No, I am sorry, that is not on offer. Thank you very much indeed.

6.1.3 Deputy K.F. Morel:

I am obviously aware of his department's decision not to say anything about the incidents, because of the criminal investigation; is the Minister in a position to assure this Assembly that, regardless of that criminal investigation, if any dangerous pollution has been detected, or is soon detected, that the appropriate mitigation and protection measures are being put in place, to ensure that the marine environment no longer suffers from any pollution that the Horizon development may have caused?

Deputy J.H. Young:

Thank you, a good question. When the first incident was brought to my attention, I did ask the officers about what mitigation measures were being done. I do understand they have agreed with the constructors that certain actions are being taken, including, I understand, the inclusion of geotextile material and engineering measures to mitigate that. I cannot say whether that has been successful, or not, but I have to say I have certainly expressed concern that if those measures were not in place before, I think that is part of the matters that I would expect to see covered in the investigation, because the planning consent would have had a requirement for an environmental site management plan and there should have been compliance with that site management plan. It is obvious that site is a known source of contamination, it is known that the high tide comes throughout that site every day and anybody doing any construction below ground was obviously going to hit these problems and, therefore, there should have been those measures in place. Whether, or not, they were in place at the start, I think that is something which is subject to the investigation, but I am now advised that those measures are being put

in place, albeit it does appear retrospectively. But I am afraid, if there has been contamination into the marine environment that contamination has happened.

[12:15]

6.1.4 Deputy M.R. Higgins:

The Minister has mentioned some figures that he had. Does he now have all the figures that I have requested in my Written Question 23, which should be circulated to States Members immediately, if that is the case?

Deputy J.H. Young:

Yes, I thank the Deputy. I was embarrassed when I saw the draft answer to the Deputy's written question, where the Deputy has asked for details of all incidents over the last 10 years: what pollution was there, what was its strength, what action was taken and who was responsible? Of course, that has involved a lot of work and I was told we are simply not able to do this in a couple of days, because it means diverting resources away from the people who are dealing with the investigation of these incidents and doing a lot of retrospective work. So, I did ask the Deputy for more time; I left him a message to do so. What I can give him this morning - and I am happy to make this available to Members - is the list I have received of the 80 incidents over the last 3 months. But, as I promised in the answer, all the information will be available and available as soon as possible and circulated widely.

6.1.5 The Deputy of St. Martin:

Eighty-one breaches are 81 breaches too many, but I am sure the Minister would agree with me that the detection equipment used to detect these chemicals is for ever improving and the breach levels are for ever reducing. However, my question is this: will the Minister agree with me that the drinking water supplied by Jersey Water will be and is always safe to drink?

Deputy J.H. Young:

Yes, I am grateful for the Deputy's clarification. Obviously, the 80 incidents that I have talked about is where the monitoring regime has detected materials in the water supply and they are the materials where there are limits in place. Lots of things are changing, as I am discovering. For example, looking on this list of the 80, a lot of them are a substance called oxadixyl, which was banned a very long time ago and yet it is still there. These materials stay in the ground. So, that is what I meant, I think, when I said it is a 'scientific matter', but I assure the Assembly that as far as drinking water through the main supply is concerned, that is safe to drink. The law on the potable drinking water limits apply to that and Jersey Water work extremely hard to make sure those are complied with and I am very satisfied with that. What the Jersey Water have asked us for is more investments of the States and that was the matter I got shortcut on. We are still without a water catchment area that we have been waiting for for 3 years, which is stuck in the chain of financial approvals under this new target operating model. We can have management changes, but we cannot seem to get water catchment officers resources.

6.1.6 The Connétable of St. Brelade:

Yesterday, all States Members were invited to a presentation by the S.o.J.D.C. (States of Jersey Development Company) and some did attend. We received an informative briefing, which included the matter of pollution down at Horizon. There seemed to be some doubt over the benchmark levels of the pollutants down there. Would the Minister be able to advise Members if he is aware of what the benchmark levels are and, in fact, if he is in discussion with S.o.J.D.C. on this, so that the matter can be resolved as soon as possible?

Deputy J.H. Young:

Generally, the practice has been to follow E.U. limits and I cannot tell the Connétable what those limits are. What I will undertake is to make that available to Members and circulate that, but, of course, it depends on what contaminants are found. At the moment, the lists are extremely long; pretty well every substance now has got a limit on it. There are 2 possibilities: we could wait for the further information and then, hopefully, we will be able to publish it, or I will make available the information generally on E.U. limits, which is what we tend to follow.

6.1.7 Senator S.C. Ferguson:

I understand that planning conditions, restrictions and licences only apply when construction either begins, or reaches a certain point. Will the Minister examine the procedures for planning conditions for work in this sort of area and make sure that it applies from the minute a shovel is put into the ground?

Deputy J.H. Young:

I asked the department: were planning conditions specifically in place to deal with pollution on this site? The answer I got is that there was in place a site management plan and there should be general compliance with that and so, as part of the application, this should have been specified in there. What the planning system has relied upon is the controls in other laws, in this case the Water Pollution Law, which is why the investigation is taking place on that. I think we can upgrade environmental impact assessment processes and we can always improve the processes for dealing with applications. But I think one has got to be proportionate, because one does not want to impose very onerous regulatory regimes on a blanket basis affecting all minor and household types of developments. I think what I have said, I want to see more sophistication where there are these risks - and this site is one - and more in-depth procedures and not introduce on a blanket basis, but I will undertake to have that followed up.

6.1.8 Deputy R. Labey:

What communication, if any, in terms of advice, or information, has been shared with marina users, or other departments on what they may have been exposed to?

Deputy J.H. Young:

I am sorry, I do not know. I suspect the answer is, because we have not been able to publish, none. I think it is obvious from the dreadful pictures we have all seen and the press reports that certainly, hopefully, nobody would be ... people do not drink sea water, anyway, but obviously in terms of catching fish from there, I do not know. I am sorry, I cannot answer that particular point.

The Deputy Bailiff:

Very well, now that brings us on to Statements on a Matter of Official Responsibility. Two statements have been notified. I am in the hands of Members. The first would be a statement made by the chair of the Brexit Review Panel and there would automatically then follow a 15-minute opportunity to take questions. It seems to me that it would not be convenient to have the statement and then the questions deferred until after luncheon, but I am in the hands of Members: either that we can adjourn now, until 2.15 p.m., or, alternatively, we can deliver the first statement, followed by a question period and then finish ...

Deputy R. Labey:

I was going to propose the latter suggestion you made.