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The Foot-And-Mouth Crisis And Its Environmental Implications

by Stephen Tromans, Barrister, Eldon Chambers, London

At the time of writing (May 3, 2001) the Government's line is that the worst of the foot-and-mouth outbreak is behind us, and that new cases will gradually disappear over the next few weeks – in time for a grateful country to award its saviours appropriately in the polling booths. Whether this will be so remains to be seen, though there is suspicion in some quarters that there has been an element of reclassification of outbreak figures as "slaughter on suspicion" or "dangerous contacts" which has helped with the figures.

In the meantime, those affected parts of the country have suffered a ghastly experience, which it is to be hoped, will not result in further environmental problems for them. Again, time will tell. Many people have felt deep revulsion at the policy of killing healthy animals as a form of "firebreak", when the alternative of vaccination was available. Many have also felt deep disquiet at the way in which the cull has been undertaken, and the task of disposing of the results of the cull have been carried out. There has been little attention paid in the media to the legal position underlying these operations, a deficiency which this article seeks to redress to some degree.

The Animal Health Act 1981

This relatively little known piece of legislation was enacted to consolidate the Diseases of Animals Acts of 1935, 1950 and 1975, the Ponies Act 1969 and the Rabies Act 1974. Section 1 of the Act contains a general Ministerial (or now in Wales, the National Assembly) order-making power, allowing such orders as are thought fit "generally for the better execution of this Act, or for the purpose of in any manner preventing the spreading of disease". The power has been used extensively over the years to make Orders as to matters such as the transport of animals, and also in relation to outbreaks of disease, for example the Cattle Plague Order of 1928 (SR&O 1928/206) and the Swine Fever Order of 1963 (SI 1963/286). These Orders include – intriguingly – the Foot-and-Mouth Disease (Infected Areas) (Vaccination) Order 1972 (SI 1972/1509). The key Order for the purposes of the present outbreak has been the Foot-and-Mouth Disease Order 1983 (SI 1983/1950) which contains extensive powers and requirements relating to the isolation of affected animals, restriction and licensing of movements, control of slaughterhouses and markets, the closure of footpaths, the prohibition of certain sporting events, and other controls which have been so familiar over the past weeks.

Part II of the Act deals with disease. Any person having in his possession or under his charge and animal affected with disease must so far as practicable keep the animal separate from unaffected animals, and must with all practicable speed give notice of the fact to a police constable (section 15). Section 16 empowers Ministers to cause to be treated with serum or vaccine, or both, any animal which has been in contact with a diseased animal, or which appears to have been in any way exposed to infection, or is in an infected area. These powers extend to the taking of any action requisite for allowing the treatment to be administered, and include a general power of entry onto premises. It is therefore transparently clear that a vaccination programme would not have required the consent of farmers, any more than would a cull. Section 17 provides for the declaration of places and areas as infected, which in turn results in the detailed provisions of Part III of the 1983 Order referred to above being applied to such areas. The declaration, amendment and revocation of infected area orders resulted in a frenzy of order-making, with some 143 declaration orders, 35 amendment orders and five revocation orders as at the start of May.

Fortunately, the Government did not attempt a general cull of wild animals, such as deer or wild boar, which might carry the disease, but had it been felt necessary, section 21 allows the Minister to do so. The criteria are that disease exists among the wild members of the species which has been or is being transmitted to other species, and that destruction is necessary to eliminate or substantially reduce the incidence of disease. The only procedural requirement is consultation with English Nature, Scottish Natural Heritage, or the Countryside Council for Wales before making the order. The view of English Nature was that there is little evidence as to the significance of wildlife as carriers of the disease, but the fact that it has not become endemic in wildlife as a result of previous outbreaks in the UK and other European countries indicates that wildlife is not a good carrier. A greater concern was that the movement of people, dogs and vehicles involved in any wildlife cull would present a greater risk of the spread in infection.

Section 23 allows orders to be made for prohibiting or regulating the movement of persons or animals into, within or out of, any infected place or area and for prescribing or regulating the destruction, burial, disposal or treatment of carcases or other things within or removed from an infected place or area. Section 25 provides for orders regulating the movement or exposure of diseased or suspected diseased animals. Under orders made under section 28, animals dealt with in breach of movement orders may be seized, detained or disposed of.

Slaughter

Section 31 of the Animal Health Act introduces Schedule 3, dealing with the slaughter of animals in relation to various diseases, which include foot-and-mouth. This is where things get particularly interesting. Paragraph 3 of Schedule 3 provides specifically for foot and mouth disease, and sub-paragraph 3(1) reads as follows:

"The Minister may, if he thinks fit, in any case cause to be slaughtered –

(a) any animals affected with foot-and-mouth disease, or suspected of being so affected; and

(b) any animals which are or have been in the same field, shed, or other place, or in the

> *same herd or flock, or otherwise in contact with animals affected with foot and mouth disease, or which appear to the Minister to have been in any way exposed to the infection of foot-and-mouth disease."*

This is a closely confined power, carefully drafted. It does not create any power to slaughter healthy animals, three kilometres away, on a "firebreak" basis, or because they happen to be on a holding contiguous to one where an outbreak has been confirmed. It is based on the likelihood of the animal already having been exposed, not on the possibility of its being exposed in the future. It is instructive to compare the wording in paragraph 1 of the same Schedule which deals with cattle plague. This provides an express power (paragraph 3(3)(b)) for the slaughter of any animals being in parts of an area affected with cattle plague, subject to such regulations as the Treasury by statutory instrument may think fit to make.

This raises the fundamental point as to the extent to which the cull, and the consequent payment of compensation, was in fact ultra vires. The MAFF website appears to suggest that because of the highly infectious nature of the disease, it is believed that susceptible animals on farms neighbouring a farm where infection has been confirmed will have been exposed to the infection. This would appear to be a highly dubious basis for the measures adopted. Lawfully or otherwise, however, it has been done, and the next issue arising is the way in which the resulting carcases were disposed of.

Disposal of carcases

By section 34(2) of the Animal Health Act, where an animal has been slaughtered under the Act at the Minister's direction, the carcase belongs to the Minister, and shall be buried, or sold, or otherwise disposed of him, or as he directs, as the condition of the animal or carcase and other circumstances may require or admit.

Delays in making use of military assistance have meant that in many cases carcases were left where they fell for significant periods before their disposal could be arranged, thereby causing much distress and potential risk to human health. An accumulation of decaying carcases would seem to be an example *par excellence* of a statutory nuisance under section 79 of the Environmental Protection Act 1990, in being both prejudicial to health and a source of nuisance by smell (section 79(1)(e)). As such it could be the subject of an abatement notice by the local authority, or a summary complaint by any person aggrieved under section 82. The notice would be served on the "person responsible for the nuisance" (section 80(2)(a)), which in the light of section 34(2) of the Animal Health Act it is suggested would be the Minister who owns the carcases and has statutory responsibility for their disposal. The defence of best practicable means having been used to prevent or counteract the effect of the nuisance (for example, the use of disinfectant) under section 80(7) would apply only if the carcases were on "industrial, trade or business premises" (section 80(8)(a)).

Movement of carcases

The controls under the Animal Health Act and Foot-and-Mouth Disease Order referred to above mean that the movement of carcases from infected areas is strictly controlled. The Minister has issued a series of general licences for the movement of carcases. For example, on April 12, 2001, the Minister issued a general licence for the movement of carcases to specified locations on specified conditions as to matters such as disinfection of vehicles and of the clothing and footwear of those involved in the operation.

Carcases as waste

The nature and extent of legal control exercisable over the transport and disposal of the carcases is dependent on their legal status as waste. The carcases are quite clearly discarded, and are required to be disposed of, and as such might prima facie be thought to be waste. However, animal carcases are specifically excluded from the scope of the EC Waste Framework Directive 75/442/EEC as amended by 91/156/EEC (see Article 2(1)(b)(iii)). Waste from agricultural premises is outside the definition of "controlled waste" under Part II of the Environmental Protection Act 1990. The status of carcases in domestic legislation therefore depends on whether they derive from agricultural premises. However, the disposal of carcases is caught by the Animal By-Products Order 1999 (SI 1999/646) which implements the Animal Waste Directive 90/667/EEC. Keeping or treating wastes (though not

disposing of them) in accordance with the Animal By-Products Order 1992 is exempted from waste management licensing by Schedule 3, para 23 of the Waste Management Licensing Regulations 1994 (SI 1994/1056).

Duty of care

It has been reported that residents living near to mass burial sites for carcases have been horrified to see blood and other fluids escaping from lorries carrying carcases onto local roads. Normally persons consigning or transporting controlled waste are required to comply with the duty of care under section 34 of the Environmental Protection Act 1990, which includes keeping the waste under their control and preventing its escape. It would be expected that similar incidents involving vehicles carrying waste to a normal landfill site would result in prosecution by the Environment Agency. Under the Controlled Waste Regulations 1992 (SI 1992/588) regulation 7(3) animal by-products are not controlled waste for the purpose of the duty of care, provided they are collected and transported in accordance with the requirements of Schedule 2 to the Animal By-Products Order 1992 (SI 1992/3303) (somewhat anomalously, since the 1992 Order has now been repealed and replaced by the 1999 Order). Among the requirements of Schedule 2 is a requirement for record keeping and a requirement that vehicles and any containers used for transporting animal remains must not leak and must be adequately covered. In the current 1999 Order, Article 6 requires that any person collecting or transporting animal by-products shall use adequately covered leak-proof containers and vehicles. The transport of leaking consignments of carcases is thus an offence under the Animal Health Act (under which the 1999 Order was made). If the carcases derived from non-agricultural premises (and thus are controlled waste) it may also be an offence under the section 34 duty of care.

Means of disposal

The BSE crisis saw a policy move away from the burial of animal by-products, in favour of rendering at approved plants or incineration. This was reflected in amendments made to the 1992 Order by SI 1997/2894, and in the current 1999 Order. Article 5 of the 1999 Order provides that a person who has in their possession or under their control any animal by-product shall without undue delay consign it for disposal, or dispose of it by a specified and limited range of methods. These include rendering or partial rendering in approved premises, and incineration. Burning other than in an incinerator or burying is only allowed under the Order if the waste is in a place where access is difficult, or the quantity of the waste and the distance to approved disposal premises do not justify transporting it. Burial and open pyres are therefore only permissible on pragmatic grounds. Under Article 5(2) of the 1999 Order, where there is a health risk from transporting infected carcases, or where there is a lack of capacity at rendering plant or incinerators, the Minister may serve a notice requiring disposal without undue delay by burning or by burial, as may be specified in the notice. Such notices have been the means of authorising open burning and burial.

Control under the Animal By-Products regime is thus by MAFF rather than the Environment Agency. The Agency's role has therefore been essentially a supporting and advisory one as to the options for disposal and their environmental implications. A key concern of the Agency has been the potential for pollution of groundwater pollution from carcase burial, and to a lesser extent from the disposal of ash after burning carcases. Potential pollutants are ammonia, chlorides, phosphates, degradable organic compounds such as fatty acids, and bacteria. One incident which resulted in publicity was the exhumation of buried carcases at Tow Law on the Borders, where they had been erroneously buried near a source of supply for drinking water. To give an idea of the scale of the potential problem, the Agency's website states that in Cumbria (where the largest number of confirmed cases was concentrated) there are around 140 abstractions of groundwater for public supply or for food or drink processing, plus several thousand private supplies dependent on groundwater.

The Agency and MAFF agreed joint working arrangements and principles, creating the following hierarchy of preferences for disposal:

- rendering at authorised plant
- incineration in authorised incinerators
- landfilling in appropriately engineered and authorised landfill sites
- burning on the farm

- burial on the farm

These options are complicated by the position on disposal of cattle born before 1 August 1996 (the date of introduction of the Comprehensive Feed Ban in relation to BSE). Carcases of cattle born before that date may not be buried, leaving the options of rendering, incineration or burning on pyres (subject to a maximum limit of 1,000 carcases for any pyre including cattle born before that date). The Spongiform Encephalopathy Advisory Committee (SEAC) advised that likely BSE infectivity in cattle born after the relevant date was about 400 times less than for older cattle, leading to the Agency's decision to allow burial of such animals on logistical grounds, depending on local water conditions and site-specific risk assessment. This was contrary to the Agency's original position that it would be advisable for all cattle to be rendered or burnt and not buried.

Landfill

MAFF and the Environment Agency agreed a Protocol for the use of licensed landfills for the disposal of carcases during the outbreak. Under these arrangements, only sites identified on an approved list based on the Agency's criteria for site approval may be used. These criteria deal with matters such as containment, leachate management, the relationship to previously emplaced waste, and gas management. MAFF authorises the disposal under Article 5(2) of the Animal By-Products Order 1999, as explained above, for each and every landfill site used. The Environment Agency modifies waste management licences for such sites under section 37 of the Environmental Protection Act 1990 to allow burial under the terms of the Article 5(2) notice. Disposal must be in accordance with a Best Practice document agreed between the Agency, MAFF and the Environmental Services Association. This covers matters such as waste acceptance (carcases not to exceed 5% by weight of weekly inputs to the site), waste handling, records, vermin control, odour control, protective clothing, and control of disinfectant run-off, as well as lorry disinfection and management.

Burning

It is the horrific images of mass pyres which caught the imagination of the public, and the smell and smoke of such pyres has made life for many country dwellers a misery. The Food Standards Agency advised that it was unlikely that dioxins and other pollutants resulting from pyres would cause anything other than a small risk to health, but is measuring levels of dioxins in agricultural produce and grass in the proximity of pyres. The FSA would advise against reintroducing cattle onto land found to be "heavily contaminated" with dioxins. In addition the Department of Health has carried out modelling as to the emission of particulates and sulphur dioxide from pyres of varying sizes. It has recommended minimum distances for pyres from local communities (2-3 kilometres depending on the size of the pyre) and advises the public to avoid proximity to the pyres. Smoke and other airborne emissions from pyres could in principle constitute a statutory nuisance, and as such prompt an abatement notice from any local authority brave enough, or summary proceedings by a local resident.

Ash disposal

Detailed guidance on ash disposal from pyres has been produced by the Environment Agency, and is summarised in the Department of Health document on Measures to Minimise Risk to Public Health (April 24, 2000). Ash from pyres will normally be left on site or back-covered with soil, subject to risk assessment by the Environment Agency. Ash may be disposed of to landfill or burial site subject to the appropriate licensing procedures referred to above. In the case of ash from cattle born before 1 August 1996, where this is removed from site it is required to be incinerated. It seems questionable quite how such ash can be justified as being left in situ, where the advice is that if moved it would have to be incinerated.

Water pollution

The keeping and disposal of carcases in the quantities involved in the outbreak clearly presents the potential for pollution of ground and surface water, whether by the run off of disinfectant, or by leaching of decomposition products. The entry of poisonous, noxious or polluting matter into controlled waters from these sources could constitute an offence under the provisions of Part III of the Water Resources Act 1991. The requirements of the Groundwater Regulations 1998 (SI 1998/2746). The disposal or tipping of substances falling within List II to these Regulations requires specific authorisation and prior investigation under regulation 5 and the ongoing

surveillance of groundwater. List II substances include (Schedule, para 3(c)) substances which have a deleterious effect on the taste or odour of groundwater, or which may form such substances rendering groundwater unfit for human consumption. On this basis the mass burial of carcases may well be subject to the Regulations.

Contaminated land

Is there a risk that sites where carcases have been buried or ash from pyres left may be regarded as contaminated land under Part IIA of the Environmental Protection Act 1990? The substances which may cause land to be regarded as contaminated include natural substances (section 78A(9)). The issue is therefore whether the presence of the carcases or ash are creating a significant risk of significant harm, or are polluting, or are likely to pollute, controlled waters. A remediation notice may not in general be served on land in respect of which a waste management licence is in force (section 78YB(2). However this would not preclude service of a remediation notice on sites where the disposal had taken place pursuant to a notice under the Animal By-Products Order. The notice would in the first instance be served on the person who caused or knowingly permitted the contaminating material to be in, on or under the land (section 78F(2)). One would hope that this would be the Minister, as the owner of the culled animals and the person having statutory responsibility for their disposal under the Animal Health Act. It would surely be a monstrous injustice if the owner of the land were to be regarded as responsible to any degree.

Transferring Remediation Liabilities In Commercial Transactions

By Valerie Fogleman, Partner and Head of Environmental Liability Group, Barlow Lyde & Gilbert

Companies which own or occupy contaminated land in England may transfer their liability to remediate the contamination if they sell or, in some cases, let the land with information about the contamination[1]. This article provides answers to common questions about transferring such liabilities during commercial transactions.

Who is liable for remediating contaminated land?

A company or other person who has caused or knowingly permitted the presence of a substance in, on or under land such that the land is posing significant harm or a significant risk of significant harm to specified "receptors" is liable for remediating the contamination under Part IIA of the Environmental Protection Act 1990 (also known as the contaminated land regime). Such a person is a Class A appropriate person. Receptors are people, designated ecological areas, commercial and domestic crops and animals, wild animals that are the subject of hunting or fishing rights, buildings and "controlled waters". "Controlled waters" include surface water, groundwater and coastal water.

If a Class A person cannot be "found" by an enforcing authority (the local authority in whose area the land is located or, for "special sites", the Environment Agency) after a "reasonable inquiry", the owner or occupier of the land is liable. The owner or occupier is a Class B appropriate person. A Class B person is never liable for remediating contaminated land if one or more Class A persons can be found by an enforcing authority, whether or not the Class A person has the funds to remediate the land.

Who can transfer remediation liabilities?

Only a Class A person, that is, a person who caused or knowingly permitted the contamination, can transfer remediation liabilities. By definition, a Class B person has not caused the contamination and/or does not know that the land that he owns or occupies is contaminated land. If he had such knowledge and the power to remediate the contamination but failed to do so after having had a reasonable opportunity, he would "knowingly permit" the contamination and would be a Class A person.

[1] Department of the Environment, Transport and the Regions Circular 02/2000, Test 3, paragraphs D.57-D.61; *see* Environmental Protection Act 1990 Part IIA; The Contaminated Land (England) Regulations 2000, SI 2000 No. 227, as amended.

A Class A person can only transfer liabilities under Part IIA in respect of land that he owns or occupies. If he has caused or knowingly permitted contamination on a site which he no longer owns or occupies, or has never owned or occupied, he cannot transfer his liability in respect of it. He may, in such circumstances, be able to enter into an agreement with the current owner or occupier of that land concerning its remediation. If an enforcing authority requires the land to be remediated, however, the authority would not exclude him from liability unless a subsequent owner or occupier had introduced a substance on the land that had interacted with a substance that was already present or had introduced a pathway or receptor so as to cause the land to be contaminated land.

What precisely must the owner or occupier of contaminated land do to be excluded from liability for remediating it?

Under the "sold with information" exclusion test[2], the owner or occupier of the contaminated land must engage in a "sale" of the land. Two types of transactions are considered to be a "sale"[3]. The first is the transfer of the freehold of the land. The second is the grant or assignment of a lease or sublease of over 21 years provided that the lessee or sublessee is entitled to receive the rack (commercial) rent of the site either in his own right or as a trustee.

Secondly, both the seller and the buyer must be members of the liability group for the significant pollutant linkage when the enforcing authority decides who must remediate the land[4]. A significant pollutant linkage exists when there is a pollutant and a pathway, such as air or water, leading to a receptor such that the basis exists for a local authority to determine that the land is contaminated land. A liability group exists if there is more than one appropriate person who may be liable in respect of the significant pollutant linkage.

Thirdly, the sale must be at arms' length[5], that is, on terms which a willing seller and a willing buyer would be expected to engage in on the open market. If the sale is part of a broader agreement or a group of transactions, the sale will be taken to have been at arms' length if the seller can show that the net effect of the broader agreement or group of transactions was an arms' length sale.

Fourthly, prior to the sale having become binding, the buyer must have "had information that would reasonably allow that particular person to be aware of the presence on the land of the pollutant [by reason of which the land is subject to remediation] and the broad measure of that presence"[6].

Fifthly, the seller must not have done anything material to misrepresent the implications of the presence of the pollutant at the land to the buyer[7].

Finally, the seller must not have retained any interest in the land or any right to occupy or use the land after the date of the sale. This condition is subject to the following exceptions:

- an easement for the benefit of another site or an equivalent statutory right;
- the right of a statutory undertaker to conduct works or install equipment;
- a reversion in a long lease; or
- a restrictive covenant or equivalent statutory agreement[8].

Does the test apply to the acquisition of the shares of a company which owns a contaminated site?

No. There must be a "sale" of the land itself, as described above, in order for the test to apply. Although liabilities cannot be legislatively transferred in share acquisitions, the parties to such transactions may protect themselves with contractual provisions such as warranties and indemnities. They may also wish to consider purchasing environmental insurance to cover, among other things, liabilities from undetected contamination that is undetected at the inception of the policy.

[2] Department of the Environment, Transport and the Regions Circular 02/2000, Test 3, paragraphs D.57-D.61; *see* Environmental Protection Act 1990 Part IIA; The Contaminated Land (England) Regulations 2000, SI 2000 No. 227, as amended.
[3] DETR Circular 02/2000 paragraph D.59(a).
[4] *Ibid.* paragraphs D.58(a), D.59(b).
[5] *Ibid.* paragraph D.58(b); *see ibid* paragraph D.59(c).
[6] *Ibid.* paragraph D.58(c).
[7] *Ibid.*
[8] *Ibid.* paragraphs D.58(d), D59(e).

Must a seller provide direct and explicit information to a buyer that a pollutant is present on a site in order for the test to apply?

Not necessarily. The test may also apply if a buyer knew from other sources or should reasonably have known that a pollutant requiring remediation under Part IIA was present on the site. Such knowledge may possibly be proved by a buyer having seen dead areas of vegetation, leaking containers or pools of chemicals on the site prior to the date of the sale.

Is it possible to have bought a site with information that it is contaminated prior to the contaminated land regime coming into force?

Yes. In commercial transactions since the beginning of 1990, a "large commercial organisation or public body" will normally be deemed to have the necessary information if the seller permitted it to conduct its "own investigations of the condition of the land"[9].

What does "investigations of the condition of the land" mean?

The term is not defined in Department of the Environment, Transport and the Regions ("DETR") Circular 02/2000, which contains most of the details concerning the contaminated land regime. The term almost certainly includes a desk top or phase I environmental assessment as well as an intrusive environmental assessment provided, probably, that, in the case of the former, the seller did not prevent the buyer from conducting further investigations. It may possibly also include an offer by a seller for a buyer or the buyer's agent to walk through a site and examine records about its past and current uses.

Does the "sold with information" test apply to transactions involving land in Scotland and Wales as well as in England?

No. A similar test is, however, contained in Scottish Executive Circular 1/2000 (the Scottish equivalent of DETR Circular 02/2000). The test does not apply in Wales because the contaminated land regime has not come into force there as yet. When it does come into force in Wales, it may apply to transactions since the beginning of 1990 as described above, depending on whether the "sold with information" exclusion test contains similar language to the English and Scottish circulars.

Is a medium-sized company in a better position to avoid liability than a large company?

Not necessarily. Whilst a "large commercial organisation" will generally be considered to have bought a site with information that it is contaminated if the seller permits it to conduct its own investigations of the condition of the land, as described above, the line between a medium-sized commercial organisation and a large one is not specified in DETR Circular 02/2000. Therefore, medium-sized companies would be advised to err on the side of caution if the seller offers them the opportunity to investigate the land they are considering buying or leasing.

In any event, the exclusion test may place a relatively high burden on a medium-sized company in terms of information that the company reasonably should have known. This is because the test provides that the level of knowledge which a person must have to be liable for remediating contaminated land under the "sold with information" test depends on "that particular person" who buys or leases the land. Thus, a medium-sized company is likely to be considered to have a higher level of knowledge than a smaller company that does not have environmental expertise.

Can a company that caused land which it owns or occupies to be contaminated transfer its liabilities to remediate the contamination to a company that never caused any contamination on the land?

Yes. As indicated above, persons who caused or knowingly permitted the presence of contamination are primarily liable to remediate the contamination under Part IIA. Thus, a company or other person who conducted activities that result in land being contaminated land may transfer its liabilities to a company or other person who acquires the site by means of a "sale", as described above. The company that acquires the site will knowingly permit the presence of the contamination if it does not remediate it after having had a reasonable opportunity to do so. This is because, according to DETR Circular 02/2000, the term "knowingly permit" refers to the presence rather than the entry of a pollutant.

[9] *Ibid.* paragraph D.59(d).

Why would a company voluntarily become a class a appropriate person by buying or leasing land which it knows to be contaminated?

This situation is not clear cut because a buyer of contaminated land does not necessarily become a "knowing permitter". For example, the buying company may consider that the land does not meet the criteria for contaminated land and may, thus, have been able to acquire the land for a reduced price due to the risk that it may be so designated. Also, the buyer may not be aware of the potential environmental liabilities associated with the land.

If a company sells contaminated land with information that it is contaminated to an unsophisticated company which has limited funds and is not aware of environmental liabilities, is it excluded from liability?

It depends on the situation when the enforcing authority determines that the land is contaminated land. If the company that buys the land is still in existence at that time, the seller will be excluded from liability if other criteria in the exclusion test, as described above, are met. The key issue is whether the company that bought the land can be "found" by the enforcing authority. If the unsophisticated company has been dissolved, the enforcing authority may, under certain circumstances, be able to apply for an order to annul the dissolution of the company[10]. If the dissolution cannot be annulled or is not considered to be appropriate, liability reverts to the company that sold the land.

If a holding company sells contaminated land with information that it is contaminated to a subsidiary, is the holding company excluded from liability?

If the companies retain the status of a holding company and subsidiary on the date on which an enforcing authority first issues a notification identifying the site as contaminated land, the holding company will not be excluded from liability.

Can a buyer of contaminated land avoid assuming liability for remediating the land?

To a limited extent only. The buyer may enter into an agreement with the seller under which they agree to allocate potential or actual remediation liabilities between themselves. DETR Circular 02/2000 states that an enforcing authority should "generally" give effect to the agreement as long as it is provided with a copy of the agreement, none of the parties to it challenges its application and its application does not result in the enforcing authority bearing some or all of the relevant remediation costs due to hardship or other considerations affecting the buyer. The seller would be prudent to ensure that such an agreement is irrevocable so as to maximise the likelihood that the enforcing authority will give effect to it.

Another method of transferring the risk of remediation costs is for the seller and/or buyer to purchase a specialist environmental insurance policy which covers the cost of remediating contamination that was not detected on the land when the policy incepted.

If a person buys land with information that it is contaminated, will he be excluded from liability if he sells the land?

It depends. If the land is subsequently sold with information that it is contaminated, the seller will be excluded from liability under Part IIA in lieu of the buyer as long as the buyer can be "found" when a local authority determines that the land is contaminated land. If the land is not sold with information that it is contaminated, the seller will not be excluded from liability under Part IIA.

Can a seller transfer all environmental liabilities by selling land with information that it is contaminated?

No. The ability to transfer liabilities so that the transferor is legislatively excluded only applies to the liability to remediate contaminated land under Part IIA. Liabilities to remediate water pollution under the Water Resources Act 1991, other statutory liabilities and common law liabilities cannot be legislatively transferred.

For example, assume that a person who sells land has contaminated it and the pollutant has seeped through the subsurface so that it is all at, below or dissolved in, the groundwater. That is, the pollutant is no longer in the land as such but is entirely contained in the groundwater. In such a case, Part IIA does not apply and the person(s) that caused or knowingly permitted the pollutant to be present in

[10] *See ibid.* paragraph 9.17 (stating, in respect of whether a Class A person can be found that "it may be possible in some circumstances for the [enforcing] authority to act against the estate of a deceased person or to apply to a court for an order to annul the dissolution of a company").

the groundwater or at a place from which it was likely to enter the groundwater is liable for remediating the polluted groundwater under the Water Resources Act 1991. Although the parties may allocate their potential or actual liabilities between themselves contractually, the exclusion tests of Part IIA do not apply.

If a company buys a site with information that it is contaminated with solvents and the enforcing authority subsequently requires the remediation of heavy metals on the site, is the buyer liable in lieu of the seller?

Once again, it depends. DETR Circular 02/2000 states that the six exclusion tests for Class A persons, of which the "sold with information" test is the third test, relate to each significant pollutant linkage. Thus, if the solvents are in one significant pollutant linkage and the heavy metals are in another such that each must be remediated independently of the other, the buyer would only be liable in lieu of the seller in respect of the heavy metals if:

- it was a large commercial organisation or public body and the seller had permitted it to conduct its own investigations of the condition of the land and the buyer was thus assumed to have bought the land with information about the heavy metals; or

- the buyer could be considered to have constructive information about the presence of the heavy metals even though it did not actually know of their presence.

If the solvents and heavy metals are in the same significant pollutant linkage, the liability (or not) of the buyer will depend on the two factors indicated above and other circumstances.

Can a company that has contaminated land for over 20 or even 100 years transfer its liabilities to remediate the contamination?

Yes. As long as the company owns or occupies the land that it has contaminated it can transfer its remediation liabilities by selling its interest in the land. The "sale" must, however, meet criteria specified in DETR Circular 02/2000. If those criteria are satisfied the seller will be excluded from liability in lieu of the buyer as long as the buyer can still be found by an enforcing authority when it requires the land to be remediated. If the buyer can no longer be found at that time, liability will revert to the seller.

Is the liability of a buyer of contaminated land under Part IIA limited to the liability that formerly attached to the seller of the land?

No. In addition, the buyer may be liable under Part IIA on account of his other acts or omissions.

Is a person who buys a contaminated site necessarily liable under Part IIA?

No. The contamination may not be present at a level that must be remediated under Part IIA or may not affect a specified receptor, as discussed above.

Is a company or other person necessarily liable to remediate contaminated land which it owns or occupies if it suspects or knows that the land is contaminated and it has the power to remediate it?

No. Land is not "contaminated land" under Part IIA unless the local authority in whose area it is located has made a determination that the land meets criteria specified in DETR Circular 02/2000. The owner or occupier of the land is not under any duty to notify the local authority that he suspects or knows that his land is contaminated. If he does not remediate contamination on his land, however, the cost of eventually conducting the remediation is likely to increase due, among other things, to the pollutant migrating and an increase in the cost of treating or disposing of the contaminated material. In addition, he may well encounter difficulties or, at the very least, a reduced price for the land when he disposes of it.

Is the "sold with information" exclusion test the only method of transferring liability under Part IIA during a commercial transaction?

No. A person who sells contaminated land can also transfer remediation liabilities under Part IIA by accepting a lower price for the land on condition that the buyer will remediate the contamination or if he makes a payment for its remediation[11]. If the buyer fails or fails adequately to remediate the contamination, the seller will be excluded from liability if, when an enforcing authority requires the

[11] *Ibid.* Test 2, paragraphs D.51-D.56.

land to be remediated, the buyer can still be "found". In order for this test to apply, the reduction in price or the payment for remediating the land must have been sufficient, when made, to pay for the remediation. The contractual documents must also specify that the payment or reduction in price has been made for remediating the land.

Does the contaminated land regime contain an exemption from liability for "innocent purchasers" of land that is subsequently discovered to be contaminated?

No. Some protection is provided for a person who acquires a freehold or leasehold interest in land that is subsequently discovered to be contaminated land as long as he does not become a "knowing permitter", that is, as long as he remains a Class B person. DETR Circular 02/2000 states that an enforcing authority should consider reducing the remediation costs of the owner or lessee of contaminated land if he demonstrates to the enforcing authority that:

- he had taken measures prior to acquiring the freehold or leasehold interest that would have been reasonable at that time to establish whether any pollutants were present on the site;
- he did not know and should not reasonably have been expected to know of the presence of the pollutant that must be remediated when the acquisition occurred; and
- it would be "fair and reasonable", when considering the interests of national and local taxpayers, for the owner or lessee, as the case may be, not to pay for the entire cost of remediating the site.

In applying the above criteria, DETR Circular 02/2000 states that the enforcing authority should consider reasonable safeguards for various types of transactions and whether the buyer is, for example, a major company or an individual homeowner. The circular does not specify whether it would have been reasonable, at some date in the past, not to have taken any measures to establish the presence of any pollutants on the land.

As indicated above, the protection only applies to owners or occupiers of land if they have not caused or knowingly permitted the presence of a pollutant on their land. Thus if, for example, the owner of a site gains knowledge that the site is contaminated land before an enforcing authority notifies him of this fact and if he fails to remediate the site after having had a reasonable opportunity to do so, the above considerations would not apply and he would not be entitled to a reduction in remediation costs.

Can a company or other person sell land that is contaminated with radioactive substances with information about the contamination?

Not at present. The regime to remediate land that is contaminated with radioactive substances has not come into force as yet.

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Waste Recycling vs. Waste Incineration

by Pamela Castle, CMS Cameron McKenna

This article first appeared in CMS Cameron McKenna's Environment Law Bulletin (published in April 2001).

In its recent Report on Delivering Sustainable Waste Management, the House of Commons Environment Transport and Regional Affairs Committee expresses a significant lack of confidence in measures to promote the re-use, recycling or composting of waste in the face of waste incineration (with energy recovery) as proposed in the Government's Waste Strategy 2000, published in May 2000.

England and Wales produces over 100 million tonnes of industrial, commercial and household waste each year, in addition to some 300 million tonnes each year of construction and demolition wastes, agricultural wastes, mining wastes, sewage sludge and dredged spoils. About two-thirds of industrial, commercial and household waste (and 23 out of 28 million tonnes of municipal waste) is landfilled. The Report concentrates on municipal waste. The imminent implementation of the EU Landfill Directive will require the amount of biodegradable municipal waste going to landfill to be reduced in stages so that by year 2020, the

amount being landfilled will be 35% of that being landfilled in 1995. This target is seen as ambitious in the light of lack of current progress and made even more daunting by the fact that there is a working assumption that the municipal waste stream will increase by 3% a year (although in view of the lack of hard evidence the Report accepts this figure somewhat sceptically).

The major issue addressed in the Report is whether mechanisms are in place to facilitate re-use, recycling or composting to accommodate the waste diverted from landfill or whether incineration (with energy recovery) is the more likely outcome.

Various methods have been developed to determine which waste management option should be chosen in a given situation. The overriding and well rehearsed principle is that of the waste hierarchy (that is, waste minimisation followed by reduction, re-use, recovery and finally disposal) but at a local level the Government has recommended the Best Practicable Environmental Option (BPEO) determining the optimal method of waste management. The Environment Agency has developed a computer model entitled WISARD for determining BPEO which is based on a life cycle analysis. The Report throws doubt on BPEO and WISARD, since it is often found that a BPEO analysis locally can be at odds with national targets.

With regard to waste minimisation, the Report considers that the Government should adopt more rigorous methods to determine if and why there is an ongoing increase in the generation of municipal waste and to put more effort into achieving waste minimisation and resource efficiency. This could be achieved for example by fiscal measures and a more prescriptive and better developed principle of producer responsibility - where the manufacturer of a product is required to take responsibility (or at least in part) for the management of the waste from the product.

The Report highlights the national targets for recycling and composting (25% of household waste by 2005, 30% by 2010 and 33% by 2015) as expressed in Waste Strategy 2000. It recognises that, in the light of the current level of recycling household waste being just 9%, more funding for appropriate infrastructure at local authority level is necessary together with development of markets for recycled materials. A strengthening of the producer responsibility mechanism is also deemed necessary for these targets (regarded by the Report as “rather modest”) to be reached. As rehearsed widely elsewhere, the development of such markets appears to be a major stumbling block for waste recycling. If they exist at all, they are embryonic and struggling. The Report recognises that if they are to succeed Government intervention by way of subsidies and other fiscal measures are needed. On the other hand, waste incineration (with energy recovery) is favoured by fiscal instruments such as Non-Fossil Fuel Obligation (NFFO) support and Private Finance Initiative grants.

The Report expresses concern about incineration, focusing on two main areas: the health effects and the impact that it would have on the prospects of other techniques such as recycling, re-use and minimisation. The Report acknowledges that the health effects from the incinerators are complex and recommends, amongst other things, the precautionary step that pre-separation of potentially hazardous materials should be mandatory.

Incinerators are not popular with the public either as a result of the perceived health risks, noise and disturbance and there are problems with planning issues. On average it takes about seven years to obtain the relevant permission and to build an incinerator. The Report appears gratified by these difficulties and seems to wish to augment them by exhorting the Government to refuse to accept energy from waste as a renewal form of energy. Furthermore, the Report proposes an incineration tax. It also suggests that new techniques such as pyrolysis, gasification and anaerobic digestion should be explored.

The Report recognises however that it is difficult to see how reducing dependence on landfilling can be achieved without the development of incineration. The capacity, infrastructure and other relevant Government measures simply do not exist currently. The challenge therefore, as expressed in the Report, is to keep the contribution of incineration to a reasonable level. Currently the average size of the incinerator is anything up to 600,000 tonnes of waste per year. The Report recommends that the building of incinerators above a capacity of 100,000 tonnes per annum should not be allowed, and that where possible, should be in the form of combined heat and power.

Overall, it is clear that the authors of the Report are extremely pessimistic about the future of recycling, re-use and composting of waste in the face of incineration, unless the Government takes strong measures to re-route developments in their direction.

Report On Working Parties

by Mark Brumwell, UKELA Council Member and Working Party Co-ordinator

INTRODUCTION

I have recently undertaken a general review of the activities of all the working parties to establish which are active, which should be amalgamated and which disbanded. This review was presented to UKELA Council on 25 April. The majority of working parties are quite active and hold regular meetings primarily to respond to legislative consultation papers. However, the following groups have not been active for sometime and there is currently no indication of any enthusiasm to reconvene them:

- Packaging Waste/Producer Responsibility
- Scottish Law
- Transport
- Noise
- Air
- Biotechnology

UKELA's Council agreed on 25 April that they be formally disbanded.

If any UKELA member is willing to reactivate any of these groups or is interested in forming any other working parties, I should be delighted if they would get in touch with me.

Recent activities of the remaining working parties are as follows:

1. Waste Working Party – Convenor, Andrew Bryce; Secretary, Anju Sanhi

The Group has continued to be active over the last 12 months, holding meetings every quarter. Recently, the Group commented to DETR on the Landfill Directive and has been addressed by Steve Lee from the Environment Agency. Meetings concentrate on the dissemination of developing practice in the waste sector with much of the information being provided by Andrew Bryce. They will deal with a range of Special Waste issues at their next meeting. The Group has 30 members.

2. Practice and Procedure Working Party – Convenor, Daniel Lawrence

This group has been very active over the last 12 months. They have been involved in the following:

- submissions on the work of the Environment Agency
- submissions on the Sentencing Advisory Panel's Consultation Paper on Sentencing for Environmental Offences
- organisation of the Environmental Courts seminar
- EC proposals to replace Directive 90/213/EEC on access to environmental information (with the Contaminated Land Working Party)
- Organisation of a seminar on Environmental Liability for Releases of GMO's.

Consultation submissions have been provided for incorporation in the UKELA web site.

3. **Planning Law Working Party – Convenor, Mark Challis**

Last summer the group organised a seminar with Stephen Crow on public examination of regional planning guidance and the submission of comments to the Royal Commission on Environmental Planning. Mark Challis has just taken over from Wendy Le-Las as Convenor. Reintroduction of regular meetings and other activities are anticipated.

Currently the group has 23 members.

4. Insurance and Liability Working Party – Convenor, Valerie Fogleman

Meetings have been held every two months over the past 12 months. The majority of time has been spent on the European Commission's White Paper on environmental liability, with comments made to both the Commission and the DETR. Alan Simcock, Steve Griffiths and colleagues from the DETR have attended meetings with the working party to discuss the UK's response to the White Paper.

The working party continues to work with the DETR on several issues including the burden of proof, liability for water contamination, insurability, defences, traditional damage, environmental damage and retroactivity.

The Group has 30 current members.

5. **IPPC Working Party – Convenor, Jacqui O'Keefe**

A meeting was programmed for the end of March 2001 with a representative of the DETR and the Environment Agency to discuss IPPC generally and its relationship with the contaminated land regime. There are 10 members.

6. **Emissions Trading Working Party – Convenor, Helen Loose, Secretary, Anthony Hobley**

The group has been recently formed and has been very active, contributing to the emerging emissions trading system through liaison with DETR and DTI. There are about 50 members.

A further meeting was programmed for 24 April 2001.

7. **Contaminated Land Working Party – Convenor, Matthew Townsend**

This Group had been inactive for 12 to 18 months until reconvened by Matthew Townsend in December. It now meets on a quarterly basis and had a further meeting in March. Malcolm Lowe from the DETR and Martin Baxter from IEMA have addressed both of the recent meetings.

They have worked on a number of issues including provisions in the Water Bill, access to environmental information, the Royal Commission's proposals to study the long term effects of chemicals in the environment, the Land Condition Record and pre and post-operation land condition reports under IPPC.

The Group has 39 current members.

8. **Nature Conservation Working Party – Convenor, Robert Simpson**

Meetings were held in January and November 2000, and another meeting was fixed for March.

They have made extensive comments on the Countryside and Rights of Way Act. Comments have also been made to Parliamentary Committees on the issues of parks and biodiversity. They are currently involved with reviewing how Regional Planning Guidance is adapting to the new CROW regime.

There are 33 members.

9. **Water Working Party – Convenor, Mark Brumwell**

The Water Working Party continues to meet every quarter and to make submissions to DETR, the Environment Agency and DWI as consultation papers emerge. It also invites external speakers to each meeting, extending invitations to London and South East UKELA members generally. At the January meeting, Harriet Nash from Wardell Armstrong gave a talk on Contaminated Risk Assessment and in April, I gave a talk on Regulatory Cryptosporidium. Previous talks have included the Freshwater Fish Directive and Water Protection Zones.

The Group currently has 28 members.

Any UKELA members interested in joining a working party should please contact the relevant Convenor. Contact details and further information on each working party is on UKELA's web site.

Scottish Briefing

By Philip Hunter , BRODIES WS

Water

Legislation to merge Scotland's three water authorities into a single body is to be introduced into the Scottish Parliament later this year. The Scottish Executive issued their proposals for the **Water Services Bill** for comment on 28 March 2001. The move is intended to help the industry fend off the threat of competition; however, there have been strong concerns voiced by the water industry and fears that the merger will divert the authorities' attention from managing the major environmental investment programme required in order to comply with EC legislation.

The Scottish Executive has published a second consultation paper on water quality and standards entitled **Water Quality and Standards 2002 to 2006**. The paper focuses on the investment necessary for Scotland's three water authorities to face the challenge of safeguarding tap water quality and protecting the environment. Much of the investment requirement relates to central public health and environmental improvements required by European legislation. Three options are outlined for discussion. The Scottish Executive favours the middle option in order to meet legal standards, make some improvement to assets and prevent further deterioration to underground infrastructure. SEPA believe that the only appropriate option is the enhanced option which allows substantial progress towards modernising all assets, removing development constraints and increasing the number

of first time connections to the mains sewerage system. (For example, for houses formerly served, by septic tanks.)

The Scottish Executive issued a leaflet on the **Framework Water Directive** on 9 February 2001 setting out the basic scheme and requirements of the directive. A comprehensive consultation paper is to be issued later this year.

The Scottish Executive issued a short consultation paper on the **forthcoming Review of the Common Fisheries Policy** on 26 March 2001. The paper seeks views on what the UK objectives should be in this review with reference to the critical analysis of the Common Fisheries Policy contained within the Green Paper.

The Scottish Executive issued a Paper **on Public Water Supplies in Scotland 1999 to 2000** on 14 March 2001. The paper provides detailed figures for matters such as daily demand and leakage, broken down in various manners and compares actual figures with those predicted.

The Scottish Executive published their report on the consultation on **The Affordability of Water and Sewage Charges** on 23 February 2001. The report details the responses received and outlines the final proposals for a transitional scheme of assistance for some consumers in order that they might afford increased water and sewerage charges.

The Scottish Executive issued a report **on Drinking Water Quality in Scotland 1999** on 18 January 2001. The report details a continuing trend in improving water quality but highlights areas where further improvements are sought, principally with regard to trithalomethanes, a by-product of the disinfection process.

Land Reform

The Scottish Executive published the draft Bill on Land Reform in February 2001. A number of improvements have been made to the draft Bill as a result of the original consultation paper and responses received. The legislation comprises a key element in the process of land reform in Scotland, creating new rights of access, community ownership and right to buy and of crofting community ownership and right to buy. The Bill will create a right of responsible access to land for recreation and passage. Guidance on the responsible exercise of the right is set out in the draft Scottish Outdoor Access Code.

The draft **Scottish Outdoor Access Code** was also published by the Scottish Executive in February 2001 and is intended to be read in conjunction with **the Land Reform (Scotland) Bill** above. The code will not be legislation but will require the Scottish Parliament's approval before it can come into force. Comments are invited upon the code and the balance between the provisions set out in the draft Bill and code.

Guidance is provided in the code as to how it will work on the ground. It is intended to produce a summary for general public use and that further summaries will be prepared to cover activities such as canoeing or horse riding.

The period for consultation for the 2 papers above has been extended to the end of June 2001, as a result of the foot and mouth crisis. Presumably, this will affect the timescale for placing the revised bill before the Scottish Parliament and this will not now occur by September 2001.

Soil

SEPA issued their long-**awaited State of the Environment Soil Quality Report** on 4 April 2001. The report sets out to review the state of our soils. SEPA recommend the creation of a soil protection strategy, in partnership with the other relevant bodies, and the commissioning of a full assessment of this valuable resource.

Natural Heritage

Scottish Executive issued **the Nature of Scotland: A Policy Statement** in February 2001. The main aims of this are: -

- to propose a new duty for Scottish Ministers to have regard to the conservation of biodiversity, the richness and variety of our species and habitats;
- to propose substantial reforms to the way in which we protect and manage our most special natural places, to ensure that we work more effectively with land managers and communities to protect and manage these places; and
- To propose new measures for the effective deterrence, detection and punishment of wildlife crime.

Environment Minister

Sam Galbraith has resigned as Scottish Environment Minister. His environmental duties have been passed to Ross Finnie who is to combine them with his rural development portfolio. His remaining duties have been divided amongst several other ministers.

Transport

The **Transport (Scotland) Act 2001** was passed by the Scottish Parliament on 20 December 2000 and received the Royal Assent on 25 January 2001. It is of note that the government, in the face of pressure from the business community, scrapped the workplace parking levy, originally featured as a main component of the Bill. Opponents had claimed that, in practice, the proposed charges would penalise companies without producing any obvious environmental benefits.

Climate Change

The Climate Change Levy came into force on April 1 2001. The Climate change Levy has been set at 43p per kWh for Electricity and 15p per kWh for gas and coal.

[All Scottish executive papers are available on the Scottish Executive web site at http://www.scotland.gov.uk.]

CASENOTE :

Alconbury [2001] UKHL 23,

By William Upton, Barrister, Chambers of Lionel Read QC (wupton@compuserve.com)

So, it's Round 1 to the Secretary of State - the House of Lords has unanimously allowed the Secretary of State's appeals against the Divisional Court's decision in these cases and has declared that "the impugned decisions of the original appellant are not in breach of or incompatible with the Human Rights Act 1998." The planning system has not been thrown into chaos, and the Secretary of State can continue to make important planning decisions and to approve compulsory purchase orders. Other public authorities in similar regulatory positions will no doubt seek to rely upon this – and that includes the Agency.

I am sure that there will be a lot said about this case in the weeks to come. After all, the judgment runs to 82 pages and each Law Lord decided to deliver his own speech. Although there is a similarity in approach, none of them specifically adopts the reasoning of any of the others (and Lord Hoffmann decided to add substantial obiter dicta).

We can now draw a number of conclusions about the UK courts approach to planning cases:

- the determination of a planning application is the determination of a civil right (Lords Hoffmann and Hutton would have doubted this but for the ECHR caselaw);
- the Secretary of State unequivocally accepted that he is not an independent and impartial tribunal, and the House of Lords agreed with this;
- the system is nevertheless compatible with Article 6(1) as the Secretary of State's decisions are subject to subsequent control by a judicial body – ie the High Court - that has full jurisdiction and does provide the guarantees of article 6(1). But this 'full jurisdiction' has to be seen in the context of the subject matter – so it does not need to include the review of policy or the overall merits of a planning decision;
- the House of Lords does not consider that the scope of judicial review needs to be altered – whilst placing unusual emphasis on the existing ability of the courts to consider errors of fact and (in the view of two of their lordships) to consider issues of proportionality;
- Hence, the Divisional Court were wrong to say that a policy maker could not also be a decision maker. Their lordships clearly did not want to remove the merits of the decision from the minister, who is accountable to Parliament, to an independent body or court. The Secretary of State can even deal with an application in which the government might be said to have a financial interest.

So, challenges to the overall principle of the UK regulatory system are not going to succeed in the UK courts. But *Alconbury* does not rule out challenges to the details of the different decision processes which exist. The Secretary of State's role in these specific cases was saved by the procedural safeguards in place (such as the public

inquiry) - none of their lordships decided to comment on the situation where there are no such safeguards. Nor did they consider the extent of any third party rights. Round 1 may have gone to the government, but I predict that the struggle is not over yet.

Like all House of Lords' decisions, this case is available on the web, through the Parliament website (http://www.parliament.uk).

Events Round-up

(Any group or working party can insert details of future events or reports of events – email the Editor)

Any member of UKELA is welcome to attend any UKELA event.

Environmental Liability For Releases Of Genetically Modified Organisms

Seminar at The Inner Temple Hall, Temple, London EC4Y on 5 June 2001

from 4.15pm to 7.30pm followed by drinks and canapés

The Seminar is Chaired by **Professor Malcolm Grant**, Chairman of the Agriculture, Environment and Biotechnology Commission (AEBC), which was formed in 2000 to offer strategic advice to government on biotechnology issues which impact on agriculture and the environment

The Speakers and discussants include:

- **Professor John Hillman**, Director of the Scottish Crop Research Institute
- **Ms Justine Thornton**, Convenor of the AEBC Working Group on Liability
- **Mr Patrick Holden**, Director of the UK Soil Association
- **Mr Peter Roderick**, Legal Adviser to Friends of the Earth

The Seminar will focus on liability issues associated with releases of GMOs to the environment. Such issues are of concern to a wide variety of interested parties, including government, the biotechnology industry, seed companies, farmers, other landowners and environmentalists. The recent political furore over GM crops has now reignited the EU debate over principles for environmental liability.

The seating capacity of The Inner Temple Hall is limited so book early to ensure a place.

Cost of attending: UKELA Members £35; Non-Members £50

CPD and Bar Council Continuing Education Hours are available.

Cheques should be made payable to UKELA and sent to Daniel Lawrence (Convenor of the UKELA Practice and Procedure Working Party) at Freshfields Bruckhaus Deringer, 65 Fleet Street, London EC4Y 1HS.

The Vermont Environmental Court

Judge Merideth Wright will give a presentation on 20 June 2001 on the work of the Vermont Environmental Court. Professor Malcolm Grant (who last year authored a major research project on Environmental Courts for the DETR) will also speak.

The presentation will take place at Freshfields Bruckhaus Deringer, 65 Fleet Street, London EC4Y 1HS. It will begin at 5.15pm and last until around 6.30pm and be followed by drinks and canapés.

Admission is free though there are limited places. Those wishing to attend should send an e-mail to Daniel Lawrence at the following address: daniel.lawrence@freshfields.com

Job Advertisement – Environment Agency

EXCITING OPPORTUNITIES WITH THE ENVIRONMENT AGENCY, THAMES REGION, BASED AT READING

The Environment Agency is one of Europe's most powerful environmental regulators with a challenging remit to protect and enhance the natural environment of England and Wales. Essential to its success are the skills and expertise of people from

a variety of specialist areas, not least of all its legal division which plays a major part in securing the implementation of our legislative driven agenda.

ADVISORY OR PROSECUTION SOLICITOR/COUNSEL
TO MANAGE A TEAM OF LAWYERS
SALARY: £30-35k

We are looking for an enthusiastic Solicitor or Barrister with a strong commitment to the environment of 5 years post qualification/pupillage experience or above to lead either our Prosecution or Advisory Team of lawyers. Reporting direct to the Regional Legal Estates and Committee Services Manager, you will be expected to handle your own workload as well as being line manager for a team of 7 Agency lawyers. This will be a challenging and stimulating role, working at the cutting edge of environmental law with policy and operational colleagues from a range of different disciplines.

Experience of waste, water, IPC/PPC, contaminated land, flood defence or other area of environmental law essential. Familiarity with local or public authority structures would be an advantage. For the Advisory Team manager's role experience with data protection, access to information and administrative law is also desirable.

ADVISORY SOLICITORS/COUNSEL

SALARY: £23-30k

Here we are looking for two enthusiastic Solicitors or Barristers with a strong commitment to the environment to join our team of 7 advisory lawyers.

The first post requires 2 years post qualification/pupillage experience or above to advise principally on waste, contaminated land and producer responsibility matters.

For the second post will would consider a newly qualified barrister or solicitor, although some experience would be preferred, to provide advice on the Habitats Directive/Regulations, data protection and access to environmental information as well as general property law and contract/commercial advice, including drafting of agreements.

ADVISORY SOLICITOR/COUNSEL
Temporary Position to cover Maternity leave c.12 months
(Full or part time hours considered)
SALARY: £26-35k

We are also looking for an enthusiastic Solicitor or Barrister with a strong commitment to the environment of 2 years post qualification/pupillage experience or above to advise on all aspects of the water resources, fisheries, land drainage/flood defence and navigation functions of the Agency, including advising on the merits of civil claims as part of our team of 7 advisory lawyers.

All positions require a good motivator with excellent interpersonal skills, able to present complex information in a manner that enables it to be readily understood. All posts require a confident communicator with strong legal research, drafting and negotiating skills and the flexible approach to work within this very busy and expanding regional legal team.

You will be expected to participate in providing in-house training to technical staff on relevant aspects of your work. You will also have a good sense of humour and be used to working in a team. Basic computer skills would be an advantage. You must have a full driving licence and be prepared to travel. A casual car user allowance is available.

In return, you will receive a comprehensive benefits package, including 27 days' holiday, flex-time working and contributory pension scheme.

To apply, please telephone 0118 953 5669 (24 hour answerphone) for an application form and job description or send a CV direct to Personnel Department, Environment Agency, Kings Meadow House, Kings Meadow Road, Reading RG1 8DQ. Closing date for receipt of applications is 10am on 31 May 2001.

ENVIROQUESTIONNAIRE

A LITTLE FUN WITH COUNCIL MEMBERS

Daniel Lawrence – Freshfields

What year did you qualify?
1989

What is your best career moment?
Settling a high profile case involving pollution damage to crops

What is your worst career moment?
As a US Citizen, I'm entitled to rely on my 5th Amendment rights

What is your favourite book?
Life in the Woods, by Henry David Thoreau

What is your favourite film?
The Seven Samurai, directed by Akira Kurosawa

What if any NGOAs are you a member?
UNED Forum

What are your hobbies?
Cycling and photography

What is the most scary / extreme / exciting thing you have done?
Solo cycling over the mountains from Kathmandu to India

What is your dream occupation?
I like to think I'm in it

What is your favourite holiday destination?
India – but its an experience not a holiday

What car do you drive?
A 15 year old Porsche 944

What is your favourite quotation?
I think, therefore I am

And finally…

When George W Bush was asked of his opinion on Kyoto, he said:

"John Lennon should never have married her."

The editorial team want letters, news and views from you for the next edition due to go out mid-July.

All contributions, be they letters, articles, book reviews, case reports etc should be dispatched to the Editor, Catherine Davey

catherine.davey@stevens- bolton.co.uk

as soon as possible. The sooner we have the material from you, the sooner we will be in a position to produce the next edition!

Letters to the editor will be published, space permitting

Environmental Law aims to update readers on UKELA news and to provide information on new developments. It is not intended to be a comprehensive updating service. It should not be construed as advising on any specific factual situation

UK Environmental Law Association

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See also the web site at

www.ukela.org

for more information about working parties and events, including copies of all recent submissions.