u.k. environmental law association e-journal

e-law

www.ukela.org *issue 12 – February 2003*

Contents

Chairman's Report

It is my pleasure to write this piece as the new Chairman of the Association. I first joined UKELA in 1989 and have seen it develop as an organisation. This development has been down to the hard work of former Chairmen and Council members. I would particularly like to record my thanks to our outgoing Chairman, Pamela Castle. Pamela has done a superb job over the last 2 years and I am aware that I have a lot to live up to.

As an organisation we rely on our members. We hope that UKELA meets your needs and aspirations and I would hope that many of you will consider becoming involved with your regional groups and working parties. During my period as Chairman it is my intention to try and visit every regional group and working party. This will be a heavy time commitment, but I feel that it would be worthwhile. If you want to become involved do please contact the Convenor of your regional group or policy working party. Their details can be found on our website www.ukela.org.

The forthcoming months promise to be an exciting time for UKELA. We have a number of interesting events planned and we are starting to look forward at developing the Association even further. Please do not hesitate to contact me if there is any aspect of UKELA you wish to discuss.

Andrew Wiseman awiseman@trowers.com

New Appointment

Vicki Elcoate is the new Executive Officer for UKELA, tasked with helping develop the organisation and raising its profile. Vicki comes to UKELA after ten years at the Council for National Parks, the last five as Director. Before CNP Vicki was a producer for Independent Television News and is a trained journalist. She holds a postgraduate diploma in advanced environmental practice.
One of the first priorities is to help UKELA develop a strategic plan, with clear aims.
Vicki is working on a self-employed basis two days a week, based at home.

Vicki can be contacted by email: vicki.elcoate@ntlworld.com.

New Council Members

Martha Grekos

Martha Grekos was called to the Bar in July 2000. She is a Pupil Barrister at 4 Paper Buildings, chambers of Jean Ritchie QC, specialising in European and UK environmental law and public law. She is also visiting supervisor in Environmental Law at the University of Cambridge and the joint monthly contributor/editor for the Parliamentary and Departmental News section in the *Journal of Planning and Environmental Law*. Martha is a regular contributor to different law journals such as *Environmental Liability*, *Environmental Law & Management*, *UKELA e-journal*, *ELFline*, *Journal of Planning and Environmental Law, The European Advocate*, *Common Law Market Review* and *Judicial Review.* She also writes the case-summaries for the European case-law judgements for *New Law Online*. At present, she is also working on the second edition of the practioners' book *Environmental Law* (Richard Burnett-Hall) in which she is writing 5 of the chapters. She was also a monthly case-reporter to the *Planning and Environmental Law Bulletin* and has written book reviews for the *Yearbook of European Environmental Law*.

Martha is currently the joint Convenor with Daniel Lawrence of the UKELA Biotechnology Working Party and as a result has helped write a Response to AEBC's *Consultation paper on the future scenarios for the uptake of GM in agriculture.* The Group has been asked by the Prime Minister's Strategy Unit to make submissions on a range of legal issues concerning GMOs and GMO regulation. She is also a member of the UKELA Insurance and Liability group. She has assisted with, and has been the rapporteur to, the UKELA 2000 Conference (London), she was a scholar for the UKELA 2001 Conference (Cardiff) and is jointly organising the panel for the GMO discussion session for the UKELA 2003 Conference (Plymouth).

She has also worked as the Research Assistant to Lord Justice Carnwath on the CPO Project at the Law Commission whilst at the same time being a visiting lecturer and tutor in Contract Law at the University of Westminster (2001-2002). She was the Research Assistant to Professor Stanton, Paul Skidmore and Michael Harris in their book on 'Statutory Torts' (2000). Whilst at Bar School and whilst studying for her Masters, she assisted on cases involving the Waste Framework Directive, a case settlement involving the pollution by a major factory to 5,000 residents, drafted documents for Judicial Review and was a researcher and co-author for the UK's opinion to the European Council on *The implementation of EC legislation on non-judicial procedures in environmental disputes.* She was also a volunteer caseworker in the referral service at the Environmental Law Foundation.

Martha has given seminars on environmental law topics at various conferences in London, Bristol and Leeds and has taken part in Environmental Legal Surgery training. She has an LL.B from the University of Bristol and an LL.M from the University of Cambridge with European, International and UK environmental law specialisms.

She will be teaching Environmental Law at Birbeck College, University of London from 2003 till 2004 and she will also be spending some time in DG Environment at the European Commission in Brussels.

Martha can be contacted by email: martha.grekos@4paperbuildings.com

Deborah Lloyd

II am a UK and Australian qualified lawyer specialising in Environmental and Health and Safety law and have practised in the UK for the last six years. I successfully completed the national general certificate in occupational health and safety in 1998 and received a Master of Laws in March 2000. My LLM focussed on environmental law with particular regard to the use of economic instruments in water pollution. In the last two years, I have been actively involved with the UKELA Emissions Trading Group and would like to extend my assistance to other areas in which UKELA is involved.

Deborah can be contacted by email

Deborah.Lloyd@ashursts.com

Julian Boswall

is a partner with Morgan Cole, based in Cardiff. He has been a member of UKELA since 1988. He co-organised the Cardiff annual conference with Bob Lee of Cardiff University. He is endeavouring to make the South Wales regional group a reality in 2003, and would welcome hearing from members in that regard.

Julian can be contacted by email

Julian.Boswall@morgan-cole.com

SENTENCING ISSUES AND DIFFICULTIES

by Peter Harrison, Barrister, Chambers of Stephen Hockman QC, 6 Pump Court (based on a speech given to the Annual Conference of the Magistrates' Association, 2002).

In their sentencing, Magistrates have enormous influence on the standards of environmental safety and environmental protection in England and Wales. This is because the vast majority of "environmental cases" are dealt with in the Magistrates' Court and the majority of those cases are guilty pleas.

Typically, the first sentencing option will be a fine. What this means is that the level of fines imposed by Magistrates is one of the key factors in protecting the environment through influencing the future behaviour of companies and individuals likely to be involved in the commission of environmental offences. It is through the process of sentencing that the aspirations and objectives for promoting the environment, protecting endangered species and so forth, can crystallize from theory into practice.

Sentencing Difficulties

Sentencing for environmental crimes poses particular difficulties. Their rarity makes it difficult for the sentencing bench, and for those advising defendants, to be confident they have a feel for the "going rate". It can also be hard for magistrates to keep in mind the need for environmental protection when their previous case was an aggravated assault, and the next case is a drunk driver who has caused an accident. It will be difficult to find the right perspective. As for strict liability, the defence will often stress in mitigation that the offence should not attract any moral culpability and that the sentence should reflect the fact that no deliberate offence has been committed and they should not be "blamed". This has been described in the past as "mischievous mitigation". This can only go so far. The degree of carelessness will be relevant to sentence, and certainly any element of intention will be a serious aggravating factor. The purpose of strict liability offences is to ensure that those who are to carry out and profit from business activities where there is a risk of environmental damage are also motivated to ensure that the best systems are observed and proper precautions are taken to minimise risk.

Factors to look out for

Recently, the courts have been increasingly-presented by the prosecutor with "*Friskie Schedules*" (named after the case) – a schedule drawn up to set out the main aggravating and mitigating features with references to the facts of the case which will be presented. It may also have been agreed by the defendant. Among the factors to look out for in the prosecution case are:

The Facts:

- **The Actual Degree of Environmental Harm** - the number of fish killed, or the number of specimens of any rare species injured, the quality of habitat destroyed or damaged. This may require careful explanation – for instance, it may not be obvious that the ugliest sites can be the most important in nature conservation terms!
- **The Risk of Environmental Harm** – the defendant may have taken grave risks even though no damage has occurred – just as when careless driving will still be an aggravating factor even if it does not lead to any accident;
- **The Duration of incident and its recurrence** - did the pollution arise from a one-off incident or was there a series of incidents eg a number of escapes of chemicals over a weekend or other protracted period of time?
- **Previous Warnings and Advice** – any evidence that warnings or advice from the relevant regulator such as the Environment Agency have been ignored or acted upon too late.
- **Previous Convictions or Cautions** - these will be a particularly aggravating feature if they demonstrate that the defendant was aware of the risks but has not changed its work practices or taken other steps to prevent the occurrence of further offences.

Motivation:

- Any proven financial motive will be a serious aggravating factor. If it is shown that the offence occurred because of an attempt to cut costs by cutting corners and maximise profits, and if the Defendant is of any size, it may be necessary to consider committing the case to the Crown Court.

Action Following the offence:

- **Clean up -** What did it cost? Did the Defendant pay or contribute?
- Did the Defendant co-operate with the authorities to minimise damage and speed amelioration?

- **Future Incidents**: Has the defendant taken genuine steps to prevent or reduce the risk of similar problems. As a rule of thumb, a genuine step is probably one that has actually already cost money.

Particular issues with Fining Companies:
There are particular issues when fining companies. Any plea in mitigation based on the fact that an individual employee is to blame should be analysed carefully. There may indeed be cases where a company has done all it can and has been badly let down by an employee. Equally, failures in training or failures in supervision which lead to the offence may themselves be aggravating features.

In a recent Health and Safety case, the Court of Appeal made it clear that in the absence of any specific evidence to the contrary Courts may assume that a company will be able to pay any fine they impose.

Significantly, the Courts have also made it clear that in the case of large or publicly-quoted companies, where the facts of the case warrant it, the fines should be large enough to make an impression on both the directors of the company and its shareholders.

Companies may often submit that financial difficulties played a part in the commission of the offence in the first place, and that a substantial fine will lead to employees losing jobs. This can be the most difficult sentencing issue. At the top of the scale, the Court of Appeal has indicated that there may be cases where the offence is so serious that it is appropriate for a fine to put a company out of business (although strictly speaking this refers to Health and Safety and not to environmental offences). In most cases, the sentencing court will want to make a judgment as to what is the level of fine at which jobs will actually be jeopardised. They would normally expect to be able to rely on some detailed financial analysis before making radical adjustments to the sentence that would otherwise be appropriate.

CONCLUSIONS
Sentencing for environmental crimes remains unusual for the average bench. By having a clear and recognised list of aggravating and mitigating features, they will have a better chance of being consistent and fair in sentencing.

If society is becoming increasingly concerned about preventing damage to the environment, then the sentencing for environmental offences should reflect this. Fines should be imposed at levels which are more than a token, but which are likely to have a genuine affect on the behaviour and attitudes of companies whose business is environmentally-sensitive.

TOP TEN ENVIRONMENTAL CASES OF 2002

By Debbie Tripley, Barrister, Fenners Chambers Cambridge

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The year 2002 found the UK Courts dealing with a number of environmental claims testing the scope of the Human Rights Act 1998, such as *Peter Marcic v Thames Water Utilities.* This was in strong contrast to a year where the top environmental stories began with flood warnings and ended with the World Summit in Johannesburg, for which there was only faint praise.

The exact scope of Article 6 of the European Convention of Human Rights ('the Convention') in the field of planning and environmental law also raised considerable debate, particularly in cases such as *Allen* whilst the case of *Burkett* lay new ground on the issue of delay in judicial review proceedings.

Last year's quote belongs, perhaps, to Lord Justice Laws. Delivering a minority judgment in the Greenpeace case concerning the importation of mahogany he said:
"In the century before last, the sanctity of contract, with all that said for trade across the British Empire and beyond, was a powerful engine of statutory construction. Now, the world is a more fragile place. Considerations of ecology and the protection of the environment are interests of high importance. These concerns are well known and well accepted. Within the proper limits of the court's role and in appropriate contexts, I think we should now be ready to give them special weight' ((2002) 1 WLR 3304, para 33).

Peter Marcic v Thames Water Utilities Limited [(2002)2 All ER 55 (2002)2 WLR 932, (2002) Env.LR 32] involved a claim for damages against Thames Water Utilities Limited ('Thames'). Mr Marcic complained about continuous flooding of his garden with sewage caused by Thames. Thames had failed to take any action to abate the nuisance. Mr Marcic brought claims for damages for nuisance, negligence and liability founded in *Rylands v Fletcher*. He also claimed Thames had interfered with his rights to family life and privacy under Article 8 of the Convention.

Lord Philips M.R giving the judgment of the Court of Appeal held that reliance on the old line of authority could no longer be sustained (*Glossop* (1879) 12 Ch.D.102 – no liability at common law for nuisance for sewage undertakings). The principles set out in the cases of *Goldman* and *Leakey* applied. Thames' passivity towards the nuisance in allowing it to continue amounted to an adoption of it. As such, the burden was on Thames to demonstrate that they had taken all reasonable steps to prevent the nuisance – a burden Thames had not discharged.

Although the human rights issues had become largely academic the Court nevertheless ruled that Article 8 was engaged (*Guerra v Italy* (1998) 26 EHRR 357). The onus was on Thames to show that its scheme of priorities struck a fair balance. Compensation was to be seen as part of the fair balance to be achieved (*S v France* (1990) 65 D&R 250) with payment of damages sufficient to ensure that the interference did not go beyond what was necessary in a democratic society.

In an interesting aside, his Lordship considered the principle of *Rylands and Fletcher* may need modification 'to march in step with the requirements of the Human Rights Convention' (para 115).

R v Department for the Environment, Food & Rural Affairs (2) Derbyshire County Council, ex parte (1) Matthew Joseph Langton (2) Denley George Allen [(2002] Env. LR 20] concerned the proper disposal of animal by-products. The claimants had allowed an accumulation of maggot waste on their land as a result of operations at their knackers yard. DEFRA had served a notice requiring the disposal of the animal by-products and the council had enforced the notice by entering the claimants' land and carrying out works identified in the notice.

The claimants' principal argument involved an allegation of interference with their Article 6 Convention rights. However, Pleming J found himself compelled to apply the *Alconbury* judgment [*R (Alconbury Developments Ltd and Others) v Secretary of State for the Environment, Transport and the Regions* (2001) 2 WLR; (2001) UKHL 23]. Finding few material facts in dispute and that the case involved a high policy/expediency element he held that it was legitimate for the administrator or policy maker to take the decision so long as the whole procedure was Article 6 compliant, including taking account of access to a judicial review court.

R v English Nature,(2)Secretary of State for the Environment, Food and Rural Affairs, ex parte Aggregate Industries UK Ltd [2002] ACD 67 confirmed that the procedure laid down by s.28 Wildlife and Countryside Act 1981 was compliant with Article 6(1) of the Convention. The claimant ('Aggregate') applied to judicially review the decision of English Nature to notify land in their ownership as a Site of Special Scientific Interest ('SSSI').

Forbes J found that Article 6(1) was engaged and that objections raised by Aggregate meant that a serious and genuine dispute arose which was determinative of its civil rights to use and enjoy its property. However, the matter fell largely within the policy arena (see *Alconbury*). As such, English Nature did not need to conduct a quasi-judicial hearing into the matter. So long as its decision-making process had a number of procedural safeguards which when taken together with judicial review proceedings could be said to amount to a 'full hearing' within the context of Article 6 the decision could be relied upon as a fair and reasonable one. Section 28 of 1981 Act was not incompatible with the Convention.

R v London Borough of Hammersmith and Fulham & Others, ex p Burkett & Another [TLR 24/5/2002; (2002) 1 WLR; (2002) 3 All ER 97; (2002) ACD 81] concerned the adequacy of an environmental impact statement produced by the developer of Imperial Wharf. The substantive aspects of the case were never heard. Instead, the application floundered at the permission stage on grounds that there had been undue delay in the bringing of proceedings (six months after the resolution to grant planning permission).

The application came before the House of Lords who rejected the rulings of both the Divisional Court and Court of Appeal. At issue was when it could be said grounds for the application first arose so that the three month time period for judicial review could be properly calculated. The Lords found it relevant that until the actual grant of planning permission no lawful act could be said to have taken place. In their view, whilst provisional views or decisions were amenable to judicial review, the claimant should not be compelled to apply at that stage. Time could only therefore run from the time when the actual permission was granted. It was only at that stage that a lawful act could be said to have occurred that created rights and obligations.

Significantly, the Lords further held that the 'six weeks rule' applied in the planning context is a misconception. The need to act 'promptly' in judicial review cannot be contracted in this way and may well be insufficiently

certain to comply with the European convention for the Protection of Human Rights.

I***Nora Mckenna & Ors v British Aluminium Ltd*** **[TLR 24/4/2002; (2002) Env.LR 30]** Neuberger J grappled with a strike out claim brought in nuisance and strict liability against 30 claimants, all children, contending there had been emissions, noise pollution and an invasion of privacy from the defendant's neighbouring factory. The claimants had no proprietary interest in land and therefore could not claim damages in nuisance (*Hunter v Canary Wharf Limited* (1997) AC 655). Based on the judgment in *Cambridge Water* ((1994) 2 AC 264) Neuberger J further held that it was necessary to have an interest in the land sufficient to justify a claim in *Rylands v Fletcher.* However, the claimants also framed their argument under the Human Rights Act, specifically Article 8 of the Convention. They argued that the Court had a duty to develop the common law in compliance with the Convention (*Douglas v Hello Limited* [2001] 2 WLR 992).

Neuberger J considered that the different landscape brought about by the Human Rights Act may well make it necessary to extend or change this area of law. On that basis, he refused to strike out the claimant's claims.

R v South Cambridgeshire District Council, ex parte Lebus & Others **[neutral citation: (2002) EWHC 2009 (Admin)]** concerned the need for an environmental impact statement for the development of an egg production unit. The local authority fell into error by first holding that it did not need to call for an environmental statement as it would receive all the same information in any event. Secondly, the authority failed to make publicly available a screening opinion in breach of Regulation 7 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999. Finally, the authority had taken the view that there were no significant adverse impacts because those that did exist could be mitigated against. This was an impermissible approach (see *BT PLC and Bloomsbury Land Investments v Gloucester City Council* [2000] EWHC Admin 1001 26 Nov.2001). The question of whether there were likely to be significant environmental effects was to be approached absent of mitigation measures and with the public engaged in the process of assessing the efficacy of such mitigation measures.

In ***R v Mayor of London, ex parte Westminster City Council & Others*** **[(2002) unreported]** the claimants argued the Mayor's congestion charging scheme ought to be subject to an environmental impact assessment. The case held that the determination of whether a project was an 'urban development project' was a matter exclusively for the planning authority, subject only to *Wednesbury* challenge.

Waverley Borough Council v Lee & 34 Ors **[(2002) unreported]** involved an application by 35 travelling showpeople to the terms of an injunction including a requirement for them to remove themselves and any mobile homes and vehicles from agricultural land. The claimants owned the land but had been refused planning permission to establish permanent quarters. They appealed against the refusal but the appeal had not been determined at the time they entered the land. They argued an injunction was not sufficiently necessary for the legitimate aim of protecting the environment to justify overriding their rights to respect for home and family life (*South Buckinghamshire District Council v Porter,*TLR 9/11/2001). However, the Court held the Council's decision to move fast was legitimate and that it was acting reasonably in the interests of its community.

In ***R v Prestatyn Magistrates Court, ex parte Director of Public Prosecutions***
[(2002) Crim LR 924; TLR 17/10/2002] the claimants challenged the DPP's decision to prosecute offences for causing criminal damage to genetically modified maize crops in the magistrate's court rather than the Crown Court. The claimants argued that the crop was an unconventional one and should be valued by reference to research costs and the cost to the Government of each trial site. The Divisional Court held it was entirely rational for the district judge to conclude that the market value for the crops was unclear. The case was to be treated as triable either way.

Bovis Homes Ltd v New Forest District Council: Alfred McAlpine Developments Ltd v Secretary of State for the Environment, Transport & The Regions **[(2002) unreported]** dealt with the conjoined challenges by two developers 'Bovis' and 'McAlpine' . The case concerned the adequacy of reasons given by the respective planning authorities for adopting the relevant parts of plans in the face of recommendations to the contrary from planning inspectors.

Both developers argued that the local plan process engaged Article 6 of the Convention and that the planning authority was not sufficiently independent and impartial. On the Article 6 argument the Court held that the adoption of the local plan did affect a developer's civil rights. However, the process did not

involve a determination of them and accordingly Article 6 of the Convention was not engaged. Even if it was, the process involved procedures compliant with the Convention.

"COSTING THE EARTH" – ENVIRONMENTAL CRIME AND SENTENCING

William Upton
Barrister, 6 Pump Court.

There has been an important development in the approach taken to environmental cases in the criminal courts. Whereas the Court of Appeal appears to have ducked the opportunity to deliver sentencing guidelines in the Sea Empress case, the magistrates have taken up the task. The Magistrates Association has published a 'toolkit' and guidance for magistrates and their legal advisors on dealing with environmental cases in their courts – called, appropriately enough, "Costing the Earth: Guidance for Sentencers" (November 2002). It has been produced as part of a joint project between the Association, DEFRA, the Environment Agency and a number of NGOs, including ELF and the WWF. There was a session dedicated to "Costing the Earth" at the Magistrates' Association's AGM, and the accompanying article by Peter Harrison - "Sentencing Issues and Difficulties" - is drawn from his speech to them.

The government has also taken the opportunity to support the guide. Indeed, launching the information toolkit and sentencing guidance at the AGM, Michael Meacher, who now holds the weighty post of 'Minister for the Environment and Agri-Environment' (!), said:

"I am confident that this new guidance will result in an increase in fines for environmental offences. We need to ensure the environment is adequately safeguarded by attaching proper deterrent penalties to environmental crime. I believe this new sentencing guidance prepared by the Magistrates' Association, together with the information toolkit on environmental crime, will for the first time begin to change that profoundly. Environmental crime needs to be taken very seriously, and the penalties for environmental offences need to fully reflect the damage caused by the crime and the full cost of this damage."

"Costing the Earth" includes guidance notes on assessing the seriousness of offences and case studies for 41 different types of offences including air pollution, poaching fish, misuse of pesticides, health and safety, illegal waste disposal, poor housing, litter, dog fouling, water pollution, illegal trade of wildlife, packaging, and nuisance.

This guidance does not replace the actual, formal Magistrates Court Sentencing Guidelines. There are also two supplemental Sentencing Guidelines which have already been issued by the Magistrates Association – "Fining Companies for Environmental and Health and Safety Offences" (May 2001) and "Sentencing for Wildlife Trade and Conservation Offences" (November 2002). "Costing the Earth" fulfils a wider purpose. Rather, the work of the Magistrates' Association is responding to the concerns from both prosecutors and magistrates about the large gap in information when dealing with these types of cases. As Lord Justice Sedley states in his introduction,
"...environmental crime, if established, strikes not only at the locality and its population but in some measures too at the planet and its future. Nobody should be allowed to doubt its seriousness or to forget that one side of the environmental story is always untold. And this is why everyone concerned with environmental protection has a use for a practical handbook like the present one: a toolkit to help keep the machinery of justice in motion."

The guide has been made available to all magistrates. It is also available from ELF (tel: 020 7404 1030; e-mail: info@elflaw.org), priced at £29.95.

CONTAMINATED LAND UPDATE

DEFRA have formally withdrawn ICRCL 59/83 (2nd edition).

DEFRA has formally withdrawn its 1987 guidance on health effects of contaminated land – including the "trigger values" rendered obsolete by the Part IIA regime – following the implementation of the CLEA package last year.

Steven Griffiths of DEFRA's Contaminated Land Branch has written to a wide range of representative organisations and local authorities to warn them of the move. The ICRCL Guidance Note 59/83 (2nd edition) is now formally withdrawn, although it will remain available from the Department on request to enable understanding of historical decisions on remediation of individual sites.

The trigger values contained in ICRCL 59/83 were a useful tool but are technically out of date. They are out

of line with Part IIA, especially for assessing the "possibility of significant harm" to health.

"The CLEA package, consisting of the main contaminated land reports (CLRs) 7-10, the CLEA 2002 software and the soil guideline values for individual substances (SGV), are now considered to represent the key instruments for generic assessment of the human health risks from land contamination,". "They represent a cross-government consensus on the technical approach to undertaking such assessments and are based on the latest scientific knowledge and thinking."

REPORT ON UKELA WORKING PARTIES

1 **Biotechnology Working Party – Convenor, Daniel Lawrence** daniel.lawrence@freshfields.com **Deputy Convenor, Martha Grekos** martha.grekos@4paperbuildings.com

The Working Party has submitted a response to certain issues raised in Annex D of the AEBC consultation paper on Future Scenarios for the Uptake of GM Agriculture.
The Convenors have been asked by the Prime Minister's Strategy Unit to make submissions on a range of legal issues concerning GMOs and GMO regulation.

Martha Grekos, now also a UKELA Council member, has notified UKELA Council of the names of one of the speakers and the Chairman for the planned GMO panel debate which is taking place on Friday 27th June 2003 6-8pm at the UKELA Annual Conference, Plymouth.

2 **Contaminated Land Working Party – Convenor, Matthew Townsend -** Matthew.Townsend@allenovery.com

A meeting was held on 31 July 2002. Articles for the e-Journal were discussed, including: Brownfield Regeneration; the CLEA model; Progress under Part IIA Environmental Protection Act 1990; the sold with information test under the same Act; contaminated land tax relief and looking behind site investigation surveys.

Simon Boyle of Groundsure gave a brief explanation of what reports Groundsure can provide. Michael Quint of PB Environment gave a presentation on the proposed Environment Agency guidance on the requirements for site closure reports in PPC surrender applications.

The next meeting is fixed for 29 January 2003.

3 **Climate Change (Emissions Trading & Flexible Mechanisms) Working Party – Convenor, Helen Loose –** helen.loose@ashursts.com **Secretary, Anthony Hobley -** arh@cmck.com

No meetings of the Working Party have taken place since the last report.
A response to the draft ETS Rules for CCA participants was submitted to DEFRA.

4 **Insurance and Liability Working Party – Convenor, Valerie Fogleman –** vfogleman@blg.co.uk

A meeting was held on 11 September 2002. The meeting was attended by Cuthbert Nestor of DEFRA to discuss the proposed Directive on environmental liability.

The next meeting is fixed for 13 November 2002.

IPPC Working Party – Convenor, Michael Hutchinson - Michael.Hutchinson@mayerbrownrowe.com

No meetings of the Working Party have taken place since the last report.

6 **Nature Conservation Working Party – Convenor, Andrew Baker -** mdxe56@dial.pipex.com

No meetings of the Working Party have taken place since the last report.

7 **Planning Law Working Party – Convenor, Mark Challis –** challism@nortonrose.com No meetings of the Working Party have taken place since the last report.

8 **Practice and Procedure Working Party – Convenor, Daniel Lawrence –** daniel.lawrence@freshfields.com

No meetings of the Working Party have taken place since the last report.

9 **Scottish Law Working Party – Convenor, Ian McPake –** ianmcpake@todsmurray.co.uk

The Working Party met on 19 August 2002.

Responses were prepared for the EC Proposal for Directive on Environmental Liability; the Consultation for Public Access to Environmental Information and the Consultation on Management Review of SEPA.

Ian McPake is currently canvassing for new members to join the Working Party.

10 **Sustainable Development Working Party – Convenor, William Upton –** wupton@compuserve.com

No meetings of the Working Party have taken place since the last report.

11 **Waste Working Party – Convenor, Andrew Bryce –** bryce@ehslaw.co.uk **Secretary, Anju Sanehi -** anju.sanehi@dla-law.co.uk

The Working Party met on 18 September 2002 to discuss the Landfill Directive, Hazardous Waste Regs timetable, Planning Reform and Waste and the latest position regarding the Environmental Liability Directive. It was also discussed whether a speaker from DEFRA should be invited to give a talk on agricultural waste.

The Working Party met again on 3 December 2002 to discuss proposals for a new Waste Forum; the Landfill Directive; Regulations and Acceptance criteria; Magistrates' tool-kit for environmental and health and safety prosecutions and Hazardous Waste Regulations timetable. The next meeting is on March 4th 2003.

12 **Water Working Party – Convenor, Elizabeth Hattan -** elizabeth.hattan@freshfields.com

The Working Party met on 19 July 2002. Various consultations were considered including Extending Competition in the Water Industry and the Government's Strategic Review of Diffuse Water Pollution from Agriculture in England.

Elizabeth Hattan is standing down as convenor of the Water Working Party in January. A replacement convenor has yet to be confirmed.

Future talks fixed for the Working Party include a talk by Glen Plant on offshore renewable energy and a possible talk by the Environment Agency on abstraction and the Habitats Directive.

The next meeting was due to go ahead on 18 October 2002.

MARK BRUMWELL
SJ Berwin
Working Party Co-ordinator
11 December 2002
mark.brumwell@sjberwin.com

STOP PRESS!!

The UKELA Climate Change Working Group met at Baker & McKenzie's offices on Wednesday, 19 February 2003.

It was agreed at the meeting that the Working Group would form two sub-groups to review and provide comments on two recent initiatives concerning climate change issues, being:

1. The UK Government's approach to developing a National Allocation Plan according to the proposed EU Emissions Trading Directive. If you are interested in participating in this group please contact Anthony Hobley (anthony.hobley@Bakernet.com); and/or

2. the UK Government's Energy White Paper which is expected to be released in the next few weeks. If you are interested in contributing to this group please contact either Deborah Lloyd (deborah.lloyd@ashursts.com) or Chris Staples (chris.staples@allenovery.com).

The next meeting is expected to be held in April and you will be notified by email once a date has been set. It is hoped that we can arrange for someone from DEFRA to attend and talk about the new Waste and Emissions Trading Bill. We also hope to discuss in more detail the potential opportunities for the Climate Change Working Group to work with other working groups of UKELA, for example the Water Group.

CONFERENCE UPDATE

Organisation of this year's Annual Conference is progressing well. The Conference will take place at the University of Plymouth between Friday 27 and Sunday 29 June. The overall theme of the Conference is the link between science, the law and the environment. Sessions include:

1. A panel debate on GMOs chaired by Professor Malcolm Grant
2. Climate Change
3. Energies for the Future
4. Biodiversity; and
5. The Human Factor.

The Conference Dinner will be held at the Eden Project. In addition to the "right to roam" through both biomes prior to dinner, drink in hand to the sound of live music, the Eden Project has kindly agreed to re-open the humid biome after dinner, ground lit only, to enable delegates to experience the sights, sounds and smells of this biome at night.

The Conference has obtained grant funding from the County Environmental Trust, subject to ENTRUST approval, to be "rubbish aware" and another sponsorship proposal has been received to enable the Conference to be carbon neutral.

Details of speakers will appear on the Conference web page (at www.ukela.org) very shortly. In the meantime, queries can be sent to ukelaconference@plymouth.ac.uk.

JOBS

Certa (UK) Limited

Senior Solicitor - City EC3

Certa (UK) Ltd is a young, dynamic, fast growing company involved in all aspects of brownfield land and environmental risk. We are a multi-disciplinary professional team of technical, legal, insurance and business development staff and work with many UK and International blue chip clients.

We are seeking a **Senior Solicitor**. The individual will be 3-7 years qualified or equivalent with experience of advising clients (developers, landowners, lenders etc.) on contract, corporate and property matters relating to brownfield sites. The role will involve work on a range of brownfield projects within Certa's Brownfield Consulting, Insurance Services, Land Investment and Conference business divisions. You will be involved with environmental, commercial and insurance law, drafting, corporate and property transactions and particularly working with the legal community in the City.

The successful candidate will also need to be able to demonstrate their ability to create business opportunities from both professional and corporate networks. The candidate must have good presentational skills and be able to present to clients at a senior level.

There is an attractive salary and benefit package.

Please write to Stephen Sykes, Legal Director & Solicitor, Certa (UK) Limited outlining your background, interests and including a CV and details of your current salary package.

Certa (UK) Limited
America House
2 America Square
London EC3N 2LU
Email: info@certa.com
Website: www.certa.com

0 - 5 YEARS PQE ENVIRONMENTAL LAWYER
PLANNING AND ENVIRONMENT GROUP

SJ Berwin is a European partnership with the vision and culture to continue to be a market leader in our chosen practice areas - corporate finance, property and EU/Competition. The firm is modern, forward-looking, and problem-solving in its approach and we aim to employ a commercial cutting edge which enables us to contribute to our clients' growth and success.

The Planning and Environment Group, which consists of three partners, five assistants and one trainee, offers an exciting and challenging environment with great opportunities for the right candidate. The group, which is based in our London office, acts for its own stand alone clients as well as supporting clients in other practice areas.

Our core environmental work centres on issues arising in a wide range of company, commercial and property transactions and on redevelopment proposals. Our thriving stand-alone environmental practise encompasses environmental infrastructure projects, contaminated land and regulatory advice for a variety of industry areas.

The successful candidate needs to be able to apply intellectual flair, to have proven solid drafting skills and to adopt a highly commercial approach to this wide range of work. Candidates will also need to be able to demonstrate an ability to add value to the matters on which they advise. The successful candidate will work closely with other teams within the Property Division and with the Corporate Finance, Banking and EU/Competition departments.

We are looking for maturity, motivation and above all, enthusiasm, with a commitment to developing the practice. In terms of legal experience, we are looking, ideally, for lawyers who are UK qualified and have a strong understanding of a full range of environmental issues. Experience in planning and compulsory purchase would be an added advantage.

If you are interested in applying for this position, please send your cv and a covering letter to Charlotte Bishop, Head of Legal Recruitment, SJ Berwin, 222 Grays Inn Road, LONDON WC1X 8XF. Alternatively, you can email her on charlotte.bishop@sjberwin.com. If you would like to discuss this opportunity in confidence by phone, she can be contacted on 020 7533 2341.

BOOK REVIEWS

Wild Law is published by Siber Ink, Capetown, South Africa (www.siberink.co.za) and distributed in the UK by

Global Book Marketing, 38 King Street, London WC2E 8JT Tel: +44 (0)20 7836 3020, Fax (0)20 7497 0309
Price £17.95 including p&p

Wild Law is an unusual book in that it is not a law textbook in the traditional sense but more a commentary on the ineffectiveness of our current thinking on world governance (and its supporting legal structure) as it relates to the protection of the Earth and its species. It is an extremely readable account of the author's own disillusionment with our current anthropocentric approach to environmental protection and his ideas on the radical solutions required. It is a fascinating blend of law and philosophy with elements of social and ecological science and should be read by all those environmental lawyers (and a much wider readership) concerned at the extent to which present day governance and regulation encourages the (possibly terminal) exploitation of the planet and its resources.

At the heart of this small book lies the belief that we need to introduce a radically different philosophy of law, an 'Earth Jurisprudence' , which itself will stem from, and support, the new cosmology or world view which holds that unless there is a dramatic shift in human consciousness our world will face certain extinction at our own hands. The title of the book, 'Wild Law' is somewhat enigmatic but it encapsulates the need to depart from the rigid tenets of traditional jurisprudence and embark on a journey into the 'wilderness' of a profoundly different basis for legal thought on human governance.

In the space of 15 chapters and nearly 250 pages, 'Wild Law' develops its thesis along the following lines:

Humans are an integral part of the Earth system – this has always been the case but these connections to natural systems outwith our rigid 'homosphere' (as the author describes it) have been almost entirely forgotten. This means that humans and our social systems are inseparably fused with the larger Earth Community which consists of the planet and all other species and ecosystems. Our systems of governance must equate with this wider context to ensure that the blinkered pursuit of human wellbeing is not at the expense of the integrity of the Earth which determines both that wellbeing and our fulfilment in life. Human governance systems need to reflect Earth Jurisprudence and this will be achieved by establishing (as the author says) "laws that are 'wild' at heart in the sense that they foster, rather than stifle, creativity and the human connection to nature". In order to give effect to such 'wild' laws, social conventions will have to be developed that properly respect Earth.

One is conscious while reading 'Wild law' of some frustration at not being offered any clear cut recommendations as to how these monumental changes are to be achieved within the framework of law as we know it but, given the radical approaches proposed, this is perhaps not surprising. There is no suggestion that there should be wholesale abandonment of current systems- rather a gradual introduction, where gaps in existing legislation allows, of law supporting this new world view. More concentration on seeing other living species as 'subjects' and not 'objects' of man's domination is one approach; another is to learn all we can from the experience and wisdom of indigenous peoples many of whom in their forms of governance still

Cormac Cullinan admits that 'Wild Law' may be read with incredulity by readers accustomed to the traditional approaches to legal philosophy. It does however contain some very important messages.

For those who have long suspected that merely signing more international agreements and tinkering with the laws that we have is not the long term solution to the environmental exploitation of our world, the author in writing 'Wild Law' has taken the courage to 'start the batting' on a subject of, literally, world importance.

UKELA LONDON MEETING

Oil Pollution from Ships

25th March 2003

You are invited to attend a UKELA Meeting to be held at the offices of Allen & Overy, One New Change, London EC4M 9QQ on Tuesday 25th March, 2003 at 5:30 p.m. for 6:00 p.m.

This seminar will examine the following:

An introduction to liability for marine oil pollution including discussing how the international liability and compensation regime for oil pollution covers environmental damage other than property/commercial damage and how this compares with the regime under the proposed EU Environmental Liability Directive.

An analysis of coastal state measures aimed at reducing the risk of oil pollution from vessels with reference to the PRESTIGE.

Case studies showing how the UK P&I Club responds to oil pollution incidents.

Speakers

Daniel Owen, Fenners Chambers, Cambridge
Sian Pullen, WWF International
Rod Lingard, UK P&I Club
Chair: Clare Coleman, UKELA Council Member

Conditions

Price UKELA Members £10.00
Non-Members £20.00

Cheques payable to UKELA
CPD points and Bar Practice points available.
Seating capacity is 70. Places issues on "first come, first served" basis

E - LAW

The editorial team want letters, news and views from you for the next edition due to go out in April 2003.
All e-law contributions, be they letters, articles, book reviews, case reports etc should be dispatched to Catherine Davey as soon as possible by email at:

catherine.davey@stevens- bolton.co.uk

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

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

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