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UKELA's future direction

UKELA's Council is drawing up a strategic plan for the organisation – which should enable it to expand and provide a better service to members.

UKELA is highly respected as an authoritative source of expertise on environmental law but it could be doing much more.

Members probably don't need reminding of UKELA's charitable purpose, which is: "to promote the enhancement and conservation of the environment in the UK and to advance the education of the public in all matters relating to the development, teaching, application and practice of law relating to the environment".

However it has been criticised – including by some of its own members – for not doing all that it should to take that purpose forward or to provide a public benefit.

Vicki Elcoate, UKELA's Executive Officer, has carried out an opinion survey of the members of UKELA's Council and some key external partners.

The clear view was that UKELA's achievements included:

- Providing a valuable network and information exchange for its members
- Helping to influence legislation (although not as much as possible)
- Holding successful events, including working party meetings and the conference
-

The vision for the future of the organisation included:

- UKELA being seen as THE organisation to approach for an expert view on matters of environmental law and therefore being more influential
- A move from being an Environmental LAWYERS' Association to an Environmental LAW Association

- A more coherent approach and voice coming from the regional groups and working parties within a framework of better quality control to maintain the organisation's credibility and value to members
- A more diverse and broader membership with a better service being provided to members

Many ideas came through on how UKELA could achieve some of this. For example:

- Working to influence the implementation of the Aarhus Convention over the next two years, linked to a programme of helping provide better access to the public on environmental law information (eg via the web-site, publications, events)
- Providing training for members, to ensure professional skills and knowledge remain "state of the art"
- A scheme for promoting best practice in environmental law
- Selecting key issues of importance and devoting resources to influencing them
- Strengthening the regional structure to get away from a perception of UKELA as a "London-centric" organisation
- A membership drive to build support and raise funds to help the organisation to develop sustainably.

At its next meeting UKELA's council will discuss these ideas and identify the priorities for action. It will also develop a short "strapline" to sum up the organisation's ethos and aims. Smaller groups will then go on to develop a business plan, setting out how the aims will be achieved, and to look at specific issues like UKELA's communications with its members and externally.

The chairman, Andrew Wiseman and the vice chairman, Stephen Sykes, are keen to seek the views of the membership on the key issues. Do let them know what you think.

If you do have any views please email them to Andrew Wiseman: awiseman@towers.com.

UKELA depends on the enthusiasm and involvement of its membership for its success and its potential is enormous. Only ten years ago the Association of

Personal Injury Lawyers had one member of staff and 800 members – now it has 30 staff and over 5,000 members and is seen as the leader in its field. The potential for growth may be smaller, but there is a long way to go, which is an exciting position for any organisation to be in.

Vicki Elcoate
UKELA Executive Officer

Facing the future; listening to the past: an editor's view

*Luke Bennett*¹

Introduction

*"Those who cannot remember the past are condemned to repeat it"*²

The programme for the 2002 United Kingdom Environmental Law Association was conceived one rainy morning early in October 2001. The world shattering events of September 11th were still fresh in everyone's minds as was the summer long UK Foot & Mouth outbreak. From across the Atlantic the first rumbles of corporate governance failings like Enron were starting to reach these shores. The "dot.com" bubble was bursting and confidence in the inevitability of a painless transformation to a bright and shiny post-industrial hi-tech economy looking increasingly suspect.

The world felt an increasingly uncertain place and the inherent vulnerability of the world system to human and natural disruption was all too evident.

Following these events the responsible agencies sought to take stock – the aim being to learn the lessons from the events as a guide to getting back on track in the search for a sustainable future.

Against this background it seemed appropriate for the UKELA Conference to also focus upon how understanding the past has an important role in shaping the way in which the future is engaged.

Accordingly the Conference programme was devised to examine the following topics under the encompassing theme of "Facing the future; listening to the past":

¹ 2002 UKELA Conference Organiser and Senior Solicitor, Nabarro Nathanson

² George Santayana "Reason in Common Sense" (1905-06), Chapter 12 (via The Columbia World of Quotations (1996) University of Columbia)

- 1) the role of environmental protest and the limits which the law sets to protest
- 2) business sustainability, corporate governance, environmental management and the link to disaster management
- 3) urban regeneration and the legacy of the past
- 4) the aftermath of the UK foot & mouth crisis
- 5) what lies ahead for environmental law on the EU and International horizon

*"The environment is everything that isn't me"*³

It has become increasingly evident that environmental law and policy is not a topic area that can be engaged in isolation from the social, economic or political world.

This orthodoxy is now reflected in the majority of definitions of Sustainable Development –

*"development that meets the needs of the present without compromising the ability of future generations to meet their own needs"*⁴

Environmental protection is only one aspect of (human) need and must be weighed against all other considerations that comprise "quality of life" (the UK Government's definition of Sustainable Development⁵ ranks environmental protection along side social progress to recognise all needs; prudent use of natural resources and the maintenance of high and stable levels of economic growth and employment).

Therefore to explore its theme the 2002 Conference necessarily stepped away from a focus on core environmental law and into the arenas of corporate governance, emergency planning and property development and countryside policy.

I am very grateful to the time and effort which the speakers and respective chairpersons of the various sessions gave to the conference. By the date of the conference (June 2002) a certain degree of "business as usual" had returned to the world. I make this point to emphasise that the doom laden point of origin that had inspired the original conference was not necessary to the fore in the minds of the speakers (or the delegates) and they would not necessarily recognise their contributions as part of an assessment of where the world found itself at the end of 2001.

³ Albert Einstein quoted in "Environmental Law" Stuart Bell & Donald McGillivray (2000) Blackstone Press

⁴ 1987 United Nations definition of Sustainable Development

⁵ The UK's Sustainable Development Strategy: A Better Quality of Life" (May 1999)

Accordingly what follows is what I, with my mind on the origin point for the conference programme, took from the various papers. Readers are free to devise their own connecting threads or read them as self contained commentary, confined to their stated subject matter as they wish.

Environmental protest

Two events emphasised the need for the conference to include a session on "The limits to environmental protest".

In July 2001 the heads of the world's richest nations met in Genoa for the G8 summit – the event was marred by bloody clashes between Italian police and anti-globalisation protestors leaving one dead and 500 injured⁶. Following on from previous clashes in Seattle and at other anti-globalisation demonstrations world leaders decided that in future such summits would be held away from public reach. The June 2002 G8 summit was held in Kananaskis, a remote Alberta mountain resort viewed by the host Canadian Government as easier to defend than the major urban centres of previous summits. Paradoxically the violence had caused the politicians to retreat to a less democratically accessible theatre for future decision making.

The Genoa summit and its aftermath raised the significance of direct action protest (viewed by many participants as "environmental" in nature) as a key factor in environmental discourse – and one with considerable economic power⁷

This power⁸ – and its potential to inflict near-fatal death blows upon target businesses - had been emphasised by the campaign against UK medical research company Huntingdon Life Sciences. After a concerted protest campaign against that company (and its vivisection based research) the UK Government was forced to step in as "banker of the last resort" after commercial banks balked to activist pressure and refused to provide banking facilities for the company. In order to enable the company to survive the UK Department of Trade & Industry reportedly permitted the company to use its account at the Bank of England.

⁶ See "Riots force review of summits" The Guardian, 23 July 2001

⁷ For an expression of the UK Government's frustration to the "anti-Globalisation" movement see Peter Hain MP, Minister for Europe's rebuke "Why the left should stop whining" The Observer, 20 January 2002

⁸ See "How to handle the new breed of activists" The Observer 4 February 2001

Meanwhile the company de-listed from the London Stock Exchange and sought capital in North America to enable it to keep trading.⁹

The Huntingdon Life Sciences protests had also featured acts of violence and intimidation and the campaign was cited¹⁰ as justification for the introduction of new criminal offences aimed at curbing harassment of persons such as senior executives of controversial companies¹¹. Concern has also been expressed by environmental campaigners that the new definition of “terrorism” introduced by the Terrorism Act 2000 now extends the force of anti-terrorism legislation to aspects of environmental protest¹².

The Conference sought to give voice to the variety of perspectives upon the question of the role and regulation of environmental protest by hosting a panel debate. Through drawing together a panel of speakers comprising an environmental campaigner, an industrialist, an environmental lawyer, an academic observer and a mediator it became clear that it was common ground that the majority of environmental protest is non-violent and represents a genuine engagement with environmental issues which is healthy for a democracy. However each speaker's perspective (encapsulated in the papers set out in Chapter 2) illustrated the diversity of the issues which needed to be taken into account, and somehow reconciled.

Business sustainability

By the time of the conference in June 2002 the issue of corporate sustainability had come into even greater prominence. Following the Enron¹³ collapse its auditors Arthur Anderson¹⁴ – one to the “big five” global accountancy firms – found itself the subject of prosecution and a fight for financial survival. In turn other seemingly inviolable mega-corporations then

⁹ See “Bank staff fear protests after Huntingdon move” The Guardian, 3 July 2001

¹⁰ See for examples comments made by Helen Brinton M.P. and other members of the House of Commons Standing Committee F during their 12th sitting to scrutinise the draft Bill 6 March 2001 (pm):: <http://www.publications.parliament.uk/pa/cm200001/cmstand/f/st010306/pm/10306s05.htm>

¹¹ See sections 42 to 45 of the Criminal Justice Act 2001.

¹² See environmental campaigner George Monbiot's assessment “Wearing a T shirt makes you a terrorist”, The Guardian 22 February 2001.

¹³ See “The end of a corporate titan”, Guardian Unlimited Special Report, 28 August 2002 (www.guardian.co.uk)

¹⁴ See “Evidence grows of Enron cover-up” The Guardian 15 January 2002

announced major problems stemming from the over statement of their assets and/or profits – for example Zerox and Worldcom¹⁵. Closer to home October 2001 had seen Railtrack Plc placed into administration by the UK Government following the massive track repair programme in the wake of the October 2000 derailment at Hatfield had shattered its ability to continue trading.¹⁶

Calls for improved standards of corporate governance had been increasing during the 1990s but it was the impact of these “true-life” examples of corporate collapse that emphasised to financial institutions and their regulators around the world the need to meaningfully (and promptly) institute effective and transparent risk management controls: the sustainability of modern capitalism depended on it.

In August 2002¹⁷ the US Securities and Exchange Commission required 942 of the largest US publicly traded corporations to certify the accuracy of financial reports filed in the last year as a measure aimed at restoring confidence in US businesses. To help focus the minds of senior executives the SEC's revised rules required the financial certificates to be personally signed by the Chief Executive and Chief Financial Officer of each corporation.

The focus upon corporate governance (and the consequences of paying insufficient attention to it) was not new to the UK. A series of domestic scandals such as the collapse of Barings Bank and BCCI¹⁸ had already stirred the London Stock Exchange to require Public Companies to annually certify that they have an adequate internal control system aimed at ensuring business sustainability. The London Stock Exchange's corporate governance guidance for listed companies¹⁹ emphasised the need for an internal control system to:

“...provide reasonable...assurance that [the company] will not be hindered in achieving its business objectives, or in the orderly and legitimate conduct of its

¹⁵ See “Battling corporate sleaze – US corruption gets worse and worse”, The Guardian 12 August 2002

¹⁶ See Christian Wolmar ‘Broken Rails: How Privatisation Wrecked Britain's Railways’ (2001) Aurum Press

¹⁷ See “US firms fail credibility test” The Guardian 15 August 2002

¹⁸ See “Corporate Governance – Futile or Effective – 400 years of financial scandals “Nabarro Nathanson, October 2002 (available at www.nabarro.com/publications) for information on these and other financial scandals

¹⁹ The Turnbull Report (1999) (The Institute of Chartered Accountant's Guidance for Directors on the internal control requirements of the London Stock Exchange's 1998 Combined Code: Principles of Good Governance and Code of Best Practice)

business, by circumstances which may reasonably be foreseen”

Whilst environmental risk management was not expressly referred to it was clear that the identification and management of strategic environmental risks (e.g. asbestos exposure liabilities; contaminated land clean up) was a key issue.

As businesses on both sides of the Atlantic struggle to adjust to the new regulatory climate the focus will very much be upon requiring businesses to show that they are actively managing all forms of business risk: and environmental, health and safety management will be viewed as an increasingly important signifier of a holistic approach to strategic risk management.²⁰

Keith Sexton's paper (Chapter 4) reviews the rise of the Corporate Governance concept and its implications for the management of health, safety & environmental (“HSE”) risks. As a senior manager (and ex-regulator) involved in advocating effective HSE systems and accountabilities at board level Keith's paper gives valuable practical insight into how such issues resonate within boardrooms today.

Simon Boyle's paper (Chapter 5) considers the in-house environmental lawyer's role by outlining how he founded and developed an Energy & Environmental Advisory Unit within the Marconi group of companies (formerly GEC). By unfortunate co-incidence by the time of the conference Marconi had found itself to be a victim of the “dot.com” bubble bursting. From an all-time high of £12.50p in August 2000 the company's share price had fallen to 2p by August 2002 causing the loss of around £35 Billion in equity value. In August 2002 Marconi concluded a restructuring deal with its bankers that saw its shareholders surrendering all but 0.5% of their shares in the company²¹.

Tom Picton Phillipps paper (Chapter 6) gives a valuable insight into how UK Government planning and preparation for dealing with future civil emergencies is developing, emphasising how the reappraisal of the old Cold War “civil defence” system was triggered by the 2000 fuel protest²² (during which national motor fuel supply deliveries were severely restricted by protest

²⁰ For a discussion of the link between corporate governance and environmental management see: “Corporate Governance and Risk Management” Anna Marshall and Luke Bennett, April 2002 (available at www.nabarro.com/publications).

²¹ See “Stop bleating about the Marconi bust” The Guardian, 31 August 2002

²² See “Fuel starts to flow as British and Belgian protesters end blockades” The Independent 15 September 2000

blockades) and accelerated by the “lessons learned” in responding to the Foot & Mouth crisis of 2001. Tom's paper also emphasises the culture gap between private business and those in the emergency services who will take control during an emergency. Since the 2002 conference civil contingency planning has become an increasingly ‘high profile’ political issue and a Civil Contingencies Bill is to be presented in the 2002/03 Parliamentary session to update civil protection for the 21st century.²³

Urban regeneration

The 2002 UKELA Conference was held in Sheffield, England's fourth largest city and a world famous centre for steel and related metallurgy. However Sheffield is also a city which has had to fight hard to escape from the mass unemployment and attendant industrial dereliction that flowed from the restructuring of the city's steel industry in the 1980s. Sheffield remains a city built on steel (indeed more steel is produced now than at any time in the past) but is also striving to diversify into aspects of the “new economy”. Accordingly Sheffield was an ideal venue to host a session to consider the relationship between urban regeneration and its impact on the environment²⁴.

Paul Beckwith's paper (Chapter 7) provides an insight into how new uses can be found for the infrastructure of an age now gone. For many decades the UK canal system lay idle, hidden away (literally) as unattractive backwaters. However canals and the warehouse and other buildings associated with them can be returned to a new life – by finding new uses for them and encouraging these areas to be integrated into urban developments.

Paul's paper also comments upon the ways in which existing legislation about environmental protection (particularly the complex mix of law and policy relating to the clean up of contaminated land) sometimes facilitates (but sometimes hampers) the redevelopment of such sites.²⁵

²³ See the UK Cabinet Office's Civil Contingencies Secretariat website: www.ukresilience.info/home

²⁴ A practical illustration of the public / private sector collaboration for the re-development of Sheffield city centre was presented at the conference by Alison Nimmo, Chief Executive of Sheffield One – the city's Urban Regeneration Company (see: www.sheffield1.com).

²⁵ See the October 2002 report of the Urban Task Group's Remediation Permit Working Group: “The Remediation Permit: Towards a Single Regeneration Licence” available at www.claire.co.uk

From an economic and social perspective the value of urban regeneration is rarely questioned and frequently urban regeneration is seen as, by definition, an unquestioned “good”. However Charles Pugh’s paper (Chapter 8) seeks to explore the “downside” – the extent to which urban regeneration may be environmentally damaging (and therefore not always desirable). In particular Charles’ paper looks at the current vogue towards encouraging the greater utilisation of town and city centres and the creation of “the 24 hour city”. This commonly involves the proliferation of a heterogeneous mix of development (new leisure and residential uses sharing space with existing industrial and commercial under-occupancies) and the potential for noise, light and other nuisance due to the ensuing conflict of sensibilities regarding the locality. Charles’ paper draws from Nineteenth Century case law to suggest that the requisite elements exist for rights of redress against those who seek to make the 24 Hour City noisier and unruly.

Foot & Mouth

On 19 February 2001 a suspected case of Foot & Mouth disease was detected at an Essex abattoir. By September 2001 at least four million sheep, cattle, pigs had been slaughtered either because they were infected or as part of attendant precautionary or animal welfare measures²⁶.

The outbreak came as a heavy blow to an industry still reeling from the BSE crisis²⁷ and struggling to reassure consumers that food could and should be taken at face value (genetic modification notwithstanding).

In the aftermath of the outbreak the UK Government announced that the following inquiries would be held²⁸:

- Policy commission on the future of farming & food (chaired by Sir Don Curry)²⁹
- Royal Society scientific inquiry into infectious diseases in livestock (chaired by Sir Brian Follett)³⁰

²⁶ page 174 of “Foot & Mouth Diseases 2001: Lessons to be learned Inquiry Report” (July 2002). The actual total is disputed. Page 1 of Stephen Troman’s paper estimates that the total may have been in the region of 11 Million.

²⁷ Bovine Spongiform Encephalopathy. See <http://www.bse.org.uk> for the 16 Volume report of the BSE Inquiry which reported in October 2000;

²⁸ See 9 August 2001 No10 News release: <http://www.number-10.gov.uk/output/page3317.asp> and the respective terms of reference: <http://www.number-10.gov.uk/output/page316.asp>

²⁹ The Commission published its report on 29 January 2002. See: <http://www.cabinet-office.gov.uk/farming/>

- Inquiry into the lessons to be learned from the 2001 Foot & Mouth disease outbreak (chaired by Dr Iain Anderson)³¹

As an interim measure Sir Christopher Haskins was asked³² to report urgently to the Prime Minister upon “Rural Recovery after Foot and Mouth” and delivered his report in October 2001³³.

The need to draw closer the link between agriculture, food and environmental protection was taken up by the Government in the form of the creation of a new integrated ministry to pull these themes together: the Department for Environment, Food & Rural Affairs under its new Secretary of State, Margaret Beckett³⁴.

In his paper (Chapter 9) Michael Seals, Chairman of the National Farmers’ Union’s Food Standards Committee sets out the NFU’s perspective upon the raft of new policy initiatives now facing the agriculture industry to deliver sustainable food and farming³⁵.

Stephen Troman’s paper (Chapter 10) sets out a detailed analysis of the legislation utilised by the UK Government in its response to the crisis and comments upon the challenges to the use of the claimed powers. It also surveys the approach of the courts to matters related to the management of the disease outbreak.

Despite calls for one from some quarters there was no national public inquiry into the 2001 outbreak – however a number of the county councils whose areas were worst affected held their own ad hoc “inquiries”³⁶. In addition various agencies such as the Environment Agency³⁷, the Countryside Agency³⁸, English Nature³⁹

³⁰ The Royal Society published its report on 16 July 2002.

See: <http://www.royalsoc.ac.uk/inquiry/index.html>

³¹ The Inquiry published its report on 22 July 2002

<http://www.fmd-lessonslearned.org.uk/>

³² See No10 News release: <http://www.number-10.gov.uk/output/page3299.asp>

³³ See report at:

<http://defra.gov.uk/footandmouth/rural/taskforce/haskins.pdf>

³⁴ See DEFRA News Release 8/01, 14 June 2001

³⁵ See DEFRA News Release 117/02 of 26 March 2002 and DEFRA’s Sustainable Farming & Food website:

<http://www.defra.gov.uk/farm/sustain/default.htm>

³⁶ See for example the Devon County Council Inquiry chaired by Professor Ian Mercer:

<http://www.devon.gov.uk/fminquiry/incamera.shtml>

³⁷ “The environmental impact of foot & mouth disease: an interim assessment (December 2001)” published 27 February 2002: <http://www.environment-agency.gov.uk/news/264281>

and the English Tourism Council⁴⁰ all produced assessments of the impact of the outbreak from their own perspectives.

What lies ahead ?

In July 2000 the European Court of Justice⁴¹ imposed a daily fine of 20,000 Euros upon Greece for its failure to adequately implement the EU Waste Framework Directive's⁴² requirement that all waste disposal facilities must be properly regulated. The proceedings concerned Greece's failure to take effective steps to comply with an earlier judgement of the European Court of Justice that had held that Greece was in breach of the Directive in allowing the tip major municipal waste site at Kourouptos, Crete to operate during the 1980s⁴³. The Commission brought the further enforcement proceedings in response to Greece's continued failure to resolve the non-compliance which this site represented.

The fine emphasised to Member States that EU environmental directives bring "real" obligations and that penal action may follow inadequate compliance.

In the aftermath the UK Government came to look more closely at its own state of compliance. One of the first issues that this identified was the UK's failure to ensure adequate facilities for the de-gassing of refrigeration equipment to remove ozone depleting substances⁴⁴ from insulating fluids and foams prior to their disposal as required by an EU Regulation⁴⁵. From October 2001, the deadline for implementation, a UK "fridge mountain" grew as the Government sought to procure infrastructure to ensure that this equipment could be degassed prior to disposal. Bizarrely (given

the rather esoteric subject matter) this failing received a higher profile in the Press and Parliament than might perhaps have been expected. An investigation by the House of Commons Environment Committee criticised the UK Government for its failure to foresee and plan for the full impact of this EU measure⁴⁶. The signal was clearly sent that the UK Government (and its agencies) must be alert to environmental developments from all directions.

Neil Emmott (the Environment Agency's EU and International Relations Manager) sets out in his paper (Chapter 11) how the Agency views the horizon. There are many changes ahead – which will add to the complexity and diversity of EU environmental law.

Anthony Hopley's paper (Chapter 12) looks at how the international initiatives aimed at addressing the sources of global climate change now fair in the aftermath of President Bush's announcement in March 2001⁴⁷ that the United States would not ratify the Kyoto Protocol⁴⁸ to the UN Framework Convention on Climate Change⁴⁹. Anthony's paper emphasises the diversity of legislative and policy measures being brought forward to tackle global warming and the importance of taking into account in strategic planning the inevitability of a "carbon constrained future".

In November 2001 Margaret Beckett held a "Waste Summit"⁵⁰ calling together key stakeholders to revitalise waste policy only two and a half years after the same Government had published its 200 page revised waste strategy⁵¹. The summit was billed as a wake up call – that the UK must take action to ensure that it will be able to meet its commitments under EU waste legislation to reduce dependence upon landfill and increase recycling (particularly of packaging waste). Greece's fine cannot have been far from the Ministers' minds. The UK has a (waste) mountain to climb if it is to achieve compliance with the standards set. Matthew Townsend's paper (Chapter 13) outlines the challenges set by EU Waste Law for the UK. A

³⁸ "Foot & mouth disease: the state of the countryside report" (August 2001):

<http://www.countryside.gov.uk/stateofthecountryside/>

³⁹ "Research Report 430: Interim assessment of the effects of the foot & mouth disease outbreak on English biodiversity" published 21 September 2001:

<http://www.english-nature.org.uk/news/story.asp?ID=307>

⁴⁰ See News ETCetera issue 10 (June 2001) Special report on Foot & Mouth and the English tourism industry:

<http://www.english-tourism.org.uk/default.asp?ID=S217L0P59811942>

⁴¹ Judgement of the ECJ dated 4 July 2000 in Case C-387/97 Commission-v-Greece (2000) ECR I-05047

⁴² Directive 75/442/EEC

⁴³ Judgement of the ECJ dated 7 April 1992 in Case C-45/91 Commission-v-Greece (1992) ECR I-2509

⁴⁴ Principally Chlorofluorocarbons (CFCs) and Hydrochlorofluorocarbons (HCFCs)

⁴⁵ Regulation (EC) No. 2037/2000 on substances that deplete the ozone layer

⁴⁶ House of Commons Select Committee for Environment, Food and Rural Affairs, 4th Report (2001/02 Session) HC673 available at:

<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmenvfru/673/67302.htm>

⁴⁷ See "George W. Bush, polluter of the free world", The Independent, 31 March 2001

⁴⁸ Available at:

<http://unfccc.int/resource/docs/convkp/kpeng.pdf>

⁴⁹ Available at: <http://unfccc.int/resource/conv/index.html>

⁵⁰ See DEFRA News Release 253/01 (21 November 2001)

⁵¹ Waste Strategy 2000 for England & Wales available at:

<http://www.defra.gov.uk/environment/waste/strategy/cm4693/index.htm>

culture change in public attitudes towards waste and multi-million pound investment in new waste management infrastructure will be required to deliver the requisite compliance statistics⁵². Failure will lead the UK Government exposed to a fine (which, as with Greece, could be imposed as a daily default fine – and amount payable every day until compliance is rendered).⁵³

Conclusion

This publication represents a snapshot in time, testimony to a moment where there was a heightened sense that things would never be quite the same again. The papers describe a turning point for varied environment related policy areas such as agriculture, emergency planning, corporate governance, urban regeneration and waste management.

The papers remain largely in the form and content presented at the conference in June 2002. As editor, I have noted selected subsequent developments in this paper and have added footnotes of interest to the speaker's papers.

It is hoped that this collection of papers can also in their own small way help inform preparations for a safe, secure and sustainable future by their reflections on the unsettling events of Summer / Autumn 2001.

Recent environmental law cases

Martha Grekos, pupil Barrister, 4 Paper Buildings, chambers Jean Ritchie QC

Bellway Urban Renewal Southern v Gillespie: [2003] EWCA Civ 400 - Court of Appeal (Civil Division) - Pill LJ, Laws LJ, Arden LJ - 27.03.03

Bellway applied for planning permission for redevelopment of a site in Stepney. The 3.5 hectare site contained four gasholders and had been extensively contaminated as a result of its former use. The planning application was supported by reports from specialist environmental consultants outlining a remediation strategy for the contaminated land. After a public inquiry, the inspector found that factors in favour of the development were the opportunity to build houses on a brown-field site and the fact that

contaminated land would be re-mediated and brought back into use. However, he recommended refusal because the gasholders were of national archaeological significance and their preservation was the policy of the Government and the unitary development plan. The Secretary of State disagreed with the inspector and granted permission on the basis that the need for the proposed development outweighed the presumption in favour of preservation of the archaeological remains and the conflict with the unitary development plan. The Secretary of State concluded that the development as an urban development project would not be likely to have significant effects on the environment by virtue of its nature, size and location within Regulations 2 and 4 of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, implementing Council Directive 85/337, so that an EIA was not required. The remediation work required could be dealt with by condition and condition VI set out the procedure to be followed by the developer and did not indicate the likelihood of significant effects on the environment. Richards J quashed the permission on the basis that the Secretary of State erred in taking the remediation measures into account in deciding whether the development was likely to give rise to significant environmental effects. Bellway appealed.

The appeal was dismissed. The Secretary of State had to make a practical judgment as to whether the project would be likely to have significant effects on the environment by virtue of its nature, size or location. The extent to which remedial measures were required to avoid significant effects on the environment, and the nature and complexity of such measures, would vary enormously but the Secretary of State was not as a matter of law required to ignore proposals for remedial measures included in the proposals before him when making his screening decision. In some cases, the remedial measures would be modest in scope or so plainly and easily achievable that the Secretary of State could properly hold that the development project would not be likely to have significant effects on the environment even though, in the absence of the proposed remedial measures, it would be likely to have such effects. In other cases, the complexity of the proposals and uncertainties inherent in them would mean that a decision that the project was unlikely to have significant effects on the environment could not properly be reached. Devising a condition which was capable of bringing the development below the relevant threshold did not necessarily lead to the conclusion that an EIA was unnecessary. The Secretary of State could not assume that the investigations and works contemplated in condition VI would necessarily have a successful outcome and he therefore applied the wrong test.

⁵² Estimated at up to £180 Million per year: see "A family and its rubbish" *The Guardian* 28 December 2002.

⁵³ In November 2002 the UK Government's Strategy Unit issued its report "Waste not; want not: a strategy for tackling the waste problem in England". See www.strategy.gov.uk/2001/waste/summ.shtml

R (on the application of Kensall & ors) v Secretary of State for the Environment, Food and Rural Affairs [2003] EWHC 459 (Admin) – QBD (Administrative Court) – Stanley Burton J – 13.03.03

The claimants were all former mink fur farmers who had carried on business in England before the Fur Farming Prohibition Act 2000 came into force on 1 January 2003. The Act made the business of mink fur farming illegal and provided for the assessment and payment of compensation to the fur farmers. The Fur Farming (Compensation Scheme) (England) Order 2002 contained a scheme compensating them for the loss of their fur farming businesses. The claimants contended that the Secretary of State had acted unlawfully, in consulting persons other than those referred to in s 5(4) of the 2000 Act, as this was an exclusive class of consultees; that the Secretary of State had unlawfully taken into account the views of the anti-fur farming campaigners that no compensation should be paid to fur farmers; that the provisions of the scheme relating to compensation for the value of breeding stock were not rational or fair and were discriminatory by reason of i) the failure to compensate for the value of breeding males, ii) the failure to recognise the additional value of special breeds, and iii) the reduction in compensation according to the date of cessation of business. They were therefore unlawful at common law and in breach of Art 1 of the First Protocol of the ECHR; and that the reduction in compensation for the value of breeding stock according to the date of cessation of business in Schedule 3 to the 2002 Order was inconsistent with the legitimate expectation engendered by the Department's letter of 26 February 2001 and was on that account unfair and unlawful. The claimants sought an order quashing the Fur Farming (Compensation Scheme) (England) Order 2002.

The Court ruled that: (1) Section 5(4) of the 2000 Act was not expressly exclusive. The Secretary of State could consult anyone whom he considered might have something relevant and valuable to contribute to his decision. There was some dispute over whether the Secretary of State had disregarded the views of the anti-fur farming campaigners that there should be no compensation payable or had struck a balance between that view and an opposing view. In the circumstances, it was not necessary to determine this dispute; (2) The compensation scheme was defective and created anomalies. It was implicit in the duty imposed on, and the authority given to, the Secretary of State by section 5 of the 2000 Act that the compensation scheme should be fair and rational. The ECHR required that compensation should be reasonably related to the value of the property taken and sufficiently flexible to take account of substantially

different situations. The provisions of the 2002 Order as to compensation for the residual value of breeding stock failed on every count. They operated unfairly as between different farmers and they failed to take account of the different values of premium breeds and thus discriminated between farmers without justification. They produced arbitrary effects. Reasons had been put forward to justify provisions of the 2002 Order that did not bear scrutiny and were irrational. The consequences of the 2002 Order's defects were too great to be contained within a permissible margin for workability or approximation; and (3) The provisions of the 2002 Order relating to compensation for the residual value of breeding stock, viewed in isolation, did not comply with the requirements of the common law or those of the ECHR. The parties did not agree whether this finding should result in the quashing of the 2002 Order as a whole or only of those parts relating to that element of the compensation scheme.

Express Dairies Distribution v Environment Agency - Divisional Court - Hale LJ, Hallett J - 27.02.03

This was an appeal by way of case stated from the decision of Evesham Magistrates Court on 26 June 2002 to convict the appellant of causing pollutant matter to enter controlled waters, contrary to s.85(1) Water Resources Act 1991. A driver of the appellant had been driving a milk tanker on the M5 motorway. The tanker was properly maintained but a tyre blow out caused the spray suspension system to become detached which in turn hit the under-run protection barrier, which detached and sheared the delivery pipe causing an escape of milk. The driver pulled over onto the hard shoulder whereupon the milk entered controlled waters. The magistrates held that a defence under s.89(1)(a) of the Act that the cause of the entry of the pollutant was the driver pulling onto the hard shoulder for the purpose of avoiding danger to life or health could not apply as the real cause was the tyre blow out.

On appeal, the issue focused on whether the appellant had a defence to a charge of causing a pollutant to enter controlled waters on the basis that the entry had been caused in order to avoid danger to life or health within the meaning in s 89(1)(a) Water Resources Act 1991.

The appeal was allowed. There had been no break in the chain of causation. The context of the use of the word "extraordinary" in *Environment Agency v Empress Car Company* was that of the intervention of a third party or a natural event. There was no such context in the present case where everything that had happened flowed from the operation of the particular tanker in question on the particular road in question. The blow out was an ordinary event and everything else had

followed from that. However, the defence under s.89(1)(a) of the Act applied. The magistrates had assumed that the driver's act in pulling over had been to avoid danger to life and health, without finding so as a fact, but had focused on the cause of the entry as being the blow out. The court was however entitled to focus on the latter part of the chain of causation and the driver's decision to pull over to avoid danger to life or health. The conviction would be quashed unless; within 14 days the appellant decided that it wished the matter to be remitted to the Magistrates' Court to determine undecided issues of fact.

RJ Tilbury and Sons (Devon) Ltd T/A East Devon Shellfish v International Oil Pollution Compensation Fund 1971 & ors: [2003] EWCA Civ 65 - Court of Appeal (Civil Division) - Kennedy LJ, Chadwick LJ, Mance LJ - 07.02.03

The Sea Empress grounded at Milford Haven in 1996 leading to the escape of 72,000 tonnes of crude oil into the sea. The Secretary of State for Wales imposed a fishing ban in the affected area. The claimant had a whelk processing business at Exmouth, Devon where it processed Welsh whelks for Korean buyers. The claimant's case was that the fishing ban brought an immediate end to the catching of Welsh whelks and destroyed its business with the Korean buyers since it was unable to replace the supply of Welsh whelks. The claimant claimed for lost profits of over £600,000. The ship-owner's liability for any damage caused in the territory of the UK by contamination resulting from the discharge or escape of oil under section 153 of schedule 4 to the Merchant Shipping Act 1995 was limited under section 157 and the International Oil Pollution Compensation Fund 1971 was liable by virtue of section 175 for damage which exceeded the ship owner's limit. The claimant argued that its loss was caused by the contamination within s 153. David Steel J, applying *Landcatch Ltd v International Oil Pollution Compensation Fund*, held that the claimant's claim was excluded on the ground that it was indirect, relational economic loss which was too remote from the causal factor which made the causer liable. Such secondary or relational claims were generally excluded both at common law and under the statute. The claimant appealed.

The appeal was dismissed. The judge was right that the claim was for secondary economic loss which was outside the intended scope of section 153 which was closely focused on physical contamination and its consequences. *Landcatch* could not be distinguished on the facts. In construing the 1995 Act the court had to bear in mind that the relevant provisions were passed to give effect to the UK's obligations under international Conventions. It was the clear purpose of

the legislation to introduce liability independent of fault, to the exclusion of any common law claims in negligence. The common law rules relating to causation and remoteness in the tort of negligence, although of considerable relevance, could not be decisive. *Landcatch* rightly rejected a simple "but for" test of causation. The required causal link between contamination and loss was not to be considered in the abstract (*Fairchild v Glenhaven Funeral Services Ltd*). Although damage consisting of economic loss might be recoverable under the statute by persons such as fishermen accustomed to fish in the waters which became contaminated, *Landcatch* indicated that some claims for economic loss had to be excluded. In this case, as in *Landcatch*, the claimant failed to show a sufficiently close and direct relationship with the contamination to bring its claim within the section. The claimant was not engaged in any local activity in the physical area of the contamination.

Feakins v Secretary of State for Environment, Food and Rural Affairs: [2002] EWHC 2574 - QBD (Administrative Court) - Goldring J - 23.12.02

The claimant succeeded in a judicial review application against the defendant relating to a breach of section 34(2) of the Animal Health Act 1981. The defendant undertook to remove from the claimant's farm so far as was practicable all ash and burned or partially burned animal carcasses or part from pyres built for the purposes of destroying the carcasses of animals slaughtered by the defendant pursuant to the powers granted by s 31 of the Act during the foot and mouth epidemic. The defendant proposed to remove the waste directly to a landfill. The claimant brought an interim application contending that such removal would be unlawful. He contended that in the residue were the remains of cattle born before 1 August 1996. Such was the risk of the presence of infective protein which caused BSE that the law required the residue should first be incinerated. There was a risk of other cattle being infected by BSE. The claimant sought a mandatory order to compel the defendant to incinerate the ash. The declaration would be to the effect that to bury the residue would be unlawful. The claimant maintained that he was or would be at risk of prosecution under the Animal By-Products Order 1999 and at risk of civil liability. The claimant also maintained that he was seeking the declaration in the public interest.

Goldring J refused to grant the declaration as: (1) The claimant had no standing to bring the action. No interest of his was affected. He was at no risk of prosecution. Although the 1999 Order spoke of the duties upon any person who had had the residue in his possession, it could not have been Parliament's

intention to impose a duty of disposal on someone in the claimant's position by that subordinate legislation, when the primary legislation imposed the duty exclusively on the defendant. He was at no risk of civil liability and in the unlikely event he was sued he would be able to claim an indemnity from the defendant. To suggest that he was bringing the claim out of public interest was spurious. Nevertheless, the claim was to be considered on the merits because if what the defendant was proposing to do was unlawful it was in the public interest to say so; (2) Expert evidence indicated that what was being proposed by the defendant would reduce any risk of BSE activity to at least a negligible level and probably below; (3) Paragraph 5(2) of the Order was intended to apply to persons who had a high or low risk by-product in their possession or under their control. Paragraph 5(2) provided that the minister could serve a notice in respect of that by-product on the person in charge certifying that for the reasons specified in the notice the by-product could be burned or buried. It could not have been intended that the minister could serve such a notice on himself. It would be surprising, if by subsidiary legislation under which it was intended the minister should regulate the conduct of others, it was also intended that he should regulate his own conduct. It could not have been intended that paragraph 5(2) applied to the minister. It followed that paragraph 5(1) could not have been intended to apply to the minister either. It was not necessary to imply that it did; (4) The defendant was entitled to take advantage of the derogation in order to permit burial rather than incineration. The derogation was related to capacity of the processing plant. The capacity had to be construed reasonably and purposively. If an incinerator plant could not dispose of the high risk material within a reasonable time or without undue delay, but had to take it into storage for a long time and at high expense, it could not be said to have the capacity. The evidence was to the effect that the time to dispose of the ash would be between one-and-a-half years at a cost of £11m. Capacity on such time scales had not been contemplated by the derogation brought in to deal with the consequences of epizootic disease; (5) Assuming that the EU TSE Regulations applied, spread of BSE was to be prevented. The defendant's proposal was burial of the ash in approved licensed landfill sites. Expert evidence confirmed that such burial would reduce the already reduced risk. All risk of the transmission of BSE would for the purposes of the Regulation be precluded. (6) The EU TSE Regulations became binding in each Member State on their enactment. That included the derogation to allow burial instead of incineration. The TSE (England) Regulations 2002 provided for the administration and enforcement of the EU TSE Regulation. Provided in any given case

the acts justified the application of the derogation, the derogation applied.

Biotechnology Working Party

BWG is continuing with its educative function by undertaking its own strategic plan. This includes inviting experts to speak at meetings, organising seminars and conferences, and reporting to members on topical issues. BWG is keen to encourage more UKELA members to join the group.

Biotechnology is a wide, multi-disciplinary subject and one that also relates to topics covered by other UKELA working parties. The UKELA Biotechnology Working Group focuses on key areas as they relate to biotechnology, particularly genetically modified organisms, liability and insurance, public participation, waste, IPPC, contaminated land, health and safety, and European and International trade law issues. We are, however, open to new suggestions for topics to examine.

BWG is continuing with its educative function and it is undertaking a variety of tasks, which include inviting experts to speak at meetings, organising seminars and conferences, pro-actively reporting on topical issues and responding to key consultation papers. As a result of this activity, the BWG is keen to encourage more UKELA members to join the group. We would be extremely interested to hear from those who have experience/knowledge in this sphere and are prepared to become actively involved with the projects and initiatives the BWG are embarking upon.

Please feel free to contact the BWG convenors for further information:

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Daniel

Lawrence

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BWG will soon be releasing its plan of events and consultations for the year ahead.

UKELA Garner Lecture 2003

This year's UKELA Garner Lecture will be delivered by Dr Klaus Töpfer, Executive Director of the United Nations Environment Programme, at The Old Hall, Lincoln's Inn, London on 27 May 2003.

The title of Dr Töpfer's talk is "Let there be Light: Government in the Sunshine, Human Rights and Environmental Justice".

Contact Daniel Lawrence (tel: 020 7427 3917; email: daniel.lawrence@freshfields.com) for registration details

Fiona Reynolds CBE to present ELF's annual lecture

With the Government's planning reforms proceeding through Parliament at break-neck speed and the apparent lack of community involvement in those reforms, it is vital that the land use planning system is the subject of serious discussion and debate. It is therefore timely that at the 2003 Professor David Hall Lecture, organised by the Environmental Law Foundation, Fiona Reynolds CBE, Director-General of the National Trust will deliver the paper: 'Planning for a Small Island'. The lecture at King's College, London on Wednesday May 21 2003 will consider the use and control of land in the UK. It will look at the different ways land provides for society as a source of food and landscape and a place to live and work. It will also consider some of the pressing concerns of our time.

The lecture starts at 6.00 pm and will be followed by a question and answer session and then light refreshments. Tickets for the event are £10 (£7.50 for ELF members and £5 for students and the unwaged) and are available through ELF on 020 7404 1030 or by e-mail at info@elflaw.org.

UKELA ANNUAL CONFERENCE 2003 – PLYMOUTH

**SCIENCE, LAW AND ENVIRONMENTAL POLICY
FRIDAY 27 – SUNDAY 29 JUNE 2003**

**Organised on behalf of UKELA by:
Sarah Holmes, Associate, BOND PEARCE &
Simon Payne, Head of Law, UNIVERSITY OF
PLYMOUTH**

UKELA

The United Kingdom Environmental Law Association (UKELA) is holding its Annual Conference in Plymouth from 27 to 29 June 2003. UKELA is a registered charity endeavouring to promote, for the benefit of the public generally, the enhancement and conservation of the environment through education, contributing to an effective and enforceable environmental legal system and promoting solutions to environmental

policy problems. Its President is Lord Slynn of Hadley. It has a broad membership covering the public and private sectors, academia, industry and environmental groups. It is open to anyone with an interest in environmental law, whether or not a lawyer. Non members are welcome to attend the conference. UKELA's website is www.ukela.org.

THE VENUE

The Conference will be held at the Robbins Conference Centre, at the University of Plymouth, in the centre of the City (www.plymouth.ac.uk). Our Gala Dinner will be held in the spectacular "Living Theatre of Plants and People" – the Eden Project (www.edenproject.com).

THE CONFERENCE

UKELA's 2003 Conference will explore the inter-relationship between science, policy, law and the environment within the overall theme of change.

At its heart lies the need to address change at all levels –

in the state of the environment

in law and policy

and, fundamentally, in lifestyle

The Conference recognises change as a consequence of human activity, as a catalyst for future change and as a challenge to all of us.

This year's sessions address the key change issues – climate, energy, biodiversity, GMOs and their human consequences.

Some speakers will tackle the scientific uncertainties in our understanding of the dynamics of environmental change and its consequences. Others will look at the technological, policy and legal responses and the all-important engagement of the individual.

CARBON NEUTRAL CONFERENCE

UKELA is delighted that **ENVIRON** is sponsoring the Conference to be "Carbon Neutral". All emissions relating to the Conference will be identified, calculated and offset by investing in one or more greenhouse gas emission reduction projects to be selected by the Conference delegates. Delegates will be asked to provide information about their travel to and from the Conference.

WASTE AWARE CONFERENCE

Reflecting the need for lifestyle change, this year's Conference is aiming to minimise waste generation through the use of sustainable products. Food and drink will be sourced locally and sustainably so far as possible, as will the delegate packs. Where appropriate, recycled materials will be used. Awareness of waste will be promoted throughout the Conference and UKELA is grateful for the support given by the County Environmental Trust Ltd through landfill tax funding, which has been approved by ENTRUST.

TRIPS

On Saturday afternoon delegates may choose from the following trips:

- Plymouth Gin Distillery
- Plymouth Dome
- Plymouth's Green House
- Plymouth Sound and River Tamar Boat Trip

GALA DINNER AND GUEST SPEAKER

Cast aside your cares and restraint, treat yourselves to a dose of the effervescent stimulant of the 10-piece salsa sensation Alka Salsa and party! Drinks from an award winning local vineyard and local brewery, sustainably sourced foods and the chance to visit both biomes should make this a night to remember. Expect a stimulating talk from our Guest Speaker, Chris Hines.

INTERNET CAFÉ

Visit the Internet Café at the LexisNexis UK stand.

SPONSORS

UKELA thanks the following sponsors of its 2003 Conference:

Homecheck www.homecheck.co.uk
LexisNexis UK www.lexisnexis.co.uk
County Environmental Trust
Environ www.environcorp.com
Landmark Chambers
www.landmarkchambers.co.uk
Willis www.willis.com & WSP www.wspgroup.com
39 Essex Street www.39essex.com
4-5 Gray's Inn Square
www.4-5graysinnsquare.co.uk

UKELA thanks the following organisations for their support:

Plymouth's Recycling Doctor
www.recyclingdoctor.com
Environmental Law Foundation www.elflaw.org
ReMaDe Kernow www.remadekernow.co.uk
The Environmental Industries Commission
www.eic-uk.co.uk

FRIDAY, 27 JUNE 2003

4.00 p.m. Registration at Robbins Centre, Plymouth University

5.00 p.m. Meetings of UKELA Working Parties

6.30 p.m. Panel Debate: **The Relevance of Trade Law Issues to the GMO Debate.**
Chaired by Professor Malcolm Grant
CBE Chairman of the Agriculture and Environment Biotechnology Commission (AEBC)

8.00 p.m. Buffet Dinner and welcome drinks at Plymouth University
Chairman's Welcome: Andrew Wiseman, Chairman, UKELA

Welcome drinks sponsored by ENVIRON

SATURDAY, 28 JUNE 2003

9.00 a.m. Climate Change

Chair: Myles Allen, Climate Dynamics Group,
Department of Physics, University of
Oxford

- Policy and Law Making and Scientific Uncertainty - facing the Social and Political Demands of Climate Change: Professor Mark Blacksell Dean of Science University of Plymouth.
- UK Climate Change Policy including Emissions Trading: Chris Leigh, Head of UK National Climate Change Policy, DEFRA
- Tackling Climate Change - the Government's Energy Paper: Bryony Worthington, Energy Campaigner, Friends of the Earth

10.45 a.m. Coffee

11.15a.m. Energies of the Future

Chair: Nick Goodall, former Chief Executive,
British Wind Energy Association

- Wind Energy – a new Mainstream Player?: Marcus Trinick, Partner, Bond Pearce
- ***Can a Low Carbon Future exist without Nuclear Power?: Dr Chris Anastasi, Senior Environmental Adviser, British Energy***
- *Wave, Tidal and Biomass: are they Credible?: Matthew Spencer, Chief Executive, REGEN SW – the South West Renewable Energy Agency*

1.00 p.m. Lunch

2.00 p.m. TOURS AND ACTIVITIES FOR DELEGATES

Plymouth Gin Distillery

Plymouth Green House

Plymouth Dome

Plymouth Sound and River Tamar Boat Trip

5.00 p.m. Coaches depart for Eden Project.

The video "The Making of Eden" will be shown during during the hour long journey.

6.30 p.m. GALA DINNER

Venue: The Eden Project

Guest Speaker: Chris Hines, Founder Member and Director, Surfers Against Sewage, Sustainability Officer at Eden Project, Broadcaster.

Vibrant music from the "10 piece salsa sensation" Alka Salsa will accompany the Drinks Reception in the Temperate Biome before a 3-course dinner at 8 pm in the Moroccan Restaurant, which links the Humid and Temperate Biomes. The Humid Biome will re-open following Guest Speaker Chris Hines for delegates to experience its tropical sensations by night. Coaches will depart at 11 pm

Pre Dinner Drinks sponsored by Homecheck

Alka Salsa sponsored by Homecheck

Dinner sponsored by LexisNexis UK

Dinner drinks sponsored by Landmark Chambers

SUNDAY, 29 JUNE 2003

9.00 a.m. Biodiversity

Chair: Paul Gompertz, Chief Executive, Devon Wildlife Trust

- The Habitats Directive & Port Development: Peter Barham, Environmental Manager, Associated British Ports
- Fisheries vs the Environment: Louise Heaps, WWF UK Marine Programme Leader
- Biodiversity in a Changing World – King Canute vs the Changing Tide: Tony Kendle, Foundation Director, Eden Project

10.45 a.m. Coffee

11.15 a.m. The Human Factor

Chair: Paul Stookes, Chief Executive,
Environmental Law Foundation

- Public Participation, Third Party Rights and Aarhus: William Upton of Counsel, Former Chair of Planning Aid for London, Trustee of Planning Aid Trust
- Misleading Cases? Radical Activism vs Reactionary Law: Alistair McIntosh, Fellow of

Edinburgh-based Centre for Human Ecology and Honorary Fellow of the Schumacher Society

- International Liability for Climate Change: James Cameron, Associate, Baker & McKenzie

1.00 p.m. Lunch

2.00 p.m. Conference closes.

CONFERENCE UPDATE

Queries can be sent to:
ukelaconference@plymouth.ac.uk.

LETTERS TO THE EDITOR

Unending Plethora

Environmental Consultants and lawyers are acquiring a tainted reputation since it is increasingly perceived by the business community and the fourth estate that environmental laws are now accepted for scrutiny without examining the justification for their introduction. The unfortunate imputation made implicitly and, alas, explicitly, is that more fees can be charged to clients for the explanation and commercial corporate application of such legislation, necessary or unnecessary.

It naturally has not surprised me that the import of the Environmental Draft Directive has fundamentally changed as I heard at the Freshfields Bruckhaus Colloquium. Members will know that I have queried both its viability, future efficacy as well as its jurisprudential basis ab initio. Its text was, in every draft, below an acceptable standard for an EC document as the Working Party recognised.

I have continually urged that it is the task of UKELA not only to scrutinise the proposed letter of the law (directive or regulation) but to enquire whether the proposed law is necessary, for example through ensuring that present EU laws are adequately enforced thus obviating the

necessity of the introduction of a new law with all the work that that entails in all EU constitutional bodies.

Now I have found powerful support (at last) from two 2002 Reports of the EFRA House of Commons Select Committee. Members will know the references in the Fridge and then the Hazardous Waste Report

“We recommend that in future the Government fully assesses the impact of E U Regulations and Directives before it agrees to them, following the practices it has itself described to us; and that in particular it looks again at the plethora of forthcoming waste disposal Regulations and Directives as a matter of urgency”

and

“any new item of European legislation should not be agreed until all the practical implications of implementation are well understood”

we recommend that the Minister takes this discussion forward and instigates a thorough review of the process by which environmental legislation is arrived at in the European Commission

Although two members of the Committee have recently asked me whether I feel vindicated and pleased at the outcome, I have honestly replied that I feel not one scintilla of triumphalism but only frustration for all the time wasted over 3 or more years.

All those who labelled me an eurosceptic in front of and behind my back, now may accept my protestations, but somehow I doubt it.

Yours sincerely

Richard Hawkins

ENVIRONMENTAL INDUSTRIES COMMISSION

The Environmental Industries Commission is holding a conference in June which may be of interest to UKELA members.

The conference “Profiting in the Green Economy” is being held on 25th June at the British Library in London from 9.30am to 5.20pm.

It is billed as an essential conference on succeeding in the UK, European and global environmental markets. The conference will provide advance warning of the opportunities from future environmental policy and practical advice on the challenges of innovation, raising finance and exporting.

The keynote speakers are the Environment Secretary Rt. Hon. Margaret Beckett MP and the Chief Executive of the Environment Agency, Barbara Young.

The conference sessions include: contaminated land remediation, industrial air and water pollution control; sustainable waste management; climate change; the EU's new strategy for the environmental technology industry; intellectual property rights and innovation.

One of the aims of the conference is to help environmental businesses to understand, manage and benefit from future environmental legislation and therefore provides a good networking opportunity.

Full details and a booking form are available at www.eic-uk.co.uk or by ringing 020 7935 1675. The cost is £325 for the whole day or £225 for members of EIC, NGOs and academics.

In return for this promotion EIC has provided an opportunity to promote UKELA to its members.

UKELA WORKING PARTIES CONTACTS

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UKELA BIOTECHNOLOGY WORKING PARTY

SEMINAR

Tuesday 1st July 2003

The UKELA Biotechnology Working Group is pleased to announce that Sue Mayer, Director of

GeneWatch UK, will speak at its next seminar on "*The GM crop commercialisation decision – EU law, co-existence and liability*".

Attendance is free to all UKELA members. Refreshments will be provided. CPD accredited.

Date and time: Tuesday 1st July, 2003 from 6pm till 7pm

Venue: Freshfields Bruckhaus Deringer, 65 Fleet Street, London EC4Y 1HS

To reserve a place, please contact Martha Grekos:

martha.grekos@4paperbuildings.com

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E – LAW

The editorial team want letters, news and views from you for the next edition due to go out in June 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

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.

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