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Index

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CIRCULAR FACILITIES (LONDON) LTD V SEVENOAKS DISTRICT COUNCIL: THE MEANING OF "KNOWINGLY PERMITTED" UNDER THE CONTAMINATED LAND REGIME*

Valerie Fogleman[1]

In the first appeal under Pt IIA of the Environmental Protection Act 1990 ("EPA 1990") to be heard by the High Court, Newman J. ordered a re-trial of Circular Facilities (London) Ltd's ("CF's") appeal of the remediation notice served on it by Sevenoaks District Council ("the Council").[2]

Circular Facilities (London) Ltd v Sevenoaks District Council[3] arose when the Council determined that a development of nine houses in Tonbridge, Kent ("the site") was "contaminated land" under Pt IIA. The Council concluded that the generation of methane and carbon dioxide from organic matter that was buried approximately 3m metres below ground level in former clay pits on the site was causing a "significant possibility of significant harm"[4] to the houses and their residents due to the risk of explosion and asphyxiation, respectively.

The Council notified CF of its determination that the site was contaminated land on 20 June 2002. The Council concluded that CF was a Class A "appropriate person" under Pt IIA because CF had "caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is such land to be in, on or under that land".[5] A Class A person is liable for conducting remediation works that are referable to the substances that the person caused or knowingly permitted to be in, on or under the contaminated land.[6]

CF had purchased the site from a Mr and Mrs Scott on December 12, 1979 and had subsequently constructed the houses, selling the last one in 1985. Mr Scott had twice applied for, and been granted, amendments to the planning permission on behalf of CF.

A soil investigation report, dated July 7, 1978 ("the report"), had been prepared as part of the planning process due to the presence of infilled clay pits on the site. The report, which had been received by the Council in its role as local planning authority on March 28, 1980, recommended the construction of six pilings with associated ground beams and suspended slabs for each house. An entry in the report for one of the trial pits that had been excavated as part of the investigation stated that it contained "[b]lack organic matter with bricks, roots, iris leaves and plastic sheeting. Water entering excavation at this level and gasses bubbling through it".

On November 5, 2002, the Council served a remediation notice on CF because the Council had failed to reach any agreement with CF on liability for the remedial works in the statutory three-month period[7]

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[2] See, on the Sevenoaks Magistrates' Court's decision of June 15, 2004, V. Fogleman, "Circular Facilities (London) Ltd v. Sevenoaks District Council; The First Ruling on an Appeal Against a Remediation Notice Under the Contaminated Land Regime" [2004] J.P.L. 1315 at pp.1319-1329.

[3] [2005] EWHC 865 (Admin).

[4] Environmental Protection Act 1990 ("EPA 1990"), s. 78A(5)(b).

[5] See n.4 above, s.78F(2).

[6] See n.4 above, s.78F(3).

[7] An enforcing authority has a duty to serve a remediation notice if an appropriate person fails to remediate contamination following the three-month consultation period. See n.4 above, s.78E(1).

following receipt of the notification of contaminated land.[8] The notice stated that the Council considered that CF was an appropriate person due to CF having "caused or knowingly permitted" the presence of the organic matter, methane and carbon dioxide.[9] In addition, the notice specified the works to be conducted by CF to remediate the contamination at the site. The Council did not serve a remediation notice on Mr Scott who had died.[10]

Sevenoaks Magistrates' Court Decision

On November 25, 2002, CF appealed the remediation notice to the Sevenoaks Magistrates' Court. At the trial of the appeal on June 14 and 15, 2004, CF argued that the Council had "unreasonably determined [CF] to be the appropriate person who is to bear responsibility for any thing required by the notice to be done by way of remediation.[11]

District Judge (Magistrates' Court) Michael Kelly rejected CF's argument that the Council had unreasonably determined that CF was an appropriate person and dismissed CF's appeal. He stated that it seemed clear from the evidence that Mr Ketteringham, the Managing Director of CF, was its "controlling mind" because he had effective control of CF, having established it with his wife and child as fellow directors. Judge Kelly concluded that Mr Ketteringham was either in an informal partnership with Mr Scott or Mr Scott was an agent of CF. In addition, he concluded that even though Mr Ketteringham had relied on Mr Scott and Mr Whitehead, the architect employed by CF, CF had bought the land and had developed the site for housing as a commercial venture.

Judge Kelly summarised Mr Ketteringham's evidence in his reasons for the dismissal as follows:

- CF had bought the land from Mr and Mrs Scott on December 12, 1979;
- "Mr Scott was responsible for arranging development of the site";
- "Mr Whitehead was the architect employed by [CF]";[12]
- Mr Ketteringham's "'arrangement with Mr Scott was a sort of unofficial partnership'";
- Mr Ketteringham had "relied on Mr Scott and [had further testified] that he did not know of the organic material which was revealed by the 'test pit' results"; and
- "Mr Scott got planning permission on behalf of [CF] to develop houses".

In noting that the report referred to organic matter and gasses bubbling through it in the trial pits, Judge Kelly concluded that:

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[8] See n.4 above, s.78H(3)(a).

[9] Under Pt IIA, a person who caused or knowingly permitted a substance that underwent a chemical reaction or biological process to become a substance that requires remediation is a Class A person. n.4 above, s.78F(9).

[10] A person can only be an "appropriate person" and, thus, be liable under Pt IIA if that person has been "found". See n.4 above, s.78F(4). Pt IIA does not define the word "found". The Department of the Environment, Transport and the Regions Circular 02/2000 ("DETR Circular"), annex 3 of which contains the statutory guidance to Pt IIA, states that a "natural person would have to be alive" in order to be "found". DETR Circular, annex 2, para. 9.17.

[11] Contaminated Land (England) Regulations 2000, SI 2000/227 ("Contaminated Land Regulations"), reg. 7(1)(b)(i). A further ground of appeal that was argued by CF in the magistrates' court was that the Council had "unreasonably failed to determine that some person in addition to [CF] is an appropriate person in relation to any thing required by the notice to be done by way of remediation". See Contaminated Land Regulations, reg. 7(1)(d). This ground of appeal, which was not appealed to the High Court, is discussed in the article on this case in the October 2004 issue of J.P.L. (see n.2 above).

[12] Mr Whitehead, who was not called to testify, died before the appeal in the High Court was heard.

> “[t]he report was available on the planning register and must have been available to [CF]. I believe that [CF] must have considered the risks of investing in land for development which had consisted of old clay pits and in assessing that risk the [report] must have been considered. The company, in my view, must have been aware of the organic material and the gas and ought to have been aware of the risk posed by landfill sites such as this. The scheme of [Pt IIA] is to make the developer of a site such as this responsible for the harm resulting from contaminants on the site”.

Judge Kelly, thus, concluded that CF is an appropriate person under Pt IIA because CF knowingly permitted the presence of the organic matter and gasses at the site.

High Court Decision

On February 17, 2005, Collins J granted CF permission to appeal out of time.

On May 10, 2005, Newman J. allowed CF’s appeal on "[t]he validity of [Judge Kelly’s] finding that [CF] knew of the presence of buried organic material or gasses between 1979 and 1985”. Although it was not necessary for him to deal with the other issues that had been appealed, Newman J. rejected CF's argument that the term "knowingly permitted" requires a person to have knowledge of the potential harm from a substance that is in, on or under the land. He concluded that the requisite knowledge is knowledge of the substance.

Newman J. concluded that Judge Kelly had not considered or investigated the basis for imputing the knowledge of the report to CF in view of Mr Ketteringham’s denial that he knew that the report existed between 1979 and 1985. Newman J. stated that if Judge Kelly had concluded that Mr Ketteringham must have known of the report’s existence, despite Mr Ketteringham’s evidence to the contrary, he should have set out the legal basis for his conclusion. Newman J. discussed the imputation of knowledge to CF by various theories including whether Mr Scott was CF’s agent or Mr Ketteringham’s partner, stating that if Judge Kelly had found as a fact that Mr Scott knew of the contents of the report, it was incumbent on the Judge to state that he had made such a finding.

Newman J. stated that:

> "[w]hilst circumstances can arise in which a principal is fixed with the knowledge of an agent, it is by no means straightforward to assert that, if the principal fixed with the knowledge of his agent is also the controlling mind of a company, the company is to be regarded as fixed with the imputed or constructive knowledge of its controlling mind".

Newman J. accepted the submission that if Judge Kelly had reached:

> "the conclusion that because the [report] was available on the planning register and was available to [CF] that that in itself was insufficient to impute knowledge of the contents of the report to [CF]".

Newman J. ordered a re-trial, commenting that:

> “[t]he difficulties to which this case gave rise relate not so much to questions arising in connection with the legislation, but with the difficulties of establishing facts, capable of giving rise to a conclusion that the requisite knowledge was held by [CF], at a date some twenty years prior to it being determined that the land was contaminated. A particular evidential difficulty arose because Mr Scott is dead”.

He acknowledged:

> "that in the context of Magistrates' Courts proceedings, without the benefit to be gained from disclosure obligations, that trials on matters as historic as this, without reference to adequate documentation, giving rise to complex principles of law, present a demanding set of proceedings for a district judge to resolve".

Knowledge under Part IIA

As indicated above, Newman J. construed the term "knowingly permitted" narrowly to conclude that CF is liable under Pt IIA only if it had specific knowledge of a document that stated that organic matter and gasses existed on the site during CF's development of it. It is arguable, however, whether such a narrow construction is appropriate in light of the policy of Pt IIA and Parliament's adoption of a term that is intentionally similar to terms in environmental legislation that have been construed broadly.

It is well settled that a court should determine the meaning of a term in a statute so as to give effect to the policy of the statute.[13] The policy of Pt IIA is to impose liability on persons who caused or knowingly permitted contamination, other than in breach of a pollution prevention regime, in order to remove unacceptable risks to human health and the environment.[14]

Parliament and the UK Government recognised that the liability of most of the persons who would be required to remove the unacceptable risks would arise from their acts or omissions prior to the enactment of Pt IIA. For example, the term "caused or knowingly permitted" is in the past tense.[15] The green paper that led to the enactment of Pt IIA is entitled "Paying for our Past".[16] The white paper, entitled "Framework for Contaminated Land" includes a chapter entitled "Tackling the Legacy of Past Contamination".[17] The focus of the DETR Circular[18] that sets out the statutory guidance for implementing Pt IIA is "land that has been contaminated in the past",[19] the "inherited legacy of [which includes] a substantial legacy of land which is already contaminated, for example, by past industrial, mining and waste disposal activities.[20]

Parliament must have known, therefore, that courts would be called on to determine whether a person "caused or knowingly permitted" contamination in the past. In particular, Parliament must have known that courts would be called on to determine whether persons, including companies, possessed knowledge of the presence of contaminants in, on or under land in the past. As *Circular Facilities* demonstrates, a court can be called on to determine whether a company had the requisite knowledge over 20 years before a case is heard, at a time when a key witness (Mr Scott) was no longer alive.

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[13] See *Fairchild v Glenhaven Funeral Services Ltd* [2002] UKHL 22; [2003] 1 A.C. 32; [2002] 3 W.L.R. 89, HL (citing *Empress Car Company (Abertillery) Ltd v National Rivers Authority* [1999] 2 A.C. 22; [1998] 2 W.L.R. 350; [1998] 1 All E.R. 481, HL, in which the House of Lords concluded that liability is not excluded under s.85 of the Water Resources Act 1991 ("WRA 1991") when the immediate cause of pollution is the intentional act of a third party because the policy of the WRA 1991 is "to impose a strict liability for the protection of the environment").

[14] *See* DETR Circular, annex 1, para. 25 (main objective of Pt IIA "is to provide an improved system for the identification and remediation of land where contamination is causing unacceptable risks to human health or the wider environment") and annex 1, para. 22 ("Part IIA . . . creates a new framework for the identification and remediation of contaminated land in circumstances where there has not been any identifiable breach of a pollution prevention regime").

[15] EPA 1990, ss.78F(2), 78F(3); *see* V. Fogleman, *Environmental Liabilities and Insurance in England and the United States* (Witherbys, 2005), pp.1324-1326 (discussing retrospective liability under Pt IIA).

[16] Department of Environment and Welsh Office, "Paying for Our Past" (March 8, 1994).

[17] Department of Environment and Welsh Office, "Framework for Contaminated Land" (November 24, 1994).

[18] See n.10 above.

[19] DETR Circular, annex 1, para. 3.

[20] DETR Circular, annex 1, para. 4.

In addition, Parliament must have known that the meaning of the term "knowingly permitted" is crucial to the enforcement of Pt IIA. This is because a basic principle of Pt IIA is the transfer of liability from a person who caused the contamination to the person who knowingly permitted it to remain on the land when effective control over the contaminants passed from the latter to the former.[21] In order to accomplish the transfer of liability, Parliament directed the Secretary of State to establish statutory guidance, according to which certain persons are excluded from liability.[22]

In view of Parliament necessarily knowing that courts would be called on to determine whether a company had knowledge of the presence of contaminants on land in the past, it is arguable that Parliament intended the term "knowingly permitted" to be construed broadly. Factors that reinforce this argument include the designation of magistrates courts and the Secretary of State to hear appeals of remediation notices.[23] As Newman J. stated, disclosure obligations do not, as a general rule, exist in magistrates courts. Similarly, disclosure is not generally available in appeals to the Secretary of State.[24] Thus, an enforcing authority's evidence about the knowledge of an alleged Class A person may well be restricted, as in *Circular Facilities*, to historic documentation on its planning files and the memories of witnesses who are still alive.[25]

Further, neither magistrates courts nor the Secretary of State are likely to have expertise on the imputation of knowledge to a company because such issues are rarely decided by them.

Still further, the Contaminated Land (England) Regulations 2000 (SI 2000/227) ("Contaminated Land Regulations") provide that a person who appeals a remediation notice on the basis that he is not an appropriate person must establish that the enforcing authority "unreasonably" determined that he was an appropriate person.[26] Use of the word "unreasonably" reinforces the view that Parliament did not intend the term "knowingly permitted" to be construed narrowly.

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[21] *Hansard*, HL, vol.560, col.1464 (January 31, 1995) (statement of Viscount Ullswater); see also Hansard, HC Standing Committee B, Eleventh Sitting, Part I, col.347 (May 23, 1995) (remarks of Robert Atkins, Minster for the Environment and Countryside). Viscount Ullswater emphasised that when one person had caused a pollutant to be in, on or under land and another person had knowingly permitted the pollutant to remain, it may be appropriate for the latter to be entirely liable for the cost of remediating it. *Hansard*, HL, vol.562, cols 214-215 (March 7, 1995) (statement of Viscount Ullswater); see also *Hansard*, HL, vol.560, col.1461 (January 31, 1995) (statement of Viscount Ullswater) (person who redevelops land should become responsible for any harm from the contamination "even if he did not originally cause or knowingly permit the site to become contaminated").

[22] EPA 1990, s.78F(6); see DETR Circular, annex 3, paras D.51-D.56 (excluding persons who made payments for remediation from liability in lieu of persons who received the payments and failed adequately to remediate); paras D.57-D.61 (excluding persons from liability who sold with information in lieu of purchasers); paras D.62-D.64 (excluding persons from liability who caused or knowingly permitted presence of a substance that interacted with substance subsequently introduced by another person); paras D.65-D.67 (excluding persons from liability who caused or knowingly permitted substance to be in, on or under land in lieu of person responsible for its escape); paras D.68-D.72 (excluding person from liability for having caused or knowingly permitted substance to be in, on or under land in lieu of person who subsequently introduced pathway or receptor).

[23] EPA 1990, s.78L(1). Appeals of local authority as well as Environment Agency remediation notices will be to the Secretary of State when s.104 of the Clean Neighbourhoods and Environment Act 2005 is brought into effect.

[24] Enforcing authorities may require persons to answer questions in order to provide information that is relevant to an examination or investigation under Pt IIA. Environment Act 1995 ("EA 1995"), s.108(j). The authorities may also require the production of "records", EA 1995, s.108(k), and examine and investigate premises. EA 1995, s.108. The focus of s.108 powers, however, is the environmental condition of the land and the incidents causing the contamination, not the knowledge of a person who knowingly permitted contamination to remain on a site. The power to question persons under the Police and Criminal Evidence Act 1984 would not be available because liability under Pt IIA is civil rather than criminal.

[25] The evidence available to a local authority will be even more limited in enforcement actions that do not involve the development of land.

[26] Contaminated Land Regulations, reg. 7(1)(b)(i).

In addition, in adopting the term “caused or knowingly permitted” in Pt IIA, Parliament used a term for establishing liability in environmental legislation that is similar to others that it introduced in the late 1800s and has continued to use to impose liability in environmental legislation since that time.[27] It seems likely, therefore, that Parliament intended the term "knowingly permitted" to be construed in Pt IIA in the same manner as the construction of similar terms by courts in other environmental legislation.[28]

Courts have construed similar terms broadly in the context of criminal offences. For example, the House of Lords construed the term "causes" in the term "causes or knowingly permits" in s. 85(1) of the Water Resources Act 1991 ("WRA 1991") to uphold the conviction of a company that owned and operated a storage tank that had been vandalised, resulting in diesel entering a river. In concluding that the company had caused the diesel to enter the river in breach of s. 85(1), Lord Hoffmann rejected a construction of the provision that would restrict liability to the person who was the immediate cause of the pollution.[29] In another appeal of a conviction under s. 85(1) of the WRA 1991, the High Court, in *Schulmans Incorporated Ltd v National Rivers Authority,* construed the term "knowingly permits" to include liability for constructive as well as actual knowledge of the pollution.[30] The broad construction of the term "causes or knowingly permits" in environmental offences is a further argument for a broad construction of the similar term in legislation that imposes civil liability.

A broad construction of the term "knowingly permitted" in Pt IIA is further reinforced by Pt IIA's roots in nuisance actions. Pt IIA "largely replaces existing regulatory powers and duties" in the statutory nuisance regime,[31] under which a statutory nuisance has been described as a private or public nuisance according to the common law.[32] In a similar test to "knowingly permitted", a person is liable in private nuisance for continuing[33] or adopting[34] a nuisance if that person knew or should have known about the nuisance during its occupancy of the land on which the nuisance was located. Further, as explained by the Court of Appeal in *R v Shorrock (Peter Coar)*, in an appeal of a conviction for causing a public nuisance, a person commits a nuisance if "either he knew or he ought to have known [of the nuisance], in the sense that the means of knowledge were available to him".[35]

Under the rationale of the above cases, the knowledge that a person must possess under Pt IIA in order to have knowingly permitted the presence of contamination would include constructive as well as actual knowledge. Thus, in *Circular Facilities*, CF would be liable under Pt IIA if information concerning the organic matter and gasses at the site had been available to it whether or not CF had actual knowledge of them.

If Pt IIA requires actual knowledge, it is arguable whether the level of knowledge required by Newman J. in *Circular Facilities* is still too stringent. In the analogous case of *Shanks & McEwan (Teesside) Ltd v*

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[27] See DETR Circular, annex 2, para. 9.8; see also *Hansard*, HL, vol.565, col.1497 (July 11, 1995) (statement of Earl Ferrers) (referring to long history of term in environmental legislation).

[28] See *Hansard*, HL, vol.562, col.182 (March 7, 1995) (statement of Viscount Ullswater) (referring to Rivers Pollution Prevention Act 1876); *Hansard*, HL, vol.565, col.1497 (July 11, 1995) (statement of Earl Ferrers) (referring to two cases construing "cause" in context of criminal liability for water pollution); see also DETR Circular, annex 2, para. 9.15 (“indications of how the test [of ‘caused’ and ‘knowingly permitted’] should be construed can be obtained from case law under other legislation where the same or similar terms are used”).

[29] *Empress Car Company (Abertillery) Ltd v National Rivers Authority* [1999] 2 A.C. 22; [1998] 2 W.L.R. 350; [1998] 1 All ER. 481 at 484, HL.

[30] [1992] 1 Env. L.R. D1, QBD.

[31] See DETR Circular, annex 1, para. 23.

[32] *National Coal Board v Neath BC* [1976] 2 All E.R. 478 at 481, DC.

[33] *Delaware Mansions Ltd v Westminster City Council* [2001] UKHL 55; [2002] 1 A.C. 321; [2001] 3 W.L.R. 1007; [2001] 3 All E.R. 737 at 748, HL.

[34] *Sedleigh-Denfield v O'Callaghan* [1940] A.C. 880; [1940] 3 All E.R. 349 at 364, HL.

[35] [1994] Q.B. 279; [1993] 3 W.L.R. 698; [1993] 3 All E.R. 917 at 925, CA.

Environment Agency,[36] the High Court was called on to determine the level of knowledge that a company must possess in order to be criminally liable for having "knowingly cause[d] . . . controlled waste to be deposited in or on any land" in breach of s. 33(1) of the EPA 1990. Mance J concluded that the company possessed the requisite knowledge when "the appellant company's senior management knowingly operated and held out the [waste disposal site] for the reception and deposit in and on it of just such controlled waste". He stated that "[i]t is unnecessary to show more specific knowledge regarding particular loads on the part of senior management".[37]

The Circular Facilities case subsequently settled and the remediation notice has been withdrawn. The terms of the settlement are confidential.[38]

STRATEGIC ENVIRONMENTAL ASSESSMENT - KEY CONUNDRUMS AND ISSUES WITH SOME POSSIBLE SOLUTIONS

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EIA in the 1990's and up to the present has demonstrated the importance of "getting it right"! It has also shown the dire consequences of getting it wrong, in terms of some embarrassing and costly decisions from the courts, in which a huge number of planning permissions have been quashed for default under these provisions. Strategic Environmental Assessment ("SEA") has the potential to trip up the development planning system every bit as much as the EIA process.

The Objective

It is vital to bear in mind the Objective of the Directive (2001/42/EC) when interpreting its detailed provisions and those of the Regulations which transpose the Directive into UK law as it is likely to affect the way that the courts interpret the legislation in the European Court of Justice and in the UK courts. Article 1 states that the Objective of the Directive is *"to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment".* The high principled and broad purposes set out in Article 1 will probably set a high benchmark for SEA and its scope in any subsequent challenge proceedings.

SEA And Sustainability Appraisal ("SA")

Clearly, there are overlaps between the SA and the SEA. However, there are indications in government statements, and there are certainly indications that some Responsible Authorities may be taking the view, that somehow economic or social impacts are not environmental impacts and therefore not essential elements of the SEA process. This cannot be correct. If the implication of subsuming the Environmental Report ("ER"), into a discrete section of the SA, care will need to be taken , insofar as economic or social impacts are also "environmental impacts" under the SEA Directive, to ensure that they are adequately covered within that section of the SA report that is labelled "the Environmental Report". Where an ER does not form part of a SA report (e.g. because the particular plan or programme is outside the scope of the SA framework), it is obviously also important to describe any likely social and economic impacts if they come within the "environmental impacts" of plans or programmes. Otherwise, the ERs in such situations would be defective and could be successfully challenged.

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[36] [1994] Q.B. 279; [1993] 3 W.L.R. 698; [1993] 3 All E.R. 917 at 925, CA.
[37] [1997] 2 All E.R. at 340; [1997] J.P.L. at 832.
[38] *Environmental Liabilities and Insurance in England and the United States* was published by Witherbys in April 2005.

Programmes And Plans

Article 2 of the Directive defines the term "**plans and programmes**" as *"plans and programmes which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption though a legislative procedure by Parliament or Government, and which are required by legislative, regulatory or administrative provisions".*
Appendix 1 to the ODPM's Practical Guide to the SEA Directive (Sept 2005) contains an extensive indicative list of plans and programmes which are subject to the SEA directive.
The obvious omission from the list is national planning guidance. However, the Environmental Report on PPS10 on waste management and the regulation statement on the outcome of that SEA exercise suggests that the government does in fact acknowledge that in certain circumstances, PPSs can be subject to the requirement for an SEA.

White papers setting out future national strategies which are likely to be important determinants in the grant of permission for major developments such as airports, nuclear power or renewable energy installations are also probably within the scope of the SEA directive. There is little doubt that they form the framework for development consents and they are arguably "required" by administrative provisions.

The Scope of SEA and Screening Issues

The key question for SEA is whether the plans and programmes are likely to have significant environmental effects. If they are then under Article 3(1) they must be subjected to SEA. Under Article 3(2) of the SEA Directive, certain types of plans and programmes are deemed likely to have significant effects and are generally subject to mandatory SEA.

The scope of Article 3(2) and thus mandatory SEA is very wide indeed. A recent EIA case[39] discussed the definition of *"infrastructure project"* and *"urban development project"*. It was held that these terms had much wider meaning in the EIA context than in normal parlance. The scope of SEA however may be both reduced and widened in certain respects under Articles 3(3) and 3(4).

Firstly, under Article 3(3), plans and programmes which would otherwise be within the Mandatory Category of Article 3(2) will not be subject to the need for SEA if they:

- determine the use of small areas at local level, or
- are minor modifications of plans and programmes covered by Article 3(2); and
- in either case, are not considered likely to have significant environmental effects.

Secondly, under Article 3(4), Member States are required to determine whether plans and programmes which set the framework for future development other than those specified in Article 3(2) are likely to have significant environmental effects. If they are, then they are also to be subject to the need for SEA under Article 3(1).

Article 3(5) sets out the legal obligation to screen plans and programmes in these situations and requires Responsible Authorities (and the Secretary of State) to take into account the criteria which are set out in Annex II. The Responsible Authority is required to make publicly available their conclusions on screening issues and to include reasons for not requiring an SEA where they have negatively screened a plan or programme.

Transitional Provisions

[39] R (Anne-Marie Goodman and Keith Hedges) –v- Lewisham LBC [2003] JPL 1309

The transitional provisions have a "filtration" effect on the need for SEA of plans and programmes and it is a particularly live issue at the present time because there are a number of plans and programmes which were in the pipeline when the Directive came into force on 21 July 2004. Article 13(3) provides that any plan or programme for which the first formal preparatory act occurred on or after that date is subject to SEA or the need for screening as described earlier.

An SEA is not immediately required for plans and programmes for which the first formal preparatory act occurred before 21 July 2004 so long as it is adopted within 2 years of that date. If it is not adopted within that 2 year period it will require SEA unless the Responsible Authority decides that it is not feasible to carry out an SEA. The legislation does not give a definition of "first preparatory act" although the Practical Guide gives some guidance at paragraph 2.10. Authorities would be ill-advised to take an evasive posture, in which either they use minimal preparatory acts carried out before 21 July 2004 as an excuse not to carry out an SEA or they recklessly plough on for months ignoring the certainty or likelihood that a plan or programme is unlikely to be adopted before 21 July 2006 and then, just before that date, to decide that it is not feasible to carry out an SEA on it. Such an evasive approach might lead to successful challenge which would further delay the plan-making process.

Consultation And Public Involvement

An important part of the Environmental Assessment is the consultation process. The Responsible Authority must give the consultation bodies and the public an early and effective opportunity to express their opinion on the draft plan or programme and the ER.

The Practical Guide at paragraph 3.15 addresses the danger of "consultation fatigue" and suggests that it is important to ensure that "participants are involved at the appropriate level". This could be dangerous advice from a legal viewpoint. Responsible Authorities should be slow to exclude groups or individuals in case they are found to have failed in the obligation to consult the public which is so widely described in Article 2. It would be better to consult widely and leave it to a process of advice, encouragement and self-selection as to which members of the interested public participate in the consultation events.

The consultation bodies nominated by the SEA Regulations are English Heritage, English Nature, The Countryside Agency and the Environment Agency. They have all entered into service commitments to ensure that they do not become a bottleneck in the system but we will need to see whether lack of resources or commitment at these bodies leads to problems with the system. It is a concern that these bodies reflect a view in Government that impacts on "population" and "human health" are not fully within the scope of SEA. This is a fundamental weakness in the UK implementation of the SEA Directive and it could lead to problems if Responsible Authorities habitually neglect or omit social and economic impacts in their ERs. To avoid this, perhaps Regulation 4 should include, at least, the Regional Development Agencies and possibly also the Primary Care Trusts.

Mitigation

The Environmental Report must include the mitigation measures envisaged to prevent, reduce and as fully as possible (our underlining) offset any significant adverse effects on the environment of implementing the plan or programme. This requirement appears to set a high benchmark. How far does it suggest that outcomes, in terms of specific decision-making, will be determined by the SEA process? It should be mentioned that EIA and SEA are said to be procedural requirements rather than dictating outcomes but some of these requirements start to look as if they could almost be determinative of the decisions that should be taken particularly if you take account of the statutory duty in section 39(2) of the Planning and Compulsory Purchase Act 2004 in relation to Regional Spatial Strategies and Local Development Documents under which Responsible Authorities *"must exercise the function with the*

objective of contributing to the achievement of sustainable development". The official line, however, is that SEAs are not intended to constrain any particular outcome. We will see!

Alternatives

It is clear from Article 5(1) that there is an obligation to describe and assess "reasonable alternatives". This Article suggests that there will be an objective standard applied as to what alternatives should reasonably be included in the SEA process. There is a serious risk of overload in the Regional Authority selecting alternatives for a strategic plan or programme and some reasonable selection process will be required to avoid this. Some "typical" scenarios may need to be adopted as a basis of comparison. The Practical Guide contains guidance on the selection of alternatives for this purpose.

Monitoring and Accountability

Finally, Article 10 provides that *"Member States shall monitor the significant environmental effects of the implementation of plans and programmes in order (inter alia) to identify, at an early stage, unforeseen adverse effects, and to be able to undertake appropriate remedial action".* The obligation to monitor does not of itself connote a requirement to actually carry out the remedial action. Monitoring is a "new" feature of SEA which does not feature in EIA – YET!

Conclusion

We will need to wait and see if SEA will be following EIA to the ECJ. Hopefully it won't and all will proceed smoothly and the worthy objective of the Directive will be met.

SANCTIONS FOR ENVIRONMENTAL OFFENCES

At the London Meeting on 18 January 2006 Martha Grekos[*] and Richard Kimblin[*] addressed current issues in regulatory crime, particularly environmental crime in order to:

- Provide an update on current sentencing practice
- Identify practical factors affecting penalty from incident/breach to conviction
- Identify future changes to types and level of penalty
- Ask who is right on level of penalty - Courts or Commentators?
- Ask whether environmental penalties are an island of their own or just part of a scheme of regulatory and other criminal penalties?

They described environmental crime as usually associated with business activity and one or more of the defendants is usually an undertaking. A regulatory crime is conduct of an undertaking which is in breach of the criminal laws to protect people and the environment. In practice, the main areas are health and safety offences, environmental crime and offences under the consumer protection legislation.

The updates on current sentencing practice can be found at [2005] JPL 1330-1338 and [2005] ELM 17, 168.

Having reviewed the consensus reached by commentators on the level of penalty and noted the firmness with which the views are expressed, they noted the absence of data or analysis of:

i. the effect or impact of prosecution, fines, prosecution costs and legal costs on defendants
ii. the relationship between the matters in (i) above and deterrence

iii. what the appropriate penalty ought to be, i.e. the commentary is to the effect that fines are too low, but commentators do not say what the level should be
iv. reaction to commentary from those criticised

Kimblin and Grekos concluded that if there is to be debate on the question of deterrent effect, or still better, some published research, then it is important to clarify the key questions. Firstly, there are clear categories of offending. For example, there are large corporations in which management failings result in prosecution. Then there are small and medium size companies, which account for most regulatory breaches, which generally either (i) have inadequate understanding and systems but do not deliberate breach regulations or create risks, or (ii) knowingly, recklessly or intentionally carry on their undertaking in a way which either ignores regulation or presents obvious hazards.

They concluded that there is coherent guidance from the court of appeal on the principles to be applied to sentencing regulatory crime, including environmental crime. A framework of penalties is emerging for the most serious breaches, but there is no such framework nor any tariff for moderate and less serious offences. That lack of tariff can yield real inconsistency and still greater perceived inconsistency amongst those who do not practise in the area and who do not see the range of culpability and means which this sphere of crime produces.

Richard Kimblin pointed to the need to consider regulatory penalties in a coherent way so that sanctions in one area of regulation related properly to those in others, an approach which seems to be acknowledged in the current Cabinet Office review of regulatory sanctions.

Calls for increases in penalty are widespread and could be described now as reaching a consensus. Despite that consensus, there has been little attempt to articulate the point at which the concerns about penalties would be met. If deterrence is the objective, then the whole effect of criminal sanction needs to be understood before deterrent levels can be gauged. However, it is clear that for some types of offences increases in the level of penalty will be far from a complete solution. These include penalties for very large organisations convicted of strict liability offences in which culpability is at the lower end of the scale, and rogues who know the risks and are prepared to take them.

A key issue for the Cabinet office review was what to do in the case of someone who is better off as a result of non compliance. “We need a method of dealing with that kind of offending”. Then there were companies for which going to court was perceived as highly damaging to reputation and for which the level of fine would make no difference. The key factors in deterring potential offenders were:

- Fines and costs
- Damage to reputation
- Financial reporting
- Loss of staff morale
- Lost management time
- Lost business
- Increased insurance premium

The merits of a scheme of fixed penalties for technical breaches were identified. They would sacrifice flexibility to achieve efficiency. Also, the power to order an undertaking to pay fees or charges which had been avoided, in addition to a fine to reflect culpability, would deal with those cases where it appeared cost effective to run the risk of a fine.

[*]Barrister (No5 Chambers) and member of UKELA Council Professor Richard Macrory is conducting the Cabinet Office review. The remit is:

to set out general principles for the use of penalties in the enforcement of regulation, and to consider:

1. How sanctions can be changed to ensure that they act as an effective deterrent and eliminate all the economic benefits of non-compliance
2. How administrative penalties might best be used to eliminate economic gains and speed up the penalty process
3. How measures can be taken to enhance consistency between and within penalty regimes
4. The role of alternative sanctions for regulatory offences such as restitutive and restorative justice
5. Whether there is a role for a regulatory tribunal in the regulatory system, and
6. To make general recommendations on the use of regulatory penalties and specific recommendations for change where that is thought appropriate.

You can read more on (http://www.cabinetoffice.gov.uk/regulation/documents/pdf/penalties.

UKELA will be responding to the call for evidence. The Environmental Litigation Working Party will be co-ordinating the response and will meet shortly to discuss it. If you are not in the working party but want to help with the evidence gathering, the convenors are Justine Thornton Justine.Thornton@AllenOvery.com and James Kennedy james.kennedy@freshfields.com.

The next London meeting is on Wednesday February 8th on Environmental Insurance.

UKELA thanks Maria Cull and Claire Robertson at Herbert Smith for their help in administering and hosting the London meeting series.

REVIEW OF IMPLEMENTATION OF WASTE DIRECTIVE ANNOUNCED

Progress on the implementation of the Waste Electrical and Electronic Equipment Directive (known as WEEE) is to be reviewed immediately. In announcing the review ,Energy Minister, Malcolm Wicks commented

"This Government is firmly committed to sustainable development and recognises that effective implementation of the WEEE directive has a key role to play in achieving this goal.

The Directive is challenging and effective implementation of its obligations requires a lot of planning and preparation - it is vital that the producers, retailers and the waste industry together with Government have the appropriate plans, infrastructure and regulations in place. We have listened to the concerns expressed by both the business community and other stakeholders over the implementation process and have decided that more time is needed to get the implementation right. Although any further delay is regrettable, this will ultimately deliver far greater environmental benefits.

My officials will be working closely with colleagues from Defra and the Environment Agency which will form the basis for a formal consultation on draft regulations and guidance in the Spring."

Liz Parkes, Head of Waste Regulation, Environment Agency commented

"Whilst we are keen to see producer responsibility implemented for WEEE, we want to be confident that it will deliver real benefits for the environment. We welcome DTI's announcement and will be supporting the policy review to ensure that implementation imposes the minimum regulatory burden for all concerned."

The WEEE Directive aims to address the environmental impact of electrical and electronic equipment (EEE) and to promote its separate collection when it becomes waste (WEEE). WEEE is a priority waste stream for the EU because of its growing volume in the municipal waste stream and its potential hazardousness following disposal.

The Directive introduces producer responsibility for waste electrical and electronic equipment (WEEE). Producers will have to finance treatment and recycling/recovery of separately collected WEEE in the UK to specified treatment standards and recycling/recovery targets. Retailers have an obligation to offer take-back services to householders.

The Government recognises that this has implications for the burdens placed on Local Authorities to dispose of separately collected WEEE. We announced previously that DTI would meet Local Authority New Burdens costs in the light of Ministerial decisions to defer the WEEE implementation. Specifically, we have said that DTI will meet any costs to Local Authorities of arranging the treatments required for any televisions and PC monitors containing cathode ray tubes and fluorescent lamps which they collect separately (rendering these "hazardous") and sent to a hazardous waste landfill, in advance of the WEEE Regulations introducing producer responsibility for these costs, i.e. where local authorities have chosen to collect separately these categories of WEEE in the absence of any legislative requirement at this stage.

DTI have already agreed with Local Authorities that payment for costs incurred in 2005/06 will be included in the annual settlement figure for 2006/07. We will continue to work with Local Authorities to establish the costs associated with the
decision to undertake this review.

Additional regulations - WEEE Permitting regulations - are to be made by Defra, together with guidance on treatment operations. The Regulations will come into force alongside the producer responsibility requirements of the DTI WEEE regulations and will introduce the treatment permitting requirements of the WEEE Directive.

REACH DECISION IS ‘BETRAYAL’ - WWF

Conservation group WWF has condemned a decision by EU ministers to reject what it sees as a crucial principle of the REACH chemicals legislation, calling the move a ‘betrayal’

The condition to substitute hazardous chemicals with safer alternatives where possible, adopted by the European Parliament in November, was rejected this week as ministers arrived at a political agreement prior to next year’s expected finalisation of the legislation.

"This failure has been driven by the German government's protectionist policy toward its chemicals industry, and though other governments - including Britain's - lobbied hard in the last few weeks for genuine environmental concessions, these were sadly not achieved. We hope the damage can be undone before REACH becomes law," said Colin Butfield, Head of the WWF-UK Chemicals and Health Campaign.

"This is a tragedy and may have profound implications for the health of the people and wildlife of Europe - as well as costing the NHS, and thus the British taxpayer, a fortune in healthcare spending that could otherwise have been avoided."

NEWS

EUROPEAN COMMISSION ADOPTS DIRECTIVE TO LIMIT FLOODS

On 18 December 2005, the Commission proposed a directive to enable Member States to better prevent and limit floods, and their damaging effects on human health and the environment. In the period between 1998 and 2004, over 100 major floods, including severe flood along the Rivers Danube and Elbe, increased concern over the inadequacy of existing protection. In December 2004, the Commission adopted a Communication outlining improved flood risk management strategies. The subsequent directive builds on provisions contained in the 2000 Water Framework Directive, and proposes a three-step process of protection.

First, Member States are required to undertake a preliminary flood risk assessment of river basins and coastal areas. Second, in the event that real risks of flood damage exist, Member States will be required to develop flood risk maps. Third, Member States must draw up risk management plans outlining measures to reduce the threat of flooding.

For more information, see: http://europa.eu.int/comm/environment/water/flood_risk/index.htm

EUROPEAN COMMISSION LAUNCHES PROCEEDINGS AGAINST 8 MEMBER STATES OVER INSUFFICIENT PROTECTION OF WHALES, DOLPHINS AND PORPOISES

The Commission has started legal action against 8 Member States for not adequately monitoring how effectively their population of cetaceans – whales, dolphins and porpoises – are being protected. The Habitats Directive 92/43/EC requires the strict protection of cetaceans, and Member States' surveillance of their conservation is central to the Directive's requirements. The Commission has instigated infringement proceedings against Belgium, France, Greece, Italy, the Netherlands, Portugal, Spain, and the UK for their failure to implement effective surveillance systems.

The Commission is of the opinion that, in order to provide effective protection, the surveillance of cetaceans' conservation must be carried out at regular intervals, and must cover all areas where cetaceans are present. In the UK, surveillance is only undertaken in its territorial waters, and monitoring is infrequent.

The Commission has issued written warning to the Member States identified that they are in breach of the Habitats Directive and are required to ensure the full protection of cetaceans.

For more information, see:Http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#infractions

FUNDING ALLOCATION ANNOUNCED FOR FLOOD AND COASTAL DEFENCE

DEFRA has announced its grant allocations targeted at flood and coastal defence from 2006-7. Total Government spending for 2006-7 will continue at approximately £570 million per annum. The Environment Agency is set to receive £433 million to finance its flood management activities, whilst Local Authorities and Internal Drainage Boards will share £85 million between them to fund their capital improvement projects.

Commenting on the funding, Flood and Coastal Defence Minister, Elliot Morley, stated:

"The programme is now more committed than ever before which is good news for the many communities that will benefit such as those at Morecambe, Lyme Bay, Burton-On-Trent, and Flexbury, Bude …

“I would also normally announce indicative threshold priority scores for 2007-08 and 2008-09 at this time but given the high level of existing commitment in the programme and our plans to introduce from April 2008 new Output and Performance Measures, which will guide prioritisation in future, I have decided not to make such an announcement but will review the situation this time next year …

"I recognise that there is still demand for many schemes which are worthwhile which is why we must prioritise our investment. I do accept we need to ensure this approach is fair and effective and I always made clear we would have a review of priority arrangements. We are of course maintaining our commitment on the overall level of funding for flood and coastal erosion risk management for the Spending Review 2004 period."

AIR QUALITY CONTINTUES TO IMPROVE

Figures published on 19 January this year confirm that the UK is maintaining improvements in air quality. DERFRA’s provisional Air Quality Sustainaible Development Indicator for 2005 demonstrates that, despite the fact that urban pollution levels are similar to those recorded in 2004, rural pollution has decreased.

The air quality indicator is one of the 68 indicators nominated in the Government’s Sustainable Development Strategy. It is used to measure annual levels of particulate and ozone pollution, and the number of days on which levels of any one of a basket of five pollutants were ‘moderate’ or ‘high’. It is though that particulate and ozone pollution as the greatest impact on health. The basket pollutants identified as indicators include carbon monoxide, nitrogen dioxide, ozone, fine particles, and sulphur dioxide.

APPOINTMENT OF CHIEF EXECUTIVE OF NATURAL ENGLAND

Dr Helen Phillips has been appointed as the Natural England Chief Executive Designate.

Natural England will be an independent statutory Non Departmental Public Policy Body, incorporating and developing English Nature with parts of the Countryside Agency and the Rural Development Service. The establishment of Natural England will depend on the safe passage through Parliament of the Natural Environment and Rural Communities Bill. It is currently going through the House of Lords, and detailed analysis at the committee stage is expected to begin on 24 January. Providing the Bill passes through Parliament and receives Royal Assent, Natural England is likely to start functioning fully in October 2006.

NORTH EAST REGIONAL GROUP

Members are reminded that there is still time to reply to Alison Boyd's (Member Support Officer) letter of 10 January asking for your views on a North East regional event. Please do take the time to respond - your views are important. Alison can be contacted on aliboyd@fsmail.net. She would be happy to email a further copy of her letter to anyone that would like one.

CALL FOR PAPERS

8 – 9 November 2006 Leipzig Germany
The 2008 deadline for full LCPD/IPPC compliance approaches.
• Large Combustion Plant Directive *(LCPD)*
• Integrated Pollution Prevention and Control *(IPPC)*
Together these two Directives mean that large power plant (50MW or above) need to detail every section of the site that has an immediate impact on the surrounding environment – gas, particulate and noise emissions, water treatment, air quality etc –in order to receive an operating permit. Following on from the success of last year's conference, IPG'06 will dissect the terms and conditions of the EC Directives, including case study examples of compliant plant. Best available technology to bring plant in line with the regulations will also be discussed. New topics for 2006 include carbon capture/storage and boiler/turbine options.

CALL FOR PAPERS DEADLINE: 21 APRIL 2006

Day One – Business	**Day Two – Technology**
• LCPD – explanation, update and timetable • IPPC – how it relates to LCPD, NECD and timetable • LCPD – opt-in or opt-out? • The UK experience • LCPD/IPPC-compliant power plant case study • EU Emissions Trading Scheme (ETS) • Asset and risk management • Demonstrating new clean coal plant – case study Financial options for cleaner coal plant	• FGD technologies 1 • FGD technologies 2 • SCR/SNCR technology • Supercritical/Ultra-supercritical boilers • Low NOx burners • Steam turbine technology • Removing particulate matter • Carbon capture and storage • Fuel handling

Speaker Information:

Papers are limited to 30 minutes maximum and must be written and presented in English. Abstracts for consideration should be a 150-200 word concise account of the suggested paper, including title and speaker. Applications for Chairman positions also welcome.

Contact:
Speaker/Chairman positions
James Luckey
+44 (0) 1322 611266
james.luckey@nexusmedia.com

THE KATE BARKER REVIEW:

THE GOVERNMENT'S RESPONSE - A SEMINAR TO PROMOTE AWARENESS AND DISCUSSION ON THE GOVERNMENT'S RESPONSE TO KATE BARKER'S REVIEW OF HOUSING SUPPLY, WITH PARTICULAR REFERENCE TO PLANNING GAIN SUPPLEMENT, WHICH IS CURRENTLY SUBJECT TO CONSULTATION

Thursday 9 February 2006
Linklater's Conference Room
One Silk Street, EC2

Speakers include representatives from ODPM and HM Treasury, the private sector and local government. See overleaf for details.

1440 Registration and coffee.

1515 Introduction from the Chair
Liz Peace, Chief Executive, *British Property Federation*

1520 The Government's response to the Kate Barker Review: the background; the proposals; next steps
Nick Dexter, Head of Housing Supply, *ODPM*
Mark Fine, Senior Policy Advisor, *Property Tax Team HM Treasury*

1605 A Lawyer's response
David Watkins, Partner, Real Estate Department, *Linklaters*

1630 A Surveyor's response
Gerald Allison, Head of Strategic Development, *DTZ*

1655 Break

1710 A local authority response
Lee Searles, Programme Manager, Planning & Housing, *Local Government Association*

1735 The sustainability impacts of housing growth scenarios.
Clive Harridge, Director, *Entec*

1800 Panel discussion involving all speakers

1830 End of seminar. Refreshments

KATE BARKER REVIEW: THE GOVERNMENT'S RESPONSE
Thursday 9 February 2006
Linklaters Conference Room, One Silk Street, London EC2
SEMINAR PROGRAMME
REGISTRATION FORM
(Please photocopy for each additional attendee)

Name of delegate _____ Position _____
Organisation _____
Address _____
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Email _____Tel No _____
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REGIONAL GROUPS

North West Regional Group : Do you and your clients have adequate environmental insurance?

The North West Regional Group is holding a special meeting to discuss Environmental Insurance on Wednesday, May 3rd 2005. Solicitor Valerie Fogleman, of Lovells, and consultant David Brierley of Bridge Insurance, will address the question:
There will be an opportunity for questions and discussion and a networking opportunity with drinks afterwards.

Date: Wednesday May 3rd 2006
Time: 4.30pm – 7pm (speakers at 5pm)
Venue: Addleshaws, 100 Barbirolli Square, Manchester, M2 3AB.

CPD points accredited: 1

Coffee/tea available from 4.30pm. Please stay for drinks and nibbles afterwards.

Cost (to cover refreshments): UKELA members £5. Non-members £10. Students free of charge although places are limited. All places must be booked.

Booking:
Please book your place by sending the attached form and cheque payable to UK Environmental Law Association to Alison Boyd, UKELA Members' Support Officer, 45 Claygate Road, Dorking, Surrey RH4 2PS

East Anglian Regional Group Meeting Environmental Law and Planning Applications

The East Anglian Regional Group is pleased to announce a special meeting on Environmental Law and Planning Applications to be held on Wednesday, May 10th 2006.

Our speakers will be Bruce Monnington, Counsel of Fenners Chambers, Cambridge who will speak on Environmental Law and Planning Applications and a speaker (to be confirmed) from AERC Consultant Environmental Scientists of Colchester who will speak on Environmental Impact Assessments.

There will be an opportunity for questions and discussion and a networking opportunity with light refreshments afterwards.

Date: Wednesday May 10th 2006

Time: 4.30pm – 6.30pm (speakers at 5pm)

Venue: Taylor Vintners Solicitors, Merlin Place, Milton Road, Cambridge, CB4 0DP

Cost (to cover refreshments): UKELA members £5. Non-members £10. Students free of charge although places are limited. All places must be booked.

Booking:
Please book your place by sending the attached form and cheque payable to UK Environmental Law Association to Helen Korfanty, Bates Wells and Braithwaite, 27 Friars Street, Sudbury, Suffolk CO10 2AD.

UKELA NORTH WEST GROUP ENVIRONMENTAL INSURANCE SPECIAL BOOKING FORM

May 3rd 2005

All places must be booked

I enclose a cheque for £ _____ payable to the UK Environmental Law Association

Fees:

UKELA members	£5
Others	£10
Students	free of charge

Name

Address

Firm/Organisation/Academic Institution

Email address

Phone number/mobile

UKELA member ☐

Student ☐

Other ☐

Please return this form with your payment (cheques payable to UK Environmental Law Association) to:
Alison Boyd,
UKELA Members' Support Officer,
45 Claygate Road, Dorking, Surrey, RH4 2PS

UKELA EAST ANGLIAN GROUP MEETING ON ENVIRONMENTAL LAW AND PLANNING APPLICATIONS
BOOKING FORM

May 10th 2006

All places must be booked

I enclose a cheque for £ _____ payable to the UK Environmental Law Association

Fees:

UKELA members	£5
Others	£10
Students	free of charge

Name

_____

Address

_____

_____

_____

Firm/Organisation/Academic Institution

_____

Email address

_____

Phone number/mobile

_____

UKELA member ☐

Student ☐

Other ☐

Please return this form with your payment (cheques payable to UK Environmental Law Association) to:

Helen Korfanty
Bates Wells and Braithwaite, 27 Friars Street, Sudbury, Suffolk, CO10 2AD

BPP ENVIRONMENTAL LAW PRO BONO GROUP

Environmental Regulations vs Market Instruments and Voluntary Initiatives

Date: 8th February 2006
Time: 6.30pm to 7.30pm
Venue: BPP Law School, Waterloo Lecture Theatre, 137 Stanford Street, London, SE1 9NN

Chair: Lord Justice Carwath, Court of Appeal

Speakers: Mr Justice Ouseley
Peter Stokes – Volkswagen UK
Nick Flynn – (TBC)
_____ Wheel – WEIL, Gotschal & Manges
Richard Buxton – Solicitor
Representatives from Friends of the Earth
Unilever

To reserve a place contact: enviro@bpplaw.co.uk

LORD SLYNN OF HADLEY MOOTING TROPHY COMPETITION 2006 AND UKELA STUDENT MOOT 2006

The final of the mooting competitions will take place on Monday 20th February 2006, at Inner Temple, Luncheon Room, at 6pm. The competitions will be judged by Lord Slynn, book prizes will be awarded by Sweet & Maxwell/Thomson, cash prizes by No5 Chambers, free UKELA annual membership by UKELA Council. No5 Chambers has kindly sponsored the moots. The finalists will be notified at the start of next week. Refreshments will be provided at the end of the evening. Those who wish to attend, please email Martha Grekos at No5 Chambers, mg@no5.com

Martha Grekos
No5 Chambers

Tel: 0870 203 5555
www.no5.com

EEL News Service 2006/1 was posted on 19 January 2006 go to http://www.eel.nl

UKELA LONDON MEETING
"Environmental Insurance – Where next?"

Wednesday 8th February 2006 at 6pm

At Herbert Smith
Exchange House
Primrose Street
Exchange Square
London EC2A 2HS

UKELA members are cordially invited to this early evening session where the subject will be "**Environmental Insurance**". The session will consist of a discussion of the need for, and availability of, insurance and other measures for transferring the risk of environmental liabilities together with practical points in placing insurance policies on behalf of clients.

The speakers will be:

Stephen Sykes (WSP Group) – Solicitor and Global Head of Environmental Liability Solutions, WSP Environmental.

Valerie Fogleman (Lovells) – Consultant, Lovells; Convenor, UKELA Insurance and Liability Working Party; author of Environmental Liabilities and Insurance in England and the United States (Witherbys 2005).

The Meeting will last for approximately 90 minutes after which refreshments will be provided to enable those attending to discuss the issues informally.

Registration is 5.30 pm with seminar due to start at 6 pm.

1.5 CPD points will be available for all attending.

There will be a small contribution to cover costs at £10 for Members and £20 for Non-members. Students and Unwaged members are free. Your booking is not confirmed until a cheque has been received.

If you wish to accept please contact by e-mail Claire Robertson at Herbert Smith: claire.robertson@herbertsmith.com

All cheques should be made payable to UKELA and sent to:

UKELA
c/o Claire Robertson
Exchange House
Primrose Street
London EC2A 2HS
(DX 28 London)

UK ENVIRONMENTAL LAW ASSOCIATION
Registered Charity number: 299498, Company limited by guarantee: 2133283

For information about working parties and events, including copies of all recent submissions contact.

General Secretary: Dr Christina BT Hill, MA Registered Office: Honeycroft House, Pangbourne Road, Upper Basildon, Berkshire
RG8 8LP

Tel /Fax: (01491) 671184
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www.ukela.org

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MEMBERSHIP ENQUIRIES
To Richard Bines
Email: richard.bines@sharpsredmore.co.uk
Fax: 01473 730030

E - LAW

The editorial team want articles, news and views from you for the next edition due to go out at end January 2006. All contributions should be dispatched to Catherine Davey as soon as possible by email at: Catherine.Davey@stevens- bolton.co.uk by 17 March 2006 .
Please use Arial font 11pt. Single space.

Letters to the editor will be published, space permitting