

Index

All Change on the Council	2
Andrew Lees Prize Winning Essay Competition 2006	2
UKELA London Meeting – WEEE and ROHS Update	4
Brownfield Briefing Remediation Awards	5
New Postal Address of UKELA	6
Free Trial Offer	6
UKELA/APIIL Joint Training Opportunity	6
Walk on the Wild Side : Changing Environmental Law Conference	7
UKELA Conference at Warwick	7
Council Members with effect from 12.07.06	9



ALL CHANGE ON COUNCIL

Andrew Wiseman has retired as the UKELA Chair after more than three years in the role. Andrew was also the longest serving Council member and has stepped down at the end of his term of office.

UKELA is hugely grateful to Andrew for all his hard work for UKELA. The new Chair, Daniel Lawrence, paid tribute to his achievements at the AGM which took place at the annual conference. They included his efforts to secure an independent environment agency for Northern Ireland; development of the e-library proposal which is currently seeking funding; work to secure better access to justice on environmental matters and helping UKELA provide a better service to members and reach more potential members. UKELA is also grateful to Trowers and Hamblins for supporting Andrew's time in office.

Daniel, of Freshfields Bruckhaus Deringer, was appointed as Chair by the Council at its first meeting following the Council elections. Peter Kellett, of the Environment Agency, was appointed as the Vice-Chair.

New Council members, who succeeded in the recent elections, were Tim Jewell and Tom Mosedale of DEFRA, and Michael Woods of Stephenson Harwood. Simon Boyle, of Argyll Environmental, and Jim Drysdale, of Anderson Strathern, also successfully stood in the election as their terms of office had expired. Stephen Sykes, of WSP, was co-opted onto Council to take the lead on Membership Development, to ensure UKELA works to secure a greater diversity of members.

Michael Woods is the new Company Secretary, replacing Christina Hill in that role. He will also provide the registered office address. Jim Drysdale continues as the Treasurer.

Christina has left UKELA as the General Secretary after many years of association with UKELA. There was a vote of thanks at the gala dinner at the conference and Christina was presented with a decanter and bottle of port. She was also awarded life membership of UKELA which will keep her in touch with its activities as she develops her new role as Deputy Lord Lieutenant of Berkshire.

UKELA's Council also thanked Valerie Fogleman, of Lovells, for her long period of time on Council during which she has acted as convenor of the Insurance and Liability Working Party, and as the administrator of the CPD points. Val has kindly offered to continue with both these roles.

Thanks also went to Martha Grekos, of No. 5 Chambers, standing down from Council, who also kindly offered to continue organising the student competitions.

ANDREW LEES PRIZE ESSAY COMPETITION 2006

Winning Essay

“PUBLIC OPINION IS A FICKLE CREATURE AND THE RIGHT TO ENVIRONMENTAL INFORMATION WILL ONLY BE EXERCISED BY A FEW”. CAN ACCESS TO ENVIRONMENTAL INFORMATION BE SEEN AS AN ENVIRONMENTAL PROTECTION TOOL?

Benjamin Bundock

In recent years we have seen a proliferation of alternative approaches to environmental protection. The ever-growing complexity of regulatory legislation has rendered our basic administrative structure, unaided by alternative techniques, inadequate to deal with the problems that we face. This, combined with an increasing disillusionment with regulation through direct state authority, has led to the emergence of a plurality of alternative mechanisms,

such as market instruments. These alternative mechanisms, on the most part, require an increased public understanding of the issues at hand, and therefore a greater amount of information at the disposal of the public.

The topic for discussion is the extent to which access to environmental information can be viewed as an environmental tool. Access to information is one of a number of entwined concepts, which work in alliance toward the goal of environmental protection. Therefore, adequate assessment of the utility of access to information as such a tool cannot be attempted without adopting a contextual view. However, due to the particular nature of the question, and constraints on space, this study must ignore a number of important issues¹, and omit further analysis on some issues for which it would otherwise be appropriate². Therefore the main analysis will be focussed on the specifics of the title quote.

Firstly, the stability of public opinion must be examined. This relates to the implementation of environmental information through processes such as 'public participation'. The claim can be summarised as questioning the wisdom of placing technical or expert decisions in the hands of an (arguably) irrational, ignorant and erratic public. It might be said that this is not a course of action that will be conducive to a consistent and coherent policy on environmental issues, and that it will operate as an obstacle rather than an aid to the objective of improved environmental protection. However, such a position ignores the dynamic nature of the relationship between public understanding and stability, and the degree to which they are involved and exposed to information. If public participation in environmental decision-making is to increase, accompanied by increased availability and propagation of environmental information, their understanding of the issues at play may develop, and their intuitive positions will be challenged through exposure to alternative perspectives. Access to information and public participation can be viewed as an alternative and preferable approach to autonomous bureaucracy that can improve the substantive output of decisions by increasing the range of input; as a response to the failure of public administration; as 'democratic pragmatism'³. Furthermore, discussion here has been limited to an assessment of effectiveness, without consideration of the philosophical consistency of omitting such rights to information and participation, given the democratic and human rights-based nature of Western society. As policy develops, there are certainly obstacles to overcome in application, such as cost (in terms of both time and money) and practical issues of implementation. Circumnavigation of community power structures will also have to be achieved to accomplish true inclusiveness⁴.

Secondly, the degree to which the public will utilise the availability of environmental information must be considered. Environmental information exists in a number of forms. The officially held registers⁵ and most reports are open to public examination, but are not disseminated by the state or other bodies, unlike specifically targeted reports, company annual reports and eco-labelling. Regarding non-disseminated information, a wealth of literature is available on the intricacies of the legislation that regulates access⁶. Such issues are only relevant here so far as regulation is particularly obstructive to public examination, which it no longer is in the UK⁷. However, it has long been established that the registers are accessed very infrequently, and almost always by sales consultants, academics and individuals involved in the property market⁸. Academics have attributed this to a lack of a 'culture of participation'⁹ in general environmental issues. Some have concluded that the public simply has little interest in these matters, and therefore resources are being wasted by pushing for increased access and involvement.

¹ For example, it is worth noting that fundamental controversy regarding the state of the environment, and what constitutes environmental protection, renders assessment of 'an environmental protection tool' an extremely complicated process.

² For example, thorough examination of issues such as the relationship between access to information and market instruments, and the effectiveness of utilising consumer choice, will be impossible.

³ J. Dryzek, *The Politics of the Earth* (Oxford University Press, 1997), Chap. 5

⁴ Lessons can be learned from the approach of international law in a number of fields, taking careful note of societal and community power structures and traditionally excluded groups.

⁵ Registers exhibiting the environmental emissions of various organisations and their compliance with regulatory requirements.

⁶ for example: Coppel, *Environmental Information, the New Regime* [2005] JPL 12

⁷ see Coppel, *op cit*

⁸ J Rowan-Robinson, A Ross, W Walton and J Rothnie, *Public Access to Environmental Information: A means to what end?* [1996] JEL 19

⁹ J Rowan-Robinson et al, *op cit*

However, when the planning regime in the UK is examined, we can perhaps see this issue in a different light. Since the 1960s, planning policy has encouraged public involvement with planning matters and decision-making. The result of this approach can be seen in the strikingly higher figures for public access to the planning registers¹⁰.

Furthermore, arguments for the utility of access to information, regardless of the public's proactive access of it, may be made. In a climate where, despite little positive action, the public do generally hold a desire to improve the state of the environment, the nature of the competitive market compels business to improve environmental performance. The simple fact that standards must be disclosed for all to see applies pressure to ensure good practice, lest competitors (or the state) capitalise on their failure. In a world where PR is all-important, no company wishes to be seen as the polluting monster. Similar analysis explains the increasing use of company annual reports to explain environmental policy¹¹, and the popularity of schemes such as accreditation. These processes have the advantage over straightforward regulatory approaches that they are graduated systems, providing constant incentive for environmental improvement. This area of regulation is still early in development, and difficulties such as the lack of concrete financial incentive (for environmental consciousness) and the lack of enforceability can be addressed as policy progresses. Also worth noting is the role of environmental information to the consumer. Here, access to information operates in alliance with other mechanisms to effect market transformation, aiming to internalise some of the environmental costs of production. While problems of axiomatic assertions and a proliferation of non-standardised claims have troubled this area, successful moves are being made to address these issues¹².

Access to environmental information is an environmental protection tool that is still in its early development. Various claims have been made as to its unsuitability and ineffectiveness, but these are often misguided, based on a view of the concept as it was or is, not as it potentially could be. Additionally, as the RCEP stated, 'The public must be considered to have a right, analogous to a beneficial interest, in the condition of the air and water and to be able to obtain information on how far they are being degraded'¹³. Moreover, the increased involvement and awareness of the public in environmental affairs is crucial given the nature of the problems we now face. Many of the most pertinent current environmental issues require fundamental changes in the way in which we live. The threat of global warming and the problem of waste disposal require transformation from the bottom up, requiring all to take responsibility in environmental stewardship. Access to information, and public participation, have an extremely important educational role in engaging the public in environmental self-evaluation. Once fostered by a shift to a more proactively disseminated and easily understandable form of information distribution, coupled with a more inclusive approach to participation in decision-making, a far more informed and concerned public will emerge, which is not only of benefit to environmental protection, but essential to it.

**UKELA LONDON MEETING
WEEE AND ROHS UPDATE
WEDNESDAY 19TH JULY 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 **"The Current Position on WEEE Implementation and an Update on the Draft Regulations"**.

The speakers will be:

¹⁰ see J Rowan-Robinson et al, *op cit*

¹¹ see Bell & McGillivray, *Environmental Law* (Oxford University Press, 2006) Chap. 10

¹² For example, in ISO 14021, and the UK government's *Green Claims Code*.

¹³ RCEP, 10th Report, *Tackling Pollution – Experience and Prospects* (Cmnd 9149, 1984)

Jeff Cooper of Environment Agency – Jeff Cooper is the Producer Responsibility Policy Manager for the Environment Agency for England and Wales. He was responsible for the implementation of the Agency's systems for the Packaging Waste Regulations and now works on the implementation of producer responsibility for end of life vehicles, waste electrical and electronic equipment, batteries and other waste streams. He has worked as the waste planning manager for the London Waste Regulation Authority, Recycling Co-ordinator for the Greater London Council and as a lecturer in Resource Science at the University of Kingston. He is Chair of the Scientific and Technical Committee of the International Solid Waste Association (ISWA) and a member of the ISWA Recycling and Waste Minimisation Group which he previously chaired and where he represents the UK Chartered Institution of Wastes Management (CIWM). He is a member of the CIWM's Scientific and Technical Committee and becomes CIWM President in June 2007. He has written a monthly column for Materials Recycling Week since 1991.

Paul Rice, Partner at Pinsent Masons – Paul Rice heads up the firm's National Environment practice. He specialises in all aspects of UK and EU Environmental Law from contaminated land projects and brownfield redevelopment, regeneration, renewables and emissions control through to IPPC, wastes management and outsourcing as well as corporate due diligence and general environmental enforcement and regulatory advice. He has advised numerous waste management clients on various aspects of waste law including licensing, enforcement, landfill tax and environmental bodies and producer responsibility. He is recognised as a leading UK Environmental Lawyer by Chambers Legal Directory, Legal 500 and Legal Experts 2005. He is a member of the Chartered Institution of Wastes Management, sits on the waste working party of UKELA and was a former member of the wastes committee of the International Chamber of Commerce.

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
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BROWNFIELD BRIEFING REMEDIATION AWARDS

The Brownfield Briefing Remediation Innovation Awards aim to recognise best practice in remediation and use of remediation technology throughout the UK. Members may have clients with projects that they would like to nominate. After the successful inaugural launch last year the BBRIA Awards for 2006 will be presented during a dinner to be held on 19 September 2006 in London.

For information about nominating a project, sponsoring the event or an individual award, or for information on hosting a table email sales@brownfieldbriefing.com

The awards cover

- * Best use of bio systems
- * Best use of chemical systems
- * Best use of combined treatment systems
- * Most innovative remediation method (out of the above)
- * Best conceptual design
- * Best validation process

<http://www.brownfieldbriefing.com>

NEW POSTAL ADDRESS FOR UKELA

Please note that the new postal address for UKELA is, with immediate effect, UKELA, PO Box 487, Dorking, Surrey, RH4 9BH. This is not the registered address. We will advise you of that in due course.

Alison Boyd
Member Support Officer
01306 500090

FREE TRIAL OFFER

To the UK's leading monthly journal of environmental policy and legislation

Whether it's the latest progress in implementing the latest Environment Agency regulations or a blow-by-blow update on the REACH debate, our specialist writers have it covered. Stitching together the many strands of environmental policy and legislation, the ENDS Report offers an invaluable spectrum of coverage from the overview of the environmental industry to the fine detail of a specific subject.

As a member of UKELA, you can now trial the ENDS Report and www.endsreport.com on a complimentary basis for 28 days. Alternatively, order by July 31st and take advantage of the £50 saving - exclusive for UKELA members.

To start your FREE trial go to : www.endsreport.com/web/ukela-free

To take advantage of the UKELA subscription offer go to : <http://www.endsreport.com/web/ukela-dis> (this offer excludes current ENDS subscribers)

UKELA/APIIL JOINT TRAINING OPPORTUNITY

UKELA has once again teamed up with the Association of Personal Injury Lawyers to offer an Essential Environmental Law Update training event.

This time we are running an all day (6 CPD points) conference in London on Tuesday, November 10th.

Speakers include: Prof. Richard Macrory, UCL Centre for Law and Environment; David Hart QC, 1 Crown Office Row Chambers, London; Martyn Day, Leigh Day & Co; Phil Shiner, Public

Interest Lawyers; Charles Pugh, Old Square Chambers; John Bates, Old Square Chambers; Richard Hemnet, Doughty Street Chambers

£195 UKELA and APIL members. Booking form available shortly on the website or from vicki.elcoate@ntlworld.com.

Discount for UKELA members at Environmental Law Masterclass

CLT is offering a substantial discount to UKELA members who sign up for one or both of its environmental law masterclasses on July 24 and 25 at the Cafe Royal in London.

Both days are being chaired by UKELA chair Andrew Wiseman and there are a number of speakers from UKELA. A flyer and booking form are attached to this mailing of e-law (if not contact vicki.elcoate@ntlworld.com). The cost is the same as for CLT subscribers if you make it clear when you book that you are a UKELA member.

The discount relates only to this conference (£365 for one day/£650 for both days - full price £495 and £950 respectively - all prices plus VAT).

DIARY NOTICE - WALK ON THE WILD SIDE: CHANGING ENVIRONMENTAL LAW CONFERENCE 10-12 NOVEMBER 2006

UKELA is working with the Environmental Law Foundation to organise a second Wild Law conference and the programme is already shaping up with some excellent speakers confirmed. This conference will be held on the afternoon of Friday November 10th at Brighton University, followed by a weekend workshop.

The South African lawyer, Cormac Cullinan, the author of the book, "Wild Law: A Manifesto for Earth Justice", will be speaking on how his ideas can be mobilised onto the worldwide public agenda and how they can be compatible with the almost universal aspiration across the world for economic prosperity.

Nick Robinson, Professor of Environmental Law at Pace University School of Law in New York, will discuss how wild law can work in practice. Other speakers include the editor of Resurgence magazine, Satish Kumar, who famously undertook an 8,000 peace pilgrimage to the world's major powers at the age of eighteen. The event is being chaired by John Elkington, of SustainAbility.

Further speakers are planned and a full programme will be circulated as soon as it is available. Last year's event attracted a packed house with delegates from a wide variety of backgrounds.

The afternoon conference will be followed by a weekend workshop to explore the Wild Law ideas further, led by Cormac Cullinan, at Arundel Youth Hostel. Places will be limited for this and full board and transport provided (you do not have to book for both events).

Booking forms will be available shortly. If you would like to get onto the list to receive a booking form please contact Alison Boyd, the Members' support officer, alisonboyd@ntlworld.com, or monitor the website www.ukela.org.

UKELA CONFERENCE AT WARWICK

The lack of environmental education for Judges was one of the main themes of the address by the Shadow Lord Chancellor, Rt Hon Lord Kingsland QC, at the annual conference at Warwick University.

Lord Kingsland criticised the Judicial Studies Board for not providing training on environmental matters. "There is no scheme to teach the Judiciary about environmental concepts", he said. There was also, he said: "The failure of Judges to develop the concept of environmental rights in the same way as they have developed the concept of human rights. Often there have been enormous problems in relation to the causation of environmental harm".

He explained that the polluter pays principle was not effectively implemented through the courts as it did not necessarily address the harm caused. The system might require someone to be compensated for any loss but "the national environment which will have suffered a permanent degradation hasn't been remediated".

The conference, attended by about 180 delegates, also discussed some of the hot topics facing environmental lawyers and those with an interest in environmental law, including climate change, the environmental implications of nanotechnology, waste and better regulation.

On climate change, Chris Dodwell from the Department of Environment, Food and Rural Affairs, said that the UK's tough stance on carbon emissions had mainstreamed environmental issues for business. "The UK decided it needed to go to the tough end of emissions trading because of the need for long term business certainty". He said other sectors that could fall into the emissions trading scheme after 2012 include aviation, surface transport and other gases.

Peter Kellett, of the Environment Agency, described joint proposals from the Government and the Agency for modernising environmental permitting systems in England and Wales. He said: "domestic environmental permitting and compliance systems as a whole are over-complex. They can be streamlined without undermining environmental protection". The proposed Environmental Permitting Programme would "deliver the requirements of numerous Directives through a single simpler permitting and compliance system for waste management licensing and Pollution Prevention and Control".

Speakers were from DEFRA; the Environment Agency; private companies; law firms; universities; local authorities and international bodies concerned with sustainable development.

One of the unexpected highlights of the conference was the chance to watch England play Portugal in the World Cup quarter finals (although the result was less of a highlight). The screening was provided in the lecture theatre with free beer supplied by one of the main sponsors, AIG Total Environmental Solutions. This proved something of a distraction from the two field visits to Warwick Castle and the Heritage Motor Museum, although those who did go enjoyed their visits.

UKELA would like to thank AIG and the other main sponsors WSP and Landmark, without whom the conference would not have been possible. Thanks also go to TM Argyll for supplying the conference bags and for planting a tree for every delegate to offset carbon emissions from their travel and to No 5 Chambers for supplying the conference folders.

Plans are already under way for the 2007 conference with a date and venue already pencilled into the diary. Watch the website – www.ukela.org – for an announcement soon. 2007 is the 20th anniversary of the founding of UKELA so this will be an important year to reflect on twenty years of environmental law and what the organisation has achieved.

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

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E - LAW

The editorial team want articles, news and views from you for the next edition due to go out at end July 2006. All contributions should be dispatched to Catherine Davey as soon as possible by email at: Catherine.Davey@stevens-bolton.co.uk by 24 July 2006 . Please use Arial font 11pt. Single space.

Letters to the editor will be published, space permitting

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