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UKELA 20TH ANNIVERSARY CONFERENCE

Booking is now open for UKELA's 20th anniversary conference which will take place at Bath University on June 22nd-24th. Places are limited for the dinner at the historic Pump Rooms so it is advisable to book early. Other sessions will include an Any Questions panel on the Friday evening, climate change and hot topics. The speaker programme is still being finalised and will be sent to all members as soon as possible.

UKELA thanks main sponsors WSP and 39 Essex Street. If you are interested in sponsoring the conference, there are still opportunities of all sizes available. You will find a booking form for the conference attached.

UKELA ARTICLE COMPETITION 2007

We are delighted to publish the winning article by **Kate Egerton, University of Bristol**

“To what extent are individual preferences or expert opinions suitable in guiding policy and damage assessment decisions relating to the environment?”

‘The protection and preservation of the environment is now perceived as being of crucial importance to the future of mankind.’¹ This is a commonly held view in modern law yet the protection of the environment requires assessment of a myriad of complex and often competing considerations. Any policy or damage assessment decisions relating to the environment are invariably influenced by the value the decision maker places with each of these considerations. For example, when assessing the potential for development of land, the economist will place the highest weight on a cost benefit analysis whereas the ecologist will have the disturbance of nature as his highest priority.

One of the factors present in this matrix of deliberations is the element of risk associated with anthropocentric activities to the environment and human health. The perception of risk is a hot battle ground between the publicly held layman's view and expert opinion. The majority of major decisions relating to the environment are made by the latter, namely professional scientists and politicians. Public concern will often trigger the formation of new areas of policy and legislation,² but will have little role to play in setting the standards in the decision making process.

The environment is a highly emotive subject inviting heavily value-laden interpretations and a bewildering number of competing environmental knowledge claims.³ Science is perceived as a superior form of knowledge from the layman's as it is detached from personal bias and not prone to irrational fears. Is this sharp dichotomy between objectivity and subjectivity really a solid enough justification for endorsing the former and dismissing the latter?

There is no denying that we rely on scientific measurement and hypothesis; it is our very mode for identifying problems relating to the environment in the first place (how else would we recognise climate change or ozone depletion?) It is undoubtedly our starting point for the assessment of risk, but it is

¹ Per Lord Goff in *Cambridge Water Co v Eastern Counties Leather Plc* [1994] 2 AC 264

² For example, the Clean Air Act 1956 following London smog and Deposit of Poisonous Waste Act 1972 in response to concern over ‘cowboy’ waste operators

³ Quentin Merritt and Jones, *Science and Environmental Decision Making: The Social Context*, Ch 3 in Huxham and Sumner, *Science and Environmental Decision Making* (2000), pp67-71

important to recognise its limitations. With every step furthering our scientific understanding, so arise an array of additional inquiries. There has been a wane in public trust in science (for example, after the BSE crisis) which is justified; we have become a highly developed society and with it comes an elevated degree of uncertainty. Science can not establish the cause-effect chain at our current level of complexity and once this is recognised, its application comes somewhat abated.

Science offers a selective view of the world we live in. Scientific analysis is based upon the capability of the subject to be assessed objectively (a beautiful view being incapable of such measurement), the priority the scientific community bestows upon it (homoeopathic medicine) and the availability of funding for such investigation (renewable energy).⁴ What effectively results is an unproblematic but highly reduced reality. A further problem is that science offers no opportunity for forming accurate models of high risk, low frequency events over time. Decision makers effectively take a gamble and hope that it pays off. Who knows what effects mobile phones will have on us over a period of 50 years? One can only hope that they will not be unpleasant.

Science does not factor in the cultural construction of risk which is an important variable considering it is the public who have to live with the consequences. Risk assessment is not the privilege of scientists. Intrinsic in our very nature is perpetual form of risk assessment we carry out every day of our lives; driving a car, flying in a plane, smoking. It is proven from these examples that humans are not adverse to risk and are in fact quite capable of forming such assessments, so why are we not accorded more responsibility when it comes to the environment in which we live? This may be attributed to perceived public irrationality and hysteria. However, the claimants' fear in *Duddridge*⁵ was a very real one, even more real than a flimsy scientific statistic which offers no substantiated proof in supporting either view. Activities leading to environmental risk are often profitable ventures, yet they are frequently unilaterally imposed upon the public by experts with no cognisance of those directly affected.

David Schön⁶ argues that the practice of deploying science without mediation from other crucial sources of knowledge is not a suitable mode for dealing with the complexity, novelty and indeterminacy of environmental issues. Science deals with statistics and when they cannot indicate a definitive answer one way or the other, individual preference of the layman must have its place. It is not the prerogative of science to assert that a threefold increased risk of a child developing leukaemia as a result of power lines is an acceptable statistic when a mother has to live with that statistic in her back garden.

Decreasing confidence in science has led to the development of the precautionary principle where in the absence of full scientific proof, decision makers err on the side of safety. This approach is illustrated by the WTO Beef Hormones Dispute where although there was no positive evidence that beef hormones posed a risk to humans, it was held that it was in 'the interest of consumers in general' to prohibit the hormones. However, the concept is notoriously ill-defined and cases such as *Duddridge* illustrate that although there is acknowledgment of the principle in general EC and international law, there is no obligation as to its application, nor should the principle be applied as a matter of 'common sense'.

Science presents life in black and white, but look outside and you will see a very colourful world indeed. Beck⁷ argues that the uncertainties of science assume a particularly acute form in cases of environmental risk and rejects the division between subjective and objective views in decision making. This appears to

⁴ *Ibid*, n.3, p71

⁵ [1995] Env. LR 151

⁶ *The Reflective Practitioner: How Professionals Think In Action*, (1983), Basic Books, New York; The crisis of professional knowledge and the pursuit of an epistemology of practice, *Journal of Interprofessional Care*, (1992), 6, 49-63

⁷ *Risk Society: Towards a New Modernity*, Sage, London; (1995), *Ecological Politics in an Age of Risk*, (1992), Polity Press, Cambridge

be the fairest view; where science cannot provide definitive answers, it should only serve as a good starting point, a guide and structure from which we, the public, can shape our own policy.

AN UPDATE ON CORNERHOUSE AND PROTECTIVE COSTS ORDERS

Justine Thornton

The Court of Appeal has made some interesting and potentially significant comments on protective costs orders which are likely to be welcomed by environmental campaigners. Protective or pre-emptive costs orders are orders granted by the Court at an early stage of the proceedings which assure the Claimant that no costs will be ordered against them whatever the ultimate outcome. The leading authority on the Courts' jurisdiction to do so is *R (on the application of Corner House Research) v Secretary of State for Trade and Industry* (2005) EWCA Civ 192, (2005) ACD 100

In *R (on the application of DEREK ENGLAND) (Appellant) v TOWER HAMLETS LONDON BOROUGH COUNCIL (Respondent) & TEAM LTD & ORS (Interested Parties)* (2006) (Court of Appeal) [2006] EWCA Civ 1742 the applicant (Mr England) was an active campaigner for the protection of the industrial heritage of Tower Hamlets. He applied for permission to appeal against dismissal of his application for judicial review of a decision by Tower Hamlets to grant planning permission for development which threatened a historic warehouse in Tower Hamlets. Prior to the court hearing, the development started the warehouse had been substantially demolished. Mr England had been legally aided but following the destruction of the warehouse, his Counsel were no longer able to support the case.

Interestingly the Court of Appeal was prepared, in the circumstances, to allow Richard Buxton (a well known claimants' environmental lawyer) to appear despite the fact he was not authorised to appear before them. In addition the judgment acknowledges Mr Buxton's role in various landmark cases.

The Court dismissed the application for leave to appeal but turned its attention to funding. It is worth repeating the comments made in full:

"Mr Buxton suggested that the Court could make a protective costs order under the jurisdiction explained in the well known Cornerhouse case [2005] 1 WLR 2600. There is no such application before us. It would be wrong to grant such an order without an opportunity for the affected parties to comment.

It is important, however, that means should be found to do this without that process itself becoming a source of additional cost. The recent report of a group chaired by Lord Justice Kay "Litigating the Public Interest" (July 2006) provides a valuable discussion of the issues arising from the Cornerhouse case. In particular, the report questions the requirement in the criteria there laid down that the applicant should not have any "private interest" in the outcome of the case. For our part we respectfully share the doubts expressed by Sir Mark Potter as to the appropriateness or workability of this criterion (Wilkinson v Kitzinger [2006] EWHC 835), but we note that a restrictive approach has been taken by this court in other cases (eg R (Goodson) v Bedfordshire and Luton Coroner [2005] EWCA Civ 1172).

Different considerations may in any event apply to a case such as the present where Mr England's "interest", as I understand it, is not a private law interest but simply one he shares with the other members of his group in the protection of the environment. In this context the provisions of the Aarhus Convention on access to justice in environmental matters (referred to in R (Burkett) v Hammersmith LBC [2004] EWCA Civ 1342 para 74) may also be relevant. We hope that the Civil Procedure Rules Committee will take the opportunity in the near future to review these questions in the light of the findings and recommendations of the Kay Report.

For these reasons, we were agreed that the application may be refused. We had appearances on behalf of the developer and the local authority. The local authority appeared because they thought that we might make a protective costs order. As we have made clear, we would not do that without finding appropriate means to ensure that the authority could make representations. Even if we had made an order in the absence of the Authority, the rules would have allowed it to apply to set it aside. Accordingly we see no reason to make an award of costs in favour of the authority. Counsel for the developer realistically accepted that it would be unusual to make an order in favour of the respondents in circumstances such as the present and he did not press a claim. Accordingly we will simply dismiss the application for permission with no order as to costs.

Since we have touched on issues of wider significance we authorise reference to this judgment where relevant in other proceedings (as an exception to the ordinary rules for judgments on permission applications.)”

CARBON OFFSET – CHANGING THE MINDSET

Paul Collins Bond Pearce LLP

Increasingly law firms are seeking to promote their ‘green’ credentials and wider corporate social responsibility (CSR) policies. You will have seen the recent exchange between some of the larger law firms as to which was first to embrace carbon offset into their practice (The Lawyer, 27 November 2006).

Whilst admirable, to a degree, it may be to redeem the environmental cost of carbon emissions through planting trees or funding renewable energy projects, it is impossible to accurately account for such offsetting projects as recouping emissions in this way bears no relation to reality.

The buying and selling of carbon offsets has been described by one leading environmental campaigner as “...like pushing food around your plate to create the impression that you have eaten it.” (George Monbiot, Heat, 2006).

For law firms that recognise reputation risk and value their green credentials, the message is clear. Postponing the hard choices they need to make now is no longer an option. Focus first on implementing a credible, responsive and independently audited environmental management system, fostering support and action from employees as part of your CSR policies. Then, and only then, consider carbon offset projects.

When deciding upon carbon offset projects consider whether you are engaging your organisation in the issue of climate change and carbon emissions. Are there charities that you can work with (and as such retain the highest standards of financial and ethical credentials)? Are your carbon offset partners non-profit making? How much of your carbon offset payments are going direct to the projects – the main UK offsetting companies spend a great deal of money on highly paid staff, marketing and international travel. And finally, are the carbon offset schemes you are involved with independently and scientifically verified?

In response to the growing concerns about the carbon offset market, the Government's Environmental Audit Committee (EAC) launched an Inquiry into the voluntary carbon offset market (14 December 2006). In announcing the Inquiry, the EAC highlighted the concerns that have been raised surrounding the lack of robust regulation and issues of verification and monitoring of carbon offset projects. The deadline for submitting evidence to the EAC was 19 January 2007.

LASER BEAMS - THE LAW

Alec Samuels

The town council resolves to install a laser beam on the top of the town hall or other public building. Not surprisingly the proposal excites considerable local interest and controversy. Opinions are divided. The issue has arisen in Southampton, Guildford, Milton Keynes, Newport, Great Yarmouth, Stockport, Blackpool and Barnsley. Proponents argue that the laser will enhance the image and identity of the town, and in a dramatic way, as the laser will be visible for miles all over the town; the local economy will benefit; tourists and visitors will be attracted; technical research can be carried out; the laser will be perfectly safe; energy consumption will be small; the cost will be small; the meridian laser beam operating from Greenwich since 2000 appears to have caused no trouble.

Opponents argue that the laser would increase artificial light in the sky with dangerous and damaging consequences; astronomy would be seriously impeded and the night sky spoiled (see Campaign for Dark Skies). Amenity would be spoiled; energy should be consumed not wasted; public money should not be spent on such projects.

At the end of the day the “political” arguments are matter of opinion, a value judgement. What is the law that may be relevant to such a dispute?

Material change of use

It may be that development, a material change of use would occur, e.g. office block or clock tower to be used for a laser display, quite different from the previous use. The building concerned may be a listed building. Whether change of use occurs is pre-eminently a matter of fact and degree.

Depending upon the terms of the local plan, including any pollution provisions, the proposal might represent a departure from the plan.

Advertisement

An advertisement means “any... sign.... device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction...” The Town and Country Planning Act 1990 s 336(1) requiring advertisement permission, Town and Country Planning (Control of Advertisement) Regulations 1992 SI 666 requires powers to be exercised in the interests of amenity and public safety. A commercial laser is manifestly caught by these provisions?. What about a local authority laser? Is it not an illuminated sign, device or representation announcing the town, and intended to do just that?⁸

Statutory nuisance

The laser beam is capable of being a statutory nuisance, i.e. “artificial light emitted from premises so as to be prejudicial to health or (sic) a nuisance - Environmental Protection Act 1990 s 79(1)(fb) as

⁸ Planning Inspector decision March 2000 in the Guildford Nightclub sky beam case. Newport BC v Secretary of State for Wales (1997) 74 P and CR 147, (1998) JPL 650- searchlight display. PPG 19 Public safety and outdoor advertisement control.

amended by Clean Neighbourhoods and Environment Act 2005 s 102(2).⁹ The laser beam would be unlikely to be prejudicial to health, though it is possible that it could be medically diagnosable as having adverse psychiatric or psychological effects, such as serious sleep interference or deprivation or distress; and it could present an optical hazard.

A statutory nuisance is a material or unreasonable interference with or departure from the use and enjoyment of property and personal comfort and amenity having regard to the nature of the area and the circumstances generally.

It might create a hazard for aircraft, shipping and land vehicles. It might compel people reluctantly to fit and draw thick heavy curtains to sitting rooms and bedrooms on summer evenings and nights. Tranquillity may be interfered with. It might devalue properties.

DEFRA guidance says that local authorities should do their best to ensure that lighting under their control does not cause problems to the local community and should take account as to whether light beams or laser shows are sustainable or a wasteful use of energy.¹⁰

By its very purpose the laser beam would be likely to be visible for miles around and might well impinge into a neighbouring local authority area. A laser beam may refract or diffuse with distance and according to climatic conditions. There could be an unwelcome alien intrusion into the countryside and wildlife and the night sky and astronomy; the urban glow could be extended into the otherwise tranquil rural setting. The countryside could perhaps comprise a national park NP or area of outstanding natural beauty AONB.

In performing any function in relation to, or so as to affect, land in an area of outstanding natural beauty, the local authority must have regard to the purpose of conserving and enhancing the natural beauty of the AONB Countryside and Rights of Way Act 2000 s 85.

Many wild birds are protected species (Wildlife and Countryside Act 1981 Schedule 1).

Under EU directive 92/43/EEC an assessment must be made in respect of a European site and a special protection area (SPA) and special area of conservation (SAC) Conservation (Natural Habitat) Regulations 1994 SI 2716.

No doubt in defence the local authority would argue that they were pursuing a laudable public benefit purpose, the best possible means of safeguarding all legitimate concerns were being met, and the objectors were unreasonable and hypersensitive.

Similarly a National Park Authority has a duty in administering the Park to attach considerable weight and priority over economic and social factors to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the Park, and protect accordingly, National Parks and Access to the Countryside Act 1949 s 11A, inserted by Environment Act 1995 s 62(1).

Public safety

The local authority has a general duty to take reasonable care to ensure public safety (Health and Safety at Work Act 1974 s 4) and the common law. Hopefully one assumes that a local authority proposing a

⁹ Light pollution and nuisance, M. Morgan Taylor (2006) JPL 1114-1127, especially 1118-1121. For private nuisance see Developments that cause a nuisance, Alec Samuels (2004) JPL 394.

¹⁰ See also PPS 1 and PPS 23 and Lighting in the countryside: Towards good practice DCLG 1997.

laser beam would consult all the appropriate bodies, e.g. Air Traffic Control, Civil Aviation Authority, the Ministry of Defence, the Department of Transport, Coastguard and Harbour authorities, and all the emergency services, police, fire and ambulance.

Conclusion

At the end of the day everything will turn on the evidence. One perhaps sensible course, as is to be followed at Southampton, is to run some sort of limited pilot or trial, with careful safeguards and professional monitoring, in order to assess the likely effects, beneficial or otherwise and whether the legal requirements are capable of being complied with.

UKELA MEMBER PROFILE

The 60 second Q & A is a new feature in e-law. We'd like to find out more about our members – and raise awareness of the range of different jobs that fall under the environmental law banner.

Tim Clare leads WSP's Environmental Due Diligence Team and is based in London. He has responsibility for a team of environmental auditors in London, Leeds & Manchester. He is 34, married (to a Solicitor), father to one year old James and lives in Guildford, Surrey.

How did you get into environmental law?

I studied conservation as my first degree, but then realising that it wasn't going to get me a job I went to Stirling and did a Masters in Environmental Management. I would say that it is there that I started to really get into environmental law, focusing to start with on wastes management.

What are the main challenges in your work?

Time is definitely the main challenge. Environmental due diligence will always be one of the last elements of advice to be commissioned in a deal and as a result we always find ourselves up against a tight deadline. I suppose it is partly self-inflicted as when your clients get to know you can pull it out of the bag very close to the wire, they can come to think that's all the time you ever need.

What environmental issue keeps you awake at night?

Climate change. It's a bit of a cliché, but becoming a father last year has made me re-evaluate my view on the issue. This has also been because in the last 12 months the scientific evidence has really mounted up and it has made me look with greater honesty at the contradiction between what I say and what I actually do.

What's the biggest single thing that would make a difference to environmental protection and well-being?

Some form of personal carbon allowance possibly? The answer is I don't really know but it has to relate to climate change. Even if you are still a climate change sceptic, you have to look at it simply in terms of the UK's energy security and know we need to make some changes.

What's your UKELA working party of choice and why?

The new Environmental Due Diligence working party. Due Diligence is such an important part of the environmental "industry" but it has lacked a forum to look at best practice and a real voice to attempt to

communicate its importance. I firmly believe UKELA, with its membership from both the legal and consultancy sectors, is the right body to champion it.

What's the biggest benefit to you of UKELA membership?

The chance to network and keep up to date. As a UKELA member based in London I have always tried to attend the London open meetings and encourage my colleagues to do the same. They are usually excellent opportunities to keep on top of key issues.

CONFERENCE PAPERS 2006

Despite our best efforts to encourage speakers at the 2006 Warwick University conference to prepare papers for publication, it has not been possible to secure enough support to make this possible. We know this is disappointing. Papers that were prepared for the conference by Peter Kellett, Halina Ward and Stephen Tromans appeared in the conference packs and can be supplied on request.

MEMBERSHIP SUBSCRIPTIONS

If your subscription for 2007 is overdue please return it now to the Membership Secretary. This saves time and effort chasing you up and would be very much appreciated by our small team. If you have lost your membership details and need the form again please tell Alison Boyd.

Those of you working in public bodies and not-for-profit organisations with individual memberships may have noticed that your 2007 subscription rate has been reduced. This was decided by UKELA's Council to encourage more people from those organisations to join UKELA. A lot of public bodies prefer not to take out corporate memberships – even though they are good value – so it was decided to introduce a lower rate of sub for individuals. This means that even if you were a full price individual member last year paying £50 you may now be eligible for the £40 reduced rate. If in doubt please do ask.

Also, as those of you paying by Direct Debit should know, we have had some difficulties setting up the system. Many thanks for your forbearance especially to those who have submitted recently the correct paperwork or cheques. If you have yet to do this we should enormously appreciate your help in sorting this out by sending in your Direct Debit form, or a cheque.

The Membership Secretary is Andy Barker at CIWM, 9 Saxon Court, St Peter's Gardens, Marefair, Northampton, NN1 1SX.

STUDENT SOCIAL EVENING SUCCESS

Students flocked to UKELA's first social and advice evening in December, where they could meet practitioners and find out about future career options.

The evening, kindly hosted by the law firm Ashurst, attracted over 90 bookings with students coming from as far afield as Durham and Bristol. The majority were studying at the College of Law and BPP in London.

Representatives of various sectors provided informal advice over a drink. Our thanks go to: Helen Loose and her team from Ashurst, Daniel Lawrence of Freshfield Bruckhaus Deringer, Tim Sheppard, Richard Kimblin and Bridget Forster of No. 5 Chambers, Gita Parihar of Friends of the Earth, Peter Kellett of the Environment Agency, Tom Mosedale and Margaret Walker of DEFRA, Neil Humphrey of Waterman Environmental, Tim Clare and Rachel Skinner of WSP, David Barr and Will Booker of Willis insurance.

The feedback from students was so positive that UKELA is now planning its next event for students.

NEW WORKING PARTY CONVENORS

Two of the working parties have new convenors. Andrew Wiseman is taking over as convenor of the Contaminated Land Working Party from Matthew Townsend. David Harrison and Christina Cork are taking over from Andrew Baker as convenors of the Nature Conservation Working Party. UKELA owes a debt of gratitude to Matt and Andrew for all their hard work as convenors over the years.

Andrew Wiseman was formerly the chairman of UKELA and is a contaminated land specialist at Trowers & Hamblins. He plans to hold a meeting shortly to reactivate the work of the group.

Andrew's contact details are as follows :

Trowers & Hamblins, Sceptre Court, 40 Tower Hill, London, EC3N 4DX

D +44 (0)20 7423 8340

M +44 (0)7976 258664

T +44 (0)20 7423 8000

F +44 (0)20 7423 8001

AWiseman@trowers.com

www.trowers.com

David Harrison and Christina Cork both work for Natural England and will continue to convene meetings (generally on Saturdays) in Browne Jacobson's office in Nottingham.

Contact details for the new convenors and information about the working parties is available at http://www.ukela.org/groups_working.shtml. New members to the working parties are welcome – just contact the convenors to let them know of your interest.

BOOK REVIEWS

UNBOWED, A MEMOIR

Wangari Muta Maathai

William Heinemann, London, £17.99. Published February 2007

www.randomhouse.co.uk

Reviewed by Vicki Elcoate, Executive Director, UK Environmental Law Association

Wangari Maathai's long struggle to fight environmental degradation in her native Kenya, and beyond, makes a fascinating autobiography. It may leave you feeling somewhat inadequate – or, given the odds she had to overcome, you may feel anything is possible. In sixty years Wangari went from her rural Kikuyu community, to be awarded the Nobel peace prize and speak on international platforms. The journey was fraught with difficulties of all kinds.

Wangari's roots were in a village in an abundant land with fertile soil and plentiful rain. "Even before breast milk, I would have swallowed the juice of green bananas, blue-purple sugarcane, sweet potatoes, and a fattened lamb, all fruits of the local land. I am as much a child of my native soil as I am of my father and my mother". Even at a young age she was struck by the loss of the fertility of the soil and increasing dependence on cash crops, under the sway of British rule: "logging, clear-cutting native forests, establishing plantations of imported trees, hunting wildlife and undertaking expansive commercial agriculture". This concern set her path for life.

Although it was not a common practice at the time Wangari's mother decided to send her to school – a decision which changed her life. Her natural ability eventually led her to a Catholic school just outside Nairobi and from there she was selected as part of the Kennedy airlift for schooling in the US. In 1960 this was the equivalent of Oprah Winfrey's recently established leadership academy in South Africa, where promising girls have been hand picked for special educational opportunities.

When Wangari returned to the now independent Kenya some six years later she was established as a scientist with expertise in microscopy and tissue research, work which later took her to Germany, secured her a PhD and established her as a university lecturer.

It was only after she met her husband and had three children that the real questioning of agricultural practices kicked in. She became a member of the National Council of Women of Kenya which took her back to the villages to meet rural women. "As I sat listening to the women talk about water, energy and nutrition, I could see that everything they lacked depended on the environment....It suddenly became clear. Not only was the livestock industry threatened by a deteriorating environment but I, my children, my students, my fellow citizens, and my entire country would pay the price...Something had to be done".

So she founded the Green Belt Movement, whose main focus initially was tree planting. And this was tree planting on the mega-scale with the objective of stopping the Sarah Desert's southwards spread and the drying out of the land as the forests were cleared. A network of rural communities who would plant trees was established and it triggered a wave of peaceful social protest that was part of changing Kenya to a more democratic society. It eventually established more than six thousand tree nurseries and has planted more than thirty million trees in Kenya alone.

It also cost Wangari her marriage and even the early years of her children, who had to move in with her husband, her home and her job. It cost Wangari her liberty on more than one occasion as the government regarded her increasingly as a trouble-maker who should be put out of influence. It even threatened her life as she suffered physical attacks – facing up to armed men with a watering can and a tree seedling - and had to go into hiding.

But the work of the Movement, which had now expanded into “civic and environmental education” at the grassroots level began to attract international attention. And it also turned into a protest movement – at activities which damaged the environment and at the Government, which was increasingly oppressive.

The new era began for Wangari and Kenya in 2003 when a democratically elected government came into power and she became a Minister in the Ministry for Environment and Natural Resources. The Green Belt Movement remains – not just tree planting in Kenya and beyond – but also protecting public land from privatisation and development and preserving biodiversity, particularly in water catchment areas.

The story is extraordinary, not least in the sacrifice of the personal for the greater good of the environment and society. And how did Wangari celebrate her Nobel Peace Prize? By planting a tree of course: “Trees have been an essential part of my life and have provided me with many lessons. Trees are living symbols of peace and hope. A tree has roots in the soil yet reaches to the sky....It is a reminder to all of us who have had success that we cannot forget where we came from”.

REGIONAL GROUPS

North East

The next meeting of the NE Regional Group is on 27 March at Pinsent Masons in Leeds and is being held in conjunction with CIWM. It will be on the subject of the WEEE Regulations.

North West

The next meeting of the NW Regional Group will be in early May at Hammonds in Manchester and is being held in conjunction with IEMA. It will be on the subject of EPP. Further details including how to book will be posted on the website soon.

South West

The next meeting of the SW group will be on 24 April at Osborne Clarke in Bristol on the subject of Climate Change. Further details including how to book can be found on the website or by contacting Terri Dorrington.

COMPETITIONS

STUDENT COMPETITIONS

Entries for this year's student competitions are now closed.

The moot final is being held on Friday March 9th before Lord Justice Carnwath, UKELA's President. Places for spectators are limited but if you want to support the finalists or see if this is something you would like to try next time, please do email Alison Boyd. She will let you know if there are any spaces.

The final will start at 4pm and is being held at No 5 Chambers, 76 Shoe Lane, London EC4.

COURSES / CONFERENCES / SEMINARS

ENVIRONMENTAL LIABILITY DIRECTIVE CONFERENCE

UKELA members will receive a 10% discount for bookings on Informa Life Sciences' inaugural conference on the Environmental Liability Directive. This takes place on 13-14 March at Jolly St Ermin's, London. An international panel of experts will present the implementation plans from ten member states and there will be discussion on enforcement of the ELD and how industry can prepare.

CLIMATE CHANGE; SCIENCE, IMPACTS AND RESPONSES

26-30 March 2007 at Imperial College London

A 5-day modular programme to help professionals to understand the business impact of climate change from underlying science to business responses. It will provide an in-depth understanding of various aspects of climate change in a concentrated period and gives those attending an opportunity to discuss the issues relevant to them.

Topics will include:

- * Climate Science
- * Mitigation Technologies and Policies
- * International Negotiations, Emissions Trading and the project-based mechanisms
- * GHG Mitigation in Agriculture and Forestry
- * Impacts and Adaptation

Delivered by a range of experts of international renown and experience, who can address this multi-faceted issue from a variety of standpoints.

This programme will be of interest to all who have a responsibility or obligation to understand the impact for their business. A modular structure has been adopted to enable senior executives to attend the single days of the most direct interest to their organisation.

Please visit the web site on www.imperial.ac.uk/cpd/climate

For more detailed information please contact Ulrika Wernmark at the Centre for Professional Development at Imperial College London on

Tel: +44 (0)20 7594 6886,

Fax: +44 (0)20 7594 6883 or

UKELA CORPORATE DUE DILIGENCE WORKING PARTY

The date of the next meeting is moved forward one month to **Monday 2nd April (16.30pm-18.00pm)**.

We apologise for any inconvenience caused; hopefully the notice period is sufficient.

The next event will be held at **Deloitte's** office, at **180 Strand, London, WC2R 1BL**.

Actioned items and an agenda will be sent to Group members before the meeting.

Once again, we look forward to seeing you there and we appreciate your continuing support.

Matt Farnsworth

UKELA Corporate Due Diligence Working Party Convenor

ATKINS

Tel: +44 (0) 1332 225522

Direct: +44 (0) 1332-225712

Mobile: +44 (0) 7803-261370

Fax: +44 (0) 1332-225694

Email: matthew.farnsworth@atkinsglobal.com

Website: www.atkinsglobal.com

UKELA LONDON MEETING

The Marine Bill

13th April 2007 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 Marine Bill**.

The meeting will cover: The Marine Bill and the White Paper that is due to be published on or about 15th March, together with a look at its relationship with the forthcoming Marine Strategy Directive and EC Maritime Policy.

The meeting will be chaired by **Professor Malcolm Forster** is a consultant and Head of the Public International Law Group at Freshfields Bruckhaus Deringer, where he was a partner for many years. He is Visiting Professor of International Law of the Sea at University College, London. He has thirty years experience in the field of international environmental law and has acted as a consultant to a wide range of international organisations, including the UN Environmental Programme. He was for many years head of an observer delegation to the Legal Committee of the International Maritime Organisation.

The speakers will be:

Melissa Moore, Senior Policy Officer, Marine Conservation Society - Melissa is Senior Policy Officer at MCS. Her main focus at present is lobbying for MCS policy priorities within the Marine Bill. She is a lead member of Wildlife & Countryside Link's Marine Task Force campaign working with RSPB, WWF and The Wildlife Trusts. Key topics for Melissa within the Marine Bill are Marine Spatial Planning and Marine Protected Areas. Other work includes providing MCS policy advice on the following topics: marine renewables, marine aggregates, oil & gas, marine recreation, climate change, shipping, Coastal Zone Management, ports & dredging, EIA and Strategic Environmental Assessments. For papers on the Marine Bill please see www.mcsuk.org or www.wcl.org.uk. For further information or policy papers on other topics please email melissa@mcsuk.org

Daniel Owen, Barrister of Fenners Chambers, Cambridge – Daniel is a Barrister at Fenners Chambers. He specialises in the law regulating how we use the seas and oceans, and his practice covers domestic law, EC law and international law.

Tim Jewell, has been a member of Defra's Legal Group for five years, and currently coordinates legal work on the proposed Marine Bill. He is a Barrister and was previously Director of the Centre for Environmental Law at the University of Southampton. He has extensive experience of environmental and planning law, and of public law generally. His work in Defra has included negotiation of European legislation, advice on Bills in Parliament, and the development and drafting of secondary legislation, on subjects ranging from the Water Framework Directive to environmental justice.

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 Angela Pallett at Herbert Smith:
Angela.Pallett@herbertsmith.com.

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

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

ENVIRONMENTAL FORENSICS CONFERENCE 16-18 APRIL 2007

Bournemouth University is hosting a three-day event that will explore the emerging discipline of environmental Forensics. Environmental Forensics draws together broad cross-sections of the earth and environmental science communities with those of environmental chemistry, policy and law. Themes will

be explored with a blend of keynote talks from leading international scientists and case studies from active practitioners. For further information please visit our website at www.bournemouth.ac.uk/conservation or e-mail us at csconferences@bournemouth.ac.uk.

UKELA SOUTH WEST - CONFERENCES 2007

"WHAT HAS CLIMATE CHANGE EVER DONE FOR US?"

Tackling Climate Change in Bristol

Lorraine Hudson & Celia Beeson

(Policy & Project Officers, Sustainable City Team, Bristol City Council)

and

Climate Change - An Inconvenient Truth for the South West?

Phil Harding

(Senior Policy Adviser, Sustainability & Environmental Technologies Team, Government Office for the South West)

at

Osborne Clarke Building, Temple Quay, Bristol

24 April 2007

4.30pm Arrival

4.45pm Presentations and Questions

6pm Refreshments

6.30pm Finish

RSVP with cheques (£5 UKELA members, £6 non-members payable to Osborne Clarke) by 9 April to:

Ms Terri Dorrington
Osborne Clarke
2 Temple Back East
Temple Quay, Bristol BS1 6EG
direct dial: 0117 917 4480
direct fax: 0117 917 4481
e-mail: terri.dorrington@osborneclarke.com

ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Half-day conference, Attendance free, CPD accredited

14.00 - 18.30

Friday 18 May 2007
Council Room, Strand Campus

Programme

14.00 - 16.00 Environmental justice in England and Wales

In the Chair: Lord Justice Carnwath

- Access to the courts in England and Wales, **Sarah Hannett, 4-5 Gray's Inn Square**
- The work of the Environmental Law Foundation and access to justice, **Martin Polden, President, Environmental Law Foundation**
- Modernising environmental justice: Beyond the courts, **Professor Richard Macrory, Centre for Law and the Environment, University College London**

Discussion followed by coffee

16.30 - 18.30 Access to environmental justice, England and Wales and beyond

In the Chair: Professor Sir Francis Jacobs QC, Jean Monnet Chair ad personam

- Access to justice in civil matters for environmental associations – national paradigms around Europe, **Danai Papadopoulou, PhD candidate, King's College London**
- Access to environmental justice at EU level, **Kate Cook, Matrix Chambers**
- An early evaluation: The Aarhus Convention and access to environmental justice, **Professor Karen Morrow, University of Swansea**

Discussion followed by drinks

To reserve a place, please follow the relevant web page on our website www.kcl.ac.uk/cel or contact the Centre of European Law on telephone 020 7848 2387.

Centre of European Law, King's College London, Strand, London WC2R 2LS

WILD LAW

Some of you have been asking what we are planning on the Wild Law theme this year.

The Wild Law group (which includes representatives of the Environmental Law Foundation and the Gaia Foundation, as well as UKELA) discussing what we should do.

The current plan is to organise a weekend event in September 2007 focusing on a Wild Law response to the challenge of climate change. This would be held in a beautiful setting and involve outdoor activities. We will bring you more details as soon as we can.

SUSTAINABLE BUILDING OFFER TO UKELA MEMBERS

Sustainable Building is a new newsletter on energy efficiency and green building. Every month it will give you news, features on using renewable energy, analysis of energy policy, a legislation tracker and case studies of good practice in sustainable construction.

More information including free trial registration here:

<http://www.sustainable-build.com/>

There is a launch subscription offer of £250 a year (£100 off the normal price). UKELA members can get 15 issues for the price of 12 by emailing their subscription order to customerservice@sustainable-build.com with 'e-law offer' as the subject line.

NUCLEAR DECOMMISSIONING CONFERENCE

UKELA members are being offered a 10% discount for an international conference on nuclear decommissioning and waste co-operation to be held on Lithuania on May 21-22nd. This follows the recent conference in London which highlighted the continuing and increasing need for cooperation, exchange of knowledge and the sharing of experience and plans. Decommissioning & Waste Cooperation in Nuclear will examine and explore strategies, technical challenges, experiences and case studies from East Europe and Russia.

A European Commission sponsored Seminar has been organised by the Lithuanian Ministry of Economy to run alongside the conference. It will focus on the Socio-Economic Aspects of Nuclear Decommissioning and Waste Management through the role of national and local authorities, and the European Union. A Technical Tour to the Ignalina NPP will follow the Conference and Seminar on Wednesday 23 May 2007.

More details at: <http://www.nuclearevents.com/decomwaste07>. The full price is £899 and the brochure including the programme will appear on the website shortly.

Name (Mr/Mrs/Miss/Ms): _____

Job Title: _____

Company: _____

Society/Association: _____

Business E-mail: _____

Address: _____

_____ **City:** _____

Postcode: _____ **Country:** _____

Tel: _____ **Fax:** _____

JOBS / ADVERTISEMENTS

UNIVERSITY OF OXFORD

FACULTY OF LAW

Career Development Fellowship in Environmental Law

in association with Corpus Christi College

Salary up to £32,796 with a discretionary range to £35,837
(University Grade 7, with effect from 1 August 2007)

Oxford's Career Development Fellowship Scheme is designed to provide an intensive and supported career development opportunity for outstanding academics at an early stage of their career; and to promote equality of opportunity by helping to create a more diverse pool of potential candidates for future academic posts at Oxford or elsewhere. The University will especially welcome applications from women and ethnic minorities, who are under-represented among its academic staff (section 38 of the Sex Discrimination Act 1975 and section 48 of the Race Relations Act 1976 apply).

The Law Faculty has recently created a Career Development Fellowship in Environmental Law, tenable for a fixed term of three years from 1 October 2007. The post has been designed to be richly rewarding from the perspective of the postholder who will have a marvellous opportunity to lay the foundations for a successful academic career in an unusually fast-moving and vibrant area of scholarship. In addition to being able to develop expertise in both research and teaching in a supportive environment, the postholder will have an academic mentor and a personalised career and professional development package, which will include the opportunity to undertake the University's postgraduate diploma in learning and teaching. In addition to the salary, the postholder will receive a start-up grant of £4,000.

The post-holder will be expected to undertake research in Environmental Law and to teach for the Faculty and College up to a maximum of 6 hours a week. The post would suit someone who has completed a Master's degree or doctorate, or who has a professional legal qualification and experience in a relevant area.

The postholder will also be a Junior Research Fellow at Corpus Christi College, where the post will be based. A full description of the post and of the academic environment of the Law Faculty and the College may be obtained on the web at <http://www.admin.ox.ac.uk/fp/> or from Sarah Connor, Faculty of Law, St Cross Building, St Cross Road, Oxford, OX1 3UL (email: sarah.connor@law.ox.ac.uk, tel. 00 44 + (0)1865 281050). The closing date for applications is **Friday 23 March 2007**. Interviews will be held in the week beginning 9 April 2007.

The University is an equal opportunities employer.

LEGAL UPDATES – 2006 / 2007

EEL News Service 2006/6, 14 December 2006 (<http://www.eel.nl>)

Upcoming Event:

*** Tackling Climate Change - An Appraisal of the Kyoto Protocol and options for the future**

Date: 30 and 31 March 2006

Location: T.M.C. Asser Institute, The Hague, The Netherlands

Legislation, Dangerous Substances

30 November 2006 Member States and Members of the European Parliament have reached an agreement on a new chemicals safety bill, REACH – which stands for **R**egistration, **E**valuation and **A**uthorization of **C**hemicals. The text is expected to pass the Council and the Parliament in the coming month. With the adoption of the Regulation, an end will come to almost seven years of negotiations. The most debated issue regarded substitution rules for the most dangerous substances, which now will oblige firms to submit substitution plans for replacing the dangerous chemicals with safer alternatives. Overall reactions are mixed, as the text is seen as steering a middle way between the interests of the chemicals industry and the concerns of environmental groups.

Legislation, Climate change

* Commission Communication on the assessment of national allocation plans for the allocation of greenhouse gas emission allowances in the second period of the EU Emissions Trading Scheme of 29 November 2006

The Commission has revised the national allocation plans (NAPs) that determine the allocation of carbon emissions to the industry for the second phase of the EU's Emission Trading Scheme (ETS). Reductions larger than expected have been demanded by the Commission. All Member States had proposed caps to the Commission, but all of them, except for the UK have been dismissed as insufficient. A further, seven per cent, cut is expected by the Commission, which has the right to veto those NAPs that seem to be too favorable for industry. Environmental groups have welcomed the firm attitude of the Commission.

Legislation, Water

* Joint text issued on new Groundwater Directive

On 24 November 2006 the text of a new Directive on the protection of groundwater was issued by the Council of Ministers and will enter into force after the European Parliament has approved it. The draft contains a requirement to prevent the input of hazardous substances into groundwater and imposes a single limit value on nitrates. Thereby the Directive sets out some of the targets from the Water Framework Directive of 2000.

Case law, ECJ

* Case C-486/04, *Commission vs. Italy*

ECJ 2006-11-23, nyr

In a case against Italy the Commission challenged Italian exemptions from the Environmental Impact Assessment (EIA) Directive for a waste development facility and a biomass incineration plant project in the village of Massafra in the region of Puglia. On 23 November 2006 the ECJ ruled against Italy stating that waste recovery operations are also covered by the EIA-Directive 85/337/EEC amended by Directive

97/11/EEC. It thus appeared of no relevance that the action of recovering waste is actually beneficial for the environment, because the installations could still have an impact on the environment.

Sector(s): EIA, Waste

* Case C-32/05, *Commission vs. Luxemburg*

ECJ 2006-11-30, nyr

Luxemburg lost a case for failing to correctly implement the Water Framework Directive in its national legislation. The ECJ held, that an existing law of 1993 did not ensure the full compliance with three of the articles in the Directive.

Sector(s): Water

* Case C-293/05, *Commission vs. Italy*

ECJ 2006-11-30, nyr

Italy has been condemned for failing to install tertiary or advanced treatment of sewage in the province of Varese near the Swiss border. It thereby breached the 1991 Urban Wastewater Treatment Directive that obliges agglomerations with a population of over 10.000 inhabitants to implement such treatment inside so-called eutrophication-sensitive zones.

Sector(s): Water

* Case C-452/05, *Commission vs. Luxemburg*

ECJ 2006-11-23, nyr

The Court ruled that Luxemburg had failed in reducing phosphorus and nitrogen in Urban Waste Water Treatment. Sewage plants, for the use of removing water pollution with nitrogen, did not meet the environmental standards in order to qualify for exemption. Luxemburg had thus breached the 1991 Urban Wastewater Treatment Directive (91/271/EEC).

Sector(s): Water

Case Law, WTO

* EU not to appeal against WTO ruling on GMOs

The European Union will not appeal against a ruling by the World Trade Organization in September 2006 that the EU's blockade on the marketing of new genetically modified organisms (GMOs) violated trade rules. Environmental organizations warn that accepting the ruling sets a dangerous precedent for future environmental disputes.

Policy Areas, General

* **Energy research priority for new EU research programme**

The European Parliament has approved an agreement on the funding of the Seventh Framework Research Programme 2007-2013 (FP7) that is intended to create a common European Research Area. Of the total budget of €54.58bn, €1.15bn is reserved for research in the area of renewables and energy efficiency. A further €2.75bn is reserved for nuclear energy research.

* **EEA Report 11/2006: 'Land accounts for Europe 1990-2000'**

Changes in land cover in Europe reflect modifications in the uses of land, which often compete for the same resource: development of artificial surfaces for housing, transport and economic activities; intensification or extensification of agriculture practices; conversion of natural land to agriculture or farmland abandonment; afforestation or deforestation. Accounting for land cover change in a consistent way at the European scale has been made possible because of the Corine land cover inventory by satellite images carried out in 1990 and 2000 (and planned to be repeated for 2006). Based on spatial information, the land accounts produced by the EEA provide assessments of the magnitude of the various types of change and, at the same time, of their distribution over the European territory. Built up

using the methodology of the integrated system of economic environmental accounting (SEEA2003) of the United Nations, land cover accounts are connected to other sets of tables which describe the use of the natural resources by the economy. Land cover accounts can serve as well as a platform to account for ecosystem integrity and goods and services provided to societies by these ecosystems.

The report analyses the main results for 24 European countries and presents the methodology used for that purpose.

*** EEA Report 10/2006: 'Urban sprawl in Europe - The ignored challenge'**

Europe is one of the most urbanized continents with around 75 percent of its population living in urban areas. By 2020 however, this percentage could be as high as 90 percent in some Member States. But not only is the percentage of people living in cities growing, also the space they consume is increasing in an uncontrolled way. A report by the European Environmental Agency warns that Urban Sprawl - which is "when the rate of land-use conversion exceeds the rate of population growth" - is partly caused by the EU policy of funding construction projects that do not use land efficiently. People living in sprawling cities need more energy supply systems and road networks which make them travel further and consume more, says the EEA.

Policy Areas, Climate Change

*** EEA Report 9/2006: 'Greenhouse gas emission trends and projections in Europe 2006'**

The main conclusion of a European Environmental Agency Report on the emission of greenhouse gases is that the 15 'old' EU-Members will reach the targets set, but only just. The domestic policies and measures that were examined show that total EU-15 greenhouse gas emissions will be reduced by a net effect of 0.6 % from 1990 levels. Despite this, seven of the fifteen are likely to fall short of their individual targets: Austria, Belgium, Denmark, Ireland, Italy, Portugal and Spain. These countries might face infringement procedures. The other eight countries, and especially the United Kingdom, that are complying with the EU requirements, are reducing emission above their targets.

Dossiers/Links, Council Conclusions

* 2740th Environment Council meeting, Luxembourg, 27 June 2006

The Council adopted Common Positions on the draft Regulation for REACH, on the establishment of a European Chemicals Agency and on a draft Directive relating to the classification, packaging and labeling of dangerous substances. Next to that a Common Position was adopted on the Union's financial instrument for the environment, Life+. Finally, also a Regulation was adopted with respect to the ten Member States that joined in May 2004, concerning the base year for the allocation of quotas of hydro chlorofluorocarbons.

National Pages

*** France relieved of record fine**

The European Commission has decided that France is now complying with the EU fishery protection rules that it had been breaching and for which the French government had been fined €20m in July 2005 in Case C-304/02. France had to pay a further €57.8 million for every six months it did not sufficiently adapt its rules to the EU requisites. National Page of France

Member States of the European Union are obliged to implement Directive 2004/35/EEC, aimed at the establishment of a framework of environmental liability based on the 'polluter-pays' principle, in their national legislation by 2007. The Spanish government is planning on doing so and going further than the EU requests by means of a new law that requires financial guarantees from operators based on an environmental risk assessment. If an operator could, according to an EIA, cause damage to the environment in excess of €2m, then it should provide for financial guarantees such as a bank guarantee

or an insurance policy. If companies stay within the limits of pollution set out by authorities or if they use the best available technology they cannot be held liable according to the 'permit' and 'state-of-the-art' defenses. National Page of Spain

EEL NEWS SERVICE 2007/1, 11 JANUARY 2007 ([HTTP://WWW.EEL.NL](http://www.eel.nl))

Policy Areas, Energy

* The Commission presented on 10 January 2007 the Communication "An Energy Policy for Europe" which set the new European strategy on energy policy and is based, among others, on the EU Energy Policy Data. the package includes:

- Renewable Energy Road Map;
- Progress in Renewable Electricity;
- Progress in Biofuels;
- Internal Market Gas and Electricity;
- Gas and Electricity Infrastructure;
- Nuclear Energy;
- Sustainable Power Generation from Fossil Fuels;
- Strategic Energy Technology Plan.

The main points of the Energy Policy for Europe are:

1. The reduction of greenhouse gas emissions by 20% by 2020 in order to ensure a limit to global warming to no more than 2 degrees above the pre-industrial temperatures;
2. The promotion of carbon capture and storage;
3. The improvement of energy efficiency in vehicles, appliances, homes and factories;
4. The establishing of a minimum target of a 20% share of renewable energy;
5. The investment of 1 billion euros over the next six years for research into renewable energies;
6. A focus on nuclear power;
7. The improvement of the European energy network connections.

* On 18 December 2006 the Council Environment held its last meeting under the Finnish presidency. During this meeting the Council officially adopted the REACH Regulation, agreed on what to do concerning marine environmental policy and discussed the waste framework directive. Available under 'Finnish presidency' on the EEL website.

Legislation, Dangerous Substances

* Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006

On 18 December 2006 the Council approved the REACH deal, after the European Parliament had already voted in favour on 13 December 2006. The new rules on the registration, evaluation and authorisation of chemicals will come into effect on the 1st of June 2007. The Regulation has been published in the Official Journal of the European Union on 30 December 2006.

* Six pesticides have been re-approved, but they will be under very strict control

Of these six pesticides, two have been authorized until the end of 2009 and four have been authorized until the end of June 2008. Needless to say, this is much shorter than the usual ten year time period, which usually applies to active substances. The short authorization clearly demonstrates the reluctance of several Member States to authorize these six substances. All six pesticides are dealt with in separate Directives, which were published in the Official Journal of the European Union on 12 December 2006.

* Directive 2006/122/EC of the European Parliament and of the Council of 12 December 2006 This Directive covers PFOS marketing and use restrictions and amends Directive 76/769/EEC for the 30th time. It will apply as of 27 June 2008, limiting concentrations of PFOS to 0.005 per cent by mass in chemical preparations, and to 0.1 per cent by mass in semi-finished products or articles. There are a couple of exemptions for essential industrial uses, for instance fire-fighting foams put on the market before the ban entered force can be used until June 2011. It was published in the Official Journal of the European Union on 27 December 2006.

Legislation, Water

* Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006
This Directive is on the protection of groundwater against pollution and deterioration. The new Directive sets safety values for various polluting substances, such as ammonium, lead and mercury. All the necessary measures must be taken in order to prevent the hazardous substances from entering into the groundwater. The Directive will enter into force as of December 2008 and Member States have until January 2009 to transpose it into national laws.

Policy Areas, Climate Change

* ETS: Actions announced against overdue National Allocation Plans
Austria, Denmark, France, Hungary and Italy are the five remaining Member States not to have submitted their national allocation plans for the second phase of the EU Emission Trading Scheme that were due in June according to the EU Emission Trading Directive. The Commission has announced infringement action against these states as well as separate actions against seven other states of which the NAPs were not submitted correctly.

* ETS: Commission's aviation plans softened COM(2006)818, 20 December 2006
The plans of the Commission to bring the aviation sector as of 2011 under the rules of the Emission Trading Scheme (ETS), have been watered down following protests from the United States and several airlines. Under the original plans the airlines would have to buy 10%, but now it is set to limit auctioning to the, much lower, average of the rest of the EU ETS, in order to treat all industries fairly. Non-EU airlines will be exempt until 2012. Air travel accounts for 3 to 3,5% to global carbon emissions, but this figure is rising fast. The Commission proposal amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community COM(2006)818 states exactly what the new plans are.

* Price of CO₂ reaches new low
The price for emitting a tonne of carbon dioxide has continued to drop in the first week of 2007. Whereas until the spring of 2006 the price was around €30,-, on 9 January 2007 it stood at €3,50. The main cause of the further is said to be the warmer than average winter in Europe, whereas the dropping in 2006 was probably caused by oversupply on the market. On a more positive note, the activity on the ETS carbon market is increasing.

Policy Areas, Air

* Parliament and the Council reach deal on tougher car emission standards
In December 2006, the Council and the Parliament reached a deal on tougher Euro 5 and Euro 6 emission standards. This means there will be new standards for fine particles, hydrocarbons and nitrogen oxides as of 2009 and new standards for Nitrogen Oxides (NOx) as of 2014. The deal was reached quite easily, because the Council accepted the Parliament's proposed time table in exchange for the NOx standards that the Council proposed. As usual, the car industry considered the targets very hard to meet,

whilst the environmental groups did not think it was far going enough. The new deal will go into force at the beginning of this year.

* Europe is doing well on international air pollution targets

During an UNECE meeting, in December 2006, it was said that Europe is developing well towards achieving the air pollution reduction targets set under the Gothenburg protocol. However, despite the general good European performance one should not overlook the differences in individual countries' performances.

Policy Areas, Energy

* European Parliament resolution on a strategy for biomass and biofuels, 2006/2082 (INI)

On 14 December 2006 the Parliament has adopted the report by German MEP Langen of 12 October 2006 on a strategy for biomass and biofuels as part of the 'Biomass action plan'.

Policy Areas, Water

* Ministers want to 'aim' for the marine's 'good environmental status'... but no obligations During the Environment Council meeting in December, the Ministers decided that they do want good environmental status in marine waters by 2021, but they do not want to make it binding. Besides that, it will also not be necessary to take measures when the costs are disproportionate to the marine environment risks. The agreement stipulates that Member States must assess the current national marine environment status within four years after the Directive coming into force. By 2018 they should have put into practice their plans to develop a good environmental status.

Policy Areas, Waste

* Working towards a classification of municipal waste-to-energy plants based on their incineration efficiency

This is a very important aspect of the amendments to the Waste Framework Directive, especially considering the new waste recovery targets that result from other EU legislation. During the environment Council meeting on 18 December 2006 the Ministers were still unable to agree on this issue, even though the environment Commissioner Stavros Dimas stressed that there is no realistic alternative.

National Pages, the Netherlands

* The Netherlands successfully promoting energy efficient products

Three pilot projects by the Dutch Ministry of Environment supplying 'energy boxes' with energy saving products as well as 'energy gift vouchers' have been big successes. Consumers could order products like foil to place behind radiators, insulation materials and energy-efficient light bulbs of a value up till €100,- free of charge. More people than expected made use of the offer. An evaluation will decide on a possible extension of the programme.

National Pages, Germany

* German renewable energy production growing strongly

In 2006 the production of energy from renewable sources has grown with 15 per cent and now constitutes 7.7 per cent of total energy consumed. Especially the use of renewable heat production and biofuels in the transport sector rose quickly. The industry sector group BEE claims they are now well on

their way of reaching 2010 targets. Herewith Germany has saved 4.2 billion euro on imports of fossil fuels and has reduced its carbon dioxide emission with 10 million tonnes.

National Pages, Spain

* A private mining company in Spain is fined the largest sum ever for an environmental offence in the EU
The mining company was found guilty of operating an opencast coal mine for 11 years, without permission. Consequently, the municipality of Villablino set a penalty of 170 million euros, according to regional legislation, which states that the fine may not be less than the profit obtained during the period of illegal operation.

Upcoming Events

* Chatham House Conferences: 'Corporate Responsibility 2007'
Chatham House, London, United Kingdom
Sense and Sustainability: The Limits and Reach of Corporate Responsibility
Date: 26 March 2007 – 27 March 2007

Case Law – ECJ

* Case C-313/05, Maciej Brezezinski vs. Dyrektor Izby Celnej w Warszawie
ECJ 18-01-2007, nyr

In a judgement of 18 January 2007 the Court ruled that Community law precludes any excise duty, in so far as the amount of the duty imposed on second-hand vehicles over two years old acquired in a Member State other than Poland exceeds the residual amount of the same duty incorporated into the purchase price of similar vehicles already registered in Poland. Thus, the court is basically reiterating the Community obligation to approach other Member States equally.

Sector(s): General

* Case C-183/05, Commission vs. Ireland

ECJ 11-01-2007, nyr

In a judgment of 11 January 2007 the Court has ruled that Ireland breached the 1992 Habitats Directive by not adequately protecting a number of endangered species. According to the second chamber of the ECJ, rules preventing the disturbance of species and the deterioration of their breeding sites have not been enforced properly by the Irish government

Sector(s): Nature

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.

UKELA, PO Box 487, Dorking, Surrey, RH4 9BH

Vicki Elcoate
Executive Director
The Brambles
Cliftonville RH4 2JF
Dorking
vicki.elcoate@ntlworld.com
01306 501320

MEMBERSHIP ENQUIRIES

Alison Boyd
Tel: 01306 500090

E - LAW

The editorial team want articles, news and views from you for the next edition due to go out at early April 2007. Please use Arial font 11pt. Single space.

Letters to the editor will be published, space permitting

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