

C/M/S/ Cameron McKenna



Environment law

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Kathy Mylrea has joined the Environment Law Group as a consultant. Highly regarded by legal directories and clients, she was previously the head of the environment law practice at Simmons & Simmons. Kathy brings a wealth of experience to the team and will be a valuable resource for our clients. It is her second spell with the firm, having practised at McKenna & Co, one of the firms, which merged to form CMS Cameron McKenna. You can read Kathy's comments on a recent ECJ contaminated land case below.



Kathy Mylrea

The ECJ's decision in Van de Walle – can it be “discarded”?

After some initial surprise at the reasoning applied by the European Court of Justice (“ECJ”) in the Van de Walle decision, in particular its reliance on the provisions of Article 4 the Waste Framework Directive, the implications of the case are beginning to be addressed. Some comments on the case have suggested that not only is all land containing contaminants of the type considered in Van de Walle (spilled hydrocarbons) waste, but that this is coupled with a positive obligation to recover and dispose of that waste. This approach does not sit easily with how Part II (Waste Management) and Part IIA (Contaminated Land) of the Environmental Protection Act 1990 are drafted and applied. However, Van de Walle is now the leading ECJ case on waste and contaminated land and if it sets out the correct approach, what does that mean for interaction between Part II and Part IIA?

DEFRA, the Environment Agency and the European Commission are currently grappling with the issues raised by the case. There are various possibilities, including changes to UK legislation or the Waste Framework Directive. Whilst it is possible that the ECJ went beyond



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what the European Commission expected, the feasibility, or otherwise of following the principles set out in Van de Walle may be something on which many parties involved in the remediation of contaminated land might find themselves in agreement.

A brief reminder of the facts of the case, *Paul Van de Walle, Daniel Laurent, Thierry Mersch and Texaco Belgium SA* (Case C-1/03, 7 September 2004):

- ▶ The contamination incident (leaked fuel from a petrol filling station located adjacent to a government office) was serious and required remediation;
- ▶ At the time, no one was aware that the escape was taking place - neither the independent manager of the petrol station or Texaco. The incident was discovered in early 1993 but most likely took place in the early 1990s;
- ▶ Texaco was the tenant of the premises but had entered into an "Operating Agreement" Under which it provided the land, building and equipment for the service station and supplied products to the operator of the station on its own behalf;
- ▶ There was no specific legislation in place in Belgium at the time that allowed Texaco to be held liable rather than the adjoining land owner, the local authority, who were essentially an "innocent victim". However, the Waste Framework Directive, 75/442/EEC, had entered into force long before and had been implemented into Belgian legislation;
- ▶ Texaco did undertake some voluntary clean-up of the contamination but did not

do a full-scale remediation of the groundwater. That work was done by the local authority who then claimed damages from Texaco;

- ▶ The Waste Framework Directive includes an obligation on Member States to prohibit the abandonment, dumping or uncontrolled disposal of waste and requires producers or holders to dispose of it in accordance with the requirements of the Directive.

Texaco and some of its officers/directors found themselves subject to criminal proceedings brought by the local authority under Belgian waste law. Following acquittal at first instance, the ECJ was asked by the Belgium Cour d'Appel about the definition of waste, in particular, whether escaped substances and any soil contaminated by the escape is "waste" even if it is not excavated. (It was also asked a question about liability between Texaco and the operator of the station which this article does not address in detail. The ECJ said that the manager responsible for the petrol station appeared to be both the producer, and the person in possession of the waste because he had been in possession and control of the petrol when it escaped and became waste. However, the ECJ added that, if the escape was Texaco's fault, then Texaco could be the producer of the waste and therefore be liable.)

A critical issue therefore was the definition of waste and the ECJ focussed on whether an accidental spill of petrol is an act by which the holder "discards" of the petrol. (Waste is defined in the Waste Framework Directive as "any substance or object... which

the holder discards, or intends or is required to discard.") The ECJ concluded that the hydrocarbons were waste, in fact hazardous waste, on grounds of both application of previous ECJ judgments (Inter-Environnement Wallonie and Palin Granit (applying the concepts used for discussion analysis of whether production residues are waste)) and policy. However, the legal reasoning is unclear - contaminated land is very dissimilar to production residues. The policy grounds, namely that the hydrocarbons would escape the obligation to be recovered or disposed of as waste in accordance with the Waste Framework Directive if they were not found to be waste, and therefore the hydrocarbons must be waste and therefore must have been discarded was equally unconvincing. The Court also decided that as the soil contaminated by the hydrocarbons could not be separated from the waste hydrocarbons that the soil too was waste - and that it did not matter whether or not the soil had been excavated.

The validity of the approach taken by the ECJ to the breadth of the waste legislation is questionable - there is nothing in the Waste Framework Directive to suggest that one of its purposes was to create a contaminated land remediation scheme applying to historic contamination.

Having said all this, does the Waste Framework Directive therefore require all wastes in the ground (i.e. contaminated land) to be "disposed of"? To the extent that the Article 4 objectives (waste is recovered or disposed of without affecting human health and without risk to waste, air, soil

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and plants and animals, without causing a nuisance through noise or odours, without adversely affecting the countryside or places of special interest) are not being met then there is a better argument that this is the case. However, where the Article 4 objectives are being met then there should be no policy reason to require excavation of the contaminated land. This would be consistent with the approach taken by Part IIA.

Finally, the ECJ did not say that the current owner of land is always the "holder" of waste for the purposes of the Waste Framework Directive obligations. The obligation falls on "holder" or the producer or person in possession of the waste. The owner of land which has been contaminated by previous operators is not necessarily the "holder" of the waste and liable to recover or dispose of it. In *Van de Walle*, the ECJ said that the manager responsible for the petrol station appeared to be both the producer and the person in possession of the waste but added that Texaco could be the producer and therefore liable if the escape was Texaco's fault.

DEFRA and the Environment Agency have therefore been put in an unenviable position. Parliamentary questions have been raised in both Houses. Much needed guidance on the definition of waste for the purposes of the Waste Framework Directive has been delayed. The Environment Agency are waiting for DEFRA to address the implications of the judgment and action by the Commission will no doubt be under consideration.

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Andrew Ryan

On 1 January 2005 the Environmental Information Regulations 2004 (EIR 2004) came into force. Created under the Freedom of Information Act 2000, the EIR 2004 revoke and replace the former regime as set out in the Environmental Information Regulations 1992.

The New Environmental Information Regulations 2004



...the range of bodies covered by the EIR 2004 has been broadened...



The EIR 2004 was introduced to allow the UK, in the Government's view, to comply with the requirements of the UNECE Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the "Aarhus Convention") to which the UK is a signatory. The EIR 2004 also aims to implement the EU Directive on Public Access to Information (Directive 2003/4/EC). This Directive itself was introduced to allow the EU to fulfil its obligations as a signatory to the Aarhus Convention.

The main differences between the EIR 2004 and the 1992 Regulations are:

- ✔ the range of bodies covered by the EIR 2004 has been broadened
- ✔ requests for environmental information need not be in writing
- ✔ the time limit for response to a request is reduced to 20 working days in most cases (40 days if further time is required)
- ✔ a requirement for the progressive introduction of publicly accessible electronic databases
- ✔ a public interest test is introduced to assess grounds for refusing to supply information.

The most significant change brought about by the new regime is in the scope of organisations that will be required to make environmental information available. The regulations apply to "public authorities". This naturally includes all government departments, local authorities, the NHS, police and various other public bodies such as the UK Atomic Energy Authority, the Environment Agency and English Nature. The EIR 2004 will also cover any other body or person under the **control** of a public authority where that body or person has public responsibilities, exercises functions of a public nature or provides public services in relation to the environment.

This extended definition has the potential to greatly broaden the scope of the EIR 2004. For example, the draft guidance released to accompany the Regulations lists Public Private Partnerships, public utilities, transport companies and environmental consultants as potentially falling within the scope of the Regulations. It is possible that, depending on the relationship between the private company and the public authority that the private company could effectively move in and out of EIR 2004's scope. In effect, this means that in some instances, the existence of a duty on a private body under the EIR 2004 may need to be assessed on a case-by-case basis.

The definition of "environmental information" is also broad. Again, more obvious examples include the state of air, water, land, etc; factors such as energy, noise and radiation, or; waste and emissions. Perhaps less obvious information that may be relevant will include "measures" (i.e. policies, plans or environmental agreements) and activities affecting or likely to affect the environment along with economic analyses used in environmental decision making. In addition, there is no geographical restriction. If the public authority is based in the UK but its impacts occur overseas then it may be caught by the Regulations (e.g. overseas development agencies). The European Court of Justice has taken the view that it will adopt a broad construction to "environmental information". It is likely that the UK courts will do the same.

A further important change from the 1993 regime is in the grounds under which a public authority may refuse to supply environmental information. These have been limited considerably. The restrictions that are available must themselves be interpreted restrictively and any potential refusal must be judged against the potential public interest served by the disclosure. Grounds for refusal include the protection of intellectual property rights and commercial confidentiality where provided by law. "Manifestly unreasonable" requests may also be refused. Importantly, a number of the grounds for refusal do not apply where the environmental information relates to

emissions to the environment. In addition, it will not be possible for a public authority, when contracting with a private body to contract out of its obligations under the EIR 2004. The EIR 2004 also contains mechanisms for appeal by persons requesting environmental information where that request has been refused.

A charge may be levied for the supply of information, but this must be a "reasonable charge". Where information is required by statute to be available on a public register (such as those held by the Environment Agency on licensing and permitting of regulated activities) then it must be available free of charge. A "market-based" charge may only be demanded where data is collected and published on a commercial basis.

Given that a private company may now find itself caught by the new Environmental Information Regulations, a number of issues should be borne in mind when contracting with a "public authority":

- ▶ Will the private company (or the data it supplies) be subject to the requirements of the EIR? This status could change on a contract-by-contract basis.
- ▶ Obligations for the supply of environmental information may only relate to data supplied to the public authority, but the private body may also be required to supply the data itself.
- ▶ Grounds for refusal are highly restrictive and subject to appeal - this must be considered when dealing with any request. Do not simply assume that information will be subject to commercial confidentiality.

The requirements of the Data Protection Act 1998 still apply, but it is possible that conflicts with the requirements of the EIR may arise.

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SECTION 1

Liability in environment law



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United Kingdom

Environmental justice

DEFRA, together with the Department for Constitutional Affairs and the EA, has for the past 3 years examined how it could reform legislation to deal with environmental crime more effectively. At a recent conference on environmental justice it laid out its three priorities. These were to improve access to justice in environmental matters, to reduce the overall regulatory burden and to consider more flexible sanctions for dealing with environmental offences so that the punishment is appropriate for the crime. Representatives of DEFRA presented ideas to business, government, regulators, NGOs and the legal profession in order to invite responses to its proposals. These included using civil as well as criminal penalties for offences that could potentially cause damage, even though they had not actually done so. Rather than just issuing a cautionary letter, it was thought that this would enable effective action, such as issuing clean-up orders in the case of pollution, to be taken at an earlier stage. DEFRA also said that civil penalties are only one option, and that several other ideas that might be effective, including a sentencing advisory panel to guide judgments are being considered.

(DEFRA, 30 November 2004)

SECTION 2

Air pollution and integrated pollution control

United Kingdom

Climate change

There is to be a review of the UK Climate Change Programme. Originally published in November 2000, it set out the Government's policy measures for reducing six greenhouse gases to meet its Kyoto targets and its own domestic target for a 20% cut in 1990 levels of CO₂ emissions by 2010. Despite the fact that there has been no overall reduction in greenhouse gas emissions since 1997, the UK is still set to accomplish its Kyoto target of a 12.5% reduction on 1990 levels by 2008-2012. However, the Government has just announced that it is off-course for meeting its own domestic target, and at the current rate would achieve only a 14% cut in CO₂ levels by 2010. The Prime Minister said that he does not accept that the 20% target would not be met, and this review is intended to try to get CO₂ reductions back on track. Opportunities identified in the draft review for making savings include greater energy efficiency, emissions trading, reducing emissions from transport, and further use of biomass for transport and electricity generation. DEFRA is inviting comments on the review until 2 March 2005, and plans to issue a revised Climate Change Programme during the first half of 2005.

(DEFRA, 8 December 2004)

A new report has predicted that climate change could cause around £200 billion worth of damage to property and infrastructure as a result of increased flooding and coastal erosion by 2050. Furthermore, it says that wind damage to buildings could result in annual insurance claims of £800 million. The Energy Saving Trust (EST), a non-profit organisation set up by government and the private sector in 1992, also said that

changing climate could severely damage the ecology and the environment of the UK. It pointed out that nearly a third (28%) of the UK's CO₂ emissions was attributable to the energy used in the home. As a result, the EST called for greater information to be conveyed to the public on domestic measures that they could carry out to help reduce energy use, such as turning thermostats down, replacing ordinary light bulbs with low energy ones and walking to the shops instead of taking the car. Such simple measures, it argues, would trim 10% off the UK's greenhouse gas emissions.

(EST, October 2004)

A study, carried out by the Buildings Research Establishment, found that 47% of homes built since new requirements for energy efficiency came into effect in 2000, under Part L of the Building Regulations, do not comply with the obligations. Although tighter building regulations are meant to account for a sixth of proposed emissions savings by 2010 under the Government's Climate Change Programme, energy use by households has actually risen in recent years.

(Daily Telegraph, 9 December)

The Office for National Statistics (ONS) has issued a report on the contribution of households to the emission of greenhouse gases in the UK. It says that UK households were responsible for 612.4 million tonnes of greenhouse gases in 2001. This figure includes direct emissions, i.e. those arising from heating, cooking and the use of private vehicles, and indirect emissions from electricity generation and the use of public transport and for transporting goods used by households. Information is also provided for different UK regions, and on a

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per household basis by size of household and by age of the head of household. The emissions are also broken down by source.
(ONS, 14 October 2004)

Emissions trading

DEFRA has published its revised timetable for the final allocation of emissions to operators included in the UK National Allocation Plan (NAP) under the EU Emissions Trading Scheme (ETS) Directive (2003/87/EC). It includes details of all on-going consultations and information about Phase 2 of the Scheme, which takes place in 2008-2012. A list of installations and sector allocations was due to be published on 5 January 2005. Any organisations with a Climate Change Agreement (CCA) should have made a decision on whether or not to opt out by 19 January 2005.

(DEFRA, November 2004)

The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2004 (SI 2004 No. 3390) came into force on 13 January 2005. They amend the principal 2003 Regulations (SI 2003 No 3311), to enable regulators in the UK to recover the costs of administering the Scheme in the financial year 2004-5. This will be carried out by means of an annual subsistence charge to operators of installations who hold a greenhouse gas emissions permit. The amending Regulations also correct an omission in the 2003 Regulations by including a power for the Secretary of State to serve a notice on regulators and other persons requesting information.

(SO, 21 December 2004)

The House of Commons Public Accounts Committee has issued a report on the UK ETS. It concluded that the scheme, which began in March 2002, was an innovative means of tackling pollution and had been successful in reducing emissions. But, it also said that it had not given taxpayers good value for money. Only 34 companies are participating in the scheme, instead of the 3,000 initially hoped for. The Committee also criticised the allocation of baselines, which were based on the period 1998-2000. This meant that some members of the scheme benefited from reductions that they would have made anyway. The five-year scheme is due to

end in 2006, when it will probably be replaced by the EU ETS.

(House of Commons, 9 November 2004)

A new on-line registry for companies involved in greenhouse gas trading schemes has been set up by DEFRA. It offers a computerised registry for participants in the EU ETS and other schemes that may arise under the Kyoto Protocol. The registry will allow account holders to hold, transfer, or acquire EU allowances and Kyoto units. In addition, regulators and competent authorities will be able to use it to manage participants in trading to ensure compliance and performance with emissions reductions obligations. The EU ETS Directive requires member states to put in place a computerised national registry, as does the Kyoto Protocol to assist trade in Kyoto units. Once international trading begins, DEFRA is to collaborate with other EU members in setting up the registry.

(DEFRA, November 2004)

PPC

Views are sought by DEFRA on a method for assessing the relative level of risk associated with local authority-regulated installations (A2) under integrated pollution prevention and control (LA-IPPC). The method is based on an amended version of the existing LAPC risk method (the Part B risk method), which has been relatively successful. The most significant amendments proposed relate to risk ratings of each A2 activity. The method assigns a level of proposed 'regulatory effort' to individual processes (high, medium or low) according to their relative risks, based upon the extent of regulation required. Risk rating is divided into two parts: Environmental Impact Appraisal (EIA), which concerns the potential environment impacts of a process, and Operator Performance Appraisal (OPA), which relates to how well the operator manages the potential environmental impact of the process. DEFRA says it hopes the method will be finalised and published in time for it to be used from 1 April 2005. Responses to the consultation must be sent by 16 February 2005.

(DEFRA, 23 November 2004)

Primary Care Trusts in England and Local Health Boards in Wales are statutory consultees, under the PPC Regulations (SI 2000 No 1973) and are responsible for identifying the public health aspects of PPC. In order to help them in this function, the Health Protection Agency (HPA) has published guidance, which includes advice on applying for a PPC permit. The guidance says that a response should be proportionate to the risk of significant pollution from any given installation, with A1 installations being potentially more polluting than A2. Part B installations present an even lower potential to pollute and a response to an application for a Part B installation, other than to provide factual information about any local health sensitivities, would only be required in exceptional circumstances. The guidance supersedes AQ9(03).

(HPA, September 2004)

The Better Regulation Task Force (BRTF), in its report on how best to improve EU regulation, 'Make it Simple, Make it Better', is calling for the IPPC Directive to be simplified. The independent body, which advises Government on ensuring that regulation accord with five principles of good regulation has highlighted some key recommendations to improve implementation of the Directive. Furthermore, it says that many of the definitions in the IPPC Directive should be clarified, to avoid confusion and double regulation. The report was welcomed by three EU Commissioners, from Trade, Competition, and Enterprise and Industry, who issued a joint statement of support for it.

(BRTF, December 2004)

Air quality

The Air Quality Limit Values (Amendment) (England) Regulations 2004 (SI 2004 No 2888) came into force on 3 December 2004. They amend the principal Regulations (SI 2003 No 2121) in order to implement Article 2 of the Directive on public participation in respect of the drawing up of certain plans and programmes relating to the environment (2003/35/EC). The amending Regulations also introduce an alternative method for sampling and measuring of particles (PM10) to bring it in line with the methods in a Directive relating to limit values for

sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (99/30/EC). They should give the public a greater say on how air pollution is dealt with by ensuring that they are consulted on plans and programmes to deal with air pollution.

(SO, 4 November 2004)

DEFRA is consulting on a draft supplement to guidance on transport plans and air pollution. The draft addendum to the Local Air Quality Management (LAQM) statutory policy guidance (PG(03)) updates DEFRA's policy guidance on air quality and action plans, and is aimed at assisting local authorities with their duties under Part IV of the Environment Act 1995. It should assist local authorities with the integration of air quality action plans into local transport plans. The draft guidance applies to local authorities in England only. Responses are required by 14 February 2005.

(DEFRA, November 2004)

European Union

Climate change

A Directive amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading, in respect of the Kyoto Protocol's project mechanisms (2004/101/EC) – the 'Linking Directive' – has come into force after its publication in the Official Journal. EU countries now have to have legislation in place to implement the Directive by 13 November 2005. The Directive is intended to allow businesses covered by the EU emissions trading scheme, and subject to controls on their CO₂ releases, to gain credits by investing in projects or by transferring technology that brings about a reduction in greenhouse gas emissions in another country. The Directive covers the two project-based 'flexible' mechanisms included in the Kyoto Protocol – the clean development mechanism (CDM) and joint implementation (JI). The CDM applies to those developed countries with Kyoto emission reduction targets (Annex I Parties) to invest in non-Annex I countries, while JI credits are available for projects carried out in other Annex I Parties, such as Russia. The Kyoto Protocol is set to enter into force on 16 February 2005 after the

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The EEA believes that it may be a major reason why air pollution in European cities is not falling faster.



Russian Federation finally signed up to the treaty in November.

(OJ L338, 13 November 2004)

Vehicles

The European Environment Agency (EEA), a public body which provides information on the environment to policy-makers and the public, has issued a report claiming that poor test standards have led to an underestimation of pollutant emissions from new cars. It says that the tests do not reflect real driving conditions and that diesel cars are a particular problem, as owners often modify their engines to increase power. The EEA believes that it may be a major reason why air pollution in European cities is not falling faster. The report also claims that as the test cycle for new vehicles does not cover air conditioning, progress towards cutting new cars' emissions of CO₂ under a voluntary agreement appears greater than it actually is. It says that although improvements in vehicle technology have led to a reduction in air pollution from road transport, despite the growth in traffic volumes, transport-related air pollution is responsible for tens of thousands of premature deaths each year in cities and towns in Europe.

(EEA News Release 19 October 2004)

International

Aviation emissions

Agreement has been reached at a meeting of the International Civil Aviation Organisation (ICAO) Assembly in Montreal on policies to address the impacts of aviation on climate change. The Assembly, a decision-making body of the ICAO, decided to continue their support for emissions trading and to encouraging voluntary agreements between member states and industry to reduce aircraft emissions. Member states also agreed to assess further the suitability of charges, accepting that while preparatory work could be done, no climate change-related charges would be brought into effect until after the next Assembly meeting in 2007. This was the first time that the Assembly has formally accepted that some members have major doubts over ICAO policy on the exemption of aviation fuel from taxation.

(ICAO, October 2004)

Ozone depleting substances

The 16th meeting of the Parties to the Montreal Protocol on protecting the ozone layer, set up with the support of the UN Environment Programme (UNEP), took place in Prague in November. One of the main outcomes was an agreement to carry out a survey on the quantities of methyl bromide used during shipments of crops such as rice and maize, and consignments in wooden pallets. Although experts have provided estimates, it is not known how accurate these are. Another decision involved requests for 'critical use exemptions' for methyl bromide for farmers in the developed world who claim that effective alternatives for some crops are not available. The pesticide was to be phased out for agricultural use in the developed world in 2005. It has now been agreed to grant developed world farmers exemptions totalling just over 2,600 tons for 2005 in addition to just over 12,150 tons agreed at a previous meeting in March 2004. This is to be followed by 11,700 tons for 2006.

(UN News Service, 29 November 2004)

Electricity generating stations

A ranking of European fossil fuel electricity generating stations, based on sulphur dioxide (SO₂) emissions has been released by the Swedish NGO Secretariat on Acid Rain. The report, which also contains data on each plant's emissions of nitrogen oxides, particulate matter and CO₂, updates two previous surveys carried out in 1994 and 2000. When combined, two large coal-fired power stations in Bulgaria and Spain, emitted around 650 thousand tonnes of SO₂ a year – as much as the combined total from Austria, Belgium, Denmark, Finland, Ireland, the Netherlands, Norway, Sweden, and Switzerland. Other findings were that emissions from large installations have fallen markedly over the last decade, but that they are still significant. The 100 highest emitters released 43% of the total from all sources on land in Europe in 2001. The oldest plant were the worse performers, with around 90 % of the SO₂ emitted from the largest coal-fired plants coming from those commissioned before 1987.

(Swedish NGO Secretariat on Acid Rain, November 2004)

SECTION 3

Water

United Kingdom

Water supply

DEFRA, together with the Welsh Assembly and OFWAT, are consulting on their approach to the new financial penalties regime introduced by amendments made to the Water Industry Act 1991 by the Water Act 2003. The amendment will mean that the turnover of a company will be used for calculating the maximum penalty that can be imposed. The new regime allows the Secretary of State in England to impose civil financial penalties of up to 10% of turnover on statutory undertakers and licensed water suppliers. The new provisions will require a statement of policy on the imposition of penalties and of how the maximum amount is calculated. It is proposed that penalties be imposed for contravening appointment conditions, licence conditions, certain statutory or other requirements, or for failure to achieve prescribed standards of performance of water supply or sewerage services. Comments must reach DEFRA by 28 January 2005.

(DEFRA, 3 December 2004)

The DWI has written to water companies to clarify their duties under the Drinking Water Directive (98/83/EC) in relation to monitoring water supplied to the public in non-domestic buildings. At present, there is no requirement for monitoring water quality at these establishments and not all water companies include them in their random monitoring programmes. DEFRA has now decided that they should be included in water companies' random compliance monitoring programmes, as is the case in most other EU countries. The information letter sent by the DWI sets out

the process and timescales by which it is proposed to introduce this change. As a first step towards a 10% coverage target, from 1 January 2005 all water companies will have to select from all premises and establishments, i.e. including public buildings, within their supply area in their random compliance monitoring programmes. At the end of September 2005, the DWI will assess the results and decide whether further guidance is necessary. Water companies are required by Water Supply (Water Quality) Regulations 2000 (SI 2000 No 3184) to communicate to consumers likely to be affected as a result of a water sample failing drinking water standards. For public buildings, this information will be sent to the owners and managers of the building.

(DWI, October 2004)

The Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment (COT) has issued its latest conclusions on a Government-funded epidemiological study of possible effects of chlorine added to drinking water on human reproduction. COT concluded that the study did not show a causal relationship between chlorinated drinking water and pregnancy outcomes. A range of possible adverse effects was examined, including low birth weight, stillbirth, spontaneous abortion, death during birth, infant death and pre-term delivery. It did, however, advise that further research was necessary to reduce uncertainties in the interpretation of the information. Another recommendation was that water companies should minimise consumers' exposure to chlorination by-products in drinking water, providing that it does not affect the efficiency of disinfection. The

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It shows that since 1991, the performance of the water industry has improved significantly...



Committee has yet to assess the data on chlorine and congenital problems.

(COT, November 2004)

Water company performance

OFWAT has delivered its annual report on the level of a broad range of services offered by the water industry in 2003-04. It shows that since 1991, the performance of the water industry has improved significantly, particularly to reduce problems of low water pressure and sewer flooding. The report, which includes information from DWI and the EA, shows that the companies' performance in providing good quality drinking water and protecting the environment have also continued to improve. With regards to drinking water, 99.88% of tests passed the current standards. Sewage treatment works' compliance with EA standards was 95%, with 99% of bathing waters meeting mandatory standards and 75% of beaches attaining Blue Flag status. However, there was an increase in the number of pollution incidents occurring.

(OFWAT, October 2004)

Pricing and investment

The EA has welcomed much of OFWAT's determinations for setting how much water companies can charge for providing services and how much investment they should make for the period 2005-10. One outcome of the extra investment, it believes, will be to that some of the most important river and wetland wildlife sites in England and Wales will be spared from pollution. Included in these are some unique chalk streams and dozens of rivers in urban areas. Around £3.5 billion of the £16.8 billion total investment is being channelled into addressing environmental problems. The EA said that although there would be large reductions in sewer overflows during heavy rain and restoration of important wetland habitats, it thought the proposed expenditure was the minimum required to meet obligations and comply with European law.

(EA News, 2 December 2004)

Contaminated land

The first stage of the commencement of section 86 of the Water Act 2003 to amend the definition of contaminated land

under the regime set out in Part IIA of the Environmental Protection Act 1990, took effect on 1 October 2004. The second Water Act Commencement Order (SI 2004 No 2528) clarifies that groundwaters do not include waters above the saturation zone and ensures that the regime deals with situations where contamination has passed from the surface of land to underground strata, but have not fully entered the saturation zone. The change means that all references to 'controlled waters' for the purposes of Part IIA in England and Wales are subject to a revised definition. The new guidance, covered in CLAN 5/04, supersedes CLAN 3/04. When section 86 is fully commenced, it will amend the definition of contaminated land so as to only apply it where there is significant, or a significant possibility, of pollution to controlled waters. The effect will be that land being formally identified as contaminated on the basis of very small amounts of matter entering controlled waters will fall outside the regime. As yet there is no indication of when this change will be brought into force.

(DEFRA, October 2004)

Bathing waters

Results of the bathing water quality tests for the 2004 season have been made available. Overall compliance with mandatory quality standards set by the Bathing Water Directive (76/160/EEC) was 98.3%, down 0.5% from the record level of compliance for 2003. DEFRA said that the heavy rain over the summer was to blame for this decrease. It also claimed that without the multi-million pound investment to improve treatment of sewage before discharging to bathing waters and increased capacity to handle storm water, the failure rate would have been much higher. The failure of six of the seven beaches to reach the standard was put down to short-term pollution events caused by runoff from diffuse agricultural and urban sources after heavy rain. DEFRA also warned that additional efforts to improve water quality will be required from farmers as well as the water industry. It says that action will be required to tackle diffuse water pollution in order to meet the more stringent water quality standards included in a proposed revision of the

Bathing Water Directive, on which a common position was expected before the end of 2004, and to meet the requirements of the Water Framework Directive (2000/60/EC).

(DEFRA, November 2004)

Inland and coastal waters

A new way of measuring the impact of human activity on rivers, lakes, estuaries, groundwater and coastal waters is being developed by the EA. The new measures, which are required under the Water Framework Directive, will look at the water quality and ecology of whole bodies of water as a joined up system. They will identify the impacts from rural and urban diffuse pollution, fisheries, over-abstraction and man-made changes to the banks and beds of watercourses. The announcement came as the EA released its latest annual survey on the condition of the water environment in England and Wales in 2003. It found little change nationally in river quality from the previous year. Although there was a small improvement in biological quality, chemical quality declined. In addition, phosphates were classed as 'high' in 53% of rivers – a levelling off of the large reductions of the early 1990s. Similarly nitrate levels have shown only small reduction in recent years and remain 'high' in 27% of rivers. Overall, one in six rivers in urban areas are still classed as 'poor' or 'bad'. The EA published initial maps, in September 2004, showing the pressures and impacts on the water environment and where further improvements will be needed to comply with the standard set in the Water Framework Directive by 2015. The EA aims to have the new methods in place by the end of 2006.

(EA News, 5 October 2004)

Diffuse pollution

DEFRA has published the results of a consultation entitled 'Developing Measures to Promote Catchment-Sensitive Farming'. The consultation, which closed on 9 September 2004, invited views on the possible approaches and measures to reduce diffuse water pollution from agriculture. It suggested a package of different possible measures, including regulatory, voluntary and economic instruments to control diffuse water

pollution from agriculture. There was general support for the idea of a mixed package of measures. But, many respondents wanted stronger regulatory measures for environment-sensitive catchments. The Government has announced that, on the basis of the responses, and wary of the economic impacts on farmers, it will continue to promote voluntary action through increased awareness, while continuing to monitor the situation. It says that it intends to consult further in 2005 to try to develop measures for tackling diffuse water pollution.

(DEFRA, 2 December 2004)

Competition

OFWAT is consulting on proposals for reforming the water industry in England and Wales, with a view to opening it up to competition. The Water Act 2003 allows for a new water supply licensing regime to allow business customers that use at least 50 million litres of water per year to choose from a range of alternative water suppliers. It is estimated that the new arrangement will affect about 2,300 customers. The consultation paper, entitled 'Eligibility, licensing, customer transfer and strategic supplies', sets out how the market might operate when the new regime comes into force in autumn 2005. Some of the key areas on which OFWAT is keen to gather views were the eligibility of customers' premises for changing supplier, the licence application process and the procedures for switching suppliers. Accompanying guidance is expected in the summer of 2005. The consultation closed on 28 January 2005.

(OFWAT, October 2004)

Nitrates

Comments are sought by 4 February 2004 on plans to enforce the Public Participation Directive (2003/35/EC) for the Nitrates Directive Action Programme. The Nitrates Directive (91/676/EEC) is transposed in England and Wales through an Action Programme within discrete areas or Nitrate Vulnerable Zones (NVZs). These Action Programmes include measures intended to promote best practice in the use and storage of fertiliser and manure to protect waters against pollution by nitrates from agricultural sources. When implemented,

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The Government... intends to consult further in 2005 to try to develop measures for tackling diffuse water pollution.

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The European Commission has issued a report on the implementation of the EU strategy for dealing with endocrine disrupting chemicals...



the Public Participation Directive will require DEFRA to consult the public before it reviews or modifies the Nitrates Directive Action Programme. It will also allow individuals to seek a review of the inclusion of land within an NVZ designated in 2002 under the review process.

(DEFRA 15 November 2004)

Marine grants

A grant scheme worth £2 million has been made available to fund projects that protect the marine environment from the impacts of marine aggregate extraction. English Nature, which advises the Government on nature conservation, is inviting applicants to apply for a share of the fund, distributed through the Aggregates Levy Sustainability Fund (ALSF) Marine Grants Scheme, for the financial years 2005-06 and 2006-07. The Aggregates Levy was introduced in April 2002 as a tax on the production of primary aggregates such as sand, gravel and crushed rock.

(English Nature News, 18 November 2004)

European Union

Endocrine disrupting chemicals

The European Commission has issued a report on the implementation of the EU strategy for dealing with endocrine disrupting chemicals, which was first applied in 1999. This second progress report covers the health and environment impacts of the chemicals for the 3 years during 2001-2003. It confirms that there is still much research being carried out under the strategy, although the work has yet to result in any legislation for controlling these substances. However, the report does set out how such controls might be incorporated into EU laws in the future. These include the controversial REACH regulations for controlling the production and use of chemicals, which is currently passing through the EU's legislative process. Other legislation that might lead to controls includes the Groundwater Directive (80/68/EEC), the Drinking Water Directive (98/83/EC) and the priority hazardous substances provisions under the Water Framework Directive (2000/60/EC).

(European Commission, 9 November 2004)

International

Oil spills

Victims of oil spills are due for improved compensation after 3 March 2005. The Oil Pollution Compensation Supplementary Fund is set to come into force after Spain ratified the Protocol in December. The fund is intended to be additional to compensation available under the Civil Liability Convention 1992 and the Fund Convention, with the combined total amount of compensation payable for any one incident limited to around US\$ 1,150 million. This is roughly five times more than the current limit. The Supplementary Fund will apply to oil spills in the territory of a Contracting State, as well as in its economic zone. A person in a country signed up to the Fund will have to make an annual contribution to the Fund if they have received a total quantity of oil exceeding 150,000 tons in a calendar year.

(IMO Press Release, 9 December 2004)

SECTION 4

Noise

United Kingdom

Transport

Research commissioned by the Department for Transport (DfT) on householders' preference for reducing noise from transport has been published in a report. The study classified property prices in terms of structure, accessibility, neighbourhood, and environmental characteristics including road, rail and aircraft noise. It looked at how much more people were willing to pay for a home in order to enjoy a quieter environment, as well as how much this actually cost. It concluded that while householders were willing to pay to avoid noise from road and rail transport, there was no conclusive evidence that they would do so for aviation noise. Although the study was based on data collected in Birmingham, the report was asked to consider how the results generated in the study could be applied to other areas of the country.

(DfT, 22 November 2004)

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SECTION 5

Waste



Waste producers will be responsible for ensuring that characterisation information relating to their waste is correct...



United Kingdom

Landfill

DEFRA is consulting on draft Landfill (England and Wales) Regulations 2005. These regulations will implement in England and Wales further provisions of the Landfill Directive. They will amend the Landfill (England and Wales) Regulations 2002 (99/31/EC), and introduce new provisions on waste acceptance criteria (WAC), for developing testing methods and for setting leaching limits for certain wastes established under Council Decision 2003/33/EC. The Decision was transposed by the Landfill (England and Wales) (Amendment) Regulations 2004. The consultation is seeking views on a number of issues, including values for monolithic wastes and for polycyclic aromatic hydrocarbons (PAHs) in inert landfills, and how responsibilities on producers of waste should be implemented. Waste producers will be responsible for ensuring that characterisation information relating to their waste is correct and, for providing a written description to accompany the waste through to disposal. Other issues on which comments are sought are: clarifying the exclusion from the Landfill Directive of the disposal of non-hazardous material dredged from waterways; implementation dates for a ban on landfilling certain non-hazardous wastes and the requirement for all non-hazardous waste going to landfill to be pre-treated; and extending the risk assessment option to cover individual waste streams destined for mono-fill separate cells in hazardous waste landfill sites. The closing date for responses is Monday 7 March 2005.

(DEFRA, 15 December 2004)

The EA has set out its proposals for meeting targets set in the Landfill Directive for diverting biodegradable municipal waste (BMW) from landfills. It is responsible until 2020 for monitoring the performance of Waste Disposal Authorities (WDAs) in achieving their targets, which are likely to need demanding policies. Assessment will require calculating reductions in waste during pre-treatment prior to landfill, using processes such as Mechanical Biological Treatment (MBT). The EA acknowledges that its decision will determine how many WDAs adopt MBT and how many opt for incineration or other methods. The consultation will run until 21 February 2005.

(EA, November 2004)

WEEE

The DTI has made available the outcome of its third consultation paper, issued 30 July 2004, on implementation of the Waste Electrical and Electronic Equipment (WEEE) (2002/96/EC) and Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) (2002/95/EC) Directives. It received 225 responses, the vast majority of which supported setting up a National Clearing House (NCH). But, there were several different views on what the functions of the NCH should be, although there was a clear view that the NCH would be too complex and difficult to deliver within the timetable envisaged. The Government is reconsidering this point. On the proposals for allocation of household WEEE, most consultees supported Option 2 - batch allocation. A majority of respondents supported proposals to allow producers to make their own arrangements for collecting WEEE from retailer sites or local collection facilities. Most, in particular

manufacturers and compliance schemes, disagreed with the proposals for reporting sales data for business-to-business products. Respondents generally accepted producers should report evidence of their compliance with obligations at the end of each quarter, although a smaller number called for annual reporting. The views expressed in the consultation paper are now being assessed before final regulations are made.

(DTI, November 2004)

End of life vehicles

A guide entitled 'De-pollution Guidance for End-of-Life Vehicles over 3.5 tonnes' has been issued for breakers of large vehicles such as heavy goods vehicles (HGVs), buses and coaches, to help comply with the End-of-Life Vehicles Regulations 2003 (SI 2003 No 2635). The guide also claims to "help to ensure that breakers can cash in on the considerable resale market for parts, both in the UK and abroad." End-of-life large vehicles may contain many pollutants, some of which are likely to be classified as hazardous waste. Under the Regulations, these hazardous components and fluids must be removed before breaking. The guide provides a description of the de-polluting process that needs to be conducted to meet these requirements for HGVs, which is very different from that for cars and small commercial vehicles. However, waste vehicles over 3.5 tonnes in weight are not subject to producer responsibility recycling targets.

(DEFRA, December 2004)

Hazardous waste

A guide for producers and managers who want to send hazardous waste to landfill has been produced by the EA. Entitled 'Requirements for Waste Destined for Disposal in Landfill – A guide for waste producers and waste managers' it clarifies how the WAC fits in with the pre-treatment requirements of the Directive. Under the Landfill Directive, hazardous waste needs to be treated before it is landfilled, and from July 2005, will also need to meet the WAC, which set stricter requirements for substances such as heavy metals.

(EA, 24 November 2004)

Packaging

Government policy is to blame for the UK's poor record on recycling of packaging waste says Forum for the Future, a sustainable development charity. The research was commissioned by Tetra Pak, a company that produces laminated paperboard packaging material for the liquid food industry. It attributed the low levels of recycling of packaging such as plastic bottles, liquid cartons and aluminium cans, to the setting of weight-based targets under the Packaging Directive. This has provided an incentive to recycle heavy materials such as glass and newspapers, despite the fact there are inadequate UK markets for these materials. The report also points to the surplus of recycled green glass waste for which there is insufficient demand in the UK, leading to a large proportion having to be exported. This is in contrast to the position for aluminium, where imported waste is required to meet EU targets. The report makes a number of recommendations including more doorstep collection with separate collection of dry recyclable materials, and the introduction of doorstep collection of organic waste.

(Press Association, 13 October 2004)

Waste planning

Proposals for strategies and planning to increase the number of waste management facilities across the country have been unveiled in four consultation papers. The consultation documents are intended to integrate municipal waste management strategies and the planning process, to provide an action plan in the short-term, as well as for the next 15-20 years. There are also plans for meeting EU and national targets for recycling, composting and recovery of value from municipal and household waste, as well as reduction in industrial, commercial and biodegradable waste sent to landfill. The consultation on draft Planning Policy Statement 10, containing proposals set out in the Planning Green paper to give more support for local authorities in providing for new waste capacity, ends on the 11 March. The consultations on draft guidance on Municipal Waste Management Strategies, proposals to change the Waste Strategy 2000 and

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It attributed the low levels of recycling of packaging such as plastic bottles, liquid cartons and aluminium cans, to the setting of weight-based targets under the Packaging Directive.

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The DTI's Technology Fund will be one of the main recipients, to support research and development aimed at waste minimisation.



proposals for providing central data and forecasting advice, end on 31 March 2005.

(DEFRA, 6 December 2004)

Farm waste

Plans to extend existing waste management controls for industry to agricultural waste are being aired in a consultation paper. If enforced, the measures would apply to storage, transport, recovery and final disposal of farm waste. Farmers would not be able to dispose of waste in farm dumps without a landfill permit and open burning of plastic waste would be banned. DEFRA estimates that around 400,000 tonnes of farm waste is produced each year, which includes discarded pesticide containers, silage wraps, tyres, batteries, oil, manure and slurry. The consultation ends 18 March 2005.

(DEFRA, 9 December 2004)

Contaminated land

The EA believes that many companies are taking pro-active action to clean up their contaminated land. A report to the Board on progress with remediation said that much of the clean-up of land is being brought about voluntarily during redevelopment. Part 2A of the Environmental Protection Act (1990), which came into force in 2000, was designed to provide a legal framework to enforce cleaning up of contaminated land. Although local authorities have the main responsibility under Part 2A, the EA has jurisdiction over 'special sites'. Since 2000, the EA says it has been asked by local authorities to inspect 120 sites. It reports that 21 inspections are complete with a further 71 ongoing, and a programme of work has been established to prioritise these sites on a risk basis to meet its target of remediating 80 special sites by 2007.

(EA News, December 2004)

Landfill tax revenue

A Business Resource Efficiency and Waste (BREW) Programme has been created to tackle the expanding volume of waste. It will see landfill tax receipts being used to support those businesses that target waste minimisation, the diversion of waste away from landfill, and improvements in resource efficiency. Due to be launched in April 2005, the first round of funding,

worth £43 million, will develop and expand existing programmes. The DTI's Technology Fund will be one of the main recipients, to support research and development aimed at waste minimisation. Another beneficiary is Envirowise, to expand its service providing business with advice on practical ways to minimise waste and reduce environmental impact. WRAP will be allocated funding to develop new markets for a number of difficult business wastes; to develop a pilot project for the collection and recycling of waste from small businesses; and to expand their scheme providing start-up funding for businesses involved in recycling.

(DEFRA, 22 November 2004)

Litter

A voluntary code of practice promoting cooperation and community involvement in reducing litter associated with food outlets has been produced by DEFRA. The code, which was supported by restaurant groups and retail outlets, recommends asking customers whether they need a bag rather than giving one automatically. It is also aimed at changing people's attitudes through education of the public to stop them dropping litter. Businesses, it says, should work closely with local authorities to take part in clean-up drives in their areas, and the code urges them to carry out litter patrols around their premises and to assist with the provision of litter bins. DEFRA has said that outlets selling fast food are a significant source of litter. Industry has generally welcomed the code, with many already adhering to some of the code's suggestions.

(DEFRA, November 2004)

European Union

Mining waste

The Council of Ministers has reached political agreement on a draft directive mining waste. It voted to maintain the Commission's proposal to cover the planning, licensing, operation, closure and after-care of waste facilities. A major accident policy for high-risk facilities is also provided. Inventories of closed facilities posing serious risks to the environment and health will have to be drawn up.

When in force, the Directive will aim to prevent water and soil pollution from the deposition of waste into heaps or ponds, two common storage methods for this type of waste. The draft directive came about as the result of several serious accidents in Europe, such as Baia Mare, Romania, in 2000, when the entire Danube river was contaminated with cyanide. The final adoption of the Directive is expected in the second half of 2005, with entry into force before the end of 2005. Member states will then have two years to transpose it.

(European Commission Press Release, 14 October 2004)

RoHS

Comments are sought by the European Commission on an amendment to the restriction of the use of certain hazardous substances in electrical and electronic equipment Directive (RoHS) (2002/95/EC). This Directive requires that from 1 July 2006, new electrical and electronic equipment put on the market does not contain lead, mercury, cadmium, hexavalent chromium, or the flame retardants PBB or PBDE. Under the Directive substances can be exempted from the restrictions in certain circumstances, such as where negative environment or health impacts are outweighed by the benefits. There are a limited number of exemptions for lead, mercury, cadmium and hexavalent chromium, listed in an annex to the Directive. The consultation is being carried out with a view to a possible amendment to scientific and technical progress of the annex after industry made a number of applications for further exemptions. Respondents are being asked to provide information on the current existence of feasible substitutes, along with the costs and benefits and advantages and disadvantages of substitution. The Commission says it will consider the results of this consultation, which closes on 11 February 2005, alongside other 'decision making processes'.

(European Commission, 13 December 2004)



Under the Directive substances can be exempted from the restrictions in certain circumstances, such as where negative environment or health impacts are outweighed by the benefits.



SECTION 6

Transport and labelling of waste and hazardous substances



The Directive sets out an obligation to notify the maritime authorities when a ship is carrying dangerous or polluting goods...



European Union

Marine transport

The European Commission has taken action against eight member countries for not having the necessary domestic legislation in place to transpose EU legislation on marine traffic monitoring and information systems. It has taken Belgium, Greece, France, Italy, the Netherlands, Austria, Finland and the United Kingdom to the European Court of Justice for failing to implement a Directive establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EC (2002/59/EC). The Directive sets out an obligation to notify the maritime authorities when a ship is carrying dangerous or polluting goods and for the intervention in the event of accidents. Member states are also obliged to draw up plans to accommodate ships in case of an emergency in waters under their jurisdiction. Aimed at improving the response of authorities to incidents, accidents and potentially dangerous situations at sea, it stems from recent events, such as the oil tankers Erika and the Prestige accidents, which led to serious pollution of the marine environment. The necessary legislation should have been adopted before 5 February 2004.

(European Commission Press Release, 15 December 2004)

SECTION 7

Hazardous substances

United Kingdom

Dyes

The Controls on Certain Azo Dyes and "Blue Colourant" (Amendment) Regulations 2004 (2004 No 2913) came into force on 31 December 2004. Azo colourants, mainly used to dye textiles and leather, can break down to amines, some of which are known to be carcinogenic. The amending Regulations implement a Directive relating to Restrictions on the Marketing and Use of 'azo colourants' (thirteenth adaptation to technical progress of Council Directive 76/769/EEC (2004/21/EC). They amend the principal Regulations (SI 2003 No 3310), which implemented restrictions on the marketing and use of azo colourants and 'blue colourant' that might come into contact with the skin or mouth, by setting out the testing methods for these dyes.

(SO, 8 November 2004)

BDE

The Controls On Pentabromodiphenyl Ether and Octabromodiphenyl Ether (No. 2) Regulations 2004 (SI 2004 No 3278) came into force on 1 January 2005. They implement two EU Directives (2003/11/EC and 2004/98/EC), which amend the Marketing and Use Directive (76/769/EEC) to introduce controls on these two chemicals, which are used as flame retardants. Penta and octa BDE are persistent and bioaccumulative, or break down to form products with these properties. The new Regulations revoke and replace the Controls On Pentabromodiphenyl Ether And Octabromodiphenyl Ether Regulations 2004 (SI 2004 No 371). From January 2005, placing penta BDE or octa BDE on

the market, as a substance or as a constituent of substances, or of preparations in concentrations higher than 0.1% by mass, will not be allowed. The ban also applies to articles containing penta BDE or octa BDE. However, the prohibition on penta BDE will not apply to aircraft emergency evacuation systems until 31 March 2006. Penta BDE is a brominated flame retardant, used almost exclusively in flexible polyurethane foam for vehicle and domestic furniture. It is not produced in the EU but was imported for sale by two companies.

(SO, 9 December 2004)

PAHs

DEFRA is conducting a consultation on proposals for the 27th amendment to the Marketing and Use Directive (76/769/EEC), relating to controls on polycyclic aromatic hydrocarbons (PAHs). Certain PAHs are classified as carcinogenic, mutagenic and reprotoxic substances. The European Commission has set out its plans to restrict the marketing and use of the PAH benzo(a)pyrene (BaP) in a proposal adopted on 13 February 2004. BaP can be a qualitative and quantitative marker for all PAHs. The restriction applies to substance or constituents of preparations in extender oils and tyres in a concentration equal or higher than 1mg/kg, or more than 10mg/kg for the sum of all polycyclic aromatic hydrocarbon listed in Annex I of the proposal. The proposal exempts aircraft tyres. The deadline for responses to the DEFRA consultation, which will be used in negotiations at EU level on a draft directive, is 28 February 2005.

(DEFRA, 6 December 2004)



The ban also applies to articles containing penta BDE or octa BDE.





It is set replace over 40 pieces of existing legislation to create a single framework for regulating the manufacture and use of chemicals within the EU.



REACH

Responses to a consultation paper on REACH, the proposed new EU-wide system for the Registration, Evaluation, Authorisation, and Restriction of Chemicals, have been published. It shows broad support among industry, environmental groups and animal welfare organisations for the UK's idea for a 'one substance, one registration' approach. The draft REACH regulation applies to organic and inorganic chemicals, metals, metal compounds, minerals and ores, unless specifically exempted. It is set replace over 40 pieces of existing legislation to create a single framework for regulating the manufacture and use of chemicals within the EU. Industry is concerned that many substances could be withdrawn. Respondents to the consultation paper, issued on 30 March 2004, were supportive of the principles of REACH. However, most suggested improvements, with industry wanting to reduce the costs and environment groups calling for a strengthening of its provisions. Retailers were especially supportive of the REACH proposal.

(DEFRA News, 25 November 2004)

GMOs

New Regulations providing for the administration and enforcement of EU Regulation (EC) No 1946/2003 came into force on 10 November 2004. The EU Regulation lays down a common system across the EU for notification and information for transboundary movements of GMOs. It implements the Cartagena Protocol on Biosafety, which is aimed at protecting biological diversity from the potential risks posed by GMOs. The Protocol also establishes a procedure so countries have the information they need to make informed decisions before agreeing to import such organisms. The Genetically Modified Organisms (Transboundary Movements) (England) Regulations 2004 (SI 2004 No 2692) make provision for the execution and enforcement of the EU Regulation in England. They designate the Secretary of State for Environment, Food and Rural Affairs as the 'Focal Point' for the UK, and as 'Competent Authority' for England. In addition, they make the Secretary of State the responsible body for

administrative duties required by the Cartagena Protocol. The English Regulations also introduce a number of administrative provisions, such as powers of entry, as well as power to carry out tests and inspections, to take samples and to require the provision of information.

(SO, 17 October 2004)

English Nature has commented on the report of the BRIGHT (botanical and rotational implications of genetically modified herbicide tolerance) study on the management of GM herbicide tolerant crops. The BRIGHT report was published by the Home-Grown Cereals Authority (HGCA), which aids development of products using UK cereals, and funds research and development on behalf of the UK arable industry. It says that its findings support the evidence from the 5-year farm-scale trials, published in October 2003, that the methods used with GM sugar beet and oil seed rape crops can be harmful to wildlife. However, scientists at English Nature believe that the results of the BRIGHT study neither challenge nor contradict the results of the farm-scale trials. They say that as the two experiments used different methodologies, different rotations, and experienced adverse weather conditions, they cannot be compared, and therefore few conclusions can be drawn from the BRIGHT experiments on the impacts of GM crops on soil seed banks. Furthermore, English Nature commented that it is already known that GM oilseed rape and beet crops reduce densities of wild life, and should not be grown commercially.

(English Nature Press Release, 30 November 2004)

Triclosan

Triclosan is a chemical used in a wide range of consumer and household products such as toothpastes, mouthwashes, soaps and deodorants, as well as many textiles. It is an anti microbial agent, giving effective and long-lasting protection against a range of micro-organisms, including bacteria, moulds and yeast. Although it has been on the market for around 30 years, the compound has recently come under increasing scrutiny from environmental groups over concerns about possible risks to the environment and human health. The

EA says that although most triclosan is removed by the sewage treatment process, small quantities can remain in the effluent discharged to rivers and the sea. However, at present there is no consensus on whether triclosan poses environmental problems. After producing a briefing paper reviewing the science on risks posed by triclosan, the EA now wants manufacturers of the chemical to undertake further scientific investigations into any effects on the environment and wildlife. Triclosan has been 'notified' under the Biocidal Products Directive (98/8/EC), which means that industry will be required to submit data from 2007 to support its use, including an assessment of potential risks to human health and the environment. Several major retailers, including B&Q, Marks and Spencer and Asda, have already stated their intention to withdraw triclosan from their products.

(EA, October 2004)

PFOS

DEFRA has announced in a consultation paper the next stage in the banning of the chemical perfluorooctane sulphonate (PFOS) and its breakdown substances. It is proposing national regulations for England and Scotland to manage the risks posed by PFOS, and hopes it will inform wider action to ban the chemical across the EU. It follows scientific studies that found PFOS to be toxic, with the potential to accumulate and cause several types of cancer in mammals, and to persist in the environment. Although industry has been involved in phasing out production and in finding substitutes on a voluntary basis, it is still used in a number of applications, including chrome plating, fire fighting foams, the photographic industry, semi-conductors and hydraulic fluids in aviation. DEFRA now wants to target these industries for substitution with alternatives. The consultation ends on 25 January 2005.

(DEFRA, 19 October 2004)

Pesticides

The HSE has published its Pesticides Incident Report covering pesticide-related incidents that it investigated during 2003. Inspectors investigated 204 incidents during the year, down from 215 in the previous year. Of the complaints investigated, 62

involved allegations of ill-health, while the rest concerned complaints from the public about spray drift during application. The HSE's Pesticide Incidents Appraisal Panel (PIAP) concluded that only one of the ill-health incidents had a confirmed link to pesticide exposure. A further 14 incidents were assessed as having a 'likely' link to pesticide exposure. None of these 'likely' incidents were directly related to work activity; all involved either members of the public or those incidentally exposed while at work. HSE inspectors issued a total of 66 enforcement notices under pesticide legislation during 2003-04 and a total of eight Informations were laid before the courts. Convictions were secured against all the Informations for which the average fine was £1,824 compared with an average of £1,250 for 2002-03. Guidance for sprayers and other users of agricultural pesticides is contained in the 'Code of Practice for the Safe Use of Pesticides on Farms and Holdings', published by DEFRA.

(HSE, October 2004)

European Union

CMR substances

The European Commission has issued a proposal for a directive, which would see a ban on the sale in the EU of 42 substances. The substances are all either carcinogens, mutagens or toxic to reproduction (CMR). It is proposed to amend for the 29th time the marketing and use of certain dangerous substances and preparations Directive (76/769/EEC). Although the draft directive would insert 346 entries into the Marketing and Use Directive, most of these involve reclassification of substances already classified as CMRs. The Commission believes that the amendment will have little impact as a large number of the chemicals put forward for a ban are used in manufacturing or for professional applications, rather than in substances and preparations on sale to the public.

(COM (2004) 638, 7 October 2004)

REACH

A joint initiative involving the European Commission, member states and industry is carrying out a pilot project to test the



After producing a briefing paper reviewing the science on risks posed by triclosan, the EA now wants manufacturers of the chemical to undertake further scientific investigations...





The overall aim of the SPORT project is to test the workability of the REACH proposal...



practical application of the proposed EU REACH Regulation, adopted in October 2003. The findings that arise from this novel scheme - the Strategic Partnership on REACH Testing or SPORT - are likely to influence the final REACH process. The overall aim of the SPORT project is to test the workability of the REACH proposal, identify solutions where problems are found, and improve understanding about REACH. The final report of the trial, which will cover eight substances or substance groups, is expected in mid-2005, but interim findings will be reported as they become available.

(CEFIC Press Release, 2 November 2004)

POPs

The EU has ratified the Stockholm Convention on Persistent Organic Pollutants (POPs). Although EU legislation already implements all the provisions of this Convention through Regulation 850/2004, becoming a Party to the Convention allows it to have a role in its worldwide implementation and to recommend additional substances to be added to it. The European Commission has already prepared a list of substances, which it would like to be considered for phase-outs. The 12 POPs covered by the Convention at present are toxic, persist in the environment for generations, can travel long distances in the atmosphere and can accumulate in humans and animals. They include chemicals widely used in industry and pesticides. The Stockholm Convention entered into force on 17 May 2004 and has so far been ratified by 83 countries.

(European Commission Press Release, 18 November 2004)

SECTION 8

Access to information

United Kingdom

OFR

The Accounting Standards Board (ASB) has issued an 'Exposure Draft' of a Reporting Standard on the Operating and Financial Review (OFR) for consultation. Draft regulations were published in May 2004, which would require certain quoted companies to produce an OFR as part of their annual report and accounts. Under the proposals, which are aimed at improving the disclosure of company information to shareholders, directors will have to provide an analysis of their business's performance, as well as future strategies and objectives. They require a range of matters to be taken into account, including any potential impacts of environment issues. The proposals also provide a basic framework for directors to apply in order to meet the requirements of the Regulations. The requirement to prepare a statutory OFR will begin on 1 April 2005, rather than 1 January as originally intended. The consultation is open for comment until 28 February 2005. The ASB will then finalise the Reporting Standard but states that it may not be possible to do this by 1 April 2005. Guidance should be issued in the near future, setting out illustrations and suggestions of what might be included in an OFR.

(ASB, November 2004)

Environmental information

DEFRA has made available for consultation further guidance on the Environmental Information Regulations (SI 2004 No 3391), which came into effect on 1 January 2005. The new regulations will replace the Environmental Information

Regulations (SI 1992 No 3240) to bring them into line with the Aarhus Convention. They will strengthen the existing requirements for the disclosure of environment information by public authorities by reducing the deadline for responding to requests and reforming the charging system. Authorities will only be allowed to withhold information if the public interest in doing so clearly outweighs the public interest in disclosure. DEFRA is making guidance progressively available. Comments on the guidance were required by 31 December 2004.

(DEFRA, November 2004)

Sustainability reporting

SustainAbility, a CSR consultancy, has published 'Risk & Opportunity', a survey of corporate non-financial reporting. The report, which was published with the United Nations Environment Programme (UNEP) and the credit rating company Standard & Poor's, says that the financial sector, i.e. insurers, lenders, investors and analysts - is beginning to pay greater attention to a range of non-financial issues including their impact on the environment. Some companies are acknowledged as having made good progress, with reporting on financial and non-financial concerns beginning to merge. Furthermore, 47 of the top reporters used Global Reporting Initiative (GRI) Guidelines, and there was greater use of external assurance of reports compared with previous years. Nevertheless, it appears that most companies still fail to identify material strategic and financial risks and opportunities associated with environment and other sustainability issues. SustainAbility's findings suggest that even the best reports show weaknesses in companies' abilities to

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identify, assess and manage priority non-financial issues. Although the survey could not prove that giving greater credence to environment issues leads to more commercial success, it did suggest that leading sustainability reporters tend to be better-governed companies. Added to this was the finding that all the top 50 sustainability reporters have a higher credit rating than the overall company average.

(SustainAbility, 1 November 2004)

Salterbaxter, in conjunction with communications consultancy Context, has issued its fourth annual report on CSR reporting. It concludes that a large majority of big European companies now report on their non-financial performance, with 44 of the top 50 issuing a CSR report in 2003-04, an increase of four on the previous year. In the UK, the figure was 83 out of the top 100 firms. However, it was critical of the lack of independent verification of CSR reports, although the number of UK companies having third party assurance for their reports rose to 60 out of the top 250 firms, up from 45 the year before. Supply chain reporting was also analysed. It showed 37 of the UK's top 100, 18 of the European top 50 and six of the top 50 US companies reported on this matter.

(Salterbaxter, November 2004)

Environment Agency

The EA has stated its intention to commit to trading in information fairly and has received accreditation from the Controller of Her Majesty's Stationery Office (HMSO). HMSO was given the task of implementing the Government's policy of improving the access and use of public sector information. It does so through the Information Fair Trader Scheme. It is designed to make it easier for potential users of this information to know where to find it, how to obtain permission to re-use it and what it will cost. The EA says it will make high quality data and information available to members of the public, whether directly or via commercial users in accordance with the five pillars of the scheme: openness, transparency, fairness, compliance and challenge. Specifically, the EA wants to maximise the information available for re-use by licensees, the number and variety of licensees and the

number and variety of methods of re-using data and information.

(EA, 7 December 2004)

European Union

Pollutant registers

The European Pollutant Emission Register (EPER) was set-up to provide information on specific pollutants from industrial sources. A new report, reviewing its performance to date, has now been made available by the European Commission. The report says that the information provided by the old 15 member states, Hungary and Norway was comprehensive and submitted punctually. However, it highlighted some problematic areas such as a lack of harmonisation in methodology and omissions in data submitted for emissions from landfills and pig and poultry farms. One of the main conclusions is that just a few installations are responsible for a high proportion of industrial pollution. The Review Report assessed the first EPER reporting cycle, which includes emissions in 2001. Data for the second EPER reporting cycle, which will cover emissions in 2004, will be published at the end of 2006 and include all 25 member states and Norway.

(European Commission Press Release, 8 October 2004)

The European Commission has laid out its intentions to upgrade the EPER to make it more comprehensive by including more types of emissions, and bring it into line with the pan-European Pollution Release and Transfer Register (PRTR). The EU signed the Protocol on the PRTR, which was supported by the 55-member United Nations Economic Commission for Europe (UNECE) in May 2003. Under the Commission's proposals the number of substances to be reported will increase from 50 to over 90. This will allow the EU to ratify and implement the Protocol. Among the additional pollutants are CFCs, HCFCs and halons – ozone-depleting chemicals, and several pesticides including aldrin, DDT and dieldrin. Other changes include reporting on pollution from diffuse sources such as road traffic, aviation and agriculture, and an annual reporting cycle instead of every three years. The first

reporting year for the European PRTR will be 2007, with online reporting from autumn 2009.

(European Commission Press Release, 8 October 2004)

Environment reporting

A new report, prepared on behalf of the European Commission, says that no EU member country has implemented a 2001 EU Recommendation on the inclusion of environmental issues in companies' annual reports and financial accounts. Most companies encountered problems with the lack of definitions for environment-related factors and methodology in accounting for their cost. Conflicts frequently arose over what was material for economic performance and therefore whether it needed to be included in a financial report. However, the report, published by PricewaterhouseCoopers, does recognize that the Recommendation has resulted in some progress, and advocates that the European Commission should support further steps by companies to integrate their financial and environmental reporting, although said that further legislation was unnecessary. Most national authorities and companies believed that the Modernisation Directive (2003/51/EC) laid down sufficient mandatory requirements for reporting financially relevant environmental information.

(PricewaterhouseCoopers, October 2004)

Eco-labels

A Decision establishing revised ecological criteria for an eco-label for refrigerators has been published in the Official Journal. The eco-label is awarded to products whose design and production are intended to lessen or eliminate its impact on the environment. It also provides for a review of the criteria before the end of the valid period. The new Decision amends Decision 2000/40/EC, which established the original criteria for refrigerators, to reflect developments in the market and is valid for three years. Among the new criteria are those relating to energy efficiency, ozone-depleting substances, take-back and recycling, and consumer information.

(OJ L306, 2 October 2004)

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SECTION 9

Energy



The least favoured approach to promoting biofuels was a voluntary agreement.



United Kingdom

Biomass

A new government-appointed task force has been set up to encourage the supply and use of biomass as fuel. The task force will carry out a one-year study of biomass, which can be burned to produce heat directly or used to generate electricity. Intended to increase the amount of energy obtained from renewable sources such as trees and plants, it should also provide an incentive for the farming and forestry industries. At the same time, the government also announced a new £3.5 million Bio-Energy Infrastructure Scheme offering financial support for the harvest, storage, processing and supply of biomass for energy production. Crops eligible for grants under the Scheme are wood fuel including sawdust, short rotation coppice (willow or poplar), miscanthus, other grasses and straw.

(DEFRA, 15 October 2004)

The results of a government consultation paper, entitled "Towards a UK Strategy for Biofuels", on plans for implementing the EU Biofuels Directive, developing a UK strategy and options for achieving specific targets, have been published. The consultation paper was published by the Department for Transport (DfT) on 26 April 2004. There was a mixed response to the UK's plans for a 2005 target, with around half those responding agreeing that the basis of the target should be best estimate of sales. Most respondents were unhappy that the UK did not plan to set a target closer to the EU's reference value of 2%. There was also a mixed response to the DfT's projection of 12 million litres a month, about 0.3% of fuel sales. There was more

of a consensus on the 2010 target, which must be set by July 2007, with the majority of consultees wanting the UK to set a target as early as possible. Most also felt that the target should be close to the EU reference value of 5.75%. There was a strong opinion that some form of renewables obligation should be used alongside direct subsidies. The least favoured approach to promoting biofuels was a voluntary agreement. Other Government support for biofuels such as increased regional grants, enhanced capital allowances or research and development got support from nearly all respondents.

(DfT, 2 December 2004)

Energy efficiency

The Energy-Saving Items (Deductions for Expenditure etc.) Regulations 2004 (SI 2004 No 2664) came into force on 3 November 2004. They relate to the deduction for expenditure that might be claimed by landlords for providing energy efficient items. In addition, the Regulations set the maximum amount of expenditure for the purpose of income tax to £1500 per building per tax year. They also set the conditions for the deduction, and for the apportionment of an allowable deduction when more than one person has an interest in a building in which loft or cavity wall insulation is installed. There is also an appeal mechanism provided where apportionment between claimants needs to be resolved.

(SO, 13 October 2004)

Proposals for the next stage of the Energy Efficiency Commitment (EEC), which runs from April 2005 to 2008, have been laid before Parliament. The EEC places a legal obligation on electricity and gas supply

companies to promote energy savings among domestic customers through measures such as cavity wall and loft insulation, and energy efficient boilers, appliances and light bulbs. The next phase of the EEC is likely to offer twice the level of help to electricity and gas consumers as the current EEC. It forms a significant part of government policy to reduce CO₂ emissions from the household sector. The measure is expected to result in savings of about 0.7 million tonnes of carbon per annum in 2010. The target for the second period, 2008-2011, will be set in 2007.

(DEFRA, 10 November 2004)

New funding has been made available for public and private investment in energy efficiency. Announced in the Pre-Budget Report, £10 million per year in 2006-07 and 2007-08 will be made available to help build partnerships between business, research and government for developing policy initiatives aimed at tackling climate change. It is envisaged that this will enable the Carbon Trust to secure at least matching funding from non-Departmental sources for the programmes that it develops. The Carbon Trust provides advice to business and the public sector on reducing carbon emissions. An Energy Efficiency Innovation Review, was also announced in the Pre-Budget Report. This is intended to examine how technological, policy and financial innovation, by government, business or consumers, can contribute to energy efficiency. This review is intended to feed into the current review of the UK Climate Change Programme.

(DEFRA News Release, 2 December 2004)

Renewables obligation

The Government's plans for reviewing the Renewables Obligation (RO) have been published. The RO is the market-based mechanism, put in place in April 2002, requiring all licensed electricity suppliers in England and Wales to supply a specified and growing proportion of their electricity sales from eligible renewable sources. It follows the publication of the draft terms of reference by DTI in August 2004, which elicited strong support for a limited review to improve the effectiveness of the RO, while avoiding changes to the key

operating principles. The DTI say that the final terms of reference reflect this viewpoint. Key areas addressed by the review are: the effectiveness of the RO; its working arrangements; the level of the RO beyond 2015-16; the impact of the EU Emissions Trading Scheme; and energy from mixed wastes. There is likely to be an initial consultation on the review of the RO in early 2005.

(DTI News, 4 November 2004)

Renewable energy procurement

Two major companies have announced their commitment to purchase their energy from renewable sources. The Co-operative group has agreed a contract of around £25 million to provide renewable energy to over 3,700 of its sites operated by 16 retail societies. In a similar move, BT has made the world's largest purchase of renewable electricity, which will meet almost all its supply requirements. The 3-year contract, worth several million pounds, will provide electricity to BT's telephone exchanges, offices and depots. The Climate Group, a non-profit organisation advising companies on reducing greenhouse gas emissions, praised the move saying that the initiative is 'globally significant'. It also added that BT's track record on reducing greenhouse gas emissions is 'phenomenal' with an 80 % reduction.

(BT News Release, 14 October 2004; Co-operative News, 11 November 2004)

Wind energy

A new study has concluded that there is a minimal impact from offshore wind farms on marine radar, communications and positioning systems. The study was undertaken by the Maritime and Coastguard Agency (MCA) and NPower Renewables (NRL) in 2004 and took place at the UK's first major offshore wind farm at North Hoyle. Among the specific findings were that wind farms at a distance are clearly and readily identified by radar. However, at closer distances, erroneous radar readings could occur, so additional measures might be necessary to address this. The report is likely to inform the consideration of future applications for offshore wind farms and the promotion of navigation safety.

(MCA, November 2004)

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They want the introduction of market-oriented systems across Europe, and an end to feed-in tariffs...



The British Wind Energy Association (BWEA) says that 2004 has been a record year for investment in the UK wind industry. It now estimates that £7 billion of new investment will come into the sector by 2010. By this date, it also predicts that there will be around 7,500MW of wind power installed in the UK, with half onshore and half off shore, which is approximately 7.5% of the nation's electricity use and three-quarters of the Government's 2010 renewable energy target. BWEA figures show that 10 new wind projects have been commissioned, with a total capacity of 240 MW, and 2 more were due to be commissioned by the end of 2004. In total, this represents almost 3 times that commissioned in 2003.

(BWEA Press Release, 22 November 2004)

the electricity generating sector as the biggest single contributor to climate change, concludes that the industry is failing to act responsibly in reducing greenhouse gas emissions. It was published to coincide with the launch of WWF's PowerSwitch! campaign, aimed at trying to encourage the power sector to act to reduce its emissions. WWF plans to build a movement of activists around the world to urge companies to switch from coal to clean energy.

(WWF International, November 2004)

European Union

Renewable energy support

RECS International, a body promoting tradable renewable energy certificates and EURELECTRIC, an association of Europe's electricity industry, are calling for harmonisation of EU renewable energy support systems. They want the introduction of market-oriented systems across Europe, and an end to feed-in tariffs, such as those operating in Germany. The move is designed to influence the European Commission as it prepares to review the EU Renewable Electricity Directive in 2005. Both organisations claim that tradable guarantees of origin lead to cost-efficiency, requires little interference in the EU internal market for electricity, and will bring about EU-wide market integration.

(EURELECTRIC News 18 November 2004),

International

Climate change

A report from the World Wide Fund (WWF) entitled 'Ranking Power' has assessed 72 of the world's leading power companies in OECD countries and Russia for their response to dealing with the threat of climate change. Companies are ranked in terms of their use, sale and investment in renewable energy and natural gas. The report, which describes

SECTION 10

Planning aspects of environmental control

United Kingdom

Waste management

Views are invited on proposals for new waste management guidance intended to supersede PPG 10, which was published in 1999. The draft Planning Policy Statement (PPS) 10, 'Planning for Sustainable Waste Management', was produced in response to recommendations made by the Cabinet Office Strategy Unit in 2002. Its report called for PPG10 to be revised urgently to enable the planning system to contribute to and support Government policy aimed at reducing the volume of waste generated and at diverting waste from landfill to recycling and re-use. The new PPS10 encourages communities to take responsibility for dealing with their own waste by reforming the way regional planning bodies and local authorities are expected to plan for waste management. This reflects the EU Waste Framework Directive, which advocates that waste should be disposed of as near as possible to its place of production. In addition, the new guidance will make planning strategies subject to a sustainability appraisal. The consultation ends on 11 March 2005.

(ODPM, December 2004)

Pollution control

PPS23 has been launched by the ODPM to replace planning policy guidance note (PPG) 23, 'Planning and Pollution Control', published in 1994. The new guidance is intended to provide planners and developers with direction when determining how pollution control and the management of contaminated land should be taken into account when considering

proposals for development. Its main application is in relation to developments on brownfield, or previously developed, land. Planners will have to ensure developers have taken appropriate measures to ensure that any pollution or contamination remaining from past uses is dealt with effectively. This includes undertaking the necessary investigations, and including the results in their proposals.

(ODPM, November 2004)

Climate change

The ODPM has published advice for planners on climate change. It is intended as an overview of current knowledge on the planning response to climate change. As planning best practice on adapting to climate change is still developing it says, the advice is looking to generate ideas for future strategies. The advice document highlights the ways in which the planning system can help reduce greenhouse gas emissions. Among those outlined are influencing the design of development by reducing the need to travel and encouraging the construction of energy-efficient buildings.

(ODPM, September 2004)

Renewable energy

Further encouragement for the development of renewable energy sources through the planning system is contained in a Companion Guide to PPS22. The Government has a target of generating 10% of the UK's electricity from renewable sources by 2010. As the current level is only 3%, this is one of a number of initiatives being put in place to quickly boost the use of resources such as wind, solar and biomass. PPS22 and the Companion Guide

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are designed to support development of schemes of various sizes in urban and rural areas. The Guide lays out practical advice on how these policies can be implemented and uses case studies to show how specific issues can be dealt with.

(ODPM, December 2004)

Sustainable housing

A new Code for Sustainable Buildings is to be developed by Government, industry and the non-government sector. It will aim to achieve higher levels of environment performance than those mandated by regulations. An outline of the Code should be available in January 2005. The Code is part of the Government's £38 billion Sustainable Communities Plan.

(ODPM Press Release, 15 December 2004)

SECTION 11

Health and safety at work

United Kingdom

Enforcement

The HSE has announced it is to target the enforcement of health and safety procedures in manufacturing industries in what it describes as an attempt to "reduce the unacceptable high number of fatal and serious injuries that continue to occur". Scrap metal, rubber, paper and wood industries are likely to be subject to greater scrutiny over the next three years, particularly with regard to their procedures for working with machinery. During the past three years, the HSE says that over 40 people have died as a result of incidents when cleaning or carrying out running repairs of machinery. Employers have a duty to maintain suitable work equipment, to provide adequate information, instructions and training, to protect against dangerous parts, and to protect against risks while maintaining it.

(HSE Press Release, 27 October 2004)

COMAH

Views are being sought on proposal for updating guidance on the Control of Major Accident Hazards Regulations 1999 (COMAH). The updated guidance is required to take into account a revision of COMAH necessary to implement an EU Directive (2003/105/EC) amending the original Seveso II Directive. An HSC consultation on the revision of the COMAH Regulations ended on 1 October 2004, and comments are currently being considered. The main effect of the revision would be a change in the thresholds that determine whether the regulations apply to a particular site. The thresholds for substances that meet the criteria for 'dangerous for the environment' have

been lowered significantly. Any comments on the proposals must be received no later than 18 February 2005. The amended COMAH regulations are expected to come into force by summer 2005.

(HSC, 7 December 2004)

Major hazard industries

New guidance published by the HSE should help directors and senior managers in major hazard industries to improve their active involvement and leadership in health and safety performance of their companies. It aims to encourage senior managers to reflect on current approaches, and calls for them to consider continual improvements. Major hazard industries are those in which a major incident would affect the health and safety of many people. These include railways, nuclear installations, chemical manufacture and storage, gas storage and transportation, offshore oil and gas extraction, and mining. The HSE believes that failures at managerial levels were at least as significant as technical failures and human error in causing accidents in major hazard industries in recent years. The guidance builds on the conclusions in the Turnbull Report on corporate governance, which supports HSE's view on the importance of leadership in effective health and safety management. It is based on previous guidance aimed specifically at the offshore industry.

(HSE, November 2004)

Indoors air quality

The Department of Health (DH) has issued advice to HSE and DTI on the assessment of the health implications of high levels of nitrogen dioxide (NO₂) and carbon monoxide (CO) indoors. The advice is in

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The Report also outlines the results of research looking at why businesses comply with health and safety legislation.



the form of a Statement, and was produced by the Committee on the Medical Effects of Air Pollutants (COMEAP), which consists of independent experts providing advice to Government Departments and Agencies. As there are no indoor air quality standards for the two gases, COMEAP recommended comparing concentrations indoors with outdoor standards set by the Expert Panel on Air Quality Standards (EPAQS) and with guidelines provided by the World Health Organisation (WHO). These are: 10 ppm, 8-hour average for CO; and 150 ppb (EPAQ) or 100 ppb (WHO), 1-hour average for NO₂. At concentrations of NO₂ above the standard, individuals suffering from asthma might experience a worsening of their condition. The effects of CO include coma and, in some cases, death.

(DH, 4 November 2004)

Offences and penalties

The fifth annual Health and Safety Offences and Penalties Report, which names companies convicted in HSE prosecution cases over the past year, has been issued. It shows that prosecutions increased by 6% on the previous year. HSE's publicly available on-line prosecutions database gives details on convictions since 1999. The Report also outlines the results of research looking at why businesses comply with health and safety legislation. This reveals that 90% of respondents strongly agreed that health and safety is important for staff productivity and morale, 82% felt they must comply with health and safety regulations to protect their reputation, but only 45% would be more likely to act on the regulator's advice because of its enforcement powers.

(HSE, 16 November 2004)

Petrol tankers

The HSC has launched a consultation on new regulations covering the transport of petrol by road and rail, including the loading and unloading of tankers. The new regulations are not expected to bring about major changes to any legal duty. Currently, regulations covering the transport of petrol by tanker are contained in both the Carriage of Dangerous Goods by Road Regulations 1996 (SI 1996 No 2095) and the Carriage of Dangerous Goods by Rail Regulations 1996 (SI 1996 No 2089). Most of the requirements set out in these two Regulations have been transferred to the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004 (SI 2004 No 568). In order to revoke the 1996 Regulations while maintaining safety standards and complying with an EU directive, the provisions concerning the transport of petrol by tanker have to be transferred to the new legislation. The HSE believes that there will not be any impact on costs for industry. The deadline for responses is 9 February 2005.

(HSC, November 2004)

SECTION 12

Miscellaneous

United Kingdom

Environment Bill

A new Bill designed to deal with environment crime and anti-social behaviour has been published. Intended to clean-up neighbourhoods and improve the local environment, it contains a range of miscellaneous measures to give local authorities and the EA greater powers to deal with such environment nuisances as fly-tipping, litter, fly posting, abandoned vehicles and noise from burglar alarms and pubs.

Some of the main implications of the legislation in its current form would be: nuisance vehicles, not just those obviously abandoned, could be removed immediately; a more effective system for stopping and searching vehicles suspected of fly-tipping, with increased penalties and seizure of vehicles for those caught; and litter dropping offences extended to all land and aquatic environments, with new local discretion to issue fixed penalty notices up to £300. Other measures such as a new requirement for site waste management plans for building and demolition projects, would affect the construction sector. It also proposes to extend the list of statutory nuisances to include light pollution and nuisance from insects. The Government received over 500 responses to its consultation on these measures in its 'Clean Neighbourhoods' consultation issued in summer 2004, most of which supported the proposals.

(House of Commons, December 2004)

Wildlife

The House of Commons Environmental Audit Committee has issued a report entitled, 'Environmental Crime: Wildlife Crime'. It concludes that the lack of a clear and agreed definition of wildlife crime is having a negative impact on the public's perception of it. The links between wildlife crime and serious and organised crime are also highlighted. The

Committee now wants the Government to state its commitment to tackling wildlife crime. In addition, it says that DEFRA, through the Partnership for Action against Wildlife crime (PAW), should lead a cross-government group to establish a definition of wildlife crime within the next twelve months. In all, the report makes 41 recommendations and conclusions, including a call for a centrally managed national database to record all incidents of wildlife crime.

(House of Commons, 7 October 2004)

Timber

The Government has carried out a survey of five forest certification schemes. Although it found that they all give assurance of legal harvesting, three did not provide sufficient confidence that forests are being managed in a way that meets its definition of sustainable forest management. These were: the Programme for the Endorsement of Forest Certification Schemes (PEFC); the North American Sustainable Forest Initiative (SFI); and the Malaysian Timber Certification Council (MTCC). Certificates from the Canadian Standards Association (CSA) and the Forest Stewardship Council (FSC) however, were accepted as assurance of legal and sustainable timber. It has now set a deadline of 9 May, after which it will take into account whether timber is sourced from sustainably-managed forests, although it expects the PEFC, SFI and MTCC schemes to give the required assurance by then.

(DEFRA, November 2004)

Construction

The Sustainable and Secure Buildings Act gained Royal Assent in September. This new Act is designed to extend the scope of building regulations to cover waste prevention, water efficiency, and fuel and power conservation, to assist in sustainable development and greater environment

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protection. By amending The Buildings Act 1984, it will allow the Secretary of State to issue building regulations covering new areas, such as the use of recycled materials, the reuse of materials and the demolition of buildings. This is likely to lead to new regulations laying down requirements for the use, and monitoring of use of fuel and electricity. There could also be a requirement that building owners and occupiers actively prevent or reduce emissions on an on-going basis. Exemptions from buildings regulations for educational premises and for official authorities will be removed by the Act.

(Parliament, September 2004)

Sustainable development

The Environmental Audit Committee has criticised the UK's Sustainable Development Strategy in its Thirteenth Report of 2003-04, 'The Sustainable Development Strategy: Illusion or Reality?' The Government launched the Strategy in 1999 to cover the period to 2005. The Committee's report says that the existing Strategy has not had the impact expected, and that economic growth is still usually given precedence over sustainable development in government policy. It draws a number of conclusions on several issues, including the definition of sustainable development, indicators and targets, consumption and awareness, and administrative processes. A new Strategy is due to be published in spring 2005, when the Committee says it would like to see the Government playing a more decisive role.

(Parliament, 8 November 2004)

CSR

A study has found that good corporate environmental management can have a positive impact on financial performance. The EA-commissioned survey was carried out by Innovest Strategic Value Advisors. It looked at the value of good environmental governance worldwide, and the link with financial returns, business opportunity and competitive advantage. The practical aspect of the study involved fifteen case studies, covering a range of investment funds, sectors and individual companies. The study also analysed the published literature on the subject, which showed that in 85% of studies, there was a marked difference in financial performance between those with and without sound environment policies. The case studies confirmed the positive correlation between

good corporate environment management and superior performance for the business and investors found during the literature review. Furthermore, it said that the benefits could be quantified, although this was subject to the caveat that it was not always clear when this was due entirely to environmental governance issues. Among the case studies, the UK investment product Jupiter Ecology Fund was singled out as 'an impressive performer' giving a consistently better investment returns over five years than the sector average.

(EA, November 2004)

The findings of the EA's report, above, were backed up by a joint study between the environment rating agency Oekom and the investment bank Morgan Stanley. They confirmed that, long-term, sustainable companies are more successful economically than others. In the study, shares in sustainable companies, as recommended by Oekom, out-performed conventional shares over the last four years by nearly 17%. By looking at 30 different economic sectors and 21 different countries, the study was able to carry out global comparisons. The fact that a benefit for sustainable companies occurred in virtually every sector provided further evidence that this effect was real and not due to isolated or exceptional factors.

(Morgan Stanley Press Release, 24 November 2004)

European Union

Wildlife

More than 7,000 wildlife sites in the Atlantic and Continental regions of the EU have been added to the network of protected nature sites covered by NATURA 2000, set up under the Habitats Directive (92/43/EEC). This will mean that 197 animal species, 89 plant species and 205 habitats in 12 member states will be added to the list. These include species such as the wolf, the otter, the salmon, as well as certain coastal lagoons and river systems. The new areas benefit from increased protection, as member states will have to take all the necessary measures to guarantee their conservation and avoid their deterioration. As a result, any activities carried out there must be compatible with the conservation of the habitats and species present. Work is currently taking place on 2 more lists of sites - Boreal and Mediterranean bio-geographical regions and the ten newest member states.

(European Commission Press Release, 8 December 2004)

The CMS Cameron McKenna

Environment law bulletin is prepared by the Environment law group of CMS Cameron McKenna. It is intended to summarise those recent developments in the environment laws of the United Kingdom and the European Union that we believe may be of interest to our clients and to collect them under appropriate headings. It should not be treated as a comprehensive review of all developments in this area of law; also while we aim for it to be as up-to-date as possible, some recent developments may miss our printing deadline.

This commentary is not a full review of the topics it covers. Specific advice should always be sought on any particular subject.

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