



ENVIRONMENTAL LAW

Welcome

Welcome to the August/September issue of **Environmental Law**. If you want further details on any of these areas then please contact one of the Environmental Team or have a look on our website www.burgess-salmon.com or complete the fax back at the end of this newsletter.

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Energy and Power

Carbon Capture and Storage

BERR issued a highly important consultation document called "Towards Carbon Capture and Storage" in June 2008. This points out that over the next decade or so a third of the UK's electricity generation capacity is set to close as older, less efficient coal and oil fired power stations become subject to tougher environmental standards and nuclear stations reach the end of their licence lifetimes. By 2015, 6 of our 19 coal power stations will have closed and the average age of the remaining coal power stations will be 41 years. At the same time, the UK is trying to drive forward the increased deployment of renewable energy in order to meet its share of the EU target of 20% renewable energy across the electricity, heat and transport sectors by 2020. While the production of power from wind farms is intermittent, the production of power from nuclear power stations cannot be switched on and off and is better adapted to provide baseload generation. Therefore, and in order to meet the objective of a varied energy mix with greater stability and flexibility to withstand variable demand, the Government is looking for ways to reconcile its emissions reductions targets with continued use of coal and gas fired power stations.

Carbon capture and storage technology, which offers the prospect of reduction of CO₂ emissions from fossil fuel power stations by as much as 90%, seems to offer

the answer to some of these problems. It is an established technology in some ways, as CO₂ storage is already used for Enhanced Oil Recovery in many applications and places in the world. Nevertheless, it has yet to be demonstrated on a full industrial scale linked to large scale power generation, and that is what the EU now wishes to promote with its proposed **Directive on Carbon Capture and Storage** which reflects similar initiatives being tried out in the United States and elsewhere. The initial costs of fitting CCS are high, and economic studies focus on the estimated future cost of CO₂, and on whether regulation can create a framework and a market to bring these costs down. Meanwhile, the Government is taking forward extensive and major revisions to legislation in the Energy Bill which it hopes will facilitate the development of carbon capture and storage projects, first of all for new power stations and secondly for retrofitting of existing power stations, and this is likely to be a major and important new policy area. BERR is also taking forward the next stage of its competition to provide a full scale demonstration project for construction of a power station with carbon capture and storage. The EU Directive is likely to be enacted before the end of 2008. This is an issue moving rapidly up the policy agenda within the EU.

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Visit our website at www.burgess-salmon.com/our_work/content/Environment/Index.htm

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Burges Salmon has been following the development of CCS for some years, and William Wilson was an Expert Reviewer of the IPCC Special Report on CCS. For further information on this area please contact Ross Fairley at ross.fairley@burges-salmon.com, tel. 0117 902 6351 or William Wilson at william.wilson@burges-salmon.com, tel. 0117 939 2289

Eighth European Solid Oxide Fuel Cell Forum

The Eight European Solid Oxide Fuel Cell Forum held in Luzern in Switzerland in July 2008 brought together over 300 delegates from all over the world for a technical and scientific exchange of information on progress on developing solid oxide fuel cell technologies and in particular addressing the key challenges of establishing their reliability and bringing down their cost.

Burges Salmon's Environmental Law Unit was represented at this conference, which was notable for its contrast with similar gatherings of renewable energy enthusiasts. Renewable energy conferences tend to have a great deal to do with policy and demands for government support and subsidy for the establishment of renewable energy technologies. The Luzern fuel cell conference by contrast had very little about international policy for the promotion of fuel cells, but was more a serious scientific exchange and progress report in the different areas of research. The organiser of this event Ulf Bossel stated that –

"this conference documents that it is time to stop the search for synthetic energy carriers, but develop fuel cells for commercially available fuels. The Eighth European SOFC Forum documents that fuel cells do not need a hydrogen economy. We are proud to present a success story. Some fuel cells have run on natural gas for over 70,000 hours without stack replacement. One should hail these accomplishments rather than lament about a slacking interest in a Hydrogen Economy"

The UK was well represented at the fuel cell event by the likes of Rolls-Royce Fuel Cell Systems Limited, Ceramic Fuel Cells Limited, the University of Birmingham (which has just opened its first hydrogen fuelling station) and a large contingent from Imperial College.

EU Regulation on Fuel Cells and Hydrogen Joint Undertaking

A new regulation made by the EU in June 2008 set up

the Fuel Cells and Hydrogen Joint Undertaking. This is a European Community body with legal personality and aimed to contribute to the aims of the EU 7th Framework Programme decision by facilitating the market breakthrough of fuel cells and hydrogen technologies, supporting the research, technological development and demonstration of such technologies in Member States and encouraging further public, private research investment.

For further information about fuel cells issues, please contact William Wilson at william.wilson@burges-salmon.com, tel. 0117 939 2289.

BERR Report calls for Feed-In Tariffs

A report for DBERR on the growth potential for micro-generation in England, Scotland and Wales says that feed in tariffs are needed for micro renewables to make a real contribution to the UK's renewable energy targets. Progress in removing the obstacles to the effective connection of micro generation to the grid continues to be painfully slow, and further Government action in this area can be expected.

Ofgem and BERR Policy on Offshore Electricity Transmission Networks

Ofgem and BERR have issued a position statement on development of a comprehensive regulatory regime for offshore electricity transmission networks. They have sought input in a further consultation on proposed changes to the electricity transmission licensing system and related industry codes, the consultation closed on 25 July 2008.

Consultation on the Draft UK Strategy for Radioactive Discharges 2006 to 2030

Defra and the devolved administrations have issued a consultation on a draft UK strategy for radioactive discharges for 2006 to 2030. The practical importance of this issue, and the related draft statutory guidance to the Environment Agency on the regulation of radioactive discharges into the environment, is very high for coastal power stations and nuclear new build. The UK had signed up to very restrictive and demanding targets under the "Sintra Statement" made in the context of the OSPAR Convention, and reconciling that commitment to phase out or cease radioactive emissions with its other policy to construct new nuclear power stations around its coast will be a demanding and difficult task for the UK Government and its regulatory agencies.

"Some fuel cells have run on natural gas for over 70,000 hours without stack replacement."

Climate Change and Sustainability

Committee on Climate Change Work Plan

In May 2008 the new Committee on Climate Change established by the Climate Change Bill published its first proposed work plan. This divided its future work into six sections –

- 1 Setting the 2050 CO₂ budget.
- 2 Setting the 2020 CO₂ budget and the trajectory from now to 2020: what should the 2018 to 2022 budget be, how much buy in should be allowed, what balance between traded and non traded sectors.
- 3 Other considerations: fuel poverty, fiscal implications, security of supply, the regions and ancillary environmental effects (competitiveness is covered under work plan section 2).
- 4 International aviation and shipping.
- 5 Other greenhouse gases.
- 6 An explanation of how the cross cutting blocks of analysis, around which the work of the secretariat has been fed into the work plan sections.

This formidable agenda will not have been helped by the resignation of the first Chair of the committee, Adair Turner. The fact that the committee needs to consider not only what the UK's targets for CO₂ should be but also issue such as fuel poverty, fiscal

implications, security of supply and so on makes its task potentially enormous, something which we pointed out to the Government in evidence given to two Parliamentary committees during the passage of the Climate Change Bill. However, the Committee on Climate Change will probably become one of the most important and influential advisory committees to Government, and we will all need to get used to following what they have to say about our CO₂ targets, as it will affect most sectors of the UK economy.

EU Emissions Trading Scheme

The European Parliament's policy department has published a study on the future elements of the EU Emissions Trading Scheme. The review considers the scope of the Directive, and the need for further harmonisation and increased predictability. It further considers the potential addition of transport, the European automotive industry and road transport, European rail industry and the maritime sector to the EU ETS. Aviation is dealt with separately.

For further information on carbon law and emissions trading issues, please contact Georgie Messent at georgie.messent@burges-salmon.com, tel. 0117 902 7732, or Robert Triggs at robert.triggs@burges-salmon.com, tel. 0117 902 7767

Waste and Contaminated Land

New Waste Framework Directive

The European Parliament and Council of Ministers agreed in June a revision to the EU Waste Framework Directive. These negotiations resulted in significant changes to EU waste law. The waste hierarchy - prevention, reuse, recycling, recovery and disposal - will now be enacted in EU law. It will see a revision to the definition of by-products allowing some materials which are currently wastes to become non wastes. The new directive will introduce targets for recycling and waste prevention. Incinerators which pass efficiency thresholds will be re-categorised as methods of recovery rather than disposal. Extended producer responsibility will be introduced in some areas. The definition of waste will be amended with particular regard to "by-products". These are very important changes of wide effect and we expect to report on them further in further briefings.

Wrap Compost Buying Guide

WRAP has issued a guide to buying peat free compost soil conditioners and mulches. Pressures on the UK's remaining peat bogs are intense, not helped by the public's fondness for garden centres and gardening, and use of alternatives to peat composts is likely to be regarded as best practice.

Hazardous Waste Rules

The Environment Agency has introduced revised rules on the management of hazardous waste, and has set a date of 10 November 2008 for the banning of mixing pits for hazardous waste, which it wants to see replaced by above ground vessels capable of better mixing solidifying and stabilisation of waste.

Animal By-Products Regulation

A draft Regulation was published in June 2008 which would, if enacted as proposed, replace the whole of the existing Animal By-Products Regulation, and introduce

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Carbon Reduction Commitment

Burges Salmon has been advising Defra on the CRC. We understand that publication of the CRC regulations, initially scheduled for summer this year, is now expected at the end of this year. It has also been announced that the scheme will commence in April (not January) 2010.

Private and public organisations likely to be covered by the CRC, due to their metered electricity usage of more than 6,000 MWh/year, will need to start making preparations now to assess the cost implications of the scheme and put appropriate processes and procedures in place.

For further information on the CRC please contact Georgie Messent, Partner on 0117 902 7732 or georgie.messent@burges-salmon.com

Emissions Trading Auction open

Organisations can now apply to become primary participants in the UK's auctions for Phase II of the EU Emissions Trading Scheme (EU ETS)

significant changes, for example to the scope of the by-products definition. We expect to report on this further in future editions of this Briefing.

Consultation on revised waste exemptions from environmental permitting

Defra have issued a formal consultation on the review of exemptions from environmental permitting. The proposals include an increase to the use of exemptions for a wide range of low risk waste operations, whilst restricting the availability of the exemptions for higher risk waste operations, and no longer providing 'notifiable' exemptions. This also includes a proposal for a number of new exemptions or changes to previous ones.

Anyone currently operating under an exemption or an Environment Agency low risk position will be affected by these proposals, however the consultation is also directed at the wider waste management industry. The consultation is open until 23 October 2008.

For further information on Burges Salmon's extensive waste law practice, please contact Nigel Campbell at nigel.campbell@burges-salmon.com, tel. 0117 902 7268

White Paper on Geological Disposal of Higher Activity Radioactive Waste

As part of the drive towards promotion of nuclear new build, the Government has published a very important White Paper on the future plans for geological disposal of high activity radioactive waste, and the procedures that it intends for inviting communities to take part in a staged process of volunteering to engage with and invite the development of such facilities within their communities.

For further information on this or any aspect of Burges Salmon's nuclear practice, please contact Ian Salter at ian.salter@burges-salmon.com, tel. 0117 939 2225

Chemicals

“Any substances that are not pre-registered but that require registration under the REACH Chemicals Regulation will have to be taken off the EU market until they have completed the full registration process.”



REACH Pre-registration is under way

Pre-registration of substances under EU REACH Chemicals Regulation is required between 1 June and 1 December 2008. Any substances that are not pre-registered but that require registration under the REACH Chemicals Regulation will have to be taken off the EU market until they have completed the full registration process. Pre-registration is required for about 100,000 or so existing or 'phase-in' chemicals which have already been on the market before 1981. Many of these have not been tested properly. The European Chemicals Agency in Helsinki is expecting about 200,000 pre-registrations from 35,000 firms covering 30,000 substances and 40,000 intermediates in the next few months. This is a massive change to the way in which chemicals are regulated across the European Union.

Amongst the many significant issues are real concerns about the level of knowledge of the EU REACH Chemicals Regulation amongst small to

medium enterprises within the UK, and difficulties in extracting relevant and necessary information from the many firms, including those overseas and in the Far East and so, who make up the supply chain to larger entities within the European Union. REACH is likely to have enormous effects both in the availability of some chemical substances and products made from them, in the forced substitution of Substances of Very High Concern such as carcinogens, mutagens and reprotoxins, and in big shifts within the supply chain of many well known chemical substances and products made from them from companies unable or unwilling to deliver information and compliance with this new regime.

REACH enforcement is expected to begin on 1 December 2008 – the draft enforcement regulations have already been published - and to be raised in profile and significance through to 2018, with criminal penalties applying for many breaches of the regulations.

For further information about REACH, the GHS and chemicals issues or to receive our separate update on current REACH and GHS issues, please contact William Wilson at william.wilson@burges-salmon.com, tel. 0117 939 2289. For details of our forthcoming webinar on REACH, please see the separate insert with this newsletter.

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The European Commission has issued important proposals concerning the revision of Annexes IV and V of REACH, exemptions from Registration. For details, request our separate REACH update.

Environmental Legislation

Climate Change Bill

The Bill was at committee stage in the Commons (eighth sitting) in July 2008 after coming back from the Lords on 1 April 2008. It is expected that it will receive Royal Assent in late Autumn 2008.

The Bill contains provisions that will set a legally binding target for reducing UK carbon dioxide emission by at least 26 per cent by 2020 and at least 60 per cent by 2050, compared to 1990 levels. It will establish an independent body - the Committee on Climate Change - to work with Government to reduce emissions over time and across the economy. The Bill will create enabling powers to put in place new emissions reduction measures needed to achieve our goals and improve monitoring and reporting arrangements, including how the Government reports to Parliament.

A separate briefing on this legislation will be available once it is enacted. To receive a copy please contact Georgie Messent at georgie.messent@burges-salmon.com, tel. 0117 902 7732.

Energy Bill

The Bill was at Committee stage in the Lords in July 2008 having come from the Commons on 1 May 2008. No projections have been made as to when it the Bill might be passed.

The Bill contains provisions that will strengthen the regulatory framework to enable private sector investment to help maintain reliable supplies of gas (given that we expect to rely on imports to meet up to 80% of demand by 2020); create a regulatory framework to enable private sector investment in Carbon Capture and Storage 'CCS' projects; strengthen the Renewables Obligation to drive greater and more rapid deployment of renewables in the UK; help energy supply companies to better target their efforts to reduce fuel poverty; create a framework that will help protect the taxpayer by requiring owners or operators of a new nuclear power station to make financial provisions to cover the full decommissioning costs and their full share of waste management costs.

A separate briefing on this legislation will be available once it is enacted. To receive a copy please contact Ross Fairley at ross.fairley@burges-salmon.com, tel. 0117 902 6351.

Marine Bill

The Bill is included in the Government's Draft Legislative Programme (DLP), and therefore is

presently expected to find a slot in the Parliamentary programme for the next session (Autumn 2008 – Summer 2009).

Defra concluded a consultation on the draft Marine Bill in June 2008. The key issues covered were –

- the creation of the Marine Management Organisation
- planning in the marine area
- licensing activities in the marine area
- marine nature conservation
- managing marine fisheries
- reform of inland and migratory fisheries
- modernisation and streamlining of enforcement powers
- administrative penalty scheme for domestic fisheries offences; and
- access to coastal land

Defra has published the results of a survey assessing the likely impact of Marine Bill proposals on developers intending to apply for marine works consent. The results of the survey claim that developers are likely to benefit from the Marine Bill proposals to establish a single organisation to manage application for marine works consents.

Defra has also issued draft guidance on the selection and designation of marine conservation zones, and on the duties on public authorities in relation to such zones under Part 4 of the draft Marine Bill. It is unusual for detailed guidance to be issued on a part of a Bill which has not yet been introduced into Parliament, and reflects the pressures on Defra's policy makers to try to take forward policies for the marine area despite the battles they have had in achieving inclusion of the Marine Bill in the parliamentary programme.

A separate briefing on the Marine Bill is available on request from William Wilson at william.wilson@burges-salmon.com, tel. 0117 939 2289.

Planning Bill

The Bill is fixed for Committee stage in the Lords in October 2008. It is expected to become law in early 2009.

The Bill introduces a new system for approving major infrastructure of national importance, such as

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Key pieces of national environmental legislation are at different stages in their Parliamentary progress, and we expect to issue separate briefings on each of them.

harbours and waste facilities, and replaces current regimes under several pieces of legislation. The objective is to streamline these decisions and avoid long public inquiries. Decisions would be taken by a new Infrastructure Planning Commission and based on new national policy statements. The new regime would be used for energy developments like nuclear power and the Secretary of State would no longer have the final say on major infrastructure decisions.

A separate briefing on this legislation is available from Jim Ryan at jim.ryan@burges-salmon.com, tel. 0117 902 6689.

Environmental Liability Directive

A coalition of non governmental organisations has objected to Defra's proposals for a minimum implementation of the Environmental Liability Directive. This involves dovetailing the Directive into existing legislation and making a patchwork of regulation that Defra hopes will have minimum impacts on business. The NGOs have objected to this approach which they say delivers inadequate protection to water bodies, marine sites and habitats. They can be expected to continue to press for full implementation of the Directive, and possibly to challenge its implementation before the European Court of Justice.

For further information please contact Georgie Messent at georgie.messent@burges-salmon.com, tel. 0117 902 7732

EU Directive on Ambient Air Quality

The revised Directive on ambient air quality in Europe was formally adopted by the EU Council of Ministers on 14 April 2008. This revised Directive merges four EU Directives and one EU decision into a single Directive on Air Quality. It does not change existing air quality standards, but introduces new binding standards for maximum concentration levels for fine particulates which have not so far been regulated at the EU level. It formally entered into force on publication in the EU's official journal in May 2008.

Public Sector Buildings (Energy Performance) Bill

A short bill introduced into Parliament in April 2008 aims to make provision about energy efficiency in micro-generation in public buildings and to place requirements on Ministers to secure those objectives when undertaking public procurement. Whether or not this Bill is enacted, it is a pointer for future policy developments. Second reading in the Commons is fixed for October 2008.

Water

Priority Substances Directive

Political agreement has been reached between the European Parliament and the Council of Ministers on this important Water Framework Daughter Directive, which is expected to be published in October 2008. We will report further in the next edition of this Briefing.

DCLG Practice Guide on Development and Flood Risk

In June 2008 the Department of Communities and Local Government published a practice guide which it should be read with Planning Policy Statement 25 on Development and Flood Risk, providing guidelines on how to implement development and flood risk policies by the land use planning system. The guide includes working examples through case studies.

Marine Strategy Framework Directive

The Marine Strategy Directive was formally adopted in May. It will require Member States to adopt measures by 2015 to achieve "good environmental



status" for their seas within 5 years. Member States will have to assess the environmental status of their marine waters by 2012, and by 2015 to develop a programme of measures to achieve good environmental status within the following 5 years. The structure of this Framework Directive is closely modelled on that of the Water Framework Directive, and like its predecessor it is likely to grow in significance over time. What may appear now to be a general statement becomes as the deadlines approach more and more onerous in terms of real actions requiring real results.

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IPCC Report on Climate Change in Water

The Inter-governmental Panel on Climate Change has issued a technical paper on climate change in water. This paper which draws on the water – relevant findings of the IPCC Fourth Assessment Report concludes that current water management practices may not be able to cope with large scale changes caused by climate change, and warns of the dangers of emission mitigation projects such as afforestation and energy crops, as these could lead to greater water scarcity if properly managed.

Bathing Water Regulations 2008

These regulations transpose the revised Bathing Water Directive into UK legislation. The Environment Agency is required to use its powers to achieve compliance with that Directive, in particular to meet the new Bathing Water Quality Standards by the end of the 2015 bathing season. Obligations are placed on beach operators to display bathing water quality information and to work with other authorities during pollution incidents and to protect bathers health.

Reporting and Management

Noise Mapping

In May 2008 Defra published on its website maps showing the level of environmental noise from major industries, road and rail networks in 23 urban areas in England. These maps were produced to meet the requirements of the Environmental Noise (England) Regulations 2006, which in turn implemented the Environmental Noise Directive of 2002. They will be used to inform the production of noise action plans for urban areas, major transport sources and significant industrial sites in England.

Natural England's State of the Natural Environment Report

Natural England published a State of the Natural Environment Report 2008, summarising the existing evidence about the state of England's natural environment. Such reports are an important baseline and over time record important trends and changes in environmental factors.

Biodiversity Indicators

Defra published in May 2008 a list of ten biodiversity indicators for England. A further 41 indicators for England will be published over the next two years. These indicators include, for example, populations of farmland birds in England, populations of butterflies, sea birds, water and wetland birds and other populations for different habitats. They mark an important measure of success, or lack of it, against achievement of the England Biodiversity Strategy, and apart from being the part of the UK's contribution to achievement of the 2010 targets of the Convention on Biological Diversity, this sort of factor is increasingly important in planning decisions when judging how

they may impact on, for example, habitats and protected areas.

UN Convention on Biological Diversity

Representatives of 191 countries met in Bonn in May 2008 and declared deep concern about the "unprecedented rate of biodiversity loss and associated decline in ecosystem services and the consequences of biodiversity loss on the poor". The EU Environment Commissioner Stavros Dimas declared that biodiversity losses are "as threatening as climate change". As the 2010 target to reduce biodiversity loss approaches, environmental NGOs are becoming increasingly critical about the lack of defined targets on measures such as financing to protect biodiversity. However, some progress has been made in establishing a global network of marine protected areas.

Home Information Pack Regulations

New regulations made in March amend the requirements for Home Information Packs so that new "finished" homes in England are required to include a sustainability certificate or a nil rates certificate in their Home Information Packs, while homes that are not finished need to have an interim sustainability certificate or a nil rated certificate.

Town and Country Planning (Mayor of London) Order 2008

This Order gives effect to additional powers for the London Mayor under the Town and Country Planning Act 1990 to determine certain applications for some categories and thresholds as well as to direct refusal in some planning cases.

Biodiversity losses are "as threatening as climate change."

**Stavros Dimas,
EU Environment
Commissioner**

DCLG Consultation on future of Planning Control

The Department of Communities and Local Government concluded a consultation in June 2008 on a series of proposals for changes to the system of building control in England and Wales.

Soil Strategy for England

Defra concluded a consultation on the draft Soil Strategy for England in June 2008. The strategy, which is being co-ordinated with the devolved administrations, and taken forward in step with the Soil Framework Directive, considers issues such as the need to regulate soil carbon with climate change impacts, buffering pollution, contributing to water and flood regulation and preserving soil biodiversity.

It considers a range of policy options for taking forward those objectives.

Invasive weeds

The Environment Agency has issued updated guidance on important pest species such as Japanese Knotweed, Giant Hogweed and other invasive weeds.

Milk Roadmap

Defra and the Dairy Supply Chain Forums Sustainable Consumption and Production Task Force have issued a report on the environmental impacts of the manufacture processing distribution retail and consumption of milk, making important recommendations for the reduction of adverse impacts for that industry. It sets short, medium and long term targets for reducing those impacts.

Air Quality and IPPC



Proposed Directive on Industrial Emissions - Impact on Intensive Livestock Farming

In May 2008 Defra and the devolved administrations published a consultation on the European Commission's proposed Directive on industrial emissions, which revises the Integrated Pollution Prevention and Control Directive, and which affects intensive livestock farming. The revised directive would apply to installations having places for more than 40,000 broilers or 30,000 places for laying hens or 24,000 places for ducks or 11,500 places for turkeys. The proposed Directive would apply to installations with other poultry species and would have implications for best available techniques for the

spreading of livestock manure and slurry outside the site of any livestock installation covered by the Directive.

Industrial Emissions Directive

This important proposal adopted by the European Commission in December 2007, will re-cast in particular the IPPC Directive, the Large Combustion Plants Directive, the Waste Incineration Directive, the Solvent Emissions Directive and the Titanium Dioxide Directive. We expect to report in more detail on progress with the proposal in future editions of this Briefing.

Industrial Emissions Directive

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Environmental Litigation

Commune De Mesquer v Total France SA, Total International Ltd

This judgement given by the European Court of Justice in June concerned Article 15 of the Waste Framework Directive and responsibility for disposal of waste from the accidental spillage of hydrocarbons at sea, in this case from the oil tanker Erika, which sank off the coast of Brittany on 12 December 1999.



The municipality of Mesquer brought proceedings against companies of the Total group to recover the cost of clean up from the massive oil spill. The Court held that heavy fuel oil being carried in a ship was not 'waste' as it is exploited or marketed on economically advantageous terms and is capable of actually being used as a fuel without prior processing.

However, when the heavy fuel oil was spilled in a shipwreck mixed with water and left on the coast of a Member State, this became waste within the meaning of the Directive. How then to apply the 'polluter pays' principle? In a ruling of wide potential significance the Court considered the potential responsibilities of the shipowner, seller of hydrocarbons and charter of the ship, the extent to which liability conventions could be applied, and the limits to producer responsibility where the producer had not contributed to the risk of pollution from shipwreck.

For further information on current environmental litigation issues, please contact Michael Barlow at michael.barlow@burges-salmon.com, tel. 0117 902 7708

Dieter Janecek v Freistaat Bayern (ECJ)

The ECJ has recently held that individuals have the right to demand action from Government bodies who fail to draw up action plans under the Community Directive on ambient air quality assessment and management in circumstances where there is a risk that the limit values and/or alert thresholds may be exceeded.

Mr Janecek brought an action for an Order requiring the Freistaat Bayern to draw up an air quality action plan in his district because a nearby air quality measuring station demonstrated that the limit value fixed for emissions of particulate matter was exceeded on a far more regular basis than permitted by law. The question of whether an individual had the power to make such demands was submitted to the ECJ in Luxembourg. The ECJ held that the obligations on the Member State were enforceable by affected individuals, but the ECJ stressed that the action plans do not have to guarantee that ambient concentration limits will never be exceeded.

The matter will now be referred back to the German courts for a final decision. However, whether or not the German judges grant the Order that Mr Janecek

demands, the ruling of the ECJ could lead to an increase in complaints by individuals against their government in other Member States.

Bailey and Others v Secretary of State for BERR and Prenergy Power

A judicial review challenge to a major energy development was dismissed by the High Court because the claim had not been brought promptly, despite the claim having been lodged within the three month period allowed. The judge took into account the considerable commercial costs to the developer resulting from the delays to the development, and concluded that the applicant was wrong to delay in commencing judicial review proceedings, even though the delay did not exceed three months. The judge also dismissed the challenge on the merits.

This decision has important consequences for energy developers facing challenges to their development consents. A separate briefing on the implications of the decision in Bailey is available on request from Ross Fairley, Partner and Head of Burges Salmon's Renewables practice, at ross.fairley@burges-salmon.com, tel. 0117 902 6351.

“The ECJ has recently held that individuals have the right to demand action from Government bodies who fail to draw up action plans under the Community Directive on ambient air quality assessment and management in circumstances where there is a risk that the limit values and/or alert thresholds may be exceeded.”

Environmental Law Team



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Ian has a wide ranging practice in all aspects of environmental law with particular expertise in the waste, energy, transport and nuclear sectors. He is a top ranked leading individual in the environmental section of Chambers Guide to the UK Legal Profession and is a member of the International Nuclear Law Association, Institute of Wastes Management and Chairman of the UK Environmental Law Association (SW Region).



Ross Fairley
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Ross is regarded as one of the foremost environmental lawyers in the UK by Chambers Guide to the UK Legal Profession. For over 15 years Ross has been advising businesses and companies on all aspects of environmental law both in relation to day-to-day operations and all types of corporate, banking and property transactions. He has been particularly active advising companies on issues associated with contaminated land, and the energy and renewables sectors.



Georgie Messent
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Georgie is one of several Solicitor Advocates at the firm with rights of audience in the Higher Courts. Her current practice includes advising on a wide range of environmental and health and safety regulatory matters, including running and closure liabilities for manufacturing sites and contaminated land issues, emissions trading and carbon law issues, drafting and negotiating contractual protection for commercial and property transactions, and defending substantial criminal prosecutions.



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William is a Barrister with full rights of audience, with 18 years experience as a specialist in environmental law and regulation. He spent 10 years in the Solicitor's Office at DoE/DETR/Defra, which included legal management of the Environment Act 1995, the Water Industry Act 1999 and the publication draft of the Water Act 2003. He has participated in EU negotiations on the Water Framework Directive and REACH chemicals Regulation, drafted numerous statutory instruments and managed UK and ECJ litigation, and has advised government and the private sector on nuclear and environmental law.



Nigel Campbell
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Nigel has advised on resource management issues for many years. His clients include contractors, banks and local authorities. He advises on major PFI/PPP contracts and waste supply, management, treatment, recycling, transport and landfill arrangements. His experience includes all the major technologies currently in use. He combines legal skills with an in-depth knowledge of, and contacts in, the industry and in the Financial and Technical advisory communities.



Michael Barlow
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Michael is an experienced litigator who now specialises in environmental disputes. He has recently worked on cases of statutory nuisance and private nuisance, claims under the statutory environmental torts, professional negligence claims against environmental consultants, claims under environmental warranties and flooding claims. He has taken cases through all of the civil courts as far as the House of Lords.



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Nick joined Burges Salmon at the end of 2007 having worked previously at Lovells and Bevan Brittan. Nick is a projects lawyer and a member of our Environmental Projects team specialising in waste & renewables projects where he has significant experience. He advises funders, contractors and local authorities. Nick's current projects include advising a contractor on a number of biomass energy schemes, the funder to a food waste disposal authority on its joint working arrangements with its collection authorities in preparation for a waste PFI procurement.

Environmental Law Team *continued*



Robert Triggs
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Robert's practice includes advice to business and government on carbon and emissions trading-related issues, on renewable energy and other power projects and on the environmental and health and safety aspects of commercial and property transactions. Robert recently advised the UK government on the implementation of the Carbon Reduction Commitment.



Chris Pritchett
Associate

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Chris works on a wide range of regulatory issues, including large scale due diligence and contractual protection in transactional work, defending environmental prosecutions and dealing with compliance matters across a broad spectrum of environmental topics. He is also the head of the Licensing, Leisure and Gaming practice area, for which a separate briefing, After Hours, is available on request.



James Phillips
Associate

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James regularly advises on a wide range of environmental issues relating to corporate and property transactions. He also specialises in renewable energy projects and has advised extensively on the acquisition and development of biomass, biofuels and wind farm projects. James has recently been seconded to the Nuclear Decommissioning Authority legal team and has previously worked in-house for OFGEM, the regulator for Britain's gas and electricity industries, advising on various environmental issues.



Simon Stuttaford
Solicitor

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Simon joined the Environmental Unit in May 2008. He originally qualified and practiced as a health lawyer and is a Solicitor-Advocate but subsequently retrained in environmental law. He has an LLM in Environmental Law (Sorbonne University, Paris) and an Advanced LLM in Energy and Environmental Law (Leuven University, Belgium). His work includes environmental litigation cases, waste prosecutions and nuclear liability issues.



Simon Tilling
Solicitor

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Simon is a graduate of Bristol University, and has a BSc in chemistry and law. He represents companies, individuals and public bodies in environmental civil and criminal litigation and disputes and is working on a number of current major environmental cases and inquiries. Simon also provides regulatory and transactional advice on environmental law.



George Fellowes
Solicitor

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George graduated from Bristol University with a BSc in biological sciences. His work area covers a broad base including major environmental litigation cases, advice on contaminated land issues, contentious agricultural land disputes and the growing area of environmental issues in agriculture especially advice on the implementation of Nitrates Directive and role of on-farm anaerobic digestion in the farming industry.



Cheryl Parkhouse
Solicitor

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Cheryl has a PhD in environmental integration into the CAP, an LLM in environmental law and land management and completed a stage in DG Environment at the European Commission. She has spent 12 months on secondment to the Nuclear Decommissioning Authority in Cumbria and advises both the public and private sectors on a range of nuclear and environmental issues.



Gareth Davies
Barrister

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Gareth recently joined Burges Salmon's nuclear team as a professional support lawyer, having previously been in house at Imperial College London for 10 years undertaking a wide range of legal work. Gareth has gained experience over 7 years dealing with nuclear fuel, transport and liability issues and for the last 3 years was the Legal and Commercial Project Manager for the Phase 1 Decommissioning Planning Project of Imperial's Consort Reactor.

In the Office



Joanne Mc Pherson

Solicitor (Qualifies September 2008)

Joanne graduated from Bristol University with a BSc in Geography and will qualify into the Environmental Law Unit in September 2008. She has experience of both contentious and non-contentious work including a range of environmental litigation cases as well as various environmental compliance matters. She also advises on Licensing, Leisure and Gambling issues.

Fax back for further information

Please contact Ian Salter, e-mail: ian.salter@burges-salmon.com, tel: 0117 939 2225 or fax this form to Ian Salter at 0117 902 4400 for further information on the following topics (*please tick as appropriate*):

- Carbon Reduction Commitment
- REACH and UN GHS
- Climate Change, Energy, Planning Bills
- Marine Bill and Marine Strategy Directive
- Industrial Emissions Directive
- Environmental Liability Directive
- Other (*please specify*)

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