

Introduction

It is an unfortunate fact that the people who 'look after' our communities are becoming increasingly compromised. Many years of expenditure cuts have left the official organisations which protect society - local government and pollution control authorities - unable to effectively carry out their duties.

In these times it is important that local communities understand their rights, and how to exercise them.

In a short hand-out guide it is not possible to give complete instruction on 'how the system works', and how to use it to your advantage. There is also the problem that such guide rapidly become out of date. For these reasons the following is only an outline, with references of where to go to get more up to date information.

Your Library

In order to work well you need to assemble, or at least have access to, a set of books which can help you in solving problems, or finding legal arguments for or against particular issues.

The following are a 'core' of books which I regularly use for quick reference.

- "*Environmental Law*" (3rd Edition), Simon Ball and Stuart Bell. Blackstone Press 1995. ISBN 1 85431 443 2. £21.95. [Ball&Bell]
- "*A Practical Approach to Planning Law*" (5th Edition), Victor Moore. Blackstone Press, 1995. ISBN 1 85431 483 1. £18.95. [Moore]
- "*Environmental Law*" (3rd Edition), David Hughes. Butterworths 1995. ISBN 0 406 08179 4. £27.95. [Hughes]
- "*Statues on Environmental Law*" (2nd Edition), R. Duxbury & S. Morton. Blackstone Press, 1995. ISBN 1 85431 484 X. £13.95. [Env.Law]
- "*Statues on Planning Law*" (2nd Edition), Victor Moore and David Hughes. Blackstone Press, 1995. ISBN 1 85431 490 4. £14.50. [Plan.Law]

- "The Guardian Media Guide - 1997", Steve Peak & Paul Fisher (eds). Guardian Books/Fourth Estate, 1996. ISBN 1 85702 491 5. £12.00.

The names in square brackets are the references to these books used in the rest of this guide. Where a specific chapter is reference the chapter number is added as a suffix - e.g. [Moore, 6].

Do not be put off by the prices of these books. Of the many books - most of which you will find are very similar in content - these are the best. It is also an unfortunate fact that being an environmental campaigner does cost money. Many of these book will be held at your local library - if not request they get them in.

The '*Statues on...*' series of books from Blackstone Press are extremely good value. Not only do they contain a few hundred pounds worth of HMSO publications for around £15, but the text of the law has been updated to reflect the later amendments so that you don't have to keep referencing amendments when looking things up.

In addition to the above I would also recommend that you get a good technical dictionary - for example "*Dictionary of Environmental Science and Technology*" (now in 3rd ed.), Andrew Porteous. Wiley Publications, 1996. It also helps to have a good standard dictionary for reference - the *Concise* or *Shorter Oxford Dictionary* is OK.

Methods

Many people who work for campaigning organisations believe that the way to campaign is to discover something, and then 'market' your particular 'spin' on the issue through the media. Although this is one way of working, and it is extremely useful to someone who sits in an office for most of the day with a fax and telephone, this method is not very good 'in the field'.

In real life - away from the campaign groups - life is very different. The media-led approach doesn't work

very well where local government is concerned. It is pretty well impossible to make an effective response to a planning application or pollution control application using the media! In these situations you have to take a more creative and, ultimately, direct approach:

- **Research:** You need to get facts about the issue concerned. This could be as easy as getting a copy of a planning application to respond to, but it can also mean spending many days going through public registers to find one piece of paper.
- **Facts:** This will mean using your library, a public library, or the Internet to find relevant information about the issues concerned. For example, you may have evidence that a local authority is allowing a factory to emit smoke, but the Clean Air Act 1993 does not permit this.
- **Delivery:** This is how you respond and take action. The public consultation required in planning applications is an example of 'delivery'. Complaining to regulators or the Ombudsman is another example. But you may also have to arrange your own method of delivery for the message concerned - for example a demonstration.
- **Publicity:** Finally, you have to publicise your delivery. This is where you may choose to use the media to deliver your message to a mass audience, but you could as easily use the Internet, or a letter to a local paper.

This is a very simplistic and ordered description of the process - often, particularly on long campaigns, it can become a little disordered and iterative.

Of all of these points, probably the hardest is the first point - research. Information can be difficult to come by. But as you gain more experience you will find (whether you like it or not) that you will develop contacts with local government and even the polluters themselves. This will often provide access to things which you would otherwise never find out about. In practice, and in my many years experience, the best campaigns come from completely accidental discoveries!

Access to Information

This is the topic, more than any other, that you need to master. [Ball&Bell, 7] The beginning of any work requires you to get hold of information - if you can't do that you don't have a campaign.

Most powers to see documents and registers held by local authorities is set out in the Local Government (Access to Information) Act, 1985. Powers are also available through the European Union's (EU)

Directive on Access to Environmental Information (ref.: 90/913/EEC - June 7th, 1990) which allow you to see information held by other public bodies (but not private organisations). These two examples are 'blanket' legislation which allow general access. For pollution control, wildlife/conservation and other issues, specific powers of access are granted by the legislation concerned.

Your rights to information under specific topics are discussed in the following section, but in the remainder of this section we'll look at the two main 'blanket' rights of access:

Local Government (Access to Information) Act, 1985

The LGAI Act was the result of a private members bill - it was not introduced as a matter of Government policy. It amends sections of the Local Government Act 1972 (and corresponding legislation in Scotland/Northern Ireland) to give the public rights of access to council meetings, agenda, minutes and documents.

The Act can be summarised as follows:

- All meetings of the council are open to the public, except where confidential matters are being discussed.
- The agendas for meetings must be made available three working days before the meeting takes place. All reports attached to the agenda, unless confidential, must also be made available. If either is not made available within the specified time, the item may not be considered at the meeting. Where matters arise as issues of 'urgency' (i.e., less than three days), copies of the relevant papers must be circulated at the meeting.
- Minutes of meetings are available for inspection (normally when approved at the following meeting) and must be kept available for six years;
- A list of background papers for each committee report should be circulated with the agenda/reports. All reports and background papers must be kept available for four years. A 'reasonable' charge may be made for the 'recovery' of background papers.
- There is a general requirement for the authority to maintain a register of; the name and address of each councillor and the ward they represent; the name/address of each member of each committee or sub-committee; the scheme of delegation of powers to officers, identifying the officer by title.
- Every authority must maintain a written summary of your rights to attend meetings and inspect documents (normally, they just give you a copy of the Act, or blush when they realise they haven't got one because no-one has ever asked).

- You have the right to take copies of any document you have access to, for a 'reasonable' charge. However, this requirement does not oblige the authority to breach copyright or commercial confidentiality.
- Where any officer, having charge of a document referred to above, either refuses access or intentionally obstructs access, they may be summarily convicted and fined a sum not exceeding "level 1 on the standard scale".

NOTE: The only loop hole in the Act are working parties - the information provisions of the Act do not apply to the minutes, papers and membership of working parties, although local authorities often make these available anyway.

The Environmental Information Regulations

Statutory Instrument (SI.) 3240/1992 - *The Environmental Protection (Access to Environmental Information) Regulations 1992* [Env.Law]

This SI. was made to enact the requirements of the EC Directive on Access to Environmental Information. The main thing to remember is that the Regulations **apply only** to information to which the public is not granted access under other legislation, and which other legislation does not specifically prohibit the disclosure of.

The regulations apply to:

- Information of an environmental nature, held by official bodies, "in an accessible form", and which is not information already available under other regulations, or which form part of public registers already available to inspection.

They do not apply to:

- Information which can be classed as 'confidential', sub-judice, or information relating to matters of international relations, national defence or public security.
- Information which is not complete (e.g., documents in draft form).
- Information of a commercially confidential nature.
- Information which would, if disclosed, "increase the likelihood of damage to the environment".

Regulation 3 of the SI. states how the material is to be made available. The relevant person - that is the officer within the organisation who has ultimate responsibility for the holding of the information - must make arrangements to:

- ensure that every request is responded to as soon as possible, and at least within two months.

- ensure that where information cannot be made available, a written reason is given as to why this is so.

Although these regulations do not cover information which is already available under other regulations, they do (in regulation 5) extend the minimum response/reply period of two months to these other sources of information.

Reasonable Charges

The biggest obstacle to getting information is finding who keeps it, and where it is. Once that obstacle has been crossed, all you have to do then is find the money to pay for copies of it. You should never be charge to view a public register, but other items - the retrieval of council background papers for example - can have huge prices put on them by the authority concerned. It is up to you to decide whether such charges a reasonable, or are merely there to try any be obstructive to the public as possible.

For any request for copies of information, a reasonable charge may be made for its provision. No guidance is given on this point. Therefore, if retrieval/collation of the information involved staff time, it is feasible for the authority to charge for this staff time - don't be surprised then if some requests return with an invoice for a few hundred pounds!

What constitutes a 'reasonable charge' has never been properly tested in the courts, and the Government refuses to set a 'reasonable charge' to be applied nationally. Different authorities can have many different ways of calculating their reasonable charge.

The County Courts ruling upon what is a 'reasonable' charge for photocopying at County Courts (County Court Rules Order 1993, Appendix A - defines reasonable as 25p per A4 copy) is a great help to people trying to get information. Where charges are higher it is essential that you raise the matter and try and get things changed.

In the first instance, go to the Chief Executive of the authority concerned and complain. Should that fail you will then need to resort to official complaints procedures. In the case of local authorities that's the ombudsman. In other cases you should go through your local MP to the Parliamentary Ombudsman.

Topics

Having considered the general background, we now consider the specific areas which you can work on.

There are many issues involved with communities and the environment. Some people chose to work on just one - for example wildlife. But in practice you must familiarise yourself with the broadest possible range of issues because of the complex and interlinked nature of environmental problems.

It would be useful to talk about the specific structures of local government and the pollution agencies, but this is problematic. Things are changing rapidly because of the reorganisation of local government, and the continued changes following the setting up of the Environment Agency. There are very good explanations of the structures of pollution agencies and local government in many books [Hughes, 1; Moore, 2; Ball&Bell, 3&4]. But if you go to the offices of your local authority, or you phone up the agency concerned, they will often give you information about their structure, functions, and the locations/contacts in the agency.

So... the issues...

The Planning System

[Ball & Bell, 9; Moore, whole book; Hughes, Part 3; Plan.Law]]

This, in my opinion, is one of the most important parts of environmental control. Not because planning regulates environmental discharges, but because planning permission is often required for any development that will subsequently cause environmental problems.

There are many aspects to development planning at the local authority level. They are best generalised as follows:

- **Strategic planning:** This is the process of making and implementing local strategic plans - reserving/zoning land for development over the next decade or so. There are a variety of 'development plans' - they can be summarised as 'Structure Plans', 'Local Plans', 'Minerals Plans' and 'Waste Plans'. In the Metropolitan area, Structure Plans and Local Plans correspond (respectively) to 'Unitary Development Plans' Part 1 and Part 2;
- **Development control:** This is the part of the local planning authority which implements the local plan policies, which processes the planning applications that are received by the authority, and that takes varying forms of 'enforcement' action when things go wrong.

In terms of planning law, unlike say environmental

health, the public have no powers to bring their own legal actions to seek redress for offences under law - that is the sole responsibility of the Local Planning Authority (LPA - the LPA is that parts of the local authority which deals specifically with planning matters). But where an LPA fails in its duty to observe the law, the public may seek review through the courts.

Strategic Planning [Moore, 4]

As noted above, LPAs make plans to determine how an area will develop over the coming years. This is the essence of development planning - ensuring that land, and land use, is managed to minimise environmental damage, and disturbance to the lives of the public at large.

The 'Development Plan' - that is the set of plans listed earlier - has never been so important since the law now requires that all development should fall within the guidance of the local development plan (Town and Country Planning Act, 1990 s.72(2)). Where development outside of the plan is allowed there must be material considerations in favour of it (Town and Country Planning Act 1990 s.54(A)). It is essential then that the Development Plan, in all its constituent parts, be environmentally sound.

The Development Plan is reviewed as a linear process. First the Structure Plan (or UDP Pt.1) will be reviewed. This is normally carried out by the 'County' authority. When that has been adopted, the 'local' plans are reviewed - it must be done in this order because local plans must conform to the Structure Plan. The 'Local Plans' (or UDP Pt.2) are normally reviewed by the District/Borough authorities, and the Waste and Minerals plans by the County authorities. In addition to complete plan reviews, plan 'alterations' may also take place during the lifetime of the development plans, addressing specific changes to parts of plan policy.

Revisions or alterations go through five stages before they are finally adopted - the public can be involved at every one of these stages:

- **Consultation draft:** The LPA produces a draft of the proposed plan. The public then have six or more weeks to comment on the consultative draft;
- **Deposit draft:** The LPA take the 'consultation' responses and produce the 'deposit' draft. This is the document which will go before the 'examination in public' (EIP) for structure plans, or the 'local inquiry' for local plans. Again, the public have six or more weeks to comment on the draft;
- **Proposed modifications:** In response to objections to the deposit draft, modifications are

produced. They are put out for consultation for six or more weeks.

- **Examination in Public/Public Inquiry:** Any unresolved objections, and the counter-objections from the proposed changes are then heard before the Inspector. At the end of the EiP/inquiry, the Inspector will produce recommendations on how individual objections may be resolved, or if they should be dismissed - the LPA do not have to follow these recommendations;
- **Adoption draft:** This will contain the proposed changes, and many of the recommendations by the Inspector. If the Inspector's recommendations are not followed, the LPA must justify this action.

If any objector does not feel that their objection has not been resolved, they can make another formal objection, and if the DoE Planning Division believe the objection to be valid, the Inquiry will be reopened to hear the objection again.

The participation of the public in the formation of the local development plan can produce very positive results. At most inquiries, 60-70% of those objecting will be businesses and property developers. Only 5-10% will be the general public, and another 5-10% will be pressure groups. However, as local people, Inspectors normally add weight to the arguments of locally based pressure groups over those of the large/speculative property developers.

Unlike individual applications, which are here and gone in a matter of months, development plan work can spread over three or more years. This type of work therefore makes a good 'long-term' campaigning theme for the pressure group to follow, and the time available gives opportunity for team-work and development of expertise within the group.

Development Control [Moore, 5-16]

The part of planning people most frequently encounter is development control. A developer applies for permission to do something, and the LPA assess the application. It is during the statutory public consultation period of 14 to 21 days that people find out about the application, and opposition/support for the proposal begins.

The basic assumption in UK planning regulations is that development should be permitted. However, the Town and Country Planning Act, 1990, and the newly revised Planning Policy Guidance (PPG) No.1 qualifies this by stating that development should fall within the guidance of the local Development Plan. Where development outside of the plan is allowed there must be material considerations in favour of it (Town and Country Planning Act, 1990, s.54(A)).

Permitted development [Moore, 7; Plan.Law]

The first problem in considering development is deciding if development needs permission in the first place. There are a whole range of development operations which are classed as being 'permitted' because they present minimal problems. To give an example, one of the unfortunate permitted development classes is radio masts which are less than fifteen metres tall - hence the mass growth in cellular radio and telephone towers which are all 14.90 metres in height!

The exact allowances and prohibitions relating to development are published in the 'General Permitted Development Order' (often called just the GPDO). This is a statutory instrument - The Town and Country Planning (General Development Procedure) Order 1995. [Plan.Law]

Planning applications

The authority is required to abide by the procedure laid down in planning acts, and to consider the content of government guidance and circulars. If the LPA refuse an application, the developer can win at an appeal if they can prove that the LPA have not met the requirements of planning acts, or they have unreasonably strayed from government guidance.

General guidelines for determining the application are given in Town and Country Planning Act, 1990, s.70/71, PPG1, and where the application is accompanied by an environmental statement, the Environmental Assessment (EA.) Regulations [Plan.Law - SI no.1199/1988] Explanatory information is contained in DoE Circular 15/88 which has been published as a booklet - '*Environmental Assessment, a guide to the procedures*'.

Relevance.

The main trap the public fall into when supporting/opposing a planning application is the need to ensure that all objections are 'relevant' in terms of the rules on 'material considerations'. If the message from the public does not conform to the idea, in planning terms, of what is relevant, the LPA will disregard the objections from the public. What is worse, if the LPA accept objections which are not material as part of the reasons for refusing an application, the developer may appeal, win at appeal, and the development will go ahead with fewer planning restrictions than it might have had if the LPA had approved it.

That is not to say that 'heart-felt' objections need not be useful - they often are, since to the councillors

making the planning decisions these will indicate the strength of public opinion. But if you can come up with good planning objections too, you can get your message over to the planning officers better, and make life difficult for the applicant.

The idea of relevance is much like that in the rules of evidence used by the courts; evidence/submissions on an issue can be ruled as relevant or irrelevant, and weight/consideration applied accordingly. Unfortunately planning law is made in parts rather than having one central regulation on the relevance on evidence, and so the definition of what is relevant is wide, and may be different in different circumstances.

A ruling in the High Court [Glidewell LJ. - Bolton Metropolitan Borough vs. Secretary of State [1991] JPL 241] found that "relevant" need not be interpreted narrowly, but can be considered to mean any information which might cause the planning authority to form a different opinion on the application. But this case needs to be interpreted with care, since the reasoning behind consideration of an issue must be testable as any subsequent planning inquiry.

Various government publications and High Court rulings have determined the following in the case of planning applications....

Relevant:

- planning laws, circulars and ministerial guidance;
- physical site considerations;
- amenity value of site;
- existing land use in the area;
- existence of alternative/better suited sites;
- development plan considerations;
- proof of conformance/non-conformance with any of the above.

Not relevant:

- economic feasibility;
- lack of public gain from application;
- matters relating to other planning/regulatory bodies;
- previous 'record' of the developer;
- matters not directly relating to the application or to the exercise of powers under the relevant planning laws.

Issues related to a development but not directly involved with the application - e.g. the quarrying of aggregates to make the concrete - are not taken as a relevant issue during determination. Only the direct physical effects are taken into account. Where such issues are brought into an by the developer, they then can be considered as relevant because it is the Environmental Statement which is taken as the subject of any determination.

With the Environmental Assessment regulations, a whole new batch of relevant items comes into play. These are specified in Schedule 3 of the SI. This includes:

- affects on humans;
- affects on flora, fauna, soil, air, water, climate, landscape and the interaction of the above;
- material assets;
- cultural heritage.

However, when an environmental assessment is needed, and when it is not, is a whole topic within itself. The best guidance I can give at this level is to get a copy of *'Environmental Assessment, a guide to the procedures'*

Appeals [Moore, 17]

If permission is refused, the developer may appeal. However, if development is permitted, but the developer does not like the conditions imposed, then they may also appeal. If the LPA fail to determine the inquiry within the period set in Regulations, the developer can appeal for non-determination. Likewise, if the LPA ask for a EA and the developer doesn't want one, they can appeal.

You must always, when considering your approach to the application, consider the risk of the developer appealing and winning. If the developer wins at appeal then the decisions on conditions are not considered locally, but by the Planning Inspectorate - this leads to all sorts of problems. A good example would be a irradiation plant I worked on in South Wales - I didn't object to the council, as a compromise, putting a condition on requiring the pressure grouting of mineworkings beneath the site. In practice it meant the plant got permission, but the company could not afford the cost of pressure grouting, and so it never got built.

After the appeal is made, the Secretary of State will either refuse the appeal (normally because it is plainly a stupid application), or an Inspector is appointed. The Inspector then receives written statements. The Inspector may decide upon the substances of the written statements, but if it is not clear then the parties involved will be asked for a closed meeting (the public cannot take part, but they may submit written statements to the Inspector). Finally, if the appeal still cannot be resolved, then a full public inquiry is arranged - at which any objector/supporter to the original application may appear (this is a good reason for writing in support of applications!).

Following the closure of the inquiry, the Inspector will report to the Secretary of State. The Secretary of

State then makes the decision whether to refuse or approve the development.

At any point in this process the developer may withdraw the appeal, and the application - they normally do this to save money if they think they might lose and get costs awarded against them.

Determination periods, publicity and judicial review

On registration of the application the authority must make a determination within 8 weeks. If the application is accompanied by an ES this is lengthened to 16 weeks to give the authority time to consider the ES. However, the public still has only 21 days to make representations. If the authority have not made a determination within the time limit the developer has the power to appeal to the Secretary of State for Environment for non-determination.

One 'get-out' clause which is sometimes used by local authorities is the guidance given in Department of the Environment Circular 15/92 - "*Publicity for Planning Applications*". Paragraph 23 of the circular states that....

"As soon as a valid planning application has been accepted and entered in the planning register, authorities should arrange for information in the form prescribed in the GDO to be sent out as quickly as possible. Wherever practicable, they should indicate when the application is likely to be determined, and the latest date when representations can be accepted. This must be not less than 21 days from the date when the notice was given, or 14 days from the date the advertisement appeared in a local newspaper."

It is important that members of the public put in their objection/support notice before the expiry of the consultation period. If they do not they may not be able to appear at any subsequent planning inquiry that results from the approval/refusal of the application. The general tactic to get around this is to put in a 'holding' statement, stating that you approve/object to the proposal, with a note that the detailed grounds will be supplied as soon as practicable.

If the planning authority make a decision which the public do not agree with they have no right of redress under the English planning system, as third parties are given no rights. If the public wish, any decision made by the planning authority or the Secretary of State can be challenged in the High Court. This would normally cost £5,000 to £50,000, and has no guarantee of success, or your money back if you win. There are alternative ways of funding, the main one being legal aid, but obtaining funding from other

sources is based mainly on the 'winnability' of the case.

Enforcement [Moore, 18]

Another arm of the development control responsibilities of LPAs is the enforcement of the law. In terms of expertise, dealing with planning applications requires little knowledge of planning laws and procedures - although it helps enormously. Dealing with development plans requires a much higher level of knowledge, especially when dealing with complex development issues. The enforcement of development controls - this involves the regulation of permitted or illegal development - presents a further problem. On the one hand the problems would seem to be very simple - you have a house built without permission for example. But to be really effective in development control it is necessary to have skill in strategic planning, development planning, and have access to a library of case law.

If development not consented in the planning permission takes place on the site, or operational conditions are breached, then it is possible for LPA to take action to stop or prevent the breach. The general guide to how local authorities should act in relation to enforcing planning control is given in Planning Policy Guidance No.18. This explains the enforcement regime set by the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, as follows:

- The power to serve a "*planning contravention notice*" where it appears that there may have been a breach of planning control and the LPA require information about activities on the land or the nature of the recipient's interest in the land (new section 171C of the Town and Country Planning Act 1990);
- The power to serve a "*breach of condition notice*" where there is failure to comply with any condition or limitation imposed on a grant of planning permission (new section 187A of the 1990 Act);
- The ability to seek an injunction, in the High Court, or County Court, to restrain any actual or expected breach of planning control (new section 187B of the 1990 Act); and
- Improved powers of entry on to land for the LPA's authorised officer to obtain information required for enforcement purposes (new sections 196A, 196B and 196C of the 1990 Act).

Development control and enforcement lends itself to some very novel forms of campaigning. If you have a landfill site which has a large volume of traffic, there will almost certainly be a condition of the planning consent limiting the number of vehicles which can enter the site. Many noisy developments have

conditions on noise levels at certain hours of the day. Many commercial/industrial developments will have conditions limiting their hours of operation. Members of the public can, after getting a copy of the consent, check every condition is being enforced, and highlight those, if any, that are being breached. Where a condition is breached, the LPA are under an obligation to investigate the alleged breach, and take action if necessary.

An obvious tactic would be to just keep your eye on the site, and report every breach, and lobby for enforcement action to be taken. Especially on sites run by cowboy operators, the ability to make a profit requires the breach of planning (and often environmental) control. Keeping them to their consent will force such operators into the red, and eventually the site may close.

Public registers

Section 69 of the 1990 Act requires registers of planning applications to be kept - but the precise form of these registers is defined in the Town and Country Planning (General Development Procedure) Order, 1995.

Basically there is the following requirement - the register must be kept in two parts:

Part I must contain a copy of every planning application submitted to the authority, and any application for the approval of 'reserved matters' in outline permissions, together with copies of plans and drawings;

Part II must contain -

- A copy (which may be on microfiche) of all applications, plans and drawings;
- The particulars of any 'direction' given by the Secretary of State in relation to the application;
- The decision (if any) of the authority, including details of conditions, and the date of the decision;
- The reference number, date and effect of any appeals to the Secretary of State under section 77 of the Act;
- The date of any subsequent approval of reserved matters.

There is also a requirement, elsewhere within the Act, to keep a register of:

- Environmental impact statements accompanying applications;
- Draft simplified planning zone schemes;
- Enforcement and stop notices.

Getting started

The best way to get started in planning is to buy a book or two, some of the key PPGs and perhaps the GPDO, and then just tackle what comes along in the 'public notices' section of your local paper.

It impossible to get extremely technical in this small amount of space - especially when involved in development plan reviews. But you should be aware that such work does cost money because of the continual need to keep you information library up to date.

Water

[Ball&Bell, 15; Hughes, 12; Env.Law]

This section is all about spotting water pollution, and acting upon it.

Pollution

Watercourses are classed on a system of chemical analyses, each graded according to levels of each chemical indicator. The Environment Agency take hundreds of samples every year to keep a check on the quality. The Agency/Dept. of the Environment set what are know as River Quality Objectives (RQOs) - these state what the officials would like the quality of a particular watercourse to be. If the classification regularly falls below the RQO, then there's a problem somewhere.

The RQO does not cover the full length of a watercourse. Different stretches can have widely differing RQO's. For example, due to a waste discharge, the section of river below the discharge point may have a lower RQO. Likewise, if a tributary is more polluted than the main watercourse, the watercourse below the confluence with the tributary may have a lower RQO. Also, remember that because this quality system is based solely on the chemical analysis of the river water it only gives a 'snapshot' of the quality of the river. There are ways of looking at the pollution in terms of the biodiversity of the river bed - but that is outside the scope of this guide.

In terms of river pollution, there are four main parameters which you should consider:

- Dissolved oxygen (DO): This is the amount of oxygen present in the water. Very important as many of the water organisms depend upon oxygen to live. It is usually expressed in two ways, mg/litre and %saturation. 11mg/litre equals

about 100% saturation. The level of oxygen determines the life within it. Game fish and some invertebrates such as mayfly larvae will begin to die of below about 70% saturation, if this continues for some time. Course fish and some of the more common invertebrates begin to disappear at around 50-60%. Below 40%, only those highly tolerant, e.g. leeches, and those living at the surface and breathing atmospheric air, will survive. Oxygen levels can decline for a number of reasons. If the water is still and stagnates, or during the winter when oxygenating plant activity is at its lowest. Pollution, especially organic pollution from sewage and slurry, is a major contributor (see BOD);

- **Suspended solids (SS):** This is the amount of material, e.g. sand, mud, etc., in the water. The higher the level, the cloudier the water. High levels of suspended solids blanket the river bed with sediment. The blanket of sediment prevents oxygen circulating through the plants or gravels which kills many of the small creatures living there. This has a very damaging effect of the ecosystems within the river. Good rivers usually have less than 5mg/l SS. Polluted ones can have in excess of 10mg/l. The exception are canals, where wholly different ecosystems exist as a result of still water and boat movement, resulting in very high turbidity;
- **Biochemical Oxygen Demand (BOD):** This represents the amount of oxygen micro-organisms use up in a given sample of water. The higher the figure, the more organic pollution, and thus the lower the amount of DO which will be available for other river creatures. Substances such as silage liquor, sewage and farm slurry are food for many micro-organisms. In the orgy of activity to consume them, the organisms use up DO at an increased rate, and this kills other river life. Increase levels of SS are a secondary effect from these substances. A clean river will have a BOD of about 3mg/l. BOD in excess of 10-20mg/l will begin to have an effect upon river organisms. BOD of raw sewage is about 200-300mg/l, but treated properly it can be as low as 20mg/l. Farm yard run off rates around 1500-2000mg/l, with silage liquor having a figure of at least 60,000mg/l;
- **Ammonia (NH):** This is a by-product of the decomposition of organic wastes. It is lethal to all river life in excessive quantities. A clean river rates around 0.01-0.4mg/l. Polluted rivers have levels greater than 0.5mg/l.

When looking through Environment Agency monitoring data, these are the main things you should be for (often, they are the only test done on the lesser used sampling points).

Sources of Pollution

There are a number of sources of pollution:

Silage:

Silage is fermented grass used as winter feed by nearly all dairy and beef farms. For a herd of around 50 cows, the farmer would need to ensile around 650 tonnes of grass. If the grass had been allowed to wilt after cutting, then during fermentation it would produce 145,000 litres of liquor, or about 19,000 litres per day whilst fermentation takes place.

Silage liquor is usually collected in ponds, and then spread on the land after being diluted with water or slurry. There are a number of ways therefore that silage can enter watercourses:

- Leaks from silage clamps, effluent ponds or containment drains due to insufficient capacity or cracks. Silage liquor is very acidic, and over a number of years will eat through steel and concrete, and open up any existing cracks.
- Land run off after application due to over dosing, or application on frozen ground or during rain.
- Collapsing or overflowing silage clamps, or silage not stored in a proper clamp and with no containment measures.
- Deliberate discharge to ditches or land as a means of disposal.
- Bag silage can cause problems where bags burst and the liquor washes into ditches and watercourses.

Different situations will lend themselves to different options, or combinations of options. Each case will have to be judged as it is encountered.

Slurry:

Modern intensive farming, especially where the animals spend a large part of the year indoors, produces large volumes of waste. A dairy farm with twice daily cleaning of the parlour and collecting yard can produce 86 litres of slurry per cow per day. A herd of about 50 dairy cattle can produce a slurry with the polluting equivalent of a community of 465 people. Cattle slurry can be around 100 times as polluting as raw human sewage and is of course supplemented by any additional pollution from silage.

On most farms, slurry is collected in large lagoons during the winter, for use early the next spring. This again leads to similar problems to silage:

- Leaks from storage lagoons due to insufficient capacity or poor maintenance.
- Land run off after application due to over dosing, or application on frozen ground or during rain.
- Storage in a poorly constructed lagoons, possibly

just a hole in the ground, leading to slow leakage over a period of time through the surrounding soil.

- Deliberate discharge to ditches or land as a means of disposal.

Sewage:

There are many sewage treatment plants around, most owned by the water companies, along with a few independent ones. In addition to this, some houses or housing developments, especially in rural areas, have their own sewage discharge consents - this usually is the liquid overflow from septic tanks or soakaways.

There are two things to beware of from sewage works. Firstly, nearly all have some form of storm-water discharge, but the consents applied to these usually have very few, if any, conditions attached. Thus, on the few times they release a quantity of partially filtered effluent which causes damage, there is very little you can do about preventing such recurrences. Secondly, there is mechanical failure. This could be caused by the plant breaking down or getting blocked up. This is a thing to look out for at rural works which are unmanned for most of the time.

As most STW's have very loose consent conditions. Even if there are signs that the discharges are having an effect on local watercourses, there is very little you can do about it immediately except complain to the water plc and the Environment Agency.

Trade effluent:

These types of discharges can consist of almost anything. There is very little scope here for the average person to do any detailed sampling, but the things to watch out for are poorly maintained buildings and lax pollution control measures - this would tend to indicate a poor regard by the company for their discharge responsibilities. Things to watch out for particularly are:

- Leakage of materials from stored goods, barrels, containers or bulk storage tanks into the land drains running underneath the site. This is sometimes made more obvious by staining of the river bank below the drain discharge, but if you are uncertain and the seriousness of the conditions warrant, you could use a special drain tracing dye to check you are looking at the correct pipe outlet.
- Unbundled fuel storage tanks or unkerbed/draind car/lorry parks near the river bank. Any leaking fuel or oil could be washed into the river by rain. (A bund is a low wall around the base of a fuel storage tank, put there to catch fuel if it leaks out in large quantities).

- Containers or barrels containing harmful substances left near a watercourse, with no containment barriers around them, or near to a surface water drain.
- Effluent discharges heavy in suspended solids (excessively cloudy), oil, or which are excessively acid/alkaline. Extreme smell or strange colouring are also good indicators.

Cooling water:

Many consents are for the use of water for cooling. The thing to watch out for here is water being returned at a temperature exceptionally higher than that in the watercourse, or which is obviously contaminated with oil or lumps of material on return. Also, by heating water it lowers its DO content, and thus cooling water outlets can have a detrimental effect to the life for a short distance below the outfall.

Another point, which is harder to check, is for contamination with anti-fouling agents. To prevent plants and algae blocking up the system the water is often dosed with chemicals to kill all algae and micro-organisms. These substances often continue to kill life when it reaches the watercourse (usually as a result of overdosing).

Pollution Seasons.

Finding pollution is not just a matter of randomly turning up on a farmers doorstep when he happens to spill something. There is a pattern which relates mainly to the weather (chiefly rainfall) and to the cycle of the farming year. In effect, different times of year will yield different problems.

The first thing to consider is that there are pollution 'seasons'. In Winter when it is wetter, containment tanks overflow, and things which normally lie on the surface can be washed into watercourses. In Summer, when water levels are lower and so there is less dilution of the pollution, discharges which may normally present no harm in the Winter have a more damaging effect.

If you are looking at invertebrates and other waterborne life, then this too will have a largely seasonal peak of activity which you would need to concentrate on.

Here is a rough calendar:

- January: Now is the time when slurry tanks on farms will begin to fill up. Increased levels of rain will also cause problems, e.g. - by washing polluting materials stored on industrial sites down surface water drains.

- February/March: Peak risk from slurry lagoons on farms. Also at this time fertilisers are applied to the land which in very wet conditions will cause a high level of run-off. Levels of nitrates, phosphates and potash in waterways can reach high peak levels.
- April-June: Slurry is spread on fields, and runoff could be a problem if weather is still very wet. At the end of Spring the first cut of silage will be made and be deposited in clamps, producing liquor in a few days. Also, the life in rivers starts to pick up with increasingly warm days.
- July/August: Peak of silage production, and of silage liquor run off from clamps. Slurry lagoons normally empty by now and so no longer present such a problem. Dry weather allows pollution to accumulate on land, or around industrial sites, and especially storm sewer systems, until the next rain washes it away. Growth of algae in watercourses and reservoirs now reaches a peak in the warm weather, fed by the high levels of nitrates and phosphates in the water. As water levels drop, pollution discharges can have a more marked effect on river life.
- September/December: Silage liquor production now past its peak. As the weather gets colder animals are brought indoors and slurry lagoons begin filling. First heavy rains, especially after long dry spells, can bring pollution flushes which briefly can result in high levels of pollution and deoxygenation of the water - there may be dead fish around to indicate that a flush recently occurred. Rising water levels dilutes sewage and other discharges, making them less damaging than during the Summer months.

In order to be there when the polluting material is entering the river, it is essential that you keep an eye on all the possible sources along your local river.

Pollution Indicators

It's no good just waiting for fish to die - you have to seek out potential hazard sites, and then survey them to assess the probability of a problem arising in the future. By alerting the owners to this problem before it happens, you save the Environment Agency money, you possibly save the person responsible getting a criminal record, and you can then avert the damage which would be caused by such an incident in the future. Farmers and factory owners often don't take kindly to your poking around their establishment - so be as kind and as diplomatic as possible.

There is no magic formula for finding river pollution. It can be a matter of chance, and quite often, you won't be able to catch someone in the act. You will have to spend many hours on the river bank or up to the top of your

wellies in highly suspect materials to be able to immediately identify the signs of different types of pollution, and recognise the difference between polluted and unpolluted watercourses. Building up a familiarity with your local streams and rivers is a very important part of this, so that you can identify out of the ordinary events, and learn the difference between natural seasonal variations and real pollution.

There are a number of visual pollution indicators which can be used to identify problems. They fall into two groups:

Primary Indicators (during incident):

- Suspended Solids: Is the river, as would normally be expected for that time of year, excessively cloudy?. Linked with this...
- Colour: Is the colour as expected, or is it definitely darker?.
- Smell: Scoop out some water - does it smell OK, or has it an off/stagnant aroma?.
- Dull flat appearance/iridescence: Is there a coating on the surface of the water. This can be either a flat matt looking layer, or a shimmering iridescence caused by organic pollutants or oil.
- Excessive foaming: All water foams a little at weirs or waterfalls, but if it is excessive - e.g., foam building up in slow moving water and eddy pools?.

Secondary Indicators (after incident):

- Excessive sediment: Normally streams and rivers have a clear bed, or one lightly covered in weed. A blanket of sediment covering the bed can indicate problems. But don't get confused with the effects of soil erosion - this coats the river bed the layer is much more solid, uniform, and is made of finer particles.
- Changes in wildlife: Dead fish and a reduced population of aquatic animals which you would normally expect to find can indicate a drop in water quality.
- Sewage fungus: This falls into both the primary and secondary categories. Sewage fungus is an algae present in all watercourses, but when organic pollution increases, e.g. sewage or silage liquor, it grows to form huge colonies. These colonies stick together with a sticky slime - this also sticks them to everything else in the watercourse. For example floating weed can accumulate sediment, and by disturbing it you dislodge it. Sewage fungus would stick fast to the weed, and if you picked some off it would be tacky between your fingers. The colour of the fungus indicates the stage of the pollution incident. When fresh it is white, pink or yellow, but as the levels decrease it dies slowly, and fades to a dark earthy brown. Later it will break-up and wash away.

Differentiating between pollution and natural phenomena is not instantaneously obvious, but after a while you will learn what signs to look for.

Reporting Pollution

After spotting a pollution incident, you will need to find a source. It is best to travel upstream, as it is easier to observe the increase of pollution indicators, and the sudden increase in quality when you pass the discharge point. If you cannot find the discharge point, don't worry, but try and find the worst point of pollution you can.

The first thing to do after pin-pointing the source is to contact the Environment Agency immediately - you can freephone using the number 0800 807060. You should give the person details of...

- The name of the watercourse, and a six figure grid reference from the OS map.
- A brief summary of the pollution indicators found, and an assessment of the damage caused.
- A guess at what the source of the pollution is (e.g. - a farm), what it is made of (e.g. - slurry), and whether the discharge is still going on or not.

It is important that you keep notes on everything you spot, keep every letter you receive related to pollution, and keep notes of when you report incidents and the response of the Agency. This is necessary, firstly because it keeps a good record for future reference if an incident re-occurs, and it also makes good reference material in case you contact/are contacted by, the media.

After discovering a pollution incident, you should do a regular follow up. A few days after reporting the incident phone the Agency to see if they have taken any action, and continue to do so until they indicate that they have, or that they definitely will not. If they don't, ask why not. In addition, at regular intervals for some time after, you should go back and check the site again - this is to ensure that they are still not polluting, and to check if any remedial action, which the Agency normally will tell you about, has taken place.

Public registers

The legislation governing access to information is contained in the Water Resources Act, 1991.

This Act relates to information on surface water/groundwater quality, regulated by the Agency. Section 190 (Part VIII) of the Act relates to the provision of information. *'It shall be the duty of the Authority to maintain, in accordance with regulations made by the Secretary of State, registers containing*

prescribed particulars of -'

- Any notice of water quality objectives served under section 83 of the Act;
- Applications for consents made under the Act;
- Any discharge consent granted under the Act and any conditions which are applied to the consent;
- Any certificate issued under paragraph 1(7) of Schedule 10 of the Act relating to confidential information in relation to discharges;
- The analyses conducted of any sample of effluent taken for the purposes of regulation under the Act (or taken by anyone else and which the Agency uses the data);
- Details of the steps taken as a consequence of analysis results;
- Any details relating to registers kept under section 20 (prescribed processes) under Part I of the Environmental Protection Act.

It is the duty of the Agency to make these registers available to the public at all reasonable office hours, free of charge, and to make facilities available for the public to take copies for a reasonable charge of any information on the public register.

Air Pollution

[Ball&Bell, 11; Hughes, 10]

This section is an introduction to Integrated Pollution Control (IPC) and Local Authority Air Pollution Control (LAAPC). For other air pollution and odour problems, you should skip on to the next section on statutory nuisance.

The air pollution control system, established under the Environmental Protection Act 1990 was created as a response to the EC Directive 84/360 on the control of air pollution of industrial plant (the 'Air Framework Directive'). The regulatory structure is divided into two parts; Part A (Integrated Pollution Control, or IPC) relates to large industrial plant and is enforced by Environment Agency (formerly HMIP); Part B (Local Authority Air Pollution Control or LAAPC) relates to smaller processes, and is enforced by local authorities. The processes which are subject to regulation - called '*prescribed processes*' - are selected according to the substances they discharge, or the volumes of the substance they discharge.

IPC covers all emissions, both air and water, from a plant. LAAPC covers air emissions only. This difference is reflected in the requirements for authorisations, monitoring and reporting. There are a large number of 'process guidance notes' which determine standards for the operation of LAAPC

processes. The Agency's regulation is controlled under a separate set of process guidance notes. Generally Part A processes have much tighter controls than those regulated by local authorities.

LAAPC

These are processes you are most likely to come across unless you live in the few heavily industrialised areas of the country. LAAPC has the following requirements:

- LAAPC processes must not be operated without an authorisation from the local authority covering the area within which it is located. The exception is mobile plants, which are regulated from the local authority in which the company concerned has its principal place of business;
- According to a set timetable, operators must submit an application to the local authority to operate the process;
- Local authorities are bound to apply conditions to the authorisation as specified in the relevant process guidance note (issued by the Dept. of the Environment). These conditions should take account of the 'Best Available Technology Not Entailing Excessive Costs' (BATNEEC). There is also a duty on operators to use BATNEEC;
- Operators can appeal to the Dept. of the Environment if they consider the conditions set in the authorisation too strict;
- Local authorities can issue variations to the authorisation, revoke the authorisation, and issue prohibition and enforcement notices;
- All applications must be publicised in local newspapers;
- Public registers must be set up, making available details of the authorisation, notices issued by the local authority, and monitoring data;
- Local authorities may levy a charge for granting the authorisation;
- Local authorities have powers to enter, seize, inspect, sample and investigate and plant which is in danger of causing imminent danger to the public.

... but the guidance states that it is not a guide for how local authorities should act.

Interpretation of the regulations

The main set of regulations covering prescribed processes are *The Environmental Protection (Prescribed Processes and Substances) Regulations 1992*, Statutory Instrument (SI.) No. 472/1991. These regulations list the prescribed processes and substances which local authorities and Agency regulate - grouped into either Part A or Part B. These

regulations have been amended MANY times - so check before quoting!

Applications and Variations

All applications for LAAPC/IPC authorisations must be publicised in local newspapers. The public can see the application at the appointed offices stated on the notice, and make comments by the date stated on the notice (normally 28 days from the first posting of the notice).

The main objections you have to applications for authorisation are:

- The application does not properly implement the process guidance;
- The emissions would cause harm to public health or the environment;
- Although not an objection to the authorisation, you can argue that the land use or planning consent does not permit the use of that land for the process applied for (you need to check the relevant planning permissions for the site to find this out).

As well as applications, and major variations to the process require consultation. However many operators try to get the Agency or the local authority to consider variations as 'minor variations' so that the need to have public consultation and to vary the authorisation does not arise.

Monitoring prescribed processes

All prescribed processes, whether IPC or LAAPC, must have authorisations, and these authorisations specify conditions on emissions, emissions monitoring, operating conditions and maintenance. The public registers that go with the authorisation are therefore a very useful source on information. For example, you may find that a local authority has issued enforcement notices because of some incident which local people were never informed of. You will probably find incidents where the authority did precisely nothing.

You can also create problems by using the authorisation as a stick to make the local authority/the Agency improve standards on sites. This requires you going through the authorisation - clause by clause - and checking that all the required standards are met.

You are likely to find that the public registers for LAAPC are hard to get hold of, and in a poor state when you finally view them. You must be shown the public register when you arrive at the office - you do not have to make an appointment or OK viewing the

file with an officer. If the information on the file does not contain what is required in the regulations (see below) then you should complain.

Public registers

The legislation concerning public registers for Integrated Pollution Control (IPC) and Local Authority Air Pollution Control (LAAPC), under section 20 (Part I of the EPA), state... *"It is the duty of every authority (either Agency or the local authority) to maintain a register of 'prescribed processes' which it regulates containing..."*:

- All applications for authorisation made to the authority;
- All authorisations granted by the authority;
- All variation, enforcement and prohibition notices issued by the authority;
- All revoked authorisations;
- All convictions and offences relating to authorised processes as are prescribed in Regulations;
- Any direction given to by the Secretary of State relating to authorisations;
- 'Such other matters relating to the carrying on of prescribed processes or any pollution of the environment caused thereby as may be prescribed' - although there are exemptions to this in cases of commercial confidentiality (under section 22) or national security (under section 21) in which case a note must be made in the file saying that information has been left out.

This final point is important - any data required to be submitted as part of the authorisation is caught under this clause, in addition to any data required to be produced by Regulations or in the 'process guidance notes'.

Clean Air Act, 1993 [Ball&Bell, 12]

Just a short note about the Clean Air Act. It is an offence under the Act to emit dark smoke, dust or fumes from a chimney. The term 'dark smoke' is defined according to the 'Ringelmann' scale.

The Act does not cover prescribed processes, and emissions from anything other than a chimney must be dealt with under other legislation

Statutory Nuisance

Where you have problems of air pollution - toxic emission, smoke or odours, your best way forward is to show that the emission constitutes a statutory

nuisance. If the source of the emissions is a prescribed process then statutory nuisance action is not possible, and action must be taken through the IPC/LAAPC system.

The law of nuisance

The law of nuisance is concerned with the unlawful interference with a person's use or enjoyment of land, or of some right over or in connection with it. This definition illustrates one of the primary distinctions between nuisance and other civil cases in that the protection afforded is directed towards controlling proprietary interests rather than the control of an individual's conduct. It also means that it is only really a way forward as a campaigning tool if the person on the receiving end of the pollution doesn't like it, and wants to get it stopped.

The basis for a claim in nuisance is founded upon a balancing exercise centred around the question of reasonableness. The Court must consider whether the defendant is using his property reasonably or not. If he is using it reasonably, there is nothing which at law can be considered a nuisance; but if he is not using it reasonably then the plaintiff is entitled to relief. Thus, in attempting to assess liability in a nuisance action, a balance is made between the reasonableness of the defendant's activity and its impact upon the plaintiffs proprietary rights. In assessing the balance, a court will take into account a number of specific factors including the locality of the nuisance, the duration of the nuisance, and any sensitivity on the part of the plaintiff.

Sensibility

One of the balancing factors to be taken into account is the amount to which the nuisance can be 'sensed'. The law does not take into account mere trivial unpleasantness. Nuisance is not actionable without proof of damage. The inconvenience has to be able to be 'sensed' by reasonable members of the public. It has to be capable of being seen, smelt or tasted by persons other than the defendant. However, that does not mean to say that where one person senses the nuisance that is sufficient for an action to be founded.

The duration of nuisance

For a nuisance to be actionable it must be something which is more than temporary. Isolated incidents can give rise to a nuisance only where the use which gives rise to the risk of that isolated nuisance is of itself a continuing use. For example, a factory which produces fumes does not necessarily have to produce those fumes continuously over a period of

years for there to be a nuisance. However, where there are isolated incidents occurring regularly then the use of the land for that purpose is of itself a nuisance. The more isolated the occurrence, however, the less the likelihood that the use being carried out is a nuisance.

The hypersensitive plaintiff

The test for assessing a nuisance has two elements. Not only must the use of land which is complained of be unreasonable, but also the use of the land to which the nuisance applies must be a reasonable use. If a potential plaintiff is particularly sensitive to one type of nuisance then it will not be actionable unless that nuisance would have affected a 'reasonable' person.

Getting local authorities to prosecute nuisance

When I first approach local authorities about nuisances, by and large, they don't want to do anything about it. I then threaten them for failing in their duty to 'protect the public health'. Quite often after a few months they give in and do something.

Local authority actions for statutory nuisance are contained in sections 79-82 (Part III) of the Environmental Protection Act 1990. Under section 79 a statutory nuisance arises with regard to:

- any premises in such a state as to be prejudicial to health or a nuisance;
- smoke emitted from premises so as to be prejudicial to health or a nuisance;
- fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- any accumulation or deposit which is prejudicial to health or a nuisance;
- any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- noise emitted from premises so as to be prejudicial to health or a nuisance;
- any other matter declared by any enactment to be a statutory nuisance.

Under section 80, where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, the authority is under a duty to serve an abatement notice requiring...

- the abatement of the nuisance or prohibiting or restricting its occurrence or re-occurrence
- the execution of such works and the taking of

such steps as may be necessary for those purposes, and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

Anyone served has a right of appeal to the magistrates' court against the notice within 21 days of the date of service. In practice, the notice provision gives the opportunity to environmental health officers to negotiate with the person causing or responsible for the nuisance. Once the 21 days have elapsed and there has been no appeal, an offence will be committed if the person acts in contravention of the notice. A fine of up to £20,000 may be imposed. A person who commits an offence in the course of private activities, such as a noisy neighbour, in contravention of the notice may suffer a fine of up to £2,000. In the case of an offence committed by a trade or business the penalty leaps ten-fold with a maximum penalty of £20,000. In addition the local authority may also take steps to reduce or abate the nuisance and recover costs from the person responsible.

Apart from highly technical defences, the only other defence available is that the best practicable means were used to prevent or counteract the effects of the nuisance. This will only apply to nuisances arising from trade premises. Also, an important limitation for local authorities is that they are not entitled to bring a claim for statutory nuisance against a process operated under IPC/LAAPC.

Statutory nuisance action

Procedure exists under section 82 of the EPA for an aggrieved person to make a complaint to the magistrates' court. Section 82 of the EPA was drawn up specifically to grant a right to private citizens to take action in pollution/nuisance cases. If anything, the range of persons who may prosecute is actually a limitation on the range of persons who may take action, the wording of section 82 being limited to or envisaging someone who is 'aggrieved'. This is wide enough to include a person directly affected and perhaps a relative or helper acting on behalf of a disabled person who is directly affected.

The first step to be taken is to serve a notice on the person or premises concerned. In the case of a noise nuisance this should be done with three days' notice and 21 days' notice in the case of any other nuisance. The notice must specify the intention to bring proceedings and shall specify the matter which is the source of the complaint.

The complaint is then laid by visiting, in person, the magistrates' court and making the complaint. Such evidence must be given on oath and a summons

should be issued. Despite the use of the word 'complaint' the proceedings are criminal.

If the court is satisfied that the alleged nuisance exists it may make an order either:

- requiring the defendant to abate the nuisance, within the time specified in the order;
- prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent the recurrence.

Waste

[Ball&Bell, 13; Hughes, 9]

Waste can be a really difficult one to work on. Firstly, there's a lot of money in the waste industry which means that these people have a vested interest in avoid control as long as possible. Secondly local authorities are tied into the whole waste scene because of the need to get rid of the local dustbins each week - this often leads to fairly strange compromises over things like landfill, incineration and recycling. Finally, to remediate or solve waste problems is hugely expensive - so the Environment Agency, local authorities and contractors are loathed to ever attempt clean ups.

Be aware that the waste functions of local authorities were transferred to the Environment Agency in April 1996, and there are still bugs in the system!

What is waste?

Waste legislation deals with 'controlled' waste. But there are a few problems with definitions because the Environmental Protection Act 1990 (EPA) was drafted before recent amendments to the EC Directive [75/442/EEC as amended by 91/156/EEC & 91/692/EEC]. Therefore the subsequent *Waste Management Licensing Regulations 1994* [Env.Law], drafted under the powers in the EPA, use the term 'Directive waste' - this is because the directive described waste as, "*any substance or object in the categories set out in Part II of Schedule 4 which the producer or person in possession of it intends to discard*".

The list in Part II of Schedule 4 is fairly long but can be summarised as residues from manufacturing processes (both waste and raw materials), adulterated, contaminated or soiled materials, unusable parts, substances which are no longer usable, residue from pollution abatement processes, machining or finishing residues, raw materials and

waste from materials extraction, any materials whose use has been banned by law, and contaminated spoil from development. Basically, everything that is thrown away.

An example of the changes brought about by the directive was the requirement for scrap yards to be licensed. This has led to improvements in the conditions/emissions from many scrap yards.

In practice the simple answer as to whether or not something is waste relies on the *Controlled Waste Regulations 1992* [Env.Law]. Where new or esoteric arguments have been made about whether something is waste or not these debates have been settled as the result of appeals or in the courts.

Duty of Care

As well as providing controls on the disposal of waste, section 34 of the EPA provides a legally binding 'duty of care' for anyone involved in the handling or disposal of waste. The Duty of Care (available from HMSO) is really weak, but even so it is possible to catch people with it.

If you find any breaches of the duty of care you should report them to the Environment Agency. The only problem is that the Agency are not bound to take action on discovery of the breach (often they just send a strong letter).

Licenses

Any site dealing with or disposing of waste requires a waste license. That includes:

- landfill sites
- incinerators
- waste transfer station
- 'merchant processing', such as chemical waste incinerators or recycling plants
- sludge lagoons and soakaways
- injection of waste into land or underground voids/mineworkings

Unfortunately there are exemptions to the need for a license which has led to confusion, inaction and pollution. The exemption to the need for a license - of which there are many - are given in Schedule 3 of the *Waste Licensing Regulations 1994* [Env.Law].

For example, because of the landfill tax many developers are using demolition and excavation waste for 'land reclamation'. In fact I have come across a number of golf course proposals recently involving the 'landscaping' of the site with more than 2 metres of imported construction waste. This has huge impacts in terms of dust, smell and lorry

movements.

Where a license is required, the person must make an application to the Environment Agency. **Unfortunately - there is no requirement for public consultation or for advertising that an application has been made.** However, there is a legal requirement that where a license application is made, planning permission for that activity (which would be subject to consultation) must be in existence. This means it is possible to know that at sometime a license application will be forthcoming, and you just have to keep phoning the Agency to find out when.

It is not possible to simply explain the reasons why you can object to a license application, but in general:

- there is a general requirement that the process should not harm the public or the environment, so odour, dust, noise, or seepage/leakage into groundwater or rivers are all relevant;
- unlike other licenses, because the waste license requires that the operator be a 'fit and proper person' their previous conduct at other sites and their financial viability are relevant;
- emissions from the site in general, for example carbon dioxide and other pollutants, are relevant, but with the exception of 'prescribed processes' (mainly incineration) which are regulated under IPC/LAAPC.

Waste carriers

Anyone who carries waste must be licensed. This is a requirement of the Control of Pollution (Amendment) Act 1989. There is a register of licensed carriers. Anyone found carrying waste who is not licensed can be prosecuted. Any registered carrier who fly tips or dumps waste where it is not permitted can be prosecuted and have their license revoked.

Special waste

Certain types of waste are so toxic or problematic to dispose of safely that they are classed as 'special waste' - the general definition is that special waste is any prescribed medicine, or any substance that is harmful to life or which has a flashpoint less than 21°C. There are regulations which restrict the carrying and disposal of special waste.

One of the important things to know about special waste is that any site where it is proposed to have special waste must have an environmental statement accompanying the planning permission. If this has not been supplied as part of the original permission

for the use of the land, the General Permitted Development Order withdraws all rights to use land where an environmental statement would be required. Hence any site which proposes storing or disposing of special waste must seek a new planning permission as it constitutes a change of use.

Litter

The EPA brought in a requirement for appointed 'responsible authorities' (usually the district or borough council, and some land owners) to keep designated 'litter zones' clean. There is a 'code of practice on litter' which is meant to set standards for how often and to what level local authorities and others should clean the streets.

The local authority keep a map, or list of street names, showing the designation of the zones. Depending on the level of designation, the litter must be kept to a certain level (the code of practice contains illustrative pictures).

If people are 'aggrieved' by litter then they should complain to the local authority, who must then go and clean it or give a written answer as to why they think the street is clean enough. If people are still aggrieved the Act gives them the right to make a complaint to the court - who will then decide.

Contaminated land

It's difficult to locate this topic, but it's relevant here as any material excavated is classed as controlled waste.

Contaminated land is defined as the presence of substances in, on or under land which cause or have the possibility of causing harm to health, the environment or ground/surface water.

Where it is proposed to develop land which has been contaminated by previous use, if the levels of contamination are above certain levels (there are a number of interpretations of the levels, but generally in the UK those set by the Interdepartmental Committee on the Redevelopment of Contaminated Land are considered 'reasonable') the site must be 'remediated'. This can mean the wholesale excavation and removal of the material, removing just the 'hotspots', or capping the site with clay prior to development. Sometimes these requirements will form part of planning permissions, but often it will be a requirement for a 'remediation scheme' to be submitted, and then either the planning or environmental health officials will make a decision on it.

There is a requirement in the EPA, as amended by the Environment Act 1995, for local authorities to occasionally identify 'contaminated sites' - but as yet there are no details as to what extent such reviews should be carried out to.

There is a class of sites specified in the amended Act called 'special sites'. These are sites that are so contaminated that the Environment Agency must take responsibility for supervising the clean up. How exactly the sites will be divided between local authorities and the Agency is not clear at the moment since there will be some reluctance by both parties to regulate the more 'borderline' sites because of the costs involved.

Where there appears to be a risk of contamination - which essentially an issue as to whether the site is likely to cause nuisance - the local authority or the Agency can issue a 'remediation notice' requiring improvements to the site.

Where 'remediation schemes' are submitted for approval to local authorities it is not always a simple matter to get hold of the relevant details. Where these details form part of a planning application you should get these as part of the planning public register - but sometimes applicants will 'encourage' the authority to treat such documents as commercially confidential. Where these documents are not submitted as part of a planning application you will have to make a request under the Environmental Information Regulations.

It is still not clear how the Agency will handle their responsibilities to supervise the remediation of large industrial sites.

Public Registers

Section 64 of the EPA states, 'It is the duty of each waste regulation authority (the Environment Agency) to maintain a register containing the prescribed particulars of...':

- Current or recently current licenses granted by the authority ('recently' is defined in section 64(3) as 'twelve months');
- Current or recently current applications to the authority;
- Applications made to the authority for the modification of licenses under section 37 of the EPA;
- Notices issued under section 38 of the EPA by the authority requiring works to be undertaken, suspending or revoking licenses;
- The result of appeals under section 43;
- Certificates of completion issued by the authority;

- Notices issued by the authority under section 42(5) of the EPA (requires specified works to be undertaken as conditions of license are being breached);
- Conviction of license holders for any offence under Part II of the EPA;
- Directions given by the Secretary of State relating to any license under Part II;
- 'Such matters relating to the treatment, keeping or disposal of waste in the area or any pollution of the environment caused thereby as may be prescribed';
- Where any 'confidential' data is excluded from the register a note must be entered into the file at that point.

Registers may be kept 'in any form', but must be made available at all reasonable office hours.

Reference

Planning Policy Guidance Notes

PPG1 General Policy and Principles (Feb. '97)
 PPG2 Green Belts (Jan. '95)
 PPG3 Housing (Mar. '93)
 PPG4 Industrial and Commercial Development and Small Firms (Nov. '92)
 PPG5 Simplified Planning Zones (Nov. '92)
 PPG6 Town Centres and Retail Developments (Jul. '93)
 PPG7 The Countryside - Environmental Quality and Economic and Social Development (new)
 PPG8 Telecommunications (Dec. '92)
 PPG9 Nature Conservation (new)
 PPG12 Development Plans and Regional Planning Guidance (Feb. '92)
 PPG13 Transport (Mar. '94) + PPG13 Technical Annex
 PPG14 Development on Unstable Land (Apr. '90) + PPG14 Technical Annex
 PPG15 Planning and the Historic Environment (Sep. '94)
 PPG16 Archaeology and Planning (Nov. '90)
 PPG17 Sport and Recreation (Sep. '91)
 PPG18 Enforcing Planning Control (Dec. '91)
 PPG19 Outdoor Advertisement Control (Mar. '92)
 PPG20 Coastal Planning (Sep. '92)
 PPG21 Tourism (Nov. '92)
 PPG22 Renewable Energy (Feb. '93) + PPG22 Technical Annex
 PPG23 Planning and Pollution Control (Jul. '94)
 PPG24 Planning and Noise (Sep. '94)
 Note - PPGs are only valid in England

Mineral Policy Guidance Notes

MPG1 General Considerations and the Development Plan System (Jan. '88)
 MPG2 Applications, Permissions and Conditions (Jan. '88)
 MPG3 Coal Mining and Colliery Spoil Disposal (Jul. '94)
 MPG4 The Review of Minerals Working Sites (Sep. '88)
 MPG5 Minerals Planning and the General Development Order (Dec. '88)
 MPG6 Guidelines for Aggregate Provisions in England (Apr. '94)
 MPG7 The Reclamation of Minerals Workings (new)
 MPG8 Planning and Compensation Act 1991: Interim Development Order: Permissions - Statutory

	Provisions and Procedures (Sep. '91)
MPG9	Planning and Compensation Act 1991: Interim Development Order: Permissions Conditions (Apr. '94)
MPG10	Provision of Raw Material for the Cement Industry (Nov. '91)
MPG11	The Control of Noise at Surface Mineral Workings (1993)
MPG12	Treatment of Disused Mine Openings and Availability of Information on Mined Ground (Mar. '94)
MPG13	Guidelines for Peat Provision in England (Jul. '95)
MPG14	Environment Act 1995: Review of Mineral Planning Permissions (Sep. '95)

Note - MPGs are only valid in England, and only a few in Wales!!

Regional Policy Guidance Notes

RPG1	Strategic Guidance for Tyne and Wear (Jun. '89)
RPG2	Strategic Guidance for West Yorkshire (Sep. '89)
RPG3	Strategic Guidance for London (Sep. '89)
RPG4	Strategic Guidance for Manchester (Dec. '89)
RPG5	Strategic Guidance for South Yorkshire (Dec. '89)
RPG6	Regional Planning Guidance for East Anglia (Jul. '91)
RPG7	Regional Planning Guidance for Northern Region (Sep. '93)
RPG8	Regional Planning Guidance for the East Midlands (Mar. '94)
RPG9	Regional Planning Guidance for South East (Mar. '94)
RPG9a	The Thames Gateway Planning Framework (Jun. '95)
RPG10	Regional Planning Guidance for the South West (Jul. '94)
RPG11	Regional Planning Guidance for the West Midlands Region (Sep. '95)
RPG13	Regional Planning Guidance for North-West Region (new)

Process Guidance Notes - Local Authority Air Pollution Control

General guidance notes

GG1	introduction to Part I of the Act. This includes a general explanation of BATNEEC, guidance on interpreting "substantial" change, an explanation of what is meant by existing process, a copy of the charging scheme, and the variation notice procedures
GG2	authorisations. This contains advice for local authorities on drawing up authorisations, and includes an outline authorisation and a range of specimen conditions.
GG3	applications and registers. This explains the procedures for making an application and the public register requirements. It includes a suggested application form, flow chart of the main stages in the application procedures, and a list of the names and addresses of the statutory consultees.
GG4	interpretation of terms used in process guidance notes. As its title suggests, this provides additional guidance on some of the terminology commonly found in the process guidance notes.
GG5	appeals. This summarises the procedures for making appeals and for the handling of appeals at a hearing or by exchange of written representations.

Process Guidance Notes

NOTE - all the process guidance notes are being revised and reissued. This began in 1995 and will continue for at least another year. In the mean time many of the older Pgs are out of print.

PG1/1	waste oil burners, less than 0.4MW net rated thermal input
PG1/2	waste oil or recovered oil burners, less than 3MW net rated thermal input
PG1/3	boilers and furnaces, 20-50MW net rated thermal input
PG1/4	gas turbines, 20-50MW net rated thermal input
PG1/5	compression ignition engines, 20-50MW net rated thermal input
PG1/6	tyre and rubber combustion processes between 0.4 and

PG1/7	3MW net rated thermal input straw combustion processes between 0.4 and 3MW net rated thermal input
PG1/8	wood combustion processes between 0.4 and 3MW net rated thermal input
PG1/9	poultry litter combustion processes between 0.4 and 3MW net rated thermal input
PG1/10	waste derived fuel combustion processes less than 3MW
PG1/11	reheat and heat treatment furnaces, 20-50MW net rated thermal input
PG2/1	furnaces for the extraction of non-ferrous metal from scrap
PG2/2	hot dip galvanising processes
PG2/3	electrical and rotary furnaces
PG2/4	iron, steel and non-ferrous metal foundry processes
PG2/5	hot and cold blast cupolas
PG2/6	aluminium and aluminium alloy processes
PG2/7	zinc and zinc alloy processes
PG2/8	copper and copper alloy processes
PG2/9	metal decontamination processes
PG3/1	blending, packing, loading and use of bulk cement
PG3/2	manufacture of heavy clay goods and refractory goods
PG3/3	glass (excluding lead glass) manufacturing processes
PG3/4	lead glass manufacturing processes
PG3/5	coal, coke and coal product processes
PG3/6	processes for the polishing or etching of glass or glass products using hydrofluoric acid
PG3/7	exfoliation of vermiculite and expansion of perlite
PG3/8	quarry processes including roadstone plants and the size reduction of bricks, tiles and concrete
PG3/9	sand drying and cooling
PG3/10	china and ball clay
PG3/11	spray drying of ceramic materials
PG3/12	plaster processes
PG3/13	asbestos processes
PG3/14	lime slaking processes
PG4/1	processes for the surface treatment of metals
PG5/1	clinical waste incineration processes under 1 tonne an hour
PG5/2	crematoria
PG5/3	animal carcase incineration processes under 1 tonne an hour
PG5/4	general waste incineration processes under 1 tonne an hour
PG5/5	sewage sludge incineration processes under 1 tonne an hour
PG6/1	animal by product rendering
PG6/2	manufacture of timber and wood-based products
PG6/3	chemical treatment of timber and wood-based products
PG6/4	processes for the manufacture of particleboard and fibreboard
PG6/5	maggot breeding processes
PG6/6	fur breeding processes
PG6/7	printing and coating of metal packaging
PG6/8	textile and fabric coating and finishing processes
PG6/9	manufacture of coating powder
PG6/10	coating manufacturing
PG6/11	manufacture of printing ink
PG6/12	production of natural sausage casings, tripe, chitterlings and other boiled green offal products
PG6/13	coil coating processes
PG6/14	film coating processes
PG6/15	coating in drum manufacturing and reconditioning processes
PG6/16	printworks
PG6/17	printing of flexible packaging
PG6/18	paper coating
PG6/19	fish meal and fish oil
PG6/20	paint application in vehicle manufacturing
PG6/21	hide and skin processes
PG6/22	leather finishing
PG6/23	coating of metal and plastic
PG6/24	pet food manufacturing
PG6/25	vegetable oil extraction and fat and oil refining

- PG6/26 animal feed compounding
- PG6/27 vegetable matter drying
- PG6/28 rubber processes
- PG6/29 di-isocyanate processes
- PG6/30 production of compost for mushrooms
- PG6/31 powder coating (including sheradizing)
- PG6/32 adhesive coating
- PG6/33 wood coating
- PG6/34 respraying of road vehicles
- PG6/35 metal and other thermal spraying processes
- PG6/36 tobacco processing
- PG6/37 knackers yards
- PG6/38 blood processing
- PG6/39 animal by-product dealers
- PG6/40 coating and recoating of aircraft and aircraft components
- PG6/41 coating and recoating of rail vehicles
- PG6/42 bitumen and tar processes

<http://www.greenchannel.com/nsca/index.htm>

Toxics

- Communities Against Toxics - <http://www.gn.apc.org/cats/>
- US EPA Web site - <http://www.epa.gov/>
- US Agency for Toxic Substances Disease Registry - <http://atsdr1.atsdr.cdc.gov:8080/>

Net resources

- Alta Vista - <http://www.altavista.digital.com/>
- GreenNet (WWW) - <http://www.gn.apc.org/>
- UK Internet Guides, Imperial College (IC) - <http://src.doc.ic.ac.uk/all-uk.html>
- The Lycos - <http://lycos.cs.cmu.edu/>
- Yahoo UK Ireland - <http://www.yahoo.co.uk/>
- YELL (UK Yellow Pages) - <http://www.yell.co.uk/>

Internet

Paul Mobbs' Environmental Activism Site -
<http://www.gn.apc.org/pmhp/>

Government

- UK 'Open Government' Server - <http://www.open.gov.uk/>
- UK Houses of Parliament - <http://www.parliament.uk/>

Press Releases & Info.

- COI Government Press Release Index (searchable) - <http://www.coi.gov.uk/coi/depts/deptlist.html>
- New press releases today - <http://www.coi.gov.uk/coi/depts/today.html>
- Search press releases by date - <http://www.coi.gov.uk/coi/search.html>
- HMSO <http://www.hmso.gov.uk>
- Statutory Instruments - <http://www.hmso.gov.uk/stat.htm>
- Acts of Parliament - <http://www.hmso.gov.uk/acts.htm>
- UK Official Publications (NUKOP Online) - <http://www.soton.ac.uk/~nukop/index.html>

QUANGOs, Commissions and Executive Agencies

- Companies House - <http://www.open.gov.uk/company/chhome.htm>
- Countryside Commission - <http://www.open.gov.uk/country/country.htm>
- Countryside Council for Wales <http://www.ccw.gov.uk/>
- The Data Protection Registrar - <http://www.open.gov.uk/dpr/dprhome.htm>
- English Heritage - <http://www.open.gov.uk/heritage/ehhome.htm>
- English Nature <http://www.english-nature.org.uk>
- Health Safety Executive - <http://www.open.gov.uk/hse/hsehome.htm>
- Environment Agency - <http://www.environment-agency.gov.uk>
- Scottish EPA - <http://www.sepa.org.uk>

Campaign sites

- Friends of Cardigan Bay - <http://www.gn.apc.org/pmhp/cbc/>
- Amnesty International - <http://www.igc.apc.org/amnesty/>
- Campaign for the Protection of Rural England - <http://www.greenchannel.com/cpre/index.htm>
- CND - <http://www.mcb.net/cnd/>
- Charter 88 - <http://www.gn.apc.org/charter88/>
- EARTH FIRST! Home Page - <http://www.hrc.wmin.ac.uk/campaigns/ef/earthfirst.html>
- Friends of the Earth - <http://www.foe.co.uk/>
- Friends of the Earth Scotland - <http://www.foe-scotland.org.uk/>
- Friends of the Earth International - <http://www.xs4all.nl/~foeint/>
- FoE local groups - <http://www.foe.co.uk/local/index.html>
- Greenpeace - <http://www.greenpeace.org/>
- National Society for Clean Air -

Mobbs' Environmental Investigations

This guide has been produced to help citizens help themselves - but there are times when you will need more specialist advice. Mobbs' Environmental Investigations is there to help you.

When I set up my business in early 1992, the philosophy was very simple. The 'green' revolution that began in the late 1980s had thrown up many companies and environmental consultants who used 'green wash' - the deliberate distortions of facts about the environment and pollution - to justify totally unsustainable activities. This means that the public is often unable to understand the reality behind many development proposals.

My task, as I see it, is to tackle the problem I have been given by the client, but more importantly, try and educate the client so that they are able to 'keep watch' after I have gone.

Rates

My work does not command any hard and fast rates. This is because the ability of many of the groups I work for varies. In general:

- Work for individuals/unfunded groups £100/day*
 - Work for community groups £150/day*
 - Work for commercial enterprises £250/day*
- * - all travel expenses, subsistence and costs of producing reports or other materials are in addition to the daily rate.

The general rates are negotiable, particularly where the commission involves work over a long period of time - for example public inquiries.

Further information

If you would like further information regarding the services I provide, the costs and the possible options for proceeding to solve your problem, please get in touch:

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