Environmental Law & Regulation

Lecture 1

MGT 388 Lecture 9

NOTE: REMEMBER TO ATTEND YOUR SECOND LAW SEMINAR

Overview

- Lecture 1
  - What is environmental law?
    - Complexity; development; principles; sources
  - Types of environmental regulatory control

- Lecture 2
  - Environmental permits
  - Additional requirements for waste management
  - Regulatory liability

The complexity of environmental problems

- Case study: The Buncefield Fire

- Effects: Air pollution; contamination of ground water; contamination of soil; total loss of depot and jobs; damage to neighbouring property and businesses; health impacts

- Parties involved: operators of the oil depot; other occupiers of premises on the site; land users and businesses in the vicinity; local residents; emergency services; pollution control agencies

Definition & development

- Environmental Law = “the area of law that seeks to manage human impacts on the environment” (NSW EDO, 2011)
  - Legal requirements can be positive, negative, or hybrid

- Tension between intrinsic and utilitarian concepts of the environment
  - "How one views pollution, and what level of it one should tolerate, depends upon what one wants to do with the environment … Rightness becomes a practical matter of power and political persuasion.” (Gunningham)

- Development of environmental law
  - Pre-industrial revolution – mostly based on law of tort
  - Mid 19th Century to 1970s – reactive legislation
  - 1970s onwards – more proactive approach

Principles of environmental law

Environmental law is based on four main principles:

- Preventative principle
- Precautionary principle
- Polluter pays principle
- Proximity principle (rectification at source)

Sources of Environmental Law:

- UK: Statute (e.g. EPA 1990); delegated legislation; gov. guidance
- EU: Environmental Directives

Sources of environmental law

- UK
  - Statute e.g. Environmental Protection Act 1990; Pollution Prevention and Control Act 1999; Water Resources Act 1991; Environment Act 1995
  - Delegated legislation e.g. Environmental Permitting Regulations 2010 passed by Sec of State as permitted by Pollution Prevention and Control Act 1999
  - Governmental policy & guidance
  - Common law e.g. tort of nuisance
- EU
  - Directives e.g. EU Wild Birds Directive -> UK Wildlife & Countryside Act 1981
- International
  - Agreements & Declarations e.g. Paris Accord; Kyoto Protocol; Rio Declaration

Types of environmental control

- Aim of regulatory control
  - To prevent or limit environmental harm by preventing, minimising or rendering harmless emissions to the environment and controlling other potential environmental impacts such as waste generation and energy use.

- Types of control
  - (i) Command & Control i.e. traditional administrative regulation
  - (ii) Economic Instruments
  - (iii) Private Voluntary Instruments
  - (iv) Criminal & Civil law

(i) Command and Control

- Standards
  - Environmental quality standards
  - Technical standards
  - Emissions standards
  - Product standards

- Controls before & during operations
  - Prohibition
  - Planning permission
  - Licensing & Permits e.g. Environmental Permits

- Controls after operations
  - Decommissioning & aftercare

Types of Control

(ii) Economic Instruments

- Charges
  - Taxes on emissions (on results of polluting activity)
  - Taxes on polluting materials or processes (on causes of pollution)
  - Cost recovery charging (to recover cost of monitoring, issue of permits etc.)
  - Charges linked to prevention, abatement & cleanup
- Subsidies & Grants
- Emissions trading scheme (creation of a market for pollution credits)
- Deposit & refund systems

(iii) Private Voluntary Instruments

- Individual companies & Private Voluntary Agreements (PVA)

- Voluntary environmental standards
  - e.g. IS0 14001; Forest Stewardship Council (FSC) certification

- Voluntary provision of information
  - To consumers
    - e.g. Eco-labels/Environmental Product Declaration (EPD)
  - To investors
    - e.g. In company's annual Strategic Report

(iv) Criminal & Civil law

- Both can act as deterrent to causing of environmental harm

- Criminal Law
  - Can provide direct criminal sanctions for environmental harm or;
  - Can play an indirect and complementary role within a broader regulatory system

- Risk of liability in tort
  - Torts of negligence; nuisance; rule in Rylands v Fletcher

A regulatory toolbox for environmental protection

- In reality combination of instruments/approaches may be used to address an environmental issue
- Optimal environmental regulation involves the consideration of which regulatory tool or combination of tools will work best
- <u>But</u> high level regulatory decisions are politically sensitive
  - Deregulation agenda (‘war on red tape’)
  - Austerity drive