

Environmental Law & Regulation

Env. Law Lecture 2

MGT 388 Lecture 10

NOTE: REMEMBER TO ATTEND YOUR IP LAW SEMINAR



Environmental Law & Regulation: 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



Environmental permits (EP)

- Governed by Environmental Permitting Regulations 2016 (EPR)
- Person must obtain an environmental permit (EP) to operate a 'regulated facility' (Reg. 12) which includes:
 - Installations (covers e.g. energy, metals, minerals, chemical industries), mobile plant, waste operations, radioactive substance activity, water discharge and groundwater activities (Reg. 8)
 - Certain waste & recycling operations are exempt from requirement



Application for environmental permit

- Body granting permit depends on classification of facility:
 - Part A(1) facilities - by Environment Agency (EA)
 - Part A(2) facilities - by Local Authority (LA)
 - Part B facilities - by Local Authority (LA)
- Determining the application – regulator will consider whether:
 - (i) Will meet required level of env protection (as per the relevant EU Directive)
 - (ii) Operator is competent to manage such a facility (mgt systems, technical competence, history of compliance, sufficient funds)
 - Note: requires expert judgment of technical nature - difficult to challenge (*Levy v EA*)
- Public participation/consultation
 - Required for new application or ‘substantial change’ of activity (not ‘variation’)



Types of environmental permits (EP)

- (a) Bespoke permits
 - apply to the more seriously polluting activities and to complex installations where a number of different activities are being carried out together on the same set of premises – e.g. power stations, chemical works, landfill sites and waste incinerators.
- (b) Standard permits
 - EA or LA may make standard rules which will apply to all operators of a some types of facility.
 - Applicant must accept ALL the standard conditions and has no right to appeal against them
 - Currently standard permits are available for a range of waste management activities. For each of these activities the standard rules provide
 - Quantities and types of waste which may be held
 - How the waste is to be stored and treated
 - How far the site must be from other sensitive sites like housing or sites of special scientific interest
 - Applicant must accept ALL the standard conditions and has no right to appeal against them



Cease of operations & decommissioning

Where an operator is ceases to undertake a particular activity its obligations depend on class of facility:

- Part A2 and Part B facilities - give regulator (LA) 20 days notice of his intention to cease the activities
- Part A1 facilities – regulator (EA) must be satisfied that the necessary measures have been taken—
 - to avoid a pollution risk resulting from the operation of the regulated facility; and
 - to return the site of the regulated facility to a satisfactory state, having regard to the state of the site before the facility was put into operation.



What about the management of waste?

- What is waste?
 - Key question is has the substance been 'discarded'?
- Waste as 'production residue'
 - Case C-9/00 Palin Granite (2002)
- Covers accidental releases of contaminants into soil/groundwater
 - Case C-1/03 Van de Walle (2005)
- When does waste cease to be waste?
 - OSS Group v Environment Agency (2008)



Waste management regulatory regime

- Waste management = the deposit, treating, keeping or disposing of controlled waste
- Regulated by Environment Agency as part of environmental permitting system (discussed earlier)
- Additional considerations
 - The waste duty of care
 - Criminal offences relating to waste (See criminal liability later)



The waste duty of care (s34 EPA 1990)

- Duty to take all those measures which are applicable to that person in his capacity in relation to the waste, and reasonable in the circumstances to achieve the statutory objectives of the duty of care.
- Statutory objectives:
 - to prevent waste management offences being committed by any person over whom the holder has control
 - to prevent the escape of waste from the control of the holder or any other person over whom the holder has control
 - on the transfer of waste to ensure that waste is transferred only to an authorised person, and that sufficient written description of the waste is given
- Code of Practice issued by the Secretary of State under s34
 - Will be taken into account if a holder is prosecuted for failure to meet waste duty of care.



Types of liability for environmental harm

- (i) Regulatory liability
 - Breach of permit
 - Statutory nuisance
- (ii) Criminal liability
 - Environmental Protection Act 1990 (EPA)
 - Environmental Permitting Regulations 2016 (EPR)
- (iii) Civil liability
 - Negligence
 - Nuisance
 - Trespass
 - Statutory civil liability for breach of waste duty of care



(i) Regulatory liability: Breach of Permit

- Under the EPR 2016 the regulator (EA or LA) may:
 - Serve enforcement notice i.e. to enforce the conditions of the permit.
 - Where operator is in breach or will likely breach a condition
 - May require the operator to take steps to: comply with the condition and to remedy the effects of pollution caused by the contravention
 - Serve suspension notice i.e. to suspend activities/operations
 - Where regulator believes a risk of serious pollution
 - Must specify the risk of serious pollution and the necessary steps to remedy situation
 - Take remedial action
 - Where regulator believes a risk of serious pollution
 - Regulator may arrange for steps to be taken to remove that risk
 - Must give operator 5 days notice prior to implementing remedial action
 - The regulator may recover the cost of taking all necessary action from the operator



(i) Regulatory liability: Statutory Nuisance

- (a) Statutory nuisance defined in section 79(1) EPA 1990 as:
 - 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
 - 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
 - noise emitted from premises so as to be prejudicial to health or a nuisance
- (b) Where the local authority is satisfied that a nuisance exists, or is likely to occur, or to recur, the authority must serve an abatement notice (s80 EPA 1990) which may require:
 - the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence
 - the execution of such work or taking of steps necessary to achieve this



(ii) Criminal liability

- Regulatory offences
 - to fail to obtain a permit (Reg 38 EPR 2016)
 - to fail to comply with a permit condition (Reg 38 EPR 2016)
 - to fail to comply with the requirements of an enforcement notice or suspension notice (Reg 38 EPR 2016)
 - to obstruct a regulator in the course of their work or to give false evidence to the regulator (Reg 38 EPR 2016)
 - to fail to comply with the abatement notice (s80 EPA 1990)
- Environmental offences (EPA 1990) include:
 - breaching the waste duty of care (s34 EPA 1990)
 - causing or knowingly permit poisonous noxious or polluting matter to enter surface or underground waters (EPR 2016)
 - causing the deposit of waste in a manner which is likely to damage the environment or harm human health (S33 EPA 1990)



(ii) Criminal liability (cont.)

- Meaning of 'cause' = carrying out an active operation which results in that pollution unless some extraordinary event intervenes (*Alphacell v Woodward* [1972]; *CPC (UK) Ltd v NRA* [1995]; *Empress Car Company v NRA* [1988])
- Who can be held criminally liable?
 - (a) The individual who committed the offence
 - (b) The company which employed an individual who committed an offence in the course of his employment
 - (c) Personal liability may be imposed on directors and senior managers who have consented to, or connived at an offence, or where the offence is due to their negligence
- Sentencing
 - Magistrates court – fine up to £20,000 (or up to £50,000 for fly tipping); imprisonment up to 6m.
 - Crown court (serious offences) – unlimited fine; imprisonment up to 2 years
 - Court may also serve notice requiring remedial works to be undertaken at the offender's expense



(iii) Civil liability

At common law

- Tort of Negligence
- Tort of Nuisance
 - Private Nuisance - interference with a person's enjoyment and use of their land
 - (See also public nuisance; rule in Rylands v Fletcher)
- Tort of Trespass

At statute

- Statutory civil liability for breach of waste duty of care (s76(3) EPA 1990)



The Buncefield fire – legal liability

- Regulatory/Criminal liability
 - Criminal charges brought under Control of Major Accidents and Hazards Regulations by regulator (joint initiative between EA & HSE) against:
 - Total UK Ltd - fined £3.6m plus £2.6m in costs
 - Hertfordshire Oil Storage Ltd (operated by Total) - £1.45m plus £1m in costs
 - British Pipeline Agency Ltd (BP/Shell) – fined £300k plus £480k costs
 - TAV Engineering Ltd – fined £1k
 - Motherwell Control Systems – fined £1k
- Civil Liability
 - 2,700 claims were filed by residents, businesses and insurers for damage to property personal injury & consequential economic loss
 - Total UK Ltd found to be liable in torts of negligence and nuisance (private, public and *Rylands v Fletcher*)
 - Total UK ordered to pay £700 million in damages



MGT388: final exam (law component)

- Multiple Choice Questions (20 questions)
 - Follows seminar question format with multiple choice options as per online pre-tests
 - 1 mark for correct answer; -1/3 mark for incorrect answer; 0 for 'opt out'
- Exam will be based on Contract Law and IP Law only
 - We feel it unfair to test you on areas where no opportunity for seminar discussion
- Open book
 - Any paper-based resources may be taken into exam hall (no electronic resources)
- Time limit
 - One hour – use all of this time!
- Scheduled directly before/after Finance exam in multiple locations
 - <https://www.shef.ac.uk/examsTimetable/viewExams.html>
 - Note: Finance part of the exam is not open book & follows different format

