

National Rivers Authority

Seminar On Water Pollution Control

APPENDIX II

(4.1.91.)

N.R.A. LEGAL TRAINING
ENVIRONMENTAL QUALITY STAFF
POLLUTION PROSECUTIONS SEMINAR

<u>DAY ONE</u>	<u>PROGRAMME</u>	<u>PRESENTER</u>
9.30.	REGISTRATION & COFFEE	
9.50.	INTRODUCTION to COURSE	REGIONAL ENVIRONMENTAL MANAGER or his nominee
10.00.	The WATER ACT 1989: History COPA Part II Part III Chapter I	TERRY WILLIAMS
10.20.	SPECIAL STATUTORY PROVISIONS: Offence & Defence Powers of Entry Sampling (inc Continuity) S & FF Act 1975 Sect 4 Prohibition Notices	DAVID BATHERS & PETER MITCHESON or MARTIN DAVIES & TERRY WILLIAMS
11.15.	* * Coffee * *	
11.30.	CASE LAW Impress Worcester Alphacell Price v Cromack Wrothwell Pegrum Express Foods McTay	TERRY WILLIAMS
12.05.	Costs & Compensation	DAVID BATHERS or JOHN BARFORD
12.25.	POLICE & CRIMINAL EVIDENCE ACT	MARTIN DAVIES or PETER MITCHESON
12.45.	* * Lunch * *	
2.00pm.	SAMPLING PROCEDURES	To be nominated by REM
3.00	PREPARATION of EVIDENCE for COURT	DAVID BATHERS or JOHN BARFORD
3.20.	* * Tea * *	
3.40.	PRESENTATION of EVIDENCE in COURT & CONDUCT of CASE	TERRY WILLIAMS
4.00.	PITFALLS/LESSONS to be LEARNT	All Legal Presenters
5.00.	SYNDICATE WORK for MOCK TRIAL on: Day Two	TERRY WILLIAMS
5.30	DISPERSE	

<u>DAY TWO</u>	<u>PROGRAMME</u>	<u>PRESENTER</u>
A.M.	MOCK TRIAL:	TERRY WILLIAMS & ANOTHER LEGAL PRESENTER
9.30	CASE for the PROSECUTION	
10.30.	* * Coffee * *	
10.45.	CASE for PROSECUTION continued	
11.15.	CASE for the DEFENCE	
12.15	SUMMING UP BY THE PROSECUTION	
12.25.	" " " DEFENCE	
12.35.	JUDGEMENT	
12.45.	* * Lunch * *	
1.50pm.	REVIEW of MOCK TRIAL	TERRY WILLIAMS
2.00	TOPIC(S) of INTEREST to be selected by REM	To be nominated by REM
3.00.	* * Tea * *	
3.20.	QUESTIONS to PANEL	All Presenters & SOLICITOR for the Region
3.50.	REVIEW of COURSE & CLOSE of SEMINAR	REM or his nominee
4.00.	DISPERSE	

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C O N T E N T S

<u>SECTION I</u>	-	<u>WATER ACT 1989 & SALMON & FRESHWATER FISHERIES ACT 1975</u>
<u>SECTION II</u>	-	<u>DERIVATIONS TABLE RE: COPA 1974 PART II</u>
<u>SECTION III</u>	-	<u>THE LAW OF THE NRA - (CHAPTER 3) BY WILLIAMS HOWARTH</u>
<u>SECTION IV</u>	-	<u>CASE LAW</u>
<u>SECTION V</u>	-	<u>REPORT WRITING</u>
<u>SECTION VI</u>	-	<u>SUMMONSES</u>
<u>SECTION VII</u>	-	<u>WITNESS STATEMENTS</u>
<u>SECTION VIII</u>	-	<u>J E CLARKE - PROOF OF EVIDENCE</u>

SECTION I

WATER ACT 1989

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(7) The debentures entitling the holders to object to a modification of a company's objects are any debentures secured on the company's undertaking which were issued or first issued before the day on which this Act is passed or which form part of the same series as any debentures so issued but have been issued on or after that date; and in this section "debentures" has the same meaning as in the said Act of 1985.

PART II

PART III

THE PROTECTION AND MANAGEMENT OF RIVERS AND OTHER WATERS

CHAPTER I

CONTROL OF POLLUTION

General provisions

103.—(1) This Chapter applies to any waters (in this Chapter referred to as "controlled waters") of any of the following classes—

Waters to which Chapter I applies.

- (a) relevant territorial waters, that is to say, subject to subsection (5) below, the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to England and Wales is measured;
- (b) coastal waters, that is to say, any waters which are within the area which extends landward from those baselines as far as the limit of the highest tide or, in the case of the waters of any relevant river or watercourse, as far as the fresh-water limit of the river or watercourse, together with the waters of any enclosed dock which adjoins waters within that area;
- (c) inland waters, that is to say, the waters of any relevant lake or pond or of so much of any relevant river or watercourse as is above the fresh-water limit;
- (d) ground waters, that is to say, any waters contained in underground strata, or in—
 - (i) a well, borehole or similar work sunk into underground strata, including any adit or passage constructed in connection with the well, borehole or work for facilitating the collection of water in the well, borehole or work; or
 - (ii) any excavation into underground strata where the level of water in the excavation depends wholly or mainly on water entering it from the strata.

(2) The Secretary of State—

- (a) shall deposit maps with the Authority showing what appear to him to be the fresh-water limits of every relevant river or watercourse; and
- (b) may from time to time, if he considers it appropriate to do so by reason of any change of what appears to him to be the fresh-water limit of any river or watercourse, deposit a map showing a revised limit for that river or watercourse;

and in subsection (1) above "fresh-water limit", in relation to any river or watercourse, means the place for the time being shown as the fresh-water limit of that river or watercourse in the latest map deposited for that river or watercourse under this subsection.

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(3) It shall be the duty of the Authority to keep any maps deposited with it under subsection (2) above available, at all reasonable times, for inspection by the public free of charge.

(4) In this section—

“miles” means international nautical miles of 1,852 metres;

“lake or pond” includes a reservoir of any description;

“relevant lake or pond” means (subject to subsection (5) below) any lake or pond which (whether it is natural or artificial or above or below ground) discharges into a relevant river or watercourse or into another lake or pond which is itself a relevant lake or pond;

“relevant river or watercourse” means (subject to subsection (5) below) any river or watercourse (including an underground river or watercourse and an artificial river or watercourse) which is neither a public sewer nor a sewer or drain which drains into a public sewer.

(5) The Secretary of State may by order provide—

(a) that any area of the territorial sea adjacent to England and Wales is to be treated as if it were an area of relevant territorial waters for the purposes of this Chapter;

(b) that any lake or pond which does not discharge into a relevant river or watercourse or into a relevant lake or pond is to be treated for those purposes as a relevant lake or pond;

(c) that a lake or pond which does so discharge and is of a description specified in the order is to be treated for those purposes as if it were not a relevant lake or pond;

(d) that a watercourse of a description so specified is to be treated for those purposes as if it were not a relevant river or watercourse.

(6) The power of the Secretary of State to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and such an order may—

(a) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and

(b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities.

Classification of
quality of
waters.

104.—(1) The Secretary of State may, in relation to any description of controlled waters (being a description applying to some or all of the waters of a particular class or of two or more different classes), by regulations prescribe a system of classifying the quality of those waters according to criteria specified in the regulations.

(2) The criteria specified in regulations under this section in relation to any classification shall consist of one or more of the following, that is to say—

(a) general requirements as to the purposes for which the waters to which the classification is applied are to be suitable;

PART III

- (b) specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;
 - (c) specific requirements as to other characteristics of those waters;
- and for the purposes of any such classification regulations under this section may provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed.

105.—(1) For the purpose of maintaining and improving the quality of controlled waters the Secretary of State may, by serving a notice on the Authority specifying—

Water quality objectives.

- (a) one or more of the classifications for the time being prescribed under section 104 above; and
 - (b) in relation to each specified classification, a date,
- establish the water quality objectives for any waters which are, or are included in, waters of a description prescribed for the purposes of that section.

(2) The water quality objectives for any waters to which a notice under this section relates shall be the satisfaction by those waters, on and at all times after each date specified in the notice, of the requirements which at the time of the notice were the requirements for the classification in relation to which that date is so specified.

(3) Where the Secretary of State has established water quality objectives under this section for any waters he may review objectives for those waters if—

- (a) five years or more have elapsed since the service of the last notice under subsection (1) or (6) of this section to be served in respect of those waters; or
 - (b) the Authority, after consultation with such water undertakers and other persons as it considers appropriate, requests a review;
- and the Secretary of State shall not exercise his power to establish objectives for any waters by varying the existing objectives for those waters except in consequence of such a review.

(4) Where the Secretary of State proposes to exercise his power under this section to establish or vary the objectives for any waters he shall—

- (a) give notice setting out his proposal and specifying the period (not being less than three months from the date of publication of the notice) within which representations or objections with respect to the proposal may be made; and
- (b) consider any representations or objections which are duly made and not withdrawn;

and, if he decides, after considering any such representations or objections, to exercise his power to establish or vary those objectives, he may do so either in accordance with the proposal contained in the notice or in accordance with that proposal as modified in such manner as he considers appropriate.

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(5) A notice under subsection (4) above shall be given—

- (a) by publishing the notice in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by it; and
- (b) by serving a copy of the notice on the Authority.

(6) If, on a review under this section or in consequence of any representations or objections made following such a review for the purposes of subsection (4) above, the Secretary of State decides that the water quality objectives for any waters should remain unchanged, he shall serve notice of that decision on the Authority.

General duties
to achieve and
maintain
objectives etc.

1974 c. 40.

106.—(1) It shall be the duty of the Secretary of State and of the Authority to exercise the powers conferred on him or it by or under the following provisions of this Chapter in such manner as ensures, so far as it is practicable by the exercise of those powers to do so, that the water quality objectives specified for any waters in a notice under section 105 above, or in a notice under section 30C of the Control of Pollution Act 1974, are achieved at all times.

(2) It shall be the duty of the Authority, for the purposes of the carrying out of its functions under this Chapter, to monitor the extent of pollution in controlled waters and to consult, in such cases as it may consider appropriate, with river purification authorities in Scotland.

Controlling and remedying pollution

Offences of
polluting
controlled waters
etc.

107.—(1) Subject to section 108 below, a person contravenes this section if he causes or knowingly permits—

- (a) any poisonous, noxious or polluting matter or any solid waste matter to enter any controlled waters; or
 - (b) any matter, other than trade effluent or sewage effluent, to enter controlled waters by being discharged from a drain or sewer in contravention of a relevant prohibition; or
 - (c) any trade effluent or sewage effluent to be discharged—
 - (i) into any controlled waters; or
 - (ii) from land in England and Wales, through a pipe, into the sea outside the seaward limits of controlled waters;
- or
- (d) any trade effluent or sewage effluent to be discharged, in contravention of any relevant prohibition, from a building or from any fixed plant on to or into any land or into any waters of a lake or pond which are not inland waters; or
 - (e) any matter whatever to enter any inland waters so as to tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading or likely to lead to a substantial aggravation of—
 - (i) pollution due to other causes; or
 - (ii) the consequences of such pollution.

(2) For the purposes of this section a discharge of any effluent or other matter is, in relation to any person, in contravention of a relevant prohibition if—

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- (a) the Authority has given that person notice prohibiting him from making or, as the case may be, continuing the discharge;
- (b) the Authority has given that person notice prohibiting him from making or, as the case may be, continuing the discharge unless specified conditions are observed, and those conditions are not observed; or
- (c) the effluent or matter discharged contains a prescribed substance or a prescribed concentration of such a substance or derives from a prescribed process or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts;

but nothing in this subsection shall authorise the giving of such a notice in respect of discharges from a vessel and nothing in any regulations made by virtue of paragraph (c) above shall require any discharge from a vessel to be treated as a discharge in contravention of a relevant prohibition.

(3) A notice given for the purposes of subsection (2)(a) or (b) above shall expire at such time as may be specified in the notice; and that time shall not be before the end of the period of three months beginning with the day on which the notice is given except in a case where the Authority is satisfied that there is an emergency which requires the relevant prohibition in question to come into force at such time before the end of that period as may be so specified.

(4) Where, in the case of such a notice for the purposes of subsection (2)(a) or (b) above as (but for this subsection) would expire at a time which is or is after the end of the said period of three months, an application is made before that time for a consent under this Chapter in respect of the discharge to which the notice relates, that notice shall be deemed not to expire until the result of the application becomes final—

- (a) on the grant or withdrawal of the application;
- (b) on the expiration, without the bringing of an appeal with respect to the decision on the application, of any period prescribed as the period within which any such appeal must be brought; or
- (c) on the withdrawal or determination of any such appeal.

(5) For the purposes of this section where—

- (a) any sewage effluent is discharged as mentioned in subsection (1)(c) or (d) above from any sewer or works vested in a sewerage undertaker; and
- (b) the undertaker did not cause or knowingly permit the discharge but was bound (either unconditionally or subject to conditions which were observed) to receive into the sewer or works matter included in the discharge,

the undertaker shall be deemed to have caused the discharge.

(6) A person who contravenes this section or the conditions of any consent given under this Chapter for the purposes of this section shall be guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

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Authority for discharges and other defences for the purposes of section 107.

1974 c. 40.

1985 c. 48.

108.—(1) A person shall not be guilty of an offence under section 107 above in respect of the entry of any matter into any waters or any discharge if the entry occurs or the discharge is made under and in accordance with, or as a result of any act or omission under and in accordance with—

- (a) a consent given under this Chapter or under Part II of the Control of Pollution Act 1974;
- (b) a disposal licence;
- (c) a licence granted under Part II of the Food and Environment Protection Act 1985;
- (d) any local statutory provision or statutory order which expressly confers power to discharge effluent into water; or
- (e) any prescribed enactment;

but nothing in any disposal licence shall be treated for the purposes of this subsection as authorising any such entry or discharge as is mentioned in paragraphs (b) to (d) of section 107(1) above or as authorising any act or omission so far as it results in any such entry or discharge.

(2) A person shall not be guilty of an offence under section 107 above in respect of the entry of any matter into any waters or any discharge if—

- (a) the entry is caused or permitted, or the discharge is made, in an emergency in order to avoid danger to life or health;
- (b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the entry or discharge and of its polluting effects; and
- (c) particulars of the entry or discharge are furnished to the Authority as soon as reasonably practicable after it occurs.

(3) A person shall not be guilty of an offence under section 107 above by reason of his causing or permitting any discharge of trade or sewage effluent from a vessel.

(4) A person shall not be guilty of an offence under section 107 above by reason only of his permitting water from an abandoned mine to enter controlled waters.

(5) A person shall not, otherwise than in respect of the entry of any poisonous, noxious or polluting matter into any controlled waters, be guilty of an offence under section 107 above by reason of his depositing the solid refuse of a mine or quarry on any land so that it falls or is carried into inland waters if—

- (a) he deposits the refuse on the land with the consent of the Authority;
- (b) no other site for the deposit is reasonably practicable; and
- (c) he takes all reasonably practicable steps to prevent the refuse from entering those inland waters.

1980 c. 66.

(6) A highway authority or other person entitled to keep open a drain by virtue of section 100 of the Highways Act 1980 shall not be guilty of an offence under section 107 above by reason of his causing or permitting any discharge to be made from a drain kept open by virtue of that section unless the discharge is made in contravention of a relevant prohibition under section 107 above.

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(7) A sewerage undertaker shall not be guilty of an offence under section 107 above by reason only of the fact that a discharge from a sewer or works vested in the undertaker contravenes conditions of a consent relating to the discharge if—

- (a) the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works;
- (b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and
- (c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.

(8) A person shall not be guilty of an offence under section 107 above in respect of a discharge which he caused or permitted to be made into a sewer or works vested in a sewerage undertaker if the undertaker was bound to receive the discharge there either unconditionally or subject to conditions which were observed.

(9) In this section—

“disposal licence” has the same meaning as in Part I of the Control of Pollution Act 1974; and

“statutory order” means an order under section 155 below or any order, byelaw, scheme or award made under any other enactment, including an order or scheme confirmed by Parliament or brought into operation in accordance with special parliamentary procedure.

109.—(1) A person shall be guilty of an offence under this section if, without the consent of the Authority, he—

- (a) removes from any part of the bottom, channel or bed of any inland waters a deposit accumulated by reason of any dam, weir or sluice holding back the waters; and
- (b) does so by causing the deposit to be carried away in suspension in the waters.

Deposits and
vegetation in
rivers etc.

(2) A person shall be guilty of an offence under this section if, without the consent of the Authority, he—

- (a) causes or permits a substantial amount of vegetation to be cut or uprooted in any inland waters, or to be cut or uprooted so near to any such waters that it falls into them; and
- (b) fails to take all reasonable steps to remove the vegetation from those waters.

(3) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(4) Nothing in subsection (1) above applies to anything done in the exercise of any power conferred by or under any enactment relating to land drainage, flood prevention or navigation.

(5) In giving a consent for the purposes of this section the Authority may make the consent subject to such conditions as it considers appropriate.

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(6) The Secretary of State may by regulations provide that any reference to inland waters in subsection (1) or (2) above shall be construed as including a reference to such coastal waters as may be prescribed.

Requirements to take precautions against pollution.

110.—(1) The Secretary of State may by regulations make provision—

- (a) for prohibiting a person from having custody or control of any poisonous, noxious or polluting matter unless prescribed works and prescribed precautions and other steps have been carried out or taken for the purpose of preventing or controlling the entry of the matter into any controlled waters;
- (b) for requiring a person who already has custody or control of, or makes use of, any such matter to carry out such works for that purpose and to take such precautions and other steps for that purpose as may be prescribed.

(2) Without prejudice to the generality of the power conferred by subsection (1) above, regulations under that subsection may—

- (a) confer power on the Authority—
 - (i) to determine for the purposes of the regulations the circumstances in which a person is required to carry out works or take any precautions or other steps; and
 - (ii) by notice to that person, to impose the requirement and to specify or describe the works, precautions or other steps which that person is required to carry out or take;
- (b) provide for appeals to the Secretary of State against notices served by the Authority in pursuance of provision made by virtue of paragraph (a) above; and
- (c) provide that a contravention of the regulations shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 107 above.

Water protection zones.

111.—(1) Where the Secretary of State, after consultation (in the case of an area wholly or partly in England) with the Minister, considers that it is appropriate, with a view to preventing or controlling the entry of any poisonous, noxious or polluting matter into controlled waters, to prohibit or restrict the carrying on in a particular area of activities which he considers are likely to result in the pollution of any such waters, he may by order make provision—

- (a) designating that area as a water protection zone; and
- (b) prohibiting or restricting the carrying on in the designated area of such activities as may be specified or described in the order.

(2) Without prejudice to the generality of the power conferred by virtue of subsection (1) above, an order under this section may—

- (a) confer power on the Authority to determine for the purposes of the order the circumstances in which the carrying on of any activities is prohibited or restricted and to determine the activities to which any such prohibition or restriction applies;
- (b) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of the Authority or in contravention of any conditions subject to which any such consent is given;

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- (c) provide that a contravention of a prohibition or restriction contained in the order or of a condition of a consent given for the purposes of any such prohibition or restriction shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 107 above;
- (d) provide (subject to any regulations under subsection (4) below) for anything falling to be determined under the order by the Authority to be determined in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be specified in the order;
- (e) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (f) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

(3) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; but the Secretary of State shall not make such an order except—

- (a) in accordance with Schedule 7 to this Act; and
- (b) on an application made in accordance with that Schedule by the Authority.

(4) The Secretary of State may, for the purposes of any orders under this section which require the consent of the Authority to the carrying on of any activities, by regulations make provision with respect to—

- (a) applications for any such consent;
- (b) the conditions of any such consent;
- (c) the revocation or variation of any such consent;
- (d) appeals against determinations on any such application;
- (e) the exercise by the Secretary of State of any power conferred on the Authority by the orders;
- (f) the imposition of charges where such an application has been made, such a consent has been given or anything has been done in pursuance of any such consent; and
- (g) the registration of any such application or consent;

and, without prejudice to the generality of that power, regulations under this subsection may apply (with or without modifications) any enactment having effect in relation to consents under this Chapter.

(5) The reference in subsection (1) above to the entry of poisonous, noxious or polluting matter into controlled waters shall not include a reference to the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes.

112.—(1) Where the relevant Minister considers that it is appropriate to do so with a view to achieving the following purpose, that is to say, preventing or controlling the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for

Nitrate sensitive areas.

PART III

agricultural purposes, he may by order make provision designating that land, together with any other land to which he considers it appropriate to apply the designation, as a nitrate sensitive area.

(2) Where any area has been designated as a nitrate sensitive area by an order under this section and the relevant Minister considers that it is appropriate to do so with a view to achieving the purpose mentioned in subsection (1) above, he may, subject to such restrictions (if any) as may be set out in the order, enter into an agreement under which, in consideration of payments to be made by the relevant Minister—

- (a) the owner of the freehold interest in any agricultural land in that area; or
- (b) where the owner of the freehold interest in any such land has given his written consent to the agreement being entered into by any person having another interest in that land, that other person,

accepts such obligations with respect to the management of that land or otherwise as may be imposed by the agreement.

(3) An agreement such as is mentioned in subsection (2) above between the relevant Minister and a person having an interest in any land shall bind all persons deriving title from or under that person to the extent that the agreement is expressed to bind that land in relation to those persons.

(4) Where it appears to the relevant Minister in relation to any area which is or is to be designated by an order under this section as a nitrate sensitive area that it is appropriate for provision for the imposition of requirements, prohibitions or restrictions to be contained in an order under this section (as well as for him to be able to enter into such agreements as are mentioned in subsection (2) above), he may, by a subsequent order under this section or, as the case may be, by the order designating that area—

- (a) with a view to achieving the purpose mentioned in subsection (1) above, require, prohibit or restrict the carrying on on or in relation to any agricultural land in that area of such activities as may be specified or described in the order; and
- (b) provide for such amounts (if any) as may be specified in or determined under the order to be paid by the Minister or the Secretary of State, to such persons as may be so specified or determined, in respect of the obligations imposed in relation to that area on those persons by virtue of paragraph (a) above.

(5) Without prejudice to the generality of subsection (4) above, provision contained in an order under this section by virtue of that subsection may—

- (a) confer power on the Minister or the Secretary of State to determine for the purposes of the order the circumstances in which the carrying on of any activities is required, prohibited or restricted and to determine the activities to which any such requirement, prohibition or restriction applies;
- (b) provide for any requirement to carry on any activity not to apply in cases where the Minister or the Secretary of State has consented to a failure to carry on that activity and any conditions on which the consent has been given are complied with;

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- (c) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of the Minister or the Secretary of State or in contravention of any conditions subject to which any such consent is given;
 - (d) provide that a contravention of a requirement, prohibition or restriction contained in the order or in a condition of a consent given in relation to or for the purposes of any such requirement, prohibition or restriction shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 107 above;
 - (e) provide for amounts paid in pursuance of any provision contained in the order to be repaid at such times and in such circumstances, and with such interest, as may be specified in or determined under the order; and
 - (f) provide (subject to any regulations under subsection (8) below) for anything falling to be determined under the order by any person to be determined in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be specified in the order.
- (6) An order under this section may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (b) contain such supplemental, consequential and transitional provision as the relevant Minister considers appropriate.
- (7) The power of the relevant Minister to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; but the relevant Minister shall not make such an order except in accordance with any applicable provisions of Schedule 11 to this Act.
- (8) The Secretary of State and the Minister, acting jointly, may, for the purposes of any orders under this section which require the consent of either of those Ministers to the carrying on of any activities or to any failure to carry on any activity, by regulations make provision with respect to—
- (a) applications for any such consent;
 - (b) the conditions of any such consent;
 - (c) the revocation or variation of any such consent;
 - (d) the reference to arbitration of disputes about determinations on any such application;
 - (e) the imposition of charges where such an application has been made, such a consent has been given or there has been any act or omission in pursuance of any such consent; and
 - (f) the registration of any such application or consent.
- (9) In this section and in Schedule 11 to this Act “the relevant Minister”—
- (a) in relation—
 - (i) to the making of an order in relation to an area which is wholly in Wales; or

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(ii) to an agreement with respect to land which is wholly in Wales,

means the Secretary of State;

(b) in relation to the making of an order in relation to an area which is wholly in England or which is partly in England and partly in Wales, means the Minister and the Secretary of State, acting jointly;

(c) in relation to an agreement with respect to land which is wholly in England, means the Minister; and

(d) in relation to an agreement with respect to land which is partly in England and partly in Wales, means the Secretary of State or the Minister.

Consents under Chapter I and application to the Authority.

113.—(1) Schedule 12 to this Act (which makes provision with respect to the making of applications for consents under this Chapter, the giving of such consents and appeals) shall have effect.

(2) The Secretary of State may by regulations—

(a) make provision modifying the provisions of this Chapter in relation to cases in which consents under this Chapter are required by the Authority; and

(b) for the purposes of the application of the provisions of this Chapter in relation to discharges by the Authority, make such other modifications of those provisions as may be prescribed.

(3) Without prejudice to the generality of subsection. (2) above, regulations under that subsection may provide for such consents as are mentioned in paragraph (a) of that subsection to be required to be given by the Secretary of State (instead of by the Authority) and, in prescribed cases, to be deemed to have been so given.

1975 c. 51.
1875 c. 55.

(4) A person shall not be guilty of an offence under section 4 of the Salmon and Freshwater Fisheries Act 1975 or section 68 of the Public Health Act 1875 (offences of causing pollution of certain waters) in respect of any entry of matter into any controlled waters which occurs—

(a) under and in accordance with a consent under this Chapter or under Part II of the Control of Pollution Act 1974; or

(b) as a result of any act or omission under and in accordance with such a consent.

1974 c. 40.

Byelaws for preventing pollution of controlled waters.

114.—(1) The Authority may by byelaws make such provision as the Authority considers appropriate—

(a) for prohibiting or regulating the washing or cleaning in any controlled waters of things of a description specified in the byelaws;

(b) for prohibiting or regulating the keeping or use on any controlled waters of vessels of a description specified in the byelaws which are provided with water closets or other sanitary appliances.

(2) A person who contravenes any byelaws made by virtue of this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale or such smaller sum as may be specified in the byelaws.

(3) In this section "sanitary appliance", in relation to a vessel, means any appliance which, not being a sink, bath or shower bath, is designed to permit polluting matter to pass into the water where the vessel is situated and which is prescribed for the purposes of this section.

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115.—(1) Subject to subsection (2) below, where it appears to the Authority that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or to be or to have been present in, any controlled waters, the Authority shall be entitled to carry out the following works and operations, that is to say—

Anti-pollution works and operations.

- (a) in a case where the matter appears likely to enter any controlled waters, works and operations for the purpose of preventing it from doing so; or
- (b) in a case where the matter appears to be or to have been present in any controlled waters, works and operations for the purpose—
 - (i) of removing or disposing of the matter;
 - (ii) of remedying or mitigating any pollution caused by its presence in the waters; or
 - (iii) so far as it is reasonably practicable to do so, of restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters.

(2) Nothing in subsection (1) above shall entitle the Authority to impede or prevent the making of any discharge in pursuance of a consent given under this Chapter.

(3) Where the Authority carries out any such works or operations as are mentioned in subsection (1) above, it shall, subject to subsection (4) below, be entitled to recover the expenses reasonably incurred in doing so from any person who, as the case may be—

- (a) caused or knowingly permitted the matter in question to be present at the place from which it was likely, in the opinion of the Authority, to enter any controlled waters; or
- (b) caused or knowingly permitted the matter in question to be present in any controlled waters.

(4) No such expenses shall be recoverable from a person for any works or operations in respect of water from an abandoned mine which that person permitted to reach such a place as is mentioned in subsection (3) above or to enter any controlled waters.

116.—(1) The Secretary of State and the Minister, acting jointly, may by order made by statutory instrument approve any code of practice issued (whether by those Ministers or by another person) for the purpose of—

Codes of good agricultural practice.

- (a) giving practical guidance to persons engaged in agriculture with respect to activities that may affect controlled waters; and
- (b) promoting what appear to them to be desirable practices by such persons for avoiding or minimising the pollution of any such waters,

and may at any time by such an order approve a modification of such a code or withdraw their approval of such a code or modification.

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(2) A contravention of a code of practice as for the time being approved under this section shall not of itself give rise to any criminal or civil liability, but the Authority shall take into account whether there has been or is likely to be any such contravention in determining when and how it should exercise—

- (a) its power, by giving a notice under section 107(2)(a) or (b) above, to impose a relevant prohibition; and
- (b) any powers conferred on the Authority by regulations under section 110 above.

(3) The Secretary of State and the Minister shall not make an order under this section unless they have first consulted the Authority.

Registers

Registers for the purposes of Chapter I.

117.—(1) 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—

- (a) any notices of water quality objectives or other notices served under section 105 above;
- (b) applications made for consents under this Chapter;
- (c) consents given under this Chapter and the conditions to which the consents are subject;
- (d) certificates issued under paragraph 1(7) of Schedule 12 to this Act; and
- (e) the following, that is to say—
 - (i) samples of water or effluent taken for the purposes of this Chapter by the Authority and information produced by analyses of those samples;
 - (ii) such information with respect to samples of water or effluent taken by any other person and the analyses of those samples as is acquired by the Authority from any person under arrangements made by the Authority for the purposes of this Chapter; and
 - (iii) the steps taken in consequence of any such information as is mentioned in sub-paragraph (i) or (ii) above.

(2) It shall be the duty of the Authority—

- (a) to secure that the contents of registers maintained by the Authority under this section are available, at all reasonable times, for inspection by the public free of charge; and
- (b) to afford members of the public reasonable facilities for obtaining from the Authority, on payment of reasonable charges, copies of entries in any of the registers.

Provision and acquisition of information etc.

Information and assistance.

118.—(1) It shall be the duty of the Authority, if and so far as it is requested to do so by the Secretary of State or the Minister, to give him all such advice and assistance as appears to it to be appropriate for facilitating the carrying out by the Secretary of State or the Minister of his functions under this Chapter.

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(2) Subject to subsection (3) below, the Secretary of State, the Minister or the Authority may serve on any person a notice requiring him to furnish the Secretary of State, the Minister or, as the case may be, the Authority, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by the Secretary of State or the Minister or by the Authority for the purpose of carrying out any of his or, as the case may be, its functions under this Chapter.

(3) The Secretary of State or the Minister may by regulations make provision for restricting the information which may be required under subsection (2) above and for determining the form in which the information is to be so required.

(4) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

119.—(1) It shall be the duty of the Authority to provide a water undertaker with all such information to which this section applies as is in the possession of the Authority and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions; and information provided to a water undertaker under this subsection shall be provided in such form and in such manner and at such times as the undertaker may reasonably require.

Exchange of information with respect to pollution incidents etc.

(2) It shall be the duty of every water undertaker to provide the Authority with all such information to which this section applies as is in the possession of the undertaker and is reasonably requested by the Authority for purposes connected with the carrying out of any of its functions; and information provided to the Authority under this subsection shall be provided in such form and in such manner and at such times as the Authority may reasonably require.

(3) Information provided under subsection (1) or (2) above to a water undertaker or to the Authority shall be provided free of charge.

(4) The duties of a water undertaker under subsection (2) above shall be enforceable under section 20 above by the Secretary of State.

(5) This section applies to information about the quality of any controlled waters or of any other waters or about any incident in which any poisonous, noxious or polluting matter or any solid waste matter has entered any controlled waters or other waters.

120. The Secretary of State may cause a local inquiry to be held in any case in which he considers it appropriate for such an inquiry to be held—

Local inquiries for the purposes of Chapter I.

- (a) for the purposes of the establishment or review under section 105 above of any water quality objectives or otherwise in connection with any provision of this Chapter;
- (b) with a view to preventing or dealing with pollution of any controlled waters; or
- (c) in relation to any other matter relevant to the quality of any such waters.

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Criminal and civil liability

Offences under
Chapter I.

121.—(1) Without prejudice to section 177 below, where the commission by any person of an offence under this Chapter is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person.

1980 c. 43.

(2) Notwithstanding anything in section 127 of the Magistrates' Courts Act 1980 (time limit for summary proceedings), a magistrates' court may try any summary offence under this Chapter, or under any subordinate legislation made under this Chapter, if the information is laid not more than twelve months after the commission of the offence.

Civil liability
and savings.
1978 c. 30.

122. Except in so far as this Chapter expressly otherwise provides and subject to the provisions of section 18 of the Interpretation Act 1978 (which relates to offences under two or more laws), nothing in this Chapter —

- (a) confers a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of this Chapter or any subordinate legislation, consent or other instrument made, given or issued under this Chapter;
- (b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter; or
- (c) affects any restriction imposed by or under any other enactment, whether public, local or private.

Supplemental provisions of Chapter I

Application to
radioactive
substances.
1960 c. 34.

123.—(1) Except as provided by regulations made by the Secretary of State under this section, nothing in this Chapter shall apply in relation to radioactive waste within the meaning of the Radioactive Substances Act 1960.

(2) The Secretary of State may by regulations—

- (a) provide for prescribed provisions of this Chapter to have effect with such modifications as he considers appropriate for dealing with such waste;
- (b) make such modifications of the said Act of 1960 or, in relation to such waste, of any other Act as he considers appropriate in consequence of the provisions of this Chapter and of any regulations made by virtue of paragraph (a) above.

Interpretation of
Chapter I.

124.—(1) In this Chapter, except in so far as the context otherwise requires—

1947 c. 48.

“agriculture” and “agricultural” have the same meanings as in the Agriculture Act 1947;

“coastal waters”, “controlled waters”, “ground waters”, “inland waters” and “relevant territorial waters” have the meanings given by section 103(1) above;

“local authority” includes the council of any county;

"mine" and "quarry" have the same meanings as in the Mines and Quarries Act 1954;

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1954 c. 70.

"sewage effluent" includes any effluent from the sewage disposal or sewerage works of a sewerage undertaker but does not include surface water;

"trade effluent" includes any effluent which is discharged from premises used for carrying on any trade or industry, other than surface water and domestic sewage.

(2) In this Chapter—

- (a) any reference to the waters of any lake or pond or of any river or watercourse includes a reference to the bottom, channel or bed of any lake, pond, river or, as the case may be, watercourse which is for the time being dry; and
- (b) any reference to water contained in underground strata is a reference to water so contained otherwise than in a sewer, pipe, reservoir, tank or other underground works constructed in any such strata.

(3) For the purposes of the definition of "trade effluent" in subsection (1) above any premises wholly or mainly used (whether for profit or not) for agricultural purposes or for the purposes of fish farming or for scientific research or experiment shall be deemed to be premises used for carrying on a trade.

CHAPTER II

WATER RESOURCES

General provisions

125.—(1) It shall be the duty of the Authority to take all such action as it may from time to time consider, in accordance (if any have been given for the purposes of this section) with the directions of the Secretary of State, to be necessary or expedient for the purpose—

General functions in relation to water resources.

- (a) of conserving, redistributing or otherwise augmenting water resources in England and Wales; and
- (b) of securing the proper use of water resources in England and Wales.

(2) Nothing in this section shall be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of section 37 above.

126.—(1) It shall be the duty of the Authority so far as reasonably practicable to enter into and maintain such arrangements with water undertakers for securing the proper management or operation of—

Water resources management schemes.

- (a) the waters which are available to be used by water undertakers for the purposes of, or in connection with, the carrying out of their functions; and
- (b) any reservoirs, apparatus or other works which belong to, are operated by or are otherwise under the control of water undertakers for the purposes of, or in connection with, the carrying out of their functions,

as the Authority from time to time considers appropriate for the purpose of carrying out its functions under section 125(1) above.

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(ii) determining whether, and if so in what manner, any power or duty conferred or imposed on the Secretary of State, the Minister or the Authority by virtue of any enactment to which this section applies (including a power of the Secretary of State or the Minister to make subordinate legislation) should be exercised or, as the case may be, performed; or

(iii) exercising or performing any power or duty which is so conferred or imposed;

and

(b) carry out such inspections, measurements and tests on any premises or vessel entered by that person or of any articles found on any such premises or vessel, and take away such samples of water or effluent or of any land or articles, as the Secretary of State, the Minister or the Authority—

(i) considers appropriate for any purpose mentioned in paragraph (a) above; and

(ii) has authorised that person to carry out or take away.

(2) The powers which by virtue of subsection (1) above are conferred in relation to any premises for the purpose of enabling the Secretary of State, the Minister or the Authority to determine—

(a) whether any provision made by or under Chapter I of this Part is being or has been contravened; or

(b) whether or in what manner to exercise or perform any power or duty conferred or imposed on him or it by or under that Chapter,

shall include power, in order to obtain the information on which that determination may be made, to carry out experimental borings or other works on those premises and to install and keep monitoring and other apparatus there.

(3) Without prejudice to any power exercisable by virtue of a warrant under section 178 below, no person shall make an entry into any premises or vessel by virtue of this section except—

(a) in an emergency, or

(b) at a reasonable time and, if the premises are residential premises, the vessel is used for residential purposes or the entry is to be with heavy equipment, after seven days' notice of the intended entry has been given to the occupier of the premises or vessel.

(4) This section applies to any enactment contained in this Part, in the Water Resources Act 1963, in the Land Drainage Act 1976 or in any other enactment not contained in this Act under or for the purposes of which the Authority carries out functions.

1963 c. 38.
1976 c. 70.

Admissibility of
analysis of
samples.

148.—(1) Subject to subsection (2) below, the result of the analysis of any sample taken on behalf of the Authority in exercise of any power conferred by this Act shall not be admissible in any legal proceedings in respect of any effluent passing from any land or vessel unless the person who took the sample—

(a) on taking the sample notified the occupier of the land or the owner or master of the vessel of his intention to have it analysed;

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- (b) there and then divided the sample into three parts and caused each part to be placed in a container which was sealed and marked; and
- (c) delivered one part to the occupier of the land or the owner or master of the vessel and retained one part, apart from the one he submitted to be analysed, for future comparison.

(2) If it is not reasonably practicable for a person taking a sample to comply with the requirements of subsection (1) above on taking the sample, those requirements shall be treated as having been complied with if they were complied with as soon as reasonably practicable after the sample was taken.

(3) In relation to any proceedings in respect of effluent passing from a public sewer or other outfall belonging to a sewerage undertaker into any water, this section shall have effect as if the references to the occupier of the land were references to the sewerage undertaker in which the sewer or outfall is vested.

149.—(1) It shall be the duty of the Authority to furnish the Secretary of State or the Minister with all such information relating to—

- (a) the Authority's property;
- (b) the carrying out and proposed carrying out of its functions; and
- (c) its responsibilities generally,

as he may reasonably require.

(2) Information required under this section shall be furnished in such form and manner, and be accompanied or supplemented by such explanations, as the Secretary of State or the Minister may reasonably require.

(3) The information which the Authority may be required to furnish to the Secretary of State or the Minister under this section shall include information which, although it is not in the possession of the Authority or would not otherwise come into the possession of the Authority, is information which it is reasonable to require the Authority to obtain.

(4) A requirement for the purposes of this section shall be contained in a direction which—

- (a) may describe the information to be furnished in such manner as the Secretary of State or the Minister considers appropriate; and
- (b) may require the information to be furnished on a particular occasion, in particular circumstances or from time to time.

(5) For the purposes of this section the Authority shall—

- (a) permit any person authorised by the Secretary of State or the Minister for the purpose to inspect and make copies of the contents of any accounts or other records of the Authority; and
- (b) give such explanation of them as that person or the Secretary of State or the Minister may reasonably require.

Provision of
information to
the Ministers.



PART III
1970 c. 39.

(2) Without prejudice to subsection (1) above, the powers conferred by section 1 of the Local Authorities (Goods and Services) Act 1970 shall be exercisable by the Authority as if the Authority were a public body within the meaning of that section.

(3) Nothing in this section with respect to the carrying out of works shall be construed as conferring any power to do anything otherwise than for the purpose of giving the Authority capacity as a corporation to do that thing; and, accordingly, without prejudice to the provisions of Part IV of this Act, this section shall be disregarded for the purpose of determining whether the Authority is liable, on grounds other than an incapacity by virtue of its constitution, for any act or omission in exercise of a power to carry out works conferred by this section.

146.—(1) Directions of a general or specific character may be given to the Authority—

Ministerial
directions to the
Authority.

- (a) with respect to the carrying out of the Authority's functions by virtue of Chapter I, II or V of this Part (other than its functions in connection with the making of applications for orders under section 112 above), by the Secretary of State;
- (b) with respect to the making of applications for orders under section 112 above or with respect to the carrying out of its functions by virtue of Chapter III or IV of this Part, by the Minister or the Secretary of State; and
- (c) with respect to anything not falling within paragraph (a) or (b) above which is connected with the carrying on of the Authority's activities generally, by the Secretary of State and the Minister acting jointly;

and it shall be the duty of the Authority to comply with any such direction.

(2) Without prejudice to the generality of the power conferred by subsection (1) above, directions under that subsection may include such directions as the Secretary of State, the Minister or, as the case may be, both of them consider appropriate in order to enable Her Majesty's Government in the United Kingdom to give effect—

- (a) to any Community obligations; or
- (b) to any international agreement to which the United Kingdom is for the time being a party.

(3) The power to give a direction under this section shall be exercisable, except in an emergency, only after consultation with the Authority.

(4) Any power of the Secretary of State or the Minister otherwise than by virtue of this section to give directions to the Authority shall be without prejudice to the power conferred by this section.

147.—(1) Any person designated in writing for the purpose by the Secretary of State, the Minister or the Authority may—

Powers of entry
etc.

- (a) enter any premises or vessel for the purpose of—
 - (i) ascertaining whether any provision of an enactment to which this section applies, of any subordinate legislation or other instrument made by virtue of any such enactment or of any byelaws made by the Authority is being or has been contravened;

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(ii) determining whether, and if so in what manner, any power or duty conferred or imposed on the Secretary of State, the Minister or the Authority by virtue of any enactment to which this section applies (including a power of the Secretary of State or the Minister to make subordinate legislation) should be exercised or, as the case may be, performed; or

(iii) exercising or performing any power or duty which is so conferred or imposed;

and

(b) carry out such inspections, measurements and tests on any premises or vessel entered by that person or of any articles found on any such premises or vessel, and take away such samples of water or effluent or of any land or articles, as the Secretary of State, the Minister or the Authority—

(i) considers appropriate for any purpose mentioned in paragraph (a) above; and

(ii) has authorised that person to carry out or take away.

(2) The powers which by virtue of subsection (1) above are conferred in relation to any premises for the purpose of enabling the Secretary of State, the Minister or the Authority to determine—

(a) whether any provision made by or under Chapter I of this Part is being or has been contravened; or

(b) whether or in what manner to exercise or perform any power or duty conferred or imposed on him or it by or under that Chapter,

shall include power, in order to obtain the information on which that determination may be made, to carry out experimental borings or other works on those premises and to install and keep monitoring and other apparatus there.

(3) Without prejudice to any power exercisable by virtue of a warrant under section 178 below, no person shall make an entry into any premises or vessel by virtue of this section except—

(a) in an emergency; or

(b) at a reasonable time and, if the premises are residential premises, the vessel is used for residential purposes or the entry is to be with heavy equipment, after seven days' notice of the intended entry has been given to the occupier of the premises or vessel.

(4) This section applies to any enactment contained in this Part, in the Water Resources Act 1963, in the Land Drainage Act 1976 or in any other enactment not contained in this Act under or for the purposes of which the Authority carries out functions.

1963 c. 38.
1976 c. 70.

Admissibility of
analysis of
samples.

142.—(1) Subject to subsection (2) below, the result of the analysis of any sample taken on behalf of the Authority in exercise of any power conferred by this Act shall not be admissible in any legal proceedings in respect of any effluent passing from any land or vessel unless the person who took the sample—

(a) on taking the sample notified the occupier of the land or the owner or master of the vessel of his intention to have it analyzed;

176. Where by virtue of this Act—

- (a) any application or notice under any enactment is required to be supplemented by such information as the person to whom the application is made or on whom the notice is served may require; and
- (b) that person is required to do anything within a specified period after the application or notice is made or served,

the failure to provide the information shall not invalidate the application or notice but, if the requirement to provide the information was made at such a time before the end of the period as gave the applicant or the person serving the notice a reasonable opportunity to provide it within the period, the person who required the information shall be entitled to delay doing that thing until a reasonable time after the required information is provided.

PART VI
Provision of supplementary information.

Offences

177.—(1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by bodies corporate.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Powers of entry etc.

178.—(1) This section applies to each of the powers conferred by sections 59(2), 60(4), 62(4), 64(1), 147(1) and 156 above and to each of the powers conferred by paragraph 1 of Schedule 10, paragraph 10 of Schedule 19 and paragraph 5 of Schedule 21 to this Act.

Warrant to exercise power.

(2) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—

- (a) that there are reasonable grounds for the exercise in relation to any premises of a power to which this section applies; and
- (b) that one or more of the conditions specified in subsection (3) below is satisfied in relation to those premises,

the justice may by warrant authorise the relevant authority to designate a person who shall be authorised to exercise the power in relation to those premises in accordance with the warrant and, if need be, by force.

(3) The conditions mentioned in subsection (2)(b) above are—

- (a) that the exercise of the power in relation to the premises has been refused;
- (b) that such a refusal is reasonably apprehended;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent from the premises;
- (e) that the case is one of urgency; or

PART VI

(f) that an application for admission to the premises would defeat the object of the proposed entry.

(4) A justice of the peace shall not issue a warrant under this section by virtue only of being satisfied that the exercise of a power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless he is also satisfied—

(a) that notice of the intention to apply for the warrant has been given to the occupier of the premises; or

(b) that the giving of such a notice would defeat the object of the proposed entry.

(5) A justice of the peace shall not issue a warrant under this section in a case to which subsection (4) of section 156 above applies unless he is satisfied that the Secretary of State has given his authorisation for the purposes of that subsection in relation to that case.

(6) Every warrant under this section shall continue in force until the purposes for which the warrant was issued have been fulfilled.

(7) In this section—

“premises”, in relation to a power which is conferred in relation to vessels (as well as in relation to premises), includes a vessel; and

“relevant authority”, in relation to a power to which this section applies, means the person who, by virtue of the provision by which the power is conferred, is entitled to designate the person by whom the power may be exercised.

Provisions
supplementary
to powers of
entry etc.

179.—(1) This section applies to any power to which section 178 above applies and to any power conferred by virtue of that section.

(2) A person designated as the person who may exercise any power to which this section applies shall produce evidence of his designation and other authority before he exercises the power.

(3) A person authorised to enter any premises by virtue of any power to which this section applies shall be entitled, subject in the case of a power exercisable under a warrant to the terms of the warrant, to take with him on to the premises such other persons and such equipment as may be necessary.

(4) A person who enters any premises in the exercise of any power to which this section applies shall leave the premises as effectually secured against trespassers as he found them.

(5) Where any person exercises any power to which this section applies in relation to any premises, it shall be the duty of the relevant authority to make full compensation to any person who has sustained loss or damage by reason of—

(a) the exercise by the designated person of that power or of any power to take any person or equipment with him when entering the premises; or

(b) the performance of, or failure of the designated person to perform, the duty imposed by subsection (4) above,

not being loss or damage which is attributable to the default of the person who sustained it or loss or damage in respect of which compensation is payable by virtue of any other provision of this Act.

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(6) Any dispute as to a person's entitlement to compensation under subsection (5) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the relevant authority and the person who claims to have sustained the loss or damage or, in default of agreement—

(a) by the President of the Lands Tribunal where the relevant authority is the Secretary of State or the Minister; and

(b) by the Secretary of State or the Minister, in any other case;

and any compensation required to be paid by the Secretary of State or the Minister under that subsection shall be paid out of money provided by Parliament.

(7) For the purposes of subsections (4) and (5) above a person enters any premises by virtue of a power to which this section applies notwithstanding that he has failed (whether by virtue of the waiver of the requirement by the occupier of the premises or otherwise) to comply with the requirement imposed by subsection (2) above or with any requirement to enter those premises at a reasonable time or after giving notice of his intended entry.

(8) A person who intentionally obstructs another person acting in the exercise of any power to which this section applies shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(9) In this section—

"premises", in relation to a power which is conferred in relation to vessels (as well as in relation to premises), includes a vessel; and

"relevant authority", in relation to a power to which this section applies, means the person who, by virtue of the provision by which the power is conferred or, as the case may be, the warrant, is entitled to designate the person by whom the power may be exercised.

180.—(1) A person who, without having been designated or authorised for the purpose by a relevant authority, purports to be entitled to enter any premises or vessel in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

Impersonation
of persons
exercising
powers of entry.

(2) For the purposes of this section it shall be immaterial, where a person purports to be entitled to enter any premises or vessel, that the power which that person purports to be entitled to exercise does not exist or would not be exercisable even if that person had been designated or authorised by a relevant authority.

(3) In this section "relevant authority" means the Authority or any water undertaker or sewerage undertaker.

Local inquiries

181.—(1) Subject to subsection (2) below, subsections (2) to (5) of section 250 of the Local Government Act 1972 (which contain supplementary provisions with respect to local inquiries held in pursuance of that section) shall apply to local inquiries under this Act as they apply to inquiries under that section.

Local inquiries.
1972 c. 70.

(4) Subject to subsection (5) below, any person who, except in the exercise of a legal right to take materials from any waters, wilfully disturbs any spawn or spawning fish, or any bed, bank or shallow on which any spawn or spawning fish may be, shall be guilty of an offence.

(5) A person shall not be guilty of an offence under this section in respect of any act, if he does the act for the purpose of the artificial propagation of salmon, trout or freshwater fish or for some scientific purpose or for the purpose of the preservation or development of a private fishery and has obtained the previous permission in writing of the water authority for the area.

3.—(1) Any person who shoots or works any seine or draft Nets. net for salmon or migratory trout in any waters across more than three-fourths of the width of those waters shall be guilty of an offence.

(2) Subject to subsection (3) below, any person who, except in a place where smaller dimensions are authorised by byelaw, takes or attempts to take salmon or migratory trout with any net that has a mesh of less dimensions than 2 inches in extension from knot to knot (the measurement to be made on each side of the square), or 8 inches measured round each mesh when wet, shall be guilty of an offence.

(3) In subsection (2) above "net" does not include a landing net in use as auxiliary to angling with rod and line.

(4) The placing of two or more nets the one behind the other or near to each other in such manner as practically to diminish the mesh of the nets used, or the covering of the nets used with canvas, or the using of any other device so as to evade subsection (2) above, shall be deemed to be a contravention of that subsection.

4.—(1) Subject to subsection (2) below, any person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing fish or into any tributaries of waters containing fish, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn or food of fish, shall be guilty of an offence.

Poisonous matter and polluting effluent.

(2) A person shall not be guilty of an offence under subsection (1) above for any act done in the exercise of any right to which he is by law entitled or in continuance of a method in use in connection with the same premises before 18th July 1923, if he proves to the satisfaction of the court that he has used the best practicable means, within a reasonable cost, to prevent such

PART I matter from doing injury to fish or to the spawning grounds, spawn or food of fish.

(3) Proceedings under this section shall not be instituted except by the water authority for the area or by a person who has first obtained a certificate from the Minister that he has a material interest in the waters alleged to be affected.

Prohibition of use of explosives, poisons or electrical devices and of destruction of dams etc.

5.—(1) Subject to subsection (2) below, no person shall use in or near any waters (including waters adjoining the coast of England and Wales and within the exclusive fishery limits of the British Islands) any explosive substance, any poison or other noxious substance, or any electrical device, with intent thereby to take or destroy fish.

(2) Subsection (1) above shall not apply to the use by a person of any substance or device—

- (a) for a scientific purpose, or for the purpose of protecting, improving or replacing stocks of fish; and
- (b) with the permission in writing of the water authority for the area;

but as respects the use of any noxious substance such permission shall not be given by a water authority otherwise than with the approval of the Minister.

(3) No person shall, without lawful excuse, destroy or damage any dam, flood-gate or sluice with intent thereby to take or destroy fish.

(4) A person who contravenes subsection (1) or (3) above or who, for the purpose of contravening subsection (1) above, has in his possession any explosive or noxious substance or any electrical device, shall be guilty of an offence.

(5) The use of any substance in any waters for a purpose falling within paragraph (a) of subsection (2) above, and with the permission mentioned in paragraph (b) of that subsection, shall not constitute an offence under—

- (a) section 4 above;
- (b) any byelaws made under paragraph 31 of Schedule 3 below;
- (c) section 2(1)(a) of the Rivers (Prevention of Pollution) Act 1951; or
- (d) section 22(1)(a) of the Rivers (Prevention of Pollution) (Scotland) Act 1951.

1951 c. 64.

1951 c. 66.

1974 c. 40.

(6) On the coming into force of section 31 of the Control of Pollution Act 1974, subsection (5) above shall have effect as if the following paragraph were substituted for paragraph (c):—

“(c) section 31(1)(a) of the Control of Pollution Act 1974”.

SECTION II

DERIVATIONS TABLE RE:

CONTROL OF POLLUTION ACT 1974 - PART II

CONTROL OF POLLUTION ACT 1974

SECTION	PREVIOUSLY REPEALED	SECTIONS NOT YET IN FORCE	TO BE REPEALED BY WATER ACT 1989	REPLACED BY	AMENDED BY	COMMENTS
1		Y				
2					Sch 25 (48) 1	
3					Sch 25 (48) 2	
4			4(4)			
5					Sch 25 (48) 3	
6						
7						
8						
9						
10						
11					Sch 25 (48) 4	
12						
13						
14					Sch 25 (48) 5	
15						

SECTION	PREVIOUSLY REPEALED	SECTIONS NOT YET IN FORCE	TO BE REPEALED BY WATER ACT 1989	REPLACED BY	AMENDED BY	COMMENTS
16						
17						
18						
19						
20						
21						
22						
23						
24	Y					
25						
26			Y	Sched 19(1) & S.155		
27						
28					Sch 25 (48) 6	
29						
30						
31			Y	107, 108		

SECTION	PREVIOUSLY REPEALED	SECTIONS NOT YET IN FORCE	TO BE REPEALED BY WATER ACT 1989	REPLACED BY	AMENDED BY	COMMENTS
32			Y	107, 108		
33		Y	Y	114		
34		34(3)	Y	113, Sch 12		
35			Y	113, Sch 12(4)		
36			Y	113, Sch 12(1)		
37			Y	113, Sch 12(6)		
38		38(3)(4)(3)	Y	113, Sch 12(7)		
39		39(3)	Y	113, Sch 12(8)		
40			Y	Sch 27, 190		
41			Y	117		
42			Y	103, Sch 12(1) 7		
43					Sch 27	
44			44(2) and (4)			
45		Y				
46		46(1)-(3)	Y	115		
47		Y	Y			

SECTION	PREVIOUSLY REPEALED	SECTIONS NOT YET IN FORCE	TO BE REPEALED BY WATER ACT 1989	REPLACED BY	AMENDED BY	COMMENTS
48		Y	Y			
49			Y	109		
50			Y			
51			Y	110		Also see 111, 112
52		Y	Y	113 & Sch 12(9)		
53		Y	Y			
54			Y	113(4)		
55			Y	113(2)		
56			Y	124		
85						
86			Y			
87						
88						
89						
90			90(1)	189(7)	Sch 27 Sch 25 (48) 9	
91						

SECTION	PREVIOUSLY REPEALED	SECTIONS NOT YET IN FORCE	TO BE REPEALED BY WATER ACT 1989	REPLACED BY	AMENDED BY	COMMENTS
92						
93						
94						
95					Sch 25 (48) 10	
96					Sch 27	
97						
98					Sch 27 Sch 25 (48) 11	
99						
100						
101						
102						
103						
104					Sch 27	
105						
106						
107						

SECTION	PREVIOUSLY REPEALED	SECTIONS NOT YET IN FORCE	TO BE REPEALED BY WATER ACT 1989	REPLACED BY	AMENDED BY	COMMENTS
108						
109						
Sched 1						
Sched 2			Para 3. Para 15 (not on transfer date)			
Sched 3			Paras 28, 21, 27-30			
Sched 4						

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SECTION III

THE LAW OF THE NRA - CHAPTER 3

(WILLIAM HOWARTH)

CHAPTER 3 CONTROL OF POLLUTION

Part III Chapter I Water Act 1989

3.01 Introduction

Amongst the most environmentally significant duties of water authorities which have been transferred to the Authority is the responsibility for control of water pollution, previously provided for under Part II of the Control of Pollution Act 1974. In relation to England and Wales, the Water Act 1989 replaces Part II of the 1974 Act with new provisions governing the protection and management of rivers and other waters. The new provisions, under Chapter I of Part III of the 1989 Act (ss.103 to 124), are significantly different from those previously operative and involve a strengthening of water pollution regulation in several important respects. Most notably, provision is made for the classification of water quality to be placed on a statutory footing (under ss.104 to 106), and for a range of precautionary measures to prevent pollution, including the facility for designation of water protection zones and nitrate sensitive areas (under ss.111 to 113).

Transitional Provisions on Water Pollution

Transitional provisions allow for certain incidental matters relating to water pollution, previously provided for under Part II of the Control of Pollution Act 1974, to continue in force as if provided for under the corresponding sections of the 1989 Act. Accordingly, any subordinate legislation in force, applications made, consents given, certificates issued or other things done under Part II of the 1974 Act, will continue to have effect after the transfer date for the purposes of the corresponding provisions of Chapter I of Part III of the 1989 Act. Similarly, subordinate legislation, applications, consents and other things done by a water authority will, after the transfer date, have effect as if done by the Authority (Sch.26 para.21(1)).

3.02 Controlled Waters (s.103)

Previously, under Part II of the Control of Pollution Act 1974, controls upon the entry of polluting matter and effluents into water applied in relation to "relevant waters". These were defined to include any "stream", "controlled waters" or "specified underground water" (previously defined under ss.31(1) and 56(1)

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Control of Pollution Act 1974). Under the 1989 Act these categories have been replaced by waters which are collectively referred to as "controlled waters", a term encompassing four subcategories of water, "relevant territorial waters", "coastal waters", "inland waters" and "ground waters" (s.103(1)). These expressions are defined in the following manner.

Relevant Territorial Waters

"Relevant territorial waters" means waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to England and Wales is measured (s.103(1)(a)). This definition is subject to the power of the Secretary of State to provide by order that any particular area of territorial sea adjacent to England and Wales is to be treated as if it were an area of relevant territorial waters (s.103(5)(a)).

Coastal Waters

"Coastal waters" means waters which are within the area which extends landward from the baselines of the territorial sea as far as the limit of the highest tide or, in the case of the waters of any relevant river or watercourse, as far as the fresh-water limit of the river or watercourse, together with the waters of any enclosed dock which adjoins waters within that area (s.103(1)(b)). Within this definition "watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except mains and other pipes which belong to the Authority or a water undertaker or are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises (s.189(1)). "Relevant river or watercourse" means any river or watercourse, including an underground river and an artificial river or watercourse, which is neither a public sewer nor a sewer or drain which drains into a public sewer (s.103(4)). The Secretary of State is empowered to provide by order that a watercourse of a specified description is to be treated for these purposes as if it were not a relevant river or watercourse (s.103(5)(d)).

Inland Waters

"Inland waters" means the waters of any relevant lake or pond or of so much of any relevant river or watercourse as is above the fresh-water limit (s.103(1)(c)). "Lake or pond" is stated to include a reservoir of any description (s.103(4)). "Relevant lake or pond" means any lake or pond which, whether it is natural or artificial or

above or below ground, discharges into a relevant river or watercourse or into another lake or pond which is itself a relevant lake or pond (s.103(4)).

The Secretary of State is empowered to provide by order that any lake or pond which does not discharge into a relevant river or watercourse or into a relevant lake or pond is to be treated as a relevant lake or pond, or to be treated as if it were not a relevant lake or pond as the case may be (s.103(5)(b) and (c)). In exercise of this power the Controlled Waters (Lakes and Ponds) Order 1989 (SI 1989 No.1149) has been made. This Order states that reservoirs which do not discharge into a relevant river or watercourse or a relevant lake or pond are to be treated as a relevant lake or pond unless they contain water which had been treated with a view to complying with regulation 23 of the Water Supply (Water Quality) Regulations 1989 (SI 1989 No.1147).

Ground Waters

"Ground waters" are defined as any waters which are contained in underground strata, or in a well, borehole or similar work sunk into underground strata, including any adit or passage constructed in connection with the well, borehole or work for facilitating the collection of water, or any excavation into underground strata where the level of water in the excavation depends wholly or mainly on water entering it from the strata (s.103(1)(d)).

The Fresh-water Limit

The key distinction between coastal waters and inland waters is drawn, in the case of relevant rivers or watercourses, at the fresh-water limit of the waters concerned. For the purpose of determining the fresh-water limit of these waters the Secretary of State is to deposit maps with the Authority showing what appear to him to be the fresh-water limits of every relevant river or watercourse (s.103(2)(a)). He may also, by reason of any change in the fresh-water limit, deposit a map showing a revised limit for the river or watercourse concerned (s.103(2)(b)). Hence, in each case the "fresh-water limit" means the place shown as that limit in the latest map deposited with the Authority for these purposes (s.103(2)). In relation to the definitive maps showing fresh-water limits it is the duty of the Authority to keep any maps deposited with it available, at all reasonable times, for inspection by the public free of charge (s.103(3)).

3.03 Classification of Quality of Waters (s.104)

A significant change in the legal strategy for the maintenance and improvement of water quality introduced under the 1989 Act lies in the enactment of statutory provisions facilitating the classification of quality of waters. It has long been recognised that purposeful management of water resources involves, first, a determination of the objective for which a particular source is to be used and, second, an associated standard of purity acceptable for waters designated for that objective. Accordingly waters designated for potable supply will have to meet a more stringent set of quality parameters than waters intended for industrial purposes, and the strictness of discharge consents into differently designated receiving waters will normally reflect these factors. This general approach to water quality planning was formulated in the report of the National Water Council in 1978, *River Water Quality, the Next Stage. Review of Consent Conditions*, and reaffirmed by adoption in the Department of the Environment's survey *Water Quality in England and Wales 1985* in 1986. The innovation brought about by the Act is to place a relatively well-established administrative practice upon a statutory footing.

Quality Classification Regulations

The new provisions authorise the Secretary of State to make regulations prescribing a system of classifying the quality of controlled waters (s.104(1)). The criteria specified in these regulations are general requirements as to the purposes for which the waters are to be suitable (s.104(2)(a)), specific requirements as to the substances that are to be present in or absent from the water and their concentrations (s.104(2)(b)), and specific requirements as to other characteristics of those waters (s.104(2)(c)). The question whether prescribed requirements are satisfied is determined by reference to prescribed samples (s.104(2)).

In accordance with the Secretary of State's power to make regulations prescribing a system of classifying the quality of inland waters the Surface Waters (Classification) Regulations 1989 (SI 1989 No.1148) have been made. These Regulations classify waters according to their suitability for abstraction by water undertakers for supply, after treatment, as drinking water. Specifically the Regulations provide for classifications DW1, DW2 and DW3, reflecting the mandatory values assigned by the European Community Directive concerned with the quality of drinking water (75/440/EEC). The classifications will also be relevant for the purpose of establishing water quality objectives

for certain controlled waters (under s.105) in the manner described below.

3.04 Water Quality Objectives (s.105)

For the purpose of maintaining and improving the quality of controlled waters the Secretary of State may serve a notice upon the Authority. A notice of this kind may establish the water quality objectives for any particular waters under the water quality classification system. Hence the Secretary of State may specify, for any controlled waters, one or more of the classifications, and a date at which the water quality objective is established (s.105(1)). The achievement of the water quality objectives specified for any waters amounts to the satisfaction of the corresponding requirements under the water quality classification system (s.105(2)).

Review of Quality Objectives

Water quality objectives for particular waters may be reviewed by the Secretary of State five years after service of the last notice establishing objectives or specifying that objectives are to remain unchanged. Alternatively the Authority may instigate a review if, after consultation with appropriate water undertakers and other persons, it requests a review. The Secretary of State may only exercise his power to establish objectives by varying the existing objectives as a consequence of a review of this kind (s.105(3)).

Where the Secretary of State intends to exercise his power to establish or vary the objectives for any waters he is obliged, first, to publish a notice setting out his proposal and specifying a period, of at least three months from the date of publication, during which representations or objections may be made. Second, he must consider any representations or objections which are duly made and not withdrawn. If he decides to establish or vary the objectives he may do so either in accordance with the original proposal or with that proposal modified in a manner he considers appropriate (s.105(4)). The notice must be published so as to bring it to the attention of persons likely to be affected by it, and a copy of the notice must be served on the Authority (s.105(5)). If, the Secretary of State decides that the quality objectives for any water should remain unchanged he is to serve notice of that decision on the Authority (s.105(6)).

3.05 General Duties to Achieve and Maintain Objectives (s.106)

The system of water quality classification and the mechanism

for the specification of water quality objectives is intended to control and remedy pollution of waters. This system of classification, together with other powers and obligations in relation to water pollution, forms the basis of the important general duty of the Secretary of State and the Authority to exercise their water pollution control powers to ensure, so far as it is practicable, that the water quality objectives specified for any waters are achieved at all times (s.106(1)). Associated with this is the duty imposed upon the Authority, for the purpose of its pollution control functions, to monitor the extent of pollution in controlled waters and to consult, in appropriate cases, with river purification authorities in Scotland (s.106(2)).

European Community Directives

The combination of powers and duties of the Secretary of State and the Authority provide the legal mechanism for implementation of a range of European Community Directives concerning water quality. The Community has enacted a range of Directives concerned with the water environment, including directives relating to dangerous substances discharged into the aquatic environment (76/464/EEC), the quality of bathing water (76/160/EEC), and the quality of fresh waters to support fish life (78/659/EEC). In each case the Government is placed under an obligation to ensure that specified or designated waters are maintained in accordance with appropriate quality parameters. The effect of the new provisions under the Act is that the obligation to implement Community Directives on water quality can be realised by legal means rather than, as previously, as a matter of administrative direction.

3.06 Offences of Polluting Controlled Waters (s.107)

Previously the main offences relating to the pollution of waters were to be found in two sections of the Control of Pollution Act 1974 dealing with the general control of pollution of rivers and coastal waters, and the control of discharges of trade and sewage effluent into rivers and coastal waters (ss.31 and 32 Control of Pollution Act 1974, repealed). Under the 1989 Act similarly formulated offences are grouped together under one section containing the main offences of polluting controlled waters (s.107). Subject to changes brought about as a consequence of this regrouping and redefinition of the waters concerned (under s.103, discussed above), the offences follow a similar pattern to that previously provided for.

The Key Offences

The key offences concerning pollution of controlled waters are committed where a person causes or knowingly permits the pollution of water in particular circumstances. Specifically it is an offence to cause or knowingly permit, first, any poisonous, noxious or polluting matter or solid waste matter to enter any controlled waters (s.107(1)(a)); second, matter, other than trade effluent or sewage effluent, to enter controlled waters by being discharged from a drain or sewer in contravention of a relevant prohibition (s.107(1)(b)); third, trade effluent or sewage effluent to be discharged into controlled waters, or from land in England and Wales, through a pipe, into the sea outside the seaward limits of controlled waters (s.107(1)(c)); fourth, trade effluent or sewage effluent to be discharged, in contravention of a relevant prohibition, from a building or from fixed plant on to or into land or waters of a lake or pond which are not inland waters (s.107(1)(d)); and, finally, any matter whatever to enter inland waters so as to tend, (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes, or the consequences of such pollution (s.107(1)(e)). These offences are subject to the various authorisations and defences, considered later, by which an otherwise unlawful emission into the aquatic environment may be permitted.

Sewage and Trade Effluent

For the purposes of general interpretation, "sewage effluent" includes any effluent from the sewage disposal or sewerage works of a sewerage undertaker but does not include surface water (s.124(1)). "Trade effluent" includes any effluent which is discharged from premises used for carrying on any trade or industry, other than surface water and domestic sewage (s.124(1)). For the purposes of the latter definition, however, any premises wholly or mainly used, whether for profit or not, for agricultural purposes or for the purposes of fish farming or for scientific research or experiment are deemed to be premises used for carrying on a trade (s.124(3)).

"Cause or Knowingly Permit"

The use of the phrase "cause or knowingly permit", as an ingredient of the main offences of pollution of controlled waters,

involves the retention of words which were given judicial consideration on a number of occasions under previous legislation (s.2 Rivers Pollution Prevention Act 1876, s.2(1) Rivers (Prevention of Pollution) Act 1951, and s.31(1) Control of Pollution Act 1974, repealed). Notably the phrase contemplates two distinct things: causing, which involves an active operation which results in pollution, and knowingly permitting, which involves a failure to prevent pollution accompanied by knowledge.

The meaning of "cause" in this context has been considered a number of times in the past. In the leading decision of the House of Lords in *Alphacell Ltd. v Woodward* ([1972] 2 All ER 475), it was held that "cause" does not require an intention to pollute waters or negligence to be shown, and this remains good law. It has been established, however, that an offence will not be committed where the behaviour of the accused is "passive" (*Price v Cromack* [1975] 2 All ER 113). Similarly causation will be lacking where it is shown that there was a distinct and independent cause of the pollution apart from the activities of the accused, as where pollution was caused by the malicious act of a trespasser (*Impress (Worcester) Ltd. v Rees* [1971] 2 All ER 357). In a recent decision the same conclusion was reached in relation to the activities of an independent contractor delivering diesel fuel oil to premises. It was held that the owner of the premises had not caused pollution which arose through a spillage which was due to the act of the delivery driver (*Welsh Water Authority v Williams Motors (Cwmdu) Ltd.* unreported, Queen's Bench Division, 7 November 1988).

Contravention of a Relevant Prohibition

The new provisions incorporate certain departures from the previous formulations of water pollution offences (contrast s.32(1) Control of Pollution Act 1974, repealed) concerned with matter other than trade or sewage effluent being discharged from a drain or sewer (under s.107(1)(b)), and concerned with discharges of trade or sewage effluent (under s.107(1)(d)), which are stated to be committed only where there has been "contravention of a relevant prohibition" (see also ss.108(6) and 116(2)). This is a reference to the power of the Authority to restrict the making of certain discharges by giving notice to the discharger.

Specifically, contravention of a relevant prohibition occurs if the Authority has given notice prohibiting a discharger from making or continuing a discharge (s.107(2)(a)), or a notice prohibits the making or continuing of the discharge unless specified conditions are observed and those conditions are not observed

{s.107(2)(b)}. Alternatively, contravention of a relevant prohibition may arise where the effluent or matter discharged contains a prescribed substance or a prescribed concentration of a substance, or derives from a prescribed process or from a process involving the use of prescribed substances or the use of substances in quantities which exceed prescribed amounts {s.107(2)(c)}. In no case, however, may notices issued by the Authority imposing relevant prohibitions or regulations concerned with prescribed substances require a discharge from a vessel to be treated as a discharge in contravention of a relevant prohibition {s.107(2)}.

Discharges by Sewerage Undertakers

In relation to the offences of discharging trade or sewage effluent into controlled waters or from land into the sea outside controlled waters {under s.107(1)(c)}, or in contravention of a relevant prohibition {under s.107(1)(d)}, a special stipulation applies to the activities of sewerage undertakers. Where sewage effluent is discharged from any sewer or works vested in a sewerage undertaker, and the undertaker did not cause or knowingly permit the discharge but was bound to receive the matter included in the discharge, the undertaker is deemed to have caused the discharge {s.107(5); contrast s.32(2) Control of Pollution Act 1974, repealed}. In effect, therefore, sewerage undertakers will be strictly liable in relation to pollution caused by discharges of inadequately treated effluent of a kind which they are bound to receive into a sewer or works either unconditionally or subject to conditions which were observed.

Penalties

Apart for a small increase in relation to the offence of allowing solid waste matter to enter waters, the penalties provided for in relation to the offences of polluting controlled waters, or the contravention of any conditions of a discharge consent, discussed below, are retained at the same levels provided for under the 1974 Act {previously, ss.31(7) and 32(7) Control of Pollution Act 1974}. The penalties allow for a person found guilty of an offence to become liable, on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, presently £2,000, or to both {s.107(6)(a)}. On conviction on indictment, the corresponding penalties are imprisonment for a term not exceeding two years or to a fine of unlimited amount or both {s.107(6)(b)}.

3.07 Authority for Discharges and other Defences (s.108)

As under the Control of Pollution Act 1974, the offences of polluting controlled waters are subject to the defence that no offence will be committed where the entry of matter or discharge is in accordance with any act or omission which conforms with specified provisions permitting the entry or discharge. Five matters serve to authorise what would otherwise amount to an offence. These are, first, a discharge consent provided under the provision of the Water Act 1989 concerned with the control of pollution or under the corresponding provision of Part II of the Control of Pollution Act 1974 (s.108(1)(a)); second, a disposal licence granted in accordance with Part I of the Control of Pollution Act 1974 in relation to matter other than matter discharged from drains or sewers or trade or sewage effluent (s.108(1)(b)); third, a licence granted under Part II of the Food and Environment Protection Act 1985 authorising the deposit of waste at sea and related matters (s.108(1)(c)); fourth, any local statutory provision or statutory order which expressly confers power to discharge effluent into water (s.108(1)(d)); or, finally, any prescribed enactment (s.108(1)(e)).

Removal of the Good Agricultural Practice Defence

A notable point of contrast between the new defences and previous provisions arising under the 1974 Act is the removal of the defence that an entry of polluting matter was attributable to an act or omission which was in accordance with *good agricultural practice* (formerly, s.31(2)(c) Control of Pollution Act 1974). This is because separate provision is made under the 1989 Act to revise the legal status of codes of agricultural practice (under s.116). Accordingly it will no longer be a defence for a person to show that the entry of polluting matter was in accordance with good agricultural practice.

The Emergency Exception

A person is not guilty of an offence of polluting controlled waters in respect of an entry of any matter or discharge into waters in respect of certain kinds of emergency. Specifically this exception arises where the entry of matter, or discharge, is caused or permitted in order to avoid danger to life or health (s.108(2)(a)). Previously the emergency exception was only available in circumstances where there was a "danger to the public" (previously s.31(2)(d) Control of Pollution Act 1974). It is not clear whether a broadening of the scope of an emergency to encompass hazard

to the life or health of non-humans is intended by the new form of words. The emergency exception will only be available where the all reasonably practicable steps are taken for minimising the extent of the entry or discharge and its polluting effects (s.108(2)(b)), and particulars of the matter are furnished to the Authority as soon as reasonably practicable after it occurs (s.108(2)(c)).

Other Exceptions

Other exceptions are provided for so that no offence of polluting waters is committed by reason of causing or permitting any discharge of trade or sewage effluent from a vessel (s.108(3), formerly s.32(4)(a) Control of Pollution Act 1974), or by reason of permitting water from an abandoned mine to enter controlled waters (s.108(4), formerly s.31(2) Control of Pollution Act 1974). An exception is also provided for in relation to the deposit of solid refuse of a mine or quarry (defined under the Mines and Quarries Act 1954; s.124(1)) on any land so that it falls or is carried into inland waters. This exception arises if the deposit was with the consent of the Authority, no other site for the deposit was reasonably practicable and all reasonably practicable steps were taken to prevent entry (s.108(5), formerly s.31(3) Control of Pollution Act 1974).

Highway Drains and Discharges by Sewerage Undertakers

Where a highway authority or other person is entitled to keep open a drain (under s.100 of the Highways Act 1980), no offence of polluting controlled waters will be committed by reason of causing or permitting a discharge to be made from the drain unless the discharge is made in contravention of a "relevant prohibition", as described above (s.108(6), formerly s.32(1)(c) Control of Pollution Act 1974). No offence of contravening the conditions of discharge consent will be committed by a sewerage undertaker if the contravention is essentially without fault on his part. That is to say that three factors are present, first, the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works; second, the undertaker was either not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and, third, the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works (s.108(7), formerly s.32(5) Control of Pollution Act 1974). The counterpart of this is that a person is not guilty of an offence of polluting waters which he caused or

permitted to be made into a sewer or works vested in a sewerage undertaker if the undertaker was bound to receive the discharge either unconditionally or subject to conditions which were not observed (s.108(8), previously s.32(5) Control of Pollution Act 1974).

3.08 Deposits and Vegetation in Rivers (s.109)

In addition to the main water pollution offences under the 1989 Act (under s.107), separate offences are provided for in relation to unauthorised deposits and the disposal of vegetable matter in rivers. An offence is committed if, without the consent of the Authority, a person removes from any part of the bottom, channel or bed of any inland waters a deposit accumulated by reason of any dam, weir or sluice holding back the waters, and does so by causing the deposit to be carried away in suspension in the waters (s.109(1), previously s.49(1)(a) Control of Pollution Act 1974). Also it is an offence if, without consent, a person causes or permits a substantial amount of vegetation to be cut or uprooted in any inland waters, or to be cut or uprooted so near to those waters that it falls into them, and fails to take all reasonable steps to remove the vegetation (s.109(2), formerly s.49(1)(b) Control of Pollution Act 1974).

Consent of the Authority

Previously it was provided that consent was not to be "unreasonably withheld" for the purpose of authorising deposits and vegetation in rivers (s.49(1) Control of Pollution Act 1974, repealed). This has been removed in the new formulation of the offence, and a new stipulation added that in giving a consent the Authority may make the consent subject to such conditions as it considers appropriate (s.109(5)). The impression conveyed is that a tightening of controls upon pollution arising through deposits and vegetation is envisaged. The Secretary of State may provide by regulations that any reference to inland waters may be construed as including a reference to prescribed coastal waters (s.109(6), formerly s.49(3) Control of Pollution Act 1974). Exceptions to the offence relating to deposits in rivers are provided for in that the offence is not to apply to anything done in the exercise of any power conferred by or under any enactment relating to land drainage, flood prevention or navigation (s.109(4), previously s.49(2) Control of Pollution Act 1974). As under the 1974 Act, the maximum penalty for the offences relating to deposits and vegetation in rivers is, on summary conviction, a fine not exceeding level four on the standard scale, presently £1,000 (s.109(3), formerly s.49(1) Control of Pollution Act 1974).

3.09 Requirements to take Precautions against Pollution (s.110)

Provision existed under the Control of Pollution Act 1974 for regulations to be made as to the precautions to be taken by any person having the custody or control of any poisonous, noxious or polluting matter for the purpose of preventing the matter from entering waters (s.31(4) Control of Pollution Act 1974, repealed). No use was ever made of this power by the Secretary of State; however, and precautionary regulations were never introduced. A corresponding power to make regulations is incorporated into the 1989 Act, but the indications are that regulations are to be made under this provision. It has been suggested that the sorts of restriction which might be introduced might apply to the location, construction and storage facilities of potentially polluting substances. More particularly, an initial suggestion was that "this might include provision for adequate bunding, or an impermeable base, for such substances as fuel, oil, liquid and solid chemicals and biocides" (*The Water Environment: The Next Steps*, DoE consultation paper (1986) para.5.7). Later indications are that precautionary restrictions will extend to agricultural contexts including the construction of new or extended silage or slurry facilities as well as industrial storage facilities (*Observations by the Government on the Third Report of the (Environment) Committee (1988) para.3.11*).

Precautionary Regulations

The enhanced provision for precautionary measures to prevent water pollution under the 1989 Act allows the Secretary of State to make regulations providing for preventative measures in relation to water pollution. Specifically, he is empowered to prohibit a person from having custody or control of any poisonous, noxious or polluting matter unless prescribed works and precautions and other steps have been taken for the purpose of preventing or controlling the entry of the matter into any controlled waters (s.110(1)(a)). In addition, he may make regulations requiring a person who already has custody or control of, or makes use of, poisonous, noxious or polluting matter to carry out works and take precautions for the same purpose (s.110(1)(b)).

Certain matters are explicitly provided for in relation to the power of the Secretary of State to make precautionary regulations. Regulations may confer power on the Authority to determine the circumstances in which a person is required to carry out works or take precautions or other steps, and to specify the works, precautions or other steps which are required to be undertaken (s.110(2)(a)). Another matter which may be provided

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for in precautionary regulations is a facility for appeals to the Secretary of State against notices served by the Authority in pursuance of its power to determine preventative measures (s.110(2)(b)). The regulations may also provide that contravention of precautionary requirements is to be an offence the maximum penalty for which is not to exceed the penalties provided for in relation to the offences of polluting controlled waters described above (s.110(2)(c)).

3.10 Water Protection Zones (s.111 and Sch.7)

Provision existed under the Control of Pollution Act 1974 for the Secretary of State to make regulations designating an area in which activities likely to result in the pollution of waters could be prohibited or restricted with a view to preventing poisonous, noxious or polluting matter from entering waters (s.31(5) Control of Pollution Act 1974, repealed). This power to regulate specified activities in designated areas for the purpose of water pollution prevention was recognised to be a useful one, particularly for the protection of sensitive water resources such as underground water used for abstraction (*The Water Environment: The Next Steps*, DoE consultation paper (1986) para.5.7). The power has been preserved under the 1989 Act with modifications to allow for the involvement of the Authority in the operation of water protection zones.

The Designating Minister

Under the Act the designation of a water protection zone is made by the Secretary of State in consultation with the Minister in the case of an area wholly or partly in England. Designation is provided for where it is appropriate, with a view to preventing or controlling the entry of any poisonous, noxious or polluting matter into controlled waters, to prohibit or restrict the carrying on of activities which are likely to result in the pollution of those waters. In those circumstances the effect of designation is to enable the prohibition or restriction in the designated area of activities specified or described in the order (s.111(1)).

Provisions Under a Designation Order

Without prejudice to the generality of the Secretary of State's power to designate water protection zones, a number of particular matters may be provided for in an order designating a zone. Specifically, a designation order may confer power on the Authority to determine the circumstances in which an activity is prohibited or restricted and to determine the activities to which a

prohibition applies (s.111(2)(a)). Notably, this contrasts with previous provisions which left the Secretary of State to determine what activities were to be prohibited (s.31(5)(b) Control of Pollution Act 1974, repealed). Alternatively, an order may apply a prohibition or restriction in respect of any activities which are carried on without the consent of the Authority or in contravention of any conditions subject to which consent is given (s.111(2)(c)). An order may also provide that contravention of a prohibition or restriction or of a condition of a consent, is to be an offence the maximum penalty for which is not to exceed those provided for in relation to the offences of polluting controlled waters, described above (s.111(2)(c)).

Determinations by the Authority

Anything falling to be determined by the Authority under a water protection zone designation order may be determined in accordance with a procedure and by reference to matters and the opinion of persons specified in the order (s.111(2)(d)). This is subject, however, to the power of the the Secretary of State to make separate provision by regulations with respect to applications, conditions, and revocation or variation of consents, and appeals against the determination of any application. Provision may also be made for the exercise by the Secretary of State of any power conferred on the Authority along with administrative matters including the imposition of charges for applications and consents, and the power to require registration of an application or consent (s.111(4)).

Publicity, Objections and Confirmation

The detailed procedural matters relating to orders designating water protection zones are set out in Schedule 7 to the Act (effective under s.111(3)). Some differences in procedure are to be discerned in that previously it was envisaged that designation of water protection areas would be made by the Secretary of State (s.31(5) Control of Pollution Act 1974, repealed). Under Schedule 7 it is apparent that initial application for a water protection zone may be made by the Authority, amongst others. Accordingly the Schedule provides that where the Authority applies for an order designating a water protection zone a copy of the order is to be submitted to the Secretary of State and published in the locality of the proposed zone and in the *London Gazette* (Sch.7 para.2(1)). Publication in newspapers in the locality is to state the general effect of the order, a place where the draft may be inspected, and

that any person may object to within a twenty-eight-day period (Sch.11 para.2(2)). The Authority is obliged, at the request of any person, and on payment of a reasonable charge, to furnish a copy of the draft submitted to the Secretary of State (Sch.7 para.3). The Secretary of State may make an order on the same terms as the draft order, or in those terms modified as he may think fit, or he may refuse to make an order (Sch.7 para.4(1)). The Secretary of State may hold a public inquiry before making an order designating a water protection zone (Sch.7 para.5).

3.11 Nitrate Sensitive Areas (s.112 and Sch.11)

In theory it may have been possible to have used the legal device of the water protection zone as a means of tackling the serious problem of nitrate contamination of drinking water supplies as a consequence of application of nitrate fertilisers to land (under s.31(5) Control of Pollution Act 1974, repealed). Nonetheless the problem of nitrate pollution is such a distinctive and formidable one (see DoE *Nitrate in Water* (1986); and DoE *The Nitrate Issue* (1988)) that it has been provided for under a separate provisions of the 1989 Act. For this reason it is explicitly provided that the kinds of entry of poisonous, noxious or polluting matter into controlled waters which may justify the designation of a water protection zone do not include the entry of nitrate into waters as a result of the use of any land for agricultural purposes (s.111(5)). Nitrate pollution is separately provided for by a facility for the designation of nitrate sensitive areas.

Designation of Areas

A nitrate sensitive area may be designated, in order to prevent or control the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes. Designation for these purposes is brought about where it is considered appropriate to do so by the relevant Minister (s.112(1)). "The relevant Minister" for the purposes of an order of this kind is the Secretary of State in relation to an area which is wholly in Wales (s.112(9)(a)), and in relation to land which is wholly in England, or partly in England and partly in Wales, the expression means the Minister and the Secretary of State acting jointly (s.112(9)(b)).

Compensation Agreements

Clearly the creation of a nitrate sensitive area may have far-reaching consequences upon persons making use of the

designated land for agricultural purposes. Consequently provision is made for compensatory agreements to be entered into between the relevant Minister and the owner of the freehold interest in the land, or any person having an interest in the land where the consent of the freeholder has been given. The substance of agreements of this kind is that, in consideration of payments to be made by the relevant Minister, the other party accepts obligations with respect to the management of the land imposed under the agreement (s.112(2)). Beyond the original parties to an agreement, the effect of the agreement will be to bind all persons deriving title from the person originally entering into the agreement with the relevant Minister to the extent of the agreement (s.112(3)).

Ministerial Orders

In addition to compensation agreements, the relevant Minister may make an order in respect of a designated area for the imposition of requirements, prohibitions or restrictions to prevent the entry of nitrate into controlled waters in relation to the carrying on, on agricultural land, of specified activities (s.112(4)(a)). The order may provide for specified or determined amounts of compensation to be paid, if any, in respect of the obligations imposed under the order (s.112(4)(b)).

Alongside the general power to impose restrictions and make payments under an order relating to a nitrate sensitive area more particular powers are specified in relation to orders of this kind. Hence the appropriate Minister may determine the circumstances in which the carrying on of any activity is required, prohibited or restricted and determine the kinds of activity concerned (s.112(5)(a)). Similarly, the Minister may give consent for a requirement not to apply, or to apply only subject to conditions (s.112(5)(b)), or to apply prohibitions or restrictions only where consent is not granted, or where the conditions imposed in a consent are not complied with (s.112(5)(c)). Penalties may be imposed for contravention of restrictions, or breaches of consent conditions, subject to the maximum levels provided for in relation to the offences of polluting controlled waters, described above (s.112(5)(d)).

Procedure for Designation

The detailed procedural provisions relating to the designation of nitrate sensitive areas are set out in Schedule 11 to the Act (effective under s.112(7)). Schedule 11 provides for the relevant

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Minister to make an order designating an area on application by the Authority. During an initial period of six months after the transfer date, however, no application by the Authority is required (Sch.11 para.1). An application by the Authority for an order designating a nitrate sensitive area is not to be made unless pollution is likely to be caused by the entry of nitrate into controlled waters as a result of anything done in connection with the use of the land for agricultural purposes, and existing provisions are not sufficient to prevent or control the entry of nitrate into those waters (Sch.11 para.2(1)). Before making the order, the relevant Minister is to publish a notice with respect to the order in local newspapers and in the *London Gazette*. The notice published in the local newspapers is to state the general effect of the proposed order, a place where the order can be inspected and that any person may object to the order within a period of forty-two days (Sch.11 para.3). A copy of the order is to be furnished to any person on payment of a reasonable charge (Sch.11 para.4). After expiry of the period for objections, the relevant Minister may make the order on the terms proposed, or in a modified form, or he may decide not to make any order (Sch.11 para.5(1)). A public inquiry may be held before deciding whether to make the order or to make it with modifications (Sch.11 para.6).

3.12 Consents and Application to the Authority (s.113)

In practical terms the most important exception to the offences under the 1989 Act concerning the pollution of controlled waters arises where a discharge consent is granted by the Authority (under s.108(1)(a)). In relation to industrial discharges alone there are in the order of 30,000 consented discharges made in England and Wales (Third Report, House of Commons Environment Committee, *Pollution of Rivers and Estuaries* (1987) para.96). Previously consents were granted under the 1974 Act (ss.34 to 39 Control of Pollution Act 1974, repealed), which continue to serve as a defence to the offences under the 1989 Act (s.108(1)(a)). The present measures concerning the grant of discharge consents are contained in Schedule 12 to the 1989 Act (effective under s.113(1)). This is considered in the following sections of this work.

Regulations on Discharges by the Authority

The Secretary of State is empowered to make regulations modifying the provisions of the Act where discharge consents are required by the Authority (s.113(2)). In particular he may

provide for discharge consents required by the Authority to be given, or deemed to be given, by the Secretary of State rather than the Authority itself (s.113(3)).

The power of the Secretary of State to make Regulations has been exercised in the creation of the Control of Pollution (Discharges by the National Rivers Authority) Regulations 1989 (SI 1989 No.1157). These Regulations set out the procedure in relation to applications for consents required by the Authority in respect of discharges of effluent or any other matter. The Regulations modify Schedule 12 to allow for consents to discharges by the Authority to be granted by the Secretary of State rather than the Authority.

Discharge Consents and Other Offences

A discharge consent also serves as an exception to water pollution offences arising under legislation other than the 1989 Act. Specifically, no offence will be committed under s.4 of the Salmon and Freshwater Fisheries Act 1975 or s.68 of the Public Health Act 1875 in respect of entry of matter into controlled waters where this is the subject of a discharge consent (s.113(4)). Section 4 of the Salmon and Freshwater Fisheries Act 1975 provides for an offence of causing or knowingly permitting liquid or solid matter to enter waters containing fish so as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn or food of fish. Section 68 of the Public Health Act 1875 provides for the offence of polluting water by matter produced by persons engaged in the manufacture of gas.

3.13 Discharge Consent Procedures (Sch.12)

Under the Control of Pollution Act 1974 the details of procedures relating to the granting of discharge consents, the conditions to which they may be subject and related matters were set out in the main body of the Act (under ss.34 to 40 Control of Pollution Act 1974, repealed). Under the 1989 Act the corresponding provisions have been grouped together in a separate schedule, Schedule 12 (effective under s.113(1)), along with new provisions providing a mechanism for charges to be imposed in relation to discharge consents.

Regulations on the Functions of the Secretary of State

It may be noted at this point that although applications for discharge consents are normally made to the Authority, various powers are given to the Secretary of State to direct applications

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to be referred to him, to provide exemptions from publicity requirements and to hear appeals from determinations of the Authority. Ancillary provisions governing these matters are set out in the Control of Pollution (Consents for Discharges etc.) (Secretary of State Functions) Regulations 1989 (SI 1989 No.1151).

3.14 Applications for Certain Consents (Sch.12 para.1)

Following the provisions of the 1974 Act (ss.34 and 36 Control of Pollution Act 1974, repealed), Schedule 12 provides that applications for discharge consents are to be made to the Authority and are to be accompanied or supplemented by all reasonably required information (Sch.12 para.1(1)). Where an application is made to the Authority it is to publish notice of the application in successive weeks in a newspaper circulating in the locality of the proposed discharge and in the localities of controlled waters likely to be affected by the discharge (Sch.12 para.1(3)(a)). In addition a copy of the notice is to be published in the *London Gazette* no earlier than the later publication in the local newspapers (Sch.12 para.1(3)(b)). The Authority is entitled to recover the expenses of publication from the applicant (Sch.12 para.1(6)). A copy of the application is to be sent by the Authority to every local authority or water undertaker within whose area the proposed discharge is to occur (Sch.12 para.1(3)(c)). In the case of an application which relates to a discharge into coastal waters outside the seaward limits of relevant territorial waters, a copy is to be served on the Secretary of State and the Minister (Sch.12 para.1(3)(d)). It is the duty of the Authority to consider any written representations or objections which are made during a period of six weeks beginning on the date of publication of the notice in the *London Gazette* and not withdrawn (Sch.12 para.1(5)).

Discharges having "No Appreciable Effect"

The provisions relating to publicity and notification which are imposed upon the Authority on receipt of an application for discharge consent may be disregarded where the Authority proposes to give the consent applied for and considers that the discharge will have "no appreciable effect" on the waters into which it is to be made (Sch.12 para.1(4)). The meaning of the phrase "no appreciable effect", as it arose under the corresponding provision of the 1974 Act (s.36(4) Control of Pollution Act 1974, repealed), was considered in a Department of the Environment Circular where it was suggested that the exemption from publicity on this ground would be available where three criteria are met: first, the

discharge should not affect an area of amenity or environmental significance (a beach, marine nature reserve, shell fishery, fish spawning area, or site of special scientific interest); second, the discharge should not result in a major change in the flow of receiving waters; and, third, taken together with previously consented discharges, the discharge should not result in such a change to water quality as to damage existing or future uses of the waters (whether or not resulting in a change of water quality classification), or alter by 10% or more the concentration in the receiving waters of any substance which is of importance for the quality of the water and the well being of its flora and fauna, e.g. dissolved oxygen, biochemical oxygen demand, suspended solids, ammonia, nitrates, phosphates and dissolved metals (DoE, Departmental Circular No.17/84, *Water and the Environment* (1984) Annex 3 para.3). It is likely that the same factors will continue to be of importance in allowing exemptions of applications from publicity on grounds of "no appreciable effect" under the 1989 Act.

Exemption from Publicity

A person proposing to make an application for discharge consent, or who has made an application, may apply to the Secretary of State for a certificate that the provisions relating to publicity and notification are not to apply in relation to the application. A certificate of this kind may also exclude provisions of the Act requiring information relating to the consent given, samples of effluent taken or information taken from those samples, to be included in public registers kept by the Authority (Sch.12 para.1(7)(a); registers are kept under s.117). Exemption of a discharge application from publicity and the other matters will only be granted where the Secretary of State is satisfied that it would be contrary to the public interest, or would prejudice some private interest to an unreasonable degree by disclosing information about a trade secret (Sch.12 para.1(7)).

3.15 Consents on Applications to the Authority (Sch.12 para.2)

Where an application is made to the Authority for a discharge consent in accordance with the previous provisions the Authority is under a duty to consider whether to give the consent applied for, either unconditionally or subject to conditions, or to refuse it (Sch.12 para.2(1)). A consent will be deemed to have been refused if it is not given within the period of four months beginning with the day on which the application is received or within a longer period agreed in writing between the Authority and the applicant

(Sch.12 para.2(2)). This represents a lengthening of the period after which a consent will be deemed to have been refused which was previously a period of three months (under s.34(2) Control of Pollution Act 1974, repealed).

Conditions in Discharge Consents

The conditions subject to which a consent may be given are stated to be "such conditions as the Authority may think fit" and, in particular, it is explicitly stated that conditions may be included as to the following matters. Conditions may be included, first, as to the places at which the discharges may be made and as to the design and construction of any outlets (Sch.12 para.2(3)(a)); second, as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the periods during which the discharges may be made (Sch.12 para.2(3)(b)); third, as to the steps to be taken, in relation to the discharges or by way of subjecting any substances to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters (Sch.12 para.2(3)(c)); fourth, as to the provision of facilities for taking samples of the matter discharged and as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges (Sch.12 para.2(3)(d)); fifth, as to the provision, maintenance and testing of meters for measuring or recording the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges (Sch.12 para.2(3)(e)); sixth, as to the keeping of records of the nature, origin, composition, temperature, volume and rate of the discharges and records of readings of meters and other recording apparatus provided in accordance with the consent (Sch.12 para.2(3)(f)); and, finally, as to the making of returns and the giving of other information to the Authority about the nature, origin, composition, temperature, volume and rate of the discharges (Sch.12 para.2(3)(g)). A consent may be given subject to different conditions in respect of different periods (Sch.12 para.2(3)), and is not limited to discharges by a particular person and, accordingly, extends to discharges which are made by any person (Sch.12 para.2(4)).

3.16 Notification of Proposal to give Consent (Sch.12 para.3)

Specific provisions apply where the Authority proposes to give a consent in relation to which representations or objections have been made (Sch.12 para.3(1)). In that case it is the duty of the

Authority to serve notice of the proposal to grant consent on every person who made a representation or objection (Sch.12 para.3(2)). These notices are to inform persons who have made representations or objections that they may, within a twenty-one-day period, request the Secretary of State to give a direction that the application is to be transmitted to him for determination (Sch.12 para.3(3)). The Authority is not to give its consent within the twenty-one-day period. If a request is made to the Secretary of State within the period, and notice of the request is served upon the Authority by the person making it, the Authority is not to give its consent unless the Secretary of State has served a notice on the Authority stating that he declines to comply with the request (Sch.12 para.3(4)).

3.17 Reference to the Secretary of State of certain Applications for Consent (Sch.12 para.4)

Following previous provisions (s.35 Control of Pollution Act 1974, repeated), provision is made for certain applications to be referred to the Secretary of State. Hence, either in consequence of representations or objections made to him or otherwise, the Secretary of State may direct the Authority to transmit to him for determination specified kinds of applications for discharge consent (Sch.12 para.4(1)). Where a direction is given to the Authority referring an application for consent to the Secretary of State, the Authority is bound to comply with the direction and inform the applicant of the transmission of the application to the Secretary of State (Sch.12 para.4(2)). In the event of an application being transmitted to the Secretary of State for determination the general provisions relating to publicity and notification in relation to applications (under Sch.12 para.1(3) to (8)) will have effect subject to prescribed modifications (Sch.12 para.4(3)).

Local Inquiries

Where an application is transmitted to the Secretary of State for determination he may cause a local inquiry to be held with respect to the application or afford the applicant and the Authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for that purpose (Sch.12 para.4(4)). This power is to be exercised by the Secretary of State in any case where a request to be heard is made in the prescribed manner by the applicant or the Authority (Sch.12 para.4(5)). In that case an opportunity of being heard is to be afforded to any person who has made representations or

objections to the Secretary of State with respect to the application (Sch.12 para.4(6)). It is then for the Secretary of State to determine the application by directing the Authority to refuse its consent or to grant consent either unconditionally or subject to conditions. The Authority is then bound to comply with any direction given by the Secretary of State (Sch.12 para.4(7)).

3.18 Consents without Applications (Sch.12 para.5)

Again following the 1974 Act (s.34(3) Control of Pollution Act 1974, repealed), the 1989 Act makes provision for discharge consents to be granted without the need for an application to be made. Consents without application may be granted if a person has caused or permitted effluent or other matter to be discharged in contravention of any relevant prohibition prohibiting the discharge (under s.107), or in contravention of obligations in relation to the discharge of trade or sewage effluent into controlled waters or from land into the sea outside the seaward limits of controlled waters (under s.107(1)(c)). Where contraventions of these kinds arise, and a similar contravention is likely, the Authority may serve on the discharger an instrument in writing giving its consent, subject to any specified conditions, for the discharge (Sch.12 para.5(1)). In a case of this kind, however, a consent granted without application is not to relate to any discharge which occurred before the consent was served (Sch.12 para.5(2)). The conditions to which a consent may be subject, (under Sch.12 para.2(3), discussed previously), are to have effect in relation to a consent granted without application in the same way as for consent granted after an application has been made (Sch.12 para.5(3)). Analogous provisions also apply in relation to publicity, so that the fact of the consent having been granted is to be published in local newspapers and the *London Gazette*, and notification of the consent is to be sent to local authorities and, where relevant, the Secretary of State and the Minister, as would an application for consent (Sch.12 para.5(4), contrast publicity of applications under para.1(3)).

3.19 Revocation of Consents and Alteration and Imposition of Conditions (Sch.12 para.6)

The Authority is placed under a duty, analogous to the former duty of water authorities (s.37 Control of Pollution Act 1974, repealed), to review the consents which are granted as a result of applications (under Sch.12 para.2) and consents granted without applications (under Sch.12 para.5) and the conditions to which they are subject

(Sch.12 para.6(1)). Subject to certain restrictions upon the power of the Authority to review consents it may, as a result of review, revoke a consent, or modify the conditions of a consent or make an unconditional consent subject to conditions (Sch.12 para.6(2)). If on review it appears that no discharge has been made in pursuance of a consent during the preceding twelve months the Authority may revoke the consent by a notice served on the owner or occupier of the land from which the discharge would be made in pursuance of the consent (Sch.12 para.6(3)).

Directions from the Secretary of State

The Secretary of State is empowered to direct the Authority to serve a notice revoking the consent or modifying the conditions of the consent, or imposing conditions in the case of an unconditional consent, if it appears appropriate to do so for certain purposes. The purposes are those of enabling the Government to give effect to any Community obligation or international agreement to which the United Kingdom is a party; for the protection of public health or of flora and fauna dependent on an aquatic environment; or in consequence of any representations or objections made to the Secretary of State or otherwise (Sch.12 para.6(3)).

Compensation

In certain circumstances the Authority will be liable to pay compensation in respect of any loss or damage sustained as a result of the Authority's compliance with a direction given by the Secretary of State in relation to the protection of public health or of flora and fauna dependent on an aquatic environment. The liability to pay compensation arises where the Authority, in complying with the direction, does anything which, apart from the direction, would be precluded under restrictions upon powers of variation and revocation of consents (under Sch.12 para.7(1)). In addition, the Authority is liable to pay compensation where it is unable to show that a direction was given in consequence of a change of circumstances which could not reasonably have been foreseen at the beginning of the period to which the restriction relates. Alternatively the liability to pay compensation will arise where the Authority is unable to show the direction to have been given after consideration by the Secretary of State of material information which was not reasonably available to the Authority at the beginning of the period (Sch.12 para.6(5)). For the purposes of the Authority's

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liability to pay compensation, information is material in relation to a consent if it relates to any discharge made or to be made by virtue of the consent, to the interaction of any such discharge with any other discharge, or to the combined effect of the matter discharged and any other matter (Sch.12 para.6(6)).

3.20 Restriction on Variation and Revocation of Consent and Previous Variation (Sch.12 para.7)

Following previous provisions (s.38 Control of Pollution Act 1974, repealed), where consent is given by the Authority for a discharge, either on application or without application, the instrument signifying the consent of the Authority is to specify a period during which no notice of revocation or modification (under Sch.12 para.6(2) or 6(4)(c)) will be served in respect of the consent (Sch.12 para.7(1)). Notices modifying a consent are also to specify a period during which a subsequent notice altering the terms of the consent is not to be served (Sch.12 para.7(2)). The period during which revocation or variation of a consent is precluded, without the consent of the person making the discharge, is stated to be not less than a two-year period beginning with the day on which a consent takes effect or the day on which the notice specifying the period is served (Sch.12 para.7(3)).

The restrictions upon variation and revocation of consent by the Authority do not prevent the Authority serving a notice revoking or modifying a consent which has been given without application (under Sch.12 para.5) in certain circumstances. Variation or revocation of a consent which has been granted without application is permitted if the notice is served in consequence of any representations or objections made to the consent (under Sch.12 para.5(5)), and not more than three months after the beginning of the period during which representations and objections may be made concerning the consent (Sch.12 para.7(4)).

3.21 Appeals (Sch.12 para.8)

Provision is retained for an appeal to the Secretary of State (previously s.39 Control of Pollution Act 1974) where the Authority has made certain kinds of adverse determination in relation to discharge consents other than in pursuance of a direction of the Secretary of State. These are, where the Authority has refused a consent application; given a consent subject to conditions; revoked or modified a consent or made an unconditional consent subject to conditions; specified a period during which variation or revocation of a consent is not to take place; refused a consent

for any deposit of solid refuse of a mine or quarry (under s.108(5)); or refused a consent (under s.109) in relation to deposits and vegetation in rivers (Sch.12 para.8(1)). In any of these cases the person applying for the consent, or whose conduct would be authorised by the consent, may appeal against the decision of the Authority to the Secretary of State (Sch.12 para.8(2)).

On appeal the Secretary of State may give the direction requiring the Authority to give consent, either unconditionally or conditionally, to modify the conditions of a consent or to make an unconditional consent conditional, or to modify the period during which variation or revocation of a consent is not to take place. In the event of the Secretary of State giving a direction that the determination of the Authority should be modified or reversed, the Authority is bound to comply with the direction (Sch.12 para.8(4)).

3.22 Charges in respect of Applications and Consents (Sch.12 para.9)

In line with European Community environmental policy, the Government is committed to the *Polluter Pays* principle, whereby those whose activities make protective or remedial environmental measures necessary should bear the resulting costs. The implementation of this principle is presented as a fair approach which gives actual or potential polluters the incentive to find ways to minimise the harm or damage they cause and to promote responsible practice (DoE consultation paper *The Water Environment: The Next Steps* (1986) para.6.1). Within the sphere of water pollution the implementation of the principle is to be achieved by the introduction of charging, wherever practicable, in relation to the main areas of pollution control.

Previous Powers to Impose Charges

In the past a legal means existed for the imposition of charges by the Authority upon persons causing pollution of controlled waters. Under the Water Act 1973 there were provisions for water authorities to devise charging schemes for services performed, facilities provided and rights made available (ss.30 and 31 Water Act 1973, as amended by s.2(1) Water Charges Act 1976, repealed). Under the Control of Pollution Act 1974 direct provisions was made for the imposition of charges in respect of discharges of trade or sewage effluent (s.52 Control of Pollution Act 1974, repealed). This measure was never implemented, however, and no charging schemes were ever introduced in relation to discharges of effluent into water-

courses, though analogous charges are imposed in relation to discharges into sewers. The new power under the 1989 Act providing for the imposition of charges in relation to direct discharges provides for a range of distinct charges to be imposed in relation to discharge consents.

Charges in Relation to Consents

Where an application is made to the Authority for a consent (under ss.108(1)(a), 5(a) or 109), or the Authority gives a consent (under ss.108(1)(a), 5(a) or 109 or Sch.12 para.5), or a consent is for the time being in force, the Authority may require the payment to it of such charges as may be specified in, or determined under, a charging scheme (Sch.12 para.9(1)). Charges are liable to be paid by the person making the application, or the person authorised to do anything by virtue of the consent and on whom the consent is served, or in the case of consents presently in force, the person who makes a discharge in pursuance of the consent (Sch.12 para.9(2)).

Procedure for Making Charging Schemes

The Authority is not to make a scheme for charging for applications and consents unless its provisions have been approved by the Secretary of State and the consent of the Treasury has been given for approval (Sch.12 para.9(3)). Before submission to the Secretary of State for approval the Authority is to publish a proposed charging scheme, in a manner appropriate to bring it to the attention of persons likely to be affected, specifying a period within which representations or objections may be made to the Secretary of State (Sch.12 para.9(4)). It is then the duty of the Secretary of State, in determining whether or not to approve the scheme or to approve it subject to modifications, to consider any representations or objections made to him and not withdrawn and to have regard to specified matters (Sch.12 para.9(4)). The matters to which he is to have regard are the desirability of ensuring that the amount recovered by the Authority by way of charges under the scheme does not exceed an amount reasonably attributable to the expenses incurred by the Authority in carrying out its functions in relation to consents and discharges into controlled waters (Sch.12 para.9(6)(a)). In addition he is to have regard to the need to ensure that no undue preference is shown, and that there is no undue discrimination, in the fixing of charges by or under the scheme (Sch.12 para.9(6)(b)). It is for the Authority to take appropriate steps to bring a scheme

which is in force to the attention of persons likely to be affected by it (Sch.12 para.918).

3.23 Byelaws for Preventing Pollution of Controlled Waters (s.114)

Two previous powers of water authorities to create byelaws to prevent pollution arising under the Control of Pollution Act 1974 are retained by the Authority under the 1989 Act. These are the power to make byelaws to prohibit or regulate the washing or cleaning of specified things in certain waters (formerly, s.31(6) Control of Pollution Act 1974), and to prohibit and regulate the keeping of vessels provided with sanitary appliances on certain waters (previously, s.33(1) Control of Pollution Act 1974). Although provided for under the 1974 Act, the latter power was one of a number of provisions concerned with the regulation of pollution originating from vessels which were never implemented (ss.33, 47 and 48 Control of Pollution Act 1974, repealed). With the retention of a byelaw-creating power concerning sanitary appliances on vessels, these provisions have been repealed.

Provision is made for the continuation of byelaws concerned with the keeping on streams and other waters of vessels provided with sanitary appliances made under earlier legislation (s.5(1)(c) Rivers (Prevention of Pollution) Act 1951). Accordingly the Rivers (Prevention of Pollution) (Continuation of Byelaws) Order 1989 (SI 1989 No.1378) provides that certain local byelaws on this matter are to continue in operation from the transfer date as if made by the Authority under s.114.

Under the 1989 Act the Authority is empowered to make byelaws to prohibit or regulate the washing or cleaning in any controlled waters of things of a description specified in the byelaws (s.114(1)(a)). In addition byelaws may be made to prohibit or regulate the keeping or use on any controlled waters of vessels of a specified description which are provided with water closets or other prescribed sanitary appliances which permit polluting matter to pass into the water where the vessel is situated (s.114(1)(b) and (3)). In either case a person who contravenes a byelaw is guilty of an offence and liable, on summary conviction, to a fine not exceeding level four on the standard scale, presently £1,000, or a smaller sum specified in the byelaw (s.114(2)).

3.24 Anti-pollution Works and Operations (s.115)

Although there existed under the Control of Pollution Act 1974 certain powers of water authorities to remedy pollution by

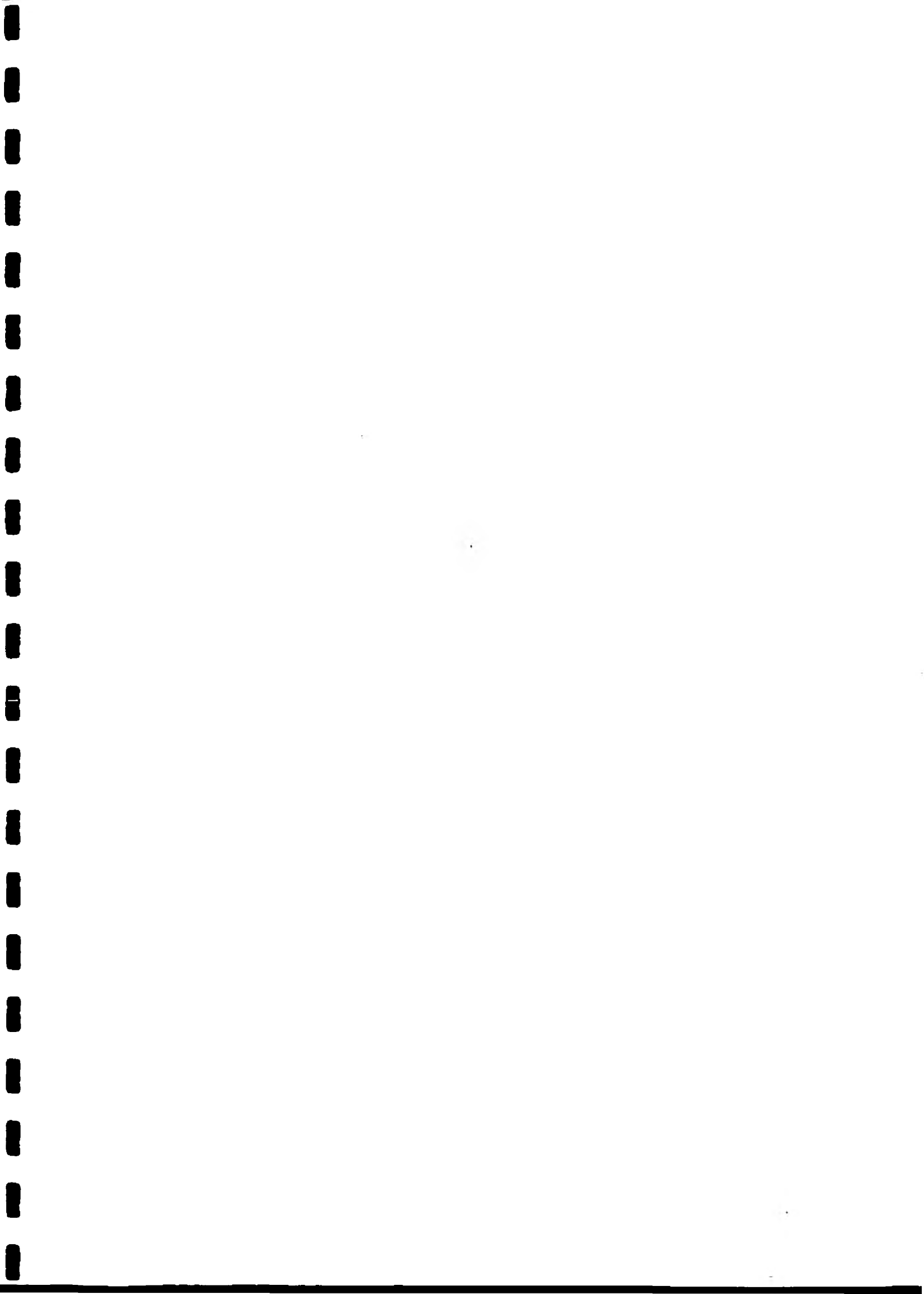
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variation of discharge consents to protect flora and fauna (s.46(1) to (3) Control of Pollution Act 1974, repealed), these provisions were never implemented. Other provisions which allow the Authority to take direct preventative and remedial action in relation to pollution have been re-enacted into the 1989 Act with slight modification (formerly, s.46(4) to (7) Control of Pollution Act 1974). Notably the 1974 Act permitted water authorities to conduct "operations" to prevent and remedy pollution, whilst the 1989 Act has employed the phrase "works or operations" in the same contexts suggesting some extension of the activities which may be undertaken by the Authority in this respect.

Works and Operations

The present position is that where it appears to the Authority that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or to be or to have been present in, any controlled waters, the Authority is entitled to carry out certain works and operations (s.115(1)). In a case where the matter appears likely to enter any controlled waters, works and operations may be carried out for the purpose of preventing it from doing so (s.115(1)(a)). In a case where the matter appears to be, or to have been, present in any controlled waters, works and operations may be conducted for the purpose of removing or disposing of the matter, or remedying or mitigating any pollution caused by its presence in the waters. In so far as reasonably practicable to do so the Authority may also carry out works or operations for the purpose of restoring the waters, including flora and fauna dependent on the aquatic environment, to their state immediately before the matter became present in the waters (s.115(1)(b)). In no case, however, will the Authority be entitled to impede or prevent the making of any discharge in pursuance of a discharge consent (s.115(2)).

Recovery of Expenses

Where works or operations of the kinds provided for are carried out by the Authority it is entitled to recover the expenses reasonably incurred in doing so from any person who caused or knowingly permitted the matter in question to be present at the place from which it was likely to enter the controlled waters, or caused or knowingly permitted the matter to be present in the waters (s.115(3)). By way of exception to this general power to recover expenses, the Authority is not able to recover in respect of waters from an abandoned mine which are permitted to be

present at a place from which they are likely to enter controlled waters, or where they enter controlled waters (s.115(4)).

3.25 Codes of Good Agricultural Practice (s.118)

Amongst the most forcefully criticised provisions under the Control of Pollution Act 1974 was the defence to the offence of causing pollution of water which was available where it was shown that the entry of polluting matter was in accordance with "good agricultural practice" (formerly, s.31(2)(c) Control of Pollution Act 1974). As the objection was put by the House of Commons Environment Committee, "We cannot think of circumstances where pollution of a stream or a river by a farmer could be justifiably excused on the grounds that it accorded with 'good agricultural practice'. The two are mutually exclusive." (House of Commons Environment Committee, Third Report, *Pollution of Rivers and Estuaries* (1987) para.64) Although it was observed that the good agricultural practice defence was rarely pleaded in practice, the Government accepted that a special defence for farmers was not justified and consequently the defence has been repealed under the 1989 Act (see, *Observations of the Government on the Third Report of the (Environment) Committee* (1988) para.3.6).

Promotion of Desirable Practices

Despite the removal of the good agricultural practice defence to water pollution, codes of good agricultural practice are to be retained under the 1989 Act, albeit with a different legal status. The Secretary of State and the Minister, acting jointly, are empowered to make a statutory instrument approving any code of practice for the purpose of giving practical guidance to persons engaged in agriculture with respect to activities that may affect controlled waters, and promoting what appear to them to be desirable practices for avoiding or minimising the pollution of controlled waters (s.118(1)). The Secretary of State and the Minister are not to make an order creating a code of agricultural practice unless they have first consulted the Authority (s.118(3)).

Contravention of a code of agricultural practice is not of itself to give rise to any criminal or civil liability, but the Authority is to take into account whether there has been, or is likely to be, any contravention of this kind in determining when and how it should exercise its powers. Specifically, a contravention of this kind is to be taken into account in relation to the exercise of the Authority's power to impose a "relevant prohibition" prohibiting certain kinds of discharge (under s.107(2)(a) or (b), discussed above), or any

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powers conferred on the Authority by regulations (under s.110, discussed above) requiring precautions to be taken against pollution (s.116(2)).

3.26 Registers (s.117)

The degree of public access to information about the aquatic environment and specifically the records kept by water authorities was, in the past, a matter of some contention. Fortunately, however, it was accepted that the guiding principle formulated by the Royal Commission on Environmental Pollution should apply: "there should be a presumption in favour of unrestricted access for the public to information which the pollution control authorities obtain or receive by virtue of their statutory powers, with the provision for secrecy only in those circumstances where a genuine case for it can be substantiated." (Royal Commission on Environmental Pollution, Tenth Report, *Tackling Pollution—Experiences and Prospects* (1984) para.2.77) As the Government conceded, "secrecy benefits nobody. It cannot be in industry's interests to hide information which does not need to be hidden. The public are bound to think the worst." (DoE, *Public Access to Environmental Information* (1986) para.1.5)

Information to be Kept on Registers

Under the 1974 Act the mechanism by which information about the state of the aquatic environment was made available lay in a duty of water authorities to maintain registers of information which were to be kept open for public inspection (s.41 Control of Pollution Act 1974, repealed). Some changes in the information to be kept in registers has been made as a consequence of the 1989 Act. For example, previously records had to be kept of notices to abstain from certain agricultural practices (under s.51(3)(b) Control of Pollution Act 1974, repealed), and this has become unnecessary as a result of the removal of the good agricultural practice defence (discussed above). Also the introduction of the new powers of the Secretary of State to serve notices specifying the water quality objectives (under s.105(1)) has introduced a new category of information to be retained in the registers. Otherwise the new provisions follow the strategy provided for under the 1974 Act.

Under the 1989 Act it is the duty of the Authority to maintain, in accordance with regulations made by the Secretary of State, registers containing prescribed particulars of certain information relating to water quality and related matters. The Secretary of State has exercised his power to make regulations by creating

the Control of Pollution (Registers) Regulations 1989 (SI 1989 No.1160) prescribing the particulars to be contained in Authority registers.

Specifically the registers are to contain particulars of the following information: any notices concerning water quality objectives and related matters (under s.105, s.117(1)(a)); applications for discharge consents (s.117(1)(b)); discharge consents and the conditions to which they are subject (s.117(1)(c)); certificates granted by the Secretary of State to certify that information relating to certain applications and related matters are not to be disclosed (under Sch.12 para.1(7), s.117(1)(d)); particulars of samples of water or effluent taken by the Authority and information produced by analyses of those samples; information with respect to water samples, and analyses of those samples, taken by any other person and acquired by the Authority; and the steps taken in consequence of information about water samples (s.117(1)(e)).

Availability of Registers

It is the duty of the Authority to secure that the contents of registers are available at all reasonable times for inspection by the public free of charge (s.117(2)(a)). The Authority is also bound to afford members of the public reasonable facilities for obtaining from the Authority, on payment of reasonable charges, copies of entries in any of the registers (s.117(2)(b)).

3.27 Information and Assistance (s.118)

A legal duty is placed upon the Authority to provide advice to the Secretary of State and the Minister. Accordingly, it is for the Authority, if and so far as it is requested to do so, to give advice and assistance where appropriate to facilitate the carrying out by the Secretary of State or the Minister of functions relating to water pollution under the Act (s.118(1)).

Notices Requiring Information to be Provided

A broadly formulated provision in relation to the acquisition of information allows the Secretary of State, the Minister or the Authority to serve on any person a notice requiring that person to furnish the Secretary of State, the Minister or the Authority information which is reasonably required for the purpose of performing control of pollution functions under the Act. In circumstances of this kind the notice may require the information to be provided within a period or at times specified in the notice and in a specified form and manner (s.118(2)). The breadth of the

duty to provide information may be limited, however, in that the Secretary of State or the Minister may make regulations restricting the information which may be required and determining the form in which the information is required (s.118(3)). A person who fails, without reasonable excuse, to comply with the requirements of a notice of this kind is guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale, presently £2,000 (s.118(4)).

3.28 Exchange of Information with respect to Pollution Incidents (s.119)

The Authority is placed under a duty to provide a water undertaker with any information in its possession which is reasonably requested by the undertaker for purposes connected with the carrying out of its functions. Information provided by the Authority in this way is to be furnished in a form and at times reasonably required by the undertaker (s.119(1)). The converse duty requires every water undertaker to provide the Authority with any information in its possession reasonably requested by the Authority for purposes connected with the carrying out of any of its functions. Information furnished to the Authority in this manner is to be provided in a form and in such a manner as it may reasonably require (s.119(2)). In either case, the information provided to a water undertaker or to the Authority is to be given free of charge (s.119(3)).

A limitation upon the provisions made for exchange of information between the parties mentioned concerns the nature of the information at issue. In this respect it is stipulated that the duties relating to exchange of information apply only in relation to information about the quality of any controlled waters or any other waters or about any incident in which any poisonous, noxious or polluting matter or any solid waste matter has entered any controlled waters or other waters (s.119(5)).

3.29 Local Inquiries (s.120)

Formerly provision was made for the Secretary of State to hold a local inquiry in connection with any of the provisions concerning water pollution or with a view to preventing or dealing with pollution (s.96(1) Control of Pollution Act 1974, repealed). Although differently worded, the new formulation of his powers in this respect is similarly extensive. Hence, the Secretary of State may cause a local inquiry to be held for the purposes of the establishment or review of any water quality objectives and other

matters concerned with the control of pollution (s.120(a)), or with a view to preventing or dealing with pollution of any controlled waters (s.120(b)), or in relation to any other matter relevant to the quality of controlled waters (s.120(c)).

3.30 Offences Concerning the Control of Pollution (s.121)

Offences by Corporate Bodies

Two procedural matters are provided for in relation to criminal proceedings brought for water pollution offences in the same manner as under previous legislation (s.87(2) and (3) Control of Pollution Act 1974). The first is the stipulation that, without prejudice to special provision made for offences committed by bodies corporate (under s.177), where the commission of a water pollution offence by a person is due to the act or default of some other person, that other person may be charged and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person (s.121(1)). That is to say, for example, where one person causes the pollution of controlled waters as a consequence of an instruction given by another, it is possible to bring proceedings against the person giving the instruction without proceedings being instigated against the person actually causing the pollution.

Time Limit for Summary Proceedings

The second procedural stipulation is that a magistrates' court may try any summary offence concerning water pollution under the Act, or subordinate legislation, if the information is laid not more than twelve months after the commission of the offence (s.121(2)). This power applies notwithstanding other general provisions concerning the time limit for summary proceedings to be brought (under s.127 Magistrates' Courts Act 1980). It may be noted, however, that this provision will be of limited application since most of the offences provided for in relation to the control of pollution are hybrid offences to which the time limit for summary proceedings would not apply (see *R v Dacorum Magistrates' Court, ex parte Michael Gardiner Ltd.* (1985) 149 JP 677).

3.31 Civil Liability and Savings (s.122)

As under the previous legislation (s.105(2) Control of Pollution Act 1974), nothing in the 1989 Act concerned with the control of pollution confers a right of action in any civil proceedings, other than proceedings for the recovery of a fine, in respect of any

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contravention of the Act or subordinate legislation concerned with the control of pollution, unless expressly provided for within the control of pollution provisions of the Act (s.122(a)). The exception to this general principle is that recovery will be allowed of expenses incurred by the Authority in relation to anti-pollution works and operations (under s.115). Nothing in the Act concerned with the control of pollution derogates from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under the provisions of the Act concerned with the control of pollution (s.122(b)). In the same fashion nothing in the pollution control provisions of the Act affects any restriction imposed by or under any other enactment, whether public, local or private (s.122(c)).

3.32 Application to Radioactive Substances (s.123)

The water pollution provisions of the 1974 Act applied subject to the requirement that they were not to apply to radioactive waste within the Radioactive Substances Act 1960 (ss.56(6) and 30(5) Control of Pollution Act 1974, repealed). The same principle has been retained under the 1989 Act, and except as provided for by regulations made by the Secretary of State, nothing amongst the control of pollution provisions of the Act is to apply to radioactive waste within the meaning of the 1960 Act (s.123(1)). As a counterpart to this, however, the Secretary of State is empowered to make regulations to provide for prescribed provisions to have effect with such modifications as he considers appropriate for dealing with radioactive waste (s.123(2)(a)). In the same vein regulations may modify the 1960 Act, or any other Act in relation to radioactive waste, in consequence of the control of pollution provisions of the Water Act 1989 (s.123(2)(b)).

Regulations on Radioactive Waste

The Secretary of State has exercised his power to make regulations in this respect by creating the Control of Pollution (Radioactive Waste) Regulations 1989 (SI 1989 No.1158). These Regulations have the effect of bringing radioactive waste within the scope of the control of pollution provisions of the Act, but in such a manner that no account will be taken of the radioactive properties of the substance concerned. Consequently radioactive waste will remain subject to control under the Radioactive Substances Act 1960.

SECTION IV

CASES

IMPRESS (WORCESTER) LTD -V- REES	-	FEBRUARY 1971
ALPHACELL LTD -V- WOODWARD	-	MAY 1972
PRICE -V- CROMACK	-	JANUARY 1975
YORKSHIRE WATER AUTHORITY -V- WROTHWELL LTD	-	OCTOBER 1983
NORTH WEST WATER AUTHORITY -V- MCTAY CONSTRUCTION	-	APRIL 1986
SOUTHERN WATER AUTHORITY -V- PEGRUM	-	FEBRUARY 1989
SEVERN TRENT WATER AUTHORITY -V- EXPRESS FOODS	-	OCTOBER 1988

IMPRESS (WORCESTER) LTD -V- REES

Impress (Worcester) Ltd v Rees

QUEEN'S BENCH DIVISION

LORD PARKER CJ, MELFORD STEVENSON AND COOKE JJ

17th, 18th FEBRUARY 1971

Distressed in ALPHACELL v
WOODWARD 1973 2 All ER 473

b **Water and watercourses - Pollution of river - Causing poisonous, noxious or polluting matter to enter river - Causing - Intervening act of third party - Escape of polluting matter caused by act of unauthorised person for purposes unconnected with accused's business - Rivers (Prevention of Pollution) Act 1951, s 2 (1).**

c The appellants kept a fuel oil storage tank in a yard which was open to and visible from the highway. Only one of the two outlets in a retaining wall which enclosed the tank was kept closed, and a gate valve in the bottom of the tank was not locked. The appellants did not employ a night watchman. An unknown person entered the appellants' premises one night and opened the gate valve. Fuel oil escaped through the open outlet in the retaining wall and into a river. The appellants were found guilty under s 2 (1)^a of the Rivers (Prevention of Pollution) Act 1951 of unlawfully causing to enter a stream poisonous, noxious or polluting matter and appealed.

d **Held** - The appeal would be allowed because the appellants had not 'caused' the oil to enter the river: the action of the unauthorised person in operating the valve, for purposes unconnected with the appellants' business, was an intervening cause of so powerful a nature that the conduct of the appellants was not a cause at all but merely part of the surrounding circumstances (see p 358 j to p 359 a, post).

Notes

For prohibition on pollution of streams, see 39 Halsbury's Laws (3rd Edn) 741, 742, para 1081, and for cases on summary proceedings in relation to pollution, see 47 Digest (Repl) 691-692, 408-413.

f For the Rivers (Prevention of Pollution) Act 1951, s 2, see 30 Halsbury's Statutes (2nd Edn) 619.

Case stated

g This was an appeal by way of case stated from a decision of the Worcester justices given on 18th February 1970 convicting the appellants, Impress (Worcester) Ltd on an information laid by the respondent, William Rees. The facts are set out in the judgment of Cooke J.

h M J Turner for the appellants.

M G V Harrison for the respondent.

h **COOKE J** delivered the first judgment at the invitation of Lord Parker CJ. This is an appeal by way of case stated from a decision of justices for the city of Worcester, whereby they convicted the appellants on an information alleging that they, on 16th October 1969, did unlawfully cause to enter a stream, namely the River Severn, poisonous, noxious or polluting matter, contrary to s 2 (1) of the Rivers (Prevention of Pollution) Act 1951. Section 2 (1), so far as material, provides:

... a person commits an offence punishable under this section—(a) if he causes or knowingly permits to enter a stream any poisonous, noxious or polluting matter ...

a Section 2 (1), so far as material, is set out at j above

ALPHACELL LTD -V- WOODWARD

PL DO NOT REMOVE OR DESTROY

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Alphacell Ltd v Woodward

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Alphacell Ltd v Woodward

HOUSE OF LORDS

LORD WILBERFORCE, VISCOUNT DILHORNE, LORD PEARSON, LORD CROSS OF CHELSEA AND LORD SALMON

14th, 15th MARCH, 3rd MAY 1972

Water and watercourses - Pollution of river - Causing poisonous, noxious or polluting matter to enter river - Causing - Overflow of polluted water from tanks by side of river - Tanks and equipment under control of accused - Reasonable care by accused to prevent overflow - No intervening act of third party - Whether escape of polluting matter caused by accused - Rivers (Prevention of Pollution) Act 1951, s 2 (1).

The appellants in the course of their business prepared manilla fibres, a raw material for paper making, at their works on the banks of a river. Part of the process involved washing the fibres. After the washing, the water, which had thereby become polluted, was piped down to two settling tanks on the river bank. In the settling tanks were two pumps, one of which was automatically switched on when the water in the tanks reached a certain level; the other was a stand-by pump which could be switched on manually. The purpose of the pumps was to prevent any overflow into the river. If for some reason the pumps failed to work properly and the tanks did overflow the liquid from them went straight into a channel provided for the purpose which led into the river. The pumps were maintained by a fitter whose job it was to inspect them every weekend. The intake to each pump was protected by a rose which was intended to act as a filter and prevent foreign matter entering the pumps with the water. On one occasion, despite the operation of both pumps, polluted water from the tanks overflowed into the river. It was subsequently found that the roses had proved ineffective, for a quantity of brambles, ferns and long leaves had been sucked through them and had been obstructing the pumps with the result that they had failed to prevent the overflow. The appellants were convicted of causing polluting matter to enter a river contrary to s 2 (1)^a of the Rivers (Prevention of Pollution) Act 1951. The justices made no finding that the appellants knew that the polluted water was flowing into the river or that they were negligent in failing to see that the pumps were operating effectively. On appeal the appellants contended that they had not caused the pollution; and further that, since s 2 (1) did not create an absolute offence, they could not be convicted in the absence of knowledge or negligence on their part.

Held - The appeal would be dismissed for the following reasons—

(i) The appellants had caused the polluted water to enter the river; their positive and deliberate acts in building and operating the settling tanks with an overflow channel leading directly to the river, and in failing to install pumps which provided an effective safeguard, had led directly to the overflow and consequent pollution of the river; there was no evidence of an intervening act of a trespasser or of an act of God which could be said to have caused the overflow (see p 479 e and f, p 481 g to j, p 483 e f and h, p 488 d and e, p 489 g and h, and p 490 c and e, post); *Moses v Midland Railway Co* (1915) 113 LT 451 and *Impress (Worcester) Ltd v Rees* [1971] 2 All ER 357 distinguished.

(ii) Section 2 (1) did not require the prosecution to establish that the appellants had knowingly, intentionally or negligently caused the polluted water to enter the river; the offence created by s 2 (1) was in the nature of a public nuisance and belonged to that class of offences which could not strictly be described as criminal but were rather acts prohibited by statute under a penalty (see p 479 b e and f, p 483 c e and f, p 484 b e and f, p 487 b and d, p 489 b and p 490 j to p 491 a, post); dicta of Wright J

^a Section 2 (1), so far as material, is set out at p 480 c, post

PRICE -V- CROMACK

DO NOT REMOVE

(k) 113

I would only like to add one word on *Dearle v Hall*¹. The court was there concerned with a trust fund where trustees were directly accountable to all persons having an interest in the trust fund, whether original or derivative. The question in issue was the priority as between various assignees of original interests. Although the judgment in that case contains valuable statements of principle which have been followed by Lord Denning MR, the case is not, I think, directly in point on the position of an equitable assignee of the benefit of a contract.

For myself, I see considerable objection to framing an issue in terms of a declaration on the principles of law in a given context without reference to the particular facts of the case. I should have thought it would be better to set out certain assumptions and then ask for the determination of the issue of law by reference to those assumptions. However, if it is considered sufficient to dismiss the appeal, leaving the learned judges' declaration to stand without amendment, I am quite content with that.

Appeal dismissed. Judge's order to stand. Third party proceedings set aside. Leave to appeal to the House of Lords refused.

Solicitors: Dayson, Lyons & Co (for the third and fourth defendants); D M Landsman (for the first and second defendants); Wright & Webb (for the plaintiffs).

M G Hammett Esq Barrister.

Price v Cromack

QUEEN'S BENCH DIVISION

BY MR JUSTICE WIDGERY CJ, ASHWORTH AND MICHAEL DAVIES JJ

JANUARY 21st JANUARY 1975

Land and watercourses - Pollution of river - Causing poisonous, noxious or polluting matter to enter river - Causing - Positive act required - Landowner allowing polluting matter to accumulate on his land - Polluting matter collected in lagoons on land - Crack in walls of lagoon - Polluting matter escaping through crack into nearby river - Whether landowner having caused polluting matter to enter river - Rivers (Prevention of Pollution) Act 1951.

The appellant entered into an agreement to allow effluent created by an industrial company to pass on to his land and be dispersed. The amount of effluent increased and, with the consent of the appellant, two lagoons were built by the company on the appellant's land to contain the effluent. Subsequently a district pollution prevention officer of the river authority found two cracks in the walls of the lagoons which had allowed the effluent to escape into a nearby river. The appellant was convicted of causing poisonous, noxious or polluting matter to enter the river, contrary to s 2(1) of the Rivers (Prevention of Pollution) Act 1951. On appeal.

Held - The offence of causing polluting matter to enter a river required some positive act on the part of the accused and not merely a passive looking on. The effluent had come on to the appellant's land and passed from there into the river by natural forces without any positive act by the appellant. It could not therefore be said that the appellant had caused the polluting matter to enter the river. Accordingly the appeal would be allowed and the conviction quashed (see p 118 c f and p 119 d to f, post).

Price v Cromack Ltd v Woodward [1975] 2 All ER 475 applied.

¹ [1962] 3 All ER 1 (182-34) All ER Rep 28

² Ibid. 2, so far as material, is set out at p 117 c, post.

YORKSHIRE WATER AUTHORITY -V- WROTHWELL LTD

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IN THE HIGH COURT OF JUSTICE

No. CO/347/83

QUEEN'S BENCH DIVISION

(DIVISIONAL COURT)

Royal Courts of Justice.

Wednesday, 26th October, 1983

Before:

LORD JUSTICE WATKINS

and

MR. JUSTICE McCULLOUGH

F.J.H. WROTHWELL LIMITED

-v-

YORKSHIRE WATER AUTHORITY

(Transcript of the Shorthand Notes of Marten Walsh Cherer Ltd., 36-38 Whitefriars Street, London, EC4Y 8BJ. Telephone Number: 01-583 7635. Shorthand Writers to the Court).

MR. J. LAWS (instructed by Messrs. Memery, Crystal and Co., London, WC1, Agents for Messrs. John Bosworth and Co., Leeds) appeared for the Appellants.

MR. S. SPENCER (instructed by The Solicitor, Yorkshire Water Authority) appeared for the Respondents.

J U D G M E N T
(As approved by judge)

(a)

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MR. JUSTICE McCULLOUGH: This is an appeal by way of case stated from a decision of the justices for North Yorkshire, sitting at Ryedale, on the 26th February, 1982. It is brought by F.J.H. Wrothwell Limited, against whom three informations were laid by the Yorkshire Water Authority. All three were found proved. The Company now appeals against the convictions.

The offences were all committed between 25th August, 1981 and 4th September, 1981. They all arose from the same act.

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The first alleged that the company "did cause to enter a stream, namely the Pickering Beck, poisonous, noxious or polluting matter, contrary to Section 2 of the Rivers (Prevention of Pollution) Act 1951."

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The second alleged that the Company "did cause to flow into waters containing fish, namely the Pickering Beck, liquid matter to such an extent as to cause the waters to be poisonous or injurious to fish, contrary to Section 4 of the Salmon and Fresh Water Fisheries Act, 1975".

F
The third alleged that the Company "did empty into a drain communicating with a public sewer chemical refuse, which was dangerous or the cause of a nuisance, contrary to Section 27 of the Public Health Act 1936".

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So far as they are relevant to the appeal the justices' findings of fact were as follows. I take these from paragraph 2 of the case. "(a) On or about the 25th August, 1981 the defendant Company through a Mr. D. Wright, a Director of the Company, discharged approximately 12 gallons of a chemical called Bidisin down a drain in the Company's business premises at 37 Market Place, Pickering. (b) We accept that Mr. Wright's perfectly natural expectation was that that liquid would travel through the drain into the public sewer system and would ultimately reach the public sewage works. (c) It was proved that in the case of the defendant Company's premises and two other adjoining properties their sewage

A pipes were not connected with the public sewers and instead travelled
directly through the existing pipes to an outlet into a stream known
as Pickering Beck. We are satisfied that this situation has existed
for approximately 50 years and no one has been found who was aware of
B that fact. We are satisfied that Mr. Wright was not aware of that.
For 50 years or so therefore all matter going into the drain of the
defendant Company's premises and the two adjoining has proceeded
through the existing system until discharged under a bridge into the
C stream known as Pickering Beck. (d) We are satisfied therefore that
this is the route which was taken by the chemical Bidisin which Mr.
Wright discharged to the drain.

D "(h) The source of the pollutant was eventually traced back
to the drain of the premises of the defendant Company and Mr. Wright
was interviewed. Mr. Wright admitted that he had discharged about 12
gallons of Bidisin down what he believed was a foul drain. Although
E not appreciating that the chemical would enter the stream he agreed that
he expected it would reach the sewage plant and he agreed when questioned
that such material would destroy a biological treatment process. (i) Bidisin
is a concentrated herbicide and it has known properties of being toxic to fish
F life.

G "(1) We are satisfied that Mr. Wright was aware that his discharging
12 gallons of the herbicide Bidisin down the drain was very likely to have
a serious adverse effect upon the functioning of the public sewage system
if and when it reached the works. He is a qualified chemist. In fact,
unknown to him or anyone else, the herbicide, Bidisin was to take
H another route also with serious results."

I take charge three first. This alleged that the chemical was
dangerous or the cause of a nuisance. Before the magistrates the Company
submitted that it had not been proved that the chemical was dangerous
and that it had not been proved that a nuisance had been caused. There

NORTH WEST WATER AUTHORITY

-v-

MCTAY CONSTRUCTION

John Barford

No. CO/1137/85

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
(DIVISIONAL COURT)

Royal Courts of Justice.

Monday, 14th April, 1986.

Before:

LORD JUSTICE GLIDWELL

and

MR. JUSTICE SCHIEMANN

Crown Office List

NORTH WEST WATER AUTHORITY

-v-

McTAY CONSTRUCTION LIMITED

(Transcript of the Shorthand Notes of Marten Walsh Charer Ltd.,
Pemberton House, East Harding Street, London EC4A 3AS.
Telephone number: 01-583 7635. Shorthand Writers to the Court.)

MR. B. HEGARTY (instructed by the Solicitors to the North West
Water Authority, Warrington) appeared on behalf of the Appellant

MR. N. KENNEDY (instructed by Messrs. Laces & Co., Liverpool)
appeared on behalf of the Respondent.

J U D G M E N T
(As approved by the Judge.)

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designed to stabilise weak ground in order to provide a firm foundation for construction works. There is no need to go into the detail of that process. It suffices to say that the carrying out of the process results in the displacement of a substantial amount of water heavily polluted with soil which is in effect slurry. The slurry in the state in which it emerges from the process will pollute any water course into which it flows. It was therefore necessary for the slurry to be taken into settling ponds or lagoons so that the solid material would gradually drop out and then the unpolluted water could be discharged into the Pennington Brook which flows alongside the site.

The particular details of this vibro-flotation process on the site were specified by the engineer to the Greater Manchester Council and it was acknowledged by that council that the carrying out of this operation was a matter for a specialist contractor. The main contractors themselves did not have the necessary expertise to carry out this operation, so the council supplied McTay Construction with a list of specialist contractors whom they, the council, would approve and from that list McTay selected one called Bauer Soil Mechanics Foundations Limited. Bauer were engaged as sub-contractors by McTay solely to carry out the vibro-flotation process.

McTay, I think with the assistance of other sub-contractors, proceeded to excavate the necessary lagoon or settling tank, but thereafter, according to the case as found by the magistrates, "the part of the site where the vibro-flotation process was to be carried out was under the day-to-day supervision of Bauer, although ultimate control reposed in the respondent and the

was in some way a cause of the flow of pollutants, and that it would be a question of fact and degree in every case. The chain of events resulting in the polluting of the stream was not initiated by the respondent, who took no active part in the process of vibro-flotation which was the operation resulting in the pollution. Accordingly we dismissed the information."

This subsection was the subject of a decision of the House of Lords in which an officer of the predecessors of this same water authority were the respondent. The case was Alphacell Ltd. v. Woodward (1972) AC 824. However, the question at issue there was not the same as the question at issue here. In that case there was only one possible defendant, the company which had discharged polluted matter from its industrial process which had found its way into the River Irwell. The question at issue was whether in the particular circumstances of that case the company was guilty of causing the discharge into the river.

The facts quite shortly were that Alphacell who were paper manufacturers produced from their processes a polluted effluent. This went into settling tanks and resulting water after the settling process in the ordinary way was re-circulated back into the production process and re-used. However, if the settling tank became overfull the discharge from it did flow into the river. In order to prevent that happening Alphacell had installed pumps in the settling tank which should have switched on when the settling tanks reached a given level, but on the day in question the pumps became choked with vegetable matter and did not operate and thus the discharge from the works went into the settling tank, the level of the settling tank mounted and it flowed over into the river. It was held at all stages that

SOUTHERN WATER AUTHORITY -V- PEGRUM

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IN THE HIGH COURT OF JUSTICE

NO. CO/1592/88

QUEEN'S BENCH DIVISION

(DIVISIONAL COURT)

Royal Courts of Justice,

Monday, 20th February, 1989

LORD JUSTICE TAYLOR

and

MR. JUSTICE HENRY

SOUTHERN WATER AUTHORITY

v.

PHILIP MAURICE PEGRUM

and

JEFFREY MAURICE PEGRUM

(Transcript of the Shorthand Notes of Marten Walsh Cherer Ltd.,
Pemberton House, East Harding Street, London EC4A 3AS.
Telephone Number: 01-583 4880. Shorthand Writers to the
Court.)

MISS S. O'CONNOR (instructed by Mr. M. Davies, Solicitor to
the Southern Water Authority) appeared on behalf of
the Appellant.

MR. M. CANNON (instructed by Messrs. Brachers, Maidstone)
appeared on behalf of the Respondent.

J U D G M E N T
(as approved by ...)

A
MR. JUSTICE HENRY: This is an appeal by way of case stated arising out of a trial on 2nd September, 1988 in Sevenoaks Magistrate's Court of an information alleging that an offence had been committed under the provisions of section 31(1) of the Control of Pollution Act 1974 by the Respondent farmers, it being alleged that they at Stidolphi Farm, Sevenoaks Weald, Kent had without lawful authority or excuse caused polluting matter, pig effluent, to enter a stream. Having heard that case, the Magistrates dismissed the information and as a result of that there has been an appeal by way of case stated.

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The section in question reads as follows:

"..... a person shall be guilty of an offence if he causes or knowingly permits

"(a) any poisonous, noxious or polluting matter to enter any stream"

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The offence alleged here is under the causing half of that section. The section has been on the statute book in its present form, namely "causes or knowingly permits" since 1861 and it was still causing problems 110 years later when the House of Lords decided the case of Alphacell Limited v. Woodward. (1872) A.C., 824. In that case the question for their Lordships was whether the offence of causing polluted matter to enter a stream could be committed by someone "who has no knowledge of the fact that polluting matter is entering the stream and has not been negligent in any relevant respect." The answer given by their Lordships was, yes, provided he caused that entry.

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Generally, of course, a person is not guilty of a criminal offence unless he intends to bring about the forbidden consequences or at least foresees that he might bring them about. But that is not the case under this statute, which provides for strict liability, that is to say criminal liability which exceptionally may apply independently of the accused's knowledge or negligence. It is not unusual to find strict liability imposed for offences such as this where in Mr. Justice Wright's classic phrase in *Sherras v. De Rutzen* (1895) 1 K.B. 918 at 922, the offences "are not criminal in any real sense, but are acts which in the public interest are prohibited under penalty." The public interest in having clean rivers needs no emphasis from me.

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As Mr. Justice Bridge recognised in his dissenting judgment in the Divisional Court in Alphacell, on the majority's view, which prevailed in the House of Lords, the criminal liability thus imposed was analogous to the strict civil liability concerning the escape from land of harmful material recognised by the courts in Rylands v. Fletcher (1868) L.R. 3 HL, 330, an analogy which I have found useful in considering this case. That case was decided seven years after the first statutory use of the words "caused or knowingly permitted" in context of the protection of rivers from pollution in the Salmon Fisheries Act, 1861. But strict liability was nothing new even then: nearly 300 years ago in Tenant v. Goldwin 1 Salk. 360, the court had

SEVERN TRENT WATER AUTHORITY -V- EXPRESS FOODS

STWA V EXPRESS FOOD GROUPS LIMITED - QUEENS BENCH
DIVISIONAL COURT - 19 OCTOBER 1988

The Authority asked Shrewsbury magistrates to state a case for the opinion of the High Court following decisions by Shrewsbury Justices to dismiss certain Informations.

The Authority had alleged that Express Foods Group Limited had committed offences arising from discharges of trade effluent, which offences were prosecuted under the provisions of section 32, Control of Pollution Act 1974. The Justices held that each discharge of trade effluent amounted to only one offence, however many consent conditions were broken.

The appeal was heard by Lord Justice May and Mr Justice Ian Kennedy. The latter delivered the judgement, as follows:

This is an appeal by way of case stated by Severn Trent Water Authority against a decision of Shrewsbury Justices on the 25 January 1988. The appellants had laid a number of informations against Express Foods Group Limited alleging breaches of the Control of Pollution Act 1974. Those informations fell into three groups. The first related to a discharge of milk processing waste - a trade effluent - on the 14 May 1987 at Minsterley. The second related to a discharge on the 18 February 1987 at Ruyton-XI-Towns. The third related to a discharge on the 3rd March 1987 at Ruyton-XI-Towns.

Within each group, more than one information was laid. There was one information for each breach of condition imposed by the appellant. The defendant pleaded guilty to one information in each group and contested the others, on the basis that each discharge could only amount to one offence. This view was accepted by the Justices, who dismissed the informations to which not guilty pleas had been entered.

Severn Trent Water Authority now appeals that decision, and the question to be decided is whether the Justices were right that the discharge is the offence or whether the breach of each consent condition is the offence.

The appellants have expressed concern on two scores. Firstly, they claim that the number of conditions broken is a measure of the gravity of the offence. I question that - only one condition might be exceeded, but to a considerable extent. Secondly, the question of level of fine attached to the offence. That is a matter for parliament and not the courts.

Section 32 provides that, "a person shall be guilty of an offence if he causes or knowingly permits ... any trade effluent ... to be discharged ... unless the discharge is made with the consent in pursuance of Section 34 of this act of the Water Authority in whose area the discharge occurs ...".

It is common ground that the respondent had an appropriate consent, with conditions regulating the impurity of the trade effluent.

This appeal concerns a simple question of construction of the wording of the statute.

The offence lies in discharging trade effluent unless the discharge is within the consent. I would dismiss this appeal.

counsel for the argument which was addressed to us, which
was very ably put. Thank you.

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DATED the 19th day of OCTOBER 1988
 IN THE HIGH COURT OF JUSTICE
 QUEEN'S BENCH DIVISION
 DIVISIONAL COURT
 BEFORE THE RIGHT HONOURABLE LORD JUSTICE MAY and
 THE HONOURABLE MR JUSTICE IAN KENNEDY

B E T W E E N SEVERN TRENT WATER AUTHORITY
Appellant

and

EXPRESS FOODS GROUP LIMITED

Respondent

COURT C.C.2

BOOK Div.Ct.2

FOLIO 196

CO/1177/88



UPON READING the Case stated herein by Mr D T Preece, Mr T D Lee and Mrs J Dibble three of Her Majestys Justices of the Peace for the County of Shropshire acting in and for the Petty Sessional Division of Shrewsbury in respect of their adjudication as a Magistrates Court sitting at Shrewsbury on the 25th day of January 1988 upon the hearing of informations preferred by the Appellant against the Respondent

- (a) that on the 14th May, 1987 at Minsterley, Shropshire, the Respondent caused trade effluent namely milk processing waste to be discharged into relevant waters namely, Minsterley Brook otherwise than in compliance with a consent in pursuance of Section 34 of Control of Pollution Act, 1974 to discharge trade effluent namely milk processing waste into the said Minsterley Brook in that whereas a variation of conditions dated the Third day of February, 1976, by which it discharges specifies that biological oxygen demand shall not exceed 20

[Handwritten signature]

REPORTED CASE LAW - MAIN CASES

Number	Name of Case	Remarks
.	ALPHACELL LIMITED -v- WOODWARD (1972) 2 A.E.R. 475	Leading case on the subject, House of Lords held that causing pollution was an absolute offence and proof of knowledge, intention or negligence was not necessary.
2.	IMPRESS (WORCESTER) LIMITED -v- REES (1971) 2 A.E.R. 357	A defendant does not "cause" an effluent to enter a stream if a third party interferes with plant or equipment. He can be charged with knowingly permitting if he knew about it and did nothing to stop the pollution.
J.	PRICE -v- CROMACK (1975) 2 A.E.R. P.113	Confirmed the case of Alphacell -v- Woodward above, in that causing pollution requires some positive act on behalf of the accused and not merely a passive looking on. The case involved a contract between two persons whereby effluent would be allowed on land. N.B. Knowingly permitting should have been used on the contractor in control of the effluent.
.	TRENT RIVER BOARD -v- WAROLE (1957) (The Times)	The prosecution can prove pollution by bringing other evidence apart from formal samples. It should be noted that evidence must be <u>convincing</u> . The case will be useful in fish kill cases where it is clear what caused the death of the fish.
5.	F.J.H. WROTHWELL LIMITED -v- YORKSHIRE WATER AUTHORITY 1983 (Unreported)	Not essential for the prosecution to prove that polluter knew that effluent would reach the watercourse. It is important to prove that the effluent came from the premises in question.

USEFUL TEXTBOOKS

- 1 Water Pollution Law by William Howarth - Published by Shaw & Sons
- 2 The Water Act 1989 by Richard Macrory - Published by Sweet & Maxwell
- 3 The National Rivers Authority by William Howarth - (U.C.W. Aberystwyth)

POINTS FOR DISCUSSION

CAUSES OR KNOWINGLY PERMITS

Can someone who has no knowledge of the fact that polluting matter is entering a stream and has not been negligent in any relevant respect, commit an offence of causing polluted matter to enter a stream.

A. Alphacell Ltd -v- Woodward - "Yes, provided he caused the entry".

Generally a person is not guilty of a criminal offence unless he intends to bring about the forbidden consequences or at least foresees that he might bring them about.

Under the 1987 Act the statute provides strict liability, that is to say criminal liability which exceptionally may apply independently of the accused's knowledge or negligence.

Impress (Worcester) Ltd -v- Rees (1971)

If vegetable matter which got into a settling tank and clogged the pumps had been deliberately put there by a trespasser, that would have been a novus actus interveniens and would have broken the chain of causation.

What then if vegetable matter entered the tank by the operation of inanimate forces in circumstances which the defendants could not reasonably have anticipated or prevented.

Alphacell

The subsection contemplates two things:-

Causing - which must involve some active operation or chain of operations involving as the result the pollution of the stream.

(12)

Knowingly permitting - which involves a failure to prevent pollution,
which failure, however, must be accompanied by knowledge.

Principles extracted from those decisions

1. If defendant conducts some active operation involving the storage, use or creation of material capable of polluting a river should it escape, then if it does escape and pollute, the defendants are liable if they caused that escape.
2. Causation - is to be decided in a commonsense way.
3. The defendants may be found to have caused that escape even though they did not intend that escape and even though the escape happened without their negligence Note Wrothwell.
4. It is a defence to show that the cause of the escape was the intervening act of a third party or Act of God (viz major) which are the novus actus interveniens defences to strict liability referred to in Rylands and Fletcher.
5. In deciding whether the intervening cause affords the defendants a defence.

Adopted in Alphacell and Impress (Worcester) Ltd -v- Rees

On general principles of causation, the question is whether that intervening cause was of so powerful a nature that the conduct of the defendants was not a cause at all, but was merely part of the surrounding circumstances.

PEGNUM

1. The immediate cause of the overflow was the blocked storm drain and the flood of water from the blocked drain into the lagoon.

2. To convict - the pollution had to be caused by a positive act of the respondents. Positive Acts - including active-operations or positive acts of the defendants were the storage and re-use of the effluent which resulted in the formations of the toxic sediment which polluted the stream.

3. Act of God - ingress of rainwater?

An act of god is an operation of natural forces so unpredictable as to excuse the defendants all liability for its consequences.

In Pegrum it was held not to be an act of God.

4. Was the blocked drain an act of God?

Phrase usually used to cover extreme climate conditions - can be used to cover - equally unpredictable and unforeseeable operation of animate forces, such as the rat which gnawed a hole in the cistern Carstairs -v- Taylor (1870).

In Pegrum there was no basis for such finding.

5. Defendants negligent in not inspecting the drain, or discovering the overflow promptly or in not providing an adequate drain.

HELD

Negligence would be the (or at any rate a) cause of the pollution in Pegrum case.

(i) Could the blocked drain be looked on as having been an intervening event - breaking the chain of causation (absolving the defendants from liability).

(ii) Can this survive independently of the erroneous premise that it was an act of God.

In Pegrum it was held that the blocked drain was not a defence -the recognised defences are :

- (i) that the cause of the escape was an act of God or
- (ii) the intervening act of a third party. ie. the "novus actus interveniens" defences to strict civil liability referred to in Rylands -v- Fletcher.

PEGRUM

- HELD
- (1) Prosecution had proved that the polluting of the stream was caused by the defendants active operations in collecting and dealing with polluting matter.
 - (2) That the overflow of liquid from the lagoon was not caused by an act of God which would negate their liability under Section 31(1)(a) of the Control of Pollution Act 1974.

SECTION V

REPORT WRITING

REPORT WRITING

There are three types of Reports that are essential when preparing your evidence for a pollution prosecution.

1. Contemporaneous Notes
2. Witness Statement
3. Offence Report or Resume of Facts

1. Contemporaneous Notes

- a) The making of contemporaneous notes are essential and they must be made at the time of the offence, or as soon as practicable after the incident (always within 24 hours).

N.B. If you produce the Note Book/Diary to refresh your memory in Court you will certainly be asked when you made the notes and if there is a delay you will not be allowed to produce them.

- b) The object of the pocket book/diary is to record first hand knowledge of an incident, to provide a basis for the completion of statement and report.
- c) They must be ACCURATE and whilst neatness is important for presentation purposes this should be sacrificed, if necessary, in the cause of accuracy.

N.B. You cannot refer to Offence Reports or Statements in Court and an accurate note produced to support your evidence always gives the right impression and image.

- d) Contents of the Note Book/Diary depend very much on the incident BUT it is essential to record the following:

EXACT TIMES

FULL NAMES AND ADDRESSES OF DEFENDANT(S) AND WITNESSES

PLACES VISITED - WITH TIMES RECORDED AGAINST e.g. examined slurry lagoon at Dale Farm at 13.45 hours in the company of John Herbert Jones, Farm Manager for Dale Farm and Roger Williams, sampler employed by National Rivers Authority.

Any discussions which take place on site, particularly if the officer has reason to believe that they are being held with a person or persons who may be held responsible for the discharge e.g. this could include not only the owner of the property but also a Contractor, carrying out works on the site which have resulted in the pollutant discharging to a watercourse. This is where the alternative charges of 'causing' or 'knowingly permitting' are essential. The owner could be prosecuted for 'knowingly permitting' or the contractor for 'causing', the polluting matter to enter the watercourse.

Details of any samples taken must also be recorded i.e. where taken, the time and date, what type of sample, what you did with the sample.

A COURT CASE IS A STORY - EVERY LINK in the CHAIN has to be recorded e.g. if you have delivered a sample to the Lab. - place in your note book the times, who accepted the sample and what forms were signed - it is a 'Blow' for Blow' account of everything to do with the incident and the more accurate the record the more convincing you will become in the Witness Box.

The source of reference (e.g. pocket notebook) becomes liable to inspection by the other party, if used. The Officer when giving evidence, should always have his pocket notebook with him because the advocate for the accused may wish to see it. Although, technically, he would not be entitled to this if the pocket notebook had not been produced or if no subpoena had been issued in respect of it. However, it is unusual to refuse to produce the pocket notebook, except on good grounds, when a direction should be sought from the court before acceding to the request.

- e) CAUTIONING - This is an absolutely vital but often misunderstood aspect of the investigation. The important point here is that STATEMENTS VERBAL OR WRITTEN will NOT be allowed in evidence UNLESS a CAUTION has been formally administered. Cases often rest on verbal response at the time and in borderline cases if a defendant after caution says 'I knew I should have removed that pipe from the lagoon last week' it will assist greatly in presentation of the case.

You should do this at the time you are formally sampling or interviewing the defendant generally. COMMON SENSE should be used and there is no need to caution until you are satisfied that an offence has taken place and if necessary why that offence has taken place. The precise words of the caution are not necessary as long as you make it clear that you will be making a note of what he says and possibly be using that in Court. A firm but fair approach should be adopted but when it becomes clear that serious consequences will follow from the investigation you should 'change the mood' into a formal cautioning stance. But of course, you may not have had the time to caution and ANYTHING that is said should be recorded including 'choice language'.

The motto should be if in doubt 'caution'. This advice does not only relate to the owner/occupier of the premises from which the pollutant has been discharged, but could indeed relate to a Plant Operator or Contractor carrying out works on the site which have resulted in the pollution.

2. Statements

The Home Office by the Magistrates Courts (Advance Information) Rules 1985 S.I. No.601 have directed that after May 1985 all prosecuting bodies must in cases which can be tried by both the Magistrates and Crown Court (Section 107 Water Act 1989) (Section 4 of Salmon and Freshwater Fisheries Act) inform a Defendant of his right to request details of the prosecution evidence in ADVANCE of the case. The prosecution have the right at the moment to provide a summary of the facts or copies of statements. The prosecution make the choice in all cases. It is likely that the Police will have a unified policy of

providing Statements in all cases. The sooner we become accustomed to preparing and providing the statements the easier it will become in the future. Statements should be prepared in all cases and depending on the merits of the case, the Legal Section will decide which form of disclosure takes place. The preparation of statements will be an acquired science but in general they are in the first person singular and should not refer to hearsay evidence e.g. 'John Jones telephoned me and said that dead fish were seen in the river' - not admissible it should be 'From information received I left Bangor at 12 noon'. Statements made by the Defendant under caution, are not hearsay evidence, nor indeed are statements made by another person in the presence and hearing of the Defendant.

3. Offence Reports

The offence report should briefly set out the details of the pollution incident, the consequences and any remedial action taken. It should provide background information as to Consents, Previous Convictions, Remedial Works, Copies of Photographs, Plans, Sketches etc.

N.B. Plans

Basically, at least two drawings are normally required, namely a 1:50,000 scale map showing the site of the pollution incident and the watercourses involved and referring in turn to an 'inset'. The inset should be a large scale drawing (1:2500 scale) showing the precise location of the incident. Both drawings should have marked thereon the location of the samples taken - indicating both the official laboratory number and the letter 'A', 'B', 'C' etc for ease of reference in Court. 6 Copies of each drawing will be eventually required. In some cases a third drawing will be required 1:10,000 scale showing the most significant area involved.

Photographs

All photographs taken at the incident must be made available for inspection by the Defence, and it is essential that a copy of all photographs are sent to the Legal Department with your Offence Report. Should it be decided that a prosecution is the appropriate course of action 6 copies of all photographs will be required, suitably mounted and labelled on card or, if there are many photographs, put into an album. There should be an additional plan indicating where all the photographs were taken. Each photograph should have its own reference letter or number.

Photographs are essential to the case for the prosecution. They paint the picture far better than any words and should be presented to the Court in a professional manner.

SECTION VI

SUMMONSES

Summons (M.C. Act 1980, S.1; M.C. Rules 1981, r.98)

Bury St Edmunds Magistrates' Court


To the accused: John Edgar Clarke

of: Hissett House
Beyton
Suffolk

Information has this day been laid by Alan Tetlow, Environmental Manager of the National Rivers Authority, Anglian Region, Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, who states that on or about the 17th March 1990 you did knowingly permit trade effluent to be discharged from your premises namely Rookery Farm, Drinkstone, into controlled waters namely the River Sapiston without the consent of the National Rivers Authority contrary to Section 107(1)(c) of the Water Act 1989.

You are thereby summoned to appear on Wednesday the 12th September 1990 at 10.00 am before the Magistrates' Court sitting at Solihull to answer the said information.

Dated this 9th day of July 1990.


Justice of the Peace
(Justices Clerk)

Summons(M.C. Act 1980, S.1; M.C. Rules 1981, r.98)

Bury St Edmunds Magistrates' Court


To the accused: John Edgar Clarke

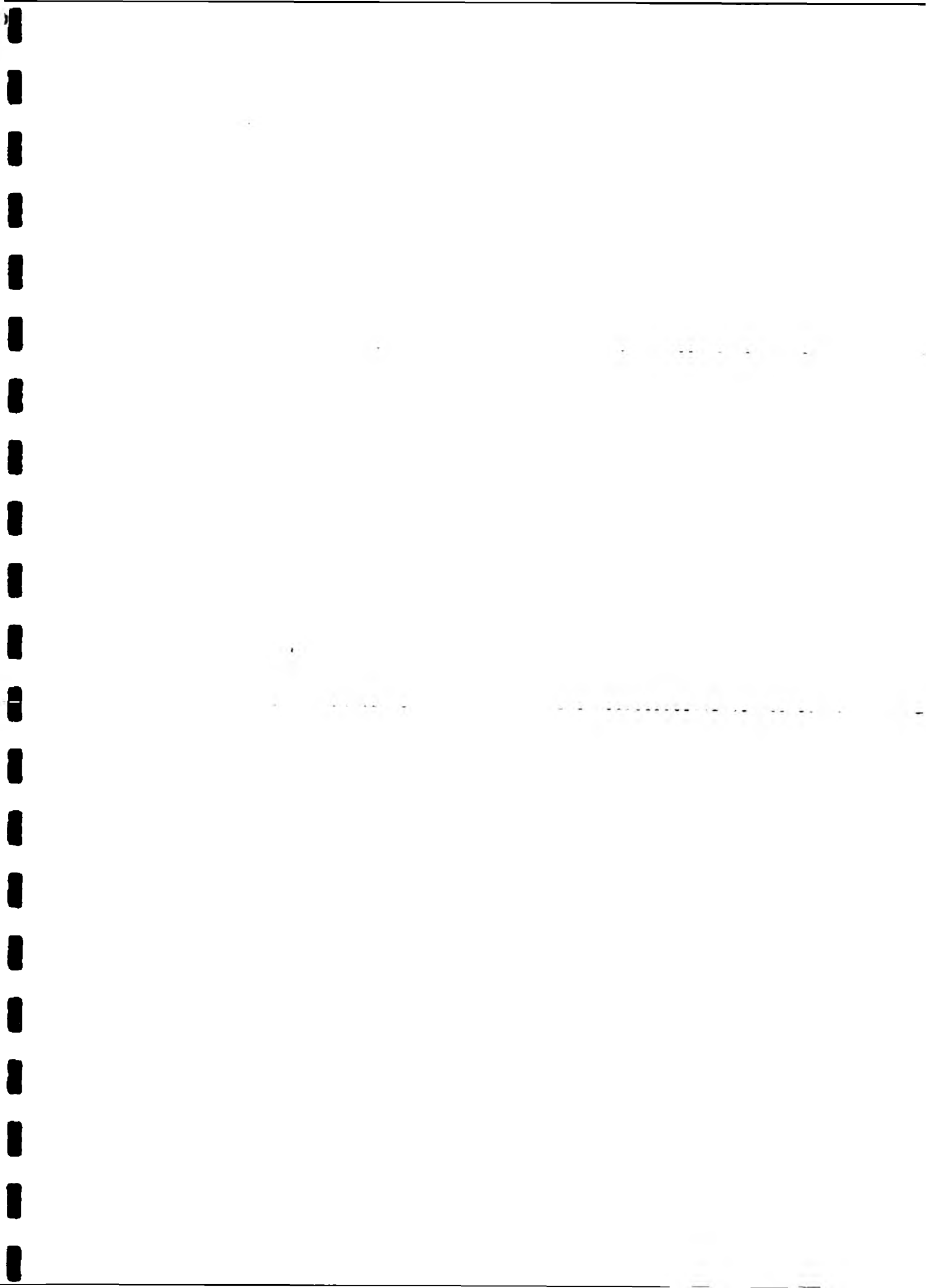
of: Hasset House
Beyton
Suffolk

Information has this day been laid by Alan Tetlow, Environmental Manager of the National Rivers Authority, Anglian Region, Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, who states that on or about the 17th March 1990 you did cause trade effluent to be discharged from your premises namely Rookery Farm, Drinkstone, into controlled waters namely the River Sapiston without the consent of the National Rivers Authority contrary to Section 107(1)(c) of the Water Act 1989.

You are thereby summoned to appear on Wednesday the 12th September 1990 at 10.00 am before the Magistrates' Court sitting at Solihull to answer the said information.

Dated this 9th day of July 1990.


Justice of the Peace
(Justices Clerk)



Summons (M.C. Act 1980, S.1; M.C. Rules 1981, r.98)

Bury St Edmunds Magistrates' Court


To the accused: John Edgar Clarke

of: Hessett House
Beyton
Suffolk

Information has this day been laid by Alan Tetlow, Environmental Manager of the National Rivers Authority, Anglian Region, Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, who states that on or about the 17th March 1990 you did knowingly permit to flow into a water namely a tributary of the River Sapiston at Drinkstone in the County of Suffolk a liquid or solid matter namely piggery effluent to such an extent as to cause the said waters to be poisonous or injurious to fish or the spawning grounds spawn or food of fish contrary to Section 4(1) of the Salmon and Freshwater Fisheries Act 1975.

You are thereby summoned to appear on Wednesday the 12th September 1990 at 10.00 am before the Magistrates' Court sitting at Solihull to answer the said information.

Dated this 9th day of July 1990.


Justice of the Peace
(Justices Clerk)

Summons (M.C. Act 1980, S.1; M.C. Rules 1981, r.98)

Bury St Edmunds Magistrates' Court


To the accused: John Edgar Clarke

of: Hessett House
Beyton
Suffolk

Information has this day been laid by Alan Tetlow, Environmental Manager of the National Rivers Authority, Anglian Region, Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, who states that on or about the 17th March 1990 you did cause to flow into a water namely a tributary of the River Sapiston at Drinkstone in the County of Suffolk a liquid or solid matter namely piggery effluent to such an extent as to cause the said waters to be poisonous or injurious to fish or the spawning grounds spawn or food of fish contrary to Section 4(1) of the Salmon and Freshwater Fisheries Act 1975.

You are thereby summoned to appear on Wednesday the 12th September 1990 at 10.00 am before the Magistrates' Court sitting at Solihull to answer the said information.

Dated this 9th day of July 1990.


Justice of the Peace
(Justices Clerk)

SECTION VII

WITNESS STATEMENTS

<u>STATEMENT OF</u>	<u>NAME</u>	<u>PAGE NO.</u>
INVESTIGATING OFFICER	IAN MEARS	1 - 9
COURIER (COLLECTION OF SAMPLES)	DEREK WINTER	10 - 11
CHEMISTS (ACCEPTANCE OF AND ANALYSIS OF SAMPLES)	DAVID WELSH MICHAEL HEALY EILEEN YOUNG	12 - 15
EVIDENCE FROM COMPUTER RECORDS	ROBERT HEATH	16 - 20
FISHERIES ASSISTANTS (SURVEYS)	PAUL WILKANOWSKI GORDON HOWES	21 - 25
BIOLOGIST (SURVEY)	GRAHAM FITZGERALD	26 - 30
TECHNICIAN (MONITORING WATER QUALITY INSTRUMENTATION)	ALEX AKIELAN	31 - 32
PHOTOGRAPHER	SIMON HALL	33 - 34
PRINCIPAL QUALITY CONTROL OFFICER (CONSENT TO DISCHARGE)	ALAN BARNDEN	35 - 36
MET OFFICE (RAINFALL DATA)	MARTIN ALLWRIGHT	37 - 43
FISHERIES SCIENTIST (INTERPRETATION OF SURVEYS)	JOHN ADAMS	44 - 63
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INVESTIGATING OFFICER

STATEMENT OF WITNESS
(C.J Act 1967 S.9: M.C Act 1980 S.102: M.C. Rules, 1981. r70)

Statement of: Ian Mears

Age of Witness: Over 21 Occupation of Witness: Water Quality Officer

Address: Anglian Water, N.R.A. Unit, District Office, Prickwillow Road, Ely, Cambs. CB7 4TX.

Telephone Number: (Home) — (Office) Ely (0353) 666660

This statement consisting of six pages each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the Twenty-fourth day of May 1989

Signed *I. Mears* Signature witnessed by *J. G. Smith*

My name is Ian Mears and I am employed as a Water Quality Officer by the Anglian Water N.R.A. unit at Prickwillow Road, Ely. I am an Associate Member of the Institution of Water and Environmental Management, and have served in the water industry for about 18 years.

On Friday the 17th of March 1989 I was at the Anglian Water NRA Unit office at Prickwillow Road, Ely, when at about 0848 hours I received a telephone message about a pollution incident from the NRA Unit's Peterborough Control Room.

I drove my car to the Broadgrass Green road bridge near Woolpit, Suffolk. That bridge is identified as point 5 on the map exhibit 2, hereinafter referred to as map 1. The Broadgrass Green bridge spans the river Sapiston, which is also known as the Black Bourn, about 8 kilometres upstream of Ixworth.

I arrived at the bridge at about 0945 hours, and found the river to be running fast and at a higher than usual level. About 3 metres upstream (South) of the bridge the main river, which approaches from the Southwest, is joined by a smaller tributary watercourse from the South. The tributary is about a metre wide, and the main river upstream of the confluence is about 2½ metres wide. The water in both the river and the tributary was turbid and sandy in appearance. Just downstream of the confluence there was a raft of what appeared to be fawn organic froth caught behind floating vegetation on the Eastern edge of the river - that is, the side on which the tributary had joined the river.

Using a can-on-a-stick sampling device I took samples of the tributary and river upstream of their confluence, at points 3 and 4 on map 1. For each point I filled two bottles, each marked with the time, location, and water temperature using a water-resistant marker pen.

Signed *I. Mears* Signature witnessed by *J. G. Smith*

STATEMENT OF WITNESS

Continuation of statement of Ian Mears

When my colleague Mr Kevin Rutterford arrived at the scene I said that I would visit a large piggery upstream of Broadgrass Green bridge. I knew that that piggery, known as Rookery Farm, Woolpit Road, Drinkstone, Suffolk, was owned by a Mr John Edgar Clarke. The piggery is shown in the inset on Map 1, and in aerial photographs on pages 20 and 21 of photographic album exhibit 3 hereinafter referred to as the album.


The piggery site is a very large one, shown by Ordnance Survey figures on the inset Map 1 to be about 34 acres, and includes several blocks of largely uncovered pig yards and some large lagooned areas of mixed septic piggery wastes and surface water. The tributary watercourse previously referred to bounds part of the Eastern side of the site.

After telephoning the Ely NRA Unit office I drove to the Rookery Farm piggery at about 1005 hours, and parked close to two bungalows on the site. I spoke to a Mr Kenneth Baker, who I understood from previous visits to the site to be an employee of Mr Clarke. It appeared that Mr Clarke was not at the piggery, so I telephoned Mr Clarke at his home from Rookery Farm. I told Mr Clarke that I was investigating a pollution incident, and wished to inspect his piggery lagoons. Mr. Clarke raised no objection, and gave no indication that he was aware of any problem at the site.

I walked across the large site to the Northeastern lagoon system and found a mechanical excavator at work at the position marked on the plan shown on page 2 of the album. The excavator carried the logo "MT Smith Plant Hire". The driver, Mr Michael Thomas Smith, stated that he had been asked to repair a breach in the lagoon bank, and was working his way along the edge of the lagoon in order to do so. I walked past his machine and found a major breach in the lagoon bank where the lagoon is close to the tributary of the River Sapiston previously referred to. The breach consisted of a gap about fifteen feet wide and about six feet high in the lagoon embankment, in the position arrowed as "breach" on the plan shown on page 2 of the album. The lagoon was at that time almost completely empty, but tide marks of septic wastes on the lagoon banks, and on dead trees contained within the lagoon, showed that prior to the breach the lagoon had been almost full. I took a number of photographs in the vicinity of the breach using a small 126 camera, and prints of those photographs are shown on pages 3 to 11 and page 13 of the album. The positions from which the photographs were taken are shown on page 2 of the album.

The photograph on page 3 of the album shows the two shallow parts of the lagoon parallel to the tributary watercourse. The tide mark to the right of the photograph shows how close the lagoon had come to overflowing the bank to the stream at this point had the breach not occurred.

The photograph on page 4 shows part of the same shallow lagoon section in the foreground, and part of the main section of lagoon in the centre. In the distance the tide mark of septic wastes on the main lagoon bank can be clearly seen.

Signed^{I. Mears}.....Signature witnessed by.....

STATEMENT OF WITNESS

Continuation of statement of Ian Mears

The photograph on page 5 shows the excavator working its way along the top of the lagoon bank. It can be seen that the top of the lagoon bank (in the foreground) is not wide enough to take an excavator or bulldozer, and is composed of loose soil and subsoil which has not been compressed or compacted.

The photographs on pages 6 and 7 are looking through the breach in the bank from the outside of the lagoon. The small discharge through the breach at that time can be seen in the foreground, and a tide mark of septic wastes can be seen on the dead trees within the lagoon.

The photographs on pages 8 and 9 show the discharge from the lagoon down the watercourse bank into the tributary watercourse at about 1030 hours. The watercourse, which was about a metre wide at water level, can be seen clearly. The surface soil and vegetation had been stripped away from the watercourse bank in the vicinity of the breach, exposing clay substratum.

The photographs on pages 10 and 11, taken from the lagoon bank adjacent to the breach, show part of the main lagoon. There is evidence of fresh erosion of the bed of the lagoon in the vicinity of the breach.

After taking the photographs I walked back to my car to collect some sampling equipment. At this point Mr Clarke arrived, and I told him what I had found on site. We went to the Northeastern lagoon, and I took two more photographs, prints of which are on pages 12 and 14 of the album.

The photograph on page 12 shows that a small line of freshly dug earth had been placed across the breach, and that effluent was running past that on its way to discharge to the watercourse.

The photograph on page 14 shows that the excavator had almost reached the breach location by about 1050 hours. In the foreground can be seen not only the tide-mark of the lagoon's contents close to the top of the embankment, but also that the embankment itself was narrow at the top. The tributary watercourse can be seen on the left. On the exposed embankment cross-section facing the camera can be seen a horizontal line at about the same level as Mr Clarke's knee. This is consistent with the position of the top of the embankment as I remembered it from visits to the site in 1986. This indicates to me that the height of the bank had been raised after I made those visits.

I measured the breach to obtain the 15 feet by 6 feet dimensions given earlier in this statement.

In the presence of Mr Clarke I took a formal sample of the discharge down the watercourse bank about 18 inches above the stream's water level at point 2 on Map 1 at about 1055 hours using a can-on-a-stick sampling device and a plastic interim sample holder. The discharge flow at that time appeared to be less than a litre per second, and consisted of black liquid smelling strongly of piggery wastes. Upstream of the discharge the tributary was of a fawn turbid appearance.

Signed *I. Mears* Signature Witnessed by *[Signature]*

STATEMENT OF WITNESS

Continuation of statement of Ian Mears

Mr Clarke and I walked around the rest of the lagoon embankment. Staining on the top of the embankment beyond the breach showed that the lagoon had started to flow over the top of the bank at that point prior to the breach occurring.

Mr Clarke said that the breach discharge had been accidental, and asked my opinion of the volume that had been discharged. I said that I thought at least a million gallons had been discharged. Mr Clarke said that he thought only two or three thousand gallons had gone. Using a retractable tape measure I measured the drop in liquid level towards the Northwestern corner of the Northeastern lagoon, and found it to have been between four feet two inches and four feet five inches at this point.

When we reached the Northwestern lagoon I found it to be brim-full, and overflowing into the Northeastern lagoon.

I pointed out to Mr Clarke that having taken the formal sample of his discharge I would need to divide the sample into three parts and have one part analysed. I walked back to my car in order to do that division, and on the way Mr Clarke collected his car, which was parked near the Northeastern lagoon.


I wrote out an official notification/receipt ticket labelled IM/89/4 (exhibit 4) and labelled three bottles using a water-resistant marker pen. Each bottle was also marked "Discharge from Rookery Farm piggery, Woolpit Road, Drinkstone, LG 1055 on 17.3.89, IM".

I there and then divided the sample into three parts and sealed each bottle with foil, wire, and lead seals. I invited Mr Clarke to choose one bottle to retain, but he refused. I therefore picked out one bottle and placed it in front of him (one of the two remaining bottles is exhibit 5). I invited Mr Clarke to sign a receipt for his bottle, but he refused. I therefore gave him an unsigned copy of the notification/receipt ticket.

I then cautioned Mr Clarke that I believed an offence had been committed and that anything he said might be used in evidence. I asked him whether there was anything he wished to say. He replied that it had been an accidental discharge, and that as soon as it had been discovered work had been put in hand to rectify the problem.

I arranged to have a subsequent meeting with Mr Clarke to discuss his effluent disposal problems. I put the two remaining formal sample bottles in my car and left the site at about 1155 hours.

After telephoning the Ely NRA Unit office I drove to point 1 on Map 1 and took a sample of the tributary watercourse upstream of Mr Clarke's site at about 1210 hours. The watercourse is very small at this point, and did not have a polluted appearance or a strong odour. I took the samples directly into two

Signed^{I. Mears}.....Signature Witnessed by .......

STATEMENT OF WITNESS

Continuation of Statement of Ian Mears

bottles from the watercourse, and marked the bottles with the time, location, and water temperature.

I telephoned the Ely NRA Unit office again at about 1230 hours, and told James Halson, Ely District Quality Officer, of the situation at the piggery.


I took all 8 bottles relating to the 4 samples I had taken to the NRA Unit laboratory at Aqua House, London Road, Peterborough, where I filled in a sample record (WEB) form using the details written on the bottles, and handed the bottles and form to David Welsh, Assistant Chemist, at about 1445 hours.

On Monday the 20th of March 1989, Mr Clarke rang me at Ely to ask what the effects of the discharge had been. I told him that the effects appeared to be both severe and widespread.

On Tuesday the 21st of March 1989, I accompanied James Halson to a prearranged site meeting at Rookery Farm, Woolpit Road, Drinkstone, Suffolk. We arrived at about 1400 hours and after a short time found Mr Clarke near the site's Northwestern lagoon (shown on the inset on Map 1). Mr Halson cautioned Mr Clarke, and discussed several matters with him. Mr Halson asked Mr Clarke for his view on the responsibility for the lagoon breach and discharge on March the 17th, and Mr Clarke replied that the responsibility was his (Mr Clarke's) although he was not responsible for the rain which he claimed fell prior to the breach occurring.

I pointed out that pollution prevention work in the vicinity of the Northwestern lagoon requested in my letters dated January the 22nd, 1986, and June the 3rd, 1986, had clearly not been carried out. Those letters are marked exhibit 6. Specifically the letters referred to strengthening and widening lagoon banks, filling in a small pit at the foot of one bank, emptying a lagoon built outside the main embankment, and not allowing the effluent level within the lagoons to come within 5 feet of the tops of any of the lagoons' banks.

All three of us walked around the outer perimeter of the site's lagoon network. It was apparent that apart from the lagoon which had discharged its contents on March the 17th all the lagoons were full almost to the brim. The Northeastern lagoon was noted to have an outer embankment which was in places so narrow at the top that it was necessary to walk in single file. I pointed out to Mr Clarke that the liquid level in that lagoon had, prior to the breach, been much higher than the recommended maximum in my letter dated January the 22nd 1986, and that the banks failed to comply with my recommendation that they "should be wide enough on top to carry a bulldozer, and much wider at the bottom than the top", both intended to provide an adequate degree of structural stability to the banks.

Signed I. Mears Signature Witnessed by 

STATEMENT OF WITNESS

Continuation of statement of Ian Mears

When we arrived at the point where the March the 17th discharge had occurred I observed that the breach had been filled in with soil and subsoil but that no attempt had been made to compress or compact the infill material. I pointed out to Mr Clarke that unless the infill was properly compacted it was likely that the breach would reopen as soon as a significant quantity of effluent had built up behind it.

Mr Clarke showed us a newly constructed raised embankment near the Southeastern corner of the site and expressed the view that if it had not been for recent wet weather the new embankment might possibly have extended as far as the breach location prior to March the 17th.

I walked along the tributary watercourse bed in the vicinity of the Northeastern and Southeastern lagoons to check for possible contaminated seepages. I saw no such seepages.

After discussion of Mr Clarke's own proposals for partial treatment of his lagooned wastes I left the site with Mr Halson.

Since March the 17th, 1989, I have inspected a number of other piggery units in the River Sapiston subcatchment, and I am able to confirm that on those visits I did not see anything to suggest that the pollution of the River Sapiston dealt with by Anglian Water on March the 17th had originated from any of those other piggeries.

This statement consisting of six pages each signed by me is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed*I. Mears*.....Signature Witnessed by *J.P. Clarke*.....

STATEMENT OF WITNESS

(C.J Act 1967 S.9: M.C. Act 1980 S.102, M.C. Rules, 1981 r.70)

STATEMENT OF: Ian Mears
AGE OF WITNESS: Over 21
OCCUPATION: Water Quality Officer
ADDRESS: Anglian Water
NRA Unit
Prickwillow Road
Ely
Cams CB7 4TX

I refer to my statement dated the 24th May 1989 consisting of 6 pages, and in particular to page 5 paragraph 3 where I make reference to a WEB registration document. I now produce the original of that document marked exhibit number 12.

This statement, consisting of one page signed by me, is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated twelfth day of June 1989.

Signed *I. Mears*



ELY DISTRICT OFFICE

SAMPLE POINT	SAMPLE POINT CODE	SAMPLE NUMBER	T A B	SAMPLE TEMP	T A B	DATE					T A B	TIME	T A B	REASON(S) FOR SAMPLE					S	T A B	SAMPLED BY	LAB No.		
						D	D	M	M	Y				Y	1	2	3	4					5	
"mic TL96"	RO2BF TL9663	3029		6.5		1	7	0	3	8	9	09	50							S			IM	29
	COMMENTS	SAPISTON (MAIN CHANNEL) U/S OF BROADGRASS GN. RD. BR.																						
"mic TL96"	RO2BF TL9663	3030		6.5		1	7	0	3	8	9	09	55							S			IM	29
	COMMENTS	TRIB. OF SAPISTON U/S OF BROADGRASS GREEN RD. BR.																						
"mic TL96"	RO2BF TL9661	3031		7.0		1	7	0	3	8	9	12	10							S			IM	29
	COMMENTS	TRIB. OF SAPISTON AT RD. CULV. U/S OF ROOKERY FM. DISCH.																						
"mic TL96"	RO2LGT TL9662	3032		—		1	7	0	3	8	9	10	55							F			IM	29
	COMMENTS	DISCHARGE FROM ROOKERY FM. (J.E. CLARKE) TO TRIB. OF SAPISTON.																						
	RO																							29
	COMMENTS																							
	RO																							29
	COMMENTS																							
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FORMAL →

EXHIBIT 1/2

C O U R I E R

STATEMENT OF WITNESS

(CRIMINAL JUSTICE ACT 1967 s. 9; M.C. Act, 1980, s. 102; M.C. Rules, 1981, r.70)

Statement of :DEREK PETER WINTER
Age of Witness :OVER 21
Occupation of Witness :DRIVER
Address of Witness :131 PASTON LANE, PETERBOROUGH

At the material time I was employed as a driver by Hereward Freight Limited.

During the night of 17th - 18th March 1989 I collected the sample bottle crates from the refrigerator at Anglian Water Authority's Ely Office and delivered them to the Authority's laboratory at Aqua House, Peterborough.

This statement, consisting of one page signed by me is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated this 27 day of May 1989 1989.

Signed

D. P. Winter

CHEMISTS

STATEMENT OF WITNESS

(CRIMINAL JUSTICE ACT 1967 s. 9; M.C. Act, 1980, s. 102; M.C. Rules, 1981,r.70)

STATEMENT of : DAVID WELSH
Age of Witness : 34
Occupation of Witness : ASSISTANT CHEMIST
Address of Witness : 57 WEST STREET, OUNDLE, PETERBOROUGH, PEB 4EJ

I have been employed by Anglian Water Authority since April 1974.

On 18 March 1989 at 0835 hrs. 27 sample bottles and 1 page of sample registration documents (WEB forms) were taken by me from the Ely courier crates at the Authority's laboratory at Peterborough.

The bottles and registration documents were given the sample numbers 3043 to 3052 inclusive.

Samples numbered 3043-3045, 3047-3049 and 3051 had three bottles, one for general analysis, another for dissolved oxygen analysis and the third for metal analysis. Samples numbered 3046, 3050 and 3052 had two bottles, one for general analysis and one for dissolved oxygen analysis.

This statement, consisting of 1 page signed by me is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated this 3rd day of April 1989

Signed

J. Walsh

STATEMENT OF WITNESS

(CRIMINAL JUSTICE ACT 1967 s. 9; M.C. Act, 1980, s. 102; M.C. Rules, 1981, r.70)

STATEMENT of : MICHAEL THOMAS HEALY
Age of Witness : 30
Occupation of Witness : SENIOR ASSISTANT CHEMIST
Address of Witness : 33 HAYES WALK, ELTON, PETERBOROUGH,
CAMBS. PEB 6RY

I am a Chartered Chemist and member of the Royal Society of Chemistry and have been employed as a Senior Assistant Chemist by Anglian Water Authority since November 1988.

On 18th March 1989 at 1710 hrs. 34 sample bottles and 2 pages of sample registration documents (WEB forms) were handed to me by one of the Authority's Water Officers, KEVIN RUTTERFORD at the Authority's laboratory at Peterborough. The bottles and registration documents were given the sample numbers 3071 to 3083 inclusive. Samples numbered 3071-3078 had three bottles, one for general analysis, another for dissolved oxygen analysis and the third for metal analysis. Samples numbered 3079-3083 had two bottles, one for general analysis and the second for dissolved oxygen analysis.

The samples were then analysed at the laboratory either by myself or under my supervision by members of my staff namely:

E. Young	G. Horton	V. Maxfield
S. Hopper	A. Young	S. Kitchenman
P. Jowett		

The results of the analysis carried out on the said sample numbers 3071 to 3083 inclusive were together with the corresponding information from the sample registration documents (WEB forms) comprising the date, time, location and temperature of each sample were duly recorded on the Authority's computer. This statement, consisting of one page signed by me is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated this 3rd day of April 1989

Signed

M. T. Healy

STATEMENT OF WITNESS

(CRIMINAL JUSTICE ACT 1967 s. 9; M.C. Act, 1980, s. 102; M.C. Rules, 1981, r.70)

STATEMENT of Eileen Young

Age (and date of birth) 38 (27.9.50) Occupation Assistant Chemist
Address 46 Gatenby Anglian Water Authority
Werrington NRA Unit, Peterborough
Peterborough PE46JU

This statement (consisting of 1 page signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 10th day of April 1989 Signed GL Yg

I have been employed by the Anglian Water Authority since June 1979.

Between 17th March 1989 and 22nd March 1989 using a routine laboratory technique, I examined or assisted in the examination of a quantity of Anglian Water Authority, NRA Unit, samples numbered: 3029 to 3032 inclusive.

For:- BOD (ATU)

The results of the analysis which I carried out were passed to Tim White, Senior Chemist.

Dated the 10th day of April 1989 Signed GL Yg

EVIDENCE FROM
COMPUTER RECORDS

POLICE AND CRIMINAL EVIDENCE ACT 1984
SECTION 69 & SCHEDULE 3 PARTS II & III
EVIDENCE FROM COMPUTER RECORDS

1. ROBERT DOUGLAS HEATH of 82 Elm Road, Folksworth, Peterborough hereby certify as follows:-

1. I am employed by the Anglian Water Authority's NRA Unit as the Senior Chemist (Data) of its Aqua House Laboratory, Peterborough, which is a position which I have held since August 1988.
2. I refer to the document annexed hereto, comprising 32 pages of sample results plus one index page and two preliminary pages making a total of 35 pages altogether and marked Exhibit "1" ("the document").
3. The document is a computer print-out of the analytical result obtained in Anglian Water Authority's Laboratory, at Peterborough of the Samples taken in relation to an alleged pollution of a tributary of the Sapiston River on or about the 17th - 19th March 1989.
4. The statement contained in the document comprises (a) the information taken from the Sample Bottles (i.e. Sample Date, Sample Time, Sampled By, and Comments) and (b) the respective Laboratory No. (Sample Number) allocated to the Sample and the Analysis results relating thereto.
5. The information referred to in paragraph (4) (a) and (b) above was supplied to a Computer in March - April 1989 and the document is the first complete print out of the analysis results relating to the said samples.

6. The document was produced at the time in accordance with the Laboratory's normal procedures for the recording of Analytical Results.
7. The Computer in question was a Honeywell DPS-870.
8. There are no reasonable grounds for believing that the Statement contained in the document is inaccurate because of improper use of the computer.
9. At all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents.
10. So far as the results of Samples analysed at the Laboratory are concerned, I am the person with over-all responsibility for the operation of the computer and in particular, the verification of the recording therein of such results.
11. This Certificate is correct to the best of my knowledge and belief.

(Signed) 

(Dated) *24th May 88*

OUTPUT FROM GENERAL DATA ABSTRACTION FACILITY

REPORT TYPE 711 - PART 2 - INDEX OF SAMPLES IN THIS REPORT

SAMPLE NUMBER	SAMPLE DATE	SAMPLE TIME	REASON(S) FOR SAMPLE	WMEIMP AUTORISED	SAMPLE POINT CODE	SAMPLE POINT NAME
3029	17/03/89	0950	PI PL	Y0	R02MFL7663	GR 10 SQUARE TL0663
3030	17/03/89	0955	PI PL	Y0	R02MFL7663	GR 10 SQUARE TL0663
3031	17/03/89	1210	PI PL	Y0	R02MFL7661	GR 10 SQUARE TL0661
3032	17/03/89	1055	PI PL	Y0	R02L6TL9662	GR 10 SQUARE TL0662
3043	17/03/89	1045	PI PL	Y0	R02BFMISCTL96	MISC. STREAMS ELM SWELL 10 K4 S0
3044	17/03/89	1030	PI PL	Y0	R02BFMISCTL96	MISC. STREAMS ELM SWELL 10 K4 S0
3045	17/03/89	1020	PI PL	Y0	R02BFMISCTL96	MISC. STREAMS ELM SWELL 10 K4 S0
3046	17/03/89	1100	PI PL	Y0	R02BFMISCTL96	MISC. STREAMS ELM SWELL 10 K4 S0
3047	17/03/89	1125	PI PL	Y0	R02BFMISCTL97	MISC. STREAMS DARDWELL 10K4 S0
3048	17/03/89	1145	PI PL	Y0	R02BFMISCTL97	MISC. STREAMS EUSTON 10K4 S0
3049	17/03/89	1230	PI PL	Y0	R02BFMISCTL83	MISC. STREAMS THETFORD 10K4 S0
3050	17/03/89	1340	PI PL	Y0	R02BFMISCTL89	MISC. STREAMS THETFORD 10K4 S0
3051	17/03/89	1330	PI PL	Y0	R02BFMISCTL79	MISC. STREAMS GRANDM 10K4 S0
3052	17/03/89	1007	PI PL	Y0	R02BFMISCTL79	MISC. STREAMS ELM SWELL 10 K4 S0
3071	18/03/89	0900	PI PL	Y0	R02BF46M72	LY. GUSE R. A10 RD. RR. BRANDON CREEK
3072	18/03/89	0930	PI PL	Y0	R02BF46M71	LY. GUSE R. MILTON BRIDGE LAKENHEATH
3073	18/03/89	1015	PI PL	Y0	R02BF46M71	MISC. STREAMS BRANSM 10K4 S0
3074	18/03/89	1130	PI PL	Y0	R02BF46M72	LY. GUSE R. THETFORD NO. 2 STAUNCH
3075	18/03/89	1200	PI PL	Y0	R02BF46M72	LY. GUSE R. NUM'S RD. RR. THETFORD
3076	18/03/89	1255	PI PL	Y0	R02BF46M72	SAFISTON R. A104 RD. BR. EUSTON
3077	18/03/89	1310	PI PL	Y0	R02BF46M79	SAFISTON R. A104 RD. BR. EUSTON
3078	18/03/89	1330	PI PL	Y0	R02BF46M79	SAFISTON R. A104 RD. BR. EUSTON
3079	18/03/89	1345	PI PL	Y0	R02BF46M79	SAFISTON R. A104 RD. BR. EUSTON
3080	18/03/89	1518	PI PL	Y0	R02BF46M79	MISC. STREAMS BRANSM 10K4 S0
3081	18/03/89	1525	PI PL	Y0	R02BF46M79	MISC. STREAMS BRANSM 10K4 S0
3082	18/03/89	1535	PI PL	Y0	R02BF46M79	TEA MILE R. TEN MILE BANK BRIDGE MILGAY
3083	18/03/89	1600	PI PL	Y0	R02BF46M79	TEA MILE R. TEN MILE BANK BRIDGE MILGAY
3084	19/03/89	1130	PI PL	Y0	R02BF46M79	TEA MILE R. TEN MILE BANK BRIDGE MILGAY
3085	19/03/89	1230	PI PL	Y0	R02BF46M79	FLCOP RELIEF CHAYVEL STON BRIDGE
3086	19/03/89	1320	PI PL	Y0	R02BF46M79	TEA MILE R. TEN MILE BANK BRIDGE MILGAY
3087	19/03/89	1345	PI PL	Y0	R02BF46M79	TEA MILE R. TEN MILE BANK BRIDGE MILGAY
3088	19/03/89	1400	PI PL	Y0	R02BF46M79	LY. GUSE R. A10 RD. RR. BRANSM 10K4 S0

... END OF PAGE INDEX ...

ENGLISH WATER AUTHORITY - CAMBRIDGE DIVISION

ANALYTICAL REPORT - PRINTED ON 16/05/89

SAMPLE POINT NAME - GRID SQUARE TL9663
 SAMPLE POINT CODE - R02B71L9663
 SAMPLE TYPE - RIVER/STREAM WATER
 SAMPLE DATE - 17/03/89
 SAMPLE TIME - 0930 HRS
 SAMPLE NUMBER - 3029
 SAMPLE REASON - POLLUTION INCIDENT INVESTIGATION
 - POTENTIAL LEGAL PROCEEDINGS
 SAMPLED BY - IM
 TEMP (C) - 6.5

DETERMINAND	VALUE	UNITS
CONDUCTIVITY AT 25 DEG C	820	USIE/CM
SOLIDS PARTICULATE (105 C) (SUSPENDED)	72	MG/L
SOLIDS PARTICULATE (500 C) (ASM)	52.5	MG/L
OXYGEN DISSOLVED MG/L AS O	11.1	MG/L O
OXYGEN DISSOLVED % SATM	93	% SATM
DOB 5 ATU TOTAL	7.35	MG/L O
AMMONIA AS NITROGEN	2.93	MG/L N
TOTAL OXIDISED NITROGEN AS NITROGEN	15.45	MG/L N

COMMENTS

TL9663 - BAPISTON MAIN CHANNEL/S OF BROADBRASS GREEN PD.3P.

2

44



F I S H E R I E S A S S I S T A N T S

STATEMENT OF WITNESS

Criminal Justice Act 1967 S.S 9; M.C. Act 1980, S.102; M.C Rules 1981 r.70

STATEMENT OF: Paul Wilkanowski

AGE: Over 21

Occupation: Senior Fisheries Assistant

Address: Anglian Water, NRA Unit
Bromholme Lane, Brampton
Huntingdon, Cambridgeshire. PE18 8NE

My name is Paul Wilkanowski and I am employed by Anglian Water, NRA Unit as Senior Fisheries Assistant. I have worked for Anglian Water for over eleven years, including six years in the Fisheries Department.

On Friday the 17th of March 1989 I arrived at Anglian Water, NRA Unit offices at Bromholme Lane, Brampton at approximately 0830hrs. Following a report of a possible pollution incident, I immediately mobilised a team of eight including myself to investigate.

We met at a point slightly downstream from Point 5 on the large scale map marked exhibit 2 (and hereinafter referred to as Map 1 or Map 2 as the case maybe). At this point I observed that the River Sapiston was dark brown in colour and had a strong smell of piggery waste. From my observations I concluded that we were dealing with a major pollution with a potentially high fish mortality.

I drove further downstream to investigate between Point 9, Map 2 and Point 13, Map 2. At the first four points the river was again dark brown in colour with the smell of piggery waste, but no dead or distressed fish were seen.

Signed *P. Wilkanowski*

On my arrival at Point 13 I could see between 20 and 30 dead fish in the reeds close to the river bank and distressed fish floating down from the impounded 'Broad' section of the River Sapiston in front of Euston Hall.

At approximately 1200hrs I rang John Adams at the Brampton Office to advise him of the present situation and asked for further equipment. On arrival back at Point 5 I directed the whole Fisheries Team to Point 13 to rescue as many fish as possible.

I then left to investigate the Little Ouse River. At Point 15, Map 2, it was obvious to me that the pollution had already come through, because the piggery smell and brown colour was still apparent. On close inspection at the confluence of the Little Ouse and River Thet, just downstream of Point 15 on Map 2, the dark, turbid Little Ouse water could be seen mixing with the clearer water of the River Thet.

At approximately 1530hrs I arrived back at Point 13 and was directed by John Adams, with the rest of the team to investigate the Little Ouse River upstream of Point 16, Map 2, where after a short inspection I found less than ten dead fish. A further investigation was made at Point 17, Map 2, where I found large numbers of distressed fish. I counted approximately 50 fish predominately Roach although the dark water colour made the determination of species difficult.

Finally at 1730hrs I met with other members of the Fisheries Team at point 18, Map 2 where our investigations for that day were suspended.

On Tuesday the 21 March 1989 I spent the whole working day at Point 13, collecting dead fish from a 600 metre section of the River Sapiston in front of Euston Hall. In my diary for that day I noted that we collected approximately 300-400 dead fish comprising of Roach, Common Bream, Chub, Pike and Perch.

On Wednesday the 22nd of March 1989 an investigation by myself of the Little Ouse River between Point 18, Map 2 and Point 21, Map 2, did not reveal any dead fish at the four sites inspected.

On Thursday the 23rd of March 1989 a further search by myself at Point 13 revealed that few dead fish remained, and at the end of the day it was decided to suspend the collection of dead fish.

Signed *P. W. [Signature]*

Between Wednesday the 29th of March 1989 and Wednesday the 17th of May 1989 I participated in a Fisheries Survey of the Rivers Sapiston and Little Ouse. I was responsible for recording catch data for the following sites which are shown on the Fisheries Survey map marked exhibit 8:

110
111
112

The results of that survey are shown on the tables attached to the second statement of John Adams and are marked exhibit 9.

This statement (consisting of three pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed *P. W. W. W.* Dated 24th of May 1989

STATEMENT OF WITNESS

(C.J Act 1967 S.9: M.C. Act 1980 S.102, M.C. Rules, 1981 r.70)

STATEMENT OF: Gordon Howes
AGE OF WITNESS: 18
OCCUPATION: Temporary Fisheries Assistant
ADDRESS: Anglian Water NRA Unit
Bromholme Lane, Brampton
Huntingdon, Cambridgeshire PE18 8NE

My Name is Gordon Howes and since the 3rd of January 1989 I have been employed by Anglian Water as a Temporary Fisheries Assistant.

I have gained experience in fisheries with the Amey Roadstone Corporation and also as a Temporary Fisheries Assistant with Anglian Water NRA Unit, Brampton, during the period May to December 1988.

Between Wednesday the 29th of March 1989 and Wednesday the 17th of May 1989 I participated in a fisheries survey of the rivers Sapiston and the Little Ouse. I was responsible for recording catch data for the following sites, which are shown on the Fisheries Survey Map marked exhibit 8: 101
102
103

The results of that survey are shown on the tables attached to the second statement of John Adams and are marked exhibit 9.

This statement consisting of one page signed by me, is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated this 24th day of May 1989

Signed ...*G. Howes*.....

B I O L O G I S T

CRIMINAL JUSTICE ACT 1967 SECTION 9

STATEMENT OF: Graham Thomas Fitzgerald
AGE OF WITNESS: Over 21
OCCUPATION OF WITNESS: Assistant Biologist
ADDRESS OF WITNESS: Anglian Water Authority
Bromholme Lane
Brampton
Huntingdon
Cambs
PE18 8NE

I am an Assistant Biologist for the N.R.A Unit (Central Area) based at Milton, Cambridge. I hold an Honours degree in Applied Biology and I have been employed by Anglian Water for three years. On Tuesday 28 March 1989 I received instructions to carry out a biological survey of the R Sapiston system in order to determine whether or not the invertebrate fauna of the river had been affected by a recent pollution incident. I carried out this survey on the 28, 29 and 30 March 1989. Sixteen sites were sampled.

These sites are marked as letters A-P on the large scale map (marked exhibit No 2) but hereafter referred to as Map 1 or Map 2 as the case may be and for convenience plotted on a diagrammatic map attached to my evidence marked Fig GTF1. The site locations are listed in Table GTF1 (attached).

At each site a kick, sweep and search sample was taken using a standard pond net, so that a representative invertebrate fauna was obtained. These were examined in the field where the invertebrates were identified and abundance estimates were carried out.

From these data a biological index was calculated - the Biological Monitoring Working Party score (BMWP score) (Reference: Chester, RK (1980) Biological Monitoring Working Party. The 1978 national testing exercise. Department of the Environment, Water Data Unit Technical Memorandum. 19:1-37). This is a national scoring system used by all Water Authorities to indicate water quality from biological data. In this system types of invertebrates are assigned a score, from 1-10, depending on their tolerance to organic pollution. Animals which prefer polluted conditions are assigned low scores (eg: Oligochaeta worms score 1, Chironomid midge larvae score 2) whilst animals which prefer clean water are assigned high scores (eg: cased Caddis larvae score 10). The BMWP score for a site is derived by summing the scores of all the types of invertebrates found at a given site. BMWP scores can be banded to give broad indications of water quality and these are shown in the boxed table in figure GTF 1.

G.T. Fitzgerald

The results of the biological survey showed that a pollutant had severely damaged the invertebrate fauna of both the tributary of the R. Sapiston that flows past Rookery Farm and large parts of the Sapiston River itself. However there were no apparent effects on the invertebrate fauna of the Little Ouse, following its confluence with the Sapiston River.

In the tributary referred to earlier many dead invertebrates were found at site M. Only a few live invertebrates were found of which only the pollution preferent Chironomids (midge larvae) were at all abundant. A BMWP score of 18 was recorded, which is indicative of poor water quality.

In the River Sapiston immediately upstream from the tributary referred to earlier at site A a varied and abundant fauna was recorded with a BMWP score of 80. This is indicative of good quality water. Immediately downstream from the tributary referred to earlier at site B there was a great deterioration in the fauna. Numbers of dead invertebrates were found and the fauna was dominated by those types which prefer or can tolerate organic pollution. A BMWP score of 55 was recorded which is a poor result compared to site A, only 20m upstream. A similar result was recorded in the R. Sapiston at site C, 5 kms downstream. At site D, 10 kms downstream there was further deterioration in the invertebrate fauna. A BMWP score of only 34 was recorded, which is indicative of poor water quality. Upstream of the confluence with the Little Ouse, sites E and F recorded BMWP scores of 90 and 86 respectively which although classified as "good" were nevertheless poor compared to the sites downstream on the Little Ouse.

The Little Ouse itself showed a diverse and abundant invertebrate fauna with the exception of site K where the fauna was limited because of very poor habitat for invertebrates. BMWP scores from the 6 sites (G,H,I,J,K,L) sampled recorded an average of 103 which is indicative of very good water quality.

This statement (comprising of two pages plus the table and figure previously mentioned which I have signed) is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated this 24 day of May 19 89

Signed 

TABLE GTF 1

28 March 1989

(1)	(2)	(3)	<u>BMWP score</u> (4)
<u>Site No</u>	<u>Name</u>	<u>NGR (approx)</u>	
A	River Sapiston U/S of Tributary	TL 966 630	80
B	River Sapiston D/S of Tributary	TL 967 632	55
C	River Sapiston at Bull Bridge Nr Stowlangloft	TL 948 679	45
D	River Sapiston A1088 Road Br Ixworth	TL 927 712	34
M	Tributary, PTC River Sapiston	TL 967 630	18

29 March 1989

<u>Site No.</u>	<u>Name</u>	<u>NGR (approx)</u>	
E	River Sapiston, Thorpe Road, Bardwell	TL 938 737	90
F	River Sapiston A1088 R/B Euston	TL 896 789	86
G	Little Ouse, Nuns Bridge - Thetford	TL 875 824	146
H	Little Ouse, Abbey Heath - Thetford	TL 851 844	98
I	Little Ouse, Santon Downham	TL 818 878	106
J	Little Ouse, A1065 R/B Brandon	TL 783 869	102
L	Little Ouse, Brandon Creek	TL 607 917	102
N	Little Ouse, - PTC Sapiston, A1088 R/B Nr Euston	TL 893 802	109
P	River Great Ouse Ten Mile Bank	TL 604 970	91

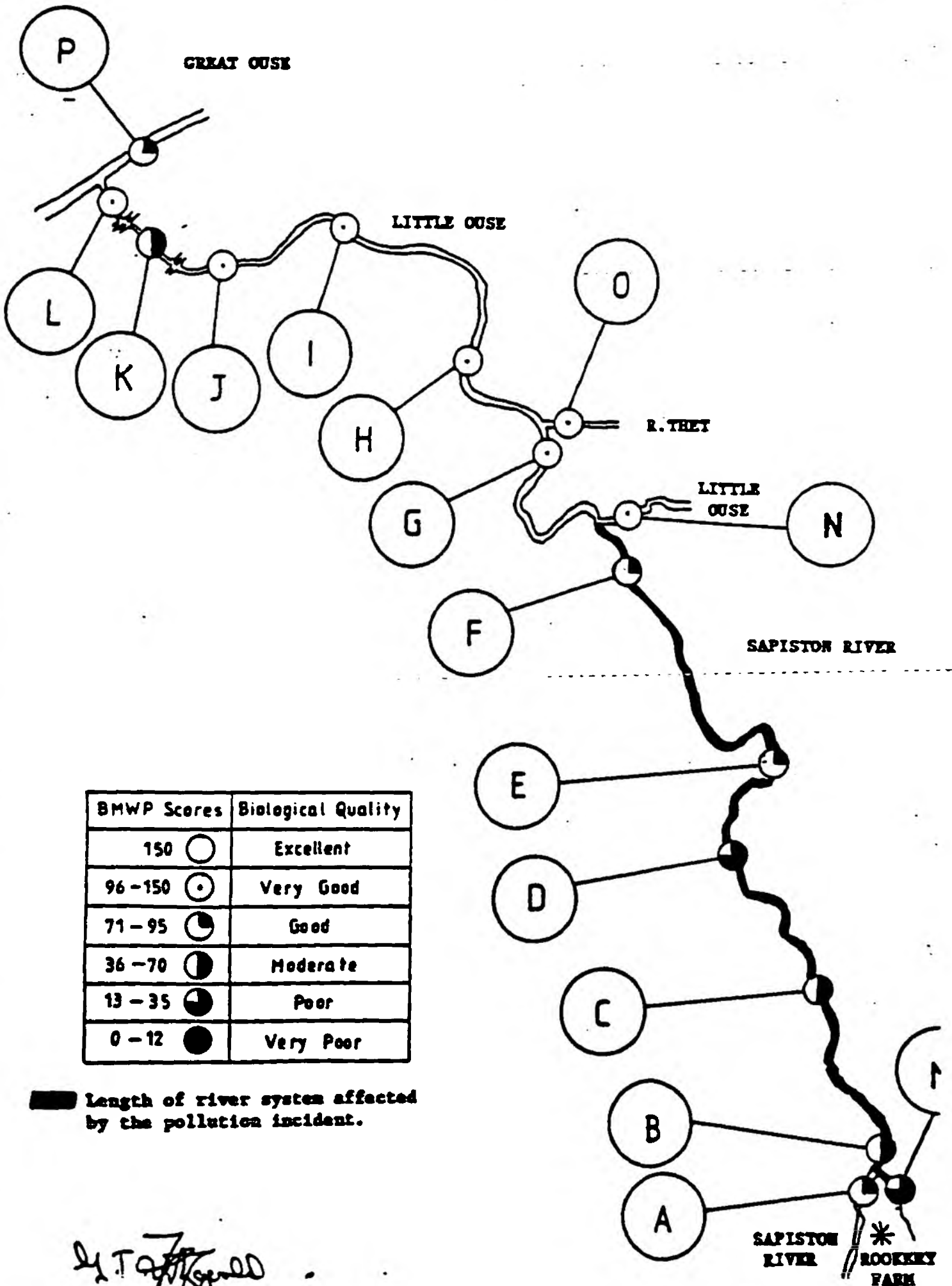
30 March 1989

<u>Site No</u>	<u>Name</u>	<u>NGR (approx)</u>	
O	River That, PTC Little Ouse, Nuns Br Thetford	TL 875 826	108
K	Little Ouse, Wilton Bridge Nr Hockwold	TL 724 866	64

L. T. [Signature]

SAMPLE POINTS AND BMWP SCORES.

FIGURE GTV1.



Handwritten signature: J. T. [unclear]

TECHNICIAN

STATEMENT OF WITNESS

(C.J. Act 1967 S.9: M.C. Act 1980 S.102, M.C. Rules, 1981 R.70)

STATEMENT OF: Alexander Wladyslaw Akielan
AGE OF WITNESS: Over 21 yrs
OCCUPATION OF WITNESS: Technician (Automatic Water Quality Monitoring)
ADDRESS OF WITNESS: Anglian Water Authority, N.R.A. Unit,
Bromholme Lane, Brampton, Huntingdon, PE18 8NE

At all material times I was in the employment of Anglian Water (NRA Unit). As part of my duties, I am required to visit on a regular basis the water quality monitoring station on the Little Ouse at Hockwold (NGR TL 732 870), for the purposes of :

- (1) Checking and testing the instrumentation situated at the site used for the purposes of measuring the water quality in the river Little Ouse. I check and test the instrumentation by calibrating it against prepared standard solutions. I also clean all the relevant probes and Sensors.
- (2) For inserting, removing and replacing at four weekly intervals the water quality data recorder chart.

I refer to a chart which I have marked exhibit No. 7 being the chart which I removed from the said site during my visit on or about the 21 March 1989, in respect of the water quality data during the preceeding four weeks. I am able to confirm that to the best of my knowledge information and belief, the said instrumentation was working correctly on 21 March 1989.

This statement (consisting of one page signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated this 12th day of June 1989

Signed *A.W. Akielan*

PHOTOGRAPHER

STATEMENT OF WITNESS

(CRIMINAL JUSTICE ACT 1967: s.9; M.C. Act 1980, s.102; M.C. Rules 1981 r.70)

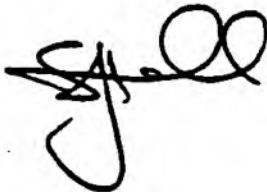
Statement of : Simon Jeremy Hall
Age of Witness : 49
Occupation of Witness : Freelance Aerial Photographer
trading as 'ASPECTS of Cambridge'
I have also been in the permanent employment of
Anglian Water since September 1976.
Address of Witness : 44 Beaumont Road, Cambridge. CB1 4PY

On 30 March 1989 I undertook an aerial photographic assignment to the order of J.G. Halson, District Quality Officer, Anglian Water, Ely. The assignment was to take an aerial photograph of the piggery at Rookery Farm, Woolpit Road, Drinkstone, at NGR TL 965 623. I took a photograph of the site. My photograph (reference A68/26) appears at page 20 of an album of photographs marked Exhibit No. 3

This statement, consisting of one page signed by me, is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated this 24th day of May 1989

Signed



PRINCIPAL QUALITY CONTROL OFFICER

STATEMENT OF WITNESS

Criminal Justice Act 1967 S.9; M.C. Act 1980. S.102; M.C. Rules 1981 r.70)

STATEMENT OF ALAN D. BARNDEN


AGE OVER 21

Occupation: PRINCIPAL QUALITY CONTROL OFFICER

Address: 5 THRAPSTON ROAD
SPALDWICK
HUNTINGDON
CAMBS

ANGLIAN WATER AUTHORITY
NRA UNIT
PETERBOROUGH


This statement (consisting of 1 page signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 18th day of May 1989 Signed 

I am a Master of Art and a Master of Science. I have been employed by the Anglian Water Authority since August 1978.

I am the person with overall responsibility for dealing with applications for and the granting of consent to discharge under Section 34 of the Control of Pollution Act 1974 and for maintaining the registers of applications for consent and the consents given in accordance with Section 41 of the Act.

I have checked the Public Registers maintained by the Authority under Section 41 of the said Act. There is no record of any application being received from nor consent being granted to John Edgar Clarke, Hassett House, Beyton, Bury-St-Edmunds, Suffolk or any other person for a discharge of trade effluent from Rookery Farm, Drinkstone, Bury-St-Edmunds to a tributary of the Sapiston River at Grid Reference: TL 965 625 or at any other point.

Signed 

18/5/89.

MET OFFICE

STATEMENT OF WITNESS

Criminal Justice Act 1967 S.S. 9; M.C. Act 1980, S.102; M.C. Rules 1981 r.70

Statement of Martin Allwright

AGE OVER 21 YEARS

Occupation: HIGHER SCIENTIFIC OFFICER

Address: ADVISORY SERVICES
 THE MET OFFICE
 ROOM 228
 LONDON ROAD
 BRACKNELL
 BERKSHIRE
 RG12 2SZ

This statement (consisting of 2 pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 29th day of September 1989

Signed *Martin Allwright*

I am employed by the Meteorological Office in the Advisory Services Branch and have been so employed for the last four years. My main duty is to prepare reports and certified statements on the weather in conjunction with legal proceedings both civil and criminal, as an expert on the weather.

Exhibit MA/1 lists the three nearest raingauges operating in 1989, to National Grid Reference TL950610, as being located at Rushbrook Hall, Rougham Green and Felsham.

Rushbrook Hall

The daily rainfall records for March 1989 at Rushbrook Hall (Exhibit MA/2) show that a total of 47.1 mm rainfall occurred during the period commencing at 9.00 am on 10th March 1989 and ending at 9.00 am on 25th March 1989. Most of this rain fell during the 72 hour period commencing at 9.00 am on 14th March 1989; 30.8 mm of rainfall occurred in this period. The highest 24 hour rainfall occurred during the period commencing at 9.00 am on 16th

March 1989 when 17.2 mm rainfall occurred. None of these three rainfall totals can be regarded as exceptional, and each of them, on average, can be expected to recur several times each year.

Rougham Green

The daily rainfall records for Rougham Green (Exhibit MA/3) show that a total of 42.6 mm rainfall occurred during the period commencing at 9.00 am on 10th March 1989, and ending at 9.00 am on 25th March 1989. Most of this rain fell during the 72 hour period commencing at 9.00 am on 14th March 1989; 28.3 mm of rainfall occurred in this period. The highest 24 hour rainfall occurred during the period commencing at 9.00 am on 14th March 1989, when 18.4 mm rainfall occurred. None of these three rainfall totals can be regarded as exceptional, and each of them, on average, can be expected to recur several times each year.

Felsham

The daily rainfall records for Felsham show a total of 46.5 mm rainfall occurred during the period commencing at 9.00 am on 10th March 1989, and ending at 9.00 am on 25th March 1989. Most of this rain fell during the 72 hour period commencing at 9.00 am on 14th March 1989; 30.0 mm occurred in this period. The highest 24 hour rainfall occurred during the 24 hour period commencing at 9.00 am on 16th March 1989 when 15.5 mm rainfall occurred. None of these three rainfall totals can be regarded as exceptional, and each of them, on average, can be expected to recur several times each year.

In my opinion it is likely that the rainfall at National Grid Reference TL950610 followed a similar pattern to that at Rushbrook Hall, Rougham Green and Felsham and that this rainfall cannot be regarded as exceptional.

Signed *Martin Allwright*

Martin Allwright

Dated *29 September 1989*

68 6 02 M. Kelly

EXHIBIT M/1

THE FOLLOWING IS A LIST OF GAUGES WITHIN 6.0 KILOMETERS OF THE GIVEN GRID POINT. (52)950610

RYEMROCK HALL
STATION NUMBER 19565 IS 3 KILOMETERS AWAY FROM THE GIVEN GRID POINT TO THE WEST . ALTITUDE 70M (APPROXIMATE BEARING 272 DEGS FROM NORTH).

ROXBURY GREEN
STATION NUMBER 18931 IS 3 KILOMETERS AWAY FROM THE GIVEN GRID POINT TO THE WEST . ALTITUDE 25M (APPROXIMATE BEARING 291 DEGS FROM NORTH).

9 LELAND
STATION NUMBER 226016 IS 4 KILOMETERS AWAY FROM THE GIVEN GRID POINT TO THE SOUTH . ALTITUDE 94M (APPROXIMATE BEARING 199 DEGS FROM NORTH).

OF THE GIVEN GRIDPOINT (52)950610 OPERATING DURING ALL OR PART OF 1989.
THAT IS THE COMPLETE LIST OF GAUGES WITHIN 6.0 KILOMETERS

DAILY RAINFALL DATA FOR MAR 1997 IN MILLIMETERS

RUSHBROOKE HALL

STATION NUMBER 185543

GRID REFERENCE: EASTING 5892 NORTHING 2613

1	2	3	4	5	6	7
0.0	6.9	0.4	0.2	0.0	0.2	0.0
8	9	10	11	12	13	14
0.0	0.0	1.2	2.3	1.2	0.0	11.6
15	16	17	18	19	20	21
2.0	17.2	0.0	1.4	1.2	6.1	1.0
22	23	24	25	26	27	28
0.0	1.9	0.0	0.0	0.0	0.0	0.0
29	30	31				
0.0	0.0	0.0				

TOTAL RAINFALL FOR MONTH = 56.4

THE 1941-1970 AVERAGE RAINFALL FOR THIS MONTH IS ****

THE RAINFALL TOTAL FOR THIS MONTH IS **** PERCENT OF THIS AVERAGE.

NOTES:-

- (1) DAILY TOTALS RELATE TO 24-HOUR PERIODS COMMENCING AT 0700 GMT ON THE DAY OF ENTRY.
- (2) WHERE ***** APPEARS ON THIS PRINTOUT NO DATA ARE AVAILABLE.
- (3) FALLS OF LESS THAN 0.05 MILLIMETERS ARE SHOWN ON THIS PRINTOUT AS 0.0.
- (4) THIS STATION DOES NOT HAVE 1941-70 MONTHLY AVERAGES

Exhibit MA/2

M. S. G. 29.9.89.

DAILY RAINFALL DATA FOR MAR 1989 IN MILLIMETERS

ROUSHAN GREEN

STATION NUMBER 100551

GRID REFERENCE: EASTING 5912 NORTHING 2610

1	2	3	4	5	6	7
0.7	3.2	0.0	0.3	0.0	0.1	0.0
8	9	10	11	12	13	14
0.6	0.9	2.1	0.0	1.1	0.0	9.6
15	16	17	18	19	20	21
0.3	10.4	0.1	1.0	1.1	6.4	0.0
22	23	24	25	26	27	28
0.1	1.6	0.0	0.0	0.0	0.0	0.0
29	30	31				
0.0	0.0	0.0				

TOTAL RAINFALL FOR MONTH = 50.6

THE 1961-1970 AVERAGE RAINFALL FOR THIS MONTH IS ****

THE RAINFALL TOTAL FOR THIS MONTH IS **** PERCENT OF THIS AVERAGE.

NOTES:-

- (1) DAILY TOTALS RELATE TO 24-HOUR PERIODS COMMENCING AT 0900 GMT ON THE DAY OF ENTRY.
- (2) WHERE ***** APPEARS ON THIS PRINTOUT NO DATA ARE AVAILABLE.
- (3) FALLS OF LESS THAN 0.05 MILLIMETERS ARE SHOWN ON THIS PRINTOUT AS 0.0.
- (4) THIS STATION DOES NOT HAVE 1961-70 MONTHLY AVERAGES

17.

Exhibit MA/3

M. Stiglitz 29.9.89

DAILY RAINFALL DATA FOR MAR 1967 IN MILLIMETERS

FELSHAN

STATION NUMBER 220016

GRID REFERENCE: EASTING 5936 NORTHING 2565

1	2	3	4	5	6	7
0.5	6.1	0.0	1.3	0.0	0.3	0.0
8	9	10	11	12	13	14
1.1	1.3	2.0	0.0	1.2	0.0	11.6
15	16	17	18	19	20	21
2.9	15.5	0.3	1.2	2.2	6.3	1.3
22	23	24	25	26	27	28
0.2	1.3	0.3	0.0	0.0	0.0	0.0
29	30	31				
0.0	0.0	0.0				

TOTAL RAINFALL FOR MONTH = 37.1

THE 1941-1970 AVERAGE RAINFALL FOR THIS MONTH IS ****

THE RAINFALL TOTAL FOR THIS MONTH IS **** PERCENT OF THIS AVERAGE.

NOTES:-

- (1) DAILY TOTALS RELATE TO 24-HOUR PERIODS COMMENCING AT 0900 GMT ON THE DAY OF ENTRY.
- (2) WHERE **** APPEARS ON THIS PRINTOUT NO DATA ARE AVAILABLE.
- (3) FALLS OF LESS THAN 0.05 MILLIMETERS ARE SHOWN ON THIS PRINTOUT AS 0.0.
- (4) THIS STATION DOES NOT HAVE 1941-70 MONTHLY AVERAGES

Exhibit MA/4

M. All. 11.

29.9.87

F I S H E R I E S S C I E N T I S T

SECOND STATEMENT OF WITNESS

Criminal Justice Act 1967 S.5 9; M.C Act 1980, S.102; M.C Rules 1981 r.70

STATEMENT OF: John Arthur Adams

AGE: Over 21 Occupation: Fisheries Scientist

Address: Anglian Water, NRA Unit
Bromholme Lane, Brsmp-ton
Huntingdon, Cambridgeshire. PE18 8NE

My name is John Arthur Adams and I am employed by Anglian Water, NRA Unit (Central Area) at Brampton as Fisheries Scientist. I gained an Honours degree in Biological Sciences at the University of East Anglia and I have been employed within the Fisheries Department of Anglian Water for approximately 7½ years.

Following a major fish mortality affecting the River Sapiston and Little Ouse Rivers I analysed and interpreted data collected during the fish population surveys carried out by Anglian Water Fisheries staff on the rivers Sapiston and Little Ouse during 1988 and 1989. The data collected between 25th May 1988 and the 4th August 1988 formed a baseline estimate for the fish population prior to March 1989 and to permit an estimate of fish losses to be calculated, this data was compared to the fish population data collected during the fisheries survey carried out between the 29th March 1989 and the 17th May 1989.

To allow a direct comparison of the 1988 and 1989 fisheries data sets, the location of each sample site was the same for both surveys. These sites are shown as numbers 101-117 on the fish survey map marked as exhibit 8. The site locations are listed in table 1 to my statement.

Two standard sampling techniques were used during this survey, electrofishing at site numbers 101-109 and seine netting at site numbers 110-117. These techniques gave a quantitative estimate of the fish population for fish greater than 10cm in length at electrofishing sites and for fish greater than 7cm in length at seine netting sites.

Signed 

The total number and weight of fish caught at each sample site are given in tables 2 and 3 respectively for the 1988 and 1989 fisheries surveys of the River Sapiston and in tables 4 and 5 respectively for the 1988 and 1989 fisheries surveys of the Little Ouse River and collectively marked exhibit 9.


From these data an absolute estimate of the fish population for each site was calculated by using either the Seber LeCren or Zippin catch depletion method. Both the Seber LeCren and Zippin equations are nationally accepted formula for calculating population estimates and are based on the catch depletion achieved during sequential sampling at a given site. The weight of fish, with the exception of Eels, was calculated by length weight regression using the Anglian Water Fisheries Data Base, Eels were bulk weighed and their weight recorded on site. The use of length-weight regressions is a standard technique for calculating fish weight as it minimizes the amount of fish handling during the survey.

The estimates calculated by these methods are given in tables 6-9 to my statement respectively of the the 1988 and 1989 River Sapiston surveys and for the 1988 and 1989 Little Ouse River Surveys.

To make useful interpretation of these estimates it is necessary to consider the surface area of water sampled at each site. The surface area of each sample site is given in table 1, and a comparison between the derived population estimates recorded at each site in 1988 and 1989 is given in figure 2 to my statement for the number of fish per square metre and in figure 3 to my statement for the weight of fish (in grammes) per square metre.

It can be seen from the population changes shown in figures 2 and 3 that the river Sapiston suffered major fish losses both in terms of numbers and by weight. Fish losses from the Little Ouse river, although severe were rather more variable than those recorded on the river Sapiston, with six of the ten Little Ouse Sites showing decline in terms of numbers of fish and seven of the ten sites showing a decline in weight of fish. Overall these results show a generally higher rate of fish survival with increasing distance from Mickle Mere (shown as site 101 on the fish survey map) with no detectable effect on the fish population at site 117 (on the fish survey map). It should however be noted that significant fish losses were recorded over the 50Km (approximately) section of river between Micklemere and Shippea Hill (between sites 101 and site 116 on the fish survey map).

Of interest was the substantial increase in the Eel population recorded on the Little Ouse river between the 1988 and 1989 surveys, (as shown in tables 8 and 9) and particularly at the Barnham Village and Barnham Common sites (marked as sites 108 and 109 on fish survey map), as a result of which, if the results are considered as a whole, the increased Eel population would distort any estimate of the true losses of other fish species from the Little Ouse over this period

Signed 

It is for this reason, and because as a migratory species (unlike the other species recorded) the Eel may be subject to significant periodic fluctuations in population level, that I have excluded Eels from any calculation of total fish losses.

To obtain an estimate of the total number and weight of fish lost, reference was made to the surface area of river affected. This calculation indicates approximately 15.1 Hectares of the river Sapiston were affected (Micklemere to the Little Ouse confluence) and 77.6 Hectares of the Little Ouse were affected (from the river Sapiston confluence to site 121 near Little Ouse village) and by extrapolating from the 1988 and 1989 survey data (tables 6-9) it was possible to calculate a quantitative estimate of losses. These estimates are given in table 10 to my statement for the river Sapiston, in table 11 to my statement for the Little Ouse River, with a combined total estimate of losses given in table 12 to my statement.

These results indicate an estimated 7093 fish (82%) with a total weight of 2062Kg (87%) were lost from the river Sapiston, and an estimated 3476 fish (25%) with a total weight of 2429Kg (53%) were lost from the Little Ouse River. This gives a total estimated loss from the affected sections of the river Sapiston - Little Ouse system of 10569 fish with a total weight of 4491Kg.

The results also emphasize the importance of quantitative estimates in assessing fish losses, particularly in cases such as this where high water turbidity at the time of the pollution incident reduced the visibility of fish which were not floating on the surface and where if dead fish counts were the only mortality measure available, the estimate of losses would be a serious underestimate of the true figure.

Both the rivers Sapiston and the Little Ouse are important recreational fisheries, with fishing rights in various sections leased by a number of different angling clubs, indeed following the 1988 river Sapiston survey a restocking operation was carried out by Anglian Water to improve fish stocks in the Ixworth area of the river Sapiston. This work was carried out as recently as the period 21st of September 1988 to the 1st of March 1989 and involved the introduction of approximately 10,000 small Roach, Rudd and Common Bream, with a total weight of approximately 360Kg.

River fisheries within the Anglian Water area are classified in terms of the weight of fish per unit area (expressed as grammes per square metre) the four categories are:

- Class A excellent - greater than 20gm⁻²
- Class B good - 10-20gm⁻²
- Class C moderate - 5-10gm⁻²
- Class D poor - less than 5gm⁻²

Signed 

Using this classification, prior to the March 1989 pollution incident the river Sapiston supported a Class 'B' fish population and the Little Ouse river supported a Class 'C' fish population. Following the March 1989 pollution incident both the rivers Sapiston and the Little Ouse were reduced to Class 'D' fish populations, one effect of which is that the affected sections of both the rivers Sapiston or the Little Ouse, now no longer support sufficient fish stocks to sustain a viable coarse fishery.

Restocking is therefore the only option to reinstate, or at least partially reinstate, the fish population in an acceptable period of time, say within a period of 12 months. It should however, be noted that although restocking will be of immediate benefit to the fishery, because of the suspected large scale losses of 1 to 2 year old fish which were too small to be caught during the fisheries surveys (ie less than 7cm in length), the continued recovery of the fish population will take a period of years before the fish population returns to pre pollution levels, as the numbers of small fish are increased in the natural reproductive cycle.

Fish for restocking are available on the open market and are normally sold by weight, the cost of these fish will vary according to species and size, but an average figure of £6000 per 1000Kg would be a realist estimate at todays prices and would reflect the species which were lost. Taking the total losses given in table 12, the estimated 4491Kg of fish lost from the River Sapiston and Little Ouse this would give a total restocking cost of approxiamtely £27,000.

This statement (consisting of four pages together with 10 pages of tables and figures and signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

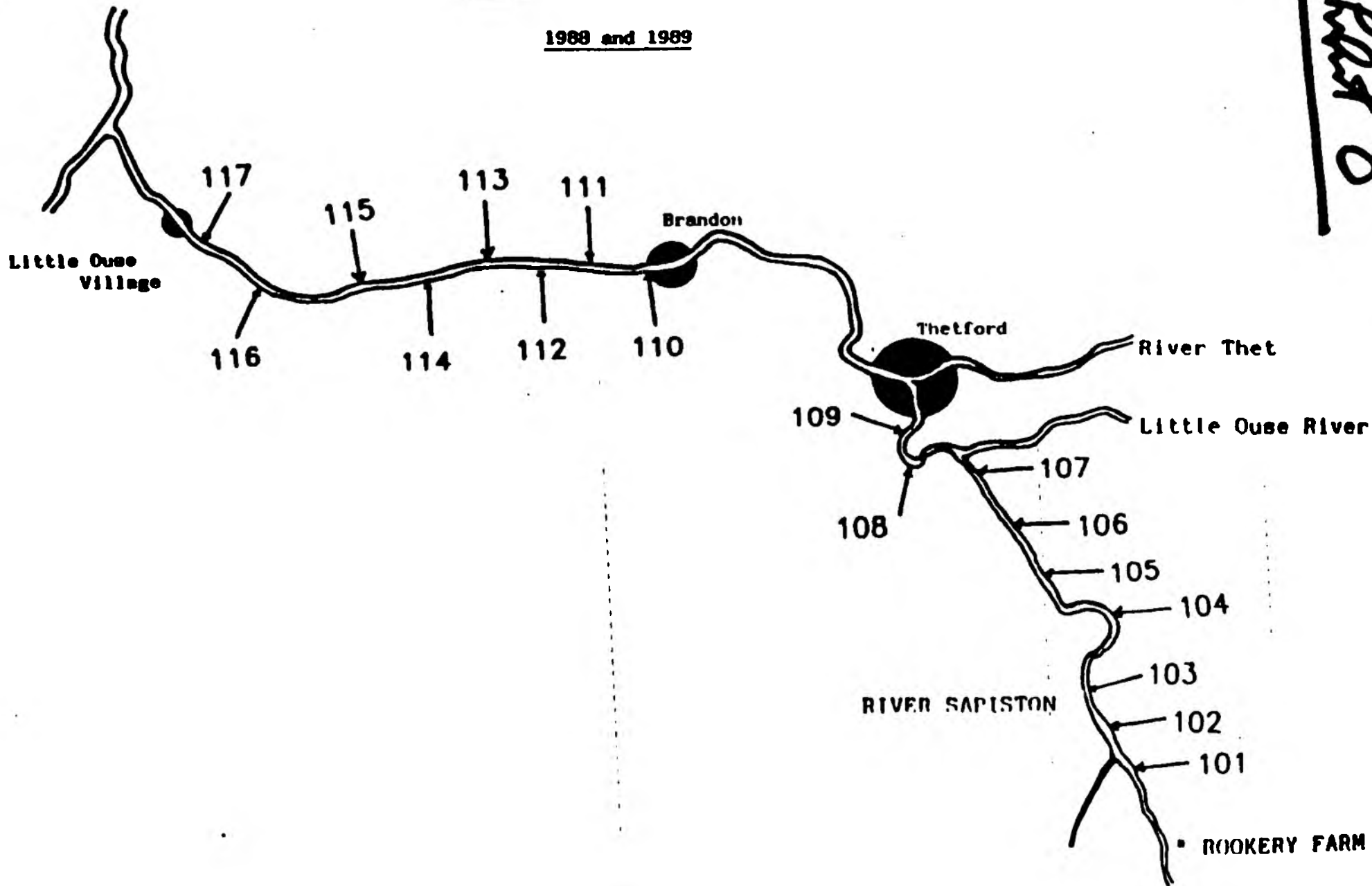
Signed  Dated 24th of May 1989

THE FISH SURVEY MAP

FISHERIES SAMPLE POINT

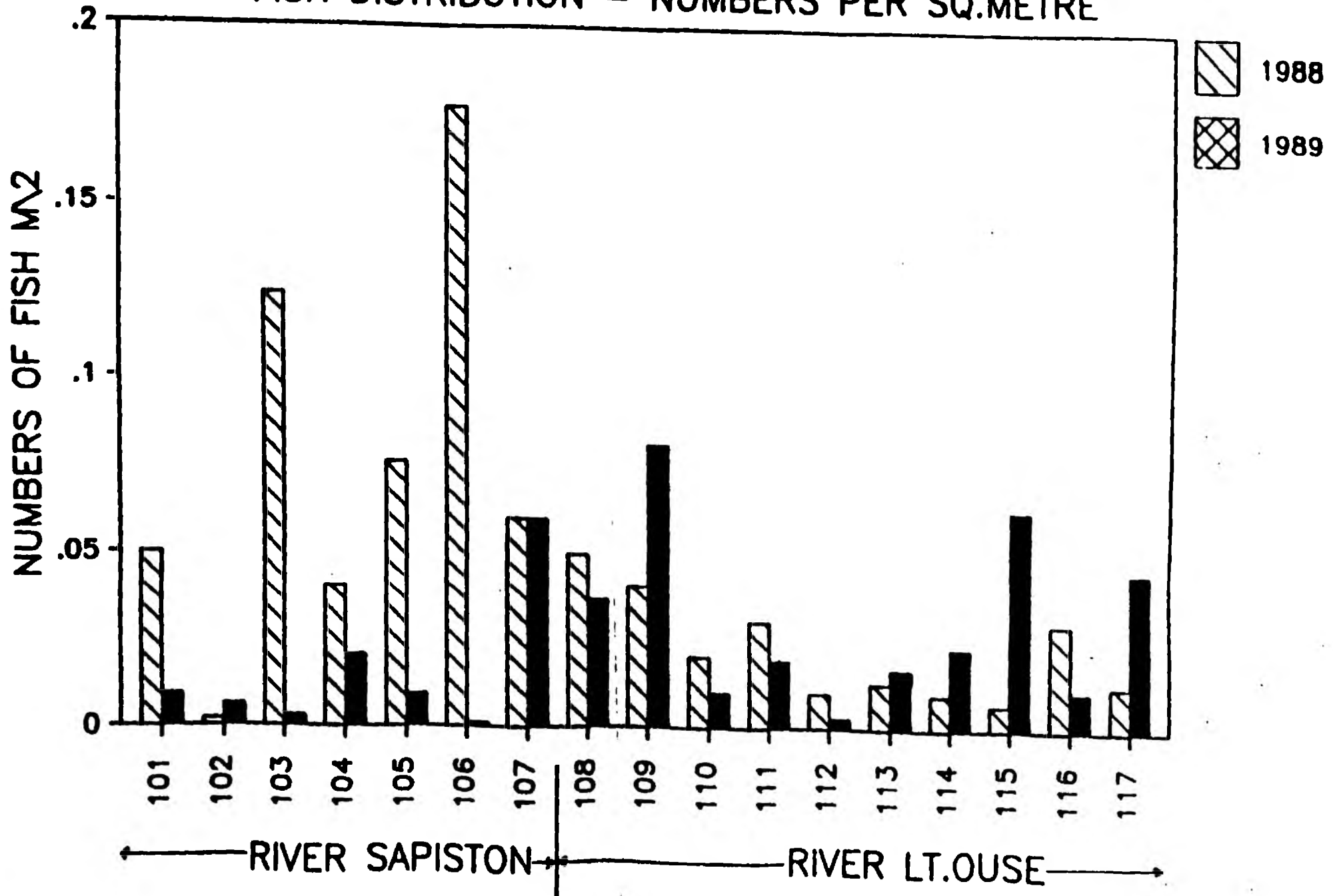
1988 and 1989

GREAT OUSE RIVER



RIVER SAPISTON \ LT.OUSE - 1988 & 1989

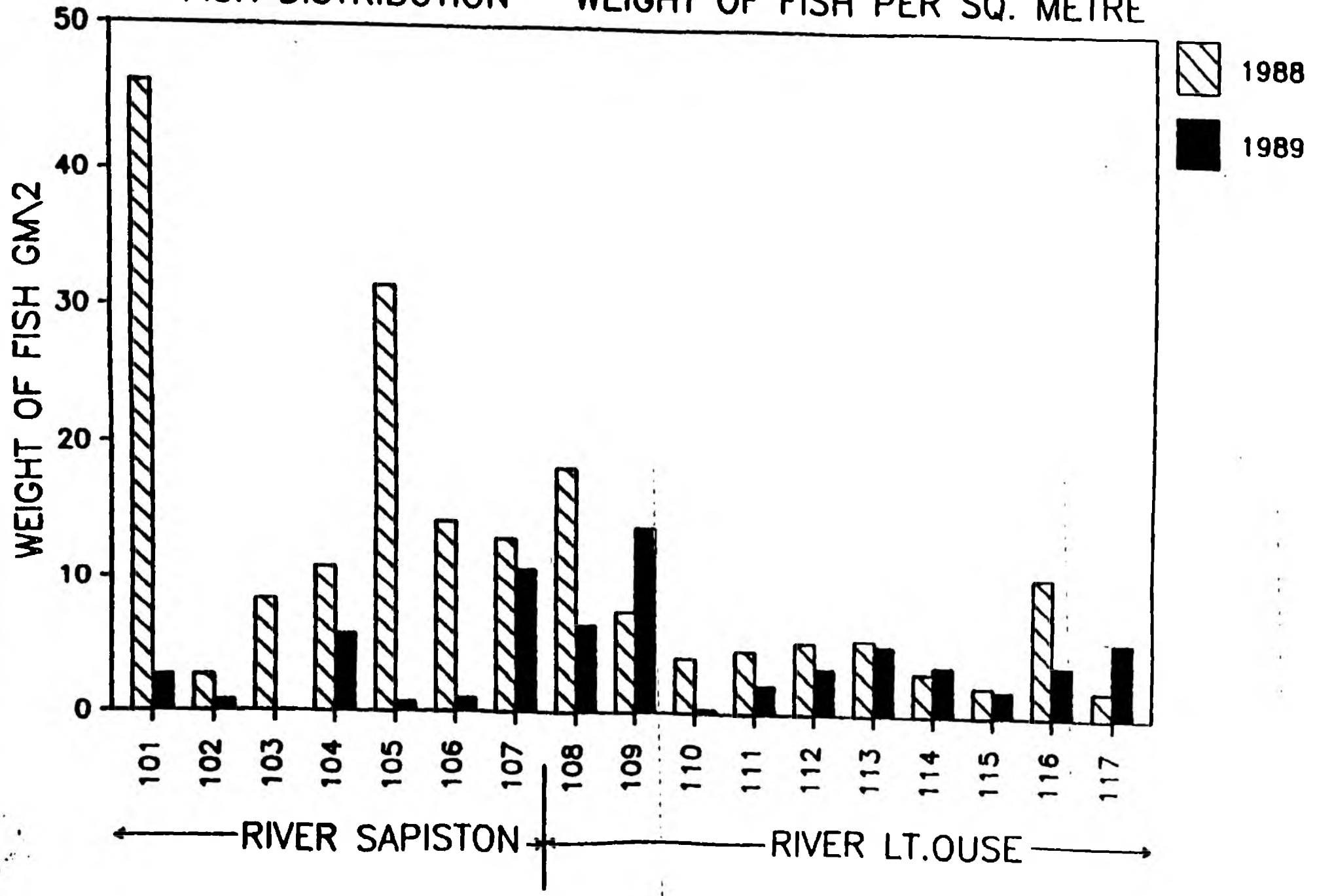
FISH DISTRIBUTION - NUMBERS PER SQ.METRE



2

RIVER SAPISTON \ LT.OUSE - 1988 & 1989

FISH DISTRIBUTION - WEIGHT OF FISH PER SQ. METRE



SAMPLING SITES ON

<u>NUMBER</u>	<u>SITE NAME</u>	<u>GRID REFERENCE</u> (Approximate)
101	Mickle Mere	TL 937 699
102	Ixworth AC	TL 928 705
103	Ixworth Mill	TL 927 714
104	Bradwell D/S	TL 935 743
105	Sapiston Bridge	TL 914 752
106	Park House Farm	TL 907 774
107	Euston	TL 889 798
108	Brandon Village	TL 857 798
109	Brandon Common	TL 875 758
110	Brandon Staunch	TL 782 868
111	Hockwold	TL 755 872
112	D/S Wilton Bridge	TL 721 868
113	Branden Fen	TL 700 865
114	Cowles Drove	TL 678 860
115	Blackdyke Farm	TL 680 860
116	Plantation Farm	TL 651 869
117	U/S Little Ouse Village	TL 631 881

5

TABLE 1THE RIVER SAPISTON AND RIVER LITTLE OUSE

<u>METHOD OF CAPTURE</u>	<u>1988 FISHERIES SURVEY</u>		<u>1989 FISHERIES SURVEY</u>	
	<u>DATE</u>	<u>AREA SURVEYED</u> M ²	<u>DATE</u>	<u>AREA SURVEYED</u> M ²
Electrofishing	11/07/88	1400	29/03/89	3520
Electrofishing	11/07/88	2250	30/03/89	1600
Electrofishing	12/07/88	1000	03/04/89	1400
Electrofishing	12/07/88	1500	03/04/89	1200
Electrofishing	13/07/88	1600	03/04/89	1600
Electrofishing	13/07/88	819	04/04/89	1800
Electrofishing	14/07/88	1200	04/04/89	1200
Electrofishing	18/07/88	1560	06/04/89	2560
Electrofishing	14/07/88	1200	06/04/89	1800
Seine Netting	04/08/88	1500	19/04/89	1700
Seine Netting	11/06/88	2300	15/05/89	2900
Seine netting	10/06/88	1820	17/05/89	3600
Seine Netting	08/06/88	1960	17/05/89	3000
Seine Netting	05/06/88	1960	17/05/89	1960
Seine Netting	03/06/88	2100	16/05/89	2400
Seine Netting	02/06/88	2100	15/05/89	9300
Seine Netting	25/05/88	1960	12/05/89	2700

TABLE 2

EXHIBIT 9
(4 pages)

RIVER SAPISTON - JULY 1988

NUMBERS CAPTURED

SPECIES	SITES							TOTAL
	101	102	103	104	105	106	107	
ROACH	15	0	34	0	55	113	1	220
PIKE	0	5	5	1	17	1	2	48
BUDG	0	0	0	0	1	0	0	1
BUDGEDN	0	0	0	0	1	0	4	5
COMMONCARP	11	1	0	0	0	1	0	13
MIRRORCARP	1	0	0	0	0	0	0	1
EELS	10	0	0	10	2	0	1	43
CHUB	18	0	1	13	17	0	6	59
DACE	5	1	15	21	17	1	38	155
PERCH	0	1	0	0	0	1	0	2
COMMONBREAM	0	0	0	0	4	0	0	4
TOTAL	69	15	124	51	114	118	62	553

BIOMASS CAPTURED

SPECIES	SITES							TOTAL
	101	102	103	104	105	106	107	
ROACH	3249	0	1761	0	15303	7064	164	27541
PIKE	6179	1705	1081	5055	10522	2711	583	27836
BUDG	0	0	0	0	281	0	0	281
BUDGEDN	0	0	35	33	16	0	73	157
COMMONCARP	28129	0	0	0	0	0	0	28129
MIRRORCARP	1677	0	0	0	0	0	0	1677
EELS	4850	4000	1350	2500	250	0	7900	20850
CHUB	18552	0	1145	7766	15154	0	4581	47198
DACE	165	0	2812	601	1013	13	3726	8330
PERCH	0	163	0	0	0	72	0	235
COMMONBREAM	0	0	0	0	5873	0	0	5873
TOTAL	52801	5868	8184	15955	48412	9860	17027	148107

total area sampled = 9768m²

RIVER SAPISTON MARCH - APRIL 1969

TABLE 3

NUMBERS CAPTURED

SPECIES	SITES							TOTAL
	101	102	103	104	105	106	107	
ROACH	7	5	0	2	1	0	1	16
EELS	8	2	3	6	5	0	14	38
CHUB	6	0	0	8	0	2	5	21
DACE	10	1	1	10	8	0	53	83
TENCH	0	1	0	0	0	0	0	1
RUDD	0	1	0	1	0	0	0	2
ROA/BRNHYB	0	0	0	1	0	0	0	1
TOTAL	31	10	4	28	14	2	73	162

BIOMASS CAPTURED

SPECIES	SITES							TOTAL
	101	102	103	104	105	106	107	
ROACH	188	96	0	72	302	0	109	777
EELS	2000	1050	75	1300	650	0	3125	8200
CHUB	6489	0	0	4801	0	1828	5531	17929
DACE	553	53	13	1178	114	0	3966	5877
TENCH	0	74	0	0	0	0	0	74
RUDD	0	23	0	27	0	0	0	50
ROA/BRNHYB	0	0	0	15	0	0	0	15
TOTAL	9240	1296	88	6673	1066	1828	12731	32922

total area sampled = 12320 m²

TABLE 4

LITTLE OUSE MAY - JUNE 1988

NUMBERS CAPTURED

SPECIES	SITES										TOTAL
	108	109	110	111	112	113	114	115	116	117	
ROACH	16	0	15	45	16	16	6	5	16	11	146
COMMONBREAM	33	0	0	0	0	1	0	0	10	0	55
PIKE	2	2	4	2	2	5	7	4	7	4	39
EELS	10	17	7	0	0	1	1	0	5	6	49
DACE	0	4	1	10	0	0	3	0	1	0	34
GUDGEON	0	27	0	0	0	0	0	0	0	0	27
PERCH	0	0	1	0	2	0	0	3	0	1	7
RUFFE	0	0	2	1	0	1	3	1	2	0	13
SILVERBREAM	0	0	0	0	0	1	0	0	0	0	1
TENCH	0	0	0	0	0	1	0	0	0	0	1
ROA/BRMNYBD	0	0	0	0	0	0	0	2	1	0	3
ZANDER	0	0	0	0	0	0	0	0	1	0	1
TOTAL	69	50	30	67	20	26	20	15	52	25	374

BIOMASS CAPTURED

SPECIES	SITES										TOTAL
	108	109	110	111	112	113	114	115	116	117	
ROACH	3063	0	2960	7374	7166	4104	567	955	961	102	27252
COMMONBREAM	13133	0	0	0	0	2878	0	0	26169	0	42180
PIKE	6782	726	873	2665	898	2731	5324	1221	2150	2967	26337
EELS	3700	5800	1700	0	0	300	100	0	1300	900	15700
DACE	505	755	193	377	0	0	34	0	230	0	2094
GUDGEON	0	470	0	0	0	0	0	0	0	0	470
PERCH	0	0	28	0	242	0	0	32	0	11	313
RUFFE	0	0	74	6	0	29	46	13	64	46	278
SILVERBREAM	0	0	0	0	0	194	0	0	0	0	194
TENCH	0	0	0	0	0	268	0	0	0	0	268
ROA/BRMNYBD	0	0	0	0	0	0	0	2359	1535	0	3894
ZANDER	0	0	0	0	0	0	0	0	2384	0	2384
TOTAL	27183	7751	5028	10422	8306	10504	6071	4500	34793	3926	119364

NUMBERS CAPTURED

SPECIES	SITES										TOTAL
	108	109	110	111	112	113	114	115	116	117	
ROACH	6	0	0	9	0	31	10	6	22	76	160
EELS	81	105	0	2	4	4	5	4	0	1	206
DACE	9	1	1	16	0	2	0	0	0	1	30
PIKE	0	1	2	7	5	7	9	4	0	5	46
BULLHEAD	0	0	5	6	0	0	0	0	0	0	11
GUDGEON	0	0	4	0	0	0	0	0	0	1	5
RUFFE	0	0	5	2	0	1	2	0	1	2	14
PERCH	0	0	0	1	0	1	17	1	0	15	35
COMMONBREAM	0	0	0	0	2	2	0	0	0	0	4
TENCH	0	0	0	0	1	0	0	1	0	0	2
ROA/BRNNYBD	0	0	0	0	0	1	0	0	0	0	1
RUDD	0	0	0	0	0	0	0	0	0	1	1
TOTAL	96	107	18	43	12	49	43	16	29	102	515

BIOMASS CAPTURED

SPECIES	SITES										TOTAL
	108	109	110	111	112	113	114	115	116	117	
ROACH	839	0	0	2597	0	5702	76	811	5483	4147	19575
EELS	14600	18500	0	100	850	500	475	2000	0	60	37085
DACE	583	230	15	457	0	61	0	0	0	13	1359
PIKE	0	479	87	1551	5669	4604	4768	990	4499	9295	31854
BULLHEAD	0	0	37	35	0	0	0	0	0	0	72
GUDGEON	0	0	96	0	0	0	0	0	0	9	105
RUFFE	0	0	201	25	0	13	28	0	16	48	331
PERCH	0	0	0	47	0	32	131	5	0	155	370
COMMONBREAM	0	0	0	0	4918	3054	0	0	0	0	7972
TENCH	0	0	0	0	139	0	0	489	0	0	1028
ROA/BRNNYBD	0	0	0	0	0	367	0	0	0	0	367
RUDD	0	0	0	0	0	0	0	0	0	56	56
TOTAL	16022	19209	436	4812	11776	14335	5478	4495	9918	13693	100174

total area sampled = 25320 m²

FISHES ESTIMATED

SPECIES	SITES							TOTAL
	101	102	103	104	105	106	107	
ROACH	18	0	34	0	63	161	4	257
PIKE	9	5	5	7	17	3	2	48
BUD	0	0	0	0	1	0	0	1
GUDGEON	0	0	2	2	1	0	4	9
COMMONCARP	11	0	0	0	0	0	0	11
MIRRORCARP	1	0	0	0	0	0	0	1
EELS	13	9	3	10	2	0	12	49
CHUB	18	0	7	11	17	0	8	61
BACE	5	0	73	23	17	1	40	164
PURGE	0	1	0	0	0	1	0	2
COMMONBREAM	0	0	0	0	1	0	0	1
TOTAL	73	15	124	30	121	166	70	607

BIOMASS ESTIMATED

SPECIES	SITES							TOTAL
	101	102	103	104	105	106	107	
ROACH	3467	0	1761	0	17252	8015	230	31515
PIKE	6180	1706	1002	5056	10522	2711	503	27040
BUD	0	0	0	0	201	0	0	201
GUDGEON	0	0	36	33	15	0	73	154
COMMONCARP	20130	0	0	0	0	0	0	20130
MIRRORCARP	1677	0	0	0	0	0	0	1677
EELS	6305	4080	1300	2500	250	0	10533	24938
CHUB	18553	0	1146	7766	16154	0	6110	48729
BACE	165	0	2013	802	1014	13	3822	6729
PURGE	0	163	0	0	0	72	0	235
COMMONBREAM	0	0	0	0	5873	0	0	5873
TOTAL	64477	5869	3168	16157	50362	11611	21441	178105

RIVER SAPISTON MARCH - APRIL 1969

NUMBERS ESTIMATED

SPECIES	SITES							TOTAL
	101	102	103	104	105	106	107	
ROACH	7	5	0	2	1	0	1	16
EELS	8	2	3	6	5	0	14	38
CHUB	6	0	0	8	0	2	5	21
DACE	10	1	1	10	8	0	56	86
TENCH	0	1	0	0	0	0	0	1
RUDD	0	1	0	1	0	0	0	2
ROA/BRINYBO	0	0	0	1	0	0	0	1
TOTAL	31	10	4	28	14	2	74	163

SPECIES	SITES							TOTAL
	101	102	103	104	105	106	107	
ROACH	198	97	0	72	362	0	109	778
EELS	2000	1050	75	1300	650	0	3125	8200
CHUB	6490	0	0	4081	0	1828	5531	17930
DACE	553	53	13	1179	114	0	4041	5953
TENCH	0	74	0	0	0	0	0	74
RUDD	0	23	0	27	0	0	0	50
ROA/BRINYBO	0	0	0	15	0	0	0	15
TOTAL	9241	1297	88	6674	1066	1828	12806	33000

LITTLE OUSE MAY - JUNE 1968

TABLE 8

FISHES ESTIMATED

SPECIES	SITES										TOTAL
	108	109	110	111	112	113	114	115	116	117	
ROACH	16	0	15	45	18	16	6	8	18	11	150
COMMONBREAM	36	0	0	0	0	1	0	0	19	0	56
PIKE	2	2	4	3	2	5	7	4	7	4	39
EELS	12	20	7	0	0	1	1	0	5	6	52
DACE	6	4	1	19	0	0	3	0	1	0	34
GUDGEON	0	27	0	0	0	0	0	0	0	0	27
PERCH	0	0	1	0	2	0	0	3	0	1	7
BUFFE	0	0	2	1	0	1	3	1	2	3	13
SILVERBREAM	0	0	0	0	0	1	0	0	0	0	1
TENCH	0	0	0	0	0	1	0	0	0	0	1
ROA/BREYED	0	0	0	0	0	0	0	2	1	0	3
ZANDER	0	0	0	0	0	0	0	0	1	0	1
TOTAL	72	53	30	67	22	26	20	15	54	25	384

SPECIES	SITES										TOTAL
	108	109	110	111	112	113	114	115	116	117	
ROACH	3854	0	2368	7274	8863	4184	567	955	1882	182	28271
COMMONBREAM	14328	0	0	0	0	2878	0	0	26189	0	42375
PIKE	6782	726	873	2865	898	2732	3325	1222	2150	2967	25340
EELS	3700	6823	1700	0	0	300	100	0	1300	800	14723
DACE	585	758	193	278	0	0	34	0	230	0	2596
GUDGEON	0	470	0	0	0	0	0	0	0	0	470
PERCH	0	0	28	0	242	0	0	32	0	11	313
BUFFE	0	0	74	0	0	29	45	13	64	46	278
SILVERBREAM	0	0	0	0	0	194	0	0	0	0	194
TENCH	0	0	0	0	0	268	0	0	0	0	268
ROA/BREYED	0	0	0	0	0	0	0	2360	1525	0	3885
ZANDER	0	0	0	0	0	0	0	0	2384	0	2384
TOTAL	28379	8775	5828	10423	9203	10585	6872	4582	34914	3926	122607

LITTLE OUSE APRIL - MAY 1989

TABLE 9

NUMBERS ESTIMATED

SPECIES	SITES										TOTAL
	108	109	110	111	112	113	114	115	116	117	
ROACH	6	0	0	9	0	31	10	6	28	96	186
EELS	81	137	0	2	4	4	5	4	0	1	234
DACE	9	1	1	16	0	2	0	0	0	1	30
PIKE	0	1	2	7	5	8	12	4	7	5	51
BULLHEAD	0	0	5	8	0	0	0	0	0	0	13
GUDGEON	0	0	4	0	0	0	0	0	0	1	5
RUFFE	0	0	6	2	0	1	2	0	1	2	14
PERCH	0	0	0	1	0	1	17	1	0	15	35
COMMONBREAM	0	0	0	0	2	2	0	0	0	0	4
TENCH	0	0	0	0	1	0	0	1	0	0	2
ROA/BRAHYBD	0	0	0	0	0	1	0	0	0	0	1
RUDD	0	0	0	0	0	0	0	0	0	1	1
TOTAL	96	139	18	45	12	50	44	16	36	122	580

BIO MASS ESTIMATED

SPECIES	SITES										TOTAL
	108	109	110	111	112	113	114	115	116	117	
ROACH	839	0	0	2597	0	5702	76	812	6876	5258	22140
EELS	14600	24138	0	100	850	500	475	2000	0	60	42723
DACE	503	230	15	457	0	62	0	0	0	13	1360
PIKE	0	479	87	1551	5669	5266	6358	990	5249	9205	34854
BULLHEAD	0	0	38	48	0	0	0	0	0	0	86
GUDGEON	0	0	96	0	0	0	0	0	0	9	185
RUFFE	0	0	201	25	0	13	28	0	16	48	331
PERCH	0	0	0	47	0	32	132	5	0	156	372
COMMONBREAM	0	0	0	0	4918	3054	0	0	0	0	7972
TENCH	0	0	0	0	339	0	0	689	0	0	1028
ROA/BRAHYBD	0	0	0	0	0	367	0	0	0	0	367
RUDD	0	0	0	0	0	0	0	0	0	56	56
TOTAL	16022	24847	437	4825	11776	14996	7069	4496	12141	14785	111594

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TABLE 10

RIVER SAPISTON

Area of river affected = 15.1 Hectares (approximately).

1	2	3	4	5	6	7
SPECIES	1988		1989		ESTIMATED LOSSES	
	NUMBER (KG)	WEIGHT (KG)	NUMBER (KG)	WEIGHT	NUMBER (%)	WEIGHT(%)
Roach	3972	487	196	10	3776(95)	477(98)
Common Bream	62	91	0	0	62(100)	91(100)
Pike	741	430	0	0	741(100)	430(100)
Chub	943	753	257	220	686(73)	533(71)
Dace	2535	135	1029	73	1506(59)	62(46)
Other species	371	471	49	2	322(87)	469(99)
Total	8624	2367	1531	305	7093(82)	2062(87)

TABLE 11

LITTLE OUSE
 Area of river affected = 77.6Ha (approximately)
 (River Sapiston confluence to Little Ouse Village)

1	2	3	4	5	6	7
SPECIES	1988		1989		ESTIMATED LOSSES	
	NUMBER	WEIGHT	NUMBER	WEIGHT	NUMBER(%)	WEIGHT(%)
Roach	6306	1188	5700	679	606(10)	509(43)
Common Bream	2354	1823	122	244	2232(95)	1579(87)
Pike	1639	1107	1563	1068	76(5)	39(4)
Dace	1429	88	919	42	410(29)	46(52)
Other Species	2228	328	2176	72	52(2)	256(78)
Total	13956	4534	10480	2105	3476(25)	2429(53)

TABLE 12

TOTAL ESTIMATED FISH LOSSES

RIVER SAPISTON PLUS THE LITTLE OUSE RIVER

1	2	3	4	5	6	7
	1988		1989		ESTIMATED LOSSES	
	NUMBERS	WEIGHT (KG)	NUMBERS	WEIGHT (KG)	NUMBERS(%)	WEIGHT(%) (KG)
River Sapiston	8624	2367	1531	305	7093(82)	2062(57)
Lt Ouse River	13956	4534	10480	2105	3476(25)	2429(53)
<u>TOTAL</u>	<u>22586</u>	<u>6901</u>	<u>12011</u>	<u>2410</u>	<u>10569(47)</u>	<u>4491(65)</u>

EXPERT WITNESS

STATEMENT OF WITNESS


Criminal Justice Act 1967 S.S. 9; M.C. Act 1980, S.102; M.C. Rules 1981 r.70

STATEMENT OF: David John Tester
AGE: Over 21
OCCUPATION: Environmental Manager
ADDRESS: Anglian Water, N.R.A. Unit, Central Area Office, Bromholme Lane, Brampton, Huntingdon, Cambridgeshire, PE18 8NE.
TELEPHONE NO: (Office) 0480-414581 (home) 0480-54339

My name is David John Tester and I am employed by Anglian Water, NRA Unit as the Environmental Manager of the Central Area of the Anglian Region. I have held the post since May 1988. I have 23 years experience in water pollution control work in the Water Industry both in the field and as a Manager.

I am a Chartered Chemist and a Member of the Royal Society of Chemistry. I am also a Fellow of the Institution of Water and Environmental Management.

I have examined the results of chemical analysis of water samples taken during the pollution incident on the River Sapiston/Little Ouse between the 17th - 19th March 1989, marked exhibit no. 1 (with certificate of Robert Heath), together with a recorder chart from an Anglian Water automatic water quality monitoring station located at Hockvold on the Little Ouse, exhibit 7 (with the statement of Kevin Rutterford), and river flow measurements taken from an Anglian Water gauging station at Abbey Heath, on the River Little Ouse, marked Exhibit 10 (with the statement of Richard Youngman). I have also examined rainfall figures for the area during the month of March 1989, supplied by ~~the~~ Martin Allwright of the Met Office Advisory Service. (The two relevant tables from which are reproduced for convenience as DJT 1 and DJT 2 with this statement). All these points are marked on the large scale map, exhibit 2, hereinafter known as maps 1 ^{and 2} as the case may be.

Signed: 

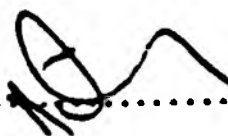
Dated: 24th of May 1989

In addition I witnessed the pollution front as it approached Little Ouse Village on the River Little Ouse, midway between point 20 and point 21 on map 2, at 14.15 hours on the 18th March 1989 and observed about a dozen fish dying as they attempted to avoid the pollution which was distinguishable by the murky brown appearance of the river and a strong unmistakable odour of piggery waste. The hyperactivity of the fish and the bloody appearance of their gills, which I observed, are symptoms of acute poisoning by a toxic substance. Very high concentrations of ammonia could have this effect on fish.

On 6th April 1989 I inspected the alleged source of the pollution, a lagoon at Rookery Farm, Drinkstone situated to the North East of the Farm (shown on the inset to map 1), and examined a breach in an earth wall which had previously retained a large volume of piggery liquor. The lagoon was nearly empty, although the breach had been temporarily repaired. The drop in liquid level in the lagoon, as evident by the dried tide mark effect on the wall of the lagoon, near to the breach, appeared to be in the order of 1.5 metre and from my own observations and from a later examination of the inset in map 1, I estimated that the lagoon area (coloured orange) excluding the south eastern end, was approximately 1 hectare (10,000 m²) in extent. The area coloured orange in the inset was constructed by reference to an aerial photograph taken of the site on 15th June 1986, (album and photographs being Exhibit 3 p.21) ~~exhibit 3 p.21~~ at a scale of 1 to 2,500, and a more recent but unscaled aerial photograph taken on March 30th 1989, exhibit 3 P.20. By multiplying the estimated area (10,000 m²) with the drop in liquid level (1.5 m) I have calculated that something in the region of 15,000 m³ (3.3 million gallons) of liquor must have been lost.

The results of chemical analysis of water and effluent samples taken by my staff during the incident, presented as exhibit 1, have been tabulated for convenience and appear with my statement as DJT 5, 4 and 3 and are best studied by reference to maps 1 and 2.

Signed:



Dated: 24th of May 1989

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Sample no. 3032, point 2 on map 1, the discharge from Rookery Farm at 10.55 hours on the 17th March, is seen to be a grossly polluting liquid with a B.O.D. (a measure of the oxygen demand of the effluent) concentration of 2877 mg/l and an Ammoniacal Nitrogen concentration of 943 mg/l. Both of these parameters are 100 - 150 times higher than one would normally expect from a typical consented sewage or trade effluent discharge to an inland watercourse.

Sample no. 3031, point 1 on map 1, the tributary of the River Sapiston immediately upstream of the farm taken at 12.10 hours, is completely unpolluted, class 1A in the N.W.C. classification system used for rivers in the U.K., with an ammoniacal nitrogen concentration of 0.09 mg/l and a B.O.D. of 2.05 mg/l.

At point 3, on map 1, 650 metres downstream of Rookery Farm on the same tributary at 9.55 hours on the 17th March only minor pollution is evident as represented by sample no. 3030. The ammonia concentration has increased to 2.11 mg/l and the B.O.D. to 4.88 mg/l. These results show that, at the time of sampling, the polluting discharge volume was only small compared with the flow in the stream and using a mass balance equation,

$$\frac{943 \text{ (at point 2)}}{2.1 \text{ (at point 3)} - 0.1 \text{ (at point 1)}} = 471.$$

This represents a dilution of 1 volume of effluent to approximately 500 clean river water. Nevertheless the water quality would be classified as class 3 - poor in the river classification system.

I conclude from this that the bulk of the pollution must have already passed downstream of point 3 at the time of sampling.

Further dilution is provided by the River Sapiston immediately downstream of this point, and also from a further tributary near Elmswell, point 7, on map 1.

Signed:



Dated: 24th of May 1989

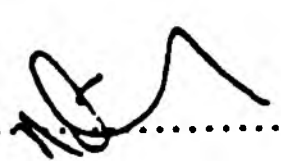
At 10.20 hours on the 17th March, at point no. 9 on map 2, at Norton the River Sapiston 4.5 km downstream of Rookery Farm, sample 3045, had an ammonia concentration of 9.8 mg/l and a B.O.D. of 20.1 mg/l. This would be regarded as a class 4 river which is described as grossly polluted in the N.W.C. classification system.

At 11.25 hours on the same day at Bardwell, (map 2), point no. 12, on the River Sapiston, (14 km downstream of Rookery Farm). Sample no. 3047 revealed that the ammoniacal nitrogen concentration was 25.2 mg/l and the B.O.D. was 45.1 mg/l (class 4 - grossly polluted) and upstream of the confluence with the Little Ouse river at Euston (map 2), point no. 14, (23 km downstream of Rookery Farm) at 11.45 hours, sample no. 3048 showed the ammoniacal nitrogen to be 49.3 mg/l and the B.O.D. to be 43.0 mg/l (class 4 - grossly polluted). It is apparent from these results that a slug of pollution was moving down the river at the time of sampling and that the pollution must have emanated upstream of the first grossly polluted site, ie. point 9 on map 2 at Norton.

Downstream of the confluence of the River Sapiston and the Little Ouse river, one would have expected the dilution from the latter river to have considerably reduced the impact of the pollution, but the sample taken at Nuns Bridge Thetford (map 2), point no. 15, at 12.30 hours on the 17th March, (30 km downstream Rookery Farm). Sample no. 3049 contained 84.4 mg/l ammoniacal nitrogen and had a B.O.D. of 129 mg/l (class 4), the highest figures recorded anywhere in the river system. In my view this sample must have been close to the head of the pollution 'slug' because at the next sample point for that day on the River Little Ouse only 8 km downstream of this point at Santon Downham, point no. 17, on map 2, at 13.40 hours, sample number 3050 showed the ammoniacal nitrogen concentration to be normal for the river at 0.38 mg/l (class 1b unpolluted).

Samples of the River Little Ouse taken on the 18th March 1989 at sample point no. 20 and 21, on map 2, (sample no. 3072, 3080) found the pollution front with an ammonia concentration of 28.8 - 29.5 mg/l approaching and finally entering

Signed:



Dated: 24th of May 1989

the Gt Ouse at 15.18 hours at Brandon Creek, where I had observed the river to be clear only two hours previously. From my own observations between points 20 and 21 on that day, the pollution levels were still high enough to kill fish in the River Little Ouse, although it was small (< 3") specimens which were mainly affected.

Further upstream in the Little Ouse at points 19, 18, 16 and 15, sample nos 3073, 3074, 3075 and 3076 respectively the ammonia levels slowly but smoothly decreased indicating no significant further inputs of pollution had occurred subsequent to the initial discharge.

The results of analysis are consistent with a large grossly polluting 'slug' of organic waste passing rapidly down the river system and certainly not for example consistent with a sewage treatment works malfunction which would have produced much lower ammonia levels. Incidents such as this are generally of large volume but short duration and are invariably caused by a catastrophic loss of liquor from a storage unit. They typically produce a 'tail' of pollution behind a front containing the peak concentration which becomes slowly dispersed in the river as it flows downstream. In this case moderate rainfall of 17 - 18 mm (see DJT 1 and 2) on the 16th March 1989 would have acted to push the slug ahead of rising river levels at a velocity I estimated to be about 1 km/hr judging from the time it took to travel the 13 km from Hockwold, automatic monitor station Exhibit 7, indicated by a triangle on map 2, (01.00 hours 18th March 1989) to Brandon Creek point 21 (sample 3080 at 15.18 hours 18th March 1989) in the River Little Ouse. This ensured the pollution travelled a very long way before it eventually dispersed to a more acceptable level of 6.8 mg/l ammoniacal nitrogen in the Gt Ouse some 66 km downstream of the incident (map 2 sample point 22, no. 3081).

A feature of the incident was that the dissolved oxygen levels in the river waters were not significantly affected. This was because of the low river temperature (6.5 - 7.0°C on all samples) and high velocity (several times higher than average) which prevented the Oxygen Demand being fully exerted. In

Signed:



Dated: 24th of May 1989

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contrast the major pollutant on this occasion, ammonia, must have been present in its un-ionised state, its toxic form, in high concentrations due to pH values being about 8 in most samples. An ammoniacal nitrogen concentration of 84 mg/l at pH 8 and temperature 7°C would produce a concentration of 1.24 mg/l un-ionised ammonia (eg. Nun's Bridge point 15, map 2 at 12.30 hours on 17th March 1989). A level of 0.2 - 2.0 mg/l is known to be lethal to a variety of species of fish and would cause haemorrhaging of the gills and eventual death. The majority of the fish that died were Roach, Pike, Chub, Bream, Dace and Perch and according to Alabaster and Lloyd in Water Quality Criteria for Freshwater Fish (published by Butterworths in 1983) p.92-93, 'a recent study by Ball (1967) on the toxicity of ammonia to roach, rudd, bream and perch, showed that the threshold LC50 values for these species at British summer temperatures were 0.42, 0.44, 0.50 and 0.35 mg NH₃/l (unionised ammonia) respectively' and that 'In general, however, the toxic levels of unionised ammonia for short-term tests for several species of fish lie between 0.6 mg NH₃/l for perch and 2.0 mg NH₃/l for carp and tench, with chub and minnow being intermediate in sensitivity'.

In order to provide a rough measurement of the polluting load passing down the River Little Ouse during the incident, I have used data from the normal chemical samples taken on the 18th March as well as from the fixed Automatic Quality Monitoring Station at Hockwold, exhibit 7 in the evidence of K. Rutterford and a copy of which is annotated and attached to my evidence for convenience as DJT 6. Rising ammonia concentrations in the River Little Ouse were monitored on this instrument from 01.00 hours on 18th March 1989 and caused it to rise off its scale (maximum of 5 mg/l) for a period of 12 hours between 02.20 hours and 14.40 hours on the 18th March 1989 thereby defining the time the pollution arrived and the period the peak of the pollution incident lasted. There were no secondary peaks, confirming, in my view, that only one incident had occurred. The river level and hence flow at Abbey Heath, point 16, (map 2) during this period, see chart, is presented as Exhibit 10 - this is repeated for convenience as DJT 7 to my evidence. Using the concentration of ammoniacal nitrogen from samples taken along the river Little Ouse on the 18th

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Dated: 24th of May 1989

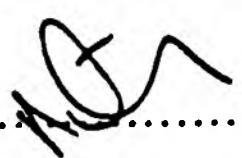
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March 1989 and the velocity of the river, 1 km/hr. I have been able to construct a graph depicting the approximate plume of the pollution in terms of ammonia concentration as it passed down the river system at 9.00 hours on the 18th March. I present this as DJT 8. From this information and the changes in river flow over the period 03.00 hours on the 17th March to 12.00 hours on the 18th March (the period when ammonia concentrations measured in the river would have passed Abbey Beath), see DJT 7, it has been possible to calculate an approximate ammoniacal nitrogen load imparted on the River Little Ouse 33 km of the downstream Thetford affected as a result of the incident. This is presented as a table in 2 km stretches as DJT 9. In total I estimate approximately 13.0 tonnes of ammoniacal nitrogen were present in the river.

This is a massive ammonia load for a river of this size and coupled with the high B.O.D. concentrations of all related samples, could only be attributable to a sudden discharge of an organic nature. In my experience the only type of discharge which could have caused such an affect, was an animal waste discharge. The strong piggery odour which I observed on the 18th of March 1989 confirmed this view. In my opinion the loss of the liquor from the lagoon was the only significant discharge of ammoniacal nitrogen in the Little Ouse catchment over the period of the pollution incident because the analytical results from the fixed automatic monitoring station and from the samples are consistent with only one pollution event, which from analytical results and river flows must have begun in the River Sapiston catchment, upstream of Norton immediately prior to the 17th March.

The 13.0 tonnes of ammonia passing down the river catchment should be compared with a load of 14.1 tonnes of ammoniacal nitrogen estimated to have been lost from the lagoon at Rookery Farm arrived at by multiplying the concentration of ammoniacal nitrogen in the discharge, (sample point 2), 943 mg/l by the estimated volume of liquor lost, 15,000 m³ (3.3 m galls) - see page 2 of my evidence. The two figures are entirely consistent with each other bearing in mind the distance and timespan involved.

Signed:



Dated: 24th of May 1989

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Conclusion

I therefore conclude that the discharge from the lagoon breach at Rookery Farm was responsible for the pollution on the River Sapiston/Little Ouse on or about the 17th - 19th March 1989 and that the discharge was responsible for the fish deaths which in my view were primarily attributable to acute ammonis poisoning.

This statement (consisting of eight pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed: 

Dated: 24th of May 1989

RUSHBROOKE HALL

STATION NUMBER 185565

GRID REFERENCE: EASTING 5892 NORTHING 2613

1	2	3	4	5	6	7
0.0	6.9	0.4	0.2	0.0	0.2	0.0
8	9	10	11	12	13	14
0.0	0.0	1.2	2.3	1.2	0.0	11.6
15	16	17	18	19	20	21
2.0	17.2	0.0	1.4	1.2	6.1	1.0
22	23	24	25	26	27	28
0.0	1.9	0.0	0.0	0.0	0.0	0.0
29	30	31				
0.0	0.0	0.0				

TOTAL RAINFALL FOR MONTH = 56.4

THE 1941-1970 AVERAGE RAINFALL FOR THIS MONTH IS ****

THE RAINFALL TOTAL FOR THIS MONTH IS **** PERCENT OF THIS AVERAGE.

NOTES:-

- (1) DAILY TOTALS RELATE TO 24-HOUR PERIODS COMMENCING AT 0000 GMT ON THE DAY OF ENTRY.
- (2) WHERE ***** APPEARS ON THIS PRINTOUT NO DATA ARE AVAILABLE.
- (3) FALLS OF LESS THAN 0.05 MILLIMETERS ARE SHOWN ON THIS PRINTOUT AS 0.0.
- (4) THIS STATION DOES NOT HAVE 1941-70 MONTHLY AVERAGES

Exhibit HA/2

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2/1/89

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Notes other samples taken in same place

Handwritten signature and date: *2/11/79*

POLLUTION INCIDENT - MARCH 1989 - CHEMICAL SAMPLES

TABLE 1 - 17 MARCH 1989

Map Ref	Sample Point	Sample Number	Date	Time	Sampled by	NGR Approx (6 Fig)	P H Units	Temp °C	Dissolved Oxygen mg/l	Dissolved Oxygen % Saturation	BODs ATU Total mg/l	Ammonia as N mg/l	Total Oxidised Nitrogen as N mg/l	Chloride as CL mg/l	Turbidity FTU	Phosphate ortho as Phosphorus mg/l
1	Tributary of River Sapiston at Road Culvert upstream of Rookery Farm.	3031	17/3/89	12.10	IM	TL 989 820	-	7.0	11.1	91	2.05	0.09	12.5	-	-	-
2	Discharge from Rookery Farm to Tributary of River Sapiston.	3032	17/3/89	10.55	IM	TL 965 625	-	-	-	-	2877.5	943	5.7	-	-	-
3	Tributary of River Sapiston upstream of Broadgrass Green Road Bridge.	3030	17/3/89	09.55	IM	TL 966 630	-	6.5	11.4	93	4.88	2.11	13.25	-	-	-
4	River Sapiston upstream of Broadgrass Green Road Bridge.	3029	17/3/89	09.50	IM	TL 965 630	-	6.5	11.1	90	7.35	2.93	13.45	-	-	-
6	River Sapiston downstream of A45	3043	17/3/89	10.45	KPR	TL 967 367	7.00	7.0	11.2	92	9.1	2.56	13.6	51	40.5	0.27
7	Elmswell Stream	3052	17/3/89	10.07	KPR	TL 968 637	7.94	7.0	10.9	90	3.25	0.682	24.6	68	20.0	0.56
8	River Sapiston downstream of Tostock	3044	17/3/89	10.30	KPR	TL 956 648	7.85	7.0	10.8	89	6.1	2.17	16.8	56	31.0	0.35
9	River Sapiston at Norton	3045	17/3/89	10.20	KPR	TL 953 662	7.7	6.5	9.9	81	20.1	9.8	16.8	58	25.0	0.96
10	River Sapiston at Bull Bridge	3046	17/3/89	11.00	KPR	TL 947 679	7.71	7.0	10.2	84	18.6	9.26	17.1	57	42.0	0.91

POLLUTION INCIDENT - MARCH 1989 - CHEMICAL SAMPLES

TABLE 1 - 17 MARCH 1989

Map Ref	Sample Point	Sample Number	Date	Time	Sampled by	NGR Approx (6 Fig)	PH Units	Temp °C	Dissolved Oxygen mg/l	Dissolved Oxygen % Saturation	B O Ds ATU Total Mg/l	Ammonia as N Mg/l	Total Oxidised Nitrogen as N mg/l	Chloride as CL mg/l	Turbidity FTU	Phosphate ortho as Phosphorus mg/l
12	River Sapiston at Barkwell	3047	17/3/89	11.25	KPR	TL 937 737	7.83	6.5	8.8	71	45.1	25.2	17.3	61	80.0	2.35
14	River Sapiston at Euston	3048	17/3/89	11.45	KPR	TL 896 790	8.13	7.0	8.7	72	43.0	49.3	17.1	74	85.0	4.22
* 15	River Little Ouse at Nuns Bridge, Thetford	3049	17/3/89	12.30	KPR	TL 874 825	8.03	7.0	7.4	61	129	84.4	15.7	89	90.0	7.09
17	River Little Ouse at Santon Downham	3050	17/3/89	13.40	KPR	TL 826 873	-	7.0	10.4	86	-	0.385	12.8	-	-	-
18	River Ouse at Brandon Town	3051	17/3/89	13.30	KPR	TL 783 869	7.9	7.0	10.3	85	2.0	0.338	10.8	49	50.0	0.18

* Indicates other samples taken at same point

POLLUTION INCIDENT - MARCH 1989 - CHEMICAL SAMPLES

TABLE 1 - 17 MARCH 1989

Map Ref	Sample Point	Solids Particulate (105C) Suspended	Solids Particulate (500C) Ash mg/l	Conductivity at 25°C U sie/cm	Iron Total mg/l	Manganese Total ug/l	Cadmium Total ug/l	Chromium Total ug/l	Copper Total ug/l	Lead Total ug/l	Nickel Total ug/l	Zinc Total ug/l	River Km from Rookery Farm Discharge
12	River Sapiston at Bardwell	-	-	-	2.84	219	0.4	5.4	22	28	29	71	14
14	River Sapiston at Euston	-	-	-	2.66	217	0.21	6.0	24	17	28	59	22.8
* 15	River Little Ouse at Muns Bridge, Thetford	-	-	-	6.78	194	0.20	9.8	8.4	14	43	57	30
17	River Little Ouse at Santon Downham	-	-	-	-	-	-	-	-	-	-	-	38.5
18	River Ouse at Brandon Town	-	-	-	3.22	224	0.17	2.8	13	17	31	40	44.5

* Indicates other samples taken at same point

ROUGHAN GREEN

STATION NUMBER 188531

GRID REFERENCE: EASTING 5912 NORTHING 2618

1 0.7	2 5.2	3 0.0	4 0.5	5 0.0	6 0.1	7 0.0
8 0.4	9 0.9	10 2.1	11 0.0	12 1.1	13 0.0	14 9.8
15 0.3	16 18.4	17 0.1	18 1.0	19 1.1	20 6.4	21 0.8
22 0.1	23 1.6	24 0.0	25 0.0	26 0.0	27 0.0	28 0.0
29 0.0	30 0.0	31 0.0				

TOTAL RAINFALL FOR MONTH = 50.6

THE 1941-1970 AVERAGE RAINFALL FOR THIS MONTH IS ****

THE RAINFALL TOTAL FOR THIS MONTH IS ** PERCENT OF THIS AVERAGE.**

NOTES:-

- (1) DAILY TOTALS RELATE TO 24-HOUR PERIODS COMMENCING AT 0900 GMT ON THE DAY OF ENTRY.**
- (2) WHERE ***** APPEARS ON THIS PRINTOUT NO DATA ARE AVAILABLE.**
- (3) FALLS OF LESS THAN 0.05 MILLIMETERS ARE SHOWN ON THIS PRINTOUT AS 0.0.**
- (4) THIS STATION DOES NOT HAVE 1941-70 MONTHLY AVERAGES**

Exhibit MA/3

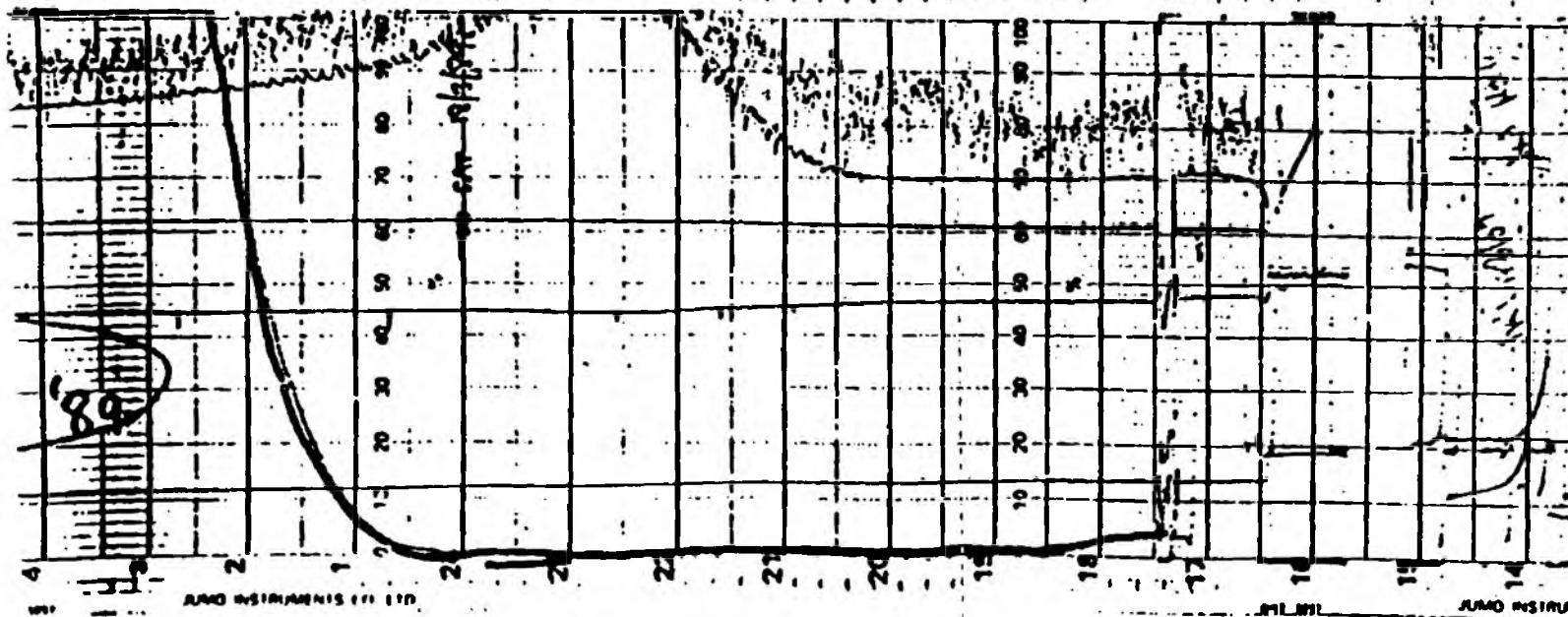
7

10.1
24/12/52

EXHIBIT

STATION RECORDER CHART

17th MARCH



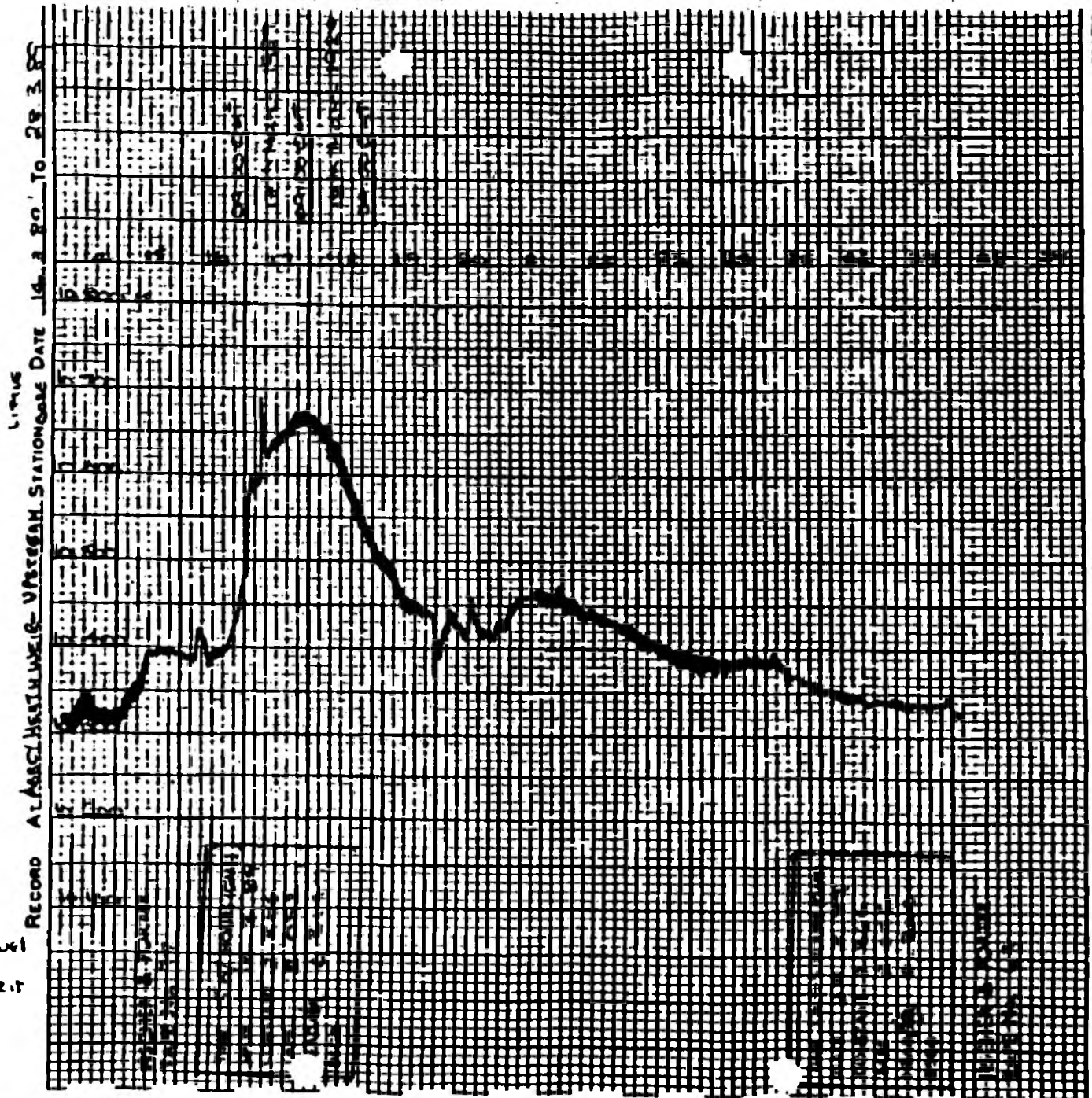
TIME (HOURS)

7/11

MARCH 14TH - MARCH 20TH 1960

Annotated with values of river flow equivalent to river level

Water level
above weir
crest
metres



11.87

11.67

8.78

6.22

4.00

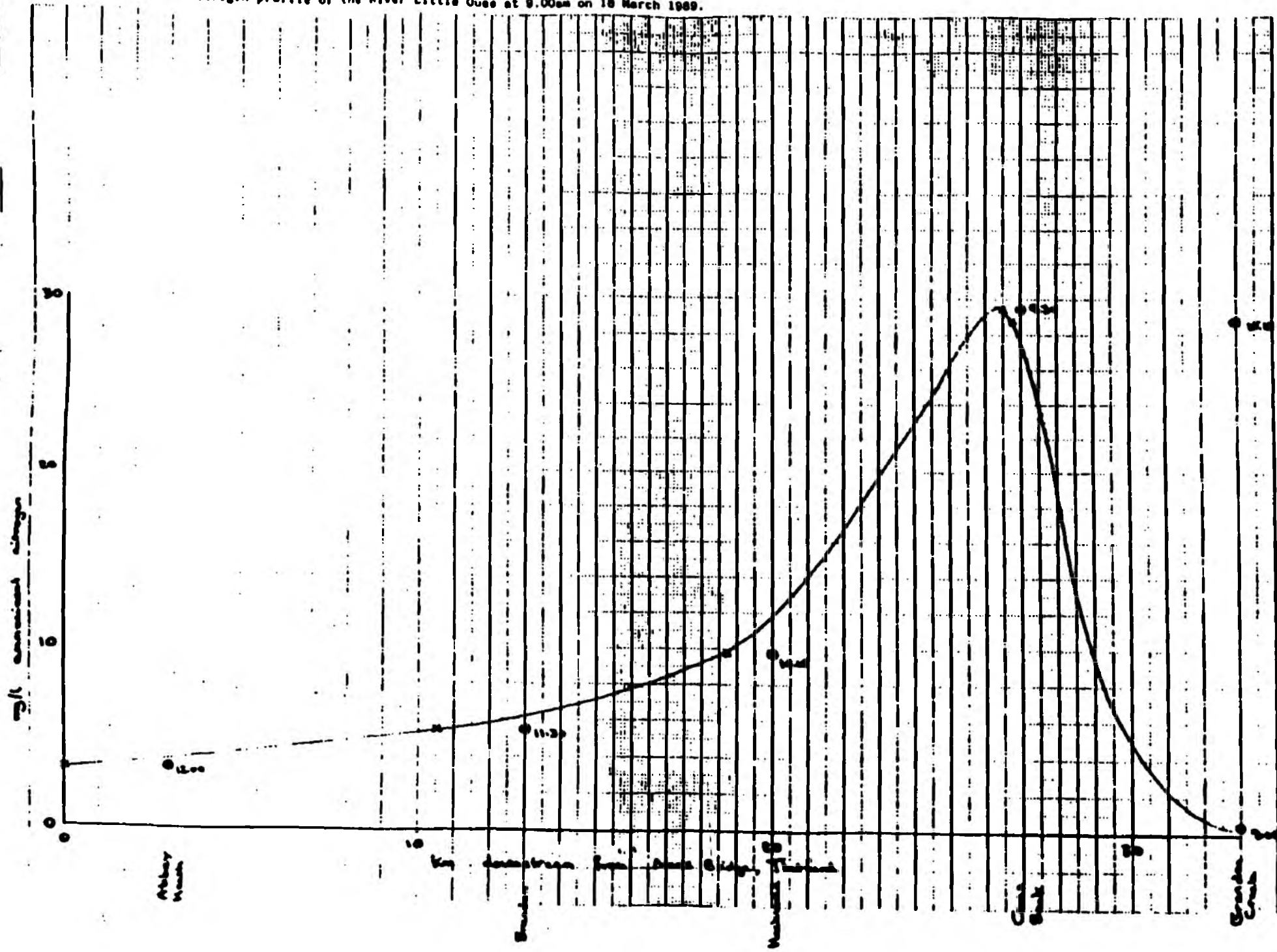
2.16

0.76

Discharge
cumecs

H.P.

Ammoniacal Nitrogen profile of the River Little Ouse at 9.00am on 18 March 1989.



CALCULATION OF AMMONIACAL NITROGEN LOADAT 09.00 GMT 18TH MARCH 1989BETWEEN NUN'S BRIDGE AND BRANDON CREEK

Section downstream from Nun's Bridge	Estimated Discharge	Estimated Concentration	Load
km	cumecs	mg/l	tonnes
0 - 2	13.62	3.4	0.333
2 - 4	13.82	3.8	0.378
4 - 6	13.88	4.2	0.420
6 - 8	13.82	4.6	0.458
8 - 10	13.56	5.0	0.488
10 - 12	13.24	5.5	0.524
12 - 14	13.17	6.2	0.588
14 - 16	12.92	7.2	0.670
16 - 18	12.73	8.5	0.779
18 - 20	12.47	10.3	0.925
20 - 22	14.21	14.1	1.443
22 - 24	11.25	19.7	1.596
24 - 26	11.37	26.1	2.137
26 - 27	8.46	29.0	0.883
27 - 28	8.14	23.7	0.693
28 - 30	7.87	10.2	0.563
30 - 32	6.80	2.4	0.118
32 - 33	6.56	0.4	0.009
TOTAL			13.007

SECTION VIII

J E CLARKE - PROOF OF EVIDENCE

PROOF OF EVIDENCE

I John Edgar Clarke of Hissett House, Drinkstone, Bury St Edmunds will say as follows:-

I am a married man and live at the above address with my wife and my son (10 years old) and daughter (8 years old).

I am 40 years of age (Date of Birth 1/1/1950).

I own Rookery Farm, Drinkstone, Bury St Edmunds, Norfolk, which is the base for my pig business.

I have previous convictions for pollution type offences but none of any other description. I cannot recall the details but when my Solicitors obtain a list from the prosecution this should assist my memory. However, I can say that they were all of a technical nature and I am somewhat surprised at the number of prosecutions brought against me, given the number of pollution type incidents that take place every year, particularly in the vicinity where I farm. Before I deal with the incidents which led up to the charges, I shall give some background to my operation at the farm. I have been using Rookery Farm for pig fattening for approximately 10 years and throughout that time I have consulted with the water authority. About 5 years ago the farming system was changed to one using traditional straw yards and accordingly the slats was concreted over and the slurry system discontinued. Although there is no more slurry, contaminated rainwater drains into the lagoons off the open yards and muck pads.

I shall now deal with the incidents which led up to the charges against me. On the 17th March about mid morning I received a telephone call from Mr Mears of the National Rivers Authority who informed me that there had been a breach in a lagoon at Rookery Farm.

I immediately agreed to go to the farm to see Mr Mears. On arrival I saw the breach in the lagoon being repaired by a contractor. I ascertained from my site foreman, Mr Smith, that as soon as he had arrived on site that morning he had discovered the breach and had put in hand the repair to the lagoon wall. Mr Mears and I walked around the site and I told him that the breach had been an accident. He was suggesting that a million gallons had been released while I am sure it was more like two or three thousand, and he insisted on taking what he called a formal sample. He seemed determined to take action against me and did not seem to be listening to my explanation. This annoyed me and perhaps rather foolishly I refused to choose a sample bottle or sign a receipt.

I believe I was cautioned when I repeated that the breach had been an accident and that on discovery immediate steps had been taken by my foreman and latterly myself, to rectify the position. Mr Mears left, after arranging a meeting which took place a few days later. At this meeting Mr Mears suggested that the lagoons had not been constructed and maintained as he had previously advised. I disagreed with much of the criticism and, anyway, I do not think any of it is actually relevant to the probable cause of the accident.

I believe the precautions which I took were reasonable in normal circumstances. While I cannot say for sure why the breach occurred, I consider the following to be the explanation.

The breach occurred on the north-east boundary of the site where there used to be a 20 foot bank. The neighbouring ditch is naturally 4 feet wide by 3 feet deep. The next door farmer in an attempt to obtain more effective drainage of his land, widened the watercourse on his side of the stream and the increased flow, unknown to me, must have been eroding the bank below the water level for some time. When I arrived on site on 17th March there was still a raging torrent flowing past the lagoon, caused by torrential rainfall over the previously few days. My records show that this was the heaviest rainfall of the season and I must assume that a unique combination of circumstances, resulted in an unprecedented flow of water, which in turn caused the breach in the lagoon wall.

I must reiterate that at no time previous to the breach actually occurring, was I aware that the wall was being eroded away and was ready to collapse. All I can say is that on my daily visits to inspect the wall all appeared in order.