

# **National Rivers Authority**

**Seminar On Water Pollution Control**

**P R E S E N T A T I O N S**

P R E S E N T A T I O N SP A R T IC O N T E N T S

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SECTION A

THE WATER ACT 1989

I BACKGROUND

II COPA II

III PART III Chapter I & Schedule 12

I BACKGROUND

① 1985 WHITE PAPER:

② MAJOR RE - THINK by GOVT<sup>n</sup>:

II COPA II

① see DERIVATIONS TABLES:

② REPEALS of COPA.?  
see Schedule 27.

III The new Act:

① "Way around it" :

② What has replaced COPA?

(a) TRANSITIONAL PROVISIONS:  
see Schedule 26 PART III

(b) MAIN CHANGES:  
see Part III Chapt I  
[& Schedule 12 for details]

SECTION B

SPECIAL STATUTORY PROVISIONS

- I OFFENCE & DEFENCE
- II POWERS of ENTRY
- III SAMPLING & CONTINUITY
- IV SECTION 4 S&FF ACT 1975
- V PROHIBITION NOTICES

II POWERS of ENTRY:

① PRIOR to 1989

② Under the new Act:

(a) SECTION 147

(b) SECTIONS 178 - 179



III SAMPLING & CONTINUITY:

① 2 TYPES of SAMPLES:

② TRIPARTITE SAMPLES:  
see SECTION 148

NB: (i) if of "effluent", and

(ii) if results of analysis is required  
for CT.

③ PROSECUTIONS by NRA:

NB re LUT CONSENTS - "SERIES" of failed samples  
required

④ "CONTINUITY":

NB: "Notebook"

SECTION C

CASE LAW

- I      ALPHACELL
- II     WROTHWELL
- III    "DEFENCE CASES" (x3)

I

ALPHACELL v WOODWARD (1972) HL

NB RYLANDS v FLETCHER  
- offence of STRICT LIABILITY

II

WROTHWELL V YORKSHIRE W.A. (1983) QBD

III

"DEFENCE CASES" (x3)

A IMPRESS v REES (1971) QBD

-"ACT of THIRD PARTY"-

B SOUTHERN WATER v PEGRUM (1989) QBD

-"ACT of GOD"-

NB: DEGREE of "CONTROL" over sub -  
CONTRACTOR

NB: DEGREE of "CONTROL" over sub -  
CONTRACTOR

SECTION D

PRESENTATION of EVIDENCE

at COURT & PLEA BARGAINING

I        PRESENTATION

II       PLEA BARGAINING



I

PRESENTATION of EVIDENCE at COURT

①

"APPEARANCE":

②

WITNESSES:

③

"TIPS"

II

PLEA BARGAINING:

①

Up to 4 OFFENCES:

②

CRIMINAL COURT

③

ADVANTAGES:

SECTION E

PITFALLS/LESSONS to be LEARNT

ANGLIAN WATER v NEESHAM

①

The FACTS:

②

LESSONS?

a "Letter before ACTION"

NB "PACE" - CAUTION

b MITIGATION\_only:

P R E S E N T A T I O N S

P A R T I I

C O N T E N T S

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WATER ACT 1989

S.107

KEY OFFENCES

(1) S.107(1)(A): -

ANY POISONOUS

NOXIOUS OR

POLLUTING MATTER OR

SOLID WASTE MATTER TO

ENTER CONTROLLED WATERS

(2) S.107(1)(B): -

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

W A T E R   A C T   1 9 8 9

S.107

KEY OFFENCES

S.107 (1)(c):

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 SEAVARD LIMITS OF CONTROLLED WATERS.

S.107 (1)(d):

TRADE EFFLUENT OR  
  
SEWAGE EFFLUENT TO  
  
BE DISCHARGED IN CONTRAVENTION  
  
OF A RELEVANT PROHIBITION - FROM  
  
A BUILDING OR FARM OR FIXED PLANT  
  
OR TO - OR INTO LAND OR  
  
WATERS OF A LAKE OR POND  
  
WHICH ARE NOT INLAND WATERS

WATER ACT 1989

S107

KEY OFFENCES

S.107(1)(e):

ANY MATTER WHATEVER TO  
ENTER ON LAND 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 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.



W A T E R   A C T   1 9 8 9

KEY OFFENCES

NB (1) SEWAGE EFFLUENT = any effluent from the sewage disposal or sewerage works of a sewerage undertaker but does not include surface water (S.124(1)).

(2) Trade Effluent = any effluent which is discharge from premises used for carrying on any trade or industry, other than surface water and domestic sewage (S.124(1)),

Note ANY PREMISES wholly or mainly used, whether for profit or not, for agricultural purposes or for the purpose of fish farming or for scientific research or experiment are deemed to be premises used for carrying on a trade (S.124(3)).

W A T E R   A C T   1 9 8 9

Defences

EMERGENCY

S.108(2) a person shall not be guilty of an offence under s.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.

NB. It is generally felt that even though there is no and between (a) and (b) that all 3 parts of this section should be read together in the same way as the defence contained in similar (now repealed) provisions of C.O.P.A.

WATER ACT 1989

Defences

Sevage Undertakers

S.108(7): A sewerage undertaker shall not be guilty of an offence under S.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:

(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.

NB AGAIN LAWYERS IN THE NRA say all 3 legs of (7) must be present for as defence to be successful.

NOTE ALSO

S.108(8)

W A T E R   A C T   1 9 8 9

DEFENCES

S.108(8) - A person shall NOT BE GUILTY of an offence under S.107 above in respect of a discharge which he caused or permitted to be made into a sewer or works vested in a sewage undertaker if the undertaker was BOUND to receive the discharge there either unintentionally or subject to conditions which were observed.

W A T E R   A C T   1 9 8 9

POWERS OF ENTRY

S.147

1        Previously water authorities had a range of specific powers of entry upon land arising under diverse enactments (including SS 111 & 112 Water Resources Act 1973, repealed SS 91 & 92 C.O.P.A & S.32 S.A.F.F.

2        General provision is now made under S 147 so that any person designated in writing by the NRA may enter any premises for specific purposes.

NB.     (a) ~~Without prejudice to any power exercisable by~~ warrant No person is to make entry into Any premises or vessel by virtue of these powers except at a reasonable time or in an emergency.

(b) If residential premises or the entry is to be heavy equipment no entry is permitted until after 7 Days notice has been given to the occupiers of the premises.

W A T E R   A C T   1 9 8 9

Powers of Entry

WARRANTS S.178/9

If these are reasonable grounds to apply for Justice of the Peace warrant then one or more of the following conditions need to be fulfilled:-

(a) that the exercise of the power of entry to the premises has been refused

(b) that such 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 emergency or

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

NB. Additionally, where the condition is that entry to the premises Concerned has been refused or refusal is reasonably apprehended the court must be satisfied either that the occupier has notice of his intention to apply for a warrant or that notice would destroy the objective of the entry.

V A T E R   A C T   1 9 8 9

POWERS OF ENTRY

WARRANTS

S.179 If a Warrant is being used:-

- (1) the person using the power must produce evidence of his designation and other authority before he exercise the power
- (2) he can take whatever equipment he needs
- (3) he must leave the premises as effectually secured against trespasses as he found them
- (4) full compensation is payable if any damage or loss occurs

S.180 ~~This is a new~~ offence relating to impersonation of persons exercising power of entry.

NB. Although it is primarily arrived at impersonation, it could also be applicable to offices of the 14 NRA who attempt to enter without proper designation or authorisation.

W A T E R   A C T   1 9 8 9

POWERS OF ENTRY

Samples

(1) This has been covered before but most important aspect of this mornings talk

(2) S.148 (formally S.113 Water Resources Act, 1963) states that the result of the analysis of any sample of effluent passing from any LAND is NOT ADMISSIBLE AS EVIDENCE IN COURT UNLESS, certain formal requirements are followed:

(a) Person taking the sample NOTIPIES the occupier of the land of his intention to have-it-analysed.

(b) Sample divided into 3 parts and each part placed in a container which was sealed and marked.

(c) One part of the sample was delivered to the occupier of the land and one part retained for future compassion, (apart from the one submitted to be analysed).



W A T E R   A C T   1 9 8 9

POWERS OF ENTRY

Samples

NB. (1) In the event of it not being reasonably practicable for a person taking a sample of effluent to comply with the formal requirements on the taking of samples, the requirements are to be treated as having been satisfied if they were complied with as SOON AS REASONABLY PRACTICABLE after the sample was taken .

(2) You do not have to split associated samples because they are not samples of effluent.

(3) Two court decisions which demonstrate in limited circumstances that the threefold sampling procedure is not always necessary:-

Trent River Authority -v-

Wardle 1957

Placing fish in a sample of effluent was not an 'analysis' and therefore the failure to adhere to the split did not preclude the admissibility of evidence showing the effect of the sample on the fish.

Wansford Trout Farm -v-

Yorkshire Water Authority 1986

Decided that the admissibility of readings from a dissolved oxygen meter in evidence did not depend upon adherence to the threefold sampling procedure.

OTHER ACTS OF RELEVANCE

THERE ARE MANY ACTS DEALING WITH DISCHARGES TO SEWAGE/TREATMENT WORKS,  
OIL FROM VESSELS, POLLUTION OF DRINKING SUPPLIES BUT ALL THOSE ACTS ARE  
GENERALLY PROSECUTED BY THE AUTHORITIES APART FROM THE NRA. AN  
IMPORTANT EXCEPTION IS THE SALMON AND FRESHWATER FISHERIES ACT, 1975 AND  
IN PARTICULAR;

SECTION 4 - POISONOUS MATTER AND POLLUTING EFFLUENT.

SECTION 5 - PROHIBITION OF USE OF EXPLOSIVES, POISONOUS OR  
ELECTRICAL DEVICES.

SECTION 4 - SALMON AND FRESHWATER FISHERIES ACT, 1975

- NB. (1) Similar wording to S.107 of the Water Act 1989 in that any person who causes or knowingly permits to flow, or puts or knowingly permits to the put, into any 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.
- (2) Fish kill numbers need to be carefully counted by Bailiffs for compensation and gravity purposes.
- (3) Analysis of fish vitally important to support reasons for fish kill.
- (4) Photographic evidence of numbers of fish always useful in court.
- (5) Fish Scientists need to provide a detailed projection of damage to the resource.
- (6) Usual to run this charge with S.107.

Control of Discharges by means of Prohibition Notices

1. SUMMARY

A range of commonly consented types of discharges control by consents now require the issue of prohibition notices if control needs to be exercised. This provides an opportunity to only control such discharges where there is risk to the environment. In all cases the discharges will be legal without the normal consent of the NRA. Section 107 of the Water Act 1989 has introduced changes in the way certain types of discharge can be controlled.

- 1 Discharge of trade or sewage effluent from a building or fixed plant onto or into land [including the majority of septic tanks].
- 2 Discharge of any matter other than trade or sewage effluent into controlled water from a drain or sewer ['surface water' discharges].
- 3 Any discharge made from a drain kept open by virtue of Section 100 of the Highways Act 1980. [most highway drainage].

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From 1st September 1989 all the types of discharge listed above are lawful unless:

- 1 A prohibition notice has been served to prohibit the discharge being made or continued.
  - 2 A prohibition notice has been served requiring the discharge to comply with specified conditions and those conditions are not being complied with or
  - 3 The discharge contain substances prescribed, or in a concentration prescribed by the Secretary of State.
2. From 1st September 1989 it will require positive action by the NRA to bring these types of discharge under control. In making that decision the NRA will have to have regard to the effects the discharge might have on the environment and the cost to the organisation of exerting control.

3. When considering any discharge the following general considerations should be followed:

- i If the discharge presents no significant pollution risk either by itself or taken together with similar near-by discharges nor are there likely to be any adverse aesthetic effects

Take no action - discharge remains legal.

- ii If there is a minor risk of pollution but the discharge would be acceptable if it complied with descriptive conditions

Serve a prohibition notice specifying conditions which must be met by the discharge (e.g. the distance of the soakaway from the nearest watercourse). The serving of the prohibition notice provides the control and no further consent is required.

- iii If the discharge poses a significant risk of pollution either on its own or when considered in context with other nearby discharges, but subject to quantitative conditions being complied with, should be acceptable but will require monitoring.

Either serve a prohibition notice specifying quantitative conditions to be met.

Or serve a prohibition notice stipulating that the discharge cannot take place or continue unless the consent of the Authority is obtained. In such cases advertising of the consent application is likely to be required. This option should be adopted where recovery of monitoring charges may be desirable.

- iv The discharge is unacceptable in any circumstances.

Serve a prohibition notice stating that the discharge cannot take place or continue.

4. A prohibition notice cannot take effect before the expiration of a period of notice which must be at least three months (unless the risk of pollution is sufficiently great that emergency notice must be given). Where, before the expiration of the period of notice, the recipient applies for a

consent, the discharge remains lawful until either (1) the grant or withdrawal of the application or (2) the expiry of the period allowed for appeal and an appeal is not made or (3) the determination or withdrawal of the appeal made within the allowed period.

5. For discharges in the three categories subject to the prohibition notice form of control, there is no application or notification required to the Authority. It is therefore particularly important that these discharges are identified through the planning consultation process or any other liaison that may be available so that notice can be served by the Authority where control is necessary.
6. The following guidelines should be applied:

a) Discharges to Land

1. Single septic tanks - If there is no threat to surface water quality or ground-water abstractions and it is unlikely to cause aesthetic problems - take no action.

If there is the possibility of problems that require control serve a prohibition notice with descriptive conditions.

If the development is within a severed area or within 30 metres of a severed area - serve an absolute prohibition notice. (For many developers these provisions will provide a very inexpensive way of providing sewerage since sewerage charges will not be payable nor will discharge charges. There may be severe pressure to allow septic tank development in severed areas).

2. Multiple developments/commercial or industrial - only in insignificant cases should a descriptive prohibition notice be served. In most cases it is likely that a conditional prohibition notice or a notice requiring that a consent be issued should be served. Decisions in each case should be based on local knowledge and the likely impact of the discharge.

b) Any other matter via a drain or sewer

1. Uncontaminated surface water from residential development would not normally require any control and no notice should be served.

2. Car and vehicle parking areas would also normally be exempt from control unless very large (>200 car spaces) or on industrial premises or routinely used by HGVs or are of a type known to be prone to oil spillage (garage fore-courts, motor spare shops etc.). Where control is required it should be by means of a descriptive conditions in a prohibition notice specifying oil entrapment facilities and their maintenance.
3. Contaminated surface water from trade premises, very large car and vehicle parks (>500 spaces, haulage firms, hyper-markets, regional hospitals etc.) should be treated as trade effluent and a prohibition notice served requiring that a consent be sought.

[NB. Any surface water arising in or around trade premises that is likely to be contaminated or is at risk of contamination because of the trade processes should be classed as trade effluent and treated accordingly.]

## 7. CONSENTS & PROHIBITION NOTICES

### 7.1 Applications Where Consent Is Not Required

7.1.1 Although consent is only required in the circumstances set out in paragraph 1 above, it is nevertheless open to a discharger to apply for consent. The reason for such an application could be two fold:

(a) To ensure that the Authority is satisfied with the discharge and will not therefore serve as prohibition notice

or (b) To provide for the eventuality of an unlawful discharge occurring and thereby provide a defence (if the matter discharged is included in the consent).

7.1.2 These applications should be dealt with in the usual way although it would be courteous, especially in view of changes for consents, to inform the applicant that a consent is not strictly necessary.

### 7.2 Consents without applications

(Paragraph 5, Schedule 12 Water Act 1989)

7.2.1 The Authority may impose a consent on a discharger without an application having been made if:-

(a) That person has caused or permitted effluent or other matter to be discharged in contravention of a prohibition notice.

or (b) That person has caused or permitted trade or sewage effluent to be discharged into controlled waters or from land through a pipe, into the sea outside the seaward limits of controlled waters (offence S.107(1)(c) Water Act 1989).

and (c) A similar contravention by that person is likely.



- 7.2.2 Therefore, in the situation where surface water discharged through a sewer or drain into controlled waters is contaminated with trade effluent e.g. oil, then consideration should be given to imposing a consent under these provisions rather than serving a prohibition notice with conditions.
- 7.2.3 Where there is the option available to impose a consent, then this should normally be chosen, in order to bring the discharge within the Charging Scheme.

NATIONAL RIVERS AUTHORITY

NORTH WEST REGION

NOTICE REQUIRING INFORMATION

(Section 118 Water Act 1989)



To:

Address:

THE NATIONAL RIVERS AUTHORITY ("the Authority") of P.O. Box 12 Richard Fairclough House, Knutsford Road, Warrington, WA4 1HG HEREBY gives you NOTICE in pursuance of its powers under Section 118 of the Water Act 1989 requiring you to provide the information specified in the Schedule hereto within a period of \_\_\_\_\_ from the date specified below.

The information is required by the Authority for the purpose of carrying out its function relating to the control of water pollution.

Dated \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Signed .....

NOTE

Failure, without reasonable excuse, to comply with the requirements of this notice within the time period specified is an offence, the penalty for which on summary conviction is a fine not exceeding £2000.

NATIONAL RIVERS AUTHORITY

NORTH WEST REGION

SCHEDULE



Details of Information Required

(List information sought)

NATIONAL RIVERS AUTHORITY

NORTH WEST REGION

PROHIBITION NOTICE

(Section 107 Water Act 1989)



To:

Address:

The NATIONAL RIVERS AUTHORITY ("the Authority") of P.O. Box 12 Richard Fairclough House, Knutsford Road, Warrington, WA4 1HG HEREBY GIVES YOU NOTICE in pursuance of its powers under Section 107 of the Water Act 1989 PROHIBITING YOU from making or continuing the discharge of surface water from a drain or sewer serving the premises at

into  
being controlled waters.  
(Except in accordance with the conditions set out below).

This prohibition comes into force on the                      day of                      19 .

(Conditions)

Dated

Signed .....  
Regulation & Planning  
Liaison Officer

THE NATIONAL RIVERS AUTHORITY

NORTH WEST REGION

PROHIBITION NOTICE

(Section 107 Water Act 1989)



To:

Address:

The NATIONAL RIVERS AUTHORITY ("the Authority") of P.O. Box 12 Richard Fairclough House, Knutsford Road, Warrington, WA4 1HG HEREBY GIVES YOU NOTICE in pursuance of its powers under Section 107 of the Water Act 1989 PROHIBITING YOU from making or continuing the discharge of trade (sewage) effluent from onto (into) (Except in accordance with conditions set out below).

This prohibition comes into force on the                      day of                      19 .

(Conditions)

Dated

Signed .....  
Regulation & Planning  
Liaison Officer

NATIONAL RIVERS AUTHORITY

NORTH WEST REGION



Dear Sir/Madam

Re: Water Act 1989 Section 107  
PROHIBITION NOTICE

I attach prohibition notice relating to a (proposed) discharge of

If you are dissatisfied with the notice or any condition imposed you may apply to the Authority for a consent authorising you to make the discharge. If you are then dissatisfied with the decision on the consent application, you may appeal to the Department of the Environment.  
~~A set of application forms and guidance notes is enclosed.~~

Yours faithfully

D J Lea  
Regulation & Planning Liaison Officer

Encs.

10. POINTS TO NOTE

10.1 Appeals Procedure

10.1.a If, after serving of such a notice but prior to it coming into effect (i.e. before the end of the 3 month period or such longer period specified) an application is made for a discharge consent in relation to the discharge to which the notice relates, the making of such an application has, the effect of deferring the dates from when the prohibition is effective until such time as the application has been granted or withdrawn, or the expiration of any period allowed for bringing on an appeal against the decision on the application when no appeal has actually been lodged, or when such an appeal has been lodged, the withdrawal or determination of that appeal.

10.1.b As to the period for determination of the application, paragraph 2(2) of Schedule 12 to the 1989 Act provides that (generally), an application for consent shall be deemed to be refused if not given within 4 months of the date of the application or such other period as may be agreed with the applicant.

~~10.1.c~~ With regard to the period of time for bringing an appeal, there is no specific provisions in the relevant paragraph (paragraph 8) of Schedule 12 and but, by virtue of paragraph 7(2) of the Control of Pollution (Consents for Discharges etc). (Secretary of State Functions) Regulations 1989 (SI 1989/1151), notice of appeal shall be given to the Secretary of State before the expiry of 3 months beginning with the date of notification of the Authority's decision to the applicant, or of the date when the Authority was deemed to have refused consent (see 1.b above).

10.2 Evidence if Prohibition Notice not complied with

10.2.a As to absolute prohibitions - the observation of the mere existence of a discharge together with a certified copy of the prohibition notice itself should be sufficient.

10.2.b Notice subject to conditions - necessary to prove that the discharge was in contravention of those conditions.

CHANGES IMPOSED BY ENVIRONMENTAL PROTECTION ACT 1990

In the case of water pollution, Section 108 Water Act 1989 has been amended so that an entry or discharge into controlled waters from a prescribed process in accordance with an authorisation under Part I of the EPA will not be an offence under Section 107 of that Act (31). It follows that where no requisite authorisation has been obtained, or if one has been obtained, the conditions have not been complied with, an offence will be committed both under Section 107 Water Act 1989 and under Section 23 of the EPA (see post).

The enforcing authority must not grant an authorisation if the National River Authority (NRA) certifies that the release will result in or contribute to a failure to achieve any statutory water quality objective. If an authorisation is granted, it must contain any conditions which the NRA considers appropriate (except that the enforcing authority may impose more onerous conditions). Conditions attached to an authorisation must be varied under the variation powers by the enforcing authority if the NRA so requires.



COST & COMPENSATION

COST

THE LEGAL POSITION

THE FIRST PRINCIPLE

NEVILLE V GARDNER MERCHANT LTD QBD 1983

HELD JUSTICES DISCRETION TO AWARD COSTS  
WAS WIDE ENOUGH TO COVER AN AMOUNT IN  
RESPECT OF THE TIME OF AN INVESTIGATING  
OFFICER PAID OUT OF PUBLIC FUNDS WHOSE  
JOB IT WAS TO INVESTIGATE ALLEGED  
OFFENCES.

FOOD HYGIENE CASE TOTAL OF £144 COSTS.  
WHAT WAS DISALLOWED WAS THE INVESTIGATING  
OFFICER AND 8 HOURS TIME WAS SPENT  
SPECIFICALLY DEALING WITH OFFENCE.

SECOND PRINCIPLE

POLLUTER PAYS

OUR COSTS SOMEWHAT GREATER THAN £144 -

START AT £4 - £5000 - SO

PRACTICE

- (1) CAREFUL LOG OF TIME SPENT BY EACH  
OFFICER AND EMERGENCY CENTRE'S  
STAFF - (IS THIS COST OR COMPENSATION)
- (2) LAB COSTS - ANALYSIS
- (3) AGREE BEFOREHAND TO ASSIST MITIGATION.
- (4) DISCRETIONERY  
(COSTS GO DIRECT TO US - FINES TO  
CENTRAL GOVERNMENT).

## COMPENSATION

### PRACTICE

#### POLLUTION CASES

- (1) COSTS OF WATER P.L.C.'S IN PROVIDING ALTERNATIVE SUPPLIES BECAUSE OF SHUTDOWN OF INTAKES. (P.L.C. MAY NOT WISH TO DO THAT BUT DEFENDANTS WILL WANT TO KNOW WHETHER THEY HAVE A CLAIM).
- (2) CLEARING UP COSTS, BOOMS, TANKERS, MANPOWER ETC.
- (3) EMERGENCY INCIDENT ROOMS AND INCIDENTAL EXPENSES (NOT PART OF INVESTIGATION).

N.B. MUST HAVE DETAILED FIGURES PLUS JUSTIFICATION FOR CLAIM

#### FISH KILL CASES

- (1) MUST PROVE CASE UNDER SECTION 4 OF S.A.F.F. 1975.
- (2) SECTION 28 SALMON AND FRESHWATER FISHERIES ACT 1975 CONFIRMED BY SECTION 141 OF WATER ACT 1989 THAT DUTY TO IMPROVE FISHERIES.
- (3) SO, ANGLING CLUB SUFFERS £100,000 DAMAGE (LOSS OF AMENITY LOSS TO THEIR PROPRIETORIAL CAPITAL & REVENUE INTERESTS, AND £250,000 RE-STOCKING WHAT DO THEY DO).

C O M P E N S A T I O N

FISH KILL LOSES

- (1) SUE THE POLLUTER DIRECT FOR £350,000 IN NUISANCE, NEGLIGENCE OR RYLANDS V FLETCHER.
- (2) CLAIM THROUGH N.R.A. FOR RESOURCES LOSS - £250,000 BECAUSE OF THEIR DUTY.
- (3) IF WE ARE CLAIMING IN CROWN COURT WE MUST SHOW
  - (a) SCIENTIFIC LOSS MUST BE PROVIDED  
NEED TO BE PRECISE IN FISH COUNT AND REPORT ON IMPLICATIONS TO RESOURCE. (MATHEMATICAL MODES AND EXPERTS EVIDENCE TOXICOLOGY REPORTS BIOLOGICAL COUNTS ALL ESSENTIAL).  
N.B. LOSS ADJUSTERS -VERY- SHARP
  - (b) RE-STOCKING PROGRAMME SHOULD BE REALISTIC  
i.e. HAPPENED OR ABOUT TO HAPPEN.
- (4) OUR JUSTIFICATION FOR CLAIM  
IF WE DON'T RE-STOCK ANGLING CLUB WILL INSIST (BY THREAT OF LEGAL ACTION <DAMAGES, BREACH OF STATUTORY DUTY, MANDAMUS>) ON N.R.A. EXERCISING THEIR DUTY UNDER SECTION 141. WE WOULD THEREFORE TAKE 3RD PARTY PROCEEDINGS AGAINST DEFENDANT IN CIVIL LAW.  
  
N.B. ANGLERS COULD USE A.C.A. & SIMON VACSON SOLICITOR FOR A.C.A.

C O M P E N S A T I O N  
ANTI POLLUTION WORKS AND OPERATION  
S 115 WATER ACT 1989

NRA CAN

1. REMOVE OR DIPOSE OF MATTER
2. REMEDY OR MITIGATE ANY POLLUTION
3. RESTORE WATERS TO PREVIOUS STATE

N.B. CANNOT USE THIS SECTION TO DO ANYTHING TO IMPEDE THE CONTINUATION OF A  
CONSENTED DISCHARGE EVEN IF IT HAS OR LIKELY TO CONTINUE TO CAUSE  
POLLUTION - NRA SHOULD REVIVE OR VARY CONSENT.

N.B. 1. MAY RECOVER EXPENSES REASONABLY INCURRED  
EXCEPT FROM POLLUTION FROM WATER FROM ABANDONED MINES

2. CARE NEEDS TO BE TAKEN IN USING THIS SECTION

COMPARE:

SECTION 24 OF THE ENVIRONMENTAL PROTECTION ACT 1990

SECTION 157 OF 1990 ACT WITH

S 121 OF WATER ACT 1989

H.M.I.P. GO FOR DIRECTORS SHOULD WE?

**NATIONAL RIVERS AUTHORITY**

**LAW ON WATER POLLUTION**

**POLICE AND CRIMINAL EVIDENCE ACT 1984.**

1. POWERS TO STOP AND SEARCH

1.1 Section 1 of PACE gives power in certain circumstances to stop and search persons and vehicles, and to seize items found. The power does not apply to NRA pollution staff, and officers should not attempt to search persons or vehicles, except in very rare circumstances and then only with consent.

1.2 Rights of entry and power to take away samples and articles are dealt with elsewhere in this course. There are other powers under section 8 of PACE, but these are not applicable to NRA pollution staff.

2. POWERS OF ARREST

2.1 Sections 24 and 25 of PACE give powers of arrest to constables, and in connection with certain offences to persons who are not constables.

Unlike water bailiffs, pollution staff are not deemed to be constables and the offences for which non-constables can arrest do not include pollution offences.

DO NOT ATTEMPT TO ARREST

3. QUESTIONING

3.1 It goes without saying that questioning must be carried out in a civil and courteous manner.

3.2 All citizens have a civic (but not a legal) duty to assist police officers to prevent and discover crime. There is no reason to suppose that this does not apply to pollution officers as it does to police officers, and a pollution officer can question anyone whom he believes can give useful information as to whether an offence has been committed and if so by whom. There is no legal obligation on the person to answer.

At this stage caution (see below) is not necessary.

4. CODES OF PRACTICE

4.1 Section 66 PACE

The Secretary of State shall issue codes of practice in connection with -

- (a) the exercise by police officers of statutory powers -
  - (i) to search a person without first arresting him; or
  - (ii) to search a vehicle without making an arrest;
- (b) the detention, treatment, questioning and identification of persons by police officers;
- (c) searches of premises by police officers; and
- (d) the seizure of property found by police officers on persons or premises.

4.2 Section 67 PACE

(8) A police officer shall be liable to disciplinary proceedings for a failure to comply with any provision of such a code, unless such proceedings are precluded by section 104 below.

(9) Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of such a code.

(10) A failure on the part -

(a) of any police officer to comply with any provision of such a code; or

(b) of any person other than a police officer who is charged with the duty of investigating offences or charging offenders to have regard to any relevant provision of such a code in the discharge of such a duty,

shall not of itself render him liable to any criminal or civil proceedings.

4.3 The codes of practice have been published and are -

A The exercise by police officers of statutory powers of stop and search.

B The searching of premises by police officers and the seizure of property found by police officers on persons or premises.

C The detention, treatment, and questioning of persons by police officers

D The identification of persons by police officers

Only C is likely to be of relevance to pollution officers.



5. CODE OF PRACTICE C

5.1 A person arrested and taken to a police station is entitled to consult a solicitor (PACE Sect 58) and under para 3.1 of the code of practice he must be reminded of his right.

5.1.1 In having regard to this requirement it is a matter of discretion whether the person being questioned is reminded of his right, but if he asks to see a solicitor he should be given an opportunity to do so. If this happens, note the fact in your notebook.

5.2 Caution

There will come a time when you cease investigating whether an offence has been committed and if so by whom, and reach a stage when you suspect a particular person of having committed an offence. At this stage the caution comes into play.

5.2.1 A person whom there are grounds to suspect of an offence must be cautioned before any questions (or further questions) are put to him for the purpose of obtaining evidence which may be given to a court in a prosecution.

It is not necessary to caution before asking full name, address, or name of company, etc.

Code of Practice C para 10.1.

5.2.2 The caution should be in the following words -

"You do not have to say anything unless you wish to do so, but what you do say may be given in evidence"

Minor deviations from the wording do not matter so long as the sense of the caution is made clear.

Code of Practice C para 10.4

5.2.3 Record in your notebook the fact that caution was given and the time.

5.2.4 The nature of pollution cases is such that the polluter may well have been assisting you to trace the source of the pollution and stop it before you get into the formal interview situation. Nevertheless it is worth giving the caution and summarising the facts in an interview

5.2.5 The interview must when the officer believes that he has sufficient evidence for a prosecution to succeed

Code of Practice C para 11.2.

5.3 Interview Records.

- 5.3.1 (a) An accurate record must be made of each interview with a person suspected of an offence whether or not the interview takes place at a police station.
- (b) If the interview takes place at a police station or other premises:
- (i) the record must state the place of interview, the time it begins and ends, the time the record is made (if different), any breaks in the interview and the names of all those present: and must be made on the forms provided for the purpose or in the officer's pocket book or in accordance with the code of practice for the tape recording of police interviews with suspects;
- (ii) the record must be made during the course of the interview, unless in the investigating officer's view this would not be practicable or would interfere with the course of the interview, and must constitute either a verbatim record of what has been said or failing this an account of the interview which adequately and accurately summarises it.
- Code of Practice C para 11.3
- 5.3.2 If an interview record is not made during the course of the interview it must be made as soon as practicable after its completion.  
Code of Practice C para 11.4
- 5.3.3 Written interview records must be timed and signed by the maker.  
Code of Practice C para 11.5
- 5.3.4 If an interview record is not completed in the course of the interview the reason must be recorded in the officer's pocket book.  
Code of Practice C para 11.6
- 5.3.5 Any refusal by a person to sign an interview record when asked to do so in accordance with the provisions of this code must itself be recorded.  
Code of Practice C para 11.7

6. EXCLUSION OF EVIDENCE

6.1 Samples. This is not strictly within the scope of PACE, but it cannot be emphasised strongly enough that unless the provisions of section 148 Water Act 1989 are followed strictly the evidence of analysis is not admissible in court.

6.2 Confessions.

6.2.1 A confession is defined as " including any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not, and whether made in words or otherwise" sect 82(1) PACE

6.2.2 A confession will not be allowed in evidence unless the prosecution can prove that it was not obtained by oppression, or in circumstances which render it unreliable - Sect 76 PACE.  
Whether or not the confession is true is not relevant in deciding whether or not it is admissible in evidence.

6.2.3 Oppression is defined as "including torture, inhuman or degrading treatment, and the use or threat of violence (whether amounting to torture or not" Sect 76 PACE

6.2.4 "Anything likely to render it unreliable" is not defined but is likely to cover oppressive questioning, a suggestion that a confession would mean no prosecution, failure to caution etc.

6.3 Other evidence.

6.3.1 It is in the discretion of the court to disallow evidence if to admit it would be unfair. In deciding that the court will look at all the circumstances including the way in which the evidence was obtained. So evidence could be ruled out for breach of code of conduct such as not making accurate note, or in time, etc  
PACE Sect 78

6.3.2 The court also has a general discretion retained by PACE Sect 82 to exclude evidence if its probative value is outweighed by its prejudicial effect.

7. DOCUMENTARY RECORDS

7.1 The normal rule is that before a document can be produced in court as evidence of facts stated in it, the maker of the document must be called to give evidence.

7.1.1 Section 68 PACE provides an exception - a document can be used to prove facts stated in it if -

1. The document is (part of) a record compiled by a person acting under a duty, from information supplied by a person who had, or may reasonably be expected to have had, personal knowledge of the facts, and

2. either -

(a) is dead, unfit, outside the UK or cannot reasonably be expected to have any recollection of the information;

or

(b) cannot be identified despite reasonable steps

or

(c) is identifiable but cannot be found despite reasonable steps.

7.1.2 Even if a document is admissible under these rules it is still open to the court to refuse it on grounds of unfairness etc.

7.2 COMPUTER RECORDS

7.2.1 Under Sect 69 PACE a statement in a document produced by a computer is not admissible in evidence unless very stringent conditions are fulfilled.

7.2.2 The prosecution must prove -

(a) that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer and

(b) that at all material times the computer was working properly; or if it was not that the fault did not affect the production of the document or its accuracy.

This can be proved by a certificate from a person occupying a position of responsibility in relation to the computer, that the above is true to the best of his knowledge and belief.

8. MICROFILE COPIES

8.1 Under Sect 71 PACE an authenticated enlargement of a microfilmed document is acceptable in place of an original. It will still be necessary to prove the admissibility of the original document.