



House of Commons
Environment, Food and Rural
Affairs Committee

**The Environment
Agency**

Seventh Report of Session 2005–06

Volume II

Oral and written evidence

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Environment, Food and Rural Affairs Committee

The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Environment, Food and Rural Affairs and its associated bodies.

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Publications

The reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at

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Committee staff

The current staff of the Committee are Matthew Hamlyn (Clerk), Jenny McCullough (Second Clerk), Jonathan Little and Dr Antonia James (Committee Specialists), Marek Kubala (Inquiry Manager), Andy Boyd and Alison Mara (Committee Assistants) and Lizzie Broadbent (Secretary).

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Association of British Insurers – Revisiting the Partnership Oct 2005 Report (Background paper)

Department for Environment, Food and Rural Affairs (Background papers)

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Torbay Council – 2004 Report on Flooding (Background paper)

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Third Report	Caught in the net: Cetacean by-catch of dolphins and porpoises off the UK coast	HC 88 (HC 540)
Second Report	Annual Report of the Committee 2003	HC 225
First Report	Water Pricing	HC 121 (HC 420)

Oral evidence

Taken before the Environment, Food and Rural Affairs Committee

on Wednesday 14 December 2005

Members present:

Mr Michael Jack, in the Chair

Mr David Drew
James Duddridge
Patrick Hall

Lynne Jones
Sir Peter Soulsby
David Taylor

Memorandum submitted by Royal & SunAlliance

1. INTRODUCTION

1.1 As one of the UK's leading property insurers, with a strong interest in flooding issues, we would like to make a brief submission to the Efra Select Committee's inquiry into the Environment Agency's work on flooding. Our response refers to point six of the Committee's Request for Evidence which requires evidence on "the Agency's responsibilities for flood defence and flood mapping, including guidance to the public".

1.2 Royal & SunAlliance (R&SA) are keen to offer good value insurance at the best prices to our customers, and to make sure that as many people as possible have access to insurance to protect their homes and businesses. The Environment Agency therefore plays a key role in achieving this aim, and we are generally positive about its activities in this area.

1.3 We have also developed our own flood mapping tool to ensure that we can offer our customers the most accurately-priced household insurance premiums in relation to the flood risk of their location.

1.4 A more detailed explanation of our views on flood risk management was published recently in our Flood Risk Report. Our key recommendations were:

- Building in flood risk areas must be avoided and only happen as a last resort.
- The level of funding needed to maintain defences should be agreed.
- The Environment Agency must become a statutory consultee in planning applications in flood risk areas as a matter of urgency.
- Insurers must be given clarity about where flood defences are to be built and by when.

Our Flood Risk Report may be downloaded from:

<http://www.royalsun.com/royalsun/floodrisk.jsp>

2. THE WORK OF THE ENVIRONMENT AGENCY

2.1 On the positive side, the Environment Agency has been involved with a productive dialogue with the insurance industry on flooding, both through direct meetings with the Association of British Insurers (ABI) and in workshops attended by the ABI's members. One example of such dialogue was during the Environment Agency's preparation of its flood map when it held regular meetings with ABI members in order to take account of their views and introduced some enhancements to make it more specific.

2.2 Whilst R&SA do not use the Environment Agency's flood map for our own underwriting purposes, we were encouraged by the Environment Agency's obvious desire and willingness to work with industry on flooding matters.

2.3 There are two aspects of the Environment Agency's work and role to which we would like to draw the Committee's attention: information on flood defences; and its proposed role as a statutory consultee.

3. INFORMATION ON FLOOD DEFENCES

3.1 R&SA has been calling upon Defra and the Environment Agency to provide better information on the whereabouts and state of maintenance of flood defences. Currently, the Environment Agency makes available an annual National Flood Risk Assessment (NaFRA) spreadsheet to insurers which includes information on the whereabouts of flood defences. Because this is only made available annually (the last one was published in January 2005), its use is limited as flood defences are constantly being built and maintained throughout the year. A more regular publication of the NaFRA spreadsheet would enable insurers to take

more recent developments into account. Also, the NaFRA spreadsheet does not always specify to what standard the flood defences are being built or maintained (eg whether they are built to withstand a one in 75 years incidence of flooding or less) More regular and complete information would enable us to have a clearer idea of the relative risks that properties in each part of the country face and therefore to offer insurance to our customers which more exactly reflects the nature of this risk.

3.2 We understand that providing information on the existence and standard of flood defences throughout the UK is a major project for the Environment Agency, but are concerned at the time it seems to be taking for the Agency to complete its Flood and Coastal Defence Database. We have no idea what the timescale for completion is and would welcome clearer guidance on a timeline for delivery.

3.3 Although some years ago we were told by the then Project Manager that the Database would be made available to insurers, we have not received assurances on this more recently, so we do not know if this is still the case.

3.4 In addition, we are not aware what kind of data will be used in the Database or how it will be presented. For example, we do not know whether the Database will describe the standards to which flood defences are being built or include information on how regularly they are being maintained and checked.

3.5 We recommend that the Environment Agency completes this information-sharing exercise and provides the insurance industry with access to the database. This would enable us, and the rest of the insurance industry, to understand flood risks better and offer the best premiums and terms to our customers.

4. MAKING THE ENVIRONMENT AGENCY A STATUTORY CONSULTEE IN ALL NEW PLANNING APPLICATIONS

4.1 In March 2005, the Office of the Deputy Prime Minister announced that the Government would consult on making the Environment Agency a statutory consultee in relation to planning applications in areas of flood risk. We would like this to happen as soon as possible. The Environment Agency displays a desire and willingness for such consultation to happen, and we are strongly in support.

4.2 The Environment Agency has a very important role to play in the light of the Government's plans under the Sustainable Communities Plan 2003 to build an additional 200,000 homes in the South East of England. Four growth areas were identified: the Thames Gateway, Ashford, London-Stansted-Cambridge corridor, and Milton Keynes-South Midlands. Large parts of these locations are areas of flood risk—for example, 120,000 homes are planned for the Thames Estuary flood plain.

4.3 Royal & SunAlliance recommends that building in areas of high flood risk should only happen as a last resort, and that if it does go ahead, adequate flood defences must be put in place as a routine part of any such scheme. Making the Environment Agency a statutory consultee in all plans for new build development would give insurers and the public more confidence that new homes are being adequately protected from flooding. As an insurer, we always try to do our best to offer insurance to people wherever possible, but we cannot guarantee that insurance will always be available in the future to homeowners in areas of high flood risk if the incidence of flooding continues to increase. We therefore recommend that the Office of the Deputy Prime Minister should act urgently to guarantee the Environment Agency this important strategic role.

We hope that the Committee will be able to give these issues some consideration as part of its wider inquiry into the work of the Environment Agency. We are happy to supply further information should it be required.

Royal & SunAlliance UK

December 2005

Memorandum submitted by the Association of British Insurers

SUMMARY

1. The Environment Agency, and the Government more widely, has made good progress in the last few years in improving the effectiveness of flood management. Many of the factors enabling insurers to remain on cover for as many customers as possible are now being addressed. Key achievements include:

- Remaining on track to reduce flood risk for 80,000 households for the period April 2003–06 and contributing to the new target to improve the standard of protection for 100,000 households for the period April 2005–08.
- Streamlining flood defence committee structures and moving towards national procedures for the allocation of funding, removing the postcode lottery.
- Developing improved and accessible flood risk data for use by the public and by planners, insurers and lenders, with plans for further progress.
- Successful trialling of innovative, temporary and demountable flood defences to serve communities where conventional defences are not feasible.

- Transfer to the Agency of approximately 40% of ordinary watercourses representing greatest risk, with plans for completion by April 2006.
 - Recognition that the Agency should take a strategic overview of all types of flooding, with important pilots on integrating urban drainage and sewage issues within catchment planning, and grant aid for householder action.
 - Action to improve and extend flood warning systems, including the requirement to opt out.
2. Building on these successes, ABI believes that the Agency should now:
- Ensure that the flood defence database is complete and up-to-date, and medium term plans for investment are clear and accessible. (Urgent).
 - Ensure procedures deliver maximum efficiency and effectiveness and clarify how savings will be used to cover inflationary costs over the 2004 spending review period. (Urgent).
 - Ensure that its skills base is deployed to greatest effect, especially engineering staff, and that future needs are addressed.
 - Work to achieve more effective action by the emergency services and by flood warning recipients once a flood is expected, to ensure life safety and that flood damages, including threats to the wider community, are minimised.
3. In addition, Government should enable the Agency to be more effective by:
- Strengthening the Agency's role in advising on planning decisions in flood risk areas in order to avoid increased flood risk through inappropriate development.
 - Increasing investment levels by at least £30 million year on year in real terms, so that national flood risk is reduced despite growing risks from climate change and aging assets, together with improved measures of the overall effectiveness of spending.

DETAILED COMMENTARY ON THE WORK OF THE ENVIRONMENT AGENCY IN MANAGING FLOOD RISK

4. The Association of British Insurers (ABI) is the trade association for insurance companies operating in the UK. It represents over 400 members who, between them, account for over 94% of the general insurance business of UK insurance companies.

5. The insurance industry has a long history of close working with the Environment Agency and its predecessor, the National Rivers Authority. Over a decade ago the NRA and ABI collaborated in mapping the state of coastal defences and assessing the risk of failure or overtopping together with the resulting areas affected by coastal flooding. The events of Autumn 2000, which led to insurance claims exceeding £1 billion, brought about a further strengthening of these ties as insurers sought action from Government that would enable insurance to continue to operate cost effectively in all areas of the UK, avoiding withdrawal with the resultant social and economic costs.

6. The ABI identified seven key areas for action, all of which impinge to some degree on the Environment Agency and its operations in England and Wales. These are:

- Greater and sustained investment in flood defences.
- Administrative streamlining.
- Improved land use planning.
- Better flood risk communication.
- Improved flood warning and emergency planning.
- Integrated land drainage planning, particularly in urban areas.
- Addressing chronic sewage flooding.

7. To date ABI members, who provide 95% of household insurance and 90% of commercial insurance in the UK, have been able to stay on cover for nearly all customers in most locations. Premiums and conditions will reflect the risk.

8. This paper sets out the ABI's views on the extent to which the Agency has been successful in addressing each of these critical concerns and identifies further action needed to ensure insurance remains sustainable in areas with high flood risk.

FLOOD DEFENCE INVESTMENT

9. Insurers were concerned that much of the damage sustained in the floods of 2000 was due to chronic under-investment in the defence system over many years. The ABI therefore welcomed the step change in investment announced in the 2002 spending review, enabling the Agency to put in place a more realistic programme to deliver better flood protection in England and, through consequential funding allocations to the Devolved Administrations, in Wales.

10. Over the period covered by the 2002 spending review, the Government's commitments on investment have been exceeded to date and Defra advises that it expects that the cumulative target at the end of the period will be exceeded. The ABI looks to the Agency to ensure that this investment is used to greatest effect through improved capital planning and rigorous assessment processes in allocating funding between new investment and maintenance programmes. We expect the Agency's reports to Parliament to enable a thorough scrutiny of the effectiveness of these processes.

11. Insurers are concerned that holding flood management expenditure at £564 million per annum in real terms will not, in the long term, be sufficient to meet the increased challenges that climate change and aging flood (especially coastal) defences bring. The ABI welcomes the Stern Review into the economics of climate change, announced by the Government on 13 October 2005. We expect the comprehensive spending review in 2007 to take account of the growing body of evidence on the significantly increased flood risks in future, estimated by the Foresight study on "Future Flooding" (2004) to at least double to £2 billion per annum, and possibly rise twenty-fold. This study calculated the need for an additional £30 million year on year (that is, cumulative) increases in investment to deal with climate related risks alone. The ABI is investigating the full future funding needs to contribute further to the evidence base, but consider it essential that, as a starting point, Foresight's findings should be reflected in Defra and the Agency's settlements with effect from 2007–08, in real terms. Without this rising investment we do not see how the Agency can deliver its remit in future.

Table 1

FLOOD MANAGEMENT EXPENDITURE (£ MILLION)

	2003–04	2004–05	2005–06	2006–07	2007–08
Total Provision	419	478	570 ^a	570 ^a	570 ^a
Total Spent	432	479	—	—	—
Made up of:					
Defra "traditional" support for projects	125	133	169 ^b	169 ^b	169 ^b
Block grant to Environment Agency	0	271	330	330	330
Local authorities and internal drainage boards	295 ^c	65 ^c	63	63	63
Defra other expenditure	10 ^d	10 ^d	8 ^d	8 ^d	8 ^d

^a Includes some £6 million not included in the original SR2002 allocation.

^b Includes £15 million for "traditional" support and £5 million for EA block grant from Government to make good previously-expected income from new funding streams.

^c In addition local authorities used council tax to pay levies to Environment Agency that exceed ODPM support (an additional £21.2 million in 2003–04 and £14.4 million in 2004–05).

^d Including contribution to Ministry of Defence for Storm Tide Forecasting Service.

12. The ABI welcomed the Agency's innovative trials of both demountable and temporary flood defences in the Severn valley, enabling protection to be offered to communities where conventional engineered solutions are not feasible. In particular, insurers consider these measures invaluable in providing consistent standards of defence within communities where individual flood cells would otherwise receive markedly differing protection due to variations in cost:benefit returns. The ABI strongly supports the risk-based approach to decision making adopted by Defra and the Agency but recognises that communities, particularly small market towns, need coherent strategies if they are to remain vibrant and sustain local economic development.

13. Future developments should include more widespread adoption of these approaches, together with grant aiding of individual property protection measures (due to be trialled in 2006), so that small communities, and other properties in high risk areas difficult to defend, can also benefit from taxpayer investment in flood management. In taking these policies forward there needs to be a clear vision of the respective roles of the Agency and of local authorities in delivering and deploying these risk management measures. We would welcome a public debate, engaging all affected stakeholders, on these issues.

EFFICIENCY SAVINGS

14. In the 2004 spending review the Government gave commitments to sustain the level of investment at 2005–06 levels in real terms by recycling Environment Agency efficiency savings. These savings were to be used to cover inflationary increases in expected staff and construction costs over the period. In its latest Corporate Plan (2005–08), the Agency has set out an efficiency programme to deliver £15 million in savings each year through reducing the cost of decision-making, overheads and through better procurement methods. The Agency now needs to clarify how these efficiency savings will be monitored and used.

HOUSES PROTECTED

15. Defra predicts that the investment programme will deliver additional protection to at least 80,000 properties in England by March 2006, in line with its commitments (Table 2). Insurers are pleased that the Agency is currently on track to make a substantial contribution to achieving this target.

Table 2

PROPERTIES BENEFITING FROM IMPROVED FLOOD PROTECTION

<i>Year</i>	<i>Households benefiting from improved flood protection</i>	<i>Environment Agency contribution</i>
2003–04	20,000	17,000
2004–05	33,800	30,000
2005–06 (estimate)	40,000	30,000
TOTAL	93,800	77,000

16. Going forward, the Government plans to improve the standard of protection for at least 100,000 households during the period covered by the 2004 spending review. As the chief operating authority under the new funding arrangements, the Agency will continue to have a crucial role in delivering protection to 33,000 houses within this target. Insurers believe that some of the more innovative approaches described above will need to be more widely adopted if further progress is to be sustained in delivering greater protection to largely unprotected properties in future.

17. Insurers would like to see careful monitoring of the movement of properties between different risk bands (low, moderate, and significant) and the development of an appropriate target to ensure the correct balance between providing new defences for essentially undefended properties and enhancing defence standards for areas of high aggregation where the number of people, properties and extent of the local, regional or national economy affected by a flood would be substantial. This would strengthen the new output and performance measures for flood management, and associated targets, which will achieve the greater transparency and accountability the ABI sought in pressing for a strong role for the Agency in leading flood management operations.

ADMINISTRATIVE STREAMLINING

18. Funding problems prior to the 2002 spending review were exacerbated by complex funding and decision mechanisms, so that scarce resources could not be used to greatest effect. There was little transparency or accountability. Insurers welcomed the move to allocate the majority of flood management expenditure directly to the Agency by way of block grant, reducing bureaucracy and ensuring greater accountability.

19. The establishment of single tier regional flood defence committees from 1 April 2005 has reduced bureaucracy, enabling efficiency savings. Similar rationalisation of processes, introducing national (rather than regional) procedures and effective management information systems to enable better scrutiny, improving accountability and allowing appraisal of flood management strategies, should be pursued further. Once the Agency has established these improved systems, we believe Defra should devolve all decisions on flood schemes to the Agency, limiting Defra's oversight to audit functions.

20. Likewise the Agency, which on flood management issues is an executive agency of government, should leave policymaking to Defra and concentrate on policy delivery. The Agency's engineering expertise should be focused on delivering benefits on the ground. We understand that the Agency has been working closely with the Institute of Civil Engineers to ensure that additional trained personnel are available as the flood investment programme expands. More such resource will be needed as the challenges of climate change and aging assets are tackled, necessitating increased investment programmes in future. The ABI considers that historic swings in funding have undermined the development of engineering capacity in the UK, both public and private sector, and that sustained investment profiles, together with adequate national training strategies, are needed to avoid similar problems in the future.

21. The Agency's regional management tier should be concerned wholly with delivery, not strategy, and resources should be deployed according to a central strategy setting out current flood management priorities rather than perpetuating historic allocations through bottom up bids.

TRANSFER OF CRITICAL WATERCOURSES FROM LOCAL AUTHORITIES

22. Work on transferring responsibility for those watercourses representing the greatest flood risk—the so-called critical ordinary watercourses (COWs)—to the Agency is making slower progress than insurers had hoped (Table 3). We understand this is in part due to the need to negotiate the transfer of associated resources on an individual basis. Insurers are concerned that, since the inadequate management of flood risk seen on some of these watercourses in the past was often due to a lack of resources being devoted to the issue, this may have been an unnecessary distraction. We look forward to completion of the process by April 2006.

23. It is important that these flood sources, which often appear deceptively benign, are brought within the catchment management processes that only the Agency can co-ordinate. This should also enable better mapping and communication of local flood risks and avoid confusion over insurability, enabling local housing markets to function properly.

Table 3

PROGRESS ON TRANSFER OF COWs

<i>Phase</i>	<i>Number of authorities¹</i>	<i>Number of COW lengths</i>
Achieved by 31 October 2004	55	225
Achieved by 1 April 2005	97	464
To be achieved by 1 April 2006	137	1,062

¹ Includes all operating authorities, not just local authorities.

DEVELOPMENT CONTROL AND PLANNING

24. The introduction of Planning Policy Guidance 25 on flood risk and development in 2001 by the Office of the Deputy Prime Minister (then Department of the Environment, Transport and the Regions) was a welcome step forward, mirroring stronger planning guidance already in place in Scotland (and since enhanced further).

25. After an initial improvement in responding to Agency objections (baseline 2001–02), performance now appears to be plateauing. In the last three years, local authorities approved around one fifth (or a total of around 1,000 cases) of all planning applications despite the Agency sustaining its objection (Table 4). Since planning authorities are not obliged currently to seek the Agency's advice, nor report back whether this advice has been heeded, the actual situation may be much worse. The Agency estimates it may be consulted on less than 60% of applications at risk of flooding. Not all planning decisions where the Agency has objected are reported back, although this proportion is said to have improved from around 40% in 2002–03.

Table 4

RESPONSES TO ENVIRONMENT AGENCY ADVICE ON PLANNING APPLICATIONS ON FLOOD RISK GROUNDS

	<i>2001–02</i>	<i>2002–03</i>	<i>2003–04</i>
Number of planning applications requiring consideration by EA on flood risk grounds	24,138	20,452	22,067
Total EA objections made on flood risk grounds	2,500	4,523	5,077
Sustained objections on flood risk grounds (where outcome is known)	758	1,047	1,437
Proportion of applications going ahead against sustained objection	37%	21%	23%
Major developments going ahead contrary to EA advice	50	22	21

26. Insurers would like to see PPG25 strengthened by:

- Making the Environment Agency a statutory consultee.
- Providing for the Secretary of State to call in applications that a local authority approves despite a sustained objection from the Agency.
- Clarifying the sequential test, using land at lowest flood risk first.
- Strengthening the requirement to include consideration of climate change impacts.

27. However the Agency will need to ensure that it can respond in a timely manner to the increased demand for advice that these measures would generate. The total number of planning applications requiring consideration by the Environment Agency on flood risk grounds has fallen significantly recently due to the adoption of national “standing advice”, enabling local authorities to respond directly to planning applications for “lower risk” developments without case by case consultations. The Agency focuses on higher risk applications such as major developments. Insurers are concerned that this approach may lead to cumulative undermining of policy through inappropriate decisions on numerous small developments. Accordingly we support this risk-based approach provided:

- High quality strategic flood risk assessments are in place;
- Strategic planning frameworks steer designated development zones, sufficient to accommodate the major part of local and regional housing targets, away from areas identified in these assessments as being at flood risk; and
- National monitoring and reporting of the results of these “fast-tracked” decisions is in place, to ensure that the Agency’s standing advice is being complied with.

28. In its initial response to the “Making Space For Water” consultation in March 2005, the Government announced its plans to review existing Planning Policy Guidance for flood risk areas (PPG25) and indicated that it was minded to give the Agency statutory consultee status. We are keen to see this and the other measures set out above put in place as soon as possible.

FLOOD RISK DATA

29. The Agency has made good progress in communicating flood risk through delivery of its flood mapping strategy.

30. Better catchment-wide modelling of flood risk, the inclusion of the effects of flood defence measures and other features (such as railway embankments) and upgrading of the website resource available to the public has ensured improved, more relevant flood risk information is accessible to all. Likewise insurers welcome the provision of the extreme flood outline to planning authorities, showing the extent of the floodplain facing 0.1% probability of flooding in current climatic conditions. We note that the planning guidance issued by the National Assembly for Wales requires planners to take account of future flood risk levels, incorporating climate change effects, and urge the Agency to provide similar information to planning authorities in England.

31. Insurers and lenders were provided with outputs from the National Flood Risk Assessment (NaFRA) modelling tool in October 2004. The quality of some information was questionable and no flood probability data was available for around 400,000 properties in flood risk areas. Improved data were provided in February 2005, but 260,000 properties still had no assigned flood probability. We hope that further improvements in modelling will enable these shortcomings to be addressed in the very near future, and that these improvements will also be reflected in the publicly available maps.

32. An essential part of this modelling, and other analyses underpinning strategic flood investment decisions, is a clear understanding of the standard and state of repair of existing flood defences and the areas they protect. At present the National Flood and Coastal Defence Database remains incomplete, although further information is available locally. It is essential that this central resource is completed and readily available to all stakeholders as a matter of urgency. In the future, medium term investment plans should also be made much more accessible, so that all stakeholders can ascertain relatively easily which areas will benefit from schemes in the future, the standards of protection these areas will benefit from and when the schemes will be complete.

FLOOD WARNING AND CONTINGENCY PLANNING

33. The Agency has a strategy in place to extend the flood warning system where sufficient warning can be given, although full delivery is some way off (the target is 78% of properties by 2008). This will not only make the service more widely available, and through a more extensive range of media, but will operate on an “opt out”, rather than opt in basis. According to the Agency, currently only about 60% of those living in flood risk areas say they are aware of the risk, and of these only 60% have any pre-determined plans on action needed in the event of a flood. Insurers regard the inclusion of flood risk status in Home Information Packs as an essential step in ensuring better understanding and support Agency efforts to secure agreement from ODPM that this information should be required. Innovative approaches to engage the public in personal contingency planning are also needed.

34. The Agency is compiling a register of catchments where the potential speed, depth and velocity of flooding would cause extreme risk to life, a measure insurers fully support. Events such as the flooding in Carlisle on 8–9 January 2005 demonstrated the need for all first responders to such emergencies to have pre-agreed evacuation plans, including the identification of vulnerable people needing special assistance or medical support. Whilst it is for Defra to take the lead in amending its Lead Department Plan, we look to the Agency as the operational body to work with all emergency partners in improving capability and preparedness to deal with flooding emergencies.

35. The Civil Contingencies Act came into force in April 2005. The insurance industry is working with Government, including the Agency, to assist in effective responses beyond the initial emergency phase. The ABI welcomes this collaborative approach.

LAND DRAINAGE AND SEWER FLOODING

36. The ABI welcomes the inclusion of a more integrated approach to land management in the Government's strategy for flood risk management, set out in "Making Space for Water", and proposals for significant funding (£2 million) of studies in 2006 to develop integrated drainage partnerships.

37. Insurers welcome the leading role the Agency is taking in developing a strategic overview across all types of flood risk in urban areas. Given the Foresight study's estimate that the number of people at risk from flash flooding in urban areas could increase by up to 700,000 by the end of the century it is vital that decisions on infrastructure, which have a long legacy, take a holistic approach based on future flood risk. Integrated drainage pilots will help assess the underlying causes of flooding in urban areas, so that cost-effective solutions can be identified in each case. The Agency, together with Defra, should ensure that there is a clear mechanism set up to roll out the findings of these pilots.

38. Whilst sewage flooding is primarily a responsibility of the sewage undertakers, it is important that the Agency ensures urban drainage plans fully integrate sewer system needs and address problems arising from combined sewers and unprotected outfalls (from treatment plants) into watercourses.

Association of British Insurers

December 2005

Witnesses: **Mr Nick Starling**, Director of General Insurance, **Ms Jane Milne**, Head of Household and Property, Association of British Insurers, and **Mr David Pitt**, Head of Product, MORE TH > N (the direct operation of Royal & SunAlliance), examined.

Q1 Chairman: Good afternoon, ladies and gentlemen. Can I welcome our two sets of witnesses: from the Association of British Insurers, Mr Nick Starling, the Director of General Insurance, and Jane Milne, Head of Household and Property, and from Royal SunAlliance Mr David Pitt, who is Head of their product MORE TH > N. I promise you, Mr Pitt, I have had to constrain the Committee. They all had these detailed questions about their policies, but I told them this is not the occasion for asking that kind of question! So we will stick to the brief which you have come to talk to us about. Can I thank you very much indeed for the written submission you have made. It was very helpful indeed. On page three of a document from the ABI entitled "Revisiting the Partnership Five Years on from Autumn 2000"¹ you say: "Every year the UK insurance industry pays out between £500 million and £1 billion in weather-related claims." Looking back over the last five years, we have seen an increase in quite severe weather incidents. With that background, can you give us some indication, if you are able to, to ascribe the premium income which goes against the level of pay-outs because what is not clear to us is how you are placed, if you like, in business terms as to whether insuring the types of risk you refer to are in fact making you any money?

Ms Milne: The premiums, of course, cover a whole range of perils which include fire damage and burglaries, etc., as well as the weather perils, but overall household insurers I think made a profit as an industry last year for the first time for some time if you look just in straight underwriting terms and ignore the investment income.

Q2 Chairman: I mentioned the question of timescale and pay-outs. Has that pay-out rate been going up over the last five years?

Ms Milne: We certainly saw an increase over a period. Last year, in fact, turned out to be quite a benign year weather-wise and then we got into this year and in January saw the Carlisle flood. So it is just luck of the draw as to when the events happen often.

Chairman: It would be helpful for us to have perhaps some kind of relationship between pay-outs and time because one of the themes running through your evidence is your observations on the conduct of the Environment Agency in terms of flood protection, and I think you acknowledge there have been some improvements. If that is the case, then one would have expected to see that in some way reflected in the overall global position. So I wonder if you could have a look back at your data to see if you can help us on that, and also in terms of perhaps doing a bit of work on the premium income side, because obviously in setting a premium there must be a weighting effect within that number to ascribe to the types of flood risk. If you could help us, to give us some perspective on that, I think it would be very helpful indeed. I want now to ask James to continue with that questioning.

Q3 James Duddridge: In some of the regions the Agency is developing temporary flood defences and we have seen examples of those on the River Severn in Bewdley. Does the industry have sufficient confidence in their timely deployment of those defences, and specifically to what extent is that reflected in the insurance premium?

¹ Not printed.

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Mr Starling: Can I start on that one, if I may? We think that these defences work, they can operate properly, but as with all technology it is how you do it that matters and you have to have a proper plan to do it. You need to know where they should be deployed, and so forth. So there is the issue of the defences themselves, which as far as we can see do operate well, but it is actually putting them into practice.

Ms Milne: There is also a slight difference between the demountable defences which are used in Bewdley, where they are dedicated to that particular site, and the temporary defences which were used in places like Shrewsbury and Ironbridge, where they could be used at a number of different sites. So one of the things insurers need reassurance on is that they will actually be deployed in that location at the moment it is needed. There is a lot of infrastructure in terms of plans and personnel which needs to go around it as well.

Q4 James Duddridge: So presumably at the moment you have not got that assurance and as a result the premiums of some of those houses where the temporary defences could be put in place are actually higher?

Mr Pitt: Can I pick up on that, please? With the demountable defences, I think Nick mentioned the importance of the process in preparing and the early warning signs so that the defences are in place. If I refer back to February 2004, those demountable defences were deployed when the Severn started to rise. As an insurer, we were waiting to see how they worked and as a result we were successful in that particular incident. In our own mapping tool, we actually went back and re-rated round about nine postcode areas in that particular region because of the success of the demountable defences. So we moved the rating from high rating back down to moderate because those defences were deployed, the process worked and because of our confidence in those defences.

Q5 Chairman: Where else could they be deployed? Have you done any analysis on that?

Ms Milne: They work best where you get a lot of warning of flooding, because you need some hours to actually deploy them. They have been used quite widely on the Continent on the very long rivers they have there. In England it is probably only rivers like the Severn, the Trent or the Thames where you could usefully use them.

Q6 Chairman: Let me re-focus your mind on the question I asked. You mentioned you have your own mapping tools, and I think SunAlliance have got theirs. It would not be unreasonable to suggest that you might have compiled a list of places where you thought this kit might have been effective. I am just a bit surprised that you have not.

Mr Pitt: Our own mapping tool is really for our own purposes, to rate the potential of a flooding risk. One of the submissions we actually made was line of sight of potential defences and where defences are going to be built in the future, really

to allow us to hone that flooding risk and improve the mapping tool and we believe it is really important for insurers to have that information so that we can assess the risk accurately, rather than insurers deciding where defences should be built.

Q7 Chairman: I appreciate you do not want to decide where they should be, but what I am interested to know is that if the Environment Agency is competing for resources then it has to make a case out. Ms Milne, you identified rivers of a certain characteristic where these particular devices could be successfully deployed. I just wondered if you had looked at the United Kingdom and said, "Well, okay, here is the range of places," and put that to the Environment Agency and said, "What's your roll-out programme? Are you going to do this more, now you have proved it at Bewdley?"

Ms Milne: We certainly have had general conversations with the Environment Agency. We do not second-guess the Government's own system for identifying where they are going to get the maximum benefit, although obviously we do have quite a lot of discussions around places where we are aware there are problems.

Q8 Chairman: But as an industry you are quite happy to have your own mapping tool, as are SunAlliance, so you could argue that is second-guessing the Government?

Ms Milne: That is being used to make commercial decisions over offering cover though.

Q9 Chairman: So if the cover level has changed then it would not be unreasonable to suppose that by identifying other areas for the use of these moveable defences it could actually be part and parcel of helping people along a bit really?

Ms Milne: We are lobbying in general for improved protection, whether it is through conventional defences or—

Q10 Chairman: Okay. Can I just ask you, in your evidence you mention the skills base involved in this kind of thing and you comment about engineering staff. In your judgment, does the Environment Agency have sufficient qualified engineers to deal with both the demountable issue as well as the wider flooding issues? What is your assessment of their engineering capability?

Ms Milne: The Environment Agency has told us—and we know it has been in discussion with the Institute of Civil Engineers—that it is concerned about ensuring it has an adequate skills base available currently and for the future.

Q11 Chairman: What do you think that means, "They are concerned about ensuring that they have"? Have they been more explicit and said, "We haven't got enough engineers and we can't pay enough to keep the ones we have got"?

Ms Milne: I think there certainly have been some discussions about whether their reward structure helps them retain staff, yes.

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Q12 Chairman: All right. You employ engineers in the insurance industry. What do you think, Mr Pitt? Have they got enough? Are they adequately supplied with these skills? You can be honest with us.

Mr Pitt: To be honest, I cannot comment on that. I can only comment in our own structure of how we went about preparing our own mapping tool, and we did employ our own force of engineers to concentrate on this and have been in development with the tool since 1998. So it has been important for us throughout that genre that we have maintained the consistency and quality of our engineering force.

Q13 Chairman: Do not feel embarrassed if you want to tell us directly, if you think they need more engineers they ought to pay them more money?

Ms Milne: I think if they are to roll out a larger programme in future, which undoubtedly they are going to need to do if they are going to keep pace with climate change and increasing risks and the long backlog of work from under-investment in the past, then they will need more qualified staff to do that.

Q14 Lynne Jones: How satisfied are you with the adequacy of cooperation between the Environment Agency and other agencies which have enforcement powers in this area, such as water companies, particularly in relation to urban areas where you have a greater complexity of the cause of flooding and the involvement of possible overflowing of sewerage, mis-connections of sewerage, and so on?

Ms Milne: I think in the past it has been quite poor and we were very concerned that there were one or two remarks immediately during the autumn 2000 floods about “the wrong sort of water,” which we did not feel was an adequate answer. I think it has improved immensely since then. It depends a bit from area to area. There has been some very close work done, for example, between Severn Trent and the Environment Agency in the Birmingham area and I know the Agency is working very closely with United Utilities up in Carlisle now. There is a slight sense that they need to have a crisis before something actually happens, though.

Q15 Lynne Jones: Since you mention Birmingham, I am from Birmingham and I have had recent examples in my constituency of householders mis-connecting sewerage into the normal water drainage. Severn Trent has been aware of this and has not really taken timely enforcement action, which has resulted in sewerage getting into the water courses and obviously into people’s back gardens and into their houses as well, which would affect yourselves. This has been known since 1996 and yet it is only just now that enforcement action seems to have been taken by Severn Trent. Should the Environment Agency not have been rather more breathing down their necks, for example, they knew about this problem, in terms of ensuring that Severn Trent took more timely action?

Ms Milne: I think there has not been enough done in the past, but in *Making Space for Water* the Government did set out that they were looking for practical ways of actually making this operate better in the future and they are going to be running some pilots, and we will be extremely interested to see how those proceed because it is an important area.

Q16 Lynne Jones: One of the problems is that your clients and our constituents do not know who is responsible for what. Obviously it is something which has caused you concern, but you feel satisfied that this is being addressed now?

Ms Milne: Yes. We raised it when we initially launched our Statement of Principles back in the autumn of 2002 as an issue which needed addressing and we are pleased to see it is on the agenda now but, like you, we would like to see more action.

Q17 David Taylor: I think later on we are going to be talking about the mapping of flood plains and local planning and things like that, but on the back of what Lynne has just asked about flooding in urban areas, which often does result from things like run-off from roads and built developments, things of that kind, there was significant flooding in my own area about three years ago for the first time in very many decades, but there were several dozen houses which were flooded there, not several hundreds or more, as you might have seen in Carlisle. Do insurance companies get together under the aegis of the ABI to compare notes on the claims they have had on that sort of miniature scale of local problems to see if there is anything they can contribute as observations in terms of planning or in terms of the water companies, or indeed the environment agencies?

Ms Milne: We certainly do on more major incidents where it is probably in the news and public knowledge anyway. It is much more difficult for us to capture information on the more localised incidents, although if it is brought to our attention either by the constituency MP or by local residents then we will follow up on it.

Q18 David Taylor: So at what point does local become significant? We had 50 to 60 houses flooded in the central and urban area. If that had been 500 or 600 the ABI would have been interested in the origins of that and the ways of minimising future claims, would you?

Ms Milne: Potentially, we are interested in everything. The reality is that we have limited resources like everybody else and we can only actually take forward a restricted number of individual cases, but even if it is only a few houses, if it is a persistent problem we will follow it up.

Q19 Chairman: Ms Milne, you said something intriguing. You said, “There’s a slight sense they need to have a crisis before something happens.” Would you like to expand on what lay behind that interesting comment?

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Ms Milne: The particular examples I used all happened once there had been some local flooding and there was a recognition that there was a problem which needed to be handled. I am not aware of similar activities going on in places where there has not yet been a problem but perhaps there might be.

Q20 Chairman: Does that reflect, in your judgment, a lack of foresightedness in the strategic approach of the Environment Agency towards flooding matters?

Ms Milne: I think in the past it has been a question of everybody looking after their own responsibilities and not being as joined up as they should be.

Q21 Chairman: When you say “everybody” I presume you are talking about all the agencies. Do you see any sign that that is going to improve, because you make mention of that in paragraph 13 of your written evidence. You say: “In taking these policies forward there needs to be a clear vision of the respective roles of the Agency and of local authorities in delivering and deploying these risk management measures.”² Do you think the Environment Agency is not aiding that cohesiveness under the present arrangements, and if so why?

Ms Milne: I think they are making steps in that direction as they pull together their catchment management plans and they are looking at these more intensive local drainage plans, which are being piloted under *Making Space for Water*. I do not think we have quite got there yet. I think they have been thinking about how they might go about it, but they have not quite got there yet.

Q22 Chairman: As the recipient of the bills when things go wrong, do you think you ought to have a seat at the table to help give a perspective from your standpoint in terms of developing future policies?

Ms Milne: I think we are very pleased that both Defra and the Environment Agency do involve us in discussions and do treat us as a stakeholder who often speaks on behalf of customers as well as our member companies.

Q23 Chairman: I think I was looking at perhaps a more localised involvement than at a strategic level.

Ms Milne: Yes, we do tend to operate on a more strategic level.

Q24 David Taylor: If I can pick up one point. You quoted that, Chairman, on the point which Ms Milne made about the Agency only acting when there is a crisis, paraphrasing. Is that not a fairly predictable method of prioritising work in an organisation which may be short of resources, that it can fire-fight okay but it has not got adequate knowledge or the people to look ahead much further than the next fire-fighting or flood draining?

Ms Milne: Just to correct the impression, I think that was the situation some years ago and the Agency has been improving on that over time. What we want to see is more actual results on the ground, but I suppose it is inevitable for any organisation that they deal with the immediate more readily.

Q25 Chairman: So it is a question of, “has made progress but could do better”?

Ms Milne: Yes.

Mr Starling: May I just say, there is another point here. We all know when events happen perspectives change and the Environment Agency is operating in an area where lots of other agencies’ interests are operating and quite often a voice which any organisation has expressed before an event suddenly becomes heard with greater clarity after it and people start to re-think. That is often the case with floods and you will find that people have been warning of the risk for some time before, but it takes the event to happen for action to actually take place. That is fairly common in a lot of areas.

Q26 Chairman: In a way that is discounting the old phrase “prevention is better than cure”?

Mr Starling: Indeed, but I am just saying that in practical terms rather than the Environment Agency not doing its job, it is a voice among many which quite often is heard more clearly once the event has happened. That is what happens.

Q27 Chairman: The reason I posed my earlier question was because the industry has a pattern of claims and Mr Pitt observed in the context of the first question that there was a reduction in risk as a result of action taken. You can spot where claims continue to be made, therefore almost by definition that is an area which needs attention, and that is what I wondered whether you were feeding back into the planning process as a way of trying to move the agenda forward from, “Let’s wait and see what happens and then do something,” to, “Oh, yes, here is a demonstration of un-met need. We can now prioritise and do something.” Do you use your information in that way to advise the Environment Agency?

Ms Milne: We do not collect data on an industry-wide basis on exactly where claims fall, companies hold that information themselves.

Q28 Chairman: Why not? You told me earlier on you are a high-level strategic partner. You are giving advice to Government and the Agency and here is something which indicates whether problems are occurring (ie the claims records of your members), but you have not got access to it to advise Government about what is happening on the ground.

Ms Milne: We collect overall the totals of claims. If members tell us that they have problems in particular areas, then we would follow up on that.

² Ev 4

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Q29 Chairman: Do they tell you?

Ms Milne: Yes, but very often you know as well as we do where they are because they are in the news.

Q30 Chairman: I think I am just a little confused there, because you have indicated how you would like to see policy develop and you have at your disposal a hard record of where problems are occurring because people make claims. Therefore, it would seem, Q.E.D., that if you want to help the Environment Agency move forward beyond, "Let's react when it happens," what you have by way of a claims record could be rather important?

Ms Milne: It certainly is good in telling you where there have been floods; it does not predict where there will be floods.

Q31 Chairman: No, but if you take a series of data going back over time—that is why I asked the first question about what has been happening over time—in the spatial sense that information would focus on where the serious problems were and if there were still claims coming in, it is a question of un-met need? Mr Pitt, you are nodding in my direction. I find that comforting! Tell me why you are nodding.

Mr Pitt: From an industry point of view, we comply obviously with the Statement of Principles and within the Statement of Principles there is a period of time for that protection to be afforded to a particular address or area and I think you will see in our submission that we are requesting more awareness of where defences are going to be built in the future and also the timescales against those defences being prepared and built so that we can understand the timescale for properties which are going to be protected and therefore understand that the risk is going to be controlled by a particular defence which is going to be built. We are encouraged by the Environment Agency's interest in our own flood mapping tool and we have taken them through our mapping system. So we are encouraged by the dialogue, but we would like to see more evidence of timescales for defences being built and maintained.

Q32 Patrick Hall: Could I just follow up that point? That is still being reactive rather taking the initiative and the Chairman's point was that you are in a position as an industry to know what has happened in the past and what is happening and therefore to draw conclusions from that to try and proactively influence the Environment Agency and Defra to take action to minimise those areas of claim?

Mr Pitt: As a company we are being proactive by producing our own mapping tool, so we understand risk right down to the individual address level rather than at postcode level. For example, we had numerous examples where other member companies might not be able to provide cover but where because of our mapping tool and greater understanding of the risk of flooding we are able to provide cover.

Q33 Mr Drew: Presumably the very fact that you had to do your maps means that you are dissatisfied with the Environment Agency's initial stab at their maps?

Mr Pitt: I think the Environment Agency map was originally set up for a different purpose and then added flood risk on to it. Certainly from our own evidence, as I say, we have our own in-house engineers and we have taken publicly available information and adding to that as we find out more details—the example of the demountable defences. We have other examples where maybe local authorities have taken action, maybe dredging brooks or whatever to reduce the risk of flood, and what we do with our map is then update our mapping system to the relevant risk that we feel is available and is appropriate for that particular postcode or that particular address.

Q34 Mr Drew: So what legal status have your maps got?

Mr Pitt: Our maps are publicly available information with our intellectual property and also they are reflective of our claims experience built into a mapping tool to understand the potential for flooding risk in the future.

Q35 Mr Drew: So can someone who is not a customer use your maps as a justification for building an extension on their property or seeking to get insurance from another company?

Mr Pitt: Someone who is not a customer of ours, if they phone us for a quotation, our mapping system is used on our front-line systems to assess the risk of flood, but it is not used for the basis you are referring to.

Q36 Mr Drew: So how many people do you turn down for business on the basis of your maps?

Mr Pitt: From our commercial point of view, we want to provide as much flood risk cover as we can and insure as many people as we can. We do not record the many particular inquiries that we do not insure. However, as I referred to earlier, we do comply with the ABI Statement of Principles in continued cover for existing properties.

Q37 Mr Drew: I will ask the ABI about this, but roughly what sort of number, percentage or figures in the round are we talking about of people who subsequent to the maps being available either from the Environment Agency, Norwich Union or Royal SunAlliance are now uninsurable because of the maps putting a blot on their property or on their community?

Ms Milne: I think what we have found is that the availability of better information has allowed insurers to stay on cover in situations where if they had been uncertain of the risk they might have wished to withdraw cover. So under our monitoring under the Statement of Principles to see that members are complying with the terms of that, we have had in the past two years literally 10 or 12 people refused renewal of cover by the entire market over that period.

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Q38 Mr Drew: That is across the whole of the insurance industry?

Ms Milne: Yes, of the existing customers refused renewal.

Mr Starling: We do not have any figures on people being turned down for new cover: new customers with new cover. We have no way of collecting that data. The Statement of Principles is about continuation of cover.

Q39 Mr Drew: You would not keep a record of that. That is quite interesting. In talking about strategic vision, it would be quite interesting for us to know how many people are not insurable once they have sought your advice initially and then the fact that you have not offered them collectively a policy.

Mr Pitt: I would like to pick up two points there. Firstly, just to re-emphasise, our mapping tool is about understanding to a greater degree the risk, so therefore the principle is about being able to provide cover where potentially other insurers could not provide cover because we have a greater understanding of the risk. The second point is the Statement of Principles applies to existing customers and we will continue to comply with those principles and provide cover. Where the issue arises is with new properties which previously have not been insured. Therefore, within our evidence we were calling for the Environment Agency (and it is backed up by PPS25) to become that statutory consultee so that in new builds we have a real understanding from an insurance point of view of the risk and the fact that the Environment Agency has been informed and is satisfied with the actions being taken.

Q40 Mr Drew: On that issue, do you think that if there is sufficient evidence from the mapping and a local authority agreed to the planning permission—I know we are going to touch on this in planning, but I think it is connected to it—that local authority, at least to some extent, would be liable if that property subsequently flooded?

Mr Pitt: Where we are coming from as an insurer is that with any new build we believe the Environment Agency has a key part to play in understanding the risk of flooding. Presently you can see on the Environment Agency website requests from local planning authorities and you can see where flood risk assessments have been requested by the Environment Agency, but you cannot see where it progresses from there. So as an insurer we want to see the full line of sight of their involvement and also the Environment Agency's assessment of the risk before a property is built.

Mr Starling: Your specific question, I think, is that if the Environment Agency has advised against building but nevertheless the local authority has gone ahead, then you might have a situation where people are then unable to get insurance. I do not know where liability lies, but clearly that is a problem for people who have been unable to get insurance.

Q41 Mr Drew: There must be such people?

Mr Starling: There must be. I do not think we have any data on that.

Ms Milne: No, but we do look at where the Agency is raising objections and if it is a major development or if that planning authority is persistently ignoring the Agency's advice we write and raise an objection in partnership with the Council of Mortgage Lenders advising the planning authority that those properties may be uninsurable.

Chairman: We are going to come on to that.

Q42 Mr Drew: Yes, we are. A final point from me: the whole point of the maps is that they give information to the public and obviously through that to the builders, and so on and so forth, but to what extent do they also give information to you in terms of the premium? You will insure someone, but clearly the risk is considerable if you believe the maps are accurate, so to what extent have we got a premium policy in place now where if someone comes to you they will have to pay an additional premium? It may be sizeable because of the additional risk they face. Perhaps Mr Pitt may want to start with the specific rather than look at the general?

Mr Pitt: Firstly, we do not use the Environment Agency map for underwriting, we use our own map for underwriting. As Jane said earlier, flood is one of the perils we insure so it is part of the premium. So it would be impossible to give you a direct answer to that, to say that it is a certain percentage of the premium, or "This is the increase because of particular flood risk." Also, we work with individual customers to review the risk as well and take particular action, whether that would be agreeing, for example, with a customer in south-east London who has been flooded five times in a row in a basement flat to still continue cover on that property. We have actually agreed to move valuables to shelving to protect the contents and take particular action, but we still continued cover. So it would be probably impossible for me to indicate a figure for the different levels of rating for flood.

Q43 Mr Drew: What about generally? Are we talking about 25%, 50%, 100% premiums which could be whacked on when there is a real flood risk?

Ms Milne: Firstly, just to say that the licensing arrangements by which we get information from the Agency precludes ABI members from using that as an underwriting tool. All it does is ensure that they are taking a consistent approach under the Statement of Principles as to whether cover should be offered.

Q44 Mr Drew: What does that mean? That is a legalistic answer.

Ms Milne: The Statement of Principles sets out the risk levels at which insurers can readily offer cover under the normal competitive market or situations where it becomes more difficult for insurers to do that but they are giving a commitment to stand by their existing customers. That is what we use that

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particular tool for. ABI, of course, is the trade association and does not get involved at all in pricing issues.

Q45 Mr Drew: No, but you have members who come to you for advice and clearly there is usually someone who will insure but what takes the strain is the premium? That is the way insuring and pooling the risk operates, so I am just getting a feel for it. What is the flood differential? What would someone expect to pay, because I have got people who really do face this difficulty? Most, thankfully, are insured but they come to me when they say, "Our insurance is going to go up by an amount," which is sometimes quite sizeable.

Ms Milne: Obviously each company will take its own view, but to illustrate, an average household premium outside of London will be about £330 a year and an average flood claim will cost between £15,000 and £30,000. If you take the higher figure, if you have a flood once in 100 years, that alone is worth about £300 a year in the technical premium. So that would double your premium.

Mr Starling: It may not just be a matter of premium, of course. It can be the amount you have to pay yourself towards a claim, which means the premium can be lower and the amount of the claim can be less when it is met.

Mr Drew: Yes, of course.

Chairman: I would like to bring in Mr Hall, if I may.

Q46 Patrick Hall: Mr Pitt, you referred to the Statement of Principles on flood insurance, that it is about existing customers and not about new build, and therefore those new customers, but it is also not about new customers who would like to buy a house from someone who is an existing customer?

Mr Pitt: Yes.³

Q47 Patrick Hall: Jane Milne knows, because I have had very constructive discussions with her and Barbara Young and some other people in the Environment Agency, that I have got an example in my constituency where somebody who is insured and who has never had a flood in twenty years is unable to sell because no prospective purchaser can get cover. So it is not just the new build estates in flood plains that cannot get cover where there is a difficulty, it is also people who want to buy a house in an area which the new mapping system reveals as being at risk. I do not know if there has been an assessment of the potential numbers of people who could be involved in that, because there is always a turnover of people wishing to buy and sell homes. Are you aware of this?

Mr Pitt: I cannot comment on the individual case, obviously, but under the Statement of Principles normally what would happen is that the existing insurer, subject to satisfying themselves of the purchaser's claims experience, would normally continue with cover for that property. So even

though the seller is moving on to a different property, whoever purchases that property normally can gain cover from the existing insurer.

Ms Milne: If it is in an area about to be protected. Unfortunately, this case is not, that is the difficulty.

Q48 Patrick Hall: Could I ask maybe both of you about the Agency's flood map for England and Wales. Clearly, Ms Milne and I have had some discussions about that, but it is clear on the Agency's website that it is there for guidance only. I think there is a sentence in a page on the website, which is actually called a joint Environment Agency and Association of British Insurers Flooding Information Sheet, which states that "Flood probability data is not accurate for individual properties"—that is the Environment Agency's map—"Insurers will need to continue to respond to evidence from policyholders about the risk faced by their property on an individual basis." Could I ask David Pitt why his company went on to produce its own flood map? Was it because it felt that the general nature of the Environment Agency map was not accurate enough and, as I have just read out, it is not intended to be accurate enough for individual properties? Is that why you have invested so much money, presumably, in introducing your own?

Mr Pitt: First of all, the Environment Agency map is to 100 metres square and our map is to 10 metres square. We assess the risk of flood every 10 metres square. So rather than assessing at postcode level, which might include up to maybe 150 properties, we are assessing the risk of flooding at an individual property level, which comes back to the earlier comment that the map is really there for us to understand risk and take on risk which potentially other insurers might not be able to because we have that greater degree of understanding.

Q49 Patrick Hall: It does seem a little confusing for the public to have two sets of maps, and who knows more? If other insurance companies produce their own we will be in a very complicated situation. Does your experience from SunAlliance suggest that perhaps the Environment Agency's map should be remodelled to a smaller focus? Does the ABI have any view on that?

Ms Milne: The Agency originally produced these maps for its strategic planning purposes on deciding where they should put in additional defences, so I think they would maintain that they produced it for an entirely different purpose and we are asking it to do things that it was never designed to do. Obviously, individual insurers then develop their own tools to enable them to make those more fine grained decisions. I guess the Agency would say that is not what they are in business to do.

Q50 Patrick Hall: The Agency is quite clear about the nature of its flood map and ABI has signed up to it on that basis, but one of the issues which emerged in the case I am dealing with and in the investigations which I and others have made in

³ Note by witness: A clearer answer is given in response to Q 47.

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Bedford about this is that it would seem that some of your members, insurance companies, are using the very generalised nature of the Agency's flood map, entering the postcode of an enquirer's property and making a decision to insure or not on that basis. Now, it is not intended to be used like that and yet there are people in the industry who talk about "flood blight" not just in areas of flood plain with potential new build but applying it to areas of existing property, the sorts of people I am talking about who want to buy and sell property and who would not notice there is an issue until they come to want to do that. Is there a case for not just the Environment Agency revisiting this but also for the industry as well being very careful in not mis-using the Environment Agency's map as it is in order to make decisions on the basis of something that the map is absolutely not designed to do?

Ms Milne: I think we have to be careful to differentiate between the different sales channels which are available. Some are more automated than others. For example, if you go to a broker and you live in a higher flood risk area and you ask for a quote, that broker may find that different insurers have got a "Refer to underwriter" flag on them and it is up to the broker then to pursue that enquiry, having a dialogue with the insurer and the customer in order to get the additional information which is needed, and some are better at doing that than others.

Q51 James Duddridge: The Environment Agency mapping system cost about £25 million to set up and £8 million on an ongoing basis. I would like to ask you, David. You have got a map system for this purpose which you believe to be superior. How much did it cost and is the taxpayer getting good value for money out of £25 million, £8 million ongoing, from the Environment Agency in relation to these maps?

Mr Pitt: I do not have the figures to hand in terms of the investment. However, we have an ongoing investment in terms of maintaining the map. We started to develop this in 1998 and put it into production and use in 2002, and even since then we are continually changing it. We have made over 600 amendments since we started to use the map. So it is one of these ongoing investments, but I do not have the figures to say how much it cost us.

Q52 Lynne Jones: Could I ask, without wanting to go into commercially sensitive information, if you could perhaps provide the Committee with a bit more information so that it would be a useful benchmark on what the private sector has done in replicating what the public sector is also doing?

Mr Pitt: I am happy to write to the Chairman and find that information.⁴

Chairman: Thank you very much.

Q53 Lynne Jones: Are there any contradictions between the information which you have compiled and the map being produced by the Environment Agency?

Mr Pitt: There will be differences because our map is looking at more detail. For example, by the nature that we are looking at 10 metres square for flood risk—

Q54 Lynne Jones: I wondered whether there are any contradictions. I understand the differences, but essentially are they saying the same thing?

Mr Pitt: Broadly speaking, the same results are coming in, but there will potentially be differences in certain areas. If we have more information or we have reflected claims experience with our new mapping tool, after every incident we do check our own mapping tool to make sure it has produced sound results. So, for example, with Carlisle we would take the Carlisle incident and play it back through our own mapping tool to understand how effective the tool had been in looking at the flood risk in that area.

Q55 Chairman: What did it tell you when you played it back?

Mr Pitt: Ultimately, you are always going to have flooding. We did have even areas that we were classifying as moderate or negligible risk which actually flooded. So our mapping tool was showing us the extent of the flood had moved to a certain level where even risks in that area were being affected.

Q56 Lynne Jones: How often do you update your publicly available information, because one of the points you have said is that the Environment Agency should update theirs more regularly? How quickly do you get your information available to the public?

Mr Pitt: We are continuously updating our tool. However, we are relying on information on defences and also the maintenance of defences and if we had more information available, timely information, on those defences we would certainly build that into our mapping tool and also the risk rating of flood in particular at present levels.

Q57 Chairman: You say in paragraph 3.1 of your evidence that you have been calling on Defra and the Agency to provide this better information. What are the excuses they give you as to why they cannot give it to you in a more timely fashion?

Mr Pitt: We have been involved in discussions obviously through the ABI and also we have had meetings where we have taken the Environment Agency through our flood mapping tool and illustrated the necessity that we have timely information. We have not as yet received dates as to when that is going to be available, hence the reason why we draw attention to it in the document.

⁴ Ev 21

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Q58 Chairman: But to be specific, have they said, “We will look at it and come back to you,” or are they committing themselves to, “Yes, we could do better and this is what we are going to do”? Are you getting stonewalled or a positive response?

Mr Pitt: We are getting positive responses. They wish to provide that information, but as yet we have not had timescales to provide that.

Chairman: Okay. Let us move on.

Q59 Sir Peter Soulsby: This is very much on the same theme really. I just want to be sure that I have understood what you are saying to us about the flood mapping. Am I right that you are saying to us that the Environment Agency is duplicating what you are doing much better when they do their flood maps and that that is a waste of money?

Mr Pitt: I think what I would say in response to that is that for our mapping tool to be effective we need to understand where the Environment Agency are going to take action and when action is going to be taken so that we can build it into our mapping tool. Our tool, as I say, is more granular in detail and it has consistently been updated with the claims records, but it is probably only as effective as the information we have to feed into the tool.

Q60 Sir Peter Soulsby: Yes, but if you had the information, the £25 million which they have invested, and perhaps more importantly the continuing investment of £8 million a year by the Environment Agency in updating their mapping tool is surplus to requirements?

Mr Pitt: No, because we are driven by what the Environment Agency do in terms of protection in updating the risk. The Environment Agency’s role is to build the defence, maintain the defence and then update their own mapping tool. So it is important for us that we understand when that action is going to be taken and also what level of protection a particular postcode is afforded by a defence.

Q61 Sir Peter Soulsby: My question is, we are told they are spending £8 million a year updating their map. You are telling us that your map is a superior product. It follows from that, surely, that their £8 million a year spent updating their map is a waste of public money?

Mr Pitt: I think what I am telling you is that our map is used for rating purposes. The Environment Agency map is used for public information on the potential risk of flood. Our map is taken into account when we actually build the premium and build the price. What we require is the information to be able to make sure our mapping tool is accurate. So I am not saying that the investment from the Environment Agency is a waste of money or not, and certainly we need information available so that we can make our mapping tool as effective as possible.

Q62 Sir Peter Soulsby: But you could have the information, surely, without them spending that £8 million?

Mr Pitt: But the public require the information as well.

Ms Milne: You rely on the Environment Agency. That is the base on which you build. You basically add further information to that which is provided by the Environment Agency and hopefully they also can take the information you have got and take account of it. We can find out whether they do later.

Q63 James Duddridge: Could I just add a small supplementary? It is difficult because we have got the Environment Agency on one side and you are just representing one company. If this piece of work was contracted out, could the private sector provide it more effectively, as you are doing within your niche?

Mr Pitt: What I would say is that the information we have on our map is public available information. We have just taken the step of using that information and building it into a mapping tool which we believe is effective for our rating purposes.

Q64 Chairman: I think, Mr Pitt, what the Committee is trying to get at is this: are you saying, just for the sake of clarity, that your more detailed analysis, your 10 meter square sits on top of what the Environment Agency does? In other words, you could not have yours without theirs, is that right?

Mr Pitt: That is right.

Q65 Sir Peter Soulsby: I have got that now. Thank you very much indeed. Again, to be sure I have understood what you are saying, you were saying, as I understood it, that people who purchased new homes in areas of flood risk which are built against the Agency’s advice or in areas where your more detailed map indicates a significant flood risk are likely to find themselves unable to get insurance? That is a correct understanding?

Mr Starling: They would not be able to buy it in the first place because the mortgage company is unlikely to offer a mortgage.

Q66 Chairman: You use this term “flood risk”. Just give us 30 seconds on what we mean by this term. What is the risk? Is it a one in X number of years event or a probability that in any one 12 month period the property will be flooded? Just help me to understand the risk we are talking about.

Ms Milne: The critical benchmark is a one in 75 year probability or an annual probability of 1.3% because that is the level at which it starts to affect an insurance premium to an abnormal degree. It is not an absolute number, but that is the number which insurers arrived at in discussion because we felt that beyond that we would be getting into pricing that customers were quite uncomfortable with.

Q67 David Taylor: At paragraph 30 of the ABI advice you refer to the mapping being at the 0.1% level. That is one year in 1,000, is it not?

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Ms Milne: That is the extreme outline they have put, yes. They have a number of different gradations on the maps.

Q68 Chairman: You are saying one in 75 years, so that if you put your house down within an area which had that risk your one in 75 could mean flooding in year one and nothing for the next 74, or it could mean that you got it wrong and it sequentially flooded for every year for the first 10 years?

Ms Milne: Yes. Although you can ascribe a probability, you do not actually know when the events are going to happen. So you are absolutely right, it could happen on the very last day of those 75 years.

Mr Starling: If you have a flood one day, the probability of it happening the next day is exactly the same, notwithstanding what has happened the day before.

Q69 Patrick Hall: So with the possibility of people finding themselves unable to get insurance on a new property in those circumstances, for that and obviously for other reasons should the Government actually be taking firmer steps to prevent local councils from granting planning permission in areas which are prone to flooding?

Ms Milne: Since you need to get insurance before you can get your mortgage, we hope that no customer is found in a difficult position and that is why we are taking the stance we are, so that they do not take on a property which they then subsequently find to be uninsurable. But yes, the planning authorities should. What is the point of building a house nobody can own?

Q70 Sir Peter Soulsby: So the Government should at the end of the day be making sure that the planning permissions are not given?

Ms Milne: Yes.

Q71 Lynne Jones: Do you think the Government should act to stop planning authorities giving planning permission for developments against the advice of the Environment Agency and that planning authorities should automatically consult the Environment Agency?

Mr Starling: We think the Environment Agency should be a statutory consultee and if the local authority goes against the Environment Agency's advice then there should be powers for the Secretary of State to withdraw applications.

Q72 Chairman: It seems a very obvious policy to take. Why do you think that is not the case, or are you optimistic that that is going to be the case in the very near future?

Ms Milne: As of last week the Office of the Deputy Prime Minister is consulting on just such a proposal.

Q73 Lynne Jones: That could delay it for some time. We could have lots more planning permissions. I was horrified that in 60% of potentially affected developments the Environment Agency is not consulted.

Ms Milne: Yes. I think there has been the right policy in place in terms of planning guidance for some years now. Unfortunately, it has not been fully implemented and we are very keen that there are effective measures in place to make sure it is implemented properly.

Q74 Lynne Jones: So you hope the consultation will not take too long?

Ms Milne: Yes.

Mr Starling: The answer may not always be not to build, of course, you may be able to adapt a development, so the raw figures may not necessarily give a full indication but we do think the whole system needs to be much stronger.

Q75 Lynne Jones: But if the Environment Agency recommends against, then presumably it will take those factors into account and planning permission should not then be granted?

Mr Starling: It should either not be granted or the development should be reconsidered to make it flood-resilient or slightly different so that it can be built, yes.

Q76 Mr Drew: I just wonder how useful you will see home sellers' packs in terms of this area of notice about potential flooding risk. You have been involved in discussions. Is this a step forward or is it irrelevant? Could it be made better?

Ms Milne: We think it is essential that this is one of the factors which is included in the pack because it is a waste of everybody's time and effort if it is an issue which they will be asked about when they seek insurance and could prevent the sale from going through if it has not been properly addressed. So it needs to be flagged up right at the front.

Q77 Mr Drew: Can I be clear, these professionals, not necessarily surveyors, who are going to collect this information together on behalf of the persons who want to sell their property, will they have to come to you, or should they come to you? I am not sure of the process of that.

Ms Milne: The Environment Agency already offer a service to solicitors and conveyancers on this, so they would be able to furnish that information to whoever is putting the pack together and we think others with adequate maps should also be able to provide that information.

Q78 Chairman: Can I just go back for the purposes of clarification. You were talking about your new policy where people were building in flood plains with a high risk of effectively signifying that you would not insure certain properties. When did that policy kick in?

Ms Milne: For some years now we have been signalling to planning authorities—we do not say it will not, because it is not for us as a trade

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association to dictate whether cover is offered or not, but we say it is extremely unlikely that people will be able to secure cover and we wrote to all directors of planning, for example, three years ago pointing this out.

Q79 Chairman: If that is the case, can you give us some concrete examples, because I notice that on p7 of your evidence you have produced a table in which you have quantified the number of developments which went ahead contrary to the Environment Agency's advice?⁵ For example, I do not know whether your members can help us, but in the latest data at 2003/4 it says that 21 major developments went ahead contrary to Environment Agency advice. I would be interested to know whether of that 21 were any of those subject to your notice saying you were unlikely to give cover and in the event were any such properties declined cover?

Ms Milne: These properties would have gone through before we had the system in place where we could write on a specific development basis as opposed to writing with a general policy, but we could go back and look at what has progressed in other areas and provide information for you if that is helpful.

Q80 Chairman: I think it would be helpful and if it does not put you to too much trouble, just to move a stage further, it would be interesting to know the nature of the risk which was involved because clearly if the Environment Agency has come to a conclusion that something should not happen and that has influenced what your members do, in terms of the work of the Agency being effective that is a demonstration of how they are doing a good job. But to turn it around the other way, if in spite of all this people go ahead and build and develop then it is of equal interest to us to know why advice is not being heeded. So if you could help us on that, I think it would be extremely valuable.

Mr Starling: It may take a little while to research, but we will let you have a note.⁶

Chairman: Okay, fair enough.

Q81 Lynne Jones: In the sellers' information packs you said that the Environment Agency will respond with information, but if their information is not at the individual property level they will not be able to give as much information as perhaps SunAlliance might be able to give. Is there not an argument, therefore, for the Environment Agency being able to access that information to give to householders?

Ms Milne: We are told by the Agency, but you would need to ask them specifically, that with that particular service they do more than just look at the maps (as on the website) to get that further information.

Q82 Mr Drew: You have already answered one of my questions with regard to how you communicate with people over the issue of flood risk, which is

through sellers' packs. What evidence is there out there that the general public is more aware of flood risk and how could you, both through the ABI and also through individual companies, make people more aware of what is a difficult and potentially calamitous set of events in people's lives?

Mr Pitt: From an insurer's point of view, we have flood information available on our website. If anyone comes to us for an insurance policy and they are in a high flood risk area we refer them to specially trained handlers, who would talk them through the risk but also give them advice as to how to protect themselves, if a flood happens how to reduce the risk or reduce the damage and obviously through the Statement of Principles refer them back to their present insurer. Within 2006, and for all our existing customers, we have a plan in place to write to them all who are in the high risk flooding area with advice as to how to protect a property and prepare themselves and have a flood plan to try and reduce the risk of damage if a flood incident occurs.

Ms Milne: Obviously our communications are not on an individual customer basis, but likewise we provide information on our website. We have been working on various pieces of advice on what people can do. We work with the National Flood Forum, which is the group which represents customer interests where people have been flooded and we look for other opportunities to work with other partners, whether it is local authorities or whoever. Unfortunately, though, it does tend to be the people who have either suffered a problem or had a near-miss who are most aware of this and others in similar areas who have been fortunate in not having been flooded are perhaps less aware of the issue.

Mr Starling: There is a number of commercial websites as well which have this sort of information and other locational information on them.

Q83 Mr Drew: So what more do you think the Environment Agency, Defra and indeed the Government as a whole should be doing to make people more aware of the flood risk? Is there anything specific that you feel you are not actually communicating or are unable to communicate through to the Government?

Ms Milne: I think it would be interesting to see how local authorities put into place their responsibilities under the Civil Contingencies Act in terms of emergency planning and communicating risks to local communities, because I think it is something which is most effectively done at the local level and very often on a fairly face to face basis. We can only go so far in terms of posting things on websites. If people are not looking for the website in the first place, we still have not managed to get the information to them.

Q84 David Taylor: I referred to local flooding three or four years ago, Chairman, and in the wake of that I think it was the local authority who organised a roadshow which went around together with representatives of one or two insurance companies,

⁵ Ev 6, Table 4

⁶ Ev 22

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the Norwich Union, I think, were there, the representatives of Severn Trent and also companies which provided products and services to protect against flooding. Do you believe that that should be driven by the local authority? The insurance industry was helpful and participated, but is there not more you could do on that face to face basis, to use that phrase you used, to take part in that sort of event in areas which have had recent events of flooding?

Ms Milne: I think different parts of the industry have tried to support flood “fairs” (as they are called) and other such events. It puts a rather jollier face on it than perhaps is really the case. I think the industry would be keen to help support issues, but yes, it has to be done really at the local level.

Q85 David Taylor: So you are reactive on these things if someone asks your members to participate, but you do not see it as part of your role to take the initiative on this?

Ms Milne: I think the sorts of initiatives which David described in terms of insurers actually having that dialogue with their individual customers are very helpful in that regard, but we do not have the local presence.

Q86 David Taylor: No, at a community level I am talking about. You do not see that as a role, a legitimate expectation of the ABI or its members to be more proactive?

Ms Milne: We certainly will do whatever we can within the media, etc, but we just do not have a local presence to provide that face to face contact.

Q87 Mr Drew: Just really to follow up, can I be clear, if someone actually does everything they possibly can do to make their property secure from flood risk, that really does result in a lower premium? Perhaps Mr Pitt can answer this. Does that actually lead to a lower premium being offered?

Mr Pitt: It is fairly difficult to prevent flooding completely. If I could state an example, we had a customer in Leeds who went to the expense of building a wall around his detached property, a remote property, to try and protect it from flooding. However, the flood water still came through the entrance to his property. We worked with that customer to try and resolve the issue. So the actual building of the defence did not affect his premium, it was more looking at the root cause and working with the customer and the local authority to try and lobby for some action to be taken to, as I think I cited the example before, to dredge the brook to allow the water run-off to take place. So it is very difficult to protect a property and therefore it is very difficult to say yes, a customer would receive a discount in premium. As in the example I referred to when we were talking about the demountable defences, it is more likely we would look at the risk of flooding and re-write that risk of flooding. So therefore we may, with a new customer, provide insurance where we would not have before.

Q88 Chairman: Can I ask you just one or two questions about the very interesting statement on page 5 of “Revisiting the partnership”. In there you say: “Early estimates suggest that London alone needs 4–£6 billion over the next 20 years to upgrade its defences, equivalent to around eight years of the entire national budget at current expenditure levels.” If you are the Government—and they have listened very hard to what you have said, they do not want people to be without insurance, spreading the load—you might say, “Well, it doesn’t really matter. We don’t need to spend that money because these good people in the insurance industry will take the risk.” Under these circumstances, what do you think the stance of the Environment Agency should be if this particular judgment, which I presume—where did you get this 4–£6 billion from, let me just ask that?

Ms Milne: This is a number which has been used in general discussions, for example, in evidence to the GLA.

Q89 Chairman: Where did it come from?

Ms Milne: I think it was an initial back-of-the-envelope calculation the Environment Agency did.

Q90 Chairman: So it is an Environment Agency number. We might probe them about how they constructed that number, but if for argument’s sake the Government said, “We’re not prepared to put that kind of money up front. We’ll have a number less than that,” what do you think the Environment Agency’s attitude should be, to roll over and accept it or resign en masse in protest, or some other strategy?

Ms Milne: I could not possibly suggest what sort of individual measures they might take like resignations. But in terms of do we need to replace London’s defences, by the 2030s we will be needing to do things or face a substantially higher risk than we currently face. That is a society-wide decision. It will affect this building, along with many others, and it will affect the whole of the UK’s economy given the types of activities which go on within the flood plain in London.

Q91 Chairman: I do not want to put words in your mouth, but I am getting the message that basically at whatever number is the right number, if the Government of the day do not accept the professional advice given to them, your risk profile as an industry changes and the consequences are that premiums in places like London would go up, or some areas might become uninsurable? Would that be a fair scenario?

Ms Milne: Ultimately, yes.

Mr Starling: There would be costs which are not insurable at all. For example, if this building flooded, so would Westminster tube station.

Q92 Lynne Jones: That was the ministerial statement and essentially you have reached an agreement, the ABI, with the Government that you will stick to

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your Statement of Principles so long as the Government maintains its investment at least at its current rate?

Ms Milne: Yes, because that particular decision is a long-term decision. That is not to say that if in five or 10 years' time nothing had happened and there was no obvious progress the industry would necessarily take the same view.

Q93 Lynne Jones: So if they did more then you would be able to put your premiums down?

Ms Milne: Ultimately, if we get cumulative improvements in the level of flood risk in the country, then yes, people will see that. But we are looking at two million properties in England and Wales alone.

Q94 Chairman: Can I just ask for some interpretation so that I can understand the messages in table 1 of your "Revisiting the partnership"⁷? You have got a comparison which is headed "Standard of Protection in 2000 versus Standard of Protection in 2005". Could you tell me what the numbers represent in these two columns?

Ms Milne: This was based on information from the Environment Agency. That standard of protection in 2000 was the standard of which we were advised. It is the annual probability of flooding, so a 2% annual probability is roughly a one in 50 risk of flooding, at the time the autumn 2000 floods occurred. Obviously these places were on a list with others which we pressed the Agency to take some action on. The 2005 column is the current standard of protection as advised by the Agency this autumn.

Q95 Chairman: So I am reading from that not much change in some of them?

Ms Milne: Some of them changed dramatically, some of them changed hardly at all.

Q96 Chairman: I think what I am getting at is, were they all of equal priority to be changed because I think it is an indicator of how does the Environment Agency's prioritisation programme work? Is it working adequately or is it working selectively? What does it tell you about the way they decide where the priorities are? Have you formed a view?

Ms Milne: Essentially, they have a point-scoring scheme but a large proportion of that scoring is based on a cost benefit analysis and so long as that comes out sufficiently positive then you have a reasonable prospect of getting a scheme. It is, of course, essentially also a rationing tool because they cannot do all the places they would like to do and therefore they do the ones where they can get the greatest effect. That is why, for example, for Lewes some areas have received a much increased standard of protection and some, as yet, have had nothing done at all.

Q97 Chairman: I think what I am trying to get from you is, do you think that tools of prioritisation are being well-used by the Environment Agency? You mentioned it was a rationing tool, but are there inconsistencies? In other words, is it universally applied, rationally applied, or is it a question of, "Well, we've got our list," but then it is, "How do we feel?"

Ms Milne: I think it is applied quite rationally and I think it has been an improvement in that it does provide as near as possible a sort of true risk basis.

Q98 Chairman: I think I understand that you think it is a reasonably rational process, so let me just move on to one last point of clarification. On paragraph 38 of your actual evidence you say, "Whilst sewage flooding is primarily a responsibility for sewage undertakers, it is important that the Agency ensures urban drainage plans fully integrate sewer system needs". Would you like to just explain a little more what you meant by that?

Ms Milne: This is one of the areas where Defra will be taking forward pilots under the *Making Space for Water* strategy and it picks up precisely on the point Ms Jones raised of the need to actually make sure that all the different sources of flooding are adequately brought together in making the assessment of what needs to be done where one may have a knock-on effect to another.

Q99 Chairman: Is the Agency doing a good job in that respect?

Ms Milne: The Agency over the last couple of years has taken this very much more seriously and the indications are that it is tackling this.

Q100 Chairman: Good. You have given us a lot of very helpful information. Is there anything else which is burning in your mind where you think, "I wish I could have said that, but he's come to an end of the questions"? Is there anything at all you want to put to us by way of a postscript?

Ms Milne: Just one point is that a lot of our conversation this afternoon has been about current flood risk. We should not forget that climate change is likely to result in a considerably worse flood risk and that means that we really cannot afford to take our foot off the gas pedal here, if that is the right analogy to use in this context.

Chairman: That is why I was asking you some of the questions about prioritisation, and indeed performance against known current risks, because the Environment Agency finds itself in between people like you and pressing the Government for resources and if, upon reflection, you think there is anything the Agency should do to upgrade its performance in arguing its case and dealing with the forward agenda then do please let us have any further thoughts. If there are any other issues you wanted to write to the Committee about other than the ones you have kindly committed yourself to, particularly Mr Pitt, for which I am grateful, we will be delighted to hear from you. Thank you very much for giving up your time and coming to answer our questions this afternoon.

⁷ Not printed.

Supplementary memorandum submitted by Royal and SunAlliance

1. Thank you for inviting me on behalf of Royal & SunAlliance (R&SA) to give evidence to the Committee on the work of the Environment Agency. I attach here a copy of the transcript of the evidence session with a few changes marked using the Track Changes function.

2. I also attach a separate *Private and Confidential* statement⁸ to the Committee on the cost of developing and maintaining Royal & SunAlliance's Geographical Risk Analysis mapping tool. This was requested by the Committee at the meeting on 14 December and I am happy to provide it here, on the understanding that this is commercially sensitive information and will be treated in confidence.

3. I would just like to support the statements I made on the day with some additional comments which may help clarify the evidence I gave and assist the Committee with its enquiry going forward. These comments may be treated as part of our public submissions.

Royal & SunAlliance Geographical Risk Assessment (GRA) Mapping Tool

4. We built our GRA digital mapping tool because we wanted to assess flood risk at individual address level and not just at postcode or postal sector level. We have been using it for over two years, and it is continually updated as we learn of new information. It is based on the company's own geological engineering risk techniques, combined with digital terrain mapping and address verification information from Ordnance Survey and a Geographical Information System supplied by ESRI (UK) Ltd. R&SA is therefore able to assess the flood risk on an individual risk address basis where necessary. Far from preventing people from getting insurance, we believe that our GRA tool enables us to insure as many people as possible because of its accuracy.

How the R&SA Tool is used

5. Although much of the information we used for building this tool is readily available, it takes considerable time and resource to build it and keep it continually updated, and we employ an expert team to do so at a significant cost to ourselves. For this reason, we would not be able to share the tool with our competitors or with public bodies, although there is nothing to prevent such organisations from using the same information to build their own mapping tool. MORE THAN and R&SA customers and potential customers are able to take advantage of the tool when we set premiums and give quotes to potential customers. We therefore consider that the GRA tool is as accessible as could reasonably be expected in the light of the fact that it informs our commercially-available products.

Differences between the R&SA GRA Tool and the Environment Agency Map

6. Another issue which came up in discussion and which I should perhaps clarify is how R&SA uses the information on flooding published by the Environment Agency (EA). We find the EA's National Flood Risk Assessment Database a very useful source of information about the whereabouts of flood defences. As I mentioned to the Committee and in our submission, we would welcome more regular publication on flood defences and the level of protection they provide as it would enable us to update our GRA tool to take account of new flood defences as they are built which might help some customers to reduce their premiums. We need information on flood defences—both new ones and the standard of existing ones—so that we can keep our flood map up to date. It is for this reason that we have been calling for the EA to complete its National Flood and Coastal Defence Database and for insurers to have access to it.

7. We have a different view on the Environment Agency's map. We do not see the EA map and the R&SA GRA tool as being mutually exclusive, but rather as pieces of information with different uses which are equally valuable to their different users. I would support here the comment made to this effect by Ms Milne from the ABI in her answer to Question 49. R&SA's GRA tool was specifically built for us as an insurer to calculate risk and premiums for property insurance products. The EA's map has a more general purpose of providing information for planning authorities and the public on a number of factors, ranging from flood risk calculated by postcode to the whereabouts of landfill sites and the cleanliness of local rivers. It was therefore built with different requirements in mind to those behind our GRA tool. Both the EA Map and the R&SA GRA tool should therefore continue to be used for their differing purposes. We do not envisage a scenario where one could replace the other.

8. On a minor point, I note in the transcript that I seem to have misheard Question 46 from Mr Hall, where I seem to agree with his comment that the ABI Statement of Principles does not apply to transferring insurance to new customers who would like to buy a property from an existing customer. In fact, as I pointed out in my answer to Question 47, normally under the Statement of Principles, the existing insurer would continue with cover for that property under its new ownership. I apologise for any confusion I may have created here, but I hope that I corrected this in my later answer.

⁸ Not printed.

9. Finally, could I just clarify that since our merger in 1996 our official company name is now Royal & SunAlliance (not “Sun Alliance” as we were sometimes referred to which was the name of one of the companies in the merger).

10. I do hope that this information helps the Committee’s work. Please do contact my colleague if you require further information or briefings, which we would be happy to supply.

11. Thanks once again for giving us the opportunity to contribute to the Enquiry, and we look forward to reading the Committee’s report in due course.

David Pitt

Head of Product, MORE TH > N, Royal & SunAlliance UK

January 2006

Supplementary memorandum submitted by the Association of British Insurers

1. The Association of British Insurers appeared before the Committee on 14 December 2005 to give evidence on the work of the Environment Agency. The Committee asked for supplementary information on:

- the development of premiums and claims in the light of increased investment in flood defences by Government;
- an estimate of the numbers of people who might be finding difficulties in securing insurance due to high flood risk; and
- an indication of the subsequent availability of insurance in developments where the ABI and the Environment Agency have raised objections to planning applications on flood risk grounds but which have nevertheless gone ahead.

2. We are pleased to be able to provide information on the first two in this note but regret that it has not been possible to produce data on individual planning cases.

RELATIONSHIP BETWEEN PREMIUMS, CLAIMS AND FLOOD INVESTMENT PROFILES

3. The Chairman asked us about the development of claims overall, and the consequential impact on premiums, as the Environment Agency delivers increasing flood protection with rising investment levels (Question 2). The following analysis sets out developments over the last decade.

UK HOUSEHOLD* DAMAGE REVENUE (ANNUAL BUSINESS) (£m)

<i>Year</i>	<i>Premiums</i>	<i>Outgo Total##</i>	<i>Of which claims</i>	<i>Of which weather claims</i>	<i>Underwriting result</i>
1995	4,075	3,745	2,344	267	330
1996	3,937	3,828	2,406	525	108
1997	4,171	4,263	2,657	436	(91)
1998	4,391	4,676	3,025	747	(286)
1999	3,887	4,097	2,610	614	(209)
2000	3,905	4,341	2,821	860	(435)
2001	4,180	4,479	2,874	761	(299)
2002	4,626	4,800	2,916	994	(174)
2003	4,930	5,000	2,869	511	(70)
2004	5,015	4,874	2,771	314	140

*Excludes commercial property business, representing £3,451 million of premium and £2,814 of outgo in 2004.

##Includes claims incurred, commission & expenses, changes in provisions and equalisation reserves.

4. Weather claims include flooding and storm damage since some types of flood damage are categorised as storm damage by loss adjusters. Frost damage to pipes has only been recorded separately since 2004 and in mild years appears to account for around £30 million pa.

5. Weather claims vary considerably from year to year, depending on whether one or more events of a critical severity occur. A detailed analysis (unpublished) of a sample of over 43,000 claims made in England and Wales between January 1996 and January 2001 showed that there were four months where notable numbers of claims were made—April 1998, October 1998, October 2000 and November 2000. Not surprisingly these months were also periods where intense rainfall was experienced in certain locations.

6. Analysing the same claims by location, the top 15 postcode sectors⁹ were (ranked by number of claims) Northampton (2 sectors), Leamington Spa, Tonbridge, Malton (2 sectors), Keighley, Bishop Auckland (2 sectors), Folkestone, Bracknell, Milton Keynes, Bewdley, Kenilworth and Cowbridge (Cardiff). Most of these locations were recognised as being particularly hard hit in either the Easter 1998 floods and/or the Autumn 2000 floods.

⁹ A postcode sector is the first half of the postcode plus the first digit of the second half eg SW1A 0 or EC2V 7.

7. These characteristics mean that although increasing levels of protection are being delivered by the Environment Agency across England and Wales, insurers' claims experience is likely to reflect rainfall intensity at individual locations. There will continue to be claims surges where either severe events which exceed the design standard of the defences (commonly 1:75 chance or 1.3% annual probability, but perhaps as high as 1:200 or 0.5% annual probability in some locations) or where rainfall happens to occur where there are little or no defences.

8. The risk based approach to allocating flood defence funding currently adopted by Defra and the Environment Agency means that those areas with the potential to give rise to the highest levels of damage are treated as priorities. This approach, combined with the increased levels of investment, has encouraged insurers to continue to offer flood insurance. Should investment levels fail to keep pace with increasing flood claims due to increasing incidence of intense rainfall or increased development without adequate protection, the sustainability of insurance would again come into question.

THE NUMBER OF HOUSEHOLDS FINDING DIFFICULTY IN SECURING INSURANCE

9. Mr Drew asked about the number of people who are not insurable for flood risk (Question 39). The Environment Agency's National Flood Risk Assessment (December 2004) estimated that whilst 1,360,000 households out of 1,860,000 households located in the floodplain were protected to an adequate or high standard (ie 1.3% annual probability of flooding or less) there were 284,000 households facing significant flood risk (more than 1.3% annual probability) and a further 230,000 households for which no data was available. We hope to receive updated data from the Agency shortly and understand that virtually all households will be allocated to a risk category this year.

10. It is likely that around 300,000 households face significant flood risk. Neither ABI nor insurers hold data on uninsured households since customers may move to alternative providers amongst ABI members and the Lloyd's market. However, official statistics¹⁰ indicate that 93% of home-owning households nationally have Home Buildings insurance in place and 78% of households have Home Contents cover. It is not possible to say how much of the 7% shortfall in Buildings cover and 22% shortfall in Contents cover is due to flooding although it is likely that relatively few of these uninsured households have been refused cover due to flood risk. Income is a significant factor with poor households buying less insurance (expressed as a proportion of households with cover and as expenditure by each household with cover). Nearly half of the poorest households (representing 9% of all households) have no Home Contents insurance. Young people in furnished accommodation are also less likely to have Home insurance in place.

11. ABI has monitored insurers' renewals since January 2004 under the Statement of Principles. Market-wide surveys showed that ABI members have only refused to renew insurance for 11 policyholders since January 2004 following multiple large flood claims. This indicates that there is no deterioration in availability of cover from ABI members, although some properties may not have been able to secure cover due to flood risk for some considerable time. We cannot comment on those households insured through the Lloyd's Market (around 5% of the total).

12. There is however evidence that the insurance market is still functioning in high flood risk locations. Almost 15,000 households that were able to obtain cover as a new customer in 2004 with a further 8,000 households moving insurer in 2005. In many cases, insurers took on the new business because they were given further information about the property's flood risk.

Association of British Insurers

January 2006

¹⁰ Office of National Statistics Expenditure and Food Survey.

Tuesday 17 January 2006

Members present:

Mr Michael Jack, in the Chair

Mr David Drew
James Duddridge
Lynne Jones
Daniel Kawczynski

David Lepper
Mrs Madeleine Moon
Sir Peter Soulsby
Mr Roger Williams

Memorandum submitted by CBI

EXECUTIVE SUMMARY

1. The CBI represents a wide cross-section of UK business, significant elements of which are directly regulated by the Environment Agency (EA).
2. The EA has made considerable improvements in efficiency, with most permit application times being reduced and cost efficiency savings being passed on in the annual charging scheme.
3. Greater clarity is needed as to how the EA balances and funds its activities, and how it plans to meet changing demands in the future.
4. The EA needs to improve its advice and decision making so that it can deliver in a timely manner that allows for adequate business planning to meet requirements.
5. For business there is a lack of distinction between the EA and the Department for Environment, Food and Rural Affairs (Defra) as to which organisation is responsible for developing policy. The CBI believes that policy making should be distinct from enforcement and that Defra should be responsible for policy, and the EA for enforcement.
6. CBI members have reported inconsistencies in opinions and actions at a local level within the EA. There are also inconsistencies between central EA policy opinions and those of staff at a local level.
7. The EA has introduced improved communication initiatives such as the NetRegs project providing sector guidance. Many smaller firms would like the EA to provide them with advice, but are concerned that advice will lead to enforcement actions. We would like the EA to be able to distinguish between advice and enforcement.
8. The EA has been identified in the Hampton review as an example of a risk-based enforcer. Whilst the EA has adopted some risk-based approaches these appear to be having little effect in practice.
9. A focus on environmental outcomes as opposed to regulatory and legal procedures would help the EA to maximise its resource use in the future.
10. Business would like to be more involved in the EA's future strategy, for example through better representation on the board.

CBI EVIDENCE

11. The Confederation of British Industry (CBI) is the national body representing the UK business community. It is an independent, non-party political organisation funded entirely by its members in industry and commerce and speaks for some 240,000 businesses that together employ around a third of the UK private sector workforce. Many of our members are regulated directly by the Environment Agency.
12. We welcome this opportunity to provide evidence on the functioning of the Environment Agency (EA) and have drawn on our members' experience in putting together our comments.

FUNDING, EFFICIENCY AND BALANCE OF EFFORT

13. The EA has committed to improving its efficiency and this has been evident with cost savings passed on in the annual charging review. In the proposed charges for 2006-07, for example, the EA's predicted cost increase of 4.8% is reduced by efficiency savings of 2.0% to a total overall increase of 2.8%. We still have questions regarding the consistency of charging between regulators for standard charges such as mailings and phone calls. For example, for processes within the automotive sector the annual charges associated with a Pollution Prevention and Control (PPC) A1 process have been estimated by one firm to be around £900 for the Local Authority (LA) annual charges and £19,000 for the EA. This is a huge variation in what should be a standard approach to a piece of legislation common to the LA and EA.

14. The EA has worked hard to reduce the amount of time that it takes to deal with some permit applications, especially those under PPC. However, there are instances where the EA does not reach a decision in time to allow businesses to plan and budget for any associated costs accurately. For example, pilot R&D plants in the pharmaceutical sector were thought to have an exemption from sections of IPPC, but the EA has yet to clarify the position. Pharmaceutical companies have to apply for PPC permits in the first quarter of 2006, meaning that firms are having to prepare applications assuming that the pilot plants are to be covered by the permit. This is the type of issue that we would like to see the EA clarify well before permit application deadlines.

15. The EA is funded through a combination of Grant in Aid from the government, and the charges that it makes for regulating selected activities. Grant in aid is reducing while the Agency's remit continues to expand (most recently to cover responsibilities under the Waste Electrical and Electronic Equipment Directive (WEEE))—leading the Agency to recover more of its costs through charges.

16. However, this approach is inappropriate for a number of the activities that companies see as core EA business, for example the EA recently requested business money (through the Business Resource Efficiency and Waste Programme (BREW)) for policing of fly-tipping. The EA's charging regime is meant to reflect the costs of regulating companies for specific activities therefore it is not consistent to use revenue raised from business for the costs of policing unregulated offenders.

17. The latest EA consultation on increased charging for contentious licences is an example of where this trend is heading. Whether or not a licence is contentious has little to do with the operator, more often than not it is to do with the location of the operations, rather than the operational history of the site. In addition to the proposed increases in charges, the operator also incurs costs, such as administrative and consultancy costs, in dealing with contentious licences and other requests for information. In the current consultation there is no clear definition of what constitutes a contentious licence, or a process as to how decisions will be made. If the EA is to decide on whether or not a licence is contentious there is an obvious financial incentive for it to declare the application contentious and levy a higher charge. There must be a balance between the need for consultation and involvement and business' liabilities in this area.

18. In order to achieve greater transparency in how the EA prioritises and finances its activities, we would like the EA to make a clear statement as to how it will resource its enforcement and policing activities now and in the future.

19. The government has pledged to improve regulatory efficiency and to minimise red tape. If as a result of this there are going to be fewer and simpler regulations in the environmental area then in the future the EA should need less resource to fulfil its existing functions. This should be addressed in the EA's corporate strategy.

20. For complex processes, industry often invests a great deal of time in helping the EA inspector to understand the details of the process. It is incredibly frustrating for companies who have done this when the inspector moves on and they have to devote a similar effort to their replacement. The EA could help to minimise additional costs to business in this area by improving their corporate knowledge retention.

INTERACTION WITH OTHER ORGANISATIONS

21. The EA does not act in isolation. Many of its responsibilities require interaction with other organisations. We view the EA's relationship with Defra as the most important to business. This is a complex relationship and there are a number of points to comment on.

22. There often appears to be tension between the EA and Defra as to which one is responsible for developing policy, this has increased since the "BRITE" reorganisation of the EA's structure which put in place more policy functions in the EA than before. This tension is exposed most often when regulations are delayed, meaning that the EA has to develop guidance without the reference to the regulations. Whilst businesses are keen to understand their responsibilities, lack of communication between Defra and the EA can lead to guidance going into more details than the requirements of the regulations. The CBI believes that Defra should be the lead on determining policy, with the EA contributing its expertise through Defra as required. Policy making and enforcement should be distinct to provide an appropriate system of checks and balances.

23. The other side of this issue is where Defra does not involve the EA in discussions early enough, thereby potentially missing out on some of the practicalities of regulatory enforcement. For example, we have requested that the EA join the Defra stakeholder consultation group on the transposition of the Environmental Liability Directive to advise on key business concerns such as the permit defence, but this has not happened so far.

24. The EA only covers England and Wales, but it is important that it maintains strong relations with the Scottish Environmental Protection Agency (SEPA) and the Department of Environment in Northern Ireland. This is especially important where the EA is looking to take on a UK-wide role, such as their bid with the Health and Safety Executive (HSE) to be the UK competent authority for REACH. It is also crucial that decisions which affect UK-wide markets are consistent to avoid distortions.

25. Local Authorities are responsible for regulating a number of environmental areas, such as Part B processes under PPC (usually process where air quality is the main environmental area of concern). The relationship between the EA and Local Authorities seems to vary. There have been instances where the EA appears to want to take over some LA competencies, for example at sites where there are both Part A (process regulated by the EA) and Part B processes under PPC. If this goes ahead, this could mean that businesses have to submit a new application and bear the associated costs for no environmental benefit.

26. In the future, under regimes such as the Environmental Liability Directive, there may be cases where a number of regulators are involved, for example, the EA, LA and English Nature. We would like to see a transparent process established for how regulators interact and ensure that they take a consistent view.

INTERACTION WITH BUSINESS

27. At a national level the EA has consulted with business regularly. In the past this sometimes has been perceived as a “tickbox” exercise to show that consultation has occurred, but this does seem to be changing. For example, in the past year the CBI and EA have established a forum where CBI members can raise their concerns directly with the EA. Whilst this and other initiatives have proved to be useful, we would still like to see the EA discuss more of the key substance involved in implementing environmental regulation, as well as the high level principles. The EA needs to cascade improved consultation and communication practices and culture throughout the organisation.

28. The EA’s annual “Spotlight on Business” report which reports on the environmental performance on business has improved significantly in recent years. We feel that this report is more balanced and reflects the environmental priorities that the EA should be addressing.

29. EA consultation at a national level can be selective. For example, the recently launched chemical sector plan covers much of the chemicals supply and use chain, but consultation on constructing the plan outside the upstream chemicals sector has been limited. Despite the launch of the plan, which could have significant benefits for businesses in the sector, many stakeholders are still unaware that the plan covers them, and that they currently have an opportunity to consult. The EA could make more use of national associations and frameworks to improve their national communications.

30. Regional REPACs have been in place for a long time where the EA consults on regional issues with a range of stakeholders. We have heard mixed reviews from our members as to the effectiveness of these groups and lack of confidence that their recommendations are being taken on board. We would like to see a clearer structure of how the REPAC’s views are fed into the EA’s forward strategy and approach.

31. The local level is where the greatest variation in EA interaction is reported. The quality and experience of local inspectors varies considerably, as do their opinions on environmental issues. The HSE operates a “single point of contact” for firms for all enquiries. This approach could help the EA to deal with business enquiries more efficiently and consistently.

ENFORCEMENT

32. The EA has to balance its role as an enforcer, with its other function as an adviser on environmental issues. It has tried to develop this dual role, for example through the development of the NetRegs website which provides a summary of applicable legislation on a sector by sector basis. Many companies, especially smaller firms with fewer dedicated resources, would like the EA to be able to advise them more. However, many are put off asking for advice as they are concerned that a visit from an inspector to give advice may lead to enforcement actions. We support strong and consistent enforcement. This will only be derived from clear policies that are given ample time to be communicated and digested by the organisations involved. We would like the EA to adopt a system that distinguishes enforcement and advisory activities where possible.

33. There are still issues around inconsistent opinions from the Agency at local levels, and between local and central functions, such as inspectors and policy staff. These inconsistencies do not help business or the EA, making it tempting for business to “shop around” for the answer that suits them best, but leaving them with a degree of uncertainty that decisions will be upheld. Initiatives that the EA has put in place such as strategic permitting groups have helped to address this problem to some extent, but we think that EA staff could benefit from further training to improve consistency and that the EA’s internal communication and performance auditing could be improved.

MODERN REGULATION

34. We welcome the EA’s commitment to the modern and better regulation initiatives. In the Hampton report on enforcement they were identified as a good practice example of risk-based regulation. Whilst the EP OPRA scheme does have a risk basis, CBI members report that this currently does not extend to the EA’s enforcement activities. Currently sites can expect to receive roughly the same number of inspections as in the past, whether or not they have a good compliance record or not. The EA must continue to extend their risk based approach to inspection and enforcement.

35. The EA is currently reviewing its permitting system under the Environmental Permitting Programme (EPP). This appears to be a good initiative which will make the permitting process simpler and hopefully cheaper. We would like to see the EA develop the EPP to promote the widest possible take-up by business. In order to do this, there must be a strong business case underlying the proposals to allow businesses to justify making the change.

36. In addressing the modern regulation agenda, the EA will need to change the current process approach to issues, which in many cases does not benefit the environment, and focus on environmental outcomes. For example, a company operating a plant which generates power from chicken bedding material and sells the ash produced in the process as fertiliser must now treat this ash as waste. This means that each farm that buys the fertiliser must be licensed as a waste disposal site. This not only makes the sale of the fertiliser and possibly the operation of the plant uneconomic, but also means that perfectly usable fertiliser will be disposed of to landfill and new fertiliser products bought in its place. This is not the best economic or environmental option. We would like to see the EA's commitment to become more outcome focussed delivered in practice.

CORPORATE STRATEGY

37. We would like to see better representation of business on the Environment Agency board. Businesses have been keen to become involved, but in the past, applications from senior business representatives have been turned down with no explanation. As businesses are among the EA's key customers and a major source of its funding, they should have a greater say than currently in the strategic management of the EA. This will help the EA to focus on delivering its key environmental objectives in ways which are more sensitive to the ways in which businesses operate.

38. Following the Hampton review on enforcement, the Environment Agency seems to be keen to expand its remit through consolidation with other enforcers, such as the Pesticides Directorate and the Drinking Water Inspectorate. Care needs to be taken to ensure that the EA does not "spread itself too thinly" and in the process undermine its key competencies.

CBI

December 2005

Memorandum submitted by EEF

EEF, the manufacturers' organisation, has a membership of 6,000 manufacturing, engineering and technology-based businesses and represents the interest of manufacturing at all levels of government. Comprising 11 Regional Associations, the Engineering Construction Industries Association (ECIA) and UK Steel, EEF is one of the UK's leading providers of business services in employment relations and employment law, health, safety and environment, manufacturing performance, education and skills, and information and research.

EXECUTIVE SUMMARY

This response represents a key sector of the Environment Agency's customer base—regulated industry. Our response is a reflection of the views of our member companies, many of whom have dealings with the Environment Agency on a regular basis.

We believe that the Agency is an effective enforcer, and is very focused on enforcement as its main purpose. We would like to see more emphasis in future on advice services for companies trying to comply with legislation. The biggest challenge faced by the EA is changing its perception amongst the business community. The EA are often seen as not being pragmatic, sometimes working against business interests and heavy handed with enforcement. This perception must be changed in order for business to work with the Agency towards better environmental performance. Our general impression is that industry is increasingly being asked to fund, through charges, budgetary shortfalls and an expanding Agency remit at a time when the overall environmental performance of industry is improving. The EA relationship with DTI/Defra is one which could be improved by more effective project planning in the run up to the implementation of new legislation. We believe one area in which the EA has made improvements is in consultation with stakeholders, in which are increasingly involved. We were pleased to see an acknowledgement in the EA corporate strategy of the improvements industry has made in reducing pollution, however, the language used in the document is not very "business friendly" and some of the targets set are very negative. Finally, we seek further specific detail as to how the EA intend to drive forward the Better Regulation Agenda.

How successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities?

1. EEF believe the Environment Agency (EA) has been an effective enforcer in that the organisation takes its enforcement role very seriously and places considerable emphasis on this aspect of its remit. However, we also feel that the EA is sometimes overly focussed on “policing” and can be perceived by much of the business community as a non-pragmatic enforcement authority working against the interests of business rather than in partnership to deliver improvements. The biggest challenge the EA faces is changing this perception.

2. EEF have examples of member companies that have approached the EA for help with a particular piece of legislation and have subsequently suffered prosecution for non-compliance. This attitude clearly mitigates against fostering a constructive relationship between the regulator and the regulated and creates an obstacle to both sides working towards a shared aim of improved environmental performance. A workable solution to this would be for the EA to introduce a “warning system” linked to tightly enforced improvement programmes before resorting to prosecution.

3. EEF recognises that whilst at strategic level there have been significant developments towards greater consistency, there still appears to be a gap between high level policy aspirations at the EA and the service that members see delivered on the ground by their inspectors.

Whether the Agency operates efficiently and provides good value for money

4. It is difficult for EEF to comment on whether the EA provides good value for money. Our views on this matter are informed by the views of our members on the charging regime of the EA. Although stakeholders are consulted on proposed charge increases, these consultations generally lack both background figures and any externally verified accounting that has led to the decision making behind such increases. Business needs to see what the outcome of the increased charges are as currently they often see charges increasing with little or no justification, and no obvious improvement in service.

5. Our general perception is that the EA is increasingly turning to industry to fund budgetary shortfalls or alternatively to funds such as the Business Resource Efficiency Programme (BREW) to fund ad-hoc initiatives such as an anti fly-tipping campaign. It is important that, if charges are to rise year on year, some justification is provided to business, and clear improvement in service is visible. EEF questions whether this is currently happening.

6. As the remit of the EA expands to cover themes mentioned in the recent corporate strategy such as “better quality of life” and “tackling diffuse pollution”, EEF would like to see other funding mechanisms considered. It is inappropriate to expect industry to fund such projects at a time when the overall environmental performance of business is improving.

7. EEF regularly seek further clarification on the uses to which Grant in Aid from Defra can be employed. Whilst we accept that the EA must recover some revenue from the regulated community under “the polluter pays principle”, in some cases this concept is being stretched and business is being asked to fund additional activities over which they have no control. These fees amount to an additional financial burden on business.

8. One particular current area of concern from our members is the EA policy for recovering funds for “contentious licensing” under the Integrated Pollution Prevention and Control (IPPC) Regulations. Contentious licensing arises where there is strong public opposition to an environmental permit application from a company. This can lead to an extended dialogue between the company, the regulator and the community. Whilst many businesses are keen to engage with the public and build better community relationships, EEF is worried that certain local stakeholders may be totally opposed under any circumstances to certain businesses located in their immediate vicinity. We therefore feel that where the company is compliant with the law for the purposes of their permit application and it has been demonstrated that emissions are not having an impact, the EA should support the company. They should make it clear to the public that the company is operating within the law and cannot be challenged. Business should not be forced to cover the EA costs of lengthy engagement with the general public, when often the duration and scale of this process is out of their control. As the public is benefiting from the use of EA resources in these instances we feel it may be an appropriate area in which Grant in Aid, rather than charges on companies, could be better deployed. We also feel that on occasion this process has appeared to be used as an alternative Planning Consent mechanism being applied in retrospect.

9. Double charging is still an issue in some cases. For example, in the latest EA charging consultation for 2006–07 additional charges are proposed for “complex” permit applications. However, this is a factor already taken into account in the spreadsheet used to calculate permit application fees when the application is made.

10. Problems still remain with charging for permit variations under IPPC. Companies are charged a variation fee even where they have made changes to improve their environmental performance. This practise does not encourage nor reward companies striving to reduce pollution and comply with using the best available techniques for environmental performance.

The structure, governance and accountability of the Agency, its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency's role in the planning system

11. We reiterate, as under paragraph 7, that we seek clarification on the exact uses on which Grant in Aid can be deployed.

12. We perceive that the relationship between the EA and Defra/DTI could be improved by better planning and communication between the two parties in the run up to the implementation of legislation. For example, registration systems for hazardous waste producers under the new hazardous waste regulations introduced earlier this year were not finalised until very close to the implementation deadline. This failed to provide sufficient time for companies to prepare for the introduction of the regulation. In addition, registration for producers of electrical and electronic equipment is expected at the beginning of next year, when the Waste Electrical and Electronic Equipment (WEEE) regulations come into force. However, final implementation details and forms for registration are not yet available. This situation needs to be improved in order to give those affected by the legislation chance to plan ahead sufficiently.

13. There is also a need for more rigorous project planning between the EA and Defra/DTI, the likes of which appears to have been absent in recent moves to implement the WEEE Directive in the UK. We have seen significant and recurring delays to implementation with a lack of concrete evidence that extra time bought by a delay is being used constructively towards workable implementation.

The Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services

14. EEF believes consultation between EA and stakeholders has witnessed a degree of improvement. We are routinely invited to participate in stakeholder groups and feel this engagement is very positive. EEF is increasingly being seen as an important stakeholder by the EA and we feel that key agency staff are open to building a constructive working relationship with us at a national level. We look forward to this national level relationship being replicated through EEF's and EA's respective regional structures.

15. We are determined that the next step is to ensure that EA consults with stakeholders at an early enough stage of the process to enable sufficient time to contribute to influencing policy. In addition, it is important to ensure that stakeholders are not just consulted but that their views are taken on board in order to shape regulation strategies.

The Environment Agency's forthcoming corporate strategy 2006–11

16. EEF is pleased to see an acknowledgement in the EA's strategy of the improvements industry has made in terms of reducing point source pollution and emissions.

17. We feel some of the targets set in the strategy to monitor "success" are overly negative and do not necessarily reflect the "good" performance of the EA. For example, setting targets for the number of successful prosecutions is not necessarily a true indicator of progress towards reducing illegal activity. The targeting of illegal activities should be balanced with resources dedicated to helping industry put preventative measures in place, thus reducing the likelihood of prosecutable offences. These could then be replaced with more positive milestones. An example of this would be the number of companies receiving a site visit to aid compliance with difficult issues.

18. We felt that the language used in the document could be more business friendly, as this is likely to appeal more to the business community. An example of this is the use of the statement "being green makes good business sense". Such a statement needs further qualifying as "being green" is not a readily recognisable concept and is unnecessarily vague.

19. We have already outlined how one of the biggest challenges facing the EA is changing the perception of the agency within the business community. It is also important that EA develop a more structured advice and warning system, to be used as a first step before prosecution, which we believe would improve the relationship of the regulator with business.

20. The EA should actively support businesses where improvements have been made and where companies are complying with the law. The EA are improving their communication with stakeholders and EEF welcomes the opportunities to work jointly with the EA in influencing forthcoming policy.

21. The EA could improve its "image" by associating itself with schemes such as the DTI Manufacturing Advice Service (MAS). This would help companies to make the link between good environmental performance and the associated business benefits through direct efficiency savings. It would also help to promote the Agency as a business friendly organisation.

BETTER REGULATION

22. The EA strategy incorporates the relevant aspects of the Hampton review and the need to move towards reducing both the complexity of environmental regulation and of administration burdens. Much environmental regulation remains very confusing, full of “grey areas”, is difficult to interpret, is sometimes contradictory and suffers from overlaps with other legislation. For example, the scope of the WEEE Directive is far from clear for many organisations. In addition, WEEE has significant overlaps with the new hazardous waste regulations, leaving companies confused about how to dispose of certain waste streams. Environmental legislation is complex and companies can be forgiven in some cases for needing additional support to understand how to comply. This needs to be acknowledged by the EA.

23. The financial and administrative burdens of managing such legislation are also significant, particularly so for small firms. EEF has encountered a number of examples of this burden, including a small plating firm struggling to clarify whether the business is covered by IPPC. In addition, another business was confused about how to comply with the packaging regulations and, to reiterate, many firms are unsure as to whether their equipment is covered by the WEEE directive.

24. A risk based approach to regulation is described in the strategy and we are very supportive of a move in this direction. However, further work is needed in this area as there is little detail in the strategy about how the EA intends to approach this in practise. For example, by adopting a risk based approach, a further question is posed as to whether self regulation for the best performers is being considered. Business would benefit from a clearer steer in this area.

25. The charging system for companies regulated under the IPPC environmental permitting regime (EP OPRA) is often championed by the Agency as an example of risk based regulation. Although this is clearly a welcome move in the direction of risk-based regulation in terms of reducing charges for the best performers, we are yet to see an EP OPRA score translated into risk based regulation on the ground (eg “lighter touch” regulation for those with the best scores). It is also important that the Agency’s ambition for risk based regulation does not stop at this point. The Agency regulates other companies that are not directly regulated by IPPC. Therefore, we would also like to see a more risk based approach to regulation in other areas of “softer” decision making. For example having a warning system in place, as described above, that is judged upon the seriousness of an incident and both the company’s previous history and willingness to comply—rather than issuing an enforcement notice for every non-compliance.

26. The strategy also describes an aspiration to reduce paperwork burdens but again, the strategy contains little detail about exactly how this will be applied and in relation to which particular legislation. We urge EA to explain how its ambitions to reduce complexity fit with the Defra target of reducing administrative burdens by 25%.

EEF

December 2005

Memorandum submitted by Water UK

INTRODUCTION

1. Water UK represents all the statutory water and wastewater companies in England and Wales at national and European level. The water industry plays an important part in delivering environmental improvements and is one of the Environment Agency’s biggest customers. We work a great deal with the EA as our members’ environmental regulator and have wide experience of many of its policy and functions.

2. Water UK is pleased to be invited to make a submission to the Committee’s inquiry. The inquiry is timely given the growing national interest in several issues where the EA has major responsibilities: water resources; climate change; the impact of the environment on human health; and the need for efficient regulation of business.

3. The modern water industry and the EA have a common ancestry and many common goals. Close working relationships exist at all levels. We believe that this cooperation, within a clear regulatory framework, is critical to the sustainability of an essential national resource and infrastructure.

4. We have responded to six of the Committee’s nine points.

Point 1: How successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities

5. In the past decade the EA has played a leading part in a national success story. Its work with other regulators and the water companies in implementing core water legislation has transformed the water environment throughout England and Wales. Where the country was once labelled “the dirty man of Europe” because of inadequate wastewater treatment, our water courses are now in a much healthier condition.

6. The strategies developed by the EA to enforce the clean-up of gross pollution were successful because they matched a need that was plain to everyone at the time. The approach tended to be prescriptive and confrontational; to err on the side of certainty at the risk of “gold-plating”; and to be influenced by reformist zeal. These characteristics are exemplified in activities such as:

- consulting on pollution standards; but not taking sufficient notice of advice on impacts;
- prosecution for non-compliance; and accusing companies of not cooperating while exercising their legal rights;
- emphasis on point source control of pollution; but lack of attention to diffuse sources, leading to a slow start in tackling major urban and agricultural pollution; and
- focus on failure in the “Spotlight on Business Environmental Performance”.

These characteristics are discernible in many of the issues raised in this submission. While undoubtedly allowing the EA to get things done, they have also led to missed opportunities and customer relationships that have worked against best outcomes. This will get worse unless changes are made. We believe that it is now a key part of the organisation’s challenge to move on from ways of behaving no longer suited to current needs. In this regard, Water UK sees the EA modern regulation project as a significant step forward.

7. Water UK believes that the EA’s wide range of responsibilities requires strong strategic direction and a cohesive management structure, which have not always been in evidence. An example is lack of coordination between the centre, regions and areas (paragraph 9); and between different functions (10).

8. In the first instance water companies generally look for guidance to EA staff at regional and area levels. However, in the past two years when they wanted to begin preparing for the water framework directive they found their normal contacts unable to help. It was only when the first river basin characterisation maps were issued (with many inaccuracies) that the areas seemed able to get involved and tackle the job on a more practical level.

9. Lack of coordination between different functions can lead to counter-productive regulation, higher cost and undeserved criticism. For example, the EA water quality function sets limits for certain substances discharged from by water companies from sewage treatment works (mercury for example); but they are there in the first place because the EA PPC function (Pollution Prevention and Control) gives permits to business to discharge them to sewers. Then, due to the presence of the substances, the EA can raise the price of discharge consents to water companies. The EA also quotes the discharges in its “Pollution Inventory” as if the water company had caused the problem.

10. A further specific example of lack of coordination with perverse consequences is policy for disposal of gravel removed from a river behind an intake weir. The gravel could be returned to the river immediately downstream with benefit to fisheries. River flow would improve; spawning would be supported; and EA water resources management, we imagine, would be pleased. Unfortunately though EA waste management policy requires gravel to be treated as waste and sent to landfill.

Point 2: Whether the Agency operates efficiently and provides good value for money

11. We recognise the great complexity of the tasks undertaken by the EA across a very wide range of sectors. However we note that the Gershon review of public sector efficiency set a target for the EA to make gains of £73 million by 2008. We believe that improvement in the cases described below could help the EA to meet the target and improve value for money to regulated businesses and their customers.

Abstraction licensing

12. In many cases the time taken by the EA to determine water abstraction licence applications is neither efficient nor good value for money. The three month determination period set out in Water Resources Act 1991 is often missed leading to increased uncertainty for water companies and other applicants developing water supply schemes. In fact the time taken can be up to 12 months or sometimes several years; and although it is accepted that for some complex applications three months is tight, and Defra plans to extend the period allowed, we believe that no decision should take longer than six months as long as the applicant provides the necessary information. The efficiency of the process will be more important in the next few years as more licences become time-limited and consequently more applications for renewal are made before expiry. The EA’s policy and timetable for increasing the proportion of time-limited licences will not help either: all the licences in a particular catchment could expire on the same date and cause a serious back-log of determinations.

13. Water UK believes that the process the EA uses to calculate water abstraction charges should be more transparent. Water companies and others must be able to see how the income is spent and the efficiencies achieved by the EA water resources function. For example, charging for “supported river systems” is calculated using a three times multiplier, but no evidence is given why this should be so. We note that earlier this year the National Audit Office pointed to a subsidy of up to £1.7 million from abstraction charge payers

to other EA functions. Water UK has responded in detail to the EA on new proposals for abstraction licence charging; in summary water companies are concerned at the scale of the increase in charges proposed over a short period of time and the impact on customer bills.

Red tape

14. Water UK has been pleased to take part in a project carried out this year by the Defra Better Regulation Unit. The purpose has been to identify areas of duplication or unnecessary bureaucracy resulting in loss of efficiency for water companies. We have been pleased that the EA, along with other water industry regulators, has contributed and are confident that worthwhile benefits will be realised. The case summarised in paragraph 15 is just one example of how the EA could improve efficiency and value for money by using a more risk-based approach.

15. To help companies meet the requirements of the bathing waters and shellfish directives, UK regulations specify use of ultra-violet disinfection (UV) as a tertiary wastewater treatment. However the EA's reporting requirements for UV are much more onerous than for primary or secondary treatment; they involve more frequent and voluminous data collection and analysis, which take up extra staff time, use of IT systems and other equipment. It is not clear how the extensive reporting is beneficial, but a joint investigation being considered as follow-up to the Defra project could establish whether anything is gained. Water UK agrees with the Better Regulation Task Force view that in this kind of case rigorous use regulatory impact assessments would help ensure more proportionate new regulation.

Consistency

16. Inconsistency between EA regions or even different areas of the same region has been a concern for water companies for many years. For instance in our response to government for the EA Finance, Management and Performance Review in 2001 we wrote:

The Agency's national office sometimes seems to be remote from the practical difficulties faced by companies whilst regional relationships can be more pragmatic. It has sometimes also been slow in producing and, importantly publishing, national policies. This leads to drastic variations in interpretation of regulations and duties, creating an uneven playing field nationwide.

17. Reorganisation under the BRITE project (Better Regulation Improving The Environment) was intended to drive a more even approach across the country. It created a single national policy making function, separate from stakeholder or customer relations (carried out mainly by the regions) and operations (mainly by areas). But the results have not always been as intended. Take water resources management. The changes meant a greater separation of the licensing process from resource planning which moved from regional to supra-regional level, but left a high degree of autonomy at area level. Some companies now experience a less coordinated approach to licence applications and resource planning issues and a loss of efficiency as agreements have to be reached at two levels. Time taken has increased as area personnel are unwilling or unable to make decisions without consulting national process.

Staff

18. Water UK believes that changes in its skill base may also be affecting EA efficiency. Traditionally EA people are technical specialists, but a combination of the need to recruit a different kind of person for reasons touched on above (Paragraph 6) and the departure of experienced staff seems to have led to less qualified recruits from a wider range of disciplines. This can bring a less flexible, more bureaucratic regulatory approach that is less able to respond effectively to complex problems.

Point 3: Structure, governance and accountability of the Agency

Structure and roles

19. We think that effective management may be harder for the EA because of its different and not necessarily compatible roles. If it were a company it might be thought of as a conglomerate. While this business model still works in a few cases, it has been in decline for many years because disadvantages have outweighed synergies. In relation to water the EA is government adviser, regulator, operator, public information provider and environmental champion.

20. This multiplicity can cause problems. For example, as regulator the credibility of the EA depends on impartial management of potentially conflicting interests; but its effectiveness as environmental champion is best served by committed promotion and close relationships with green interest groups.

21. This might be complex enough. But the arrangements that interlock policy-making, customer relations, and functional development, at national, regional and area levels are hard to understand for both customers and, we believe, many staff. We suggest to us that some clarification of roles and/or structure creating a simpler organisation would improve efficiency and service.

Governance

22. The EA has won wide praise for its modern regulation strategy, “Delivering for the environment, a 21st Century approach to regulation”, adopted earlier this year. Water UK shares this response. We are pleased that the strategy includes commitments to the five principles set out by the Better Regulation Task Force (BRTF) and to replacing rigid rules with a risk-based approach to regulation. We find EA board members and senior officials accessible and willing to discuss ways of improving business between companies and the organisation.

Accountability

23. However there can be gaps between policy statement and execution which make us question the true accountability of the EA to its sponsors and other stakeholders. An example is in its use of consultation. It is not lack of consultation that causes the doubt—the EA has a well-worked out system for publishing proposals, holding workshops and commissioning independent research among stakeholders—but the use made of it. Too often there has been a sense that policy has already been decided. Views may be sought and comments genuinely welcomed, but little of substance changes as a result.

Point 4: Relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency’s role in the planning system

Government

24. Water companies and their customers are directly affected by EA advice to ministers and government bodies who rely on its expertise when making policy on a range of issues. There has always been robust debate about how best to restore the environment and avoid infraction, but until recently the kind of solutions needed was not really in doubt. Now there is less certainty: the best, most sustainable, solutions to problems are less obvious. It is necessary to take the widest view before providing advice that may lead to more investment and higher water bills.

25. We believe that the quality of its advice would often benefit if the EA took a holistic view. There is a tendency to concentrate on standards rather than assessing impact on the whole environment. For example, in their work on the water framework directive, water companies have identified a number of omissions and errors that need to be addressed to improve risk assessments and monitoring of targets and outcomes. But to date the EA’s advice has not changed.

26. The EA plays a big part in the 5-yearly periodic review of water prices. The process depends on good working relationships between ministers and other regulators. In the 1999 review differences between the EA and Ofwat were noted by many, including MPs. In 2004 there was a greater sense of partnership, but some water companies still felt that there was little evidence of the EA accepting the need for economic justification when advising on necessary solutions. Water UK is pleased that Water Act 2003 requires memoranda of understanding between leading participants in the periodic review and hopes that the EA will see this as a positive step.

27. The EA has a duty to pursue sustainability. One of the requirements of the national sustainable development strategy led by Defra is for integrated policy solutions, but we believe that there are occasions when the EA seems to take no account of this. An example is in demanding tighter river quality standards which require a higher level of wastewater treatment, but ignore the higher energy consumption, higher carbon emissions and higher cost to other sectors that follow. The EA needs to make more use of cost-benefit analysis to ensure that it meets government sustainability targets.

Planning system

28. The EA is the “competent authority” appointed by government to lead implementation of the water framework directive. The directive is an example of a new breed of legislation less suited to traditional regulatory methods. The EA will have to work closely with a wider than usual range of stakeholders and “co-delivery” organisations to meet its responsibilities. We believe that it must exercise positive and timely influence on spatial planning to ensure that developments are sustainable. As long as the link between spatial planning and the water environment is strong and enforceable there is no reason why the water framework directive and the government’s sustainable communities plan should not be compatible. However, if development plans, water resource plans and river basin plans (at the heart of the water framework directive) are not properly integrated, the environmental limits that are essential for sustainability could be exceeded.

Point 5: Relationships with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services

Non-government stakeholders

29. The EA needs to work more closely with other organisations to deliver its objectives. Its corporate strategy 2006–11 speaks of the importance of enabling staff to spot opportunities and forge partnerships that produce benefits for the environment. We endorse this commitment, especially the implication that there will be more scope for local decision-making. Three examples will illustrate the potential.

30. First, water companies depend on the EA to help them interpret government requirements. A positive example this year has been in relation to development of drought contingency plans due in draft by April 2006; EA guidance has helped make sense of complicated, occasionally unclear, legislation. Second, we believe that the EA could work more closely with River Trusts to help deliver monitoring and improvement programmes as the water framework directive unfolds.

31. Third, we sense that the EA's relationship with agriculture may need to improve if the commitment to tackling diffuse pollution is to contribute positively within the government's Catchment Sensitive Farming initiative. It is clear that ever-tightening control of pollution at source is subject to the law of diminishing returns and is becoming less and less sustainable. One example of the need to build trust is the Voluntary Initiative on pesticides involving the crop protection industry, farmers and water companies. The EA's response in the pilot catchments has been stand-offish, which may be understandable for the regulator. However on occasions when EA support has been sought it has played the part of traditional regulator in an initiative designed to test more modern, flexible approaches. We believe that the EA needs policy principles that both apply in many cases, but give it the capacity to view each issue individually and take a wider view of the consequences of its actions and how it engages with stakeholders.

General public

32. The EA has a duty to involve interested parties in its work. This will require a new way of working, with more engagement of the public through an innovative communication strategy. It is impossible to overestimate the importance of accessibility through interactive communication and web technology to the EA's future relationship with the public.

The benefit will be in growing awareness of environmental limits. The temptation might be for the EA to strengthen its role as environmental champion, but Water UK believes that it is more likely to succeed through sound science and building its credibility as an impartial regulator.

Monitoring satisfaction

33. We have been encouraged by the EA's increased desire for feed-back from stakeholders on its performance. We hope that the findings are used to inform and improve its services.

Point 9: Environment Agency's forthcoming corporate strategy 2006–11

34. The Agency's strategy rests on a vision for improvement. It covers quality of life, wildlife, air, water, soil, business, natural resources, climate and flooding. Water UK believes that, while there may be disagreement on some aspects and about how best to achieve the aims, few stakeholders will argue with the overall direction or the account of the nine priorities.

35. The final sections of the strategy—*Improving the way we do things*—seem particularly relevant to the Committee's enquiry. Water companies hope that better ways of working with regulated sectors will develop during implementation. A key element of this will be avoiding duplication of effort by regulator and regulated. Partnerships to build evidence and assemble and use the best available expertise will be central to the delivery of sustainable outcomes.

Water UK

December 2005

Witnesses: **Mr Michael Roberts**, Director of Business Environment, and **Mr Steve Bailey**, Director, Environment Health and Safety Strategy and External Relations (GlaxoSmithKline), Confederation of British Industry (CBI); **Mr Gary Booton**, Director of Health, Safety and Environment, and **Ms Anna Latham**, Environmental Adviser, EEF; and **Mr Barrie Clarke**, Director of Communication, and **Ms Alex Martin**, Head of Water Strategy (South Staffordshire Water PLC), Water UK; gave evidence.

Q101 Chairman: Good afternoon, ladies and gentlemen. In the words of a famous radio programme of yesteryear, if we are all sitting comfortably then we will begin. Can I welcome to this evidence session on the Environment Agency representatives of the CBI, represented by Michael

Roberts, their Director of Business Environment, and Mr Steve Bailey, who is Director of Environment Health and Safety Strategy and External Relations for GlaxoSmithKline; the Engineering Employers' Federation, Gary Booton, Director of Health, Safety and Environment, and

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Anna Latham, their Environmental Adviser. Finally to Water UK, to Barrie Clarke, their Director of Communication, and Alex Martin, Head of Water Strategy for South Staffordshire Water PLC. All of you are most welcome and, on behalf of the Committee, can I thank you for the written evidence which you sent to us. We are always interested in what people think in overall terms of an organisation like the Environment Agency. On their website the Agency tell us the following: to look after the environment and make it a better place for people and wildlife for present and future generations. That is what they say they do; who would like to take first cockshy at whether you think they do it?

Mr Bailey: The Agency has a critical role in a very difficult situation. A lot of things that they do they do quite adequately; they are also working very hard to improve what they do. They still have some difficulties in front of them and we are hoping we can contribute to making a difference there.

Q102 Chairman: Some people have suggested that, as an Agency, they have suffered from mission creep without the necessary resources to bolster that up. Others have suggested they have had mission creep because they are doing things they ought not to do. What do you think?

Mr Bailey: I think their role is changing and the change has been forced upon them. If you look at legislation that comes through from Europe, and that may be 70% of our environmental legislation now, there is a trend away from legislating just operations towards legislating products, and that is something which the Agency is not geared up to do but they are going to have to do. I think the first example is probably the WEEE, electronic government regulations. That is going to require a different sort of approach, different skills and different organisational structure and we see that creep coming in now, for four or five years. I think it is a very tough one for the Agency to get to grips with. It is going to get worse with legislation like REACH coming through.

Mr Booton: Picking up on that point, I think clearly there is some mission creep in EA's remit and I think some of that is being planned for at the moment, as a deliberately strategy, by looking at their forward strategy till 2010, we see a broader remit being opened up for the Environment Agency. I think it points up one of the significant problems our members face, and our members are predominantly manufacturing businesses, which is that there is a dual role, that of policing versus—and it is a pejorative term—advising businesses and we believe that there needs to be more consideration of how those roles can be delivered effectively. There certainly is a role for a policing organisation, that is a vital arm of the operation, but much more in the future we seem to be going forward into an Agency which is about encouraging continual improvements in environmental performance. We believe that will

need a new strategy and new skills coming from the Agency to deliver that effectively in a business-appropriate way.

Q103 Chairman: Let me ask you this, because it follows from something you said in your evidence, which is the juxtaposition between enforcement and advice, particularly as it affects smaller companies. How do you think the Agency can tackle that problem of improving its advice services, against a background where some companies might feel that if they declared their hand would they risk a prosecution?

Mr Booton: Can I hand over to Anna because she has some evidence on that.

Ms Latham: I think it is particularly a problem for small companies in that, for a lot of the legislation they are trying to comply with, it is not simple legislation, it is not like getting a parking ticket, it is complex legislation in a lot of cases. What they need to be able to do is feel they are able to approach the Environment Agency for help with asking if they need to comply and what they need to do to comply. Really we are talking about the perception of the Environment Agency and them making themselves more approachable to business, to be able to approach them and ask questions without fear of being prosecuted. I do not think necessarily they need two separate strands to their business, they do not need an advice service that is separate from their enforcement business, but they need some kind of structured procedure in place which reassures companies that if they approach them for advice they will not be prosecuted; they need to know what the warning system is.

Q104 Mrs Moon: I just want to be clear that the issue was not just fear of prosecution but the fear of costs; you get the advice and the cost implications are such that you wish you had not asked?

Ms Latham: Absolutely, and particularly as we are seeing this mission creep, if you like, and the strategy encroaching into areas like sustainable communities and all those sorts of things; who is going to pay for that?

Mr Clarke: The water industry has a detailed and very strong and long-standing relationship with the Environment Agency. In fact, we share responsibilities for many different aspects of the nation's life: the whole water resources situation, the business about regulating sewage effluent. I would like to add to what people have said, with none of which I disagree. I think there is going to be a different approach needed, but I would like to introduce the time sequence. I think things have changed quite radically as to what is expected of the Environment Agency and they are reacting to that. What we are seeing is a move, in our language, from regulating point source pollution, that is gross pollution, of the really worst sort, which gets our country a terrible name, to something which is much more insidious and subtle, which we tend to call diffuse pollution, and

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this is something which is going to require a totally different sort of approach. It is reflected in some of the environmental Directives that are coming from Brussels and that now are part of our legislation, notably the Water Framework Directive; what will be the Agency's role within all of this? The kind of approach and characteristics that they have developed to deal with gross pollution, we suggest, would not really be very relevant to the new task that they are facing.

Q105 Chairman: It is alright posing the question but what is the solution?

Mr Clarke: I think they have got to build on their science base. We have great respect for the depth of that science base. Certainly their background in the water sector, in many ways, is the same as that of other water companies, so they have not let that go, but there will be questions, and they may come up in the next few minutes, about whether they can recruit and retain the right level of staff to provide the kind of advice that is needed. I would agree with my colleagues on what has already been said.

Q106 David Lepper: Mr Clarke and Ms Martin, in your written evidence,¹ you say a lot of interesting things but two in particular on this theme. You describe the Agency as having been "prescriptive and confrontational" in its approach, very often, and suggest that has "led to missed opportunities and customer relationships that have worked against best outcomes". You say also, that a "prescriptive and confrontational" approach in the past contributed to the success of its strategies. That suggested to me there might be people out there, in whatever area of activity, who would not have done so swiftly or thoroughly what they were supposed to be doing but for the confrontational, as you have described it, approach of the Agency, and yet you are saying they need to move away from that. Could you just explain what seemed to me to be a bit of not exactly a contradiction but a duality there?

Mr Clarke: I think the explanation for it is in the timeframe, because originally the need was for some very clear, shall we say even heavy-handed direction as to the way we were going to solve the gross pollution that was affecting the country. In more recent years, particularly, and I would come back again to the Water Framework Directive, that same kind of approach is not going to work in the same way, so it could well be missed opportunities and we do feel that our companies have looked to the Agency, in their local areas, their normal contacts, for advice on the Water Framework Directive and have not been able to receive it. I think actually my colleague, Alex, has a point that might be relevant.

Ms Martin: An example of a situation where they have gone in a little heavy-handed perhaps is on the Voluntary Initiative on pesticides. The Environment Agency were not involved at the

outset on one of the example catchment areas in our area of supply. An issue came up with pollution from pesticides and the Agency were invited to join, on the basis of advice and moving forward with a relationship, and they came in and took a different approach, at which point the group almost fell apart because of the culture and approach that they were taking. That is a missed opportunity; that relationships could have been built, with external money from Voluntary Initiatives, and the Environment Agency could have been getting more bangs for their bucks, if you like.

Q107 David Lepper: Would representatives of other agencies agree with what has been said?

Ms Latham: I can illustrate with an example from one of our member companies of where they have approached the Environment Agency for advice and what they have been faced with is prosecution. A small plating company in the North West had a spill internally, inside their own factory, so not a high level of environmental damage from that spill. It was not external, but they did the right thing, they wanted to know what to do about the spill, so they rang the Environment Agency and said, "Look, it's happened; what should we do to rectify the situation?" The Environment Agency wrote back and said "Thanks very much for letting us know. Next time it happens we'll fine you." That is exactly the sort of approach which deters our members from approaching the Agency. Of course they have an enforcement role and of course business should be prosecuted where they have been irresponsible, we do not disagree with that, but we need a balanced approach where the Environment Agency perhaps helps companies to put improvement programmes in place to rectify situations, rather than just going straight for the red card.

Mr Roberts: I think we have had examples also where a prescriptive approach has not been particularly helpful. I do not think it is necessarily prescription which is the problem but, where prescription is applied, whether it is well justified. To give you an example, in our experience, it relates to the application of a particular dimension of the Landfill Directive, where the Directive itself talks about the need for a risk-based approach, in other words, looking at each case upon its merits, with regard to the use of existing landfill sites for particular purposes. In practice, we were finding, from members who were affected by this, that the Agency was not adopting a risk-based approach but, in fact, was adopting a dirigiste approach across all sites, so it was a degree of prescription which was not, in fact, in the spirit of the Directive which was causing some significant disbenefit to affected firms. We then had a conversation with the Agency, which has led to some movement, I would not say it has been perfect, but it is an example where the basis for the prescriptive approach has been at fault rather than necessarily the prescription itself.

¹ Ev 29

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Q108 David Lepper: In view of what you have all said, I am wondering whether this has something to do with the quality of—I do not know—the experience, the approach, of particular officers of the Agency in particular regional offices. I know that, Mr Roberts and Mr Bailey, in your evidence,² you talked about the quality and experience of local inspectors varying considerably, as do their opinions on environmental issues. Just as it has been suggested there may be some people who fight shy of going near the Agency and therefore a problem becomes worse, because they are worried about the consequences, it suggests, I think you suggest, that there may be people who are shopping around. Do you have members who will go to an officer in one particular region because they think they might get more amenable advice than from elsewhere?

Mr Bailey: We have seen cases certainly where inspectors in different regions give different advice or take different interpretations on the legislation, and obviously if those different operations all belong to one company we hear about that and we ask “Why is it different?” I think you are right about the point of experience. We see that less-experienced inspectors tend to follow the rules more prescriptively, rather than using judgment, they are less capable of giving a proportionate response to a situation rather than a very clear-cut “It must be this way,” or “It must be that way.” We spend a lot of time actually educating inspectors, bringing them up to speed on what are our operations, what are the issues with our operations, and we find that they move around quite frequently, so within months or a couple of years you lose that effort and you have to reinvest it in a new inspector before they can get to the point where they can give you really good advice. I think there is a big opportunity for the Agency to work in a more collaborative way. Most companies are trying very hard to comply with legislation and to improve the environment and we would welcome the kind of involvement of saying “How can we do better here and let’s work towards that up front,” rather than “Oh, you’ve failed to follow this rule exactly; let’s do something about that.” There could be a significant change. Perhaps just as an example, as a comparison, we also work with the Health and Safety Executive; they are much more collaborative, they are much more open to input before anything ever goes wrong. We tend to see more change happen on that side because industry and HSE are working in partnership to make it happen, rather than potentially in conflict when something goes wrong.

Q109 David Lepper: There seem to be people nodding along the row?

Ms Martin: Another factor which influences the staff performance and inconsistency is what has happened under BRITE; it seems to have moved policy away from the practicalities at the sharp end

and the local staff and therefore they have this difficulty of interpretation of what to do because they are a bit more removed. That compounds with the lack of experience of some of the local people.

Q110 Chairman: In what context was that?

Ms Martin: Under the BRITE initiative, where they have moved policy to the supra-regional level.

Q111 Chairman: If people had the time to jot down an example, it would be very helpful for the Committee. Thank you.

Ms Martin: Yes.

Mr Booton: Can I just add to that regarding experience, or inexperience. It is certainly one of the concerns which manufacturing members have raised with us on a number of occasions; it is individuals following the letter of guidance, often guidance rather than the law, and a rigid interpretation of that. We put that down to inexperience predominantly, but also recognising and echoing comments of the reflection between the EA and the Health and Safety Executive about if you were at the highest levels within the EA perhaps a lack of willingness to move forward into more open relationships with business. One particular example which we have been involved in is on the health and safety side, which is pushing forward a so-called On Trust initiative, which is where some very large companies are working with HSE, as the Health and Safety regulator, to develop good practice so that the regulator can put its resources elsewhere, which obviously is very much in the Hampton type of design of things. When we have brought forward similar initiative proposals for the EA they have not been as welcoming to those proposals, which is surprising given that the demands on their time are ever greater, and we think there would be an opportunity to be more flexible without reducing standards, putting the resource where it is needed.

Q112 Lynne Jones: In the Water UK submission, you say there has been a departure of experienced staff and difficulties in recruiting so that there are less-qualified recruits who are less technical. From where have you got that information and what is the cause; has there been a mass exodus or is this just normal turnover?

Ms Martin: Turnover does seem to be very high; it is from personal experience on a number of projects I have been involved with. I have seen a different member of staff at every six-month meeting because they have left or moved on, particularly in areas like hydrology, and they seem to rely very heavily on graduate placements. Rather than people being junior staff, building their experience and moving along, they get in short-term contracts, which does not help continuity or consistency or building knowledge. Most of that comes from personal experience.

Q113 Lynne Jones: This is a perception; you have not got any information on it?

² Ev 24

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Ms Martin: It is a perception and discussion with Environment Agency staff that I liaise with; they do seem to suggest themselves that there is almost a policy that the way they retain their staff within the Agency is to move them round, rather than progress them within the same kind of area.

Q114 Lynne Jones: You imply that experienced staff have been leaving; where did you get that from, that rather than being moved around to different areas they have actually been leaving the Agency?

Ms Martin: I know of one, I think, who has gone to consultancy; of others that have gone to other regions. It is perhaps misleading that they are leaving the Agency altogether; certainly they are moving from area to area and you are losing the knowledge in that particular area.

Mr Clarke: This is a wide experience across the water industry and I think sometimes it is exacerbated by the complexity of the organisation, which means that if there is a meeting to discuss a particular issue the structure of the Agency means that quite a large number of people tend to turn up for the meeting; that is people representing functions, supra-regions sometimes and regions. It is a slightly different point but of course it is very expensive of resources, and perhaps it is not so surprising that there are going to be fresh people brought in at different points, but it is something that, it is true, we have not got chapter and verse on, but it is a widely-experienced phenomenon within our industry.

Q115 Chairman: You say in your evidence: “Water UK believes that the EA’s wide range of responsibilities requires strong strategic direction and a cohesive management structure, which have not always been in evidence. An example is lack of coordination between the centre, regions and areas...and between different functions...”³ Does that manifest by the fact that all these different people turn up to discuss the same thing?

Mr Clarke: It is partly that; it is also manifest in some of the inconsistencies that we have been talking about and it is the capacity to drive through consistency of policy that I think sometimes is lacking.

Q116 Chairman: Do they need a different structure then?

Mr Clarke: The Better Regulation Improving The Environment, the BRITE development, was intended to do that and I think that we gave it a fair wind at the time, because it did try to create a policy-generating unit at the centre and then for the work to follow that, but unfortunately it seemed not to have worked out in quite that way.

Q117 Chairman: Why?

Mr Clarke: It is hard really for us to say.

Q118 Chairman: You said so, in this paragraph here. You would not have commented if you had not got some basis for making the comment?

Mr Clarke: The comment is related to the fact that there are different interpretations. It appears that the policy is not properly communicated so that there are different views taken by different people at the lower levels.

Mr Roberts: I think the Agency itself recognises that there is an issue about inconsistency on enforcement and interpretation and, to that end, has set up the Strategic Permitting Groups, for example, as a way of trying to improve the consistency between the centre and the field officers and between field officers. What I think we observe across the various representative organisations is that the benefit of that initiative is not yet fully worked through the system and that the movement of staff between functions, I am not sure if it is necessarily people leaving but certainly the movement of staff between functions, has not helped. On the issue of people actually leaving the organisation, just one example that I am aware of is that in the North East apparently Agency staff have been leaving to go to join the RDA, and there the driver has been the differential in pay that has been offered by that particular organisation. That is only one example and we have not got the figures, to be fair, that paint the generic picture about the extent to which the Agency is losing staff, but I think it is more the movement of people within the organisation which has been the issue.

Q119 Mrs Moon: I would like to pick this up in terms of your comment about policy and inconsistency of interpretation of policy. You are going to have to excuse me, Chairman, because I have got to go to my statutory instrument committee, so I will ask my question and hopefully Roger will follow it through. I am just wondering how much the inconsistency that you are talking about is also driven by where the policy directives are coming from and how much perhaps Defra is driving in one direction and the Welsh Assembly is driving in another. How much is that affecting your perception that there is inconsistency for the various bodies that you represent and how much is actually down to an individual inspector and their skills base?

Mr Roberts: Can I give you two observations. The first is, there is an inherent challenge, in terms of providing consistency, with regard to enforcement by the Agency, and that is the challenge posed by trying to adopt a risk-based approach, which business recognises as being the most favourable approach here. In other words, if you are asking the Agency, as the enforcer, to look at each case on its merits then inevitably that is going to challenge the ability to be consistent. However, within that context, our observation is that the arrangements are not particularly helpful because

³ Ev 31, para 7

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of what we have perceived to be the lack of clarity in terms of the relative responsibilities of the Agency, on the one hand, and Defra, on the other. What we observe is that, in certain circumstances, Defra, as the policy-maker, fails to establish significantly a lead in terms of how the policy ought to be designed and interpreted. In that vacuum the Agency then steps forward, not unnaturally, but what tends to happen is that decisions about how regulation ought to be interpreted or enforced is, if you like, in colloquial terms, made on the hoof rather than being a function of a very well structured process at the front end in deciding how things ought to be enforced so that the Agency then can go on and do it.

Q120 Chairman: Have you got a concrete example of that you could let us have in writing?

Mr Roberts: Certainly.

Chairman: Good; because at all of these sessions, of course, somewhere in the audience the Agency is lurking, writing this down, so that the mystery of having your example before us, before they come to see us in a week's time, will be very helpful.

Q121 Mr Williams: Going back to the staffing issue, certainly the Environment Agency and Water UK must be recruiting in the same pool, so to speak (sorry about the pun there), and I am just wondering if there are enough people with the sorts of skills and the sort of ability in order to meet the requirements? I was at Cardiff University yesterday, where they have just set up a new course on, I think it is called, geohydrology, on the basis that there was a need for people with these skills.

Mr Clarke: Certainly I would agree with that and it is something that our industry has noticed in recent years, which has been a fall-off in people studying the specific requirements in hydrogeology, for instance, and it is worrying. Quite a number of companies, I think, are taking steps to encourage people to see them more when they do the milk-rounds, to promote this kind of aspect, the technical aspects, on which the whole thing depends, in the end.

Q122 James Duddridge: I will ask two questions which go together quite nicely. Firstly, what would you consider a more appropriate form of funding for the Environment Agency? Secondly, how can the Agency achieve greater transparency in terms of how it prioritises and finances all of its activities?

Ms Latham: One thing we have always called for clarity on is what Grant in Aid can be used for; that is the money they get from Defra to do certain activities and it is not clear to us what they can use public money for and what they should be recovering through charges from industry. Really we turn the question round and ask for clarity on that.

Mr Clarke: I think we accept that where there is transparency it is appropriate for the Agency to recover their costs from their customers; that would seem to be a normal relationship, though

unfortunately that transparency is missing sometimes. In our written submission we talk quite a lot about abstraction licences and the way that the charges are set in abstraction licences is not clear, it is not clear to us how the money is used. It is quite a complex question but there is an important point; in principle, no problem. Occasionally we would agree that Grant in Aid may well be a more appropriate source of funding than, for instance, water customers. I think it is true to say that, in the business of abstraction licences, when the National Audit Office looked at the business of charging people for water abstraction they found that there was an unseen subsidy from abstractors to other customers of the Environment Agency or to the Environment Agency in ways which were not visible. This is something which concerns us; and when there are complex changes afoot, which there are now, for instance, in the whole business about permanent licences for water abstraction being withdrawn, and the whole question about the compensation which that is likely to attract, then you can see this is a matter of some importance, and we are talking there about quite large sums, of course; it is a major part of water companies' business.

Mr Roberts: I think one of the contentious areas is about who pays for the Agency to enforce regulation against the habitual offenders, in common terms, the cowboys. I think, amongst the vast majority of our membership who take their responsibilities seriously and who wish to be compliant, they are desperately keen to see enforcement of the regulations carried out effectively and rigorously. The challenge is that there are some who are beyond the pale, if you like, and who regularly flout the law, and the question-mark is whether those who are compliant should be financing in some way that particular activity beyond the charges which they pay already to be compliant with their permit. This is a particular challenge, because the Agency is keen to deal with the cowboys but has a lack of resource to do that properly and is trying to find ways in which you can find the right sort of resource and has been looking to, for example, funds under the BREW programme, which is the recycle revenue from the additional landfill tax receipts in future years, which is not uncontentious within the business community. I think the cost of enforcement and pursuit of the cowboys is the classic area where either it should be funded through Grant in Aid or potentially through the revenue from fines against those who have genuinely transgressed.

Q123 James Duddridge: Is there, longer term, a percentage figure, that you will expect the Environment Agency to be funded via Grant in Aid, as opposed to via licences, or other similar revenue activities, so a percentage split that would be optimal?

Mr Roberts: We have not got a view on what that figure might be, but one observation I would make is that if, as indeed the Agency says it is, the Agency

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is truly committed to the Hampton agenda, the Better Regulation agenda, and delivers truly on a risk-based approach, one would expect the overall cost of enforcement potentially to come down. Therefore one would see that actually being reflected in the level of charges, but it might also be reflected in terms of the amount of grant aid that is needed.

Mr Clarke: Can I add a sideline to that, that we have been very pleased that the Agency has got involved with us in Defra's, what I think they call, anti-red-tape project and there have been a number of areas that they have put forward, or we have put forward together, that we would look at. For instance, some duplication in monitoring the waste water consents that I was mentioning earlier; it is not really necessary for both sides to do that and the Agency have accepted that companies have to do it, so can we devise a system of us being rigorously monitored but that only one person has to come and actually do that monitoring? I think, to be fair, they have been very keen to work with us on that kind of contract, so we have some high hopes that might work.

Q124 Lynne Jones: In relation to the cowboys and the enforcement, would you like to see the Environment Agency given the ability to apply its own penalties, to fix penalties, and do you think that the fines, the penalties against the cowboys, not the people who are genuinely seeking assistance, are high enough?

Mr Roberts: I think there is a view amongst our membership that a new approach is needed, whether in terms of the level of fine or indeed the use of administrative penalties of the sort that I think you are hinting at, particularly against that part of the business community. I think though there are some issues to be resolved, for example, the extent to which there are appropriate means of appeal, in the event that administrative penalties are used, because there is always the likelihood that the Agency may be tempted to use that approach rather more rigorously than might otherwise be desirable, in the interests of raising sufficient revenue to do the job that it wants to do. I think the ability to appeal against those fixed penalties is quite important and I do not think there has been sufficient thought given yet to that part of that debate.

Q125 Lynne Jones: Higher fines for cowboys?

Mr Roberts: Yes.

Q126 Chairman: It is very interesting, when you compare and contrast the evidence from each one of you, there is a consistent theme running through, which is lack of transparency and a real feeling that somehow industry is being screwed, to use modern parlance, in terms of the financial demands being made upon it in the charging regime to make up for lack of grant. Is that a fair observation? Mr Clarke, do you dissent slightly from that?

Mr Clarke: I would have to dissent slightly from that, because I think we are particularly concerned about the transparency of it. I think I tried to say that the principle in itself is not a problem but we do find frequently that we cannot understand how a particular metric, for instance, in terms of a standard unit charge, might be applied in a particular case, why it would be like this, and there seems to be no answer.

Q127 David Lepper: We have talked already about what one of you, I think, described as a kind of policy vacuum in Defra on some topics which leads to the Environment Agency taking on a role of policy development, interpreting policy. Is there a feeling among the organisations here that is a real problem, that there is a conflict between the Agency's role as adviser to the Government, merging sometimes with policy-maker perhaps, and the Agency's role as regulator and enforcer? Is there a problem with those two functions, or the way they are carried out?

Mr Bailey: This is an area where we have experienced a lot of difficulty. The main result of it is delays in getting clarification on what we should be doing, whether facilities are actually within the scope of certain regulations or not, and that makes it hard for us to take decisions. I think it is important to differentiate between the policy that goes into developing legislation and the policy that goes into interpreting and enforcing that legislation, and it is the latter area which has tended to cause us the most difficulty. As an example, at the moment we have the Pollution Prevention and Control regulations just coming into force for our sector. For the last two years we have been trying to get clarification on whether research and development operations are actually in scope or not; we still do not have an answer on that. Right now we are having to apply for authorisation because we are up against the deadline and we want to be compliant, so it is costing us money which eventually we might not need to have spent and that is caused by delays in the system. Our feeling is that those delays arise from the interaction between the Agency and Defra; it is a sort of ping-pong of policy issues going backwards and forwards, with no-one quite taking ownership of it. We have seen this in a number of examples, not just the one I have quoted.

Mr Booton: I think for us as well the absence, up until certainly very recently, of effective project management across Defra through the EA, in terms of delivering particular policy outcomes, has been notable by its absence. The tension which was just referred to is one which we recognise well, where certainly the EA have been left in a position from time to time where they are filling a vacuum. There is also, although this is not an inquiry into Defra but the implications of Defra and its activities I think are fairly clear to our members in this area, and that is that there is almost a lack of ownership in terms of delivery, because the policy design is Defra's responsibility and the delivery on the

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ground in England and Wales obviously is EA's. That is certainly a cause for concern, in terms of which types of policy. I think the best area to flag this up, which impacts on virtually all business, is that of waste. Obviously, one could argue that the design of the underlying directives are part of the problem, that may well be the case, but when we have an Environment Agency with some broad objectives allied to sustainability we see enormous challenges, and I think that is an understatement, in order for Defra/EA to move forward and improve waste recovery levels. For example, where we have a definition of waste, which the EA are bound to and which create nonsenses, where businesses want to recycle, want to reuse and are prevented from doing so.

Mr Roberts: If I could add one point, just to be clear. Whilst I think we all share a view that there have been instances of a policy vacuum and that has not been helpful to business, that is not to say that the Agency should not be involved at an early stage in the discussions about the design of policy, which subsequently it has to enforce, for the obvious reason that it will have a view, and an informed view, about the practicalities of implementing and enforcing regulation. It is not about saying that they should be kept apart from the discussions but clearly they should be involved in a context where Defra is leading. To give you one example which is current, which is of concern to us, which relates to the transposition of the Environmental Liability Directive, actually it is a case where we are in danger once again of transposing in a very compressed timescale and in a roundabout way, the UK was instrumental in getting a good result at the European level in the design of the Directive. We are losing the opportunity of making the best use of time to get the transposition detail right and, whilst there are a number of stakeholders that are being involved under Defra in the discussion about transposition, as far as we are aware the Agency is not being properly involved in that discussion and that seems to be quite a significant drawback.

Q128 Chairman: It sounds like fridges all over again?

Mr Roberts: You might say that, Chairman, but I could not possibly comment.

Q129 David Lepper: Are you suggesting there that there are bits of plant that need to be built, for instance, or are there processes that need to be developed, that your members or others ought to be getting on with and they cannot?

Mr Roberts: It is less obviously about that, which I think was one of the issues surrounding fridges, it is more about the terms under which the Directive will be applied. For example, in the event that there is some form of environmental damage, there are provisions within the Directive about the defences that a company that is accused can bring, in the event that it is actually being accused. For example, the so-called state of the art defence or

the permit defence, in other words, if it has been compliant with the terms of its permit and yet there is still environmental damage which people then feel they want to pursue that company for, we think it is legitimate, and indeed the Directive suggests it is legitimate, that the company should be free from prosecution because it is compliant with the terms of its permit. There is detail surrounding those sorts of issues which we need to bottom out in the transposition process and we have not got much more time to do it. As I say, there is a sense that the Agency, which at the end of the day will be responsible for policing this, seems not to be involved as fully as it should be.

Q130 Chairman: Can I raise with you an issue, this particularly to Water UK, which your evidence raises, which I find quite interesting, because the Environment Agency ought to be able to draw together, in dealing with environmental issues, the sum total of its parts, but in paragraph 25 of your evidence you say: "We believe that the quality of its advice would often benefit if the EA took a holistic view." Then you go on to tease that out. Then later, in paragraph 27, you draw our attention to the fact that: "One of the requirements of the national sustainable development strategy led by Defra is for integrated policy solution . . ." Then you go on to talk about, on the one hand, raising standards, in terms of river quality, but not then calculating the impact on other aspects to achieve that policy objective, energy consumption, higher carbon emissions, higher costs to sectors that follow. That seems to me like a very fundamental failing for what is supposed to be an integrated environmental agency?

Mr Clarke: I do not think it is entirely the Environment Agency's fault that the problem comes partly with the legislation itself. There are several questions here, of course, because I think we have just been establishing that the Environment Agency ought to be and is intimately involved with the Government in advising and helping it to frame the Directives that are going to influence us here. I think they do need to take this concept of an integrated approach where you cannot just trade off one thing against another and say that everything is going to be alright, and this is partly to do with this different kind of culture. Defra has completely revamped its Sustainable Development Strategy, I think to take account of just this sort of point. People have tended to take one particular pillar of sustainability, as we used to call it, and then that became the be all and end all. Maybe there is still some of the same kind of thinking within the Agency. They want to be the champion of the environment, albeit in the context of sustainability. I think we would prefer them to be the expert on the environment in the service of sustainability, if I can coin another phrase. The implications of all of that are certainly that you get idiotic developments: investment, to tighten standards to improve wastewater effluent, and then massively increased energy expenditure.

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Chairman: Thank you all very much indeed. I am sorry, inevitably time is always the great enemy to exploring a number of the very interesting points that you have raised both verbally and in your written evidence. What I would say to you is that, whilst you cannot undo that which you have said, if there are any further points that occur to you that you want to drop us a line on, we would be delighted to hear from you, and in one or two cases where you have agreed to supply some further evidence we look forward to receiving it. Thank you very much.

Supplementary memorandum submitted by CBI

1. At the committee session on 17 January the CBI agreed to provide the committee with additional evidence on the relationship between the Environment Agency and Defra, with particular reference to policy making. The following points are additional examples to illustrate why we feel that this process is currently not working effectively:

- The Landfill Directive requires that adequate financial provision is made to cover the costs associated with the closure of landfill sites. The EA proposed the landfill operators should be required to set up Escrow accounts to guarantee these costs were covered. This was a disproportionate approach to the issue and went beyond the requirements of the Landfill Directive. In Scotland SEPA will accept a letter from Directors and do not require even bonds as a guarantee. The EA's costings to justify the proposition were also quite wrong. On such a major issue Defra should have taken the lead, by providing examples of what would constitute adequate financial provision, rather than leaving the details open to prescriptive interpretation.
- The implementation of the Groundwater Directive led to a number of instances of over-prescription and confusing advice from the EA. The example that we raised in our oral evidence related to the requirements for landfill sites and the problems around guidance on "piggybacking". Another area of confusion related to the implementation of the Solvent Emissions Directive and the implications of the Groundwater Directive. Operators using and storing solvents were sent a series of communications which ranged from advice to formal guidance. The legal status of these communications was unclear and went beyond the requirements of the two Directives. When questioned EA staff were unable to clarify the legal status either.

2. We thank the committee for calling the CBI to give evidence to the committee and we hope that this additional evidence is of interest to the committee.

CBI

January 2006

Further supplementary memorandum submitted by CBI

In response to the request for supplementary evidence on the EA's involvement in the consultation process on the Environmental Liability Directive, we provide the following additional explanatory points:

1. The CBI is a members of DEFRA's stakeholder consultation group on the transposition and implementation of the Environmental Liability Directive. This group is made up of representatives from DEFRA, DTI, industry groups and environmental NGOs.

2. This group is a combination of two separate consultation groups, one for industry and one for environmental NGOs, which DEFRA ran prior to the agreement of the Environmental Liability Directive.

3. The Environment Agency has never been represented at either the industry stakeholder group, or the combined industry and NGO group. At both groups the CBI and other industry stakeholders expressed a wish to discuss certain aspects of the proposed Directive and its subsequent implementation with the Environment Agency, but DEFRA does not seem to have acted on these requests.

4. The CBI sits on many other DEFRA stakeholder groups at which the Environment Agency is routinely present, for example on the transposition and implementation of the Water Framework Directive, on Integrated Pollution Prevention and Control and on Air Quality and Waste issues.

5. It is our understanding that the Environment Agency is involved in bilateral discussions with DEFRA on the Environmental Liability Directive. We would, however, like to see them involved in the wider stakeholder debate as their input will be key to resolving workability issues such as dealing with third party requests for intervention and advising on the permit defence.

CBI

February 2006

Supplementary memorandum submitted by EEF

INTRODUCTION

1. We would like to thank the Committee for the opportunity to elaborate in more detail some of the issues we raised in our initial written submission and in our oral evidence to the inquiry into the workings of the Environment Agency (EA). In particular, we will focus on two particular areas—the perception of the EA, and that of Grant in Aid funding and transparency of cost.

THE PERCEPTION OF THE EA

2. One of the biggest challenges facing the EA in their relationship with business is changing the perception of the organisation amongst the regulated community. The EA is often seen as “policing” and using heavy-handed enforcement rather than offering advice and guidance. This is illustrated by the following example.

3. A company within our membership obligated under the Pollution and Prevention Control (PPC) Regulations as a surface treatment activity had a spill inside the plant. The company are running on a very tight profit margin and had found the PPC process itself extremely demanding and expensive. The environmental damage arising was negligible as it had happened on hard surfacing and internally. However, as a condition of their PPC permit, they were required to report any spills to the EA.

4. The company therefore wrote to their inspector to inform them of the incident. The reply from the inspector thanked the company for reporting the incident and informed them that next time a spill occurred they would be fined. This attitude will not encourage a company to report an incident if one should occur in the future. For any company running at a very low profit margin reporting such an incident in the future may become a business decision. If spills are not reported and dealt with this obviously runs counter to the EA’s aim of protecting the environment.

5. A more helpful attitude may have been for the inspector to visit the site and assess what went wrong. They could then put in place a structured improvement plan to an agreed timescale that must be followed in order to ensure that such an incident is not repeated. The kind of incident outlined above is a case of a company doing their best to comply with the law and following the rules through communicating such an incident to the EA. In our opinion this scenario is not the most appropriate situation for the EA to use their powers of fining for enforcement. This is totally different to a company deliberately and consistently flouting the law, which is the more appropriate context for the use of fines for enforcement.

6. Although the EA may argue that the actual number of cases as outlined above is small, it is these sorts of experiences that influence the perception of the EA amongst the business community and make it less likely for companies to report incidents or approach the EA for help with legal compliance. This is clearly an area for improvement if the EA and business are to work together towards the shared aim of improved environmental performance.

7. We recognise that the Agency is as a regulator first and foremost and cannot resource a full advice service. However, we do believe that there are certain actions the EA could take in order to bridge this gap:

- It would be helpful if the EA had a “warning” system for those companies who are perhaps in breach of the law but are genuinely seeking help to remedy a situation. Instead of threats of prosecution, we feel an approach whereby the Agency insists on a programme of improvements to an agreed timescale may be more productive. If the company fails to adhere to the programme, the Agency should then use powers of enforcement. We note that some inspectors do already use this approach, but there is still a difference in approach between regulators. To standardise this and make the philosophy widely available would be beneficial. We understand that the EA has a “Mind the Gap” policy that aims to bridge the gap between high level EA policy and the decisions made by regulators on the ground. We welcome this and efforts made by the EA to standardise practice amongst inspectors.
- We also suggest that the EA may like to consider working more closely with the DTI Manufacturing Advisory Service (MAS). Not only would this make the environmental benefits of streamlining and resource efficiency more obvious to companies using MAS, it would also help to promote the Agency as a business friendly organisation.

TRANSPARENCY OF COSTS AND GRANT IN AID FUNDING

8. We understand that Grant in Aid is funding from DEFRA for core EA “set up” costs in the run up to new regulations being introduced. We also understand Government policy to recover the actual costs of regulation from industry charges under the “polluter pays” principle. However, what is not clear is where the dividing line lies for activities covered by these two different types of funding. Transparent rules should be in place to enable stakeholders to see what is legitimately inside scope for Grant in Aid and therefore what is chargeable. Current arrangements lack this clarity.

9. Whilst we accept that the EA must recover some revenue under the polluter pays principle, in some cases this concept is being stretched and revenue raised through charging schemes is not being used to cover the direct cost of regulating that particular activity. For example, some landfill tax money being recycled through the Business Resource Efficiency & Waste (BREW) programme is being used to fund a programme of fly tipping enforcement. This programme to target environmental crime does not directly benefit the companies that have complied with the law and paid their landfill tax. Funding programmes being used in this way blur the boundary between Grant in Aid and taxation/charging.

10. In addition, there are some cases where charges to industry are applied seemingly without full consideration of whether Grant in Aid would be more appropriate, and business is being asked to fund additional activities over which they have no control. These fees amount to an additional financial burden on business as the specific example below illustrates.

Under the PPC Regulations, industry in certain sectors is required to make an application to the EA (or Local Authority) for a permit to operate.

11. One particular current area of concern for our members is the EA policy for recovering funds for “contentious licensing” (sometimes referred to as “permits of high public interest”) under PPC. Contentious licensing arises where there is strong public opposition to an environmental permit application from a company. This can lead to an extended dialogue between the company, the regulator and the community in the determination of the application and a permit being issued.

12. Whilst many businesses are keen to engage with the public and build better community relationships, certain local stakeholders may be totally opposed to the presence of a particular business in their neighbourhood under any circumstances whatsoever.

13. Under the “polluter pays principle”, it is reasonable to expect that the EA recover costs for processing a PPC application and associated charges for on-going regulation for compliance with the permit itself. However, once a company has submitted a “Duly Made” application to the Agency, their legal obligation under the regulations for making an application has been satisfied. Any on-going engagement with the public on aspects of the application is beyond their control. Although the EA are required by law to open up the application for public comment, the level and duration of this engagement is flexible.

14. The EA has a responsibility to control the level and duration of such engagement. It should be made clear to the public from the outset that the company is operating within the law and its presence in a particular location cannot be challenged if it is compliant with the law. PPC is not an alternative to the planning process and business should not be forced to cover the EA costs of lengthy engagement with the general public, when often the duration and scale of this process is out of their control.

15. As it is the public that is benefiting from the use of EA resources in these instances we feel it may be an appropriate area in which Grant in Aid, rather than charges on companies, could be better deployed.

16. The recent EA charging consultation document—Proposed 2006/7¹ charges, in relation to dealing with complex licences attracting significant comment from the public, stated:

“Some of the licences we process attract attention and significant comment from the public and other consultees. This in turn generates significant additional work and hence costs for us. The [DEFRA/ Agency charging] review looked at whether the costs should be paid from government grant or charges and draft conclusions propose that use of grant in aid was not consistent with the key principles established by earlier stages of the review (page 8, Section 4.3).”

17. However nowhere in the DEFRA/Agency charging review² document does it state that Grant in Aid should not be used to recover contentious licensing costs. The report actually states that recovering the costs of contentious licences:

“has been identified as an issue requiring further consideration in stage 2 of the report” (page 31).

18. However, our understanding is that no further work has been carried out on stage 2 of this report as yet. It would therefore appear that the use of Grant in Aid to cover these costs has not been properly assessed to date.

19. The EA 2006/7 charging consultation at the end of last year gave four options for the recovery of costs from contentious licensing, all four of these options concerned recovering the costs from industry. Despite representation from several industry sectors expressing concerns similar to the ones outlined in this paper, and despite the conclusions of the EA/DEFRA charging review, the EA have still taken a decision to recover these costs from industry.

¹ Link to full document: http://www.environment-agency.gov.uk/yourenv/consultations/1180312/?version=1&lang=_e

² Link to full document: http://www.environment-agency.gov.uk/commondata/acrobat/review_of_charging_1211916.pdf

CONCLUDING REMARKS

20. We hope that this additional information is of use to the Committee, and offers some further insights into the two areas of extra interest. We remain at the service of the Committee and ready to answer any further queries there may be on the subject of the EA.

EEF

February 2006

Supplementary memorandum submitted by Water UK

1. Water UK is pleased to submit the following additional evidence in response to the Committee's request for an example of how the BRITE initiative has "moved policy away from the practicalities at the sharp end and the local staff".

2. Water companies' general experience is that the BRITE reorganisation has introduced additional processes which have slowed things down. Additional layers of bureaucracy and levels of decision-making have been introduced. Companies are spending more time going from areas to region to supra-region to discuss regulatory issues and submissions. This process can often be iterative and very time consuming.

3. A good example is decision-making about statutory drought plans. It is necessary to consult three layers of the EA in order to get consensus on specific elements (for instance drought permit sites) whereas in the past the negotiation was with the EA regional Water Resources Manager and his team who spoke on behalf of the Agency as a whole. For some larger water service companies this means speaking to three area teams, two regional teams and the supra-regional water resources team.

4. Day-to-day issues now have to be addressed at three different layers within the EA, and companies have to work to bring these elements together rather than getting a "one-stop shop" approach where one representative will speak on behalf of the EA as a corporate body.

Alex Martin

South Staffordshire Water

Barrie Clarke

Water UK

January 2006

Memorandum submitted by Environmental Services Association

SUMMARY

1. ESA is the sectoral trade association representing the UK's managers of waste and secondary resources.

2. Our sector is primarily driven by regulation. An effective and consistent regulatory framework will be the main driver if the UK is to comply with EU law, achieve national targets for recycling and recovery, improve resource efficiency, export environmental services and create jobs.

3. ESA's Members want the Environment Agency ("the Agency") to provide a structured approach to implementation of new regulations and their consistent and effective enforcement—Investors in appropriate new infrastructure to recycle, recover and treat waste need such regulatory certainty.

4. ESA wants a single environmental regulator and the Agency is better than its predecessor at regulating waste management. An effective regulator provides a consistent national approach and partnership enabling business to align economic and environmental sustainability.

5. ESA supports the Agency's "sector planning". A "waste sector plan" should improve regulation of our sector by providing a timeline of new regulations and how they will be introduced, implemented and enforced.

6. In 1999 the ETRA Committee concluded that "the overall perception has been that progress in creating an effective, coherent and confident new body has not been as rapid in the three and a half years since the Agency was formed as it ought to have been. This perception was confirmed during our inquiry."¹ Progress has since been made in a number of respects but ESA's experience is that the Agency's evolution into an effective, efficient and modern environmental regulator remains incomplete.

¹ Select Committee on Environment, Transport and Regional Affairs Sixth Report: The Environment Agency 1999, (paragraph 11).

(1) *The Environment Agency as an enforcer of environmental regulation and controls.*

7. Effective regulation is an essential precursor to sustainable waste management and the Agency is a significant improvement on the previous regime.

8. Operators need clear rules and the confidence that they will be consistently and fairly enforced. A national, coordinated approach to environmental regulation should provide consistent decision-making and certainty for waste management operators. Nevertheless progress in the decade since the Agency's inception has been slower than could reasonably have been expected, in part because the Agency has such wide responsibilities.

9. ESA would particularly welcome inspectors with greater specialist knowledge of regulated facilities and processes: the Agency should develop teams of specialist waste regulators, as recommended by the ETRA Committee², to ensure consistent high-quality decision-making.

10. The National Audit Office³ opined that the Agency has three functions in regulating waste management:

- setting out what should be done;
- monitoring operations;
- enforcement, prosecution and the policing of illegal activity

(a) *Setting out what should be done*

11. EU law requires that landfills be permitted under the Integrated Pollution Prevention and Control regime ("PPC" in England and Wales). Between July 2003 and July 2007 more than five hundred landfill sites must be "re-permitted" to comply with the IPPC and Landfill Directives.

12. Re-permitting has been muddled and costly and has exposed existing sites to operational uncertainty as regards precise requirements of the new regime and timing of the Agency's decisions.

13. Publication of Regulatory Guidance Notes (RGNs) by the Agency was intended to help operators to understand the requirements of regulations (such as new engineering specifications and groundwater protection) but in practice RGNs often caused confusion and delay and were issued, revised and/or withdrawn without adequate notice.

14. In response to our concerns with the re-permitting process, the Agency set up Strategic Permitting Groups. This cut the time taken to process applications and improved consistency but at the expense of a risk-based approach. ESA does not believe consistency and a risk-based approach are mutually exclusive: we seek consistent decision making in a risk-based framework.

(b) *Monitoring operations*

15. Once regulations are in place, systems must allow operators to comply. One instance of failure occurred in July 2005 when the Hazardous Waste Regulations came into force (five years late) and the Agency's electronic registration system was not reliably functional. Last minute arrangements were required to manage the backlog and thousands of producers of hazardous waste were unregistered as the Regulations came into force.

16. In 1999 the ETRA Committee noted that "despite the 'improved dialogue' with the industry of which the Agency boasts, it has still not done enough by way of training its staff to gain the confidence of the waste management industry".⁴ To help to develop Agency officers' skills, ESA organises an annual placement scheme. Each year, up to 50 of the Agency's officers spend two weeks at ESA's Members' facilities to learn how the sector operates. Since the scheme's inception, over 200 Agency officials have taken part. ESA has also led joint training on new regulatory requirements for management of landfill gas and ESA hopes to extend this approach to OPRA.

17. ESA also requires our Members to exceed legal requirements for the operation of landfill through reported compliance with environmental indicators agreed with the Green Alliance and adoption of health and safety targets.

² Select Committee on Environment, Transport and Regional Affairs Sixth Report: The Environment Agency 1999 (paragraph 31).

³ National Audit Office, "Protecting the Public From Waste", 2002.

⁴ Select Committee on Environment, Transport and Regional Affairs Sixth Report: The Environment Agency 1999 (paragraph 40).

(c) Policing illegal activity

18. Fly-tipping is a major problem. Even more pernicious is ongoing illegal waste management activity where waste is mis-described by unscrupulous waste producers, waste brokers or illegal operators and inappropriately handled.

19. We are extremely concerned that, following introduction of new regulations, volumes of targeted waste habitually fall, but no-one can satisfactorily account for the reduction. For instance, in July 2002 liquid hazardous wastes were banned from landfill but have not since passed through facilities built by ESA's Members to manage these wastes in accordance with the new requirements.

20. Similarly, new requirements in July 2005 for managing solid hazardous waste were expected to lead to large volumes of waste requiring treatment: again, this waste has not materialised. Whilst some hazardous waste presumably has been "managed out" of processes by waste producers, it seems probable that some is going astray.

21. In October 2004 ESA noted in evidence to the Environmental Audit Select Committee⁵ that:

"More generally, the culture of enforcement is still insufficiently strong to encourage investment. For example, the Grant in Aid budget from Defra to the Environment Agency, used to fund policing and enforcement of illegal waste activity, has been cut by £4 million for 2004–05 even though the implementation of more prescriptive EU environmental standards is so obviously bound, if inadequately policed, to increase criminal activity."

22. We instead want the Agency to devote sufficient resources to tackling illegal activity to establish a national culture of zero-tolerance. This must be a core budgetary and operational priority for a serious environmental regulator and Defra should release as much money as is necessary from its BREW budget and elsewhere to secure zero-tolerance.

(2) Whether the Agency operates efficiently and provides good value for money

23. ESA welcomes the Agency's initiative to "modernise" regulation, although we also note that tools of modern environmental regulation such as cap and trade systems are far beyond the scope and powers of the Agency.

24. The Agency's progress toward modernising its own regulatory activity was recognised by the Hampton review, although we below note that there is still room for substantial improvement on the ground, particularly regarding OPRA.

25. Modern regulation should increase efficiency, reduce costs for responsible businesses and enable the Agency to focus its resources on tackling poor environmental performers and illegal operators. Whilst its rhetoric has significantly improved, the Agency has been less successful in turning words into action. For example, responsible operators still report a high number of basic inspections rather than the more targeted and in depth regime NAO recommended in 2002.

26. Most of our Members' sites now have Environmental Management Systems in place. EMS represents significant cost to operators and operators would be better incentivised to extend EMS more rapidly if the Agency reduced the frequency or nature of its inspections at EMS sites.

(a) Costs to industry

27. In 1999 the ETRA Committee concluded that: "if the Agency is to maintain the confidence of those whom it regulates, it must ensure that the justification for its charges is clear" and that "if industry is to be charged in line with a top-level consultancy, it can reasonably expect to receive a commensurate level of service".⁶

28. The Environment Agency received approximately £250 million in charges from regulated industry in 2004–05. Fees have increased substantially in recent years—for instance, Waste Management Licence (WML) fees in April 2005 rose by up to 2,200% and in 2004–05 the average cost of application and subsistence fees for energy from waste facilities doubled.

29. High quality services require proper funding and ESA supports the principle of transparent cost-recovery from regulated businesses. That said, our Members are certainly not reporting better regulatory service.

30. Whilst nationally the Agency claims to implement its risk based approach through OPRA, in practical terms this barely moderates fees charged.

⁵ ESA evidence to the Environmental Audit Select Committee Inquiry into Hazardous Waste and Waste Policy, October 2004.

⁶ Select Committee on Environment, Transport and Regional Affairs Sixth Report: The Environment Agency 1999 (paragraphs 83 & 85).

(b) *Efficiency of permitting*

31. In 1999 the ETRA Committee noted that:

“If the Agency is to retain credibility as a regulator, it must ensure that it is, and is seen to be, operating with maximum efficiency. The Agency must therefore take steps to deal with the problems which lead to inefficiency and delay and put itself in a position to respond to applications and other issues which arise during the regulatory process within an agreed timeframe.”⁷

32. The re-permitting of landfills to meet the requirements of the IPPC and Landfill Directives is largely an administrative exercise. However, it usually costs operators hundreds of thousands of pounds to re-permit each site, with some operators compelled to spend millions of pounds simply to maintain existing operations.

33. 550 landfills are likely to be required to be re-permitted by 2007. At the beginning of November 2005, 419 applications had been made, and the Agency had determined 259. Of 157 permits actually issued, 40% were subject to appeal by operators, resulting in huge costs, lengthy delays and little tangible environmental benefit.

34. In 2003, the Agency also introduced unduly prescriptive requirements for the management of landfill gas. Whilst the Agency has since improved its approach, it remains likely that regulation will cause more flaring and less recovery of renewable energy from methane than is environmentally optimal.

(c) *Funding the policing of illegal activity*

35. As above stated, we want the Agency to police illegal activity to a standard creating a national culture of zero-tolerance.

(d) *Data*

36. Effective environmental regulation is impossible without reliable and accurate data on waste flows. The Agency already gathers a lot of data from operators and others but loses much of the value of the data through ineffective systems. This must be addressed.

37. ESA is extremely concerned that even for high risk waste streams such as hazardous waste, the Agency cannot state precisely how much and where hazardous waste is produced and exactly how and where it is managed.

38. We support Defra’s waste data strategy and welcome the focus on the Agency’s capture, analysis and dissemination of data. An unwelcome outcome would be bureaucratic imposition of additional reporting requirements on operators with minimal analysis and reporting back by the regulator.

(3) *Structure, governance and accountability*

39. Because good environmental regulation is now so important, we would prefer disaggregation of the Agency’s regulatory and non-regulatory functions so the Agency can become the World’s best environmental regulator.

40. The ETRA Committee in 1999 noted that “if the Agency is to make a serious contribution to sustainable development, it must get involved at all levels of industry, not merely—important though it is—in the regulation of particular industrial processes”.⁸

41. To give effect to this, we offer the thought that the composition of the environmental regulator’s Board and the agenda of its meetings need to focus on environmental regulation and be informed by operational knowledge of regulated industries. As a minimum, we encourage non-executive members of the Agency’s Board to engage in regular and structured dialogue with the waste management industry.

42. In terms of high level responsibility for waste management issues, the Agency’s current staff structure remains unclear and staff often appear to assume different responsibilities at short notice. For instance there was no single point of contact for hazardous waste issues during the crucial two years leading up to the introduction of WAC in July 2005.

43. Industry is often confused by the respective roles of (and interactions between) the Agency’s waste “policy” and waste “strategy” teams and the process industry team which regulates certain aspects of energy from waste. These relationships are complicated further by the national “operations” directorate (which included responsibility for the permitting and inspection of facilities) and the role of regional offices. There were particular difficulties for operators in identifying and understanding where responsibilities lay between Strategic Permitting Groups and Area Officers throughout the PPC re-permitting process.

⁷ Select Committee on Environment, Transport and Regional Affairs Sixth Report: The Environment Agency 1999 (paragraph 80).

⁸ Select Committee on Environment, Transport and Regional Affairs Sixth Report: The Environment Agency 1999 (paragraph 102).

44. In terms of structure on the ground, we are disappointed that only slow progress has been made to develop industry specialist teams to regulate waste management facilities. Agency officers tend to be generalist and, in an area that relies on specialist and detailed knowledge, this can lead to delays, misunderstandings and additional costs for business. Operators are too often not in a position to have full confidence in the officers regulating their facilities.

RELATIONSHIPS WITH DEFRA, DEFRA SPONSORED BODIES AND THE REST OF GOVERNMENT, INCLUDING ITS ROLE IN THE PLANNING SYSTEM

45. Our view has always been that the Government should govern and the regulator should regulate. During years of policy vacuum at Defra, however, the Agency could not be blamed for wishing to make progress.

46. Better co-ordination is required for development, implementation and enforcement of waste management policy and regulation. For instance, implementation of the WEEE Directive is split between the DTi (producer responsibility), Defra (regulations) and the Agency (implementation).

47. The development of a sector plan promises to provide a focus for identifying future regulatory requirements and how they might be implemented. We urge the Agency to involve Defra, DTi and ODPM in this work.

48. Waste management facilities require both planning permission from a local authority and a permit from the Environment Agency. In some instances it makes sense to “twin track” applications by applying for consent under both systems in parallel. Where an operator chooses to twin track, the Agency and relevant local authority should work closely to realise efficiencies. Even if applications are not twin tracked there is a strong case for local authorities and the Agency to work closely together to progress applications more quickly.

49. The Agency also has an opportunity to play a more positive role in the planning system: for instance providing positive signals to authorities about likely environmental benefits and impacts of proposed developments, and providing local politicians with the confidence that environmental issues will be addressed in the permitting process.

50. Closer working is also required between the Agency and HSE to avoid potential conflicts between environmental requirements and health and safety imperatives in activities such as monitoring and testing loads entering waste management facilities.

RELATIONSHIP WITH NON-GOVERNMENTAL STAKEHOLDERS

51. Inevitably the Agency’s relationship with industry is that of “regulator” and “regulated”.

52. That said, there has been a marked improvement in ESA’s relationship with the Agency and the relationship our Members have with the Agency through ESA. More progress is needed but the substance and tone of meetings have become much more constructive, relevant and engaged than when the ETRA Committee reported.

53. The cultural shift in the Agency’s perceptions is perhaps incomplete. On the one hand there are criminals who need to be prosecuted and who are too often not prosecuted. On the other hand, the regulated waste management industry could more usefully be seen by the Agency as an extension of its role where the Agency directly regulates and the waste management industry provides regulatory compliance for waste producers.

FLOOD DEFENCE

54. As above stated, our preference would be for the Agency to disaggregate its public works and regulatory functions. The two activities are very different and we see great merit in developing a British environmental regulator demonstrably capable of enabling business to secure necessary environmental outcomes in the most economically efficient manner.

55. In some instances, there may also be a conflict of interest between the two functions: for instance, Agency regulates aspects of its own public works functions including the disposal of wastes.

AGENCY’S FORTHCOMING CORPORATE STRATEGY 2006–11

56. The Agency’s priorities and environmental challenges set out in the strategy are largely defined by EU and UK legislation and policy. The Agency should therefore concentrate on how it will meet these challenges through its primary role of environmental regulation.

57. In emphasising its role as champion for the environment, the Agency risks conflict with its central function as a regulator. Others are ready, able and willing to champion the environment. We want to see one really effective and focussed environmental regulator.

58. A “greener” business world is best delivered by regulation working with markets. Developing market-oriented, risk-based regulation could enable the Environment Agency to establish itself as the EU’s most effective environmental regulator but this probably requires significant changes in governance.

59. The Agency’s policy word of risk-based regulation is welcome but not yet always reflected in operational deed. Rapid progress is needed to realise the economic and environmental benefits of modern regulation.

60. We want the Environment Agency to succeed in demonstrating that better regulation means effectively securing necessary environmental outcomes synergistically with a dynamic economy.

Environmental Services Association

December 2005

Memorandum submitted by Waste Recycling Group Limited

INTRODUCTION

1. Waste Recycling Group Ltd (WRG) is one of the UK’s leading waste management and energy recovery companies and handles in excess of 15 million tonnes of household, commercial and industrial waste each year. More than 50% of Waste Recycling’s business is accounted for by waste management contracts with around 70 local authorities across England, Scotland and Wales. The Company operates facilities for the reception, recycling and disposal of waste, including a network of waste transfer and recycling centres and strategically-situated landfill sites, and is one of the largest operators of civic amenity facilities on behalf of local authorities for use by the general public. The Company operates an energy from waste (EfW) incinerator at Nottingham and is building a further EfW facility at Allington Quarry in Kent, which will substantially reduce that county’s dependence on landfill.

2. WRG has gone from strength to strength since its founding in the early 1980s. In 1994 the Company was floated on the London Stock Exchange and was a member of the FTSE250 Index until July 2003 when the Company was acquired by the private equity investment organisation, Terra Firma Capital Partners Ltd. In June 2004 Terra Firma acquired the UK waste disposal and electricity generation business of the Shanks Group plc and has integrated it into the Waste Recycling Group.

3. The Company is Europe’s leading generator of electricity from landfill gas, with an installed capacity of some 200MW (enough electricity to supply the needs of around 200,000 homes) and, together with power generation from waste incineration, WRG now contributes very significantly to the Government’s renewable energy targets and climate change objectives.

POINTS ON WHICH THE EFRA COMMITTEE REQUESTS INFORMATION

Point 1: How successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities.

4. *WRG response:* There is no doubt that the very wide range of responsibilities that the Agency has, together with its background of having had to accommodate different regulatory disciplines since its inception, means that performance is the biggest challenge the Agency has to come to terms with. From WRG’s perspective (limited to the regulation of controlled waste) the Agency’s performance remains patchy at best. The effectiveness of the Agency as a regulator and/or disseminator of best practice also depends largely on the region involved and, in some circumstances, the attitude of individual officers.

5. The Agency’s approach is inconsistent in reflecting the foundation regulation in its policies or guidance. Consequently, the permits that evolve from these policies and guidance are often reliant upon inconsistent interpretations. Additionally the Agency can take a unilateral view of the meaning of regulation that leads to these views being tested by the waste management industry either at appeal or even in court. Often the only option the industry has to challenge such interpretation is by formal appeal, but is this the right way of dealing with regulatory decision making? We don’t think so. We would question what the legal position is on the Agency’s remit to interpret policy and regulation in the way that they do.

6. The current status of Agency “guidance” is not clear. Much is at a draft stage and is still emerging, and this does not aid consistency. For example, there is no Best Available Technique (BAT) for waste but a comprehensive draft guidance note⁹ has been issued and, we presume, can be used pre-emptively by the Agency as “fact”—and can also be used in support of prosecution. Too much of the Agency’s guidance (or the references contained within it) is hard to find or extract. Finally, the training that Agency officers receive on new policy and guidance often lags behind its actual implementation.

⁹ Guidance for the Landfill Sector. Technical Requirements of the Landfill Directive and Integrated Pollution Prevention and Control (IPPC). External Consultation, 1 July 2005.

7. The Agency is currently trying to cope with a number of major issues: the full implementation of the Groundwater Directive for landfills, the Landfill Directive and the introduction of Pollution Prevention and Control (PPC) for landfill, as well as the roll-out of EP Operator and Pollution Risk Appraisal (OPRA) compliance assessment. This has been a huge challenge and one that we believe the Agency has failed to come to terms with. It is clear that the necessary preparation and training has simply not taken place.

8. While the Agency uses Special Permitting Groups (SPGs) to write permits, they are then issued to local area officers who know nothing about the detail or generality of the permitting system, but are expected to regulate against the new permits.

9. For most waste facilities, you cannot receive an operating permit until you get planning consent. Increasingly, we are asked to parallel permit and planning applications—at our cost. However, the planning authority requires a very precise response from the Agency on the appropriateness of a development in order that it can advise its elected members on environmental aspects of the process. The industry is in a Catch-22 situation, with the planning authority not making a determination until the Agency decides on a permit. This is one of the elements that is slowing up the UK waste management industry's ability to deliver urgently-needed recycling, recovery and disposal facilities in support of the Government's waste strategy. We recommend that these “unique to waste” requirements are removed to allow the industry to apply for, and secure, a permit before planning consent is granted.

10. We also have particular concerns around the Agency's performance on regulation, compliance and prosecution. The Agency's drive to introduce a business-like approach has some worrying implications for our business. Our experience is that there are Agency inspectors who really do not fully understand what they are doing, yet they are assessing our new landfill permits and recording Compliance Classification Scheme (CCS) scores. They are aware that the fees that will be collected are linked to the degree of non compliance found which, in the end, will have a direct bearing on their jobs. In brutal terms, higher compliance = lower subsistence fees = fewer Agency jobs. We are worried that the CCS system itself is a mechanistic conveyor belt towards prosecution and which removes officers' discretion. There is an inbuilt motivation to keep on finding fault and this is an unwelcome approach. It represents a spiral of escalation of regulation that does nothing to enhance environmental outcomes.

11. WRG has been supportive of OPRA since its inception. However, the waste management industry in general is not yet certain as to how OPRA scoring will be replaced within the overall “EP OPRA for waste” scheme, especially as waste management facilities transfer into PPC permitting. For example, the focus of future landfill site inspection is understood to be more formally integrated with the CCS and the Agency's enforcement and prosecution policy. We have already seen instances where CCS scoring has been wrong; we have challenged the scores and the Agency has subsequently changed them. In our view the Agency should have introduced CCS with a six month, industry-wide provisional operation period to allow for learning—on both sides—and inevitable snagging. The Agency is also introducing CCS scoring under the existing licensing system, and they are still scoring OPRA points against landfill sites that have received new permits!

12. While WRG supports the principles that regulatory effort should be focused towards poorly operated, or high risk sites, and that the rigour of operators' own management systems will be relied upon following endorsement by more in depth Agency “systems” audits, we are concerned that landfill operators will lose a useful check by the regulator as to how the operator's detailed performance can be measured and expressed.

13. In particular, there is concern that as programmed site inspection visits become less frequent, visits are more likely to be triggered by external complaint, and that individual inspectors will be less familiar with site circumstances and personnel, hence less well placed to make informed inspections. Therefore, future regulation looks more likely to be events based, ie reacting to circumstances, or otherwise to be based upon the completeness of a mushrooming reliance on documentation (risk assessments, operator inspection records, CQA reports, etc). Subject to future clarification by the Agency on the likely mix and targeting of regulatory effort agreed within their area-based Compliance Action Plans (CAPs), we reserve judgement on whether future regulation is likely to be more administratively focused and whether this will be an improvement.

14. In WRG's view, the Agency has an over-zealous policy in respect of prosecution. Much play is made of the increased number of waste related prosecutions by the Agency to the point where it is clear that this is considered to be akin to a key performance indicator. Many of these prosecutions are for technical breaches of site licensing or permitting and few transgressions have major detrimental impacts on the environment. While we do not wish to suggest that waste management companies must not be obliged to strive at all times for high quality performance at their facilities, the Agency's approach begs the question: does an increased number of prosecutions equate to better regulation? We would suggest not. Given that the primary purpose of regulation should be to prevent environmental breaches occurring in the first instance, prosecution, by its nature, is a “post event” approach to regulation. Prosecution also leads to lengthy delay and cost, with prosecutions resolved sometimes years after the original technical breaches (and any remedial work) have taken place.

15. The Agency mentality towards such issues is made clear by the continued publication of their sectoral prosecution statistics in the annual Spotlight Report on Business Environmental Performance. We recommend that the Agency looks at the role of tribunals, rather than always resorting to full prosecution in courts. We believe this would place technical breaches in a more meaningful context and would speed up the resolution of lower category of non-compliance. We would also ask for the Agency to seek more positive ways of achieving good environmental outcomes from certain environmental “crime”. For example, the notion of working with industry so that the latter can contribute more positively to local environmental solutions rather than suffer the ultimate deterrent of prosecution would be helpful.

Point 2: Whether the Agency operates efficiently and provides good value for money.

16. *WRG response:* Any comment on the Agency’s performance in its current role needs to address a number of levels. At the highest level, the Agency’s independence to act is set within specific bounds by Defra policy and by Government finance. We recognise that the Agency’s ability to deliver a service to industry is directly related to its level of resourcing. Our industry consistently increases its contributions to the Agency via fees and charges, while Government support is reducing. The scope of Government funding also focuses upon areas within the Agency where they are able to act. For example, there is no finance to regulate waste handling processes that have been declared exempt from waste management licensing (eg land spreading/golf course “restoration” etc), and while the Agency may have a remit to ensure these activities do not cause environmental pollution, in practice it does not regulate them.

17. While there remain significant structural problems within the Agency, and a less than clear relationship with Government through Defra, we cannot be persuaded that, overall, the Agency “provides good value for money”.

Point 3: The structure, governance and accountability of the Agency.

18. *WRG response:* WRG supports the idea of a single regulatory agency with the power to act to be effective, to secure environmental improvements and to eliminate unlawful activity. We do feel, however, that these powers must be transparent and applied even-handedly. Agency employees are warrant-carrying enforcers with legal powers akin to the police and we feel they need to aspire to a similar level of accountability. Therefore, training of Agency officers to a recognisable benchmark standard is vital. Poorly informed judgements and dogmatic approaches to acceptable standards/interpretation of guidance, result in wasted time and/or fruitless debate. Far too many issues remain unresolved pending resolution of court actions, directions from Defra or release of definitive guidance.

Point 4: Its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency’s role in the planning system.

19. *WRG response:* As outsiders to the relationship between the Agency and Government, we would observe that there appears at times to be a breakdown in communication between the two. The most alarming problem (and which impacts on our business) is the apparent lack of timely policy setting within Defra. This leads, at best, to understandable frustration within the Agency at being unable to “get on with the job”; at worst, the Agency adopts the role of itself being a policy maker (sometimes unwillingly, sometimes enthusiastically). We do not believe that the Agency—which has a policing function first and foremost—should have the task of setting policy and subsequent compliance enforcement. This strikes us as fundamentally unfair and inappropriate. Waste policy is the remit of Government, and Defra should be strengthened in its ability to determine policy more quickly and efficiently in order to give the Agency the lead it requires.

20. An example of how the relationship between the Agency and Defra can be problematic, has come with the introduction over the past few years of the Hazardous Waste and Landfill Regulations. The UK was poorly prepared by Government for the introduction of several stages of these regulations, which made a difficult regulatory task even harder for the Agency. Lack of timely policy and guidance has meant that the Agency continues to struggle in the application of new regulation around the definition of hazardous waste, its treatment and ultimate disposal.

Point 5: The Agency’s relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services.

21. *WRG response:* The Agency has a distinctive voice—independent of Government and the waste management industry, although it is not always recognised as such by the public. Nonetheless, because of its independent position we would encourage the Agency to play a greater role in providing stronger guidance to members of the public and to local authorities in the planning process. This would be most helpful in assisting communities to choose appropriate technologies for their sustainable waste management strategies.

22. We believe that Regional Environment Protection Advisory Committees (REPACs) while worthy are extensive talking shops for people with the inclination and time to attend, but they appear to have very little influence on the Agency’s performance.

23. We are aware of a small number of Agency regional directors who make themselves available to meet the waste industry on a regular basis and where specific issues of mutual interest are raised and aired. We would encourage the Agency to formalise and extend such links between their regional directors

and industry. We would also urge the Agency to consider being more communicative at its most senior levels with the principal waste management operators in order to improve dialogue and build relationships.

Point 6: The Agency's responsibilities for flood defence and flood mapping, including guidance to the public.

24. *WRG response:* We have no comment to make on this point.

Point 7: How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency.

25. *WRG response:* We have no comment to make on this point.

Point 8: How the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity.

26. *WRG response:* We have no comment to make on this point.

Point 9: The Environment Agency's forthcoming corporate strategy 2006-11

27. *WRG response:* We have no comment to make on this point.

Waste Recycling Group Limited

December 2005

Witnesses: **Mr Dirk Hazell**, Chief Executive, **Mrs Leslie Heasman**, Technical Development Director, M J Carter Associates (MJCA), and **Mr David O'Connor**, Chairman, ESA Landfill and Pre-treatment Committee, Environmental Services Association (ESA); and **Mr Jim Meredith**, Chief Executive, **Mr Andy Ryan**, Group Operational Services Director, and **Mr Graham Watson**, Group Environment Manager, Waste Recycling Group Limited (WRG); gave evidence.

Q131 Chairman: Good afternoon to our second cast list this afternoon. May I welcome the Environmental Services Association, who have been very loyal contributors in the past to our efforts and understanding of the world of waste, so to Mr Hazell, their Chief Executive, who has come before us on many occasions; this is a new area for an outing for you, so I hope you will enjoy the new field that we have given you to plough. You are supported by Leslie Heasman, your Technical Development Director. It says here "MJCA"; what is that?

Mrs Heasman: That is M J Carter Associates. We are a consultancy member of ESA.

Chairman: There you are; you have had a free plug and now we are better informed. Mr David O'Connor is Chairman of the ESA Landfill and Pre-treatment Committee; that is a fascinating subject but we will not go into that in too much detail. We will move on to welcome the Waste Recycling Group: Mr Jim Meredith, their Chief Executive, welcome again, Mr Andy Ryan, their Group Operational Services Director, and Mr Graham Watson, Group Environment Manager. Daniel Kawczynski is going to start our questions.

Q132 Daniel Kawczynski: I would like to ask a question relating to the issuing of permits. In written evidence, a number of witnesses representing the waste management sector have criticised the Environment Agency's performance in issuing permits and I have a figure here that in November 2005 the Agency had determined only 259 of the 419 applications. Could I ask, why has the Agency been so inefficient in issuing permits to the waste management sector and how could the Agency improve consistency and transparency in this area?

Mr O'Connor: Chairman, thank you for inviting us and we are very pleased to be here. Permitting is twofold, one from the area offices for new sites of work before 2003, where ESA supported the setting up of a Strategic Permitting Group. We took on the responsibility for repermitting some 500 landfill sites and they did this in a series of phases. In the early days there were difficulties, there were difficulties with guidance on the Environment Agency, but I think that we are reasonably pleased now with the efforts that the Strategic Permitting Group are making. There are three areas that I would like to touch on very quickly, Chairman. One is 'energy from waste' facilities; they have gone through the repermitting process very successfully, there are no problems there. Secondly, physico-chemical treatment plants, they are also going through the repermitting programme and it has not been completed yet, we have not seen a permit, but we understand that progress is pretty good. Where we have had the difficulties has been with the landfill. Two things happened here; one with the 'energy from waste' facilities. We have had engagement with the Environment Agency since the early nineties when IPC came in, so really there were no surprises to be had in that field. With the physico-chemical treatment plants, engagement started there in June 2004, and this is based on general template standards conditions, of which obviously the operators in these two areas were fully aware. In the landfill area, I am sorry to say there was little engagement on the conditions within these standard templates and the two processes are different for these two, if you like, process treatments, incineration and treatment, from landfill, so one would expect them to be a little different but not as vast a difference as we have seen. Perhaps I could ask Mrs Heasman to explain the difference.

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Mrs Heasman: If I pick up on the difference with landfill, unfortunately landfills are in geology and, as we all know, geology is not the same in any two places. Therefore the design of a landfill is very different from the design of a piece of kit for an incinerator, say, or for a treatment plant. The design of landfills in the UK is based on legislation and on risk assessment, which drives the degree of engineering that is necessary. As a result of that, there is a lot of interpretation that is necessary in assessing whether a particular design put forward is acceptable, or not acceptable, under the regime and that provides difficulties where the necessary level of resource, in terms of expertise and experience, is available within the Agency staff. It is also difficult to understand given the numbers that we have heard, you have heard that there are 259 permits determined; of those 259 that were determined by November last year, only 150 of those were issued, which means the remaining ones were either refused or withdrawn, and we were informed by the Planning Inspectorate that the hundredth appeal of a PPC permit was registered in the last month. That reflects the great deal of dissatisfaction with the nature of the permits that have been issued for landfills to date, so even issuing the permits is not the end of the story. The conditions that are attached to those permits, which should be risk-based, are often not risk-based, are at the root of ongoing difficulties and still remain unresolved.

Mr Ryan: I would endorse and agree with what has been said. I think the seeds for the difficulty on the landfill permits were sown when the decision was taken to translate the old Waste Management Licence into a PPC-style permit. To adapt one for process to a landfill was already difficult enough, but to implement the Landfill Directive, at the same time, and really, in truth, to apply the Groundwater Directive through guidance notes properly to landfill for the first time, even though it had been around for a long time, the site-specific risk assessments that Leslie Heasman referred to have been substantially difficult to write and therefore to receive and interpret for the officers doing that. I think, the acknowledgement of the resource implications, the Agency came with a decision to put out a lot of the technical adjudication of risk assessments to consultants, without which they would be even further behind now because there were simply not the resources within the Agency to put enough on it to make the necessary progress. I think also there was an element of the transposition problem you heard about from the previous group, where the RGNs, the regulatory guidance notes, to interpret the Groundwater Directive and Landfill Directive in the PPC format came out late, there were problems, there were difficulties, we would say, from the industry side in poor consultation on those. I think a lot of those appeals to which Leslie has referred loop straight back to the problems with the RGNs in the first place.

Q133 Chairman: You have been very good at describing the problem. We have got to write a report about this Agency, so what is your

recommendation to ensure that this kind of thing does not happen in the future?

Mr Ryan: If you are going to take on the task of these three big changes at once, I think a better allocation for time and effort is required to do that. A better appreciation of what a very large task it was going to be would have been useful at the outset, an absence of delay at the outset and possibly moving the end time, because the timescale given has been quite tight, for Directive implementation reasons.

Q134 Daniel Kawczynski: This timescale is 2007 and that is being set by the European Union, we have got this target to meet by 2007. What will happen if we do not meet that target?

Mr Ryan: I presume, infraction proceedings and the non-implementation of the Landfill Directive. I think the target is from the Landfill Directive. I am happy to be corrected.

Mrs Heasman: I agree with Mr Ryan. In answer to the question about what should have been done, the Landfill Directive was published in 1999. This is 2006. The timetabling for facing up to the difficulties of interpretation—and certainly we do not underplay the difficulties of interpretation, the legislation does not help, it is poorly written, that is the European legislation—is not clear. The decisions on how the UK plc was going to interpret these matters should have been made a lot earlier, should have been made by Defra and then the Agency should have had a relatively straightforward task.

Q135 Chairman: I can remember when this Committee looked at the question of the disposal of dangerous wastes and waste acceptance criteria was one of the issues that I can remember us debating in some intense detail and all of the delay and exactly the same commentary that you have given about the Directive were made at the time. Let us come to the fundamentals. Here we have the powerful Environment Agency, the guardian of the environment, and you were commenting about the policy-making process. Do you feel that, the relationship therefore between the Agency and Defra, when these very important policy decisions are being made, and obviously, looking to the future, the Water Framework Directive is now evolving, there is a great deal of responsibility put on Member States for implementation, under those circumstances should there be a different relationship than there is now between the Environment Agency and Defra, when it comes to the policy development and subsequent implementation procedures being worked out, to avoid the kind of elongated process to which you have just referred?

Mrs Heasman: Certainly the lessons of the past need to be learned, otherwise we will be repeating those errors.

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Q136 Chairman: Does that mean some form of closer working relationship between Defra and the Environment Agency that does not take place now?

Mrs Heasman: It means a clear distinction between who determines the policy and who then implements the regulation of that policy. Under the Landfill Directive there were a number of detailed, very important policy issues that were bounced about between Defra and the Agency, and the decision regarding whose lap it should land in was not made until very, very late in the day. How you resolve that I cannot give you the answer to because I do not know what the answer is, but that issue has to be recognised.

Q137 Daniel Kawczynski: I do not know whether you know the answer to this, but is it just in our own country that there seems to be a problem with this, or are other European Union countries facing a similar problem, in meeting this Directive?

Mrs Heasman: I know a bit about the other European countries, as I sit on the European representative group of ESA equivalents in the rest of Europe, and there is a very varied method of implementation. There are some European countries where there is no debate between the regulator and the legislator, the legislator says "This is how it will be done" and there is no discussion and debate, in the way that we have here; that has advantages and disadvantages. There are other countries which tend to legislate in the same way that we do and then leave the interpretation to the regulators, in the same way that we do, and they do not tend to have such intense debates about fairly small legislative points, they make the decision early on and get on with it. If someone disagrees then that is a challenge which goes forward at a later date.

Q138 Daniel Kawczynski: Is there a model of a country that is doing very well, in fact, that you know of, that we could learn from?

Mrs Heasman: The ones that tend to operate more pragmatically would be Denmark and Sweden, for example, they tend to have a similar risk-based approach. There are good things we can take and there are things that we would choose, I think, not to take as well.

Mr Meredith: I think, from my perspective, and this is an opinion rather than factual evidence, the Agency was handed a massive task, depending on the time that they were released to do it, the timescales that they agreed with Defra and how then they decided to take the policy forward. I suspect that the organisation had not faced up to this degree of task before in the same way; that is my perspective on it. I think actually they learned their lessons to a degree in terms of negotiating with industry and they came up with the SPGs, which were a focused group to try to move the PPC process forward. I think most people along the table would say that has worked to a degree and it has helped.

Q139 Chairman: For the benefit of colleagues not overly familiar with your area of work, SPGs?

Mr Meredith: These are the Special Permitting Groups. If I recall correctly, the permits were originally being dealt with at a local level and as it became clear that was not going to meet the timescales and the criteria they were taken to the centre. That has created some dislocation in terms of the permits being formed and the application by the inspectors on the ground, but it did actually accelerate the timescales quite significantly. I think that lesson, if you were putting into practice the same sort of regulatory implementation, is one that the Agency should learn from and take notice of. The other area that we have got now, particularly in waste, is that, yes, we have these licences and, clearly, from the number of appeals that Mrs Heasman has alluded to, there is quite a lot of dissent out there about the criteria under which the licences are being judged. In my view, there should be a mechanism to resolve those rapidly and internally to the Agency, if at all possible, with the companies concerned, rather than trying to go through a precedent system of running it all through the courts or the planning inspectors. A lot of these are technical issues around the technicalities of risk and engineering of landfills and certain background levels of emissions, and those sorts of things, so actually it is a very technical area in which both sets of parties have some expertise. I would see an appeal process within the Agency. An equivalent thing might be, it is not an exact analogy but a sort of complaints commission that you could go to, to say, "Right, here's an independent body to look at the Agency's decision, look at the company's decision and run that very quickly to a conclusion." I fear that the working through of the PPCs into a form that everybody will be comfortable with, both for the Agency and for the companies, actually is going to be a very protracted process and a very expensive one.

Q140 Mrs Moon: I assume that before this was all rolled out there was a consultation process. Did you take the opportunity to highlight your concerns during the consultation process with Defra, so that before we got into what appears to be quite a mess really you were highlighting the inconsistencies that were there and the possibility for you, as operators, to comply? Was that something you did?

Mr Hazell: Mr Chairman, would it help the Committee to have a written schedule of our various contributions to Defra and the Environment Agency over the years?

Q141 Chairman: Surely, it would be very helpful. Thank you.

Mr O'Connor: Chairman, if I could say that I feel there is a very positive way forward, so that these template conditions are satisfactory, to operators and the environment and to public health and to the Environment Agency. SPGs, the Strategic

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Permitting Groups, from henceforth, that is from January of this year, have been given the full role of determining PPC permits, so they should be getting up now an expert team, who have had this experience since 2003, to do a decent job. With regard to the conditions, Mrs Heasman said there are over 100 appeals, that is not 100 conditions being appealed, it is probably more like 6,000 conditions being appealed, by doubling up with different people appealing the same condition. At ESA, and I have led this, as Chairman of the Landfill Group, we have had a series of four meetings with a specialist group, at very senior level, from the Environment Agency, who have listened to our concerns regarding these conditions and have agreed that 60 of them must be changed. If only we had spoken earlier and been engaged with, like the 'energy from waste' and the physical treatment, we would not have been in this position. I know, if you go to an eight-day appeal on a site and an eight-day appeal on another site, you are talking £400,000, that is the operator's cost; that does not mean all the senior Environment Agency, who are tied up for weeks. It just does not make sense. We must have more engagement and I think, now that we have got this lot sorted out and the SPGs are doing the job, we should go forward. That is my hope and I will be doing everything to make sure that happens, and I think the EA would as well.

Q142 Mrs Moon: In relation to fly-tipping, if I can move you on to that issue, away from licensing, you describe it as a major problem and certainly it is a major problem for all representatives, it is one of those things that there are always complaints to us about. There are two levels, in a sense; you have got the individual perpetrator who abandons a sofa in a country lane but also we talk about being scrupulous waste producers, and these are people who highlight themselves as actually removing waste and who then are illegally fly-tipping. You talk about the need to have a national culture of zero tolerance and I would certainly endorse that, but what do you think both the Environment Agency and Defra should be doing to foster that, what would be your recommendation, what would be your advice about raising the zero tolerance level?

Mr Hazell: There has been a helpful change in the law: the status of fly-tipping has been changed by law, which is helpful. We are quite clear that the top priority and the top funding priority of an environmental regulator ought to be to secure the conviction of environmental criminals. It is difficult for the Environment Agency to make that its top priority because the Environment Agency is asked to do three different things, which are not always mutually consistent. It is asked to be a general advocate for the environment, it is asked to do public works, notably flood defence, and it is asked to do environmental regulation. One of the effects of that is, I think you heard it from the other witnesses and I would agree with what I believe the

CBI said, for example, that there is not a great deal of transparency in the Agency's operations when it comes to getting focus. Certainly we are of the view, as it is essential to protect an environment, human health and, indeed, to enable our industry to invest in infrastructure, that instead of this emerging culture of organised, or nearly organised, crime and local authorities all over the place have really serious problems often with hazardous waste being dumped, it has got to be nipped in the bud, if you call this thing a bud, before it gets even worse. That must take as much money from public funds as it needs because, at the end of the day, it is going to save money to deal with it now rather than to deal with the consequences, in terms of environmental damage and more claims on the NHS, if we do not do it. What ESA, and I think it was the CBI who alluded to it, has strongly supported is that the BREW money, which is basically hypothecated landfill tax, should be used to the fullest extent necessary to give the Environment Agency the resources to be an effective detector and then prosecutor. When you interview the Environment Agency, I think you will find that where they have put in relatively small resources actually they have achieved quite good results, but you have got to have enough of an impact for this to be seen as a country where you do not get away with it. One example, just one example, is that instead of always just recruiting new graduates because they are cheap, if you are going to be really serious about this, then have a national hazardous waste flying squad, really tough, experienced police officers, former police officers, recruited into the Environment Agency, to give the signal that they mean business.

Q143 Mrs Moon: I was going to ask you about where you thought the money was coming from as well. I think I am quite happy with the answer we have had.

Mr Ryan: If I may just add a remark, there is a concern from the industry as well about exempt waste activities, which is not fly-tipping as the public might imagine it, with a deckchair and three mattresses in a lay-by. These are permitted activities, legal activities, but exempted from having a licence or permit, so it is on-farm composting of green waste, or landscaping with waste materials for a golf course or an acoustic bund, and so on. I would simply make the point that if I were an unscrupulous person trying to cheat I would put my material, which is not as I am describing it, where I know the Environment Agency would be extremely unlikely to be looking. I think that the regulation of exempt activities, or equal attention to exempt activities, is important if we are to have security that the wastes are going to the correct facilities.

Mr Hazell: I can offer another figure which might be helpful. Between 10% and 50% of construction and demolition waste is managed through exempt sites, so between nine and 47 million tonnes of this waste a year is simply not being monitored.

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Q144 Chairman: After that helpful observation, Mr Hazell, can I take you back to a point that you made in your evidence to us, where you drew our attention to the Environmental Audit Select Committee, who found that Defra's Grant in Aid to the Environment Agency used for policing and enforcement of illegal waste activity had been cut by £4 million. Did you ever get any idea, from your privileged position in the industry, as to why that cut had taken place?

Mr Hazell: We certainly did not, Mr Chairman, and it is extraordinary to have a context where environmental regulation, quite rightly, is pushing us towards a more sustainable economy and therefore, for our sector, more expensive waste management, on the one hand, and a reduction in the enforcement budget, on the other. It is very difficult more generally on funding of the Agency, it is very difficult to comment because, and this is what the earlier witnesses were saying, there is such an extraordinary lack of transparency. For a body like ours, we see the amount of money the Environment Agency has and ask why cannot they spend more on prosecution? It is very difficult for people like us to form any sort of a view on that, because the Environment Agency has these three distinct functions without the transparency or disaggregation of its funding.

Q145 Chairman: If you had a free hand, could you give us an example of how you would like that transparency to be improved?

Mr Hazell: We would like to see, I think, complete disaggregation of the funding of the regulatory work of the Environment Agency, because that would give you immediately very clear headings. There are assertions about the number of officials which the Environment Agency has working on waste; we do not recognise that figure of 1,800 officials, from what we see as an industry. We want risk-based regulation. We think that the Environment Agency, by international standards, is pretty good at making sure that facilities that are operated are run to pretty good standards, but there is an immense opportunity now for this Select Committee to drive towards a modernisation of environmental regulation which is much more output-based, risk-based and process-oriented. For the people in the Environment Agency who want to do their job as well as they possibly can, that needs a complete disaggregation of the regulatory function, and if you speak to the officials privately some of them will admit that.

Mr Meredith: I guess that what I would like to say is in support of that but I am not sure that I agree necessarily with the areas of the Agency as Mr Hazell has described them. I see it as technical adviser, enforcement and policy, whether it is the interpretation of policy, or whatever, and I think sometimes we see, from the inspectors at the front end, some clashes there between where they are advising or they are enforcing. It comes back, to me, to the establishment of what is the functionality of the Agency and how it disaggregates itself

internally. One could argue quite strongly that there are other analogous organisations out there, like the police force, which actually police very well, and they are very clear about who sets the policy, it is the law, how it is then implemented, how there are safeguards built into it, in order that people can go through proper processes with checks and balances, and you employ people with the skill set to do the policing, not necessarily technical guys, who are attempting to do the policing and attempting to interpret at the front end as well. That would also give you some clarity about the ability to have a technical advisory group within the Agency for a sector and I think would match to some of what the previous witnesses said, that maybe you would not be crossing the boundaries of enforcement to technical advice if they were separated within the Agency. On top of that, you would then have some transparency in the funding arrangements. It is not for me to say that the Agency needs to rip itself apart and rebuild but it must be very difficult with what is meant to be a holistic organisation to generate the sort of Chinese walls internally to make those functions appear very clear.

Q146 Daniel Kawczynski: I very much like the idea of a fly-tipping flying squad and I think I shall be raising that with Margaret Beckett. If somebody, say, dumps asbestos in your consistency, do you think that the local authorities actually have enough powers to deal with it, or is it a lack of financial resources as to why not enough is being done to prosecute these people?

Mr Hazell: The powers have changed. If there were a stronger national squad in the Environment Agency, they would be better placed to give local authorities, who have a lot of other things to do, the specialist resources to help to detect and prosecute what is going on. We gave some evidence to the Greater London Assembly, about a year ago, or it may be longer than that. It was heartbreaking, listening to some of the enforcement officers in London's local authorities, being physically attacked for trying to deal with industrialised dumping of materials like asbestos in a London street where you get children playing. You have got to have a tough squad somewhere, so you are going to have it in either the police, because the local authorities are not going to be able to do it, or the Environment Agency, and probably the Environment Agency, with properly-skilled staff, would have the right skill sets.

Q147 Sir Peter Soulsby: Can I just be clear what Mr Hazell and Mr Meredith between them are saying. Am I right, in summarising what you have just said, that you would argue for a clear disaggregation of the budgets within the Environment Agency and a much clearer separation of the roles that those operate in the Agency; is that a fair summary?

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Mr Hazell: It is definitely what we would argue for; we have been arguing it for some time and it is very much as a constructive friend. There is another side to it. Last year, the fees for charging for Waste Management Licences went up by 210% to 2,200%, and we are simply not in a position to say whether we got value for money for those increases. It works both ways, but if you have an environmental regulator, which is what we are primarily concerned with, focused simply on regulation, I think you will find that within the space of a Parliament they become a more effective regulator. You would not dream of asking the Financial Services Authority to sell mortgages or proselytise for the financial community as a whole, and there is no reason either why those functions should be together in the Environment Agency, because you would get the same conflicts.

Q148 Sir Peter Soulsby: I want to change tack slightly and ask about the definition of waste. In their written evidence, a number of those who have submitted to us have talked of difficulties in the way in which waste is defined. One of the particular examples given to us was the definition of gravel and the way in which gravel can be removed from a river behind an intake, it could be used more usefully but has to be defined as waste. Can I ask you to comment first on that specific example, on that specific issue, and the rather more general one as to whether there are issues about how waste is regarded?

Mr Hazell: The definition of waste is contained in the Waste Framework Directive. Immediately before Christmas, the European Commission released a draft new Waste Framework Directive which we believe, rightly, has not amended the definition of waste, so basically waste is anything that you are required to, or intend to, or do discard, and since that original definition has come up nobody has been able to find a better definition. The European Commission gave a briefing meeting both on the new draft Directive and on the relevant two thematic strategies yesterday; there is clearly no intention and no appetite for changing that basic definition of waste. What is going to be a struggle in Brussels, and this is where it is going to be decided, not by the Environment Agency, in the next two years, is where in certain cases something stops being waste, and perhaps in one or two very narrow cases is not considered to be waste in the first place but is a by-product. I think our view is that we want whatever best protects the environment, and as long as something protects the environment I do not think anybody is going to make unreasonable claims. That said, it seems to us that every single producer industry in this country suddenly has got the idea into its head that whatever it is producing now is not waste, and that has been a dangerous escalation of expectations because the Brussels machinery, quite rightly, is not going to deliver on that. If there are products which quite simply can be got to a standard that is safe and then can be put on the market, yes, of course,

they should be and we should not be too bureaucratic about that. We make our living from regulation but we do not want to bring down the whole of the economy to produce good environmental standards.

Q149 Sir Peter Soulsby: On this occasion, it is not a matter of the way in which Defra and the Environment Agency are defining waste, it is a more general issue, as you describe it?

Mr Hazell: It is very important that it is defined consistently across the European Union. I do not think any of our authorities can be properly criticised for implementing, not gold-plating but properly implementing, European law, but there is an issue if other regulators do not properly implement European law.

Q150 Chairman: On a technical point, you may not know this, but in terms of a lot of the detailed technical work that working groups within the European Union, the Commission arrangements, undertake, from what you are saying the Environment Agency do not have a seat at the table?

Mr Hazell: We would say that perhaps they have a little bit too much of a seat at the table, in the sense that I recognised at least one of their officials at the briefing meeting yesterday.

Q151 Chairman: Which briefing meeting was that?

Mr Hazell: The European Commission's briefing meeting yesterday in Brussels. We would say very much that it is for the Government to govern, and I agree strongly with the evidence you heard earlier this afternoon, ESA strongly agrees with it, that the Agency should indeed have an expert contribution to make to Defra's formation of policy but the Environment Agency should not itself be the Government. The Minister is accountable directly to you. Barbara Young can be interrogated by you but she is not directly accountable to you. A lot of people are affected by these laws and your job, as elected Members of Parliament, is to scrutinise and you can only do that if it is the government department that forms the policy. We have consistently invited Defra to try to co-ordinate, not by compulsion, representations that we, the Environment Agency and others make in Brussels, because there is a distinctly British perspective that adds value in Brussels, which is aligning economic and environmental sustainability.

Q152 James Duddridge: I am going to skip ahead, because I think we have covered a number of issues around funding and transparency and also we have covered risk-based analysis and approach, which I was going to query with you. I would like to ask about data collection by the Agency. In particular, in what ways have ineffective systems within the Agency devalued the information collected by waste operators and what improvements can be made in relation to that data use?

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Mr Hazell: David is going to answer that more fully but, in very simple terms, an awful lot goes in and not very much comes out.

Mr O'Connor: I would agree with that. Chairman, for some years, before the Environment Agency, with the waste regulatory authorities, there was a requirement under the old Waste Disposal Licences, which then became Waste Management Licences, which are now PPC permits, to send in monthly returns to the regulatory authority for the characterisation of waste, the quantities, the type and its origin. When we have a dearth of statistical information on waste streams, one does wonder what has been happening to this information that has been collected since 1976. We have also got pollution inventory reporting, where 200 individual parameters, emissions to air and water, are recorded and sent to the Environment Agency. We have got monitoring data on emissions from sites, from landfill sites, to air and water. We have got the LATS quarterly reports on MSW that is accepted at landfill sites so that diversion targets can be calculated, and we have got separate returns for reporting on hazardous waste volumes and the nature of them. One thing we have got is that all of this information goes out but we see very little coming back out of there, and effective environmental regulation can take place only if you have got good supporting data on waste types and quantities. It was a surprise that up to 50% of construction and demolition waste is not going through licensed sites. You need to know where wastes are going and in what quantities. Just to give you an example where accuracy is fundamental, if you have got a 10% inaccuracy on LATS returns, this is the diversion of biodegradable waste from landfill, that can cost English local authorities £35 million. Ten per cent on the low side, they have got a debt of £35 million; 10% on the high side, they have made £35 million. When you are being charged £150 as a penalty for every tonne that you fail to meet your target by, if you have not got accurate data then the local authority which has got these targets, you and I will be paying for it. It is crucially important, not just in hazardous waste but where you have got penalties such as the ones I have described, in not meeting the target of diversion from landfill, it is going to cost a lot of money if there are any inaccuracies in the system. We have mentioned exempt facilities. There is no data whatsoever on that, except what Defra have collected, and the construction and demolition waste is a figure that Defra has provided for us, so you are talking 47 million tonnes that are not accounted for. It is crucially important that the Environment Agency has good, sound, accurate, computerised technology and systems so that at least we know where we are and where we are going.

Mr Hazell: One of the main problems for local authorities is on the failure to apply the European Waste Catalogue, so municipal waste is still, some years I think after it was supposed to come in, currently grouped collectively and it should not be.

Mr Watson: A comment on a few of David's points really, but there is a clear need for mature and robust data-handling systems within the Agency and, one

of the peculiarities, the Agency has done very well in respect of capturing information on pollution inventory by allowing direct electronic submission of information, but on a regional basis you see there are discrepancies between requiring information sent on, either bespoke templates, electronic submissions or even good old-fashioned paper, and then sent into regional offices to be scanned to be put onto the public register. I think, with the data capture systems that most companies are using now, it would be a very simple process to align industry with the Agency and actually submit data directly to the public register and cut out a whole tier perhaps of administration and bureaucracy.

Q153 Chairman: Just help me to understand one thing because, going back to when the new disposal arrangements came in for dangerous substances, I can remember ESA talking about the missing millions of tonnes of material. I hope my memory has not let me down on that. I can remember also Elliot Morley standing up in the House of Commons pooh-poohing all of this criticism: "Yes, we can account for it all; it's just industry talk." In other words, there is not somewhere sitting there vast quantities of material which could not be accounted for, seemed to be the Government's line. You have been calling for the Environment Agency to have better data handling and yet the Government took a very defensive position that they knew where all of this material was. I just wonder, once the proverbial new dust had settled, was there ever an analysis carried out by these interested parties to establish with clarity and accuracy where these different perceptions came from, because clearly the Agency are reliant on other people's data to collect and your assertion was that there was not a proper collection to account for the materials that were being disposed of? Unless you can solve the fundamentals of that line of thinking, you will not get the accurate database which both parties before us have suggested is needed. Is that a fair assessment?

Mr Hazell: There still is not enough data collection. If Graham's advice was adopted, and it is advice that other operators have made as has ESA, you would have a form of double-entry book-keeping that at a stroke would eliminate a great deal of fraud which undoubtedly exists in the system. No company, I think, suffered more probably than did Onyx when liquid hazardous waste was banned from landfill and the liquid hazardous waste did not then go to their new treatment infrastructure. The volumes of waste for solid hazardous waste, if you believe in miracles then perhaps the Minister was entirely accurate in everything he said to the House, but miracles hardly ever happen and we have some reason to believe that hazardous waste has not disappeared completely from the United Kingdom with the new regulation. Obviously there has been some minimisation, obviously there has been more careful categorisation by responsible waste producers of some waste streams, but we simply do not believe that the volumes of hazardous waste have fallen to the extent that they appear to have fallen and probably there

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are waste producers all over the country who are hoarding things that would be a lot safer if they were not hoarding them.

Q154 Chairman: One of the issues which have come up in all the evidence that we have heard, not only today but in other inquiries, that have affected the work of the Agency, is the question of specialist staff. It would be very useful to have your collective opinions as to whether, in fact, you adjudge that the Agency has the right people and whether they are paying the right salaries to ensure retention whilst they build up their experience, so that they do not end up being poached by others who can offer better salaries and therefore denude the Agency of continuity and quality at the same time?

Mr Hazell: We think that, at a personal level, a lot of the people in the Agency in themselves are good people. Our relationships at the top of the Agency are very good. There are management problems in terms of getting the policies at the top down to the operational level, and there are issues both with the skills and the management structures of operational staff. The law has been for some time that if you wish to work in waste management you have to have quite prescriptive qualifications. We would like the qualifications for our regulator to be at least as demanding and we would like, and we have been offering this for several years, to have joint training, because we think joint training would be very helpful, for both the people who work in our industry and the regulator. I think, to be fair to the senior management of the Agency, they were very resistant to that when the ETRA committee reported, I think they are more sympathetic than they were, but it would certainly be very helpful if you could press them on joint training and indeed on technical skills. In the same way that it is very difficult for good waste management companies to respond to bids from local authorities that are not very well informed, it is incredibly difficult for the better-trained staff of the better-run companies to deal with Agency officials who have a great deal of local power but really are not trained for the responsibilities that they have.

Mr Meredith: I would come back to the point about the disaggregation, I think. You need to look at the skill sets that are required for each group of people and a lot of what we do is talk about the interaction of the technical knowledge and the technical interpretation around risk and I think that needs to be vested with a very, very trained group of specialist people who are available almost at an arm's length to resolve the sort of PPC type issues that we deal with. Then I think the regulation is a separate issue in itself and needs a different skill set. I think there are all sorts of anecdotal comments that one could make. I do not have figures on turnover of staff and I am not even sure that we have seen a massive turnover of staff on the Agency side. What I do know is that the Agency was required to expand its role and remit and as the complexity of what it is trying to do in terms of PPCs has expanded they have needed quite a significant injection of young blood

just simply to take up the reigns of, and cope with, the work that they have got to do. I think that brings in an inevitability of an experience curve that has to go up, it has to be going up at the same period of time. I think that is something that we in the industry just have to take on board and, as Dirk said, I think the ESA has been running forward and WRG, we have been involved in it as well, I think if it was brought forward, if we just keep going on the joint training and try to get these people up the experience curve as fast as we can, because that is what we want. We want good, strong, robust regulation, a relatively level playing-field and we do not want to have to spend hours of our time and resource and cost arguing about things which effectively are trying to educate people. It is absolutely no disrespect to anybody in the Agency. I think it is their functionality, where they have come from and where they are trying to get to and I think it is a very difficult job they have got, trying to square that circle.

Mrs Heasman: If I can comment on a point made by the previous witnesses, that there is a severe technical skills shortage in the market out there, everybody is fighting in the same pool, as it were. The universities, in NERC funding, are cutting back on a regular basis on the specialist courses, such as hydrogeology, geotechnics, chemistry, in favour of the more popular, less technical, general environmental courses. The numbers of graduates being generated with these specialist skills are far too low and it is certainly not sustainable in number terms and it is very difficult to get engagement on that issue.

Q155 Chairman: Does that mean though that there are many technical and demanding forms of qualification which still command a lot of people to go and try to qualify? Being a doctor or a vet is a long haul but, at the end of the day, the rewards are there. Are you suggesting that, certainly for those who might seek employment with the Environment Agency, the rewards are not sufficient to attract people to do these more demanding courses? I suppose, in the same sense, you are all fishing in the same pond?

Mrs Heasman: Yes, we are. You are right, the rewards are not adequate for those to go through that training to identify a career. Also, they do not see necessarily an organisation such as the Environment Agency as an organisation that needs technically-qualified staff. People who work in the Agency understand that, but the big view of the Environment Agency is as a general protector of the environment and people who have those specialised skills, or are considering acquiring them, do not automatically consider a career in the Environment Agency as one where they can use them, and they ought to.

Chairman: So there is a bit of a selling job for the Agency to do about attractive careers. Thank you all very much indeed for your contributions. If, as a

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result of our line of questioning, you think of any further ways in which the Agency's operations can be improved, or even further points that you think this Committee should put to the Agency, please let us know with all speed. Thank you very much for your contributions this afternoon.

Supplementary memorandum submitted by Environmental Services Association

CORRESPONDENCE AND MEETINGS WITH DEFRA AND THE AGENCY REGARDING IMPLEMENTATION OF THE LANDFILL DIRECTIVE

The following tables sets out the relevant key correspondence and meetings with Ministers, officials and the Environment Agency dating back to the agreement of the Landfill Directive on 16 April 1999.

ESA consistently:

- outlined to the Government the importance of regulatory certainty for investment in new waste treatment technologies
- encouraged the Government to introduce the Waste Acceptance Criteria from 16 July 2004 to avoid the problems created by an interim year
- highlighted the need for waste producers to be made aware of the legal and regulatory requirements.

Date

16 April 1999	Landfill Directive agreed	
16 July 1999	Landfill Directive appears in the Official Journal.	Deadline for transposition into UK Law is 16 July 2001
16 November 2000	Meeting between ESA and Dinah Nichols, Director-General, Environment, Defra	ESA outlined the conditions necessary to achieve compliance with the Landfill Directive.
10 January 2001	Meeting between ESA and Rt Hon Michael Meacher MP and his officials: Ms Ann Hemming and Mr Simon Hewitt.	ESA emphasised the pivotal role of the Waste Acceptance Criteria (WAC) in determining investment in new infrastructure. ESA assured that "everything is in hand" regarding the WAC.
11 January 2001	Meeting between ESA and Dinah Nichols	ESA expresses concern regarding arrangements for implementing the Landfill Directive including articles 8 & 10.
19 July 2001	Letter to Michael Meacher MP enclosing ESA report on the Implementation of the Landfill Directive	The report outlined ESA's interpretation of the Landfill Directive and set out ESA's position on aspects of the Landfill Directive such as from when the WAC should apply.
4 October 2001	ESA wrote to DEFRA officials regarding arrangements for implementing the Landfill Directive by the Environment Agency.	The letter stated that the Agency was "applying" the Directive to certain facilities even though the Landfill Regulations had not been laid before Parliament.
12 October 2001	ESA responded to DEFRA's second Consultation on "The Implementation of Council Directive 1999/31/EC on the Landfill of Waste"	ESA expressed concern about ongoing delays in providing industry with the necessary framework of a regulatory package and a clear suite of guidance to implement the Directive. Particular concern was expressed regarding hazardous waste.
15 October 2001	Letter from Rt Hon Michael Meacher MP to ESA (responding to ESA's Letter 19 July 2001)	The Minister commented "I share your concern about the delays in agreeing waste acceptance criteria in Europe".

<i>Date</i>		
15 October 2001 (received 24 October 2001)	Letter from Richard Bird, Director, Environment, Defra to ESA	The letter sets out Defra's position on the implementation of the Landfill Directive and states "subject to obtaining the necessary parliamentary powers, the Directive will be implemented well before 1 July 2002".
19 October 2001	ESA met DEFRA officials: Ms Ann Hemming, Mr Tom Bastin, Mr David Short.	ESA emphasised that investment in new facilities required by the Landfill Directive was severely constrained by the absence of appropriate regulatory guidance. At this stage, WAC were not agreed in Europe and the Landfill Regulations had not been laid before Parliament. Mr Short commented that the industry should not wait until everything was signed, sealed and delivered.
24 October 2001	Letter from ESA to David Short	ESA offered Mr Short a secondment opportunity to understand better the role of regulation in providing commercial justification for investment.
10 December 2001	Letter from ESA to Richard Bird	ESA emphasised the need for a single implementation date for PPC permits to create a level playing field among operators.
27 February 2002	Letter from ESA to Brian Bender, Permanent Secretary, Defra	ESA outlined the problems experienced in implementing the Landfill Directive, and Defra's engagement of the waste management industry, drawing specific reference to Article 8 of the Directive.
13 May 2002	Letter from ESA to Rt Hon Michael Meacher MP	ESA again urged the Government to issue promptly statutory guidance relating to the Landfill Directive.
15 May 2002	Meeting with ESA, Chemicals Industry Association and Rt Hon Michael Meacher MP regarding the implementation of the Landfill Directive and hazardous waste	ESA drew attention to the problems in hazardous waste management that could occur from 16 July 2004. ESA proposed a dedicated hazardous waste strategy.
31 May 2002	Letter from ESA to Rt Hon Michael Meacher MP following the meeting of 15 May	ESA reiterated the need to implement WAC from 16 July 2004 and offered suggestions as to how the Government could encourage investment in infrastructure, including fiscal incentives. ESA repeated its call for a national hazardous waste strategy.
10 June 2002	Letter from ESA to Rt Hon Michael Meacher MP	ESA emphasises its preference for WAC to be introduced from 16 July 2004, highlighting the importance of WAC in determining the standards to which waste must be treated.
18 June 2002	Letter from Brian Bender to ESA	Mr Bender responds to ESA's concerns regarding Article 8 of the Landfill Directive and on engaging stakeholders commenting "we place particular emphasis on engaging those likely to be affected by any proposals coming from Europe and take considerable steps to do so."

<i>Date</i>		
10 July 2002	Letter from ESA to Rt Hon Michael Meacher MP	ESA noted the importance of the WAC to enable ESA's Members to plan investment and repeated calls for prompt and comprehensive guidance to enable consistent interpretation of the Landfill Regulations by the Agency and ESA's Members. ESA repeats the offer to explore with Defra the feasibility of jointly commissioning leading Queen's Counsel.
2 July 2002	ESA presents oral evidence to the House of Commons EFRA Select Committee Inquiry into Hazardous Waste	
17 July 2002	Letter from Rt Hon Michael Meacher MP to ESA in response to ESA's letter of 31 May 2002	The letter did not state from when WAC would apply.
24 July 2002	Meeting between ESA and Brian Bender	ESA again noted Defra's failure to engage effectively with ESA and its Members.
26 July 2002	EFRA Select Committee published its report on hazardous waste	The Select Committee commented that "uncertainty" was the dominant theme surrounding this inquiry.
22 August 2002	Letter to Sue Ellis, Head of Waste Policy, Defra	ESA set out the priority actions for the Hazardous Waste Forum.
26 September 2002	Meeting with Sue Ellis	ESA repeats the industry's views on the priorities for the Forum.
1 October 2002	Letter to Sue Ellis	ESA again sets out the industry's views on the Forum and commits to nominating representatives who would bring the necessary expertise.
20 March 2003	Dinner with Bill Stow, Director-General, Environment, Defra	Members briefed Mr Stow on the current problems faced by industry in implementing the Landfill Directive.
6 May 2003	Meeting with Jonathon Startup, DTI	ESA outlined the potential problems following the banning of co-disposal if WAC were not in place.
4 July 2003	ESA responds to the draft RIA for the Landfill (England and Wales) (Amendment) Regulations 2003.	ESA advised that the transitional period during which Acceptance Criteria would not apply but during which co-disposal was banned would discourage investment in new waste treatment infrastructure. ESA expressed concern regarding lack of data on hazardous waste treatment / disposal capacity.
29 July 2003	Meeting with Roger Sharp, Special Adviser, DTI	ESA emphasised the importance of WAC for investment and that they should apply from 16 July 2004.
9 July 2003	Letter to Elliot Morley MP, Minister for State	ESA reiterated that WAC should be implemented in July 2004 and raised concerns at arrangements for implementing Article 8 of the Landfill Directive.
9 August 2003	Letter from ESA to Ray Alderton, Head of Landfill Policy, Defra	ESA set out its position regarding negotiation of WAC at European level and its opposition to a risk assessment approach regarding WAC.
20 October 2003	Letter to Elliot Morley MP	ESA requested a meeting with the Minister.
17 November 2003	Meeting with Neil Thornton, Director, Environment, Defra and ESA's Board of Directors	ESA reiterated the importance of WAC applying from 16 July 2004.

<i>Date</i>		
16 December 2003	ESA responded to Defra's consultation on the draft Landfill Amendment Regulations	ESA's stated: "with only 7 months remaining until co disposal must cease, the UK Government has still not provided the waste management industry with the regulatory certainty it requires to invest in infrastructure for the treatment and final management of hazardous waste".
20 January 2004	Letter to Elliot Morley MP	ESA requested a response from the Minister to its letter of 20 October 2003.
23 January 2004	Meeting with Stephen Crisp, Environmental Advisor, Defra	
2 February 2004	Meeting with Elliot Morley MP	ESA outlines three priorities: regulatory certainty, adequate investigation and enforcement post July 2004, and an effective planning process.
27 May 2004	Meeting between Elliot Morley MP and ESA's Chairman and Chief Executive	ESA reiterates need for certainty and crucial role of regulation in creating a market in waste management services.
29 October 2004	ESA responded to Defra's review of Special Waste Regulations.	ESA called for a reinforcing of Duty of Care requirements to improve data flows and for the Agency to focus its resources to ensure proper enforcement of the hazardous waste regulations.
07 March 2005	ESA responded to Defra consultation on proposed Landfill (England and Wales) Regulations 2005	ESA expressed concern regarding widespread waste producer ignorance of new requirements. ". . . less than four months before the waste acceptance criteria are implemented in England and Wales, the Environment Agency has still to publish detailed guidance on sampling and testing wastes". ESA expressed concern at delays in publishing detailed proposals for Monolithic Waste Acceptance Criteria.

The following tables sets out the relevant correspondence and meetings with the Environment Agency relating to the permitting of landfills and the implementation of the Landfill Directive.

Meetings and correspondence:

<i>Date</i>		
09.10.02	Meeting with Environment Agency officials	Concerns raised regarding the difficulty of commenting on the process of PPC permitting, when much of the detailed Agency guidance had not been published.
08.01.03	Meeting with Environment Agency officials	Concerns raised regarding the implications of Regulatory Guidance Note (RGN)16 ("Establishing the Areas to be covered by a PPC permit") on the re-permitting of landfills.
17.03.03	Letter to Mr Steve Lee, Head of Waste Regulation, Environment Agency	Outlining concern that RGN16 might be "gold plating" EU Law, and that the requirements of the Groundwater Directive were being applied retrospectively.

<i>Date</i>		
26.03.03	Letter to Baroness Young	Expressing concern that insufficient guidance had been made available to operators prior to the requirement to submit a PPC permit.
13.01.04	Meeting with Baroness Young, Mr Archie Robertson (Director of Operations) Dr Paul Leinster, Director of Environmental Protection), Mr Steve Lee, (Head of Waste Regulation)	Outlining concerns with the implementation of the Landfill Directive generally and Financial provision in particular.
05.02.03	Meeting with the Mr Steve Lee, Head of Waste Regulation))	ESA outlines ongoing concern with PPC fro including RGN16, RGN6 and RGN11.
12.03.03	Meeting with Environment Agency officials	Concerns expressed regarding delays in the PPC permitting process.
19.01.04	Meeting with Sir John Harman, Chairman, Baroness Young, Chief Executive, Dr Paul Leinster, Director of Environmental Protection	ESA expressed continued frustration over the uncertain status and meaning of RGNs.
25.02.04	Letter to Baroness Young	Suggesting a joint review of the Agency's Regulatory Guidance by Queen's Counsel.
09.03.04	Meeting with Environment Agency officials	Outlined continued problems with interpretation and implications of the Agency's RGNs. ESA noted that RGNs were increasingly regarded as "defacto law", even though some were still available only in draft form. The Agency noted that the RGNs were issued because of a lack of policy guidance from Government.
02.06.04	Meeting with Environment Agency Officials	Concerns raised regarding Agency guidance on leachate levels and sub water table landfills. "Goldplating" of Landfill Directive requirements.
29.07.04	Letter to Ms Liz Parkes, Head of Waste Regulation	Outlining concerns that RGN6 did not recognise and reflect environmental risk assessments. ESA noted that "A revised RGN6 would bring more clarity and certainty than would a fundamentally flawed document to the process of permitting landfills."
14.09.04	Meeting with Environment Agency officials	Concerns expressed that as guidance was emerging and evolving, operators were disadvantaged by changing rules during the permitting process.
01.11.04	Meeting with Sir John Harman and Baroness Young	ESA highlighted concerns that Agency continued to "gold plate" EU Law by way of its interpretation of Landfill and PPC Directive requirements.
04.02.05	Letter to Baroness Young	Requesting a meeting to discuss ongoing concerns with the PPC permitting process and highlighting the increasing number of appeals against permits by operators.

ESA submitted formal responses to the following Environment Agency consultations on guidance relating to the Landfill Directive:

<i>Date</i>	<i>Environment Agency Guidance</i>
05.03.2001	"Technical Guidance on the Design, Construction and Operation of Non-Hazardous and Inert Landfills"
15.03.2001	Leachate Protocol
31.07.2001	Draft Groundwater Protection Guidance relating to landfill location
23.11.2001	Consultation Paper on Landfill Directive: Conditioning Plan Form and Guidance

<i>Date</i>	<i>Environment Agency Guidance</i>
10.12.2001	Consultation Paper: Guidance for the Landfill Sector: Technical requirements of the Landfill Directive and Integrated Pollution Prevention and Control
14.12.2001	The Location and Impact Assessment of Landfill Sites
21.01.2002	Guidance on the Waste Treatment requirements of article 6(a) of the Landfill Directive
04.07.2002	Environment Agency Regulatory Guidance Note (RGN) 6: Interpretation of the Engineering Requirements of Annex 1 of the Landfill Directive (Version 3.0)
06.08.2002	Hydrogeological Risk Assessment for Landfills and the Derivation of Groundwater Trigger Levels
09.10.2002	Draft Consultation: Guidance on Monitoring of Landfill Leachate, Groundwater and Surface Water
21.10.2002	National Interim Waste Acceptance Procedures. Version 1.2.
08.11.2002	Landfill Directive Regulatory Guidance Note 3
12.11.2002	PPC: Part B of the Application Form for the Landfill Sector
11.12.2002	Landfill Directive Regulatory Guidance Note 16
21.02.2003	Guidance on the Management of Landfill Gas
21.02.2003	Guidance on the Monitoring of Trace Components in Landfill Gas
21.02.2003	Guidance on the Monitoring of Landfill Gas Engines
07.03.2003	Guidance on Gas Treatment Technologies Landfill Gas Engines
07.03.2003	Guidance for Monitoring Enclosed Landfill Gas Flares
06.06.2003	Guidance on Landfill Completion
11.07.2003	Guidance for Monitoring Landfill Gas Surface Emissions
24.12.2003	Impact Assessment of Environment Agency landfill gas management guidance
09.04.2004	Guidance on sampling and testing of waste to meet landfill waste acceptance procedures (Version 4.3a)
18.06.2004	Sub Water Table Landfills and Leachate Level Management
30.07.2004	Environment Agency Guidance on the Assessment of Risks from Landfill Sites
30.11.2004	Environment Agency consultation on Financial Provision for Landfill
26.09.2005	Landfill Sector Guidance

Environmental Services Association

February 2006

Wednesday 18 January 2006

Members present:

Mr Michael Jack, in the Chair

Mr David Drew	Mrs Madeleine Moon
James Duddridge	Mr Jamie Reed
Patrick Hall	Mr Dan Rogerson
Lynne Jones	Sir Peter Soulsby
Daniel Kawczynski	David Taylor
David Lepper	Mr Roger Williams

Memorandum submitted by English Nature on behalf of the Natural England partnership

EXECUTIVE SUMMARY

1. The Natural England partnership works closely with the Environment Agency across a great many of its functions at national, regional and local level. This relationship has recently been strengthened through a Memorandum of Understanding between the Environment Agency, Natural England partnership and the Forestry Commission. Close partnership working, based on clear understanding of our distinct roles and responsibilities and where we overlap, is essential for effective delivery of many of the functions and duties of each organisation. The collaborative work programmes under the joint MoU will focus effort on those areas of partnership working where the opportunities for collaboration are especially rich and the risk of duplication high.

2. The Environment Agency is one of the statutory bodies most able to contribute to the enhancement of the natural environment through its operational and regulatory roles. The Agency has committed to play its part in enabling Government to achieve the PSA target for SSSIs, reviewing around 60,000 consents and authorisations affecting Natura 2000 sites, and in implementing various UK Biodiversity Action Plans.

3. The Environment Agency is the competent authority in England and Wales for implementing the Water Framework Directive, which it is anticipated will be the basis for managing the UK water environment in future. It is important, therefore, that measures should apply to a wide range of surface waters. At present, only 50% of the river network and less than 10% of lakes in England and Wales have been identified as “water bodies”. It is important that the Directive is used to achieve real benefits for people and the water environment, and that the administrative burden it will place on the Agency should not detract from commitment to that vision and purpose.

4. Efficient and effective delivery at the farm level requires close collaboration between Natural England and the Agency. The jointly agreed governance and proposals for delivery of the England Catchment Sensitive Farming Programme exemplify the required approach.

5. The Rural Development Service is the largest deliverer of the England Rural Development Programme, including agri-environment schemes. The involvement of the Agency in the design of Environmental Stewardship and now in its delivery both at national and local levels is welcome and has been productive. In continuing to lead on delivery of the agri-environment programme (and especially Environmental Stewardship) the Natural England partnership will work closely with the Agency.

1. Introduction

A new organisation—*Natural England*—is being created with responsibility to conserve and enhance the value and beauty of England’s natural environment and promote access, recreation and public well-being for the benefit of today’s and future generations.

The creation of the new organisation, *Natural England*, has already begun, with English Nature (EN), the Landscape, Access and Recreation division of the Countryside Agency (LAR), and the Rural Development Service (RDS) working together as partners. This natural partnership is delivering joint outcomes and paving the way for Natural England, whilst continuing to deliver their separate and respective statutory duties:

- *English Nature* is the independent Government agency that champions the conservation of wildlife and geology throughout England.
- *The Rural Development Service* is the largest deliverer of the England Rural Development Programme and a range of advisory and regulatory rural services.
- The aim of Countryside Agency’s *Landscape, Access and Recreation* division is to help everyone respect, protect and enjoy the countryside.

This evidence has been produced jointly by English Nature, the Rural Development Service and the Countryside Agency's Landscape, Access and Recreation division who are working to create *Natural England*, a new agency for people, places and nature.

2. *General background to our response*

2.1 The Environment Agency is one of the statutory bodies most able to contribute to the enhancement of the natural environment, including designated wildlife sites and biodiversity more generally, through its operational and regulatory roles. Its contribution is particularly important where habitats and species are affected by pollution, abstraction, land drainage, water-level management and sea defences, as well as in relation to access and water-borne recreation, and agricultural land and waste management. A number of joint processes have been established for the Natural England partnership and the Environment Agency to work together in the delivery of collaborative programmes, starting with a Concordat between English Nature and the Environment Agency in June 1997 and most recently the Memorandum of Understanding signed in September 2005 by the Environment Agency, Natural England partnership (English Nature, Countryside Agency—LAR, Rural Development Service) and the Forestry Commission (see attached at Appendix 1). A full list of existing agreements and protocols is contained in Annex 2 of this MoU.

2.2 The Natural England partnership works closely with the Environment Agency across a great many of its functions, and in collaboration on a number of projects at national, regional and local level. The evidence we present here relates to a range of the Agency's activities, and is relevant in particular to the EFRA Committee's interest in the Environment Agency's role as enforcer of environmental regulation and controls; its relationships with Defra-sponsored bodies; the changes brought about by the Natural Environment and Rural Communities Bill; how its work in improving wildlife habitats ties in with English Nature's (and in future Natural England's) work on biodiversity; and the Agency's forthcoming corporate strategy (2006–2011).

3. *Working with the Environment Agency*

3.1 Although we have a number of joint MoUs with the Environment Agency (see Appendix 1, Annex 2), effective delivery requires us to engage with the individual functions as well as with the Agency corporately. English Nature deploys a number of specialist staff to work on relationship management as well as in a technical liaison and advisory capacity across key Agency functions. For example, a series of regional and national workshops held in 2004 between English Nature, the RDS and the Agency's Flood Risk Management function resulted in a working agreement, building on best practice and engendering better communication at regional and area levels.

3.2 Under the MoU (September 2005) between the Environment Agency, Natural England partnership and the Forestry Commission, the Chief Executives have commissioned further high level agreements on roles and governance arrangements for five collaborative work areas where NE, EA and FC need to work closely together. These are:

- Agriculture and Land Management Policy;
- Integrated Catchment Management (and Water Framework Directive);
- Coastal and Fluvial Flood Risk Management;
- Habitats Regulation Implementation;
- Water and Land Based Recreation.

Development of these collaborative programmes is still in progress, but we are already jointly well-advanced in collaborative work through the Multi-Agency Catchment Sensitive Farming (MACSF) project to tackle diffuse agricultural pollution. This pilot project, which draws on the different skills and responsibilities of the partner organisations, is an important test bed for future joint working between Natural England and the Environment Agency. It has also informed the jointly agreed governance and proposals for delivery of the England Catchment Sensitive Farming Programme (ECSFP), a new advice programme in England, which will be led by Natural England with the Environment Agency, to reduce the diffuse pollution of water caused by farming operations. This initiative, to be launched by the Minister in December 2005 and which is currently planned to run for two years, will be part of the national response to meet the requirements of the Water Framework Directive and will contribute towards achieving Natura 2000 objectives and the SSSI PSA target. We welcome the essential role that the Agency is playing in this programme.

4. *Progress on biodiversity and wildlife habitats*

4.1 The condition of Sites of Special Scientific Interest (SSSIs) in England is a barometer of the success in deploying measures to protect and restore wildlife habitats. Water and wetland (including coastal) habitats remain at the bottom of the list, with only 27% of river and streams; 54% of lakes; 42% of fens, marshes and swamps in favourable condition. These are the areas where English Nature looks to the Environment Agency to deploy its powers and resources, in partnership with Natural England.

4.2 Two key areas of joint working with the Agency on wildlife and biodiversity, concern our work to help achieve the government's target for 95% of SSSIs to reach favourable or recovering condition by 2010, and implementation of measures to ensure the contribution to favourable conservation status of Natura 2000 sites (designated under the EU Habitats and Birds Directives).

4.3 Under the Countryside and Rights of Way Act (2000), the Agency has a duty towards furthering the conservation of SSSIs in carrying out its functions. The Agency has committed to play its part in enabling Government to achieve the PSA target for SSSIs and English Nature is in the process of agreeing with the Agency those remedies for which it has some degree of responsibility. A challenging timetable for the identification and implementation of measures has been agreed with the Agency. Good progress has already been made in agreeing and implementing a programme of water level management for the protection of SSSIs, for which the Agency has set aside a substantial budget over four years, with almost £2 million committed in 2005–06. It is important that sufficient resources are made available over the period to 2010 to enable the remainder of the SSSI remedies to be completed, particularly against competing priorities such as the Water Framework Directive.

4.4 To ensure compliance with the Birds and Habitats Directives, the Agency is required to review around 60,000 consents and authorisations affecting Natura 2000 sites. This programme, due for completion in 2010, has been one of the most significant areas of joint work between English Nature and the Environment Agency since 1998. Close working practices have been established, with joint technical advisory groups intended to identify policy and research needs, and to resolve technical differences. Collaboration has generally been good during the Review of Consents programme. Variation in the priority given to this work area across different Agency regions and functions, and local and regional interpretation of national guidance, must be managed jointly to ensure effective delivery.

4.5 Progress in implementing measures to protect wildlife sites through these programmes has also varied between different functions. The relationship with Flood Risk Management has improved significantly over the last three years. The Agency now has biodiversity and SSSI targets for its flood risk management work and all of the Agency's capital schemes are subject to sign-off by English Nature on wildlife issues.

4.6 The requirement to deal with a legacy of previous water quality and water resources problems affecting designated sites, now places particular responsibility on these functions in implementing the Habitats Directive's requirements. With the Agency's water quality function, English Nature has agreed targets for phosphorus concentrations in rivers which have been used to drive the water companies' AMP programmes, the Habitats Directive Review of Consents and now the SSSI Remedies Programme. English Nature worked closely with the Agency in developing and supporting the environmental programme under AMP3 and AMP4, where the emphasis of English Nature's work has been the development with the Agency of schemes to protect SSSIs and Natura 2000 sites. Our joint work with the Agency on marine water quality under the Review of Consents programme has led to improved environmental risk assessment approaches in a number of areas (contaminated sediment, mixing zones, risk of nutrients in estuaries and thermal pollution effects).

4.7 English Nature's joint activities with the Agency in relation to water resources have recently been set out in our evidence to the House of Lord's enquiry into water management. We have agreed with the Agency's water resources function the use of generic targets proposed by English Nature for river flows or groundwater levels for Natura 2000 site protection. We are working together in an English Nature led project to apply the criteria for SSSIs but as yet very few abstraction licences have been amended or revoked. We are concerned that the Agency should take a sufficiently precautionary approach in applying these criteria for the protection of designated sites.

4.8 We are concerned that new arrangements for funding compensation for revoked abstractions (and set out in the recent Environment Agency consultation *Review of the water abstraction charges scheme*) will limit the ability of the Agency to meet requirements for protection of Natura 2000 sites and SSSIs. We believe that the Agency will also require significant additional resources to handle the volume of challenges likely to arise from full implementation of the programme forecast in its Restoring Sustainable Abstractions estimates.

4.9 English Nature (with CCW) is working with the Agency in determining the risks of air pollution to designated sites. Until recently, the Agency's effort has been focussed on controlling point sources of air pollution through the PPC Regulations. English Nature worked initially to promote the greater awareness by the Environment Agency of criteria based on environmental rather than solely human health effects, and we would now like to see a greater role for the Agency in developing strategies (including planning and technology transfer) for tackling diffuse sources of pollution from transport and agriculture.

4.10 Strategic Permitting Groups, independent of agency regional/local structure have been established by the Agency to manage more efficiently the workload generated by the transition to IPPC. English Nature (and CCW) has worked closely with the Environment Agency nationally to agree procedures to ensure that regulation by Strategic Permitting Groups is cross-compliant with wildlife legislation. Efficiencies have certainly been gained, however some inconsistencies in approach remain to be addressed.

4.11 Both the Environment Agency and English Nature act as advisors to the Government's (independent) advisory committees on pesticides and biocides, as well as providing advice directly to the relevant regulatory agencies. English Nature has generally taken the lead in advising on aspects of terrestrial environmental risk or impact, including monitoring residues in terrestrial wildlife, whilst the Environment Agency has led in advice on impacts and monitoring in the aquatic environment. English Nature and the Environment Agency work closely in partnership and complement each other's work in research, monitoring and policy advice and advocacy in these areas.

4.12 On radioactive substances, English Nature has, through the work required to review the Agency's consents affecting Natura 2000 sites promoted and subsequently advised the Agency in the development of a risk assessment methodology for the specific assessment of the environmental effects of radioactivity. Certain other areas of novel potential wildlife risk are not readily encompassed by the current scope of the Environment Agency's work. Therefore English Nature has, for example, undertaken preliminary work into the potential environmental risks associated with non-ionising radiation (eg mobile phone masts).

4.13 *UK BAP implementation*

The Environment Agency has lead responsibility for implementing the UK Biodiversity Action Plans affecting several freshwater and coastal habitats and species, although English Nature leads on wetland Habitat Action Plans (fens, bogs, grazing marsh and reedbeds). Progress has been encouraging for some freshwater species but less so in others such as white-clawed crayfish and freshwater pearl mussel. White-clawed crayfish are seriously at risk from factors such as non-native invasive species. Invasive non-native species are a major threat to freshwater biodiversity yet at present there is no single organisation with responsibility for managing or advising on their control. The Agency undertakes some control of invasive plant species where excessive growth results in increased flood risk but there are limited resources available for more strategic control programmes or biodiversity focused work. English Nature is working with the Agency to develop strategic approaches to these problems together with other interested parties and stakeholders.

4.14 The Environment Agency is the UK lead partner for the eutrophic standing waters Habitat Action Plan and together with other partners has made good progress identifying the lakes requiring attention under this plan and the mesotrophic lakes HAP. Lakes have to some extent been a neglected habitat with most focus on river quality monitoring and improvement. As such, lakes have suffered from a number of pressures and many require expensive remedial action. Current knowledge of the status of our lakes is limited. Improving the condition of English lakes will require continued commitment from the Agency to tackle historic problems and ownership of the lakes HAP targets through all Agency functions.

4.15 Saltmarsh is being lost at a rate of 100ha per year. The Environment Agency leads on the saltmarsh and mudflat Habitat Action Plans which are intended to tackle this rate of loss through the creation of 140ha of new saltmarsh each year. As part of this work the Agency has undertaken some innovative and exciting projects to create new intertidal habitats, which include managed realignment to address both a real flood risk need (to people and property) as well as contributing to biodiversity commitments. Such initiatives represent the ideal way forward in achieving a more sustainable approach to flood risk management as well as achieving biodiversity commitments. However, the Agency has very few such projects at the planning stage. This is a serious concern as managed realignment projects take several years to plan, initiate and deliver, consequently Defra's Flood Management Division performance measure for the Agency to create 100 ha of new intertidal habitat in England each year is at risk.

5. *Implementation of the Water Framework Directive (WFD)*

5.1 The Environment Agency is the competent authority in England and Wales for implementing the Water Framework Directive. English Nature has a key role in helping to define "good ecological status" and the objectives of water-dependent Natura 2000 Protected Areas. The 2003 Regulations require the Agency to consult English Nature on the production of River Basin Management Plans. The WFD requires diffuse pollution from agriculture affecting ground and surface waters to be addressed: RDS has a key role in delivering agri-environment programmes which include such a resource protection function. The Environment Agency has been handling Water Framework Directive implementation at a national level through a project team. English Nature has met regularly with the Project Team (and CCW) since December 2001.

5.2. It is anticipated that the Water Framework Directive and its “programmes of measures” will be the basis for managing the UK water environment in future. It is important, therefore, that measures should apply to a wide range of surface waters. At present, only 50% of the river network and less than 10% of lakes in England and Wales have been identified as “water bodies”. English Nature and CCW have been pressing for additional waters to be included in “water bodies” and have drawn up lists in response to the Government’s policy statement of March 2005 (*Water Framework Directive: note from the UK administrations on the next steps of characterisation*).

5.3 Two key outcomes from this phase of Water Framework Directive implementation are that surface waters are adequately covered by River Basin Management Plans through our proposals for “water bodies” and that the water-related requirements of SSSIs and Habitats Directive sites, which are comparatively well understood, are included in measures to be implemented by 2012 (and not left to later planning rounds). It is important that this Directive is used to achieve real benefits for people and the water environment, and that the administrative burden it will place on the Agency should not detract from commitment to that vision and purpose.

6. *Regulatory and advisory roles in the countryside*

6.1 Natural England welcomes the joint working with the Agency under the England Catchment Sensitive Farming (CSF) Programme to address diffuse water pollution from agriculture. Efficient and effective delivery at the farm level requires close collaboration between Natural England and the Environment Agency, as demonstrated by integration of the Agency’s catchment co-ordinators within England CSF Programme delivery.

6.2 Successful delivery of this programme to meet EA, NE and Defra objectives requires effective awareness raising, advice provision and incentivising through grant support, and will need to be supported where necessary by strong regulation. Existing grant support schemes such as Environmental Stewardship cover a broad range of environmental problems, but cannot address all diffuse water pollution issues related to farming and additional resourcing will be required. To deliver CSF outcomes, we need to ensure appropriate regulatory activity to support CSF activities yet retain stakeholder/industry support. Good dialogue on this is needed between the Agency and Natural England and we need to ensure a consistent line on enforcement with the Agency where problems persist, or are serious or flagrant.

6.3 The Rural Development Service is the largest deliverer of the England Rural Development Programme, including agri-environment Schemes. In continuing to lead on delivery of the agri-environment programme (and especially the Environmental Stewardship Scheme) the Natural England partnership will work closely with the Agency. The Agency has been involved in the design of Environmental Stewardship and now in its delivery both at national and local levels. This involvement is welcome and has been productive. Overall the Environment Agency engagement at a national strategic level has been good but there is an acknowledged deficit in the target statements with regard to natural resource protection—due, in part, to a lack of available information on priorities. We will work together, through the agri-environment steering group, to include much more detailed local natural resource protection targeting information in the next targeting round to achieve both the Agency’s and Natural England’s objectives.

6.4 More specifically on resource protection, Environmental Stewardship directly addresses issues related to sediment and phosphorus and also supports improved habitat management for biodiversity, which often has significant related resource protection benefits. Budget availability and the range of resource protection-specific options will limit Natural England’s activity in tackling wider Agency concerns over farm pollution. More detailed agreement is required on overarching priorities and the resulting requirements for land management change as part of our collaborative programme for Integrated Catchment Management. Urgent work is needed to secure adequate funding and develop new regulatory measures where more stringent controls over nutrient inputs or farming systems are needed to meet Natura 2000 or SSSI requirements by 2010 (ie ahead of implementation of the Water Framework Directive). Improved clarity and agreement on available options and prioritisation will improve opportunities for more effective Environmental Stewardship delivery. However, any expansion of resource protection options and delivery will have significant cost implications and without a significant increase in the budget, would be at the expense of other Environmental Stewardship objectives.

6.5 Soil protection is an area of developing importance at EU and national level. We are strongly supportive of the work the Agency has done to develop an overall soil protection policy and of their work with Defra to take forward the Soil Action Plan.

7. *Marine and coastal issues:*

7.1 Environment Agency—Supervisory Powers over Coast Protection

English Nature believes that, in order to achieve a long-term sustainable approach to coastal management, there is a need to integrate the management of both coastal flooding and erosion risks. It is our opinion that this is best achieved by the creation of a single national authority with responsibility for all coastal flooding and erosion risks. We believe that some of the perceived disadvantages in such an approach can be addressed if there is a commitment by the new agency to work in partnership with local

authorities from the outset to ensure effective democratic participation of local communities in the planning and decision making process. English Nature supports the Government's current review of these responsibilities and the commitment in the Making Space for Water response to give at least a supervisory role to the Environment Agency.

7.2 Marine strategy. We welcome the Agency's Marine Strategy which has been developed through an open and participative process. It has strong parallels with English Nature's maritime strategy and by being complementary it strengthens some of our core messages on the need for action. We would like to see a stronger emphasis on an ecosystem-function approach and would hope in future to work more closely over marine climate change issues.

8. *Access and Recreation*

8.1 The Countryside Agency has greatly appreciated the close working relationship with the Agency in securing access to the Agency's own estate and more widely to water, using dedication as a way of securing access to water.

8.2 The Environment Agency has audited all its owned sites to assess whether they would be suitable for dedication under the Countryside and Rights of Way Act (2000). Five sites were selected to pilot the access dedication process; these sites will be dedicated by end December 2005. Further sites will be reviewed for dedication over the next year with the aim of dedicating sites where they deliver clear access benefits. The Countryside Agency believes that more rapid progress would be facilitated if greater funds were allocated to the Environment Agency for this purpose.

8.3 The Environment Agency is also carrying out a number of pilot projects to look at different ways of securing access to water. One of these pilots, the River Mersey project, is the first large scale project of its kind and is proving particularly successful in securing access to water (for canoeists) through dedication. The Environment Agency and the Countryside Agency will benefit from the knowledge gained, which we will promote as best practice in securing access to water by dedication.

8.4 *Coastal Access Commitments*

The Government has made clear its commitment to take forward a programme of improved coastal access for the public. The Natural England partnership is currently working with Defra to investigate options for improving access to coastal land in England, with an overall aim of creating an onward journey on foot. As yet, no decision has been made on how to achieve better access to the coast but among the options being investigated are mapping or description under section 3 of the Countryside and Rights of Way Act 2000; improvements to the Rights of Way network using Rights of Way legislation and voluntary/permissive agreements with landowners. In low lying areas this presents a number of challenges where, for example, following Government policy, the Environment Agency proposes to withdraw from the maintenance of uneconomic sea walls. It has been possible to devise schemes to successfully create a realigned public footpath to follow the new shoreline. In general, though, where the withdrawal of permissive duties will eventually lead to failure of the seawall and any public right of way that it supports, there will need to be close cooperation between the various agencies involved to ensure practical mechanisms and adequate finance to allow the creation of a new footpath that follows the new coastline.

9. *The Environment Agency's draft corporate strategy*

9.1 The Natural England partnership broadly supports and welcomes the basic objectives and priorities in the Environment Agency's draft strategy. The focus within the strategy on outcomes rather than processes is welcome, as is the commitment to contributing to the enjoyment of the environment and to achievement of the government's PSA target for SSSIs. However, the strategy would benefit from a clearer reflection of the balance between the Environment Agency's and Natural England's respective roles and partnership in delivering the Government's environmental priorities. These are more clearly set out in Annex 1 of our joint MoU (attached at Appendix 1).

9.2 We regard more comprehensive integrated solutions to deal with multiple issues such as recreational access, diffuse pollution, land management for biodiversity and flood risk management, as critical for the future of biodiversity and land management in the countryside. The Environment Agency is well-equipped to develop and deliver such solutions in partnership with Natural England, and a stronger emphasis in its strategy on such ways of working would be welcome. We would welcome also a clear vision for what the Agency hopes to achieve through implementation of the Water Framework Directive, and a clear statement about the emphasis it will place in future on putting resources into strategic science and monitoring the environment.

English Nature (on behalf of the Natural England partnership)

December 2005

APPENDIX 1

Memorandum of Understanding between the Natural England partnership, the Environment Agency and the Forestry Commission

1. This Memorandum of Understanding is between the Natural England partnership¹, the Environment Agency and the Forestry Commission. It is about how we will work together to protect and enhance the natural environment during the period prior to the legal establishment of Natural England, and signals our intent to work together beyond that date.

2. Each body has its own distinctive roles and responsibilities. We all recognise the benefits of working together to achieve our common interest.

3. This Memorandum sets out:

- our respective roles and responsibilities;
- the outcomes we will achieve by working together;
- the working practices we will use to achieve them.

OUR ROLES AND RESPONSIBILITIES

4. Our roles are defined in statute (principally the Environment Act 1995, the Forestry Act 1967 and the Natural Environment and Rural Communities Bill²). The RDS's role from 1 April 2005 is defined in a Framework Document.

- The Natural England partnership leads on:
 - conservation and enhancement of biodiversity and geodiversity throughout England (EN);
 - protection and enhancement of England's landscapes and promotion of outdoor recreation and access (CA);
 - the sustainable land management schemes which form part of the Rural Development Regulation (RDS).
- The Environment Agency leads on the integrated protection and enhancement of natural resources (air, land and water), the management of waste and flood risk, water-based recreation, fisheries and navigation.
- The Forestry Commission leads on delivery of woodland and forestry policy.

5. In many cases, the roles of each organisation are different and distinctive. Where our roles overlap, we each have distinctive but collaborative responsibilities within the same area. These are defined in Annex 1. By working in partnership we can achieve more effective delivery of outcomes, improve service to our customers and avoid duplication. This Memorandum defines how we will work together to do so.

Our shared vision and outcomes

6. We share a common vision of contributing to sustainable development and achieving a better quality of life through:

- protecting, recovering and enhancing biodiversity, geodiversity, landscapes and natural beauty;
- promoting access, recreation and public well-being;
- delivering environmental protection and improved air, soil and water;
- contributing directly and indirectly to social and economic wellbeing.

7. The strategic environmental priorities we will address in partnership are:

- Sustainable agriculture policy and practice which delivers the protection of natural resources, landscapes and natural features and the conservation of biodiversity;
 - Support and incentives to land managers to deliver sustainable land management;
 - Catchment flood management planning and river basin management planning which deliver reduced diffuse pollution and good ecological status, reduced flood risk, sustainable water supplies and enhanced biodiversity and landscape quality;
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¹ The Natural England partnership is working together, from 1 April 2005, until the legal establishment of the new agency. It comprises the Landscape, Access and Recreation division of the Countryside Agency, English Nature and most of the Rural Development Service.

² And preceding legislation related to the three partners within the Natural England partnership.

- Protection of marine natural resources and conservation and enhancement of marine biodiversity;
- Protection and enhancement of special sites and delivery of specific UK Biodiversity Action Plan targets;
- Enhanced opportunities for outdoor recreation and improved access to land, water, coasts and the sea;
- Regional strategies and policies which contribute towards natural resource protection and sustainable development;
- Delivery of evidence-based advice on matters affecting the environment to national, regional and local government.

Collaborative programmes and working practices

8. These priority outcomes will be delivered by the working principles defined in paragraph 11. We also have in place joint working agreements and protocols set out in Annex 2.

9. In a number of areas, partnership working will be especially rich and opportunities for collaboration and risk of duplication will be high. For these areas we need clarity and distinctiveness of role and to establish who leads on what and how they will work with the other bodies. For these collaborative programmes we will define our roles, establish accountabilities and agree ways of working for each body at national, regional and local level.

10. Areas identified for collaborative programmes are:

- integrated catchment management;
- agriculture and land management policy;
- Water Framework Directive implementation;
- Habitats Regulations implementation;
- coastal and fluvial flood risk management;
- land and water based recreation.

We will periodically review and agree these areas, by considering each organisation's strategic priorities and environmental imperatives. As other high priority areas emerge over time, we will develop new collaborative programmes to address them.

11. We will:

- build towards a shared evidence base by exchanging information and data;
- collaborate on research and development, partnership projects and joint approaches nationally, regionally and locally;
- encourage interaction at all levels, including developing strategies, advising others and operational delivery;
- pool our expertise and resources when working jointly to avoid duplication;
- share our positions in response to policy initiatives and consult each other at the earliest opportunity;
- communicate our collaborative work together to government, partners and the public;
- be consulted on and contribute to formal guidance issued by the Secretary of State to any of the signatories of this Memorandum;
- consult each other and contribute to strategies and major policies of mutual interest;
- establish mechanisms for collaboration at national, regional and local level, including:
 - An annual meeting of the Chairmen and CEOs;
 - Quarterly meetings of CEOs to monitor progress on this Memorandum;
 - Regular meetings of national, regional and local teams to develop collaborative objectives and working practices, where these help us achieve our outcomes and improved customer service.

LIAISON AND REVIEW

12. The relationship between our organisations will evolve over time and we will keep this Memorandum under review. Key milestones for reviews are the appointment of the Chairman and Chief Executive of Natural England in November 2005, and legal establishment of Natural England in October 2006 (as currently envisaged and subject to parliamentary approval).

Governance of this Memorandum

13. The CEO's of each of the organisations will own and sign off this Memorandum, and meet to monitor progress every quarter. Relevant Executive Directors, including Regional Directors, will meet regularly to put this Memorandum into operation and monitor outcomes. Chairs and Board members will meet as necessary to discuss specific national issues and the overall progress on this Memorandum.

Andy Brown, Chief Executive; English Nature

Barbara Young, Chief Executive; Environment Agency

Paul Hill-Tout, Director England; Forestry Commission

John Adams, Chief Executive ; Rural Development Service

Margaret Clarke, Acting Chief Executive; Countryside Agency

September 2005

Annex 1

**DISTINCTIVE RESPONSIBILITIES OF THE NATURAL ENGLAND
PARTNERSHIP, EA AND FC**

LANDSCAPE AND HISTORIC ENVIRONMENT

	<i>Specific Responsibility</i>
Natural England (CA)	Statutory advice to Government and others on landscape. Designating England's finest countryside as National Parks and AONBs.
Natural England (RDS)	Incentivising farmers and land managers on protection and enhancement of landscape and the historic environment through ERDP schemes.
Natural England (EN)	Statutory advice to Government and others on landscape scale policies and actions for biodiversity and geodiversity.
Forestry Commission	Promoting the contribution of woodland to the landscape (through grants to landowners and on the public forest estate) and ensuring (through guidelines and felling licenses) that forestry does not cause adverse impacts on landscape and the historic environment.
Environment Agency	Statutory duty to conserve and enhance landscape and the historic environment on own estate.

ACCESS AND RECREATION

	<i>Specific Responsibility</i>
Natural England (CA)	Implementation of CRoW Act 2000 access provisions.
Natural England (RDS)	Incentivising farmers and land managers on permissive access through ERDP schemes.
Natural England (EN)	Regulation on designated sites.
Forestry Commission	Incentivising landowners to provide permissive access in woodlands and management of recreation on the public forest estate. Lead on community forestry and Community Forests.
Environment Agency	Strategic planning for water-related recreation and sport; improving the amenity of surface waters and enabling the recreational and navigational use of waterways and promotion of angling.

BIODIVERSITY

	<i>Specific Responsibility</i>
Natural England (CA)	Integrating landscape character and biodiversity data, including through Countryside Quality Counts.
Natural England (RDS)	Competent Authority for EIA (Uncultivated Land and Semi-Natural Areas) and Heather and Grass Burning Regulations. Providing advice to Defra on the application of the Weeds Act. Licensing and compliance enforcement, and incentivising farmers and land managers to protect and enhance biodiversity through ERDP schemes.

Natural England (EN)	Statutory advice to Government and others on biodiversity. Regulating, designating, managing, consenting activities on or affecting statutory sites. Protection and enhancement of BAP species.
Forestry Commission	Protecting woodlands through the felling licence system and promoting the creation, conservation and enhancement of woodlands (through grants to landowners and management of the public forest estate). Competent Authority for EIA (Forestry) Regulations.
Environment Agency	Competent authority under the Habitats Regs and S28G “Public Body” under the CRoW Act 2000. Enforcement and influencing to improve salmon/freshwater fisheries. Protection and enhancement of water, wetland and coastal habitats and sites and of wetland BAP species. Creation of new habitats through flood risk management.

COASTAL AND MARINE

<i>Specific Responsibility</i>	
Natural England (CA)	Designation and governance of heritage coasts. Access to coast appeals and mapping process.
Natural England (RDS)	Incentivising coastal habitat re-creation and management through ERDP schemes.
Natural England (EN)	Statutory advice to Government and others on coastal and marine biodiversity and geodiversity. Designation and management of coastal and marine protected areas out to 12 nautical miles offshore.
Forestry Commission Environment Agency	Not relevant. Regulation of emissions and pollution to estuarine and coastal water. Advising and influencing to reduce contamination of estuarine and coastal waters. Acting as harbour authority in two locations. Regulating fishing for salmon, migratory fish, across inland and coastal waters to the six mile limit. Sea fisheries power in 60% of estuaries in England and Wales. Conducting enforcement in conjunction with local Sea Fisheries Committees, the Sea Fisheries Inspectorate and other partners. Coastal flood risk management.

WATER AND WETLANDS

<i>Specific Responsibility</i>	
Natural England (CA)	Statutory role to provide advice under the Water Act (s156).
Natural England (RDS)	Incentivising the implementation of water level management plans and flood risk management through ERDP schemes.
Natural England (EN)	Regulating, designating, managing, consenting activities on or affecting statutory sites.
Forestry Commission	Promoting the positive role of woodland in water issues and providing guidance to avoid or reduce negative impacts.
Environment Agency	Regulating and advising on environmental pollution and water abstraction. Developing Water Level Management Plans and water resource management strategies. Monitoring water quality and characterizing surface and ground water standards. Delivery of flood risk management. Competent Authority for the implementation of the Water Framework Directive.

SOIL QUALITY

	<i>Specific Responsibility</i>
Natural England (CA) Natural England (RDS)	Research on the landscape implications of soil management and erosion. Incentivising soil protection and management, the control of diffuse pollution and nutrient planning through ERDP schemes.
Natural England (EN) Forestry Commission	Advising on soil biodiversity. Providing guidance on soil protection associated with forestry activities. Evaluating and monitoring the effects of forests and forestry on the soil. Conserving undisturbed soil profiles in ancient woodland.
Environment Agency	Regulating, licensing and influencing to control pollution of soil and clean up of contaminated land. Safeguarding of soil functions. Leading on development and implementation of soil strategy and priorities, including research, advice and regulation to tackle diffuse pollution and erosion.

Annex 2

EXISTING AGREEMENTS AND PROTOCOLS

EN/EA: Joint Ventures Programme (JVP) 2002–2005³

EN/EA: Protocol for Flood Management and Conservation⁴

EN/EA: Service Level Agreement Information Exchange⁵

EA/EN: European Water Framework Directive, English Nature and the Environment Agency. Protocol for co-operation under the Joint Ventures Programme⁶

EA/EN/CCW: Water Framework Directive Protected Areas: Natura 2000 sites. Agreement on joint working between EA, EN and CCW⁷

EN/FC: A Joint Statement of Intent between English Nature and the Forestry Commission (England)⁸

EN/FC/CA/Sport England/The Association of National Park Authorities: Health Concordat 2005⁹

EN/CA: Nature Conservation and Access Land: An agreement between English Nature and the Countryside Agency¹⁰

EN/EA/CA/EH: Strategic Environmental Assessment: Consultation Bodies' Services and Standards for Responsible Authorities¹¹

EA/EN/CCW: new SSSI procedures for immediate implementation¹²

EN/EA: Memorandum of Understanding on River SSSIs

EA/CA/Sport England: Memorandum between the Countryside Agency, Sport England and the Environment Agency

³ Dated 7 March 2002, this Joint Ventures Programme sits underneath the 23 June 1997 "Concordat between English Nature and the Environment Agency". Whilst the Concordat itself is superseded by this MoU, the JVP framework, setting priorities for biodiversity-focussed EA/EN collaboration at all levels, will continue. In rolling forward the current JVP into 2005–06, the priorities for the remainder of the Integrated Agency confederation period will be re-visited.

⁴ Dated March 2003 and due for review in March 2006.

⁵ Dated 1 December 2004 and due for review in December 2007.

⁶ Dated August 2002, and likely to be revisited as part of JVP review.

⁷ In preparation and ready for sign off.

⁸ Dated 20 November 2003 and includes Joint Action Plan 2003–04 (with update of latter planned).

⁹ EA has also indicated a wish to pledge up.

¹⁰ Dated 10 July 2000.

¹¹ Version of 26 August 2004 signed by all CEOs. Describes the services and standards which "Responsible Authorities" can expect from the English "Consultation Bodies" over SEA Directive Consultations.

¹² Dated 1 July 2002.

Witnesses: Mr James Marsden, Head of Policy, Dr Alastair Burn, Head of Water and Wetlands Team, English Nature, and Ms Alison Tytherleigh, Rural Development Service Partnership Team, Natural England partnership, gave evidence.

Q156 Chairman: Good afternoon, ladies and gentlemen. I apologise for the late delay in starting. It was partly due to the earlier division and some rather extended Committee business, so my apologies for the fact that you have been kept waiting. Can I welcome the Natural England partnership. We feel that having debated the birth in the previous Committee of Natural England, it is quite interesting to see that you are now part-way delivered and we look forward to eventually seeing the whole of Natural England emerge with the right label, but nonetheless you are very welcome. Your delegation is led by Mr Marsden, who is the Head of Policy of English Nature, supported by Dr Alastair Burn, the Head of the Water and Wetlands Team from English Nature, and Alison Tytherleigh of the Rural Development Service Partnership Team. You are all very welcome. I hope you do not mind my saying so, but when I read your very comprehensive evidence I began to think that you were having a sort of personal love-in with the Environment Agency because I kept reading your eulogies of praise on all the work they were doing and I laboured very hard to find almost a scintilla of doubt or criticism that the Agency were doing anything which was wrong or might cause you a problem, or even just a flicker of the eyelid in terms of lost sleep at night! Have I gained the wrong impression, or is there underneath that something which you ought to make the Committee aware of about the work of the Environment Agency, or is everything so beautifully sweet and tranquil and untroubled that we should believe everything in your evidence?

Mr Marsden: Chairman, may I start by thanking you for the opportunity, before I turn to answer that question, for joining you in your deliberations this afternoon. I am rather pleased that was your reaction to our evidence, because I think it is true to say that more so than at any time in my career in English Nature we are now working extremely closely with the Environment Agency. I think in the last week I have probably spent two or three days with Environment Agency colleagues. I am due to spend considerably more time with them in the current weeks ahead. We are working jointly on looking at our corporate plans, on the strategies of the two organisations. It is an extremely close relationship and it is a relationship based on shared outcomes, and indeed one of need.

Q157 Chairman: That is it, is it? So you are all buddies together. Part of our attempt is to explore the remit of the Environment Agency and to discover whether there are ways in a positive sense in which its performance can be improved, so have you got a little list, perhaps, of things which you can tell us where in spite of the very cosy relationship you now have developed with them there are things which they could do better?

Mr Marsden: There are one or two things, and I am sure we will talk about them in the course of this discussion. My starting point, I think, would be the breadth and depth of the organisation. It is of

necessity a broad and deep organisation. Its remit is vast, the integration of air, water and land. That is a daunting agenda for any organisation. The challenges it faces now and in the future are staggering in their scale. On the point of complexity, sometimes a little is lost in translation, and I think you will find that in our evidence, from what is agreed nationally to what is delivered on the ground. If there is one thing I would point you to, that is an area where we would like our relationship to be closer, stronger, better and more efficient, which is how you translate the sorts of things which we talk about in our evidence, the Memorandum of Understanding, the collaborative programmes. We need to see those translate into our corporate business plans, which we are working on, as I have said, and then to see that translate into action on the ground in a consistent and comprehensive way. That is the area where there has been some tension, I think it is true to say.

Q158 Chairman: You do not think that because of the enormity of the remit of the Environment Agency what resources it does have are spread a bit thinly on the ground?

Mr Marsden: We would all like to have more resources, and I am sure that is true of the Environment Agency as much as it is of English Nature, or indeed of the future of Natural England. They are very heavily stretched, yes, that is absolutely right.

Chairman: Okay. Let us move on. As you say, I am sure there will be points which will come out.

Q159 Mr Williams: In environmental terms, probably the Water Framework Directive is going to be one of the most important pieces of European legislation in the coming years and it is the Agency's duty to handle the implementation, but as I understand it Natural England is going to work jointly with the Agency through the Catchment Sensitive Farming Programme to tackle diffuse pollution, agricultural surface water issues?

Mr Marsden: Yes.

Q160 Mr Williams: What are Natural England's priorities for implementing the Catchment Sensitive Farming Programme and how do they fit in with the Agency's priorities, and who takes precedence in a case of conflict?

Mr Marsden: If I could start by saying there are some differences in timeline here, which is a fact we have to work with. The timeline for delivery of the Water Framework Directive is 2015. Natural England will have some rather shorter time horizons, around 2010 for the delivery of the public service agreement on SSSIs and for Natura 2000 under the Habitats Directive. However, all of those protected sites exist in catchments. That, too, is a fact. So one will contribute to the other and in drawing up jointly the list of priority catchments—and there are 40 which the Minister, Elliot Morley, announced on 21 December—we worked very

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closely with the Environment Agency to look at the juxtaposition of the characterisation exercise which was done and published for phase one of the characterisation under the Water Framework Directive and our own prioritisation of which protected areas were most affected by diffuse pollution from agriculture and needed urgent attention ahead of that 2010 timeline. The result of that is that the vast majority, but not all, of those special sites are included within the 40 catchments. That is how we are proceeding. We are about to start recruiting next week the team of staff which will jointly deliver the Catchment Sensitive Farming initiative announced by the Minister before Christmas.

Q161 Mr Williams: We have been told in previous evidence that sometimes the Environment Agency has a difficulty in getting a balance between its policing role and its advisory role. What advice would you give the Agency about how they are going to handle these issues and still keep on board the commitment and support of the stakeholders?

Mr Marsden: Could I start on that, and then I am going to pass over to Alison. This is an area where the Environment Agency would clearly like to do some more work on the advisory side in terms of the mix of advice, incentive and regulation. The incentivisation is for Natural England to deliver and the balance in that troika, which is a partnership across the two organisations, is a very keen one. There are going to be some areas where in the longer term we are going to need to see some regulation, and diffuse pollution is one of them in the longer term. In the short term, we need to give advice and incentives. The advisory role through the Catchment Sensitive Farming officers will be a shared one. We have integrated some of the Environment Agency's recently appointed farm advisors into the cohort of Catchment Sensitive Farming officers who will be appointed, hopefully in March. We have also integrated the four Catchment advisors who are doing the pilot work on the multi-agency scheme which we kicked off in April. So that has happened; that is done. In addition, the RDS, as it comes into Natural England, has an existing programme of farm advice. That comes into Natural England, and I will pass over to Alison now, who will talk about how that will be integrated with the Environment Agency.

Ms Tytherleigh: The key certainly for RDS's work is liaising with farmers and getting farmers to take up schemes and agreements, and we need to work very closely with the Environment Agency to have that balance between the incentive and regulation. There are plenty of really good examples of where we currently work on that and through the Farm Demonstration Programme, RDS have had regional farm coordinators who have been working in the Environment Agency to liaise with farmers on looking at how to tackle the issues of diffuse pollution, both using agri-environment and the issues around regulation and the use of regulation. So there is a good balance there.

Q162 Mr Williams: So you think that by integrating staff in the model you have described, there are not going to be different messages from either organisation which might confuse farmers?

Mr Marsden: Could I be very clear on the point about the Catchment Sensitive Farming initiative, where you started, Mr Williams, the integration is such that we are jointly appointing these staff. They are coming from the Environment Agency, RDS and English Nature, and maybe some from the Countryside Agency, and they will come together to form a group of 40-odd staff who will deliver this initiative. In addition, there will be about four of the Environment Agency's own agriculture advice team outwith that programme but working very much alongside. Then there will be some associates from other bodies, such as the Farming and Wildlife Advisory Group (FWAG), the Rivers Trust, and so forth, working in a joined up, coordinated way under the auspices of this to deliver the initiative. So that is the Catchment Sensitive Farming initiative, which is a big new advice programme. There are existing advice programmes, which Alison has touched on, and those, too, will be under review very shortly by Defra.

Mr Williams: Thank you.

Q163 Chairman: In your evidence, in paragraph 5.3, you say: "It is important that this Directive" (meaning the Water Framework Directive) "is used to achieve real benefits for people and the water environment, and that the administrative burden it will place on the Agency should not detract from commitment to that vision and purpose."¹ What is going to stop the objective of that sentence happening?

Dr Burn: I think there are two points to make here. One is that the Water Framework Directive is a mammoth task. It puts requirements on a vast range of the Environment Agency's activities, including the need to monitor what is going on over large areas, and the extent of resource which is going to be needed to tackle the process of the Water Framework Directive is itself a mammoth objective which the Environment Agency has got to face up to. In addition, the Water Framework Directive is a huge opportunity and there is still a lot to play for. To give you a concrete example, the way in which the Water Framework Directive will be implemented is through River Basin Management Plans. The types of activities which will take place within River Basin Management Plans will be determined by Programmes of Measures addressing water bodies in particular, and the way in which water bodies are defined becomes quite important there because if you have not defined a water body then the measures are not going to be there to apply to it. So the discussions at the moment between ourselves, the Environment Agency and Defra about how broadly to cast that definition of water body are quite pertinent and significant. What we are anxious about is that concerns about the scale of the process

¹ Ev 71

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here should not interfere with the breadth of opportunity which a real vision behind the Water Framework Directive should drive.

Q164 Chairman: Given those discussions, when do you believe it will be possible to make a judgment as to whether the Environment Agency has sufficient resources to realise the vision and potential of the Water Framework Directive, because from what you are saying things have not crystallised in such a way that you could make that judgment at the present time?

Mr Marsden: I referred to timelines earlier on. There are some pretty critical ones coming up ahead and they are not all closely aligned. I have mentioned 2010 and the PSA and Natura. In 2008 we hit the initial Programmes of Measures, River Basin Management Plans, and so forth. We have then got another periodic review, which unfortunately comes in 2009, and those timelines are not as well juxtaposed as one would wish and one has got to work with what we have got. Those are the processes we are in. So I think we will know once we see the first drafts of River Basin Management Plans, which we and others will be heavily engaged in helping the Environment Agency to draft. We will be sharing data derived, hopefully, from a shared database through a geographical information system platform. Alastair and I were joking earlier on about sending disks by courier during the last periodic review. We do not want to be in that place; we want to be in a modern, IT-driven place whereby we have a shared IT platform which can allow us to share data across, to develop the River Basin Management Plan, to develop the Programmes of Measures, and to align the Programmes of Measures with the schemes required under PRO9. That is when we will start to see how well this is working. That is the test.

Q165 James Duddridge: Is there a danger that funding to either the Environment Agency or Natural England will be cut and the excuse given will be that the other is doing it?

Mr Marsden: You have given me an open goal there, I think. Obviously the funding for ourselves and the Environment Agency comes ultimately from the same pot. We are all aware, I think, of the rather tight fiscal environment coming up ahead of us, both now and looking towards SRO7. We were told by our sponsor last week that there is a possibility that the Treasury might look to national resource protection as a priority area of Defra's for a zero-based review. We would find that very uncomfortable if that were to happen. Added to that, at the high level we have had a recent EU budget settlement which places the agri-environment budget under some pressure and we will be relying on modulation. The agri-environment budget, dare I remind you, is one of the main tools in our toolkit, both now and going forward as Natural England, to deliver our outcomes, so any pressures on those areas are going to be very painful, not only for Natural England but also for the Environment Agency.

Q166 James Duddridge: Those are really financial constraints. The other constraint, particularly within the Environment Agency is the human resource constraint. To what degree do you think they can outsource either to the private sector work, or alternatively to yourselves?

Mr Marsden: They already outsource a considerable amount of flood defence work, for example. That is already the case. If you are hinting at delegation, and I will read into what you have said that you are—

Q167 James Duddridge: There is no hidden agenda.

Mr Marsden: Let me say a little about delegation then, perhaps, because whilst Part 8 of the Bill currently in the House, the NERC Bill, does allow Natural England to delegate, we are not vested yet and we will not take any decisions about what, if anything, we will delegate or who we will delegate to until after we are vested and a new top management team is in place. Our understanding of the Environment Agency's position vis-à-vis delegation to Natural England is comparable.

Q168 Mrs Moon: Going back to the issue of funding and the pressures which you were talking about facing, I wonder whether what sometimes happens is that when there are funding pressures people revert back to their statutory responsibilities, which then leaves a lot of the growth in the initiative and developmental work, and it just does not happen? Is that something which you have particular potential for when you are describing your enclave and the Environment Agency's enclave and somewhere there is a gap in the middle? Is that a risk we are facing?

Mr Marsden: I mentioned earlier shared outcomes. Many of those shared outcomes—and we have touched on a few, the Water Framework Directive, the delivery of the public service agreement targeted on special sites—are so core to the Agency's respective agendas that it is unthinkable we will cut those. We may have to slow the progress in delivery if funds are really very scarce, but I do not think those things will disappear. Some of the areas which potentially could be threatened are some of the nice to do, the desirables as opposed to the mission-critical. Nobody is going to cut mission-critical. It would be an extreme settlement that led us into that position.

Q169 Chairman: I think we could do with a bit of guidance. Looking back at your evidence, there are a number of areas where you highlight financial constraints. You have just made an important statement that there are some things which are the “must do” and there are some things we would like to be done. Can you try, for the sake of time, to tease out in a little note to us which are the “must do” and which are the “desirable” and just put a little commentary about where the financial pressures come? The question I would like to ask is, do you think the Environment Agency should say loudly and publicly if it does think it is under pressure on any of the “must do” in terms of the finance which it gets, because obviously ultimately it reports to the

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Secretary of State, it is the servant of Defra, but it does have a very powerful role, as you have outlined, in protecting the natural environment and working with other partners who are similarly tasked? Is there a need for really strong spokespersonship (ie stand up and be counted time) if there really is pressure put on the “must do”?

Mr Marsden: I am sure the Chief Executive of the Environment Agency would respond forcefully and robustly with a very strong evidence base, as would her Chairman, if that were the case.

Q170 Chairman: You would want them to respond that way?

Mr Marsden: We would wish them to do so and would wish to make common cause; indeed, that was the nature of the discussion I had with my counterpart last week when we heard about the possibility of a zero-based review on natural resource protection, and I would go further and say that we would expect to work not only with the Environment Agency but with our respective sponsors in the Department, in Defra, to work on that across government, because it is an across-government issue which needs to be addressed.

Chairman: Thank you.

Q171 Mrs Moon: The evidence which we had from Baroness Young mentioned the “very rich” relationship and the need for that to be the nature of the relationship between the two Agencies, but she also talked about boundaries and for those to be “written down very carefully” otherwise there could be treading on corns and toes. There is a perception, I know, because I talked quite extensively with my local authorities and the voluntary sector agencies, that the Environment Agency deals with land, air and water and Natural England is divided as to landscape and access. Is that a fair assessment or just a simplification of your different areas of priority and expertise?

Mr Marsden: It is a good high level assessment. Natural England will have five strategic outcomes. I will not list them all in full, but if I can summarise, at high level for Natural England will be about an enhanced natural environment and better access for more people from more diverse backgrounds to enjoy. That is what we will be about. In terms of the outcomes, clearly an enhanced natural environment is number one, increased opportunities for access to people to enjoy the coast and the sea, from the inner-city to the sea, more understanding of our natural world and the pressures upon it and more sustainable use and management of the natural environment. The fifth I always struggle to remember, which is really fundamental, an enhanced quality of life for all, the underlying links across the natural environment and economy. Much of that which I have outlined in terms of our programme outcomes which we want to achieve as Natural England is within the warp and weft of air, land and water. So Baroness Young is absolutely right when she calls for clear and distinct roles and responsibilities. That is what we have mapped out through the Memorandum of Understanding which

we attach to our evidence.² The next step from that, which we are currently engaged upon, is developing some really quite detailed collaborative programmes in the priority areas which are signalled in that Memorandum of Understanding. That will translate into how we deliver those specific areas jointly and severally and who else we will work with and through.

Q172 Mrs Moon: So you would not say there was a tension between the two Agencies and their respective stakeholders?

Mr Marsden: No, actually I would not. I think there are tensions between the two Agencies and I have alluded to one already. Another one clearly is around the agri-environment budget, because we both want a slice of the action. There is not enough of the agri-environment budget. It is Natural England’s job to deliver through our advisers on the ground, but the targeting of that will be done in partnership with others, of which the Environment Agency will be one.

Q173 Mrs Moon: Am I right in understanding that a lot of the tensions are around budget and the constraints of budget and who has got the capacity to actually move things forward, and in particular who you see as responsible for biodiversity action planning and Habitat Action Plans?

Dr Burn: The biodiversity action planning process is again very much all about partnerships. There is a wide range of biodiversity action plans for species and habitats and there is quite a wide range of lead organisations for each of the individual Habitat Action Plans and Species Action Plans, so the fact that you have the Environment Agency leading on some and Natural England or English Nature leading on others should not be really a surprise and I think it is an important part of it. Biodiversity Action Plans will only deliver if organisations make things happen on the ground. The Environment Agency has particular responsibilities and is able to deliver specific things, specific areas of work in certain areas. Take, for example, coastal and flood defence. It is the Environment Agency which has the capacity to construct or remove sea walls, for example, which is a massively important part of preparing for more natural coastal processes. So the fact that the Environment Agency is a lead in that area is a good thing, and the fact that there is a mix of organisations leading on Biodiversity Action Plans is also a good thing. The important thing is that within each Biodiversity Action Plan group you have the right constituent parts and that the lead organisation can provide the lead and the vision necessary for the constituent parts to then do what is necessary within each of those organisations. I think the split between English Nature on water and wetland issues and the Environment Agency is a good thing and we certainly hope that will continue under Natural England, under our new role.

² Ev 73 Appendix 1

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Q174 Mrs Moon: The Agency has got the role of “Champion of the Environment”; its website describes itself in that way. One of the things which people have consulted me about is this issue of the overlap between the responsibilities. As you have just said, different people take different leads, but it is where the resources come from to actually fund that lead which is the issue I was trying to get at. It is the resource issue, because there has certainly been a concern that there is a lack of dedicated resources and it is a case of who has got a pot of money, and nobody is quite sure who is actually going to fund this work.

Mr Marsden: The flood risk management budget clearly goes to the Environment Agency, but Defra expects (and we share that expectation) that wherever possible the delivery of schemes to protect human health, life and wellbeing through flood risk will also deliver other benefits, and biodiversity is now recognised very clearly as one of those, and access where possible as well. So there are ways of using budget streams to deliver multiple public benefits. That is the game we are in. So far as the agri-environment budget is concerned, that is a multi-objective scheme and flood risk management is a second order objective of that, so there are no absolutely hard lines any more around those funding streams in the way you seem to suggest there are. What we are about is integration but with, in the case of the flood risk management budget, clearly very much the primary objective up front. But if we can deliver some biodiversity as well through the Environment Agency working in partnership with ourselves and others, that is what we will try and do.

Q175 Lynne Jones: We have just been mentioning the importance of partnership. In your Memorandum of Understanding you also mention the risk of duplication. One area which might highlight this is responsibility for saltmarsh and mudflat Habitat Action Plans being with the Environment Agency and English Nature leading on wetland Habitat Action Plans. What is the rationale for this split, what are the problems, and could it be organised differently?

Mr Marsden: Perhaps I will start with the saltmarsh and then ask Alastair to deal with the wetland. We have been talking just now about flood risk management and flood risk management schemes. If you build a hard sea defence, typically if there was a saltmarsh in front of it before there will not be for much longer because it will erode.

Q176 Lynne Jones: We actually visited and saw that.³

Mr Marsden: Indeed, and thank you for reminding me that you did. I am sorry I was not with you that day, but I hear it went very well. What we need to do is to realign and to make better use of soft defence. In that way we can recreate some saltmarsh if the topographic conditions allow. Indeed, the Environment Agency has a target to do so in the Defra guidance. More often than not, it is actually

an Environment Agency scheme which is required to deliver saltmarsh habitat because we are either walking away from, or doing managed realignment in a considered way with, an existing flood defence structure. More often than not, that is the case when we need to recreate saltmarsh. We are moving the line back. In wetland recreation the circumstances are slightly different. I am sure Alastair will wish to talk about the vision work we are doing at a strategic level with the Environment Agency as well as the specifics.

Dr Burn: Just to pick up on the point about why English Nature should lead on wetland Habitat Action Plans and the Environment Agency on certain others, I think it is logical. Obviously there is a big distinction between the types of habitat we are dealing with under the wetland Habitat Action Plan, which includes things like reedbeds and grazing marsh, fens and bogs. Those are quite different habitats with quite different needs and very different pressures from saltmarsh and mudflats. I think this gets to one of the nubs of the difference between English Nature’s responsibilities and those of the Environment Agency in this area, and that is when it comes to assessing technical habitat requirements (and particularly technical habitat recreation requirements) in those quite tricky areas the expertise and weight of knowledge sits with English Nature and the partner organisations on the wildlife and biodiversity side. So it is fairly natural that we should take the lead on that. But again, as I said before, the Environment Agency sits on the same Habitat Action Plan group and it has a role in delivering on that. The Environment Agency leads on, I think, about five different Habitat Action Plans so its responsibilities here are not confined to saltmarsh and mudflats. One where it has another lead responsibility is on lakes, and there again the logic in the Environment Agency having the lead there is that, in contrast to the sort of wetland habitats we have just been describing where most of the problems are to do with the need to recreate and restore, in the case of lakes we are not by and large seeking to create new lakes but we are seeking to restore existing lakes to a good or even better condition. The nature of the actions which are needed there again fall to the sorts of activities which the Environment Agency is engaged in, so things like water quality issues and water resources issues are the things which need to be tackled. The need for vision there is exemplified through the evidence we gave you in relation to the Water Framework Directive, where at the moment relatively few lakes are listed as water bodies under the Water Framework Directive and one of the things we need to see is engagement by all parts of the Agency to bring the importance of the lakes Habitat Action Plan, for example, up the agenda so that it is equally there amongst those who are dealing with, say, the Water Framework Directive and setting objectives and visions under that.

Q177 Lynne Jones: So you are entirely satisfied that there is a logic in arranging that?

³ The Committee visited Abbots Hall Farm, Essex, 30 November 2005.

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Dr Burn: I think there is a logic.

Q178 Lynne Jones: There is not a risk of duplication? The fact that you are working in partnership avoids duplication?

Dr Burn: I think it is because of the differences in responsibilities that we have. We have a role to play in the saltmarsh Habitat Action Plan and the Environment Agency has a role to play in the wetland Habitat Action Plan. The important thing is making sure that all parts of both organisations take on board what they need to do to achieve those. It is worth just mentioning, if I could, Chairman, the fact that we are, with RSPB and the Environment Agency, developing a vision for water and wetlands, which is essentially our collective view as to what the water and wetland environment should look like in 50 years' time.

Q179 Chairman: I am sorry, I am a bit confused. Just help me to understand. I apologise to my colleague for interrupting her thought process, but if you take an SSSI which includes a wetland, a saltmarsh and a river estuary and you have a responsibility for SSSIs, do you then have to work with the Environment Agency on the other bits which may be included in that area because they have primary responsibility for those?

Mr Marsden: Absolutely, and it would be very strange if we did not. The situation which you describe is, I should think, daily played out across England. It is routine for us. The Environment Agency and ourselves are very clear about what we have to do to help us help Defra deliver on the SSSI/PSA target. We meet regularly, we discuss the remedies required which are going to switch the condition state of those SSSIs from red (unfavourable) to green (favourable). We discuss that regularly, routinely. The Environment Agency knows what it needs to do, it has a plan to achieve it and it is working with us and reporting through to a director in Defra, through the major landowners' group, to achieve that. That is on the land they directly own, which is actually rather small. They have a far bigger influence, as you rightly point out, through their regulatory role and there we have a parallel set of processes which are part of the same governance I have talked about. The first and possibly the most important is the review of the consents process under the Habitats Directive where you may, I am sure, know that the Environment Agency has a duty to review, modify or revoke its consents which may have an adverse effect on the integrity of those Natura 2000 sites, the highest level of protection for biodiversity. We are well into that process, and indeed this year I think the first tranche of key decisions on the priority sites over that review of consents will come to light. So that is at the strategic level, but in terms of their routine operations they need to consult us and we have a discourse. It is not an overlap, it is not duplication, it is how we do our job.

Q180 Lynne Jones: It all sounds quite complicated.

Mr Marsden: It is complicated.

Q181 Lynne Jones: You do not think that English Nature or Natural England eventually should have responsibility for all habitats?

Mr Marsden: That is a rather difficult question. In one sense we do in that we are now, as English Nature, the champion for the natural environment and we will be that as Natural England, and it will be Natural England which will have the responsibility for designation and the protected sites network. It will also have the role as the champion for biodiversity across England, and indeed in the sea. So in that sense I do not see how, in delivering that, either Natural England or any other body (were it given to any other body) could deliver that in isolation; it has to work with and through others and at the top of the list of people we need to work with to deliver on that agenda for wildlife is the Environment Agency. There are one or two others which run a close second, but the Environment Agency is by a long way the most important one.

Q182 Lynne Jones: So in effect you are sort of delegating responsibility for saltmarsh and mudflat to the Agency?

Mr Marsden: Let us give you another example. Your Chairman, Mr Jack, talked about rivers in his example and let us talk about rivers. Under the Water Framework Directive we are going to need to look at whether or not we need to restore some rivers, or parts of rivers which have been canalized and do not have the characteristics which will be required under the Directive. Let us assume that one of those is an SSSI, or perhaps not. The actual work required to restore a more natural quality to the river to achieve the Water Framework Directive requirement will have to be done by the Environment Agency. It has the powers and it has the people who can do that. It has the chaps who sit on diggers who know how to do that stuff. Natural England will have the agri-environment budget and the incentive and the advisory tools to help persuade the landowners and farmers on either side of the river that this is a good thing which needs doing and there is a target out there on which the two Agencies need to work together to deliver.

Q183 Lynne Jones: Moving on, you mentioned in your evidence that there are some inconsistencies of approach. Why have those arisen and are they going to be addressed soon? What are the barriers to addressing them?

Mr Marsden: I talked about the scale and complexity at the outset of our evidence and I think to some extent that is inevitable, but we have, as we have at a national level, very, very good working relationships at an area team level, at the point of delivery. Sometimes the priorities are rather different. We can try and make it better, but it is almost inevitable, I think, that there will be those disjoints when you have two organisations with the sort of breadths and depths of the agendas which we

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have, but not always at the same time will the same people in respect of teams be as aligned around a particular task as they need to be to deliver it.

Q184 Lynne Jones: You also say there is no single organisation with responsibility for managing or advising on the control of the invasive non-native species. How significant a problem is this and which organisation should fulfil that role? Could I just add on that, is the issue of GM crops or GM species an issue there as well?

Mr Marsden: Non-native invasive species is a very significant problem; it is getting worse. The Water Framework Directive requires us to address it, and Alastair will say a little bit about how we are going to tackle that and put a bit more flesh on the scale of it.

Dr Burn: I think the first thing to say about non-native invasive species and the governance of tackling the problem—and it is a big problem: from the biodiversity point of view it is cited as a threat in about a quarter of all the Habitat Action Plans, so that is a significant problem, and about 12% of the Species Action Plans, so it is a big biodiversity threat—is that it is a problem across a wide range of sectors. So it is a biodiversity threat, certainly, but it is also a problem for fisheries, for recreational activities, for flood defence and for horticulture; in other words, this problem of non-native invasive species is one which is shared across a wide range of sectors. When we talk about no single body coordinating action, I think what we want to home in on is action in relation to biodiversity, and particularly action in relation to biodiversity in the water and wetland environment. In that environment, as I mentioned, you have got problems relating to things like fisheries, flood defence and the condition of wetland habitats. There is certainly governance. Defra has set up a process, along with the Joint Nature Conservation Committee, for harmonizing research and setting an overview of priority needs across the piece, but when you come down to looking at what is needed, for example within a particular catchment or in a particular river to tackle an invasive species in a coordinated way, we have not got a body which is able to take or which currently takes the overview in that way. There are some good examples. There is some really good practice going on. In relation to the River Tweed there is a collaborative programme between Scottish Environmental Protection Agency and the Environment Agency, which conservation agencies are enjoined in negotiating as well, aiming to prevent the further spread of two invasive species, Giant Hogweed and Japanese Knotweed, but there is not a kind of overall process.

Q185 Chairman: Dr Burn, I am sorry to interrupt this flow of fascinating information, and you have very clearly identified that there needs to be something done. Would you like to just tell us whether you think this is a role which the Environment Agency should play?

Dr Burn: I think it probably is an important role for it to play, and certainly under the Water Framework Directive we would look for it to play that role.

Chairman: I think my colleague David Lepper wanted to come in here.

Q186 David Lepper: Thank you, Chairman. I have been listening carefully this afternoon and I have not intervened in the discussion before, but as far as I recall one of the main and probably the main conclusion of Lord Haskins back in 2003 was that rural delivery arrangements were too complex; hence we have a number of changes put in place, one of which led eventually to the creation of Natural England. Do you really think that that issue of the complexity of rural delivery arrangements is going to be dealt with through the kinds of responsibilities and roles you have been talking about this afternoon which you will share with the Environment Agency, or, if I were a customer, would I end up being even more confused about who I go to for what if I want advice or to make sure I am not breaking the law?

Mr Marsden: There is a number of things going on in that regard—the Hampton review implementation, the better regulation agenda—and the creation of Natural England is part of the Hampton implementation. Both we and the Environment Agency are heavily engaged in the Defra teams which are working on the implementation of those two strands, so this is a journey which we are travelling on. It is a long-term journey. The creation of Natural England is a milestone on that journey. Natural England coming up to full steam—and do not expect to see it within the first year because there will be some transition costs—will be another milestone. Delivering on its outcomes in a joined up way with its partners will be another. This is not going to happen overnight.

Q187 Patrick Hall: It would actually be helpful, to me anyway, if we could maybe have some information with regard to the mapping of SSSIs, which I believe have been around for 40, 50 years or so. We have now got Natura 2000 sites, I do not know what they are, and various UK Biodiversity Action Plans, which I gather must be geographical and territorial?

Mr Marsden: They are.

Q188 Patrick Hall: We have got a number of bits of territory which are variously defined and I think it would be helpful if we could have a map showing the distribution around the country and where these consents and authorisations apply. It is very complex. Trying to understand how various bodies work on all these things which exist on the ground is not easy. I guess most of these bits of territory are in private ownership?

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Mr Marsden: Yes.

Q189 Patrick Hall: They are in economic use in part?

Mr Marsden: In most cases.

Q190 Patrick Hall: Therefore, there is monitoring. Standards have fallen over the years in nearly all of these?

Mr Marsden: No, it is getting better.

Q191 Patrick Hall: They have been falling for many decades in SSSIs, have they not?

Mr Marsden: They have been getting better for a number of years. If I may say, our website contains an interactive map and you can not only see the location of all of the Sites of Special Scientific Interest but you can see the location of the sites designated under the Habitats Directive and the Birds Directive, which is what Natura 2000 relates to. You can also see the condition state of individual parcels of land within those sites, and on 21 February we will be publishing the second condition state report. We published the first report in 2003. We publish the second one at County Hall at four o'clock on 21 February, the second cycle. That will show that the condition state of the series has improved considerably and continues to improve for some of the reasons we have been talking about this afternoon.

Q192 Patrick Hall: But all of those small bits of territory have enforcement issues, voluntary agreements, public subsidies, all sorts of things which a number of bodies are responsible for, including at some point Natural England. The Environment Agency made local authorities deal with the planning and development of the series as well. Then there is the rest of the country, which is not included in any of those areas. So in terms of getting a picture of the scale and the implications of all of this, you say you can go to the website and do it but I am not sure that is really the answer I am looking for.

Mr Marsden: What would you like? If you would like a paper copy of the map, we can provide you with that, but it is there for you to see and to interact with on the website.

Patrick Hall: It says who is responsible for dealing with all these things?

Q193 Chairman: You had better invite Mr Hall to come round for a chat so that he would be able to look at the map and he can pour over the whole thing and get into the detail of it.

Mr Marsden: I would gladly offer you an hour, or two if you can spare that, with our special sites team at our head office, or indeed at London—we can access it from there—and we can talk you through it.

Q194 Chairman: There you are, a mouth-watering opportunity; a voyage of discovery. Mr Marsden, just before you depart from us, I was intrigued by the nearest thing to criticism of the Agency I could find in your evidence, at section 6, paragraph 6.3: “The Agency has been involved in the design of

Environmental Stewardship and now in its delivery both at national and local levels,” and you go on about that. Then you say: “Overall the Environment Agency engagement at a national strategic level has been good but there is an acknowledged deficit in the target statements with regard to natural resource protection—due in part to a lack of available information on priorities.”⁴ What on earth does that mean?

Mr Marsden: I will give it to you in very straight black and white language. It is around the characterisation process for the Water Framework Directive. The Environment Agency has published the first stage of that. When, as I hope he does, Mr Hall takes up the invitation which you so kindly prompted, we will share with you the way in which we analyse biodiversity data and other data at an area level outside of the protected areas network. We need to be able to join up our data with the Environment Agency’s data in a common GI (geographic information) platform, such that we can then have a shared approach to targeting of what is, as we discussed earlier with Mrs Moon, a limited agri-environment pot. When we have that, it will make the job a lot easier than it currently is. That is the point we are making.

Q195 Mrs Moon: I get the picture of these two agencies working wonderfully in harmony, there is wonderful cooperation, both of you are champions, both of you have a commitment to moving forward in partnership with the other agencies in the field, et cetera. I just wonder what would be lost if you were actually one body? If, instead of having two bodies, there was one what would be lost? It is almost that you get sort of two heads or two minds thinking as one, so what are we going to lose?

Mr Marsden: I think what would be lost in an organisation of the scale you are intimating would be the sharp focus which we currently have on the distinctive roles and responsibilities. The Environment Agency is large now. Natural England is going to be quite a large beast, considerably larger than English Nature. Put those two bodies together at some stage in the future and you have a really pretty unwieldy agency, potentially, and as to the sharpness of focus which we currently have (and which on Natural England’s part we will carry forward into the new Agency) on the primary purposes of which we are about, there is the risk that that will be diluted in an agency of the scale you are talking about.

Q196 James Duddridge: Can I just throw out a possibility? Abolish the Environment Agency, set up a separate body which looks at flooding, a separate body which looks at waste and has a complete focus on those two elements and give the rest to yourself. Would that work? It depends who is asking the question?

Mr Marsden: No. It is an inordinately challenging question and it would be a challenging agenda. I think the answer is, probably not, because—

⁴ Ev 71

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Chairman: There was a thought there, Mr Marsden, I could see it forming in your mind, as the Chief Executive of such a colossally powerful body, but then you rolled back at the thought of having to do all the work to get there

Q197 James Duddridge: I sense if I was a Minister, Chairman, the answer would be “Yes”.

Mr Marsden: I think not. We are most effective, and I will cite an example from the recent past. The way in which we worked together from our several and different positions to achieve the outcome we achieved in the last periodic review of water pricing from different perspectives, coming together jointly around a shared agenda to achieve better environmental outcomes, is a very good example of why not. We have achieved potentially a £500

million benefit for the natural environment out of that; the water resources side of the agenda will deliver more. I would argue strongly that we would not have achieved the same had we been one single agency.

Chairman: Thank you very much indeed. We are going to draw stumps there and move on to our next set of witnesses. Thank you very much indeed for your contribution so far, both written and oral. Thank you for being able to supply certain additional pieces of information and the opportunity for Mr Hall to study your detailed maps, if he so wishes. If there is anything else which occurs to you which you would like to put in writing to us before we draw our conclusions on this then we would, as always, be delighted to hear from you. Thank you very much indeed.

Memorandum submitted by RSPB

EXECUTIVE SUMMARY

- The creation of the Environment Agency was a milestone for environmental protection in England and Wales. The RSPB welcomed it as a body empowered to work for the good of the environment, through the regulation of abstraction, polluting activities and the delivery of flood risk management.
- Building an integrated organisation from the components of several other bodies was bound to be an enormous challenge, which we believe the Agency has, largely, met with steady success. In particular, it has acted as a watchful regulator of discharges to water, helping to deliver substantial improvements in quality through programmes of industry investment.
- The price paid for integration, however, has inevitably been greater organisational complexity, with its associated perils of inconsistency and inflexibility. Strong leadership and a willingness to adapt structures are beginning to make a difference, with a greater sense of ownership of the environmental agenda developing at the area level. However, at times this broader view is challenged by residual internal barriers, which prevent strategic planning across functions, and impede the delivery of multi-functional solutions.
- Functional and organisational integration are not the only issues facing the Agency, however. The scale of the environmental and social challenge is growing. On the one hand, people are quite rightly seeking a higher quality built and natural environment, resulting in increased expectations that past degradation will be redressed and future damage prevented.
- On the other hand, the environment is changing faster than ever before. The potential impacts of climate change are pushing to the limit our ability to predict environmental futures; whilst on the ground, this problem interacts with many others of equal complexity, if not equal magnitude (for example the creation of sustainable agriculture). It is ironic that whilst we need an Environment Agency more than ever to disentangle the sustainable from the unsustainable, we are also creating a world in which the intellectual and organisational challenge of this task is growing by the minute.
- In this context, we welcome the very positive role the Agency has played in delivering environmental improvements over the last 10 years; and recognise the scale of the task it faces in equipping us all for a testing future. We hope to continue to build our own partnership with the Agency as it develops in this way.

How successful has the Environment Agency been in its role as enforcer of environmental regulation and controls, and how well does it manage its wide range of activities?

1. The RSPB believes that the Environment Agency (henceforth “the Agency”) has a proven record of delivering environmental improvement through regulation, in areas where it has the powers, funding and political backing to do so.
2. For instance, it has had considerable success in enforcing a suite of legislation, resulting in a steady reduction in gross pollution of water, fewer serious pollution incidents and a reduction in atmospheric emissions from regulated industries.

3. However, its relative success in managing point source pollution has served to highlight the pressures placed on the environment by a range of diffuse urban and rural sources of pollution, which are much more challenging to control.

4. Whilst in many cases the Agency has nominal responsibility for dealing with these pressures, we do not believe that it currently has the powers, resources or guidance to do so. We look to government to provide the Agency with a stronger mandate to act on diffuse pollution, including refinements and extensions of its regulatory authority.

5. Nor is diffuse pollution the only area where financial and/or political constraints can prevent the Agency from fulfilling its regulatory duties. It recently consulted on a revised abstraction charging scheme that incorporates the need to compensate for the revocation or variation of licences that are having a detrimental impact on European wildlife (Natura 2000) sites. Its proposals would only raise a proportion of the revenue required, leaving Natura 2000 sites still suffering damage, and the UK Government apparently infracting EU legislation. It is unclear whether the reluctance to impose greater charges has its roots in the Agency or in government. If it is the latter, this is a clear example of how the Agency is hampered in its work by lack of government support.

6. Of course, the Agency does not operate in a vacuum, and its own approach to regulation is also driven by the Government's "better regulation" agenda. We do not question the logic of wishing to see a more efficient regulatory system. However, we believe that the success criteria for simplifying regulatory processes must include delivery on environmental objectives.

7. We also believe that the growing emphasis on self-regulation and voluntary corporate responsibility should not reduce the total regulatory risk faced by industry. This means that, as greater trust is placed in business, so greater penalties should be imposed on those who abuse it. We will be looking to the Agency to take ever more decisive enforcement action against those who breach standards and regulations, and to the courts to impose meaningful fines.

Does the Agency operate efficiently and provide good value for money?

8. Although the Agency is a large and complex organisation, we consider that this reflects the scale of the task invested in it. It has, in general, shown itself to be more effective and fit for purpose than its predecessors.

9. While the integration of Agency functions has been tackled by successive internal reorganisations, these functions came from a range of predecessor bodies, each with their own legislative framework and funding streams. This can potentially create internal conflict and, more significantly, prevent the organisation from deploying public money to best effect by delivering multi-functional benefits through its schemes.

Comments on the Structure, Governance and Accountability of the Agency

10. The Agency faces a challenge, as the delivery body for nationally generated law and policy, to find ways of working constructively with local stakeholders, including democratically elected representatives.

11. We believe that implementation of the Water Framework Directive (WFD) provides an opportunity to help with this process, in particular through revision of the existing statutory committees (Regional Flood Defence, Environment Protection Advisory and Environment Fisheries Recreation and Access Committees), whose role and effectiveness is increasingly unclear.

12. Our response to the recent consultation on River Basin Management Plans (Water for Life and Livelihoods) recommended that River Basin District Authorities be established, with selective representation from key sectors and co-deliverers. Over time, catchment groups at a sub-River Basin District level should be developed to maximise local involvement. Such a system would break down arbitrary divisions between internal functions and engage key stakeholders in delivering WFD objectives.

13. Whilst we recognise that the WFD does not cover all of the Agency's functions (in particular, those relating to land and air quality, and waste), we do believe that public engagement could be adapted and extended to cover these fields, alongside water management.

The Environment Agency's relationships with Defra, Defra-sponsored bodies and the rest of Government, including its role in the planning system

DEFRA

14. The Agency's status as a non-departmental public body gives it the necessary level of independence from government's day-to-day work. In general, we consider there to be an appropriate relationship between Defra as policy maker and the Agency as policy adviser, regulator and delivery body. However there are two areas of concern.

15. First, it is unhelpful that each part of the “Defra family” appears to be developing its own environmental “vision”, independently of other parts (eg Defra’s Vision for the Natural Environment, the Agency’s corporate strategy and Natural England’s corporate strategy). We hope that Defra will move to defining a vision for the natural environment that will be shared in common by the “Defra family”.

16. Secondly, following the introduction of the block grant for flood risk management, Defra has restricted its role to one of pure policy, with much of the operational oversight structure being removed. In general we support this. However, we believe Defra must retain an approval role in respect of works which could impact on international obligations, including those to Natura 2000 sites.

OFWAT AND THE AMP PROCESS

17. The Agency plays a key role in determining the environmental footprint of the water industry, and hence the quality of the water environment.

18. The performance of the Agency in recent rounds of negotiations on industry investment has been impressive. It has introduced a rigorous approach to the appraisal of environmental benefits, and been firm on insisting on their delivery, in the teeth of often substantial political pressure. This has not always been achieved in harmony with other regulators, including Ofwat. However, we believe this is largely the result of the adversarial nature of the process, rather than an unwillingness on the part of the Agency to co-operate. Our own experience of working with them during the recent review was positive.

19. Looking to the future, however, we would like to see the Agency take a more active role in seeking out innovative solutions to managing water quality problems, and promoting these as part of its commitment to sustainable development.

ODPM

20. The RSPB is pleased to see that the number of planning applications granted on floodplains contrary to Agency advice has fallen. However, the percentage of new homes built in the floodplain is roughly equivalent to the percentage of England’s land area designated as floodplain, suggesting that such designation is still not making floodplain land generally less attractive to developers.

21. Even where development does not take place in the floodplain, increased storm intensity is threatening to overwhelm urban drainage infrastructure. The Agency plays a significant role in advising planning authorities and developers on the adequacy of urban drainage design, but success in encouraging the uptake of Sustainable Urban Drainage Systems (SUDS) has been extremely limited.

22. Of course, the Agency’s ability to influence the planning process is limited, and we do not advocate giving it an absolute veto over the planning functions of democratically elected local government. However, we do believe that greater scrutiny must be applied to planning consents granted against Agency advice. We would like to see revision of Planning Policy Statement 25 (Development and Flood Risk) to require reporting of such consents, alongside new Agency powers to require any such decision to be called in. We are disappointed by a recent statement by the Deputy Prime Minister, which suggests that the ODPM does not see the need for significant change in the current relationship (*House of Commons Official Report* 16 Nov 2005: Columns 953–4).

The Agency’s relationship with non-Governmental stakeholders and the general public, and how it monitors satisfaction with its services

23. Our experience as a stakeholder in many of the areas regulated by the Agency has been mixed. We have constructive and open working relationships in many fields, but still feel the Agency has some way to go to ensure best practice is rolled out across England and Wales and that engagement mechanisms are WFD-compliant. However, there is clearly a willingness to learn, and develop new approaches to engaging communities and stakeholders more widely.

24. A good example of this is a new project on the Humber Estuary, which aims to understand the root cause of community resistance to managed realignment of coastal defences. The project will trial innovative approaches to engagement and monitor their effectiveness in changing negative public perceptions. The project is run through a partnership of the Agency, English Nature and the RSPB, and has been funded through the Government’s *Invest to Save* scheme.

25. We also have a very positive experience of developing a joint Wetland Vision in partnership with the Agency and English Nature. This is an excellent example of how close working relationships can help foster a better understanding of the opportunities and constraints faced by each organisation, and overcome inevitable tensions.

26. The Agency's use of Key Performance Indicators (KPIs) to set explicit targets for managers is very welcome. Not only does this incentivise delivery; it also allows external stakeholders to monitor progress. However, we are disappointed that, at present, the flood defence and biodiversity KPIs do not fully align with the flood risk management High Level Targets set by Defra. Nor are they broken down regionally, a move that would allow stakeholders to hold regional teams to account more easily.

The Agency's responsibilities for flood defence and flood mapping, including guidance to the public

27. Flood Risk and Coastal Management accounts for the largest single element of Government grant in aid to the Agency. The RSPB takes a keen interest in this function, because of its huge impact on rivers, coasts and wetlands. A shift to more sustainable approaches to flood defence offers huge potential for the creation of new habitats.

28. We have been particularly pleased with the development of more strategic approaches to flood and coastal risk planning and management. This allows habitat losses and gains to be appreciated across a catchment or coastal cell, and will facilitate habitat enhancements ahead of losses, to ensure compliance with European and domestic legislation.

29. Examples of good practice include the Humber Estuary Strategy, a coherent and detailed piece of work which has made a thorough assessment of habitat loss/gains over a 50 year period. Our experience in resolving summer flooding issues affecting the Ouse Washes (an RSPB reserve and European wildlife site) has also been very positive and we continue to be involved in identifying compensatory habitat selection.

30. Unfortunately, there are also examples where strategic planning and stakeholder engagement has been less successful, for a range of reasons. For example, the Broads PFI has led to the contracting out of flood defence delivery on the Norfolk Broads and the "fixing" of standards of defence for the next 25 years. We have fundamental concerns about this approach, because contractual agreements cannot easily respond to shifts in policy, legislative requirements and improved understanding of future risk. As a result, we fear that the gap between Government policy and PFI delivery will continue to grow over the life of the contract.

How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency

31. It is envisaged by government that the work of Natural England will complement that of the Agency, with the Agency continuing to protect the quality of air, land and water, primarily through regulation and compliance.

32. We consider that the process emerging from the Haskins Review and the Natural Environment and Rural Communities Bill confirms and endorses the Agency's role in leading on environmental protection through regulation. It should now be given the political space and support to fulfil this fully. Equally, we expect Natural England to produce the high quality natural environment envisaged by government, working through an incentive-led, advisory route. Clearly, the two bodies will need to work closely together: for example, access to agri-environment payments supplied through Natural England will be a key mechanism for land managers to put in place practices that secure compliance with the regulatory regime managed by the Agency.

33. Given Lord Haskins's view that rural delivery arrangements were too complex, we view the Agency's move to develop its own advisory field-force to work with land managers on diffuse pollution with some dismay. We continue to believe that the Agency should work with farmers in a regulatory capacity, and should work through Natural England to deliver the necessary package of incentives and advice to facilitate compliance.

How the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity

34. The Agency has a key role in delivering on Government obligations to wildlife, in particular in the field of water management. Its regulatory functions are central to the protection of many designated sites and the recovery of many threatened species. Increased powers to control diffuse pollution will be crucial in the future, to ensure that its regulatory role supports and complements the role of Natural England in advising on and incentivising the creation of a high quality natural environment.

35. In addition to this role, the Agency has an operational responsibility for flood risk management, currently spending some £520 million per annum. As such, it could make a major contribution to Government targets for biodiversity, especially in freshwater and coastal habitats, in ways that are complementary to the work of Natural England.

36. Defra's recently published flood risk management strategy, *Making Space for Water*, suggests that some 500,000 hectares of agricultural land no longer justify public investment to defend them from flooding. It will be vital for the Agency and Natural England to work in partnership to manage this change in a way that will maximise habitat creation/improvement, while supporting rural livelihoods through agri-environment incentives and advice.

The Environment Agency's forthcoming corporate strategy 2006–11

37. The RSPB assessment of the Agency's draft corporate strategy was generally positive. We were particularly pleased to see a logical set of priorities, with prominence given to "an enhanced environment for wildlife", because we believe the state of habitats and species is a fundamental indicator of the quality of the environment, and one that underpins many aspects of people's quality of life.

38. We support the strong emphasis on delivering benefits for the natural environment through flood risk management. This continued swing towards schemes that provide multi-functional benefits reflects the Government's flood defence policy, set out in *Making Space for Water*.

39. We were concerned that discussion of diffuse pollution control is framed exclusively in non-regulatory throughout the Agency's corporate strategy consultation. Although we recognise that tackling diffuse pollution will require a range of approaches, we do not believe that incentive and voluntary action can work unless they are underpinned by a strong regulatory framework, and we are disappointed that the Agency is apparently pre-empting the conclusions of the Government's own diffuse pollution policy review(s).

RSPB

December 2005

Memorandum submitted by Campaign to Protect Rural England (CPRE)

INTRODUCTION

1. CPRE welcomes the opportunity to contribute to this inquiry. This submission covers three main issues:

- the relationship between the Environment Agency and Natural England;
- the governance of the Environment Agency; and
- the role of the Environment Agency in strategic planning, including Strategic Environmental Assessment and transport debates.

2. We believe the Environment Agency has an increasingly important role to play in securing improvements in environmental standards. It requires greater resources and political support to enable it to perform this role more effectively.

NATURAL ENGLAND

3. CPRE warmly welcomes the creation of Natural England and has played a leading role among the environmental non-governmental organisations in the development of the new agency. We have twice given evidence to the Committee on the subject of Natural England and the Rural Strategy 2004. Specifically, we welcome the unification of landscape and biodiversity protection, together with the encouragement and enhancement of responsible public access to the countryside. We have also welcomed the proposed universal approach of Natural England to the natural environment, which gives the new agency a remit across urban and coastal landscapes as well as rural ones. In our view, however, the role of the Environment Agency (EA) remains essential and we urge the Government to encourage through every possible means, effective and well coordinated joint action by both agencies.

4. The regulatory role of the EA in the protection of the natural environment requires a level of experience and expertise which no other organisation can match. The EA benefits, we believe, from the clear separation of an incentivising role from that of environmental regulation. Should grant making processes be run by the same individuals that need to make objective judgements on environmental contamination for example, the complex relationships which would inevitably arise would damage the public confidence in and credibility of the regulatory process, and the fairness of the grant making process. Both the effective enforcement of regulation, as well as the enthusiastic encouragement of best practice are vital; and the responsibility for discharging these functions should not be vested in one body.

5. Nevertheless, CPRE is strongly supportive of the leadership shown by the EA in promoting the cause of integrity of the natural and semi-natural environment. A robust evidence base for making decisions on regulation and priorities for incentives is vital. There should be great strength of the distinctive roles of the EA and Natural England but they will need to work in close liaison for the public good to be well served. Some degree of overlap and mutually reinforcing roles, especially in relation to environmental leadership and vision, will help substantiate the contribution of each to improving environmental quality.

GOVERNANCE

6. CPRE considers the governance arrangements of the EA to be effective in ensuring the right degree of independence from Government. This is particularly significant, given the great controversy surrounding the initial proposals for an “integrated agency” in 2003. During the process of consultation over Natural England’s formation, the Government has shown it has fully understood the importance of the independence of board and chairman to secure public confidence in Non-Departmental Public Bodies. We stated in our evidence to the Committee in November 2004 that Natural England should be “bone-crackingly independent”: we believe the same standard should continue to apply to the EA.

THE PLANNING SYSTEM AND STRATEGIC ENVIRONMENTAL ASSESSMENT

7. CPRE has for some time been concerned that plans for very large-scale development—as set out in the Sustainable Communities Plan (2003) and subsequent documents, notably the Five-Year Plan Sustainable Communities: Homes for All (January 2005)—have been subject to little or no effective environmental appraisal. Where there has been appraisal, the results have either been opaque (as with the recent work for ODPM on the impact on sustainability of Kate Barker’s increased housebuilding scenarios) or appeared too late and been ignored (as with the draft East of England Plan). While we welcome the stronger role for the Environment Agency in advising on development and flood risk, it has a key role to play in providing independent advice on the wider environmental implications of proposals for major development. It is not clear that it has been the case in relation to recent debates over housing supply.

8. Water supply is central to these concerns. Combined with the forecast effects of climate change on rainfall and flooding, this is an acute and growing problem. Concern is most acute in the East of England. This is the driest region in Britain, where a combination of wetter winters, even drier summers, extensive low-lying land and vulnerable coasts raises serious questions as to the wisdom and practicality of the “step-change” in development proposed in the Sustainable Communities Plan and now taken forward in the draft East of England Plan. In evidence to the examination-in-public of the draft Plan, the Environment Agency has stated that the growth proposals demand two large and expensive expansions in supply capacity, as well as a 15% improvement in water efficiency in all new housing and an average 8% reduction in water use in all existing housing across the region. Such a proposition, simply to accommodate the level of growth proposed in the next 16 years, is a formidable challenge, and there must be doubts as to its achievability. It also poses unanswered questions about the policies driving the growth agenda and the relationship between central Government departments, in particular the Treasury and the ODPM, to the EA.

9. We note that the Chartered Institution of Water and Environmental Management (CIWEM) is so concerned about this issue that it has called for a rethink and public audit of the Government’s growth plans.

10. CPRE believes that the EA has a crucial role to play in assessing and communicating the physical implications of spatial planning proposals. Above all, we think greater attention should be paid to the capacity of the environment to accommodate and support new development. We believe that a key step towards this must be to involve the EA in the development and assessment of spatial planning options at the earliest stage of policy making and at the highest level. We are disturbed, however, that the Government’s commitment to growth in housing supply is reducing the freedom and integrity with which the EA is able to perform this task.

11. Moreover, the EA is a statutory consultee for Strategic Environmental Assessment (SEA), which has been a requirement of certain major developments since 14 July 2005. CPRE is not clear whether additional resources have been provided to ensure they can do this job effectively. The EA has a particularly important role in checking that SEA reports are of a sufficient quality.

TRANSPORT

12. The EA should also have a clearly defined role with regard to engaging with transport issues. We believe that it has sometimes experienced difficulty in this regard. It appears that the EA has tended to see its role as a regulator, or consultee for specific schemes with regard solely to effects on the water environment. However, given the wider brief that the EA has established, and the holistic approach which is necessary to protect the environment, we believe the agency needs to be unequivocal in its role in engaging with transport policy decisions (as opposed to examining schemes on a case by case basis). Clearly it should be provided with the resources to be able to achieve this, as well as the support of DEFRA and the Department for Transport in performing this role.

Campaign to Protect Rural England

December 2005

Witnesses: **Mr Martin Harper**, Head of Government Affairs, **Mr Robert Cunningham**, Senior Water Policy Officer, RSPB (Royal Society for the Protection of Birds), **Mr Tom Oliver**, Head of Rural Policy, and **Mr Paul Hamblin**, Head of Transport and Natural Resources, CPRE (Campaign to Protect Rural England), gave evidence.

Q198 Chairman: My apologies that you have been kept waiting, but let us move on. Representing the Royal Society for the Protection of Birds we have got Martin Harper, the Head of Government Affairs, and Robert Cunningham, the Senior Water Policy Officer; for the Campaign to Protect Rural England, Mr Tom Oliver, the Head of Rural Policy, and Mr Paul Hamblin, the Head of Transport and Natural Resources. Just before I ask Mr Drew to move into our more detailed questions, I want to ask the RSPB, you do not seem to have a word of criticism about the Environment Agency at all in your evidence? It looks like a sort of proverbial love-in between your organisation and the Agency. Is it really all so much sweetness and light?

Mr Harper: I should firstly say thank you very much for inviting us along here. I am stepping in for my boss, Mark Avery, who sends his apologies. He is laid up in bed. He has got a very bad back. He would love to be here, but unfortunately he cannot. Fortunately, I am alongside Rob, who is very good on the water matters.

Q199 Chairman: Well, with the Parliamentary broadcasting he may be locked in to our every word!

Mr Harper: I hope he is, and I am sure that he will be very pleased with what we are about to say. Unfortunately for your Committee, I am afraid we will not be giving you the nuclear option of wholesale reform, principally because we feel the Environment Agency is delivering a good job in terms of the regulatory responsibilities it has. I think it is very apt that CPRE and RSPB are on this panel because it was back in the mid-80s when we clubbed together to produce a report called Liquid Assets, which outlined the reasons why the regulatory responsibility of Government with regard to water should not be privatised. We think it is therefore completely appropriate that the Environment Agency over the last 10 years has evolved principally as a regulator of water abstraction, pollution, and indeed of flood risk prevention. That will help to complement the principally incentivising responsibility of Natural England, its partner body.

Patrick Hall: Chairman, could I just comment on that point?

Chairman: I want to bring David in, but then you can, of course.

Q200 Mr Drew: Obviously as a natural sequitur to that, in terms of what criticisms you made is there not a resource issue, because you can have all the wonderful words, you can have all the good intentions, but as a constituency MP my one criticism is that sometimes they do not actually get translated into action? So where is the beef here?

Mr Harper: I will kick off and then pass it on to my colleague Rob, and then maybe the CPRE would like to chip in. Essentially, on the question of resourcing I think it is two-fold. Does the Environment Agency currently have the necessary resources to do its job? I think more often than not

what it is trying to do is to actually come up with complex solutions to increasingly complex problems and trying to learn from those experiences. It may not always have the right tools at its disposal, courtesy of central Government, to allow it to do its job. In a sense, there is a whole plethora of little niggles which we would probably wish to table at the door of Defra in terms of improved guidance and clarification of responsibilities, but I do not think that is necessarily the responsibility of the Environment Agency to fix itself. Maybe Rob would like to come in with a couple of examples.

Mr Cunningham: On the issue of resourcing, it is quite important to think of the Agency because it is such a complex beast. It comes from a background of many different sets of legislation and a number of predecessor bodies and the underpinning legislation of those quite often sets the funding arrangements for that. So for water resources, abstraction, for instance, the hydrology function of the Agency recovers its costs through its abstraction licensing and it has very strict rules on where it spends that money, which will be on water resource related projects. Flood defence, probably the biggest element of the Environment Agency budget, comes from a grant from Defra. Again, there are very strict rules on where it spends that section of money. When it comes to things like biodiversity, access and recreation, on those very pure biodiversity schemes, recreation schemes, there is a grant-in-aid from Defra. So although you might see a monolithic body with a budget of £1 billion, or something like that, actually the freedom to spend that money across those underlying administrative boundaries is limited.

Q201 Mr Drew: Are you saying you want less ring-fencing, that is a significant problem, or do you welcome the fact that you have certainty in the knowledge that what comes from central Government actually gets spent by the Environment Agency on what it should be spent on?

Mr Cunningham: It is partly less ring-fencing. If you look at the flood risk management budget, for instance, there is quite a move within the policy development. *Making Space for Water* is the new Government strategy for flood risk and coastal management to actually look at multi-functional approaches to flood risk management, so looking to get biodiversity gains from flood risk management spend. There is less clarity on exactly how you do that and there are schemes where the Agency has achieved that, in particular some of the coastal retreat schemes where there is multi-functional benefit from reducing flood risk, but there are still internal barriers and difficulties in how you do that. But under *Making Space for Water* the Agency and Defra are actually working to identify where those problems lie and adjust policy. So it is partly a problem of ring-fencing, but it is also partly a problem of working around that and how to be creative about how you spend your money.

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Q202 Patrick Hall: Could I just pick up on the relationship, Chairman, which you mentioned, which appears to be between RSPB and the Environment Agency. I remember when I visited Sandy a few years ago and had discussions there that the impressions I gained were that the relationship was not a very happy one. Therefore, I say now, what has changed? What are the significant changes which have improved that relationship?

Mr Harper: Again, I will kick off. I think one of the things we should say is that it is not surprising, given the visions which are outlined in the Environment Agency documents and the emerging visions from Natural England, that we share a lot of those aspirations for the natural environment. So in a sense I think over time we have probably found the Environment Agency increasingly occupying territory which we are very comfortable with. I think certainly at the national policy perspective we have a very healthy constructive working relationship to try and come up with these complex solutions to these complicated problems, and they translate down into projects on the ground. I think, possibly, as both organisations have matured over the years we have invested more in that partnership relationship. So I would hope if you came to Sandy now you would probably get a better impression of the working relationship we have. I will not say anything about the fact that we happen to have indirectly passed on the Chief Executive of RSPB into the hands of the Environment Agency. In a sense, I think it is a long-term investment in that relationship to deliver shared objectives.

Q203 Lynne Jones: The RSPB operates across the whole of the United Kingdom and there are different arrangements in the devolved authorities. Are there any lessons to be learned from how it operates in Scotland—Scotland is obviously the most distinct—and also other authorities?

Mr Harper: Of course, we have a relationship with SEPA in Scotland. We do not have an equivalent body in Northern Ireland and that is why we are campaigning at the moment to try and establish an equivalent body in Northern Ireland, because there is no body responsible for some of these regulatory functions. It is left in the hands of central Government, and that is actually possibly quite informative because in an area the size of Northern Ireland, where you would expect central Government to be both the regulator and the incentiviser, it is failing in so many of the deliveries of its environmental objectives. So we are strong proponents of the need for a strong, independent champion and regulator of the environment. I do not know whether Rob can think of any specific examples.

Q204 Lynne Jones: Are there two bodies in Scotland such as there are in England and Wales?

Mr Harper: Yes, there is SEPA and there is Scottish Natural Heritage up in Scotland.

Q205 Lynne Jones: So there is a sort of mirror image there?

Mr Harper: Indeed, yes.

Mr Cunningham: Yes, although SEPA do not hold the responsibility for flood risk management; that is dealt with by the local authorities. So it has slightly less responsibility.

Q206 Lynne Jones: Which do you think is the best model then?

Mr Cunningham: I think there is a very strong argument for the Agency to have the flood risk management control, because there is a very clear need for a national approach to setting and identifying priorities. There is also such a huge overlap between the adaptation and the modification of coasts and rivers and the environmental outcomes for wetlands, for rivers and for our coastal environment. So I think there is a very clear need for the Agency to hold that role.

Q207 Chairman: Could I just ask you on that point, in paragraph 30 of your evidence you comment on the strategic planning and stakeholder engagement in this area and you say: “Unfortunately, there are also examples where strategic planning and stakeholder engagement has been less successful, for a range of reasons.” You go on to comment about the Broads PFI and you conclude by saying, “We have fundamental concerns about this approach, because contractual agreements cannot easily respond to shifts in policy, legislative requirements and improved understanding of future risk. As a result, we fear that the gap between Government policy and PFI delivery will continue to grow over the life of the contract.”⁵ Whose fault is that? Where did the problem originate?

Mr Cunningham: There appears to be some enthusiasm to use the PFI funding mechanism for flood risk management and it is mentioned specifically in *Making Space for Water* as a potential future way of funding large-scale regional flood risk management options. I am not sure how you would apportion blame in terms of the setting up of the original PFI, but the concerns we have are that *Making Space for Water*, for instance, has established a new Government aim and objective for flood risk management which quite clearly states that flood risk management, while it is primarily about reducing risk to people and their property, is also about delivering sustainable development on the environment, social outcomes, et cetera. The PFI pre-dates that, so in relation to the standards and objectives set in the PFI how are we going to align that to what we want for *Making Space for Water*?

Q208 Chairman: Can I just stop you before we get too discursive? Really I was interested to know, just on that point, is it a Defra policy problem or is it an Environment Agency problem? Who is the master and who is the servant?

Mr Cunningham: Certainly the policy is very clearly that Defra had divorced themselves from the delivery side of flood risk management, and that is quite clear. They abolished their regional engineers

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and they have set themselves very clearly as the policy-setters and the Agency is the delivery mechanism. I was not involved at the time of the inception of the Broads PFI—

Q209 Chairman: But you have written it down here.

Mr Cunningham: Absolutely. I think what we are concerned about is that Defra, in *Making Space for Water*, highlight the PFI as a potential mechanism for the future.

Q210 Chairman: Let me tell you why I am asking the question. In terms of establishing the independence and advocacy role of the Environment Agency, if this was a bad policy, in your judgement, do you believe that a body like the Environment Agency should have had the courage—because you will have told it that it is a bad policy, I am sure—to stand up and be counted, or is it in such a position that if Defra has set the policy, that is it, it has got to do what it is told?

Mr Cunningham: I think there is a very clear need for the Agency to make it clear where policy is failing because they are the people who know at the delivery end. I think there is clearly a healthy discussion between Defra and the Agency.

Q211 Chairman: Okay. Let me move to this next point on that then. If that is one of its key roles, do you have any examples where you think it might have failed in that duty?

Mr Cunningham: It is very difficult, because flood risk management is something which I deal with quite a lot in my day to day work and quite clearly the Agency has the delivery role but also has the role of informing Government about the technical issues and about what the outcomes of its policy will be, but ultimately the Government has the clear role on setting policy. It is a Government issue. So if PFI is a Government tool for what it considers to be a more rational way of financing flood risk management, ultimately that is a political decision. In essence, the Agency can tell them it thinks it is a bad idea, but it is a Government decision ultimately what the policy is.

Q212 Mrs Moon: I want to take up this issue of the Environment Agency's close involvement with policy-making, because a number of people who have submitted evidence to us have felt that the Agency exceeds the purpose for which it was established. There has been a lot of discussion around the championship of the environment role for the Environment Agency. How much of a conflict is there between the Agency's role as a regulator and adviser and its involvement in the development of policy, whether or not that is a vacuum, because the policy is not going down to almost make it on the hoof? Again, taking up the issue which Lynne Jones talked about, is there a difference between the devolved administrations? Is there a difference in terms of the involvement in policy of the Environment Agency in Wales, in Scotland, in Northern Ireland and in England?

Mr Harper: I know my colleagues are itching to get started, as it were, so maybe if I allow Paul to kick off.

Mr Hamblin: I can give a CPRE perspective. I think we attach great importance to the policy advice role which the Environment Agency provides to Government, but given our remit as CPRE perhaps I will keep my comments restricted to England. I think we have seen a growing distance between government departments and statutory bodies in particular, such as the Environment Agency. I remember in 1998, when the Government was developing the assessment of its roads review, where clearly the implications of its roads programme on the water environment was a very important consideration and the Agency was very much involved, as were other agencies in the development of that assessment process. This was done before decisions were being made. What I think we are witnessing now is that increasingly a number of reports are being commissioned by Government and announcements are being made where the Environment Agency, if you like, is providing advice but *post hoc*, after decisions have been made. Examples I would use for that would be the Barker Report on the supply of housing, where there was no strategic environmental assessment undertaken of that, the Eddington review on transport and productivity, where Rod Eddington has been asked by the Chancellor and the DfT to examine this issue and quite explicitly has been told not to examine the environmental considerations. That is being thrown back as, "This is an issue which Government will need to consider but it is not for him." I think our concern is that when these studies are being undertaken, when announcements are being made, they should be undertaken within the climate of, and the priority which is being given to, sustainable development. The Government has published its sustainable development strategy. It has said that we must work within environmental limits, and that is something which CPRE, and I am sure RSPB, would very much wish to support. In my mind, this would mean that the pressure on the Agency to provide advice, early advice to feed into policy is simply going to grow. This comes back to the resourcing point about making sure there are sufficient resources for the Agency to do that, and equally that the Government is able and willing to listen to the advice which it then receives.

Q213 Mr Rogerson: The RSPB has said that the Agency is "hampered in its work by a lack of Government support"⁶ in terms of powers, resources or guidance, a steer in some areas. How do you think that should be addressed?

Mr Harper: I will kick off by saying something which I wanted to raise when Natural England were speaking. I think the Environment Agency, and indeed Natural England, should be judged on the delivery of their environmental objectives and environmental outcomes and increasingly I hope that is the way in which Government wishes to take

⁶ Ev 87, para 5

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assessment of environmental delivery. In a sense that should be the starting point for determining whether the tools they have at their disposal are fit for the job. I think one of the best examples of the way in which the agencies of central Government have worked together recently has been on the attempt to try and ensure that 95% of SSSIs are in good condition by 2010, one of the public service agreement targets. That is very much a shared Government agenda with the Agency, whereby Defra plus major landowners, plus English Nature are being challenged not only to come up with solutions but also possible remedies to try and take forward action. That sort of collaborative, very sensible approach is now being adopted, as Rob alluded to in the *Making Space for Water* venture, where there is a recognition that in a sense there are these major obstacles out there but we need to actually discuss what are the key remedies to actually fix them. I do not know whether Rob wanted to elaborate particularly on *Making Space for Water*?

Mr Cunningham: On *Making Space for Water*, for instance, one of the BAP targets and one of the Government targets for flood defence is to create 140 hectares of inter-tidal habitat a year. That is proving very, very difficult. You would be able to manage the realignment sites, but there is not a huge number of those in existence and if we are to get anywhere near meeting that target then progress will have to accelerate. There are a lot of barriers to the creation of managed realignment sites. You have to acquire the site through purchase. There can be a lot of local opposition and there are a lot of things which will need to be tackled to accelerate that and *Making Space for Water* has a range of projects, some led by Defra, some led by the Agency, including a project to look at the barriers to that delivery, whether it be financial, whether it is institutional or whether it is a lack of appropriate legislation. Those will be looked at, and it is also in collaboration with ourselves and English Nature carrying out a public stakeholder kind of trial up in the Humber to look at that. So there is no simple answer, but in certain areas clearly there is a failure. For instance, on diffuse pollution I think there is a very clear failure at the moment to get a clear steer about what mix of advice, regulation and incentive will be at the disposal of the Agency and Natural England to deliver the Water Framework Directive objectives. That is a large area of uncertainty because the Water Framework Directive targets are meant to be achieved in 2015. We do not want to be in the situation where we are looking back and thinking we should have acted a lot earlier. So there is a whole range of issues.

Mr Oliver: Could I add to that? I think there is a risk that we forget what is at stake in terms of the effective management of the environment and the responsibility of the Environment Agency. There are a number of people who are at risk from flooding at the moment, about five million. The number of businesses at risk is two million. The capital value of those businesses is in the hundreds of billions. These are serious issues which are not just about the numbers of dunlin or Redshank or the numbers of pretty landscapes, though those are important, and

it is crucial to recognise the need for the Environment Agency to harness wider society's input and capital investment and intelligent decision making about strategic planning. I am mindful of the evidence you heard yesterday where there was talk of difficulty with mission-creep with the Environment Agency and I think the expression was used, "What is the Agency doing being involved with sustainable communities?" While that mentality prevails in parts of the business community, we are in dire trouble unless we are able to harness and lead wider society to recognise the need to avoid flood plains, to take water management seriously both in use and in conservation. So although these issues are fundamentally important and are very technical, as you heard from previous witnesses, it is important to raise our game and to realise that the Environment Agency has a very significant role to play for everybody.

Chairman: Jamie Reed, I think, wanted to follow up on that.

Q214 Mr Reed: I am very interested in the potential for duplication between yourselves and Defra and potential conflict and overlap. Do you think there is any, and if there is could you give any examples of where there have been potentially duplicated efforts between the Environment Agency and Defra?

Mr Harper: Just quickly on the Environment Agency and Defra, we were talking about its role as regulator and its role as advisor. One thing we did not talk about is its role as technical support as well, particularly as regards the Water Framework Directive. Those who know it well—and this Committee knows it pretty well—will be aware of just how complex it can be and it is absolutely vital that the specialists who are employed by the Environment Agency are on hand to be able to provide the technical support and advice to Defra colleagues when they are in negotiations in Brussels. Our understanding is that that relationship works well. I think, as a previous witness suggested, it is important for policy to be informed by practice and of course the Environment Agency has (as indeed do the RSPB and Natural England) a lot of experience of practice and that is why we, as the RSPB, contribute detailed submissions to policy consultations and that is why I also fully endorse what Paul said about the role of the Environment Agency to try and ensure that what is essentially a cross-cutting issue is dealt with in a comprehensive way.

Q215 Mr Reed: I am grateful for the response. In that respect, though, do you think that there are some functions which Defra perform, which perhaps you might deal with, which we could strip away from Defra? This Committee, and I believe all Members of the House are very interested in stripping out unnecessary cost and barriers to speedy regulation and effective government. Is there anything you think Defra currently does which, frankly, you think you could do better?

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Mr Hamblin: I think there are a number of areas where the Environment Agency and Defra need to work in partnership. There is policy advice, and there is information which the Environment Agency can provide and which Defra requires. Frankly, I think that sort of advice needs to be provided to other government departments, which need to seek it from the Environment Agency so that not all information is channelled through Defra. That raises the question of whether there is duplication of effort. I do not see duplication of effort but, having heard the previous witnesses being questioned on this point, clearly a concern is whether there are two champions of the environment. I suppose what I would say in response to that is, how many champions of the economy are there? How many champions are there for other particular policy areas? The environment is broad, it is interconnected, and it is important that we have the knowledge which the Environment Agency can provide in terms of monitoring the state of the environment. But we also need a very important strong department within government which is able to integrate environmental concerns across government.

Q216 Mr Reed: With regard to planning issues, do you have a sufficient relationship with other Whitehall departments, in your opinion, as you do with Defra when it comes to advice and expert advice?

Mr Hamblin: CPRE has a good liaison with the Office of the Deputy Prime Minister and other government departments. I think the relationship which the Environment Agency has with the Office of the Deputy Prime Minister is mixed and certainly there are policies which the Office of the Deputy Prime Minister has been at the forefront in pursuing, such as the Communities Plan, which are raising very significant issues for the resources which the Environment Agency is trying to monitor, not least water consumption. Proposals for massive housebuilding in the east of England, one of the driest regions in the country, I think highlight that problem. Clearly, the Environment Agency needs to be feeding into these discussions at a regional level—and I believe it is, although the resources available to do that, I suspect, are insufficient—but really the key issue is about making sure that these challenges are addressed higher up the decision-making tree, so before the Communities Plan was produced.

Q217 Mr Reed: That is the ODPM. How about the Department of Health, the DTI and other departments? Is there sufficient scope for their advice to be taken? Are the relationships adequate, do you feel, in order for environmental aspects of policy-making to be considered properly?

Mr Oliver: I am sorry to ask a question, but when you say “you” do you mean CPRE or—

Q218 Mr Reed: My apologies. I meant the Environment Agency.

Mr Oliver: There has been a Memorandum of Understanding between the Environment Agency and the Department of Health and that is a good step forward. One of the most significant issues which arises in terms of overlap between the Environment Agency and Natural England is the scale of operation, and I think probably one of the most significant points is that, for example, if you take the Water Framework Directive, at least 80% of the surface area of England is implicated in needing significant change to a catchment, whereas the total SSSI area of England is only 7%. So although Natural England has a remit in terms of improving and enhancing the landscape and access to it on a wider basis, it is dealing with, relatively speaking, smaller areas than the Environment Agency. That difference in the scale of operation, leaving aside all the questions of waste management and flood prevention, means that it is actually quite helpful to have two bodies because they do operate at different scales and there is, if you like, a sort of binocular vision which actually also benefits NGOs because there are two sources of authority. That is actually quite helpful. It helps you get the range. That is my analogy. For example, with the NERC Bill it has been very helpful to have the Environment Agency giving advice on the process and not being directly implicated in the legislative process. That has been very helpful.

Q219 Mrs Moon: You have made it quite clear that you feel perhaps the Environment Agency is not being consulted sufficiently early enough and robustly enough in terms of central Government planning. I think we have got that message. What about in terms of planning within local authorities? Do you think the role of the Environment Agency gives them sufficient influence when they are consulted on local planning applications? Are they robust enough and do their reports carry enough weight?

Mr Oliver: They are a statutory consultee with LDFs, of course, as well as RSS, so technically speaking that is a good situation. Part of the problem is, I think, that they deal with tens of thousands of planning application queries every year. CPRE itself looks at roughly 100,000. I think we are probably quite unique amongst the NGO community in having that sort of scale of operation, but I think there probably is a question of resource allocation there because it depends on how many applications are coming in. There is no rule which says that the number of applications coming in will be more or less controversial in any one year. I would have thought it is probably, from CPRE's perspective—I am not sure whether RSPB would agree with this—very helpful if there is greater attention to planning applications where they are of great consequence because of course otherwise the NGOs are left to do that job themselves, as does sometimes happen. CPRE does not own land, of course, so we do not have the particular question, but I remember when I worked for National Trust I was quite concerned that planning and development

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issues which affected the estate I ran were not necessarily always receiving the degree of attention I wished them to have from the EA.

Mr Hamblin: If I may just add to that, the changes which have been brought about by the Planning and Compulsory Purchase Act have meant that we are now in a situation where rather than simply looking at land allocation in plans we are looking at the management of land through spatial planning. That provides lots of opportunity for the Environment Agency to try and integrate messages about resource management right into the heart of the planning process at the local level through local development frameworks. Because the Planning and Compulsory Purchase Act has generated significant changes through the planning system all at the same time I think there is a phasing issue and a resourcing issue in terms of the extent to which the Environment Agency is able to respond to all of the proposals which are coming forward and really ensure that its wider messages about managing water are incorporated at the plan level, and not simply addressed through individual planning applications.

Q220 Mrs Moon: So you are saying yes, they should be, but there is not enough money for them to actually do the job effectively?

Mr Hamblin: Well, money and human resources.

Q221 Lynne Jones: Talking about human resources, you referred to the Environment Agency as having the technical expertise. When we were talking to the industry representatives yesterday they expressed concern that the Environment Agency had lost experienced staff or that there was a high turnover of staff and it was dependent upon fairly inexperienced graduates (it was recruiting people who had just graduated), and also an inconsistency of expertise and sometimes an inconsistency of advice which was given as a result of that. I do not think you have mentioned that in your evidence. Is that something which you would identify with or not?

Mr Harper: I do not think we are aware of the human resources figures which the Environment Agency has and I do not think that necessarily rings true with our experience. I will let Rob come in in a moment, but I think there may be a broader issue about equipping people for the skills to effectively embark upon an environmental career, which I think is perhaps more of a subject for the Education and Skills Select Committee. I think maybe Rob has some experience.

Mr Cunningham: As a hydrogeologist who left the Environment Agency, I sat yesterday listening to the evidence when they were saying, "We need more hydrogeologists," so I was quite interested in that. The real issue is that I do think there has been evidence from the Institute of Civil Engineers about flood risk management and the engineering base required for that, and thinking of hydrogeology and the number of courses doing hydrogeology I think there is only one now left in the country where previously there were three or four. So the number of graduate hydrogeologists has dropped significantly. I think it is an industry-wide problem

in terms of getting new blood in and also getting people in who have the appropriate skills, because I would say that what we want in terms of flood risk management engineers for the 21st century is that although they will need the core engineering skills, we are actually asking them to do a different job from the one they were doing 50 years ago. So they are going to need a much broader base, or at least an understanding of the much broader issues which they are being asked to address when they are designing schemes and fulfilling their statutory obligations. It is really finding those people, and I think that is a much wider issue than the Environment Agency; I think it is a skills-based issue.

Q222 Chairman: Could I just conclude this section of questioning by just probing you a little bit about the planning role because in the CPRE evidence at paragraph 7 you say: "While we welcome the stronger role for the Environment Agency in advising on development and flood risk, it has a key role to play in providing independent advice on the wider environmental implications of proposals for major development." Then you conclude by saying, "It is not clear that it has been the case in relation to recent debates over housing supply."⁷ At a national/regional level the debate about the Thames Gateway project, for example, rages on and it is clear that the Environment Agency has expressed concern, but the observation I have is, how much weight does that concern carry? Do you think that in asserting its independence it should be in the position which a permanent secretary finds him or herself in where a minister directs against civil servants' advice a particular course of action and to cover himself the permanent secretary requires a letter from a minister saying, "I absolve you from responsibility; it is down to me"? Added to that, do you think that the minister, for example ODPM, Thames Gateway, in that kind of strategic environment, should be forced to say in public why he disagrees with the Agency's advice?

Mr Oliver: I think both of us have something to say on this, but I would say that it is a very refreshing suggestion for one particular reason: one of the things which paralyses progress in terms of understanding environmental limits is the sort of ballet which goes on where people are trying, on the one hand, to defend their position (which may be quite legitimately held for whatever reason) but at the same time passing off any responsibility if what they suggest does not happen. This happens with both sides; it happens with agencies and it also happens with Government. I agree, I think that at the heart of this is, if you like, a lack of honesty and process. I would agree, I think that is a very good suggestion in principle. How it would work in practice and at what point you would do that my colleague will know more—the SEA, for example.

Mr Hamblin: I think the key is in the transparency of the process and making sure that the advice which the Environment Agency and other agencies provide

⁷ Ev 91

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to ministers is open and available to members of the public and to other interested parties. Where ministers either ignore that advice, or choose not to, I think it is helpful if decisions need to be justified. After all, ministers have made a lot of attaching importance to evidence-based policy-making and therefore if decisions are being made which go against the evidence which is being provided it only seems appropriate that there needs to be additional justification given. As Tom has said, the Environment Agency is a statutory consultee in the process of strategic environmental assessment. When a public body produces a plan or programme which is subject to SEA one of the important parts of the legislation is that in adopting that plan or programme they need to justify the decision they have taken, taking into account the results of the strategic environmental assessment. The Environment Agency is going to be providing guidance in a whole range of different areas which are beyond the remit of the SEA Directive, but I think that process has a lot of merit to it.

Q223 Chairman: Finally, on that at a more specific project level, for example on localised development applications which the Environment Agency will have commented on but which might, for argument's sake, go on appeal, do you think the law which surrounds the operation of the Planning Inspectorate enables inspectors and the Inspectorate to give sufficient weight to the Environment Agency's observations when determining an application on appeal?

Mr Hamblin: I am perhaps not best placed to answer that directly now. We may be able to find out.

Chairman: By all means reflect on it, and I will bring in David Lepper.

Q224 David Lepper: The question I have from the written evidence of both your organisations and from something Mr Cunningham said earlier is that both of your organisations agreed with Lord Haskins in his report two years ago that there should be a separation of roles between the Environment Agency having responsibility for regulation and Natural England having the responsibility for advice, incentivisation packages, and so on, and yet certainly the impression I have is that that is not the way things are going. Why, briefly, does each organisation feel that that separation of roles is so important and do you feel (as I suspect you do) that it is not necessarily what is going to happen under the arrangements which are soon going to be in place?

Mr Oliver: I think we say in our evidence that it is important that one sole body does not do both, all of both. I think there is a difference between saying that and saying that each body should only do one of those functions, and I think the clever thing which emerges about the relationship between Natural England and the Environment Agency, which is perhaps a matter of chance as much as design, is that both have a preponderance of one over the other but they also do a bit of the other one. So there is a mutual understanding when it comes, for example,

to English Nature's experience of its regulation of biodiversity, and similarly the Environment Agency has a very interesting role sometimes in designing habitat and landscape as part of its flood defence role. So there is mutuality there where each feeds off the other's experience. In the future, my expectation is that climate change will demand far more from both organisations as well as, as I was alluding to earlier, the business community and the rest of us in understanding and taking initiatives which are commensurate with what is happening. I would be very glad if both organisations became better at doing all that they do, and a part of that is not being reformed too often but at the same time being carefully scrutinised by people like yourselves.

Mr Harper: Just to elaborate a little further, one of the reasons why CPRE and RSPB are broadly singing from the same hymn sheet on this broad area is because (a) we have been working together for so long, but also (b) particularly through the Defra modernising rural delivery programme we would be very anxious about what comes out at the other end. I think what Tom quite rightly said was that there are going to be regulatory powers which Natural England will have to enforce, particularly with regards to SSSI measures, and at the same time there are going to be some advisory measures which we would expect the Environment Agency to be responsible for delivering. But in your question I think there was some anxiety that there was a drift in the wrong direction, and I think one example we picked up in our evidence was the Environment Agency's involvement in field-based advice and you heard a little bit more about that from the Natural England representatives earlier. In a sense, Mr Cunningham alluded to this earlier by saying that diffuse pollution is one of those areas where the Environment Agency does not currently have all the regulatory tools it requires in order to prevent nutrient pollution-type problems upstream. That may be the reason, being generous to the Agency, why it is investing in the advisory role. We do not believe that diffuse pollution can be cracked in a voluntary way on its own.

Q225 David Lepper: Just one final point then. Thank you for that clarification of your position. The underlying theme of the Haskins Report—and I dwell on it because Natural England's relationship with the Environment Agency stems from it—was making rather more simple what he saw as too complex a system of delivery on rural policy. Do you think the way things are now turning out satisfies that aim of simplifying, making things easier, particularly for the customer?

Mr Oliver: I think it raises an interesting question as to who the client is. Yesterday it was very apparent that some representatives of business and industry think of themselves as the client. I think that is questionable. I think it is perfectly reasonable to assume that the Agency is the client representing society. I think there is probably a bit of both going on, and as a consequence it is important to remember that there are mutual responsibilities in any of these relationships. Specifically, to try and

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answer your question about the ultimate end result, I think I would suggest that in the end the Environment Agency's wide remit means it has a rather different perspective from Natural England's rather more concentrated one on specific landowners or customers.

Chairman: Thank you all very much indeed. There is plenty of food for thought there. If, on any of the points we have discussed, you want to drop us a further note after reflecting, please do so, and thank you very much indeed for your written contribution also.

Supplementary memorandum submitted by Campaign to Protect Rural England (CPRE)

1. On 18 January 2006 CPRE provided oral evidence to the Environment Agency inquiry. We promised to reflect on a particular question posed during the session and hope that this supplementary memorandum will assist the Committee in its deliberations. In light of other evidence received by the Committee, and further developments, we also have taken this opportunity to comment on how forthcoming planning policy could strengthen the consideration given to the water environment.

POWERS OF THE ENVIRONMENT AGENCY WHEN PLANNING APPLICATIONS ARE SUBJECT TO APPEAL

2. We were asked whether CPRE believes that the powers of the Environment Agency are adequate for individual planning applications, when these are subject to an appeal and being heard before the Planning Inspectorate (Question 223). We believe it is very important that the advice of the Environment Agency regarding flooding and water abstraction is given sufficient weight in the planning system. This can be most effectively done as part of the forward planning process, through the EA's advice influencing the content of spatial plans like Regional Spatial Strategies and Local Development Frameworks. We believe that regional planning bodies, local planning authorities and planning Inspectors should all attach much greater weight to the advice provided by the EA as part of the process of plan preparation. Regarding individual planning applications we believe the strengthening of national guidance, as set out in draft Planning Policy Statement 25 (PPS25) will assist considerably.

3. If an application goes to appeal, the Planning Inspectorate also needs to have due regard to established national and local planning policies. Providing the proposals currently contained in draft PPS25 remain in the final document we do not see the need for greater powers in terms of the EA's advice. But it will be important for the Inspectorate to have a clear understanding of the changes that will be introduced as a result of PPS25. We would recommend the EA and Planning Inspectorate work together to ensure all Inspectors are made sufficiently aware of these changes in policy. This should be through formal training, and could include providing a lead Inspector within the Inspectorate who is able to advise on particularly complex cases involving potential development on flood plains.

OTHER SUPPORT FOR THE ENVIRONMENT AGENCY

4. We believe the Government can support the work of the EA in three principle ways. These are:

- adequate financial resourcing;
- strong environmental policies to reduce stress on the natural environment; and
- seeking and responding positively to the EA's advice on policy development.

5. With regard to the second of these, we believe the publication of PPS25 provides an important opportunity to address stresses on the water environment brought about by the amount, location and design of new development. We recommend that the remit of PPS25 as currently drafted be widened to encompass other issues over the management of water as a natural resource. It should thus become a PPS on water, rather than on the management of floodplains. This should embrace, for example, how the planning system should consider water abstraction from new development; how changes brought about by climate change could affect the aquatic environment and in turn influence patterns of development; and clarify what "living within environmental limits", as set out in the Government's Sustainable Development Strategy, means in practice in relation to the water environment. Such a change would be in keeping with the transformation of land use planning into a broader spatial planning agenda with its increased emphasis on the management of land. Failing this, we recommend that these wider issues concerning water conservation are addressed in any forthcoming PPS on climate change.

6. We hope this supplementary evidence assists the Committee in its deliberations. Please do not hesitate to contact us should you wish to discuss any of the issues raised here.

CPRE

February 2006

**Memorandum submitted by Local Government Association
(including Planning Officers Society submission as an annex)**

1. The Local Government Association, which represents local authorities throughout England and Wales, is grateful for the opportunity to comment on this important issue. The evidence submitted here focuses on the main issues affecting local authorities.

SUMMARY

(A) *Flooding and planning authorities—revision of PPS25 and development on flood plains*

The LGA feels it is inappropriate for the EA to call for a “power of call-in” (including referral to the Secretary of State), where planning authorities permit schemes against their advice. Resources would be better used trying to improve relationships at a local level in these cases, rather than opting for removing the local democratic aspect and indeed “using a sledgehammer to crack a nut”.

(B) *Making Space for Water*

Defra has recently given the EA responsibility for approving all flood defence and coast protection works and is considering giving EA further responsibilities in this area. This would cut democratically elected councils out of the process, remove the framework where coast protection is integrated with other council functions and may lead to loss of local knowledge/experience.

(C) *Working through Local Strategic Partnerships (LSPs)—improving effectiveness*

Management of the environment in a geographical locality is fragmented between many different organisations. The LGA believes the EA could achieve their objectives more effectively through joining LSPs convened by councils, establishing a set of objectives for the year based on local needs.

(D) *“Working better together”*

Relationships with the Agency vary at the local level. The LGA and EA have established “working better together” protocols. Defra and EA need to ensure this type of liaison is valued and properly resourced.

(E) *Waste management*

EA decisions on waste management issues often have an impact on councils. Officers feel EA do not always thoroughly investigate the likely impacts (often financial) on councils.

(F) *Capacity in the Environment Agency*

There is evidence to suggest that the delivery capacity of the Agency is struggling to cope with the growing amount of functions that are being taken on.

(G) *Waste planning*

(1) Waste Planners believe the EA needs to ensure that the appropriate resources and management priority is given to waste data issues so that the Mineral and Waste Planning Authorities can plan on a secure information base. (2) There is a body of evidence that the EA is not investing appropriately in the Planning Liaison business of responding to consultations from Minerals and Waste Planning Authorities. (3) There is concern that the Agency and Mineral and Waste Planning Authority enforcement staff do not liaise in the most effective ways. (4) It is frustrating for planning staff to deal with different Agency staff in their council area because of the different geographical boundaries which the EA and councils have.

LGA EVIDENCE

(A) *Flooding and planning authorities—revision of PPS25 and development on flood plains*

2. The Environment Agency (EA) has been concerned that a number of local authorities are granting planning permission against the EA’s advice. The LGA is very concerned to ensure that development on flood plains only happens in appropriate conditions. There are two key points:

- often disagreements relate to differing advice on whether proposed defences are adequate;
- the number of instances where the local authority and the EA disagree has reduced to very small numbers. The numbers of such instances are statistically small and are decreasing, with a handful of authorities being responsible for the majority of these cases.

3. Given these issues—the LGA feels it is in appropriate for the EA to call for a “power of call-in” including referral to the Secretary of State, where planning authorities permit schemes against their advice. Resources would be better used trying to improve relationships at a local level in these cases, rather than opting for removing the local democratic aspect and indeed “using a sledgehammer to crack a nut”.

4. (The LGA supports the majority of the PPS 25 revision.)

(B) *Making Space for Water*

5. Defra has recently given the EA responsibility for approving (and administering the funding system for) all flood defence and coast protection works (a responsibility which used to be held by Defra). Under the *Making Space for Water* review, Defra is also considering giving the EA responsibility for producing Shoreline Management Plans, as well as promoting and building flood defences inland and on the coast.

6. This is worrying for a number of reasons:

- Effectively, this will cut democratically elected local authorities out of the process, leaving important decisions in the hands of unelected and unaccountable officials. The proposal does not sit easily the 1998 Agriculture Select Committee report which was concerned about the possible transfer of coast protection to another body and stated that “were this [transfer] to come about, there would be considerable disadvantages in terms of political accountability, especially at a regional and local level”.
- It will break-up a framework where the coast protection function is integrated with a range of other local authority functions such as strategic planning and development control, amenities and tourism, environmental health and economic regeneration.
- Local knowledge and experience may be lost and there are realistic fears (based on the lack of capacity in local EA offices) that the EA will not be able to provide as good a service as local authorities do presently.

(C) *Working through Local Strategic Partnerships—improving effectiveness*

7. Management of the environment in a geographical locality is fragmented between many different organisations. The LGA believes organisations like the EA could achieve their own objectives more effectively through joining Local Strategic Partnerships convened by local authorities. One small example: the EA is currently concerned that SMEs are not complying with environmental regulation. The solution to this is likely to lie in local-authority led Business Partnerships which forge a joined-up approach to supporting local SMEs.

8. Local EA offices could work with the Local Authority and other local environmental bodies to establish a set of objectives for the year based on local needs.

9. This could be facilitated by EA geographical boundaries being aligned with local authority boundaries (this issue is also raised in the context of Waste Planning below).

(D) *“Working better together”*

10. Relationships with the Agency vary at the local level. The LGA and EA have worked together to establish “working better together” protocols which aim to address this issue. Where relationships are not effective, there is often a feeling that there is limited understanding from Agency staff about the functions and responsibility of local authorities. The LGA and EA are therefore currently working to do more along these lines.

11. This needs to be backed up by an approach nationally which sees the EA consulting local authorities more closely on issues which will have an impact on their work. LGA believes both Defra and EA need to ensure this type of liaison is valued and properly resourced.

(E) *Waste management and Environment Agency policy: EA policy has an operational and financial impact on local authorities—not always recognised by the EA or Government*

12. Agency decisions on waste management issues often have a financial or operational impact on councils. Council officers sometimes feel EA policy has “come out of the blue” and feel they have not been consulted or that consultation did not investigate or make explicit the likely impacts on local government. There are many examples, which are often rather complex. One relates to the decision on how to measure “MBT residuals going to landfill”—which has had financial and operational impacts not spelled out in the consultation. Further details can be submitted on request.

(F) *Capacity in the Environment Agency*

13. There is evidence to suggest that the delivery capacity of the Agency is struggling to cope with the growing amount of functions that are being taken on.

14. Corporately the EA are keen to take on larger roles in issues such as coast protection, however discussions with regional EA staff suggest they may not be able to deliver such new roles. Local authority networks point to examples such as the National Flood and Coastal Defence Database where the inability of the EA to deliver on projects is causing organisational and financial difficulties to authorities.

(G) *Waste planning*

15. The Minerals and Waste Committee of the Planning Officers Society have submitted some more detailed comments—submitted alongside this LGA submission (see Annex A). In summary, Waste Planners have the following comments:

- The EA needs to ensure that the appropriate resources and management priority is given to waste data issues so that the Mineral and Waste Planning Authorities can plan on a secure information base.
- There is a body of evidence that the EA is not investing appropriately in the Planning Liaison business of responding to consultations from Minerals and Waste Planning Authorities. (four key points are made in detail in the POS Annex B paras 8 to 10.)
- There is concern that the Agency and Mineral and Waste Planning Authority enforcement staff do not liaise in the most effective ways.
- It is frustrating for planning staff to deal with different Agency staff in their council area because of the different geographical boundaries which the EA and councils have. It is not being suggested that the EA reorganise, but that the Agency teams may be more effective if they coordinated functions on a “county area” basis. This approach is being considered with Primary Care Trusts as it is thought there are efficiencies and service benefits to be realised.

Local Government Association

December 2005

Annex A

COMMENTS BY THE PLANNING OFFICERS SOCIETY
(MINERALS AND WASTE COMMITTEE)

INTRODUCTION

1. This submission is on behalf of the Planning Officers Society’s Mineral and Waste Committee to the Parliamentary Environment, Food and Rural Affairs Committee’s Inquiry into the Environment Agency. It relates to the Term of Reference concerning the Agency’s role in the planning system with particular regard to the work of Mineral and Waste Planning Authorities.

2. Minerals and Waste Planning Authorities include County Councils; Unitary Authorities (including Metropolitan and London Boroughs) in England and the Unitary Authorities within Wales. The Authorities are responsible for the forward planning of waste facilities and the extraction of mineral resources and the control of development of the same ie the administration of planning applications and enforcement. These Authorities also act as planning authorities for the development arising from the other services eg education, of their respective Councils.

3. Mineral and Waste Planning Authorities consider that the Environment Agency is a key partner in planning for sustainable development outcomes. In particular the Agency has a vital role in providing advice and regulating matters relating to water, including flooding, pollution control waste permitting so that Mineral and Waste Planning Authorities can facilitate the right forms of development at the right place and time. Currently, the focus for Mineral and Waste Planning Authorities is ensuring that appropriate mineral resources are available to underpin infrastructure investment and housing development in the next 15 years. There is also a focus on developing new waste facilities to facilitate increased recycling, more resource recovery and reduced landfill to meet Government objectives and avoid infraction proceedings from the EU. Altogether this chimes well with the Agency’s goals.

4. However, there is a concern that the Environment Agency in its dealings with Mineral and Waste Planning Authorities are not investing sufficiently in a “customer focus culture” and the following paragraphs are intended to illustrate this point.

WASTE INFORMATION AND DATA

5. The Agency collects and holds considerable amount of information relating to waste and Mineral and Waste Planning Authorities in planning for new facilities are very dependant on this information. It is understood that the Waste Data Strategy proposed by DEFRA is intended to address this situation. However, the delay hitherto has been damaging and some interim solutions are urgently required. Since the Spring Mineral and Waste Planning Authorities have been expecting the Strategic Waste Management Assessments and it would be helpful if these could be released without delay.

6. The important point here is that if the waste planning process is to have a successful outcome there can not be any further delays in the implementation of the Waste Data Strategy. The Agency needs to ensure that the appropriate resources and management priority is given to waste data issues so that the Mineral and Waste Planning Authorities can plan on a secure information base.

PLANNING CONSULTATIONS

7. There is a body of evidence that the Environment Agency is not investing appropriately in the Planning Liaison business of responding to consultations from Mineral and Waste Planning Authorities. It is recognised that the Agency is consulted on a variety of applications and in considerable number, which makes the point that this work load has to be properly managed.

8. First it would help if the Agency invested further in ICT to help facilitate the interchange of planning documentation. Mineral and Waste Planning Authorities under e-government requirements are now in a position to use electronic communication to consult with other public bodies, but it is understood the Agency does not have the capacity to do so. This is a matter which should be remedied.

8. Second, the Planning Authorities are becoming increasingly frustrated with the limited response from the Agency on consultations over major waste infrastructure. It is recognised that the Agency does not wish to “fetter” its position when such developments maybe the subject its own waste permitting processes. However, the Planning Authorities do need the assistance of the Agency to advice on the pollution control issues. The public understandably want answers to certain fundamental planning issues on major waste planning applications and the Agency has the capability to provide them. It is felt that the Agency should devise procedures to do this or else there will be blockages to urgent decision making on much needed waste facilities.

9. Third, there is a concern that the response from the Agency lack appropriate focus and not address the issues that Mineral and Waste Planning Authorities expect help on. Often there are detailed comments from the Agency relating to “nature conservation” and an absence of advice on the flooding and pollution issues. Indeed it appears at times the Agency is covering the role of English Nature! This is not to say that these matters may not be important, but the impression is that the Agency is not proactively managing planning consultations with respect to customer priorities. It is possible that the Planning Liaison function in the Agency is not given sufficient priority and status to ensure the correct level of service is delivered.

10. Finally, there is a concern that the Agency in response to planning consultations is not proportionate in its advice. There is a time pressure—21 days—in which to make a substantive comment, but the incidence of an objection from the Agency is increasing when a more measured response would be more helpful. Very often the concern that the Agency may have on a development could be dealt better by the request of a “planning condition” than an objection, which can initiate unnecessary activity and problems.

ENFORCEMENT

11. There is a concern that the Agency and Mineral and Waste Planning Authority enforcement staff do not liaise in the most effective ways. Although both bodies have different enforcement priorities and procedures, much can be gained by regular liaison. This can facilitate more effective control, but it is understood that this is not universal practice. Of course the management of such a way of working is not helped by the lack of congruity between Agency Areas and Planning Authority boundaries. This often means multiple liaison arrangements have to be managed.

AREA OFFICE AND PLANNING AUTHORITY INTERFACE

12. As mentioned in the previous paragraph the administrative area of Planning Authorities and the Environment Agency seldom agree. It is felt that is an issue that should be addressed. It is frustrating for planning staff to deal with different Agency staff in their council area. Often similar problems and developments are subject to different priorities and procedures. It is understood that Agency Areas are for policy purposes based around river basins, but it is a different issue when delivering services that are based on liaison with the public and local authorities.

13. It is not being suggested that the Agency should geographically reorganise. However, for services relating to day to day liaison with Mineral and Waste Planning—and District Planning Authorities—and the public the Agency teams may be more effective if they coordinated functions on a “county area” basis.

This approach is being considered with Primary Care Trusts as it is thought there are efficiencies and service benefits to be realised. It is suggested that the Agency could consider this as an option for becoming more customer friendly.

Planning Officers Society (Minerals and Waste Committee)

December 2005

Witnesses: **Councillor Michael Haines**, Deputy Chair of the LGA's Environment Board, and **Mr Lee Searles**, Programme Manager, Local Government Association, gave evidence.

Q226 Chairman: Gentlemen, I am sorry you have had to wait rather longer than anticipated but we are grateful to you for your patience. Can I welcome from the Local Government Association, Councillor Michael Haines, the Deputy Chair of the LGA's Environment Board. Which Council, for my interest, are you on?

Councillor Haines: Teignbridge District Council in South Devon.

Chairman: I hope it has not been too arduous a journey for you to come and join us today, and Mr Lee Searles, who is the Association's Programme Manager. I am going to ask Sir Peter Soulsby if he would be kind enough to start our questioning.

Q227 Sir Peter Soulsby: Thank you, Chairman. We have heard quite a lot of evidence already about the wide range of functions which the Environment Agency has, and indeed the increase in the number of those functions. I think the Local Government Association has suggested to us that the Agency is struggling to cope with that range of functions. I wonder if you can give us some general thoughts on that and perhaps some specific examples?

Councillor Haines: I can give you a specific example straight away which I think will illustrate a number of points. In the area I represent I actually chair the Teign Estuary Partnership Committee and there was a flood defence scheme being proposed for Teignmouth, which is the seaward end of that. The Environment Agency was promoting this scheme, but they ran into difficulties because it did not really have the ability to carry out the communications and the public relations as far as that scheme was concerned, and the local public there were becoming very agitated and in the end the scheme was pulled. So it has been shelved, to the detriment of, as I see it, the people of Teignmouth, who really need a flood prevention scheme in the very near future. So I think as an illustration of something which I could develop further, that is something which has been the result of perhaps not having the resources it might have had.

Mr Searles: I think also there has been a gradual development in the complexity of a policy framework, largely emanating perhaps from the EU Directives, of more integrated approaches nationally, which actually starts to create questions which are for all of us, not just for the Environment Agency to decide. I suppose that may be an area where there is also a capacity constraint, in that dealing with the challenges which might be caused by the Water Framework Directive, as an example, really demands all of us to actually have that discussion locally and with our local people and to

understand what it means for the way our areas develop and what we need to do. I think they are realising that where they have the capacity technically to do that there is a wider issue about engaging with the wider local society, i.e. the local bodies, about what needs to be done, and I think there is an area of capacity constraint there. I think that is probably what we meant by that.

Q228 Lynne Jones: The example you gave, Councillor Haines, was a resource issue, a particular function, that of flood management, but you are saying that they are taking on additional functions. Have you got examples of additional functions which perhaps they should not be taking on which are perhaps detrimental to their core functions?

Councillor Haines: The example I was trying to put forward there was the fact that it is the local authority which is better placed to carry out the public consultation side, the sort of democratic representation, which clearly, although it is their core function, they are unable to achieve that already. As an example of where they are overstretched, they cannot carry out the consultation in the same effective way as a local authority could because it has got its elected members locally who can then respond to what the public are saying in the local area. That is where I was coming from with that example.

Q229 Sir Peter Soulsby: I would just like to follow that up. I think the words used to us yesterday were that there was a lack of transparency about the roles the Environment Agency was performing at any particular time. I think it was suggested to us that there was merit in seeing some separation of the roles, whether within the Agency or between the Agency and others. To what extent is that borne out, in your experience?

Councillor Haines: Yes, certainly it does have a number of roles and certainly in the eyes of the public they do find that difficult. I can give another for instance. Again in the Teign Estuary, there was an area which was being flooded or there was a risk of flooding to the local people, but the Environment Agency was able to come up with a stewardship scheme which enabled a marsh area, a stream there, to be managed to reduce that risk of flooding. People saw that as the Agency doing it because they were doing works about flooding, but in fact they were doing it because of their environment stewardship side of things. So there is this complete misunderstanding on the part of the public as to which role they are doing things for in some instances.

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Mr Searles: If I could elaborate also, following my previous point, the Agency is obviously being asked and sometimes wants to take on roles and responsibilities and coastal protection has been mentioned by previous witnesses. In a way it is kind of a good example because you have a pressing need to address an issue which is only going to grow in scale if you believe in the effects of climate change and a feeling that it is so urgent that something must be done about that. If you are the Agency, you have your primary purposes and clearly that is protecting people, and people's lives and property is going to be a core function you are going to carry out, but to do that job properly and address that issue is actually a bigger problem and one which will affect the economy, communities, and is really something which, as I say, we all should be involved in. It is really something which local government should be more involved in. So in a way you might also be asking, if the Agency is hitting buffers which are actually related to the fact that it has not got the remit or the accountability and transparency to carry out the kind of debates we will need to have, then what is local government doing about that? I suppose that is where we have some things we would like to say about the role of local government in developing capacity in that area.

Q230 Sir Peter Soulsby: Could I once more pursue this point? To what extent are these examples you are giving us ones which illustrate difficulties of communication in terms of the Environment Agency explaining what it is doing and why it is doing it as against organisational problems within the Agency, or perhaps something which is inherent in the range of responsibilities which have been given to the Environment Agency? Is it communication, is it organisation, or is it some inherent problem in the way in which the Agency is established?

Councillor Haines: Obviously there is a problem in terms of their organisation, as I understand it, within the country. At the national level, the liaison between the LGA and the Environment Agency is very good. Certainly in my area there is very good liaison with the Environment Agency and I am very pleased with that, but because of its boundaries not being similar to local authority boundaries clearly there are sometimes communication difficulties which do show itself up because where authorities have got two different parts of the Environment Agency dealing with them then inconsistencies between those are certainly things which show up, which would tend to illustrate the communications difficulties. I think areas in Hampshire would be ones which could be looked at as examples.

Mr Searles: In terms of relationships between local authorities and the Agency, I think the last set of points really move it into that kind of arena. There have been issues resulting from the way the Agency has rolled out certain things which has had practical implications on local authorities in either cost terms or in skills and human resource terms. That is really as a result of a lack of dialogue, a lack of forewarning and a lack of involvement in certain areas. I do not think that would be considered as a

conscious policy decision of the Environment Agency, I think it is probably more the effect of the structure of the organisation and the remits of the people who work in it and trying to find the right people to have conversations with, for example local authorities, and to have that dialogue going I think is probably a function of a number of things about the organisation. It is just a sort of communications breakdown which definitely needs to improve.

Q231 Mr Rogerson: I want to ask you about the shoreline management plans. I understand the LGA has concerns about the Government's intention and signal to move that to the Environment Agency. Why do you think Defra has sought to do that, and do you think it shows a lack of confidence on the part of Defra in local authorities' abilities in that area?

Councillor Haines: Yes, I think you might have perhaps answered it in the second point there. It may be that they are not confident in the local authority's ability. Perhaps having one organisation which is dealing with it nationally they might see as an attractive way of achieving that. I think you have had submissions from the various coastal groups, people around the country, from the local authorities where local authorities have split the coast up into groups and then obviously they liaise. That is the model which the local authorities are putting forward as being the alternative and what it does, of course, is it means we retain our engineers in the local authorities, which I think is a very important thing we need to do for various reasons which I can elaborate on if you wish. Clearly, our view is that the local authorities are best placed to do this. We know the areas already. It may well be that if consultants were brought in to look at these schemes by the Agency then they will not have the same local knowledge which our engineers have. If I take my own local authority as an example, we have got a number of engineers who have been there certainly, I can recall, from the late eighties or early nineties, so they are very knowledgeable of the area. It will not be those people who would necessarily be drawing up those management plans, and I feel it should be because they have the knowledge.

Q232 Mr Rogerson: With that in mind, do you think a model might be that if it moves the responsibility to the Agency then it should perhaps seek to outsource some of that work back to the local authorities?

Councillor Haines: I gather there are potential difficulties with that because if the local authorities retained the staff then there is the short-term nature of those agencies, which would be a difficulty, so we cannot guarantee to keep them thereafter. That is the concern I would have with that.

Mr Searles: I think in general this is a kind of a fundamental point. Following on from the first set of questions where we are talking about the Environment Agency going into areas which it cannot adequately handle, we are very keen to try and show some leadership on behalf of local government and try and encourage local authorities to see the management of the environment in the

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round and the delivery against things like climate change at one end and cleaner, greener, safer neighbourhoods at the other as a core and important part of their responsibilities. We feel we are in a bit of a—not a spiral going down, but a bit of a circle because leadership, funding and performance frameworks are at the moment not really creating the kind of virtuous circle, where we can actually show that leadership is then driving up performance which is being rewarded with resources. So we are making a start by trying to say to local authorities at leadership level that we really need to build capacity in local authorities to manage the environment, to actually build it and have embedded good practice and have that capacity to handle the things which cross agendas, not to try and compartmentalise things the way our regulatory approach managed by central government might do but actually to see how economy, leisure and community activities can actually link together with the management of the environment. It probably can be seen as a tall order to try and convince people that is where we need to go when you look at the way in which some local authorities are resourced to deliver this agenda at the moment, but we really think it is important to make a start and we would see it as a wrong signal to move away and take capacity from local authorities when actually they probably are going most of the way on coastal erosion and coastal management at the moment, and it would really diminish our resource.

Councillor Haines: Could I just follow up on the point about the management plans being done by local authorities instead of the Environment Agency? As I said earlier on, you have still got the democratic accountability of the local authority when such plans are being drawn up. If they are being drawn up by perhaps consultants on behalf of the Agency, the local people will not feel they have got the same democratic input and certainly there could be implications for even yourselves in that respect, those who have got coastal resources, depending on what the recommendations might be. So there needs to be a democratic input into this.

Chairman: We will probably return to that theme before our session is over, but I would like to call David Lepper next.

Q233 David Lepper: Thank you, Chairman. I am sorry I was not here at the beginning of your evidence. My apologies for that. The LGA does say in its evidence that despite working together with the Environment Agency on protocols to ensure closer working, the quality of the relationship between your members and the Agency tends to vary from place to place. Is that a substantial problem? What do you feel could still be done to improve the relationship between Agency staff and local authorities?

Mr Searles: It is an historic problem and I believe it often varies between different elements of activity also. It has been particularly evident on the planning side. I believe it is not so evident in some other areas. I can speak from what I have found on the planning side and I can preface what I am going to say by actually saying I think the Agency has put in place

quite a lot of things to actually improve that. Historically, the issues have related to the kinds of issues which any national organisation with a kind of regional structure and a very large local presence has, which is whatever you agree in a room in central London (and the LGA has much the same problem) is not necessarily what happens when someone interprets that on the ground in dealing with another party. It is the consistency, therefore, between regions and often between cases within regions, and often the interpretations by specific officers in certain areas have been partly the problem in relation to making the protocols at national level seem real and credible on the ground. In response to those issues, the Agency, in tandem with many other statutory consultees, has put in place a range of standing advice which for all but the most important cases actually tells local authorities clearly what to expect from the Agency and what they expect the Agency's response will be in a variety of circumstances, and that has been put in place for the flood issues, for example. I think some things could be considered to improve matters and I think part of the problem—and this goes back to my first comments again—is that the Agency obviously has a narrower set of purposes than the local authorities do. The local authorities consider the economic, the social and the wider issues in deciding, for example, a planning application and they have to take all those things into account. We are not saying the Agency should abandon its views, because clearly they are important and indeed may have regulatory backing, but we feel that sometimes Agency staff could have a little more appreciation of the facts the local authorities are actually considering and we would probably favour some kind of swapping mechanism, some secondment mechanism, to give people more experience of the issues of local authorities. It partly goes back to the points made on recruitment. I do not think the Agency has a problem recruiting people, but sometimes they are very junior and very full of zeal and it is a question of how you not necessarily dampen that down but make it work in the real world.

Q234 David Lepper: You did say in your written evidence—and I think you put it a little bit stronger than you might have done just now—that there is sometimes limited understanding from Agency staff about the functions and responsibilities of local authorities. That is a bit worrying, and maybe it relates back to what you are saying about junior members of staff?

Mr Searles: I did not write that, but it sounds like code for what I have just said really.

Q235 David Lepper: All right. I thought that was a bit stronger than what you have just said. It suggested they are not just over-zealous sometimes but it sounds like they are not actually understanding the legal functions and roles of local authorities when the Agency gives advice?

Mr Searles: There may well be cases of that, and I am sure with a little prodding I could provide some examples, but as I say, I think the Agency is

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recognising these issues as long-standing ones and realises that if it wants to be effective and get its voice heard then it needs to be pragmatic as well as assertive in its advice.

Q236 David Lepper: We have heard similar things said on behalf of the Planning Officers' Society's mineral and waste committee, I think, about the relationships there.⁸ I do not know whether you have any?

Mr Searles: We do and when we develop these protocols we always try and engage the Planning Officers' Society and all the local authorities on consultations, and to be honest it has become increasingly more difficult to do that, reflecting the authorities' feelings about the worth of the protocols on the planning side. I think on other areas it is a lot better.

David Lepper: Thank you.

Q237 Lynne Jones: Would you say that the Environment Agency is an organisation which listens to concerns and does its best to act on them? That is the impression I have got from what you have been saying, that they have moved to improve things, or could they do more?

Mr Searles: From my own personal experience, they do listen to concerns. I think often it is the case for them, of trying to find the right people in local authorities to have the right conversation with and how that is embedded throughout the organisation. As I say, sometimes you can agree things at national level with the EA, but trying to get that actually delivered through every interaction on the ground when you are not involved is obviously quite difficult and authorities so far have found that is not the case.

Councillor Haines: In my own local authority we have had a good experience with them for a long time now, so I have not got any examples. You have got the wrong person here to give you examples, I am afraid, where there has not been harmonious working. Following on from what Lee said to the earlier question, I feel that obviously sharing best practice across the country would be a good way forward because clearly I feel that in my authority we would be quite happy to have people coming in from the Environment Agency and from other authorities where there are no conflicts to learn how we were getting on.

Q238 Mr Rogerson: There are perhaps feelings, certainly in my constituency following the Boscastle event—not from the point of view of the local authority or from the Environment Agency but from the point of view of those people trying to get their businesses up and running again—that there were tensions in terms of what the planning process wanted them to do in terms of replacing their buildings, in terms of what the Environment Agency wanted them to do to decrease the flood risk. Do you think there could be more in terms of protocols to make sure—excuse me going on at length, but the example of disability access issues which the council

wanted to see and the complete opposite in terms of location because of the flood risk. We had people sort of running between the two trying to find the solution which would satisfy both sets of requirements. So could there be protocols agreed, do you think, which would help ensure that that did not happen again?

Councillor Haines: I do not know much of the exact detail about the buildings in Boscastle in terms of the status, but I think as you have explained it, it is always thus. I am Chairman of a development control committee, I have chaired planning since the nineties on and off, and inevitably you are going to get conflicting requirements from different groups and it will be the job of the planning committee or development control committee at the end of the day to weigh up those different requirements, including what its own officers might be saying to it if we are talking about things which would have to go before a committee, but at the same time there is a time constraint on that example because people want to get on with their lives. So I think it would have been pretty difficult to have had protocols in place before seeing such a situation. That would be my reaction. It is always going to be difficult and we just have to be thankful that those sorts of things happen very rarely.

Mr Searles: The new Planning Policy Statement 25, up for consultation now, and the associated Good Practice Guide which should come out with it, will hopefully clear up some of the issues around the smaller scale development and what is required in terms of flood risk assessment or specific measures, and maybe clear up some of the issues about the Agency's views when development is occurring on top of something which is already there, which has actually been the nub of many of the issues between local authorities. It is that sense of realism about the guidance, and hopefully the review PPS25 is acknowledged by all sides, the Government, communities, local authorities and the Environment Agency, as an opportunity to clear up a lot of the confusion which has existed throughout the existence of PPG25 and led to many of the small-scale local conflicts between the Agency and local authorities. So I am hoping, also, the situation in Boscastle could be covered in that process.

Q239 Chairman: Could I just ask you, because in terms of the planning side there are some people outside the local authority, members of the public, who might actually rather like somebody outside to be a whistleblower and say, "You shouldn't be developing there because technically speaking we think there are dangers," I noticed in your evidence under the Waste Planning section you have a little punt at the Environment Agency where you say, "There is a body of evidence that the [Environment Agency] is not investing appropriate in the Planning Liaison business of responding to consultations from Minerals and Waste Planning Authorities."⁹ So you have a pop at them there. Then you have another go at them over this question of flooding

⁸ Ev 102, Annex A

⁹ Ev 102, para G(2)

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here. You sort of imply almost that the Environment Agency ought to be getting off your turf because you comment, "Resources would be better used trying to improve relationships at a local level in these cases, rather than opting for removing the local democratic aspect and indeed 'using a sledgehammer to crack a nut'."¹⁰ Are you just saying, "Get off our turf"?

Councillor Haines: The issue does not actually personally relate to me, as I have already said. We have not approved something where the Environment Agency has said they are against it, so on my authority I can speak for them. I am just saying there is a preface, but coming on to the LGA as a whole, clearly it comes back to the issue of trying to extend better practice across the country between the Agency and some local authorities, which if that is achieved then that is the only nut you have to crack. That is it. So if you get there without having to have the sort of call-in issue then you retain local democratic accountability in a much more straightforward way. I think that is what it is trying to say, but I will hand you over to someone nearer to the author.

Mr Searles: Yes, I did actually realise that –

Q240 Chairman: You cannot walk away from it now!

Mr Searles: Yes, I know. I did say the words "sledgehammer to crack a nut" and subsequently it was written down. You actually raised a question before about whether the Agency actually speaks its voice and tries to get itself heard in Government. Our view is that it does. We actually have to really watch out for the Agency sometimes in our dealings because we feel that it is very effective at trying to get its voice heard in Government, and I suppose that comment was actually motivated by the fact that we have got the proposed flooding direction in PPS25, which we feel is unnecessary. We have got nothing to fear from the Agency scrutinising local planning applications. To take flooding as an example, there is a new report on last year's performance of local authorities on high level target 12 and it basically just continues to show a very much improving picture in relation to local authority performance, in terms of deciding applications in the flood plains. Over 95% of applications are decided in line with Agency advice. The Agency's views are often upheld in what appeals then take place; something like only three were decided against the Agency. So the system is actually working. It began with a fairly low level of coverage in local plans of the Agency's views, and these issues are now addressed. They are mainly affecting all plans which have been progressed in the last year. The development of standing advice has removed a lot of the small-scale issues, leaving the more significant ones, and still the number permitted against EA advice has gone down. So generally speaking we feel, and we will be making this clear in our response on PPS25, that further directions are all that is necessary really on that area. So we would question why it is being sought. That is that point. On the waste point, there has been a longstanding

issue about where waste planning material considerations end in terms of deciding a proposal for a waste planning application and where the integrated pollution and prevention control issues start. We would very much like to see a common approach in terms of trying to address issues in an integrated way, because the community does not distinguish between what is a waste planning issue and a waste health issue, and we want to try and ensure that resources are aligned and that involvement takes place at the appropriate stage. I think that comment was motivated from the fact that quite often that does not happen in the way we would like and therefore the two issues become divorced. You cannot get the information.

Q241 Chairman: Does that not raise in fact a very big issue, because in my part of Lancashire, nearby to Preston, there has been a fearsome debate about proposals to build a series of waste transfer stations. The policy which deals with waste very much involves the Environment Agency, Defra, the county council, the waste authority and the local authorities, and it is quite difficult when you have the juxtaposition between a national desire to deal appropriately and in accordance with European legislation and national legislation with waste as a collective and the frictions which then come locally in trying to work out a plan which local people will acknowledge as acceptable. It does need somebody to try and hold the ring. Do you think that is a role which should be advanced for the Environment Agency in trying to bring parties together, including the public, because you mentioned the importance of consultation earlier in your remarks, to try and resolve some of these very big and difficult issues where, if the reports, for example, last night on the television were anything to go by, the Government appears to be going to change its policy on waste, where issues of incineration are going to become extremely important and where the public under those circumstances will seek some dispassionate advice to enable them to come to an informed decision about all of the planning matters which might be associated with such a development? These are very big and complex issues. Do you think the Environment Agency should be playing a stronger, more central role in trying to help people solve the solution to such issues?

Councillor Haines: The advice to the Government, presumably, will be on the health aspects related to incineration. Is that what you are saying?

Q242 Chairman: I can only comment on what was revealed on the television, but I just make the observation that in relation to the waste policy the Environment Agency is right at the heart of it, whether it be in terms of good practice and following all the national and European legislation or dealing with the bad practice, fly-tipping, illegal disposal of dangerous substances, and so on and so forth. They are right at the middle of the whole of the waste policy of the United Kingdom.

¹⁰ Ev 100, para A

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Councillor Haines: Yes, but at the end of the day the actual waste management policy which is introduced for that area is going to be one which has gone through all the democratic processes. The local authority may come to a decision and it would then be up to the relevant Secretary of State, if it is taken to that extreme, which I presume it would be, to come to a decision. It is not dissimilar to the example you gave about the Thames Gateway earlier on. At the end of the day, the decision is going to be made at minister level. So the role of the Environment Agency will be just as one of the participants, together with the local authorities and the public in the discussion which takes place in the area where it is to happen through the regional spatial strategy and the local development framework system which we now have. I cannot see that the Environment Agency can step outside of that.

Mr Searles: We basically have concerns on three levels in relation to the Environment Agency. I think the answer is, yes, it needs to play a stronger role. The core issue is, of course, PPS10 on waste, which was introduced last July. There is a real need for a very strong information base to underpin the development of both regional, sub-regional, and local policy. An information base which is notoriously bad leads to endless conflicts because it can be interpreted in many different ways. We have views we are developing about the role of local authorities in relation to strategic waste management which we will send you separately. So the Agency needs to play a role in that, formulating plans, securing an information base at a wider level. Then there is this issue I have mentioned, which I think is actually the role of the Agency, in terms of responding to specifics and being there with the local authority and being a partner. It is there in some places and it is not in others. Lastly, there is a general sense of frustration, probably through a lack of Agency staff, on the more local issues around licensing, enforcement issues, on a day to day basis, and I think there has been a perceived lack of coverage by Agency staff there. I think overall it points to perhaps a lack of Agency planners in that area.

Q243 Mrs Moon: You talked about not minding the Environment Agency scrutinising planning applications. I do not know that they actually scrutinise them. Their responsibility is to comment on them. What we have here is an Agency which is described as an environmental champion. For many people—and indeed the CPRE and the RSPB made

it quite clear today that they feel there are not that many environmental champions around and perhaps sometimes the pressure is on planning departments in particular to go with the developer and also to not risk costs by turning down an application if it is going to appeal. Would you not see, therefore, the Environment Agency as a critical partner for planning departments in actually flagging up the environmental issues, the environmental concerns and the long-term risks, again as pointed out by the CPRE and the RSPB, and the environmental risks to the planning developments which are proposed? Are they not actually critical to a holistic analysis of a planning application?

Councillor Haines: I would not think you would have the risk of costs awarded against you now if the Environment Agency is saying no and the local authority then actually—

Q244 Mrs Moon: That is why I am saying the Environment Agency is a critical partner for you?

Councillor Haines: Yes, exactly, compared with what it was like five or 10 years ago, when if the Environment Agency said, “No, there’s a risk of flooding,” you actually did think, “Oh, we will lose that one on appeal.” But now it is a much stronger guidance, so that is good. Could I just say that, taking their partnership, my local authority has got a strategic flood risk assessment in place now for its local development framework with help from the Environment Agency and its own engineers, which we have got in-house. So again it comes back to the importance of there being the two bodies, each with their experts on flooding, so that we can be advised by our own experts as well as the Environment Agency, which agrees in our case. So I think that is a good balance and then that can be seen by the public, that the Environment Agency is agreeing with the local authority at the strategic level as well.

Q245 Mrs Moon: Just in terms of democratic accountability, the environment is one of those things which can easily be a cost-saver, “Let’s not do that bit of work because it’s not education and it’s not social services,” whereas if you have an outside agency like the Environment Agency coming in and saying, “No, this must be done,” it justifies for the Department and the local authority that spend?

Councillor Haines: Yes.

Chairman: Thank you, gentlemen, very much indeed for your evidence. If there is anything further which occurs to you, do please let us know and thank you again for your written evidence.

Wednesday 25 January 2006

Members present:

Mr Michael Jack, in the Chair

James Duddridge
Lynne Jones
David Lepper
Mrs Madeleine Moon
Mr Jamie Reed

Mr Dan Rogerson
Sir Peter Soulsby
David Taylor
Mr Shailesh Vara

Memorandum submitted by Department for Environment, Food and Rural Affairs

EXECUTIVE SUMMARY

1. This memorandum provides evidence from Government to the Environment, Food and Rural Affairs Select Committee on The Environment Agency (EA). As the Whitehall sponsoring department for the EA, this Memorandum has been produced by the Department for Environment, Food and Rural Affairs (Defra) with contributions from across Government, including the Office of the Deputy Prime Minister (ODPM), and the Department for Trade and Industry (DTI).

2. The EA plays a central part in delivering the environmental priorities of Government and the Welsh Assembly Government (WAG) through its various roles and its principal functions and duties as laid out in the Management Statement (Annex A).¹ The Government welcomes this inquiry as the tenth anniversary of the creation of the EA nears.

How successful has the Environment Agency been in its role as enforcer of environmental regulation and controls, and how well it manages its range of activities?

Objectives and Targets

3. Government requires the EA, through its Management Statement and the Financial Memorandum (Annex B)² to prepare an annual Corporate Plan. This sets challenging targets for delivering environmental improvements and taking forward Government priorities from the EA's Statutory Guidance (Annex C),³ the Sustainable Development Strategy and Defra's Five Year Strategy. It also gives details of the EA's resources and activities across England and Wales. The 2005–08 Corporate Plan has been published and approved by Ministers. Defra is currently working with the EA on preparation for the 2006–09 Plan.

4. Government monitors the EA's achievement against these targets and objectives on the basis of the high-level in-year performance management review with Defra. Targets for 2004–05 included improved coastal water quality targets; reduction of pollution incidents; reduction in waste disposal for EA regulated activities; and, an increase in the number of homes protected by flood defences.

5. The EA reports regularly against the achievement of its objectives. In relation to 2004–05, Government agrees that the EA has broadly met its objectives. Taking water as an example there were only 114 major water pollution incidents in 2004 in relation to the 105,000 discharge consents. Overall water quality showed an improvement with 71% of rivers in England (80% in Wales) classified as "very good" or "good" in 2004. The Government is looking to the EA to continue its work to put in place the measures necessary for the delivery of the EU Water Framework Directive.

Reducing Burdens

6. Government also expects the EA to reduce the administrative burden on the businesses which it regulates. To achieve this it is effectively engaged in the Government's Better Regulation agenda. In March 2005, the Hampton report and the Better Regulation Task Force report *Less is More* were accepted in full by the Government, making better regulation a priority for all Government Departments. The better regulation agenda sets real challenges to deliver outcomes with the least possible regulatory burdens on business.

7. Defra's Regulation Task Force reported in April 2004, with a total of 54 recommendations for action. These were picked up in Defra's Five Year Strategy, published in December 2004, which committed to cut administrative burdens imposed by its regulations by at least 25% by the end of 2009. As the EA is

¹ Not printed.

² Not printed.

³ Not printed.

responsible for enforcing many of Defra's regulations it is an integral partner for Defra's successful delivery of the better regulation agenda. The EA was a member of the Defra Regulation Task Force and is a member of Defra's Ministerial Challenge Panel on Regulation, which provides a scrutiny function for new and developing regulatory proposals. The EA has also developed its own Modernising Regulation Change Programme. Two Better Regulation projects that the EA is engaged in are highlighted in Boxes 1.0 and 1.1 below.

BOX 1.0—THE WHOLE FARM APPROACH

The Whole Farm Approach (WFA) is a new internet-based service, offering farmers and growers in England a faster and more efficient way of doing business with government. The service will include a website providing quick links to a range of Government business areas and, an electronic "self assessment" questionnaire on how farmers currently carry out their activities. This "Appraisal" will help raise awareness of current and planned legislation that may affect farming and link to up-to-date guidance on the farm practice in question. A range of regulatory and delivery partners, including the EA and the farming industry are working together on its development. In future, the WFA will provide data gathered through the appraisal to enable the EA and other regulators to build up a risk profile for each farm business, better target inspections and other enforcement activity; and share inspection results.

BOX 1.1—ENVIRONMENTAL PERMITTING PROGRAMME

The Environmental Permitting Programme is a joint initiative of Defra, the Welsh Assembly Government and the EA. Its aim is to combine the Pollution Prevention and Control (PPC) and waste management licensing systems into a common permitting and compliance framework. It will deliver a modernised permitting system, in line with EU requirements, sound environmental policy and the Government's principles of good regulation. The new system will reduce the administrative burden of regulation on industry, produce efficiencies for regulators and allow greater resources to be devoted to enforcement activities in areas of higher environmental risk. It aims to provide a platform that can be extended to other areas of regulatory control. A first public consultation on proposals will be made early next year.

8. Government also expects the EA to effectively enforce environmental regulations, especially in relation to those who flout the law. Work in this area is taken forward by the EA through initiatives such as the "Delivery for the Environment" programme, which recognises that regulatory approaches, including enforcement, need to be continually assessed and improved to ensure a proportionate and effective service is delivered.

9. Government launched a "Review on Enforcement in Environmental Regulation" in September 2005 to examine the broader issues associated with enforcement across all environmental regulators. As the largest environmental enforcement body, engagement from the EA is vital, and it is taking an active part. This evidence-led review will identify obstacles to effective environmental enforcement and sanctions, and then aims to develop more efficient, more proportionate, and more effective enforcement. Stage I will identify and define problems with current systems; Stage II will appraise possible solutions. The review team is working with the EA, local government, business and environmental groups, aiming for a wide consensus on the way forward. Conclusions from the Review are expected in June 2006.

Does the Environment Agency operate efficiently and provide good value for Money?

10. Government expects the EA to deliver its functions efficiently. This requirement is set out in the Management Statement (Annex A):⁴ that the EA should discharge its functions in an economical, efficient and effective manner and organise its activities in ways that reflect good management practice and provide value for money. This is also highlighted by the Gershon cross-departmental Review of Efficiency.

11. Defra has a target to deliver efficiencies of £610 million by the end of 2007–08: this includes £299 million from savings in the waste sector to be achieved by local authorities. Of the Defra commitments, the EA has the second largest contribution to make: a challenging target to deliver efficiency savings against a target of £73 million by 2007–08, of which £18 million must be cash releasing.⁵ The EA has committed to deliver £80 million in its 2005–08 Corporate Plan (see paragraphs 22–24) consisting of £30 million in 2005–06 and £25 million in both 2006–07 and 2007–08. As part of the SR04 settlement it was agreed that EA could

⁴ Not printed.

⁵ Broadly speaking, efficiency savings are classified as cash releasing or non-cash releasing. Cash-releasing savings can be redeployed elsewhere. Non-cash releasing efficiencies must demonstrate increased delivery levels or raised quality of service without changes in cost and are not capable of being redeployed other than in the area where the saving was generated.

re-invest most of these savings in its services. The Government will hold the EA to deliver against these targets through regular reporting, including OGC Gateway Reviews. To date, the EA is on target to deliver its SR04 commitments and is actively embedding an efficiency culture throughout the organisation.

12. For the Comprehensive Spending Review (CSR 07 covering the period 2008–09 to 2010–11), an integrated approach will be required that delivers value for money through a process of reprioritisation, programme modification and efficiency gains. Government is working with the EA to provide the evidence required to demonstrate that existing resources are effectively used, identify the funding scenarios, confirm that the ratio of benefit and cost are proportionate and consistent with the strategic aims and identify any policy gaps resulting in additional burdens over the CSR07. The CSR07 exercise will keep Defra's plans for improved efficiency beyond 2007–08 under the spotlight. Maximising value for money derived from Government expenditure is essential if Government is to continue to improve service delivery and release resources needed to respond to the challenges facing public services over CSR07 and beyond.

13. As part of SR02 the EA secured additional funds for investing in IT-related services. As a result, time recording and activity based costing systems are now in operation. Defra will work closely with the EA as they develop management information to inform benchmarking exercises and unit costs to help drive greater efficiency across their operations. The new systems will also be crucial in validating the delivery of efficiencies. Specific Corporate Plan measures on delivery of efficiencies are also being addressed as part of the 2006–09 planning round.

Charging

14. Government's position on charging is set out by HM Treasury in the *Fees and Charges Guide*. Defra has recently published a *Handbook on Charging* to provide policy makers with guidance on the principles to be taken into account when considering regulation and the need for charging schemes to promote a consistent approach. The Handbook, published in November 2005, identifies 13 guiding principles. Those most relevant to charging for environmental regulation are: the Polluter Pays Principle and Full Cost Recovery.

15. Under the Environment Act 1995, the EA has the powers to charge for environmental licences in respect of the functions it carries out and to recover costs incurred in performing those functions. Any end-year deficits or surpluses are required to be corrected in subsequent years. Ministers approve new charging schemes and changes to existing charging schemes, subject to consultation with the National Assembly for Wales. In 2005–06, the EA passed the improvement in efficiency to charge payers through a reduction in pay and price inflationary pressures from 5% to 2½%.

16. The main objective for the EA charging scheme is therefore cost recovery. However, incentivising operators to minimise their impact on the environment is also encouraged. To support this, the EA has developed the Operator and Pollution Risk Appraisal (OPRA) that rates individual operators on a risk basis.

17. In addition, a joint review of charging by the EA and Defra was established in 2003 to take stock of existing charging schemes and develop a common approach to charging that could be applied to current and future schemes taking into account the environmental risk, the polluter pays principle and implications for charge payers. Defra is working with the EA to ensure transparency on cost-setting for charge payers.

The structure, governance and accountability of the Environment Agency

Accountability

18. The EA was established by the 1995 Environment Act, and assumed its responsibilities in April 1996. It is an executive Non-Departmental Public Body (NDPB) sponsored by Defra and the Welsh Assembly Government (WAG), operating at "arms' length" from Ministers. The EA is vested with a wide range of duties touching on almost every aspect of the environment (the full list in included is the Management Statement at Annex A)⁶.

19. The EA is accountable for its activities in England to the Secretary of State for Environment, Food and Rural Affairs, who is in turn accountable to Parliament for the EA's activities, the EA's charging regimes in England and Wales, and its expenditure in England. The EA is accountable to the WAG for its activities and expenditure in Wales.

20. Defra is committed to quality and continuous improvement. As part of this, it is important to review regularly whether the EA continues to be the best way to deliver the services for which they are responsible; and, if they are, how delivery of these services can be improved in the future. Cabinet Office guidance states that reviews should be carried out with sufficient frequency to give the Department confidence that the organisation is delivering high quality services efficiently and effectively, and fits appropriately into the Department's overall delivery structure. The last Financial Management and Policy Review was carried out in 2001–02.

⁶ Not printed.

Governance

21. The EA's principal aim is defined in Section 4 of the 1995 Act. Statutory Guidance (Annex C)⁷ sets out the principles the EA should follow in deciding its priorities; states the objectives the Government has set for the EA; and identifies its roles in contributing to the achievement of sustainable development. It also outlines how the EA is expected to work with other public bodies. The statutory guidance was last produced in 2002.

22. The Management Statement (Annex A)⁸ sets out the relationship between the Secretary of State, WAG and the EA. The Secretary of State's roles include setting the EA's priorities and objectives for England (and measuring progress against them), the allocation of resources and the appointment of the Board. The Management Statement also requires the EA to develop a Corporate Strategy and Corporate Plan which it must agree with Secretary of State in conjunction with the Assembly Government.

23. The Corporate Strategy describes how the EA intends to deliver the objectives set out in the statutory guidance, including a description of priorities, objectives and targets over a five-year period. The EA has been revising its Corporate Strategy, working closely with Defra and WAG officials to ensure that the content reflects the issues Government sees as a priority for the EA.

24. The Strategy in turn drives development of the Corporate Plan. The Corporate Plan is published annually in a three-year rolling programme and sets out the targets and key performance indicators used to measure progress against the Government's strategic objectives, and objectives for how the EA will improve the way it operates through seven change programmes.

25. The EA provides Defra with a high-level in-year performance report on their performance against objectives. At the end of the year, the EA's Annual Report sets out a financial and performance summary showing the extent to which the EA has met its targets. Defra Ministers have biannual performance reviews with the EA Chairman and Chief Executive to hold the EA to account for its performance. Where the EA's objectives risk not being delivered, Government and the EA agree to put mechanisms in place to ensure progress.

26. Following a recommendation in the 2001–02 Financial Management and Policy Review of the EA, a high-level co-ordination group was established to co-ordinate the prioritisation of Government's objectives for the EA and their delivery through the corporate planning process. The FMPR also recommended the creation of a new Division in Defra—Environment Partnerships, Delivery and Finance (EPDF) to act as the sponsorship division for the EA. This has been set up.

27. The Financial Memorandum (Annex B)⁹, last revised in June 2005, is issued by Defra in conjunction with WAG. With the Management Statement, it sets out the rules and guidelines relevant to the exercise of the EA's priorities, statutory duties and powers. It also sets out certain of the conditions under which any public funds are paid to the EA and how the EA is to be held to account for its performance and use of public funds.

28. The EA submits its audited accounts to the Secretary of State and the National Assembly for Wales. These are then submitted to the Comptroller and Auditor General and are laid before both Houses of Parliament. These accounts are subject to scrutiny by the Committee on Public Accounts; and the Audit Committee of the National Assembly may also examine any report. The National Audit Office also audits the accounts.

Appointments

29. The Secretary of State appoints the Chair, Deputy Chair and members of the EA Board, except for one member who is appointed by the National Assembly for Wales. Appointments are made by open competition and are subject to the Commissioner for Public Appointments' Code of Practice. The Board currently comprises 14 members, including the Chief Executive, who is an ex officio member. Members are normally appointed for a three-year period and are eligible for reappointment for a further term, subject to satisfactory service. The appointment of the Chief Executive is made by the EA Board, but has to be approved by the Secretary of State.

30. Defra Ministers also appoint the Chairs of the seven English Regional Environment Protection Advisory Committees; seven Regional Fisheries Ecology and Recreation Advisory Committees; and 11 Regional Flood Defence Committees. These are statutory Committees set up to advise the EA on proposals relating to the manner in which the EA carries out its functions in that region. Appointments to these Committees do not fall under the remit of the Commissioner for Public Appointments, but the Commissioner's Code is followed nevertheless for these appointments as a matter of good practice.

⁷ Not printed.

⁸ Not printed.

⁹ Not printed.

The Environment Agency's relationships with Defra, Defra-sponsored bodies and the Rest of Government, including the EA's role in the planning system

31. Section 4 of the Statutory Guidance outlines how the EA is expected to work with Central Government departments in England¹⁰, WAG and the relevant statutory agencies.

The EA and Defra, WAG and Other Government Departments

32. Defra's Five Year Strategy states that Defra is developing a new "business model" for how the Department organises itself. This is driven in part by Defra's *Delivery Strategy*, which describes the outcomes required to deliver Government policy. The business of delivery will be passed to delivery bodies who will have a shared understanding with Defra of their role in both delivering Defra's outcomes and supporting the development of policy. This is underpinned by the following principles:

- Deliverers inform policy development and decision making;
- Outcomes and targets are agreed with deliverers before publication;
- Policy rationale understood and championed by both;
- Deliverers empowered to get on with delivery, held to account by monitoring, audit and inspection; and
- Strong two-way communication with deliverers reporting back regularly to policy on the achievement of outcomes.

33. In relation to the EA specifically, the Statutory Guidance (Annex C)¹¹ describes how Government expects the EA to work. In particular it confirms that the EA will support Defra and WAG by acting as an *independent advisor on environmental matters affecting policy-making, both within Government and more widely* (for example in its publications, public engagement, briefings etc). This advisory role is grounded in the EA's technical expertise and operational knowledge and includes, where appropriate, advice in relation to the development and implementation of Government policy and strategy, the implementation of international, European and domestic legislation and in European Union negotiations.

34. There are strong and close working relationships between the EA and Defra officials on a range of policy issues. For example, an important issue is the effective engagement of the EA in the negotiation and transposition of European legislation, to ensure that such regulation is fit for purpose. Defra is committed to a more rigorous approach to planning and managing the transposition of European legislation, which includes the timely consultation of delivery partners, through the use of Programme and Project Management (PPM). From April 2005, all new European environmental Directives and Regulations have been implemented using PPM.

35. In addition, there are circumstances when the EA advises Government on wider policy issues, including publicly. For example, the Government Response to the Barker Review identifies the importance of the EA's role here in ensuring that new growth points are directed to the most sustainable areas possible and that Defra Ministers are supported with a robust evidence base. In particular, the EA's Sustainable Development duty requires it to reflect the environmental perspective, where its expertise is greatest (while bringing to bear its knowledge of the interaction between environmental practice and social and economic factors). However, it is for Government to take the eventual policy decisions which will integrate social, economic and environmental considerations.

36. It is therefore inevitable that there are sometimes differences between the EA's advice and Government's eventual policy decision. For example, although ODPM has long had a close and constructive working relationship with the EA on developing policy on flood risk planning, the EA has at times challenged some aspects of Government policy for creating sustainable communities, and on development and flood risk.

37. It is important that such necessary and inevitable differences do not undermine effective working relationships. For example, ODPM and the EA have agreed a Concordat which ensures that significant environmental barriers to development are identified at the earliest possible stages; that consistent messages are given to external stakeholders on the environmental impact of the Government's plans for housing growth; and, where possible, to ensure the EA provides effective and relevant advice and support on measures needed to mitigate negative impacts.

¹⁰ The EA works most often with the DTI, ODPM, DfT, HMT and DH. The EA also works with the Scottish Environmental Protection Agency (SEPA) and the Environment and Heritage Services (EHS) in Northern Ireland (NI) to ensure as even a playing field across the country as possible, particularly with regard to the better regulation agenda.

¹¹ Not printed.

The EA and Defra sponsored bodies

38. Defra's Five Year Strategy makes clear that the business of delivery will increasingly depend on delivery bodies, which together form Defra's delivery "landscape". Within this, the EA is the largest player, alongside a range of other bodies, including executive agencies, non-departmental public bodies, public corporations, non-ministerial departments (such as the Forestry Commission (FC) and the Foods Standards Agency), parts of other ministerial departments, parts of other public bodies, independent and commercial contractors, and NGOs/voluntary organisations. The interaction with local authorities is covered in paragraph 45.

39. Statutory Guidance requires the EA to develop a close and responsive partnership with a wide range of public bodies, and that it should not duplicate the existing role of other expert bodies but where possible enter into agreements to enable it to have continuing and rapid access to the necessary advice, while developing "in-house" capability to act as an intelligent client.

40. In practice the EA has developed constructive relationships with a range of partners, most recently building on existing close relationships with English Nature (EN), the Countryside Agency (CA) and the Rural Development Service (RDS), which now are working together in confederation towards establishing Natural England (NE) in October 2006, (including developing and signing an innovative three-way MoU between EA, the FC and NE). Government welcomes the variety of MoUs that the EA has with Defra sponsored bodies.

41. Government expects the EA to continue this approach even as the wider delivery landscape changes over the coming years. An example of this can be seen in Box 1.2. Successful collaboration between the EA, EN, English Heritage (EH) and the CA on Regional Spatial Strategies serves as another good example of effective joint working between delivery bodies.

BOX 1.2 CATCHMENT SENSITIVE FARMING

The EA and NE are working together on Catchment Sensitive Farming. They are carrying out four integrated catchment management pilots and the EA has appointed catchment co-ordinators, who will become part of the network of Catchment Sensitive Farming Officers being set up under a new catchment Sensitive Farming Delivery initiative. This will ensure consistency of message and joined-up engagement with farmers. Defra, the EA and NE have developed the delivery model for this together, including a dedicated technical support unit in the EA. The EA's expertise and data sources are used to prioritise catchments and inform monitoring and evaluation arrangements. Defra is committing £10 million 2006–07 and £15 million 2007–08 on this. Further details will be announced before the end of 2005.

42. The EA also has a role to play in the "rural delivery frameworks", which are being developed in each region. These seek to ensure that prioritisation and delivery in the English regions address the three core strands of Rural Strategy 2004—supporting rural enterprise; social justice for all; and enhancing the value of our countryside by protecting the natural environment. Development of these frameworks will ensure that priorities are shaped to fit regional need and opportunity, as well as supporting national priorities. The frameworks provide an opportunity for the EA to engage in partnership working with a range of agencies in each region, and to explore the potential for these organisations to contribute to delivery of the EA's environmental objectives. The frameworks will be finalised by the end of 2005–06.

43. The Hampton Report on reducing the burden of regulation on businesses, which the Government has accepted, recommends merging a number of the smaller regulatory bodies into six thematic regulators. It has not yet been decided how, if at all, this will affect the EA, and its relationships with other bodies. Any decision will be subject to a detailed decision-making and consultative process.

44. The Government has also announced that it is considering setting up a Marine Management Organisation. Government expects the EA to establish an effective relationship with any such organisation.

Local and Regional Authorities

45. The EA also works alongside Local Authorities (LAs) to enforce regulation and to support LAs in protecting the local environment. They have complimentary environmental powers and duties and shared public service values. The EA and the Local Government Association (LGA) agreed a concordat "Working Better Together" in 1999 to improve working relationships between them. This was reviewed in 2002–03 (Annex D)¹² and expanded to focus on a range of environmental outcomes to be delivered jointly by LAs and EA by 2007. The revised concordat also contains eight protocols setting out how these outcomes will be achieved through technical co-operation.

¹² Not printed.

46. In some areas this is working well, for example, the EA is working with the LGA, Royal Town Planning Institute and Defra to produce guidance for land use planners on the Water Framework Directive. In some cases however more could be done to improve the consistency of the EA's working relations with LAs, for example on fly-tipping or on the speed and quality of its responses when consulted on planning applications.

The EA's role in the Planning System

47. The EA has a range of statutory and non-statutory responsibilities related to the planning system. It provides policy advice to Government on the environmental planning issues raised by the development of national planning policy statements; advises Regional and Local Government on more detailed planning matters in drawing statutory spatial plans (for which purpose it is a statutory consultee) through its network of Area and Regional Offices; and comments on the resulting planning documents (eg Regional Spatial Strategies), and local development plans (Local Development Frameworks). Where consulted or otherwise aware of proposals, it advises on specific planning applications. It also provides advice to developers and landowners through its pre-application advice and discussions.

48. The EA provides advice on issues such as flood risk, water quality and water resources, waste, land contamination and wetland biodiversity. Each year it is consulted on around 60,000 planning applications as well as development plans. The EA is a statutory consultee on some planning matters, and is also consulted on national planning policy advice—Circulars, Planning Policy Guidance notes (PPGs), and the new Planning Policy Statements (PPSs).

49. In statutory terms, the EA is a “specific consultation body” for Regional Spatial Strategies, Local Development Frameworks and Supplementary Planning Documents; a “consultation body” for Sustainability Appraisal; and a “statutory consultee” (under Article 10 of the Town and Country Planning General Development Procedure Order (GDPO)) for some planning applications and under the Strategic Environmental Assessment and Environmental Impact Assessment Regulations.

50. The EA does not have direct regulatory control over development. It is a statutory consultee for those types of development set out in Article 10 of the Town and Country Planning (General Development Procedure) Order 1995 (in summary, a range of waste, minerals, water (but not yet flooding) and hazard-related development). Therefore, before a Local Planning Authority (LPA) makes a decision, the EA should have the opportunity to provide advice and views on proposed development. Given the technical and specialist nature of much of the work it undertakes in assessing the implications of a proposed development, its view is potentially significant in the subsequent local authority decision-making process. EA also relies on regional planning bodies and LPAs to adopt its policy recommendations in their development plans.

51. There is close and generally good working between the ODPM and EA on waste planning, and the regulatory interface with waste management licensing—an EA secondee was a key member of the team working on PPS10 (Planning for Sustainable Waste Management). PPS23 (Planning and Pollution Control) covers the wider interface between planning and the environmental permitting regimes (with detailed annexes on how spatial planning interacts with the regulation of air and water quality and the statutory contaminated land regime).

52. The EA also has an important role in the provision of relevant and timely information on waste management (eg understanding changes in the stock of waste facilities and the amount of waste arising). However, the Government is looking to the EA to ensure the appropriate priority and resources are given to data collection and dissemination for users other than the EA to avoid any difficulties in future around prompt delivery.

53. The Government is grateful for reassurances that have been provided regarding the “data warehouse” now under development—as a central element of Defra's Waste Data Strategy. Users of the planning system will continue to want clarity on how the warehouse will supply information on waste arisings and on waste being managed at exempt sites, and commitments on the EA's priority in meeting their needs, level of service and its charges.

54. The planning system controls the development and use of land in the public interest. It should focus on whether development is an acceptable use of the land, and the impacts of those uses on the development and use of land. Planning and pollution control authorities should therefore work closely to ensure integrated and timely decisions under the complementary regimes. This means that it is important that the EA respond to consultations on time. To ensure this, from August 2005, for those types of development on which the EA is a statutory consultee it has been under a duty to respond within 21 days, or such other time as may be agreed in writing. The EA will report annually to the ODPM on how it has performed against this duty. The EA is also working to improve this co-operation through electronic planning systems and through the ODPM and local government (PARSOL project) on the development of e-planning initiatives.

55. In the case of flood risk, through its inputs on development plans and cases the EA effectively acts as a “watchdog” on the application of national government policy—Planning Policy Guidance note PPG25 Development and Flood Risk. It reports annually to Defra and the ODPM on the impact of its technical advice on flood risk provided to LPAs, through the High Level Target HLT5, (formerly HLT12) report. The Government will shortly be announcing further measures to strengthen the EA's role here. ODPM has

long had a close and constructive working relationship with the EA in developing policy on flood risk in development planning. In its inputs to drafting both PPG25 and (its proposed replacement PPS25) the EA has always accepted that some forms of development are compatible with some degrees of flood risk. The key to getting the balance right is a sensitive use of the “sequential test” which is at the heart of PPG25 (and the proposed PPS25) and comprises a risk-based approach to proposals for development in or affecting flood-risk areas. The Government looks to the EA to reflect the need to take decisions on this basis in its broader statements on the appropriateness of development in flood risk areas.

56. The need to implement the Water Framework Directive means that the relationship between LAs and the EA will become even more important. The EA is coordinating the implementation of the river basin planning system, and this will have to be closely linked to the spatial planning system. Work is in hand to develop these relationships. For example, the EA is closely involved in the OPDM led workshops on the implications of the Water Framework Directive for planners taking place in November and December 2005.

The Environment Agency’s relationship with non-Governmental Stakeholders and the general public; and how the Agency monitors satisfaction with its services

57. Regarding its relationships with non-Governmental Stakeholders and the general public the Section 4 Guidance states that the objectives of the EA shall be to:

- conduct its affairs in an open and transparent manner in full compliance with the requirements of all relevant statutory provisions and codes of practice relating to the freedom of, and public access to, environmental and other information and to make such information broadly available subject to legislative constraints;
- ensure that regulated individuals and organisations comply with relevant legislation whilst being mindful that their work can have major social and economic as well as environmental consequences. The EA should therefore develop approaches which deliver environmental requirements and goals without imposing excessive costs (in relation to benefits gained) on regulated organisations; and
- reflect on and build upon the principles of public accountability in developing a close and responsive partnership with the public, representatives of local communities, regional chambers and other regional bodies, other public bodies and regulated organisations, and adopt effective procedures to manage these relationships.

58. Government recognised the work that EA has done on service standards such as the Customer Charter, as well as the variety of interfaces they have with non-governmental stakeholders and the general public, such as Floodline and the national Customer Contact Centre. Government does not directly monitor these services or undertake separate analysis of customer satisfaction but the EA does report against them in its balanced scorecard.

The Environment Agency’s responsibilities for flood defence and flood mapping, including guidance to the public

59. Defra is the Government Department with policy responsibility for flood risk management in England and provides the great majority of funding for the service, including flood defence grant in aid to the EA (£445 million in 2005–06). The Welsh Assembly Government has similar responsibilities in Wales. The EA’s flood risk management work is delivered using “permissive powers”, ie the ability to undertake works but without obligation to do so.

60. The EA is the principal flood risk management delivery body for England and Wales and is responsible for:

- planning, providing and maintaining physical flood defences;
- adopting other means of managing flood risk, for example by managing natural features (eg sand dunes, shingle ridges and saltmarshes);
- contributing to sustainable development, including through the creation of wildlife habitats as part of the flood risk management programme;
- operating a joint research and development programme with Defra;
- producing flood risk maps;
- advising members of the public about flood risk via its Floodline;
- undertaking some regulatory functions; and
- exercising a general supervision over all matters related to flood defence.

61. Defra and EA work together to manage the new Flooding Emergencies Capability Programme. The EA’s flooding emergencies role includes accessing and interpreting forecasts; issuing flood warnings to the public and emergency responders; managing defences during a flood event including liaison with emergency services etc; reviewing post flood event and working with affected communities on how to manage flood risk in future; and leading emergency exercise plans.

62. The EA also have limited controls and regulations relating to consents to practices that might add to flood risk on main rivers. They also have byelaw making powers (Schedule 25 to the Water Resources Act 1991). LAs and Internal Drainage Boards have similar powers for non-main rivers. Government intends to bolster the EA's powers in relation to byelaws to achieve conservation ends, through the Natural Environment and Rural Communities Bill, currently before Parliament (more details on this can be found at paragraph 67).

63. LAs and internal drainage boards can also undertake flood risk management works in relation to more minor watercourses and local authorities can also undertake coastal defence works against flooding and coastal erosion.

64. The EA reports to Government against delivery of these responsibilities in its high-level in-year performance management review and its Annual Report. These indicate that the EA generally manages this range of responsibilities well, increasingly integrating its functions to manage flood risk holistically. Defra is working with the EA to ensure that all flood risk is managed holistically, that the EA has a new strategic overview over all flood and coastal erosion risk management (the EA currently have no responsibility for coastal erosion or for many aspects of localised urban flooding) and that the biodiversity targets—and wider environmental targets—from the flood risk management programme are delivered. Details can be found in Box 1.3.

65. Government's wider efficiency programme for the EA is covered in paragraph 10. On flood management, targets for £15 million year-on-year efficiency savings for three years from 1 April 2005 have been agreed. These savings are being recycled for the benefit of flood risk management in order to maintain outputs over the period to 2007–08 at equivalent levels to 2005–06 with no increase in funding. As with the wider programme, achievement of these efficiency savings is demonstrated at quarterly intervals.

BOX 1.3—MAKING SPACE FOR WATER

The Government new strategy for flood and coastal erosion risk management in England, *Making space for water* is the result of partnership working between Defra, EA and other partners, including joint working on follow-up work streams. The work has been widely praised by stakeholders. The first Government Response is available at <http://www.defra.gov.uk/enviro/fcd/policy/strategy.htm>

Government's next steps are to broaden the EA's responsibilities further, by delegating to the EA responsibility for grant payments to other delivery bodies (Local Authorities and Internal Drainage Boards) progressively from April 2006 and giving the EA a strategic overview of all flood and coastal erosion risk management activity. This links to the decision to fund (from April 2004) almost all of the EA's flood defence work through Defra grant in aid rather than local authority levies, and to make the EA responsible for all rivers creating greatest flood risk (in phases to April 2006). These changes resulted from the Funding Review, the conclusions of which were announced in March 2003.

How the organisational changes brought about by the Natural Environment and Rural Communities (NERC) Bill will affect the role of the Environment Agency

66. The Natural Environment and Rural Communities (NERC) Bill is part of a broader package of changes being implemented in response to Lord Haskins' Rural Delivery Review. This can be found at <http://www.defra.gov.uk/rural/ruraldelivery/report/default.htm>. Government's response to this was the *Rural Strategy 2004* which accepted the proposal to establish an integrated agency (now called Natural England—NE) and that Defra would work with the EA and English Heritage to agree concordats and other tools to underpin collaborative working with the now NE and to promote synergies between them. The Strategy included a series of targets on how Defra would get the range of delivery bodies to work together. The full list of targets can be found at Annex E¹³ and the Rural Strategy 2004 at: <http://www.defra.gov.uk/rural/strategy/default.htm>.

67. The NERC Bill is well progressed through Parliament but has not received Royal Assent. As such the effects of it on the EA are provisional. These effects are outlined below.

68. Following pre-legislative scrutiny the NERC Bill was amended to allow the Secretary of State to give guidance to NE only after having consulted both NE and the EA. A reciprocal amendment was made to the Environment Act 1995. The Government response to the EFRA Select Committee report explained that this was: “due to the importance of the relationship between the Environment Agency and Natural England”.¹⁴

69. The NERC Bill also deals with Flexible Administrative Arrangements (Part 8, Chapter 1). This section will allow the Secretary of State to “delegate” Defra functions, by agreement, to designated bodies (of which EA is one). The provisions will also allow designated bodies to “delegate” their Defra related functions to other designated bodies, such as LAs. These powers are intended to allow the EA (and other

¹³ Not printed.

¹⁴ <http://defraweb/rural/pdfs/ruraldelivery/bill/gov-response-efra-report.pdf>

Defra delivery bodies) to more effectively deliver outcomes jointly with partners in Government by removing legal barriers to partnership working, avoiding duplication and improving service to customers. Delegation agreements cannot be imposed. They must be agreed by mutual consent of all bodies involved.

70. The NERC Bill also contains a provision amending flood defence bylaw-making powers in the Water Resources Act 1991 and the Land Drainage Act 1991. This provision will allow the EA (along with LAs and Internal Drainage Boards) to take account of the environmental effect of land drainage works, when making byelaws or taking a decision under those byelaws. This provision was requested by the EA to allow them to place conditions on work such as dredging and gravel extraction which have in the past been cited as damaging to bird species and aquatic life, and significantly damaging to river ecology and geomorphology.

71. The NERC Bill was accompanied by a policy statement,¹⁵ which highlighted a number of issues specifically relating to the effect of NE on the EA. This anticipates that:

- bringing together biodiversity, landscape and public enjoyment into one agency will make NE a more effective partner, complementing the expertise and functions of EA;
- together the EA, NE and the FC will provide a stronger environmental voice in the planning process;
- better environmental outcomes will be achieved by NE and EA working in a coordinated way—for example maximising both biodiversity and flood prevention improvements or advising farmers and contributing to tackling climate change;
- the EA, NE and the FC will work closely together, joining forces or allowing others to lead where this makes sense from the customer perspective and in terms of delivering outcomes most effectively and efficiently;
- the NE will use its incentive-giving powers (including agri-environment funding) to support the EA in tackling diffuse water pollution in order to meet our obligations under the EU Water Framework Directive (eg catchment sensitive farming); and
- strong and transparent partnerships will be achieved through working level agreements between the three bodies (for example a three-way MoU) and by Defra coordinating its role as sponsor of both agencies.

How the Environment Agency's work in improving wildlife habitats will tie in with Natural England's work in biodiversity

72. Complimentary to the English Nature (to be Natural England) lead on biodiversity and wildlife the EA has important responsibilities for protecting wildlife habitats and biodiversity. This is in addition to the EA's statutory duty to take reasonable steps, consistent with the exercise of its functions, to further the conservation and enhancement of Sites of Special Scientific Interest (SSSIs). Government includes biodiversity requirements in other policy areas (eg water, flood) and where this is not explicit expects the EA to identify what it can do for biodiversity and to generate proposals accordingly.

73. To date the EA has demonstrated close working relationships with EN on a number of initiatives linking the improvement of wildlife habitats and biodiversity, including joint work on the environment programme for the water industry, the biodiversity aspects of the EU Water Framework Directive, and chairing meetings for the development of a Water and Wetlands Vision for England. As part of EA's contribution to EN's delivery work on Defra's PSA target to improve the condition of SSSIs, the EA has expanded the scope of its review of consents affecting European sites, to include work on any remaining SSSI's that may also be adversely affected. Defra is working with the EA to improve the contribution to biodiversity targets from the EA flood risk management programme (see paragraph 65).

74. In all such work the EA will need to work closely with EN and its successor NE to ensure there is good science, robust evidence, appropriate efficiencies, co-ordination and value for public money. In many cases, the roles of each organisation are different and distinctive. Roles do overlap on habitats/biodiversity but are clarified in the MoU.

75. The UK Biodiversity Action Plan Review is currently going through the 2005 reporting round. This review will update targets that have expired or need amending in the light of recent change, such as those brought about by the creation of NE.

The Environment Agency's forthcoming corporate Strategy 2006–11

76. Government also requires the EA to develop a Five Year Strategy as part of its management framework. Defra officials have been working constructively with EA on the development of the EA's public consultation on *Creating a Better Place* which closed on 31 October 2005. Government supports the current draft of the Corporate Strategy, particularly the priority given to flood management; the Water Framework Directive, the Hampton and *Less is More* agenda; and the EA's efficiency programme.

¹⁵ <http://www.defra.gov.uk/rural/pdfs/ruraldelivery/bill/policy-statement.pdf>

77. Since the summer, EA and Defra officials have held corporate planning bilaterals based on the nine themes in the draft Strategy. These developed proposals for the 2006–09 Corporate Plan targets and performance indicators that will inform EA/Defra agreement in due course.

Department for Environment, Food and Rural Affairs.

December 2005

Witnesses: **Mr Elliot Morley**, a Member of the House, Minister of State for Climate Change and the Environment, **Miss Sarah Nason**, Head of Flood Management Division, and **Mrs Sue Ellis**, Head of Waste Management Division, Department for Environment, Food and Rural Affairs, gave evidence

Q246 Chairman: Minister, thank you once again for appearing before this Committee, for which we are very grateful. I know you are on a tight time schedule this afternoon, so we will try to be as quick as we can. May I formally welcome Elliot Morley, the Minister for Climate Change and the Environment, supported by Miss Sarah Nason, Head of Flood Management Division and Mrs Sue Ellis, Head of Waste Management Division of Defra. Minister, we always like to spring a surprise on you, so we are not going to talk about the Environment Agency straight away. I hope you do not mind putting on your environment hat to clear up a little point of concern. When the Secretary of State came before the Committee in November for a very helpful session, we wrote to her about when the results of your appraisal of the UK Climate Change Programme were going to be published. Not unnaturally, given the presidency responsibilities and Council responsibilities she had, she said she thought it would be unlikely that the draft of that would be in our box before Christmas and she gave us the distinct impression it would be afterwards. I know she is not still on holiday from Christmas and the New Year, but we have not seen this document. Could you try to explain to us what has caused the delay and is it going to appear, as some have suggested, at the end of March or, as others have suggested, the end of February?

Mr Morley: The short answer, which is not terribly satisfactory, is that we want it to appear as soon as possible. It was always going to be the case that it was going to be after Christmas because of the work that was in progress. To be quite frank with you, Chairman, there is the issue of the National Allocation Plan for the second phase of the EU ETS. We do have to publish figures on the second phase. Those figures have a direct bearing on the climate change review. We would expect to get a very large carbon saving in the second phase of the EU ETS. In terms of people evaluating the range of measures that we are likely to put forward, I think it would be in everyone's interests if we could coincide with those figures so people can see them. In terms of the figures, that work is very close to completion. It is not completed yet. I am not absolutely sure the exact date that it will be completed. It is not that far away, as I understand it.

Q247 Chairman: Just to press you a little further on it, is it likely to be in the first quarter of this year?

Mr Morley: Yes.

Q248 Chairman: The reason that we are interested in it is that obviously we want to use the results of that as a focus point for our own inquiry into it. We have published details of that as you have probably seen. Knowing when it is going to come would be of particular help to us.

Mr Morley: I think you could certainly bank on it being in the first quarter.

Q249 Chairman: I am grateful to you, Minister. Let us move on to the Environment Agency. It is just about 10 years old and we thought it would be a good idea to have a look at it. It is about six years since some people on the Select Committee side looked at the Environment Agency's work. I was struck by your own Department's evidence. Did you sign this off?

Mr Morley: Yes.

Q250 Chairman: You read it word for word?

Mr Morley: Yes, just about.

Q251 Chairman: Did you think it answered the questions that we actually put forward?

Mr Morley: Some of the questions that your Committee asks are very wide-ranging and there are broad answers to them.

Q252 Chairman: For example, the first question was very simple: how successful has the Environment Agency been in its role as enforcer of environmental regulation and controls and how well is it managing its range of activities? You dealt with that in three paragraphs. Each one of them simply said what it did. It contained no commentary. I was intrigued as to why you were reluctant to say even something nice about the Agency.

Mr Morley: For the record, I can say that measurement of success can be a very judgmental issue. In terms of my own view of the Agency, which is the second largest Agency of its type in the world, and it is certainly the largest in Europe, I think it has had a range of successes of which we in this country can be proud. We did make it very clear that we support the work that it has done. Regularly we monitor its objectives and achievements. In terms of its delivery, any organisation, as you will know, Chairman, always has to look at the way it performs, the way it

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delivers and its objectives; there is always scope for improvement in any kind of organisation. I think the Agency has a very good record.

Q253 Chairman: The Agency told us in its evidence that it has lots of meetings regularly with you. You have formal review meetings and I am sure you have many phone calls with the hierarchy. Can you give us a flavour of that? You said in your last sentence that there is always room for improvement. How can it improve? Whilst you have been Environment Minister, what are the things you have asked it do better and what are the things about which you have criticised it?

Mr Morley: I would not say that I have particularly criticised the Agency. I have certainly asked it to look at its regulatory functions to make sure that they are efficient and properly reviewed. I have asked it to look at its budgets to make sure that it finds economies within its own operations. The economies it finds can be fed through to its spending areas. I have asked it to make sure that it does recover costs in relation to its work, but no more than the cost of the enforcement of the particular area in question. I know that they have done that. In the discussions that I have with them, particularly going through their score cards (of course, like them, I am quite interested in where they identify within their own score cards that they could do better) they are doing better. I have no doubts at all on their commitment to that.

Q254 Chairman: The Environment Agency and indeed your own department vie with each other, it seems, to be champions of the environment. When we had the Campaign to Protect of Rural England before us last week, they said that there has to be a limitation on the number of people vying to be champions because there is a danger of overlap and duplication. Do you perceive that as a problem and, if you do, what are you doing to deal with that?

Mr Morley: I do not see it as a problem in a sense. It is inevitable, if we have a body like the Environment Agency with responsibilities for air, land, water and pollution and responsibilities for flood and coastal defence, that there are implications there in relation to biodiversity. It has a duty to promote sustainable development. Of course we have other agencies. Currently English Nature and the Countryside Agency are going to form the new Natural England. In some areas it is inevitable that, whatever structure of government you have, there are going to be some overlaps. Where there are overlaps, the Agency has been developing memoranda of understanding with Natural England and the Forestry Commission. There have been what I think are some very good examples of partnership working, particularly in relation to the Water Framework Directive and agricultural management. I think there are some good examples of that in terms of the Agency and other bodies, and I very much welcome that.

Q255 Mrs Moon: One of the things that we are aware you are moving towards is Defra's Marine Bill. We have looked at a number of things in relation to this. One of the things that you have suggested, for example in your *Making Space for Water* document, is that the Environment Agency should take responsibility for Shoreline Management Plans. The British Ports Association has argued that perhaps there need to be clearer guidelines on the Environment Agency's responsibility in relation to marine issues. Could you clarify for us what role you see the Environment Agency playing in either the development or the implementation of the Marine Bill and the measures that will be in it?

Mr Morley: Of course the Marine Bill covers a wider area than simply shoreline and estuary management. The idea of the Marine Bill, apart from addressing issues such as marine conservation and spatial planning, is also to look at the objectives of trying to bring together the range of regulatory functions that exist in offshore waters, which is currently divided amongst a number of government departments and organisations. It is an attempt to streamline that. Of course it very much depends on the outcome of the consultation. The Government does not have a fixed position on other ideas about a marine management organisation. We are currently evaluating the kind of responses that we are getting. The Agency is principally land-based but it does have some roles, particularly in diffuse pollution that is flowing from the rivers into the sea for example, in relation to shoreline management plans, and also such things as coastal squeeze in biodiversity terms. There would have to be close interaction between the Environment Agency and the future development of a Marine Bill and a marine management organisation, should that be the road that we go down.

Q256 Mrs Moon: Some of those who have given evidence to us have expressed an opinion that the Environment Agency already has too much responsibility in relation to marine conservation and development. Would you agree that they already have too much responsibility?

Mr Morley: I would not necessarily agree with that. I think it is quite right and proper that you keep an open mind about what is the most effective organisational structure. What we should be trying to work towards as a government—and I know, Chairman, that this has been the view of your own Committee on a number of occasions—is a holistic management approach where we have an integrated approach to issues such as water management, marine management, coastal management and the implications those have for agricultural land management planning and river and sea defences. In that respect, the role the Agency has on coasts and estuaries is appropriate for what it does.

Q257 Mrs Moon: If you saw it having an enhanced role in relation to the Marine Bill and marine conservation issues, would you see it having additional expenditure or taking that from its current budget?

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Mr Morley: That would very much depend on whether it had an enhanced role in relation to the Marine Bill. As I was saying, as it is primarily land-based and as we are looking at marine-based activities in which the Agency is not currently involved, there is not necessarily an expanded role for the Agency and its approach.

Q258 Mr Reed: A Marine Bill is something I personally welcome. However, I do think that the EA, or whichever body is charged with implementing the bill, for want of a better term, must surely have an international element to it, given the international element of maritime legislation. In what way do you see that affecting the EA? On the bill in particular, would it replicate or complement or supersede the international treaties such as OSPA and UNCLOS to which we are already signatories?

Mr Morley: I can make it absolutely clear that a Marine Bill will not supersede those treaties. They are binding treaties, treaties which we have signed up to. The geographic scope of any potential marine management organisation very much depends on the scope of the regimes that underpin the functions that it delivers. There is also, incidentally, a devolved implication here as well because of course there would be devolution of management in Scotland and to quite a large extent in Wales as well. I repeat the point that this is a new approach that does not necessarily put extra burdens or responsibilities on the Environment Agency.

Q259 Chairman: Can I be clear, as part of your preparation for the Marine Bill, are you evaluating two models of an Agency with a responsibility for the marine environment: one that would incorporate it within the existing Environment Agency and one a free-standing body?

Mr Morley: We are certainly looking at a free-standing body. Many of the functions that will be encompassed by a Marine Bill are not currently the responsibility of the Environment Agency but of the Department for Transport, ODPM and the Department of Trade and Industry, such as the licensing of offshore renewable energy developments. ODPM has an interest in dredging. Defra has an interest in dredging in relation to environmental impact assessment. That is not an Environment Agency function. A lot of the functions we are looking at are not Environment Agency functions. The issue for us is whether there is justification for a new organisation. The Hampton Review recommended to Government that we do not unnecessarily set up more regulatory bodies and that we think very carefully before we do that.

Q260 Chairman: When you talk about functions, are you talking about the legal functions, the statutory functions?

Mr Morley: Yes.

Q261 Chairman: You appear to suggest that you are not prepared to review the statutory position at the Agency. In some of their publications they talk in environmental terms about, for example, air quality

and some things to do with climate change. The policy responsibility lies well outside the remit of your Department upon which they comment but on which they have no direct responsibility.

Mr Morley: That is right but of course the Agency is an environmental adviser and an independent organisation. It is free to make comments on a range of issues that can include marine issues. In relation to its regulatory functions that I have been outlining, those are not with the Agency but within other government departments and other parts of government. There is also the Joint Nature Conservation Committee that has responsibility for advising us in relation to marine biodiversity issues. Natural England will also have responsibility in such things as designation of marine nature reserves and marine protected areas.

Q262 James Duddridge: Why would what is essentially a regulatory agency get more and more involved in policy making? One piece of evidence suggested a response. The Waste Recycling Group said that perhaps as a result of a lack of timely policy setting within Defra, occasionally the Environment Agency unwillingly accepted and sometimes enthusiastically accepted a more policy-making role rather than a regulatory role.¹

Mr Morley: Under the changes which have been introduced by Government under the Haskins Review and Defra's Delivery Strategy, we are separating out the policy functions and the delivery functions. The policy functions are matters for government departments. In relation to policy functions, those are a matter for Defra. Of course, in terms of how we produce policy, like *Making Space for Water*, in relation to our coastal strategy, the Environment Agency is very closely involved in that. We involved them in that in terms of the Waste Review. They are very closely involved in these policy frameworks. As I say, the Environment Agency is free to comment on policy. Policy determination is a matter for Defra in the case of those areas which fall within our responsibilities. I do not necessarily accept the case that we have been slow in bringing forward guidance on a range of issues including waste matters. We often give advice and warning to a range of our stakeholders, often well in advance, and they then turn round a couple of years later and say that they never knew that was coming. There is that kind of aspect as well. I do not necessarily accept that.

Q263 James Duddridge: Waste was one example. The CBI really said that from a broader perspective that was a consistent trend and went on to say that there is a lack of distinction between policy making and the regulator.²

Mr Morley: Again, I am not sure I accept that. It would be wrong of me to say that everything is perfect. I think we should always strive to look for improvements. We have set up a programme to improve the implementation of European directives, for example, to make sure that we do involve people

¹ Ev 52, para 19

² Ev 24

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as early as possible and that they are open and transparent. What we are trying to do in relation to the programme is to set up a centre of excellence in terms of the kind of good practice or best practice that we apply and also that our agencies, like the Environment Agency, apply. We are trying to address some of these points which have been raised. I do think they are sometimes exaggerated.

Q264 Chairman: As a point of information, does the Environment Agency work with your officials on EU management committee meetings when the detail of the policy is being designed? Some of the evidence that we have had indicates that there are problems in this translation process into UK law, and obviously the Environment Agency has much practical experience about these matters. Are they directly involved?

Mr Morley: They are very closely involved in all the EU directives.

Q265 Chairman: Do they sit alongside your officials at official meetings?

Mr Morley: I will ask Sue Ellis to comment because of course her division does a lot of the technical work and her people sit on the technical committees. As far as I am aware, the Environment Agency is closely involved.

Mrs Ellis: That is right and particularly if there are technical issues being addressed by either a working party or a technical adaptation committee, then we would of course take the Environment Agency with us as our technical advisers. That is their role and they provide us with very valuable support in that role.

Q266 Chairman: How did we get into the fridge mess then? You do not want to answer that. We have been over that once.

Mr Morley: It was before both our times!

Q267 David Lepper: It was not before the time of some of us on this Committee. To pursue that question of the involvement of the Agency in advising perhaps and interpreting on enforcement of EU regulations, I hear what you have just said, Minister. The CBI, for instance, told us in their evidence that they had asked that the Agency should be involved in the Defra stakeholder consultation group on the Environmental Liability Directive and that so far that had not happened. A rather different kind of organisation, the Campaign to Protect Rural England, said that their experience sometimes was that the Agency had not been involved in a way which might have been very useful, for the very reasons that have been given by the Chairman about the experience on the ground that the Agency has. Do you feel those are criticisms that do not really bear too much examination?

Mr Morley: To be honest, Chairman, I am bewildered by that statement because the Environment Agency is a member of the steering group in relation to the Environmental Liability Directive and has been involved from the very beginning. That is an allegation that I can very

firmly refute. In addition to that, in terms of the working groups and consultation that we have had on the ELD, groups like the CBI have been members of that and so have the Environment Agency. I really do not know why they have made that claim.

Q268 David Lepper: They made it particularly with reference to concerns about the permit defences. They put to us that it would have been helpful to have the view of the Agency in work on that in particular.

Mr Morley: I am pretty sure that the Agency has been involved in the discussions on the permit defences.

Mrs Ellis: I can comment in relation to waste permits. Certainly, my team has been working very closely with Environment Agency colleagues and I know has been doing very close work with them on the implications of using a permit defence, so, yes, I am surprised as well.

Q269 Mr Vara: Minister, the figures for 2004 would suggest that over 1,100 houses were built in flood risk areas against Agency advice. Estimates also suggest that the Agency consulted on less than 60% of applications at risk of flooding. Do you feel that the Agency has sufficient clout with central government, both with ODPM and Defra?

Mr Morley: I think there is a case for strengthening the role of the Agency in the planning process. That is why, as part of the current consultations on the revision of PPS25 within that consultation, there is a proposal that the Agency be a statutory consultee in relation to major developments. Also, there should be a considerable stepping up of its powers if it feels that there have been planning decisions taken without any regard to its advice; it can ask for a call-in of the application, which I think is very welcome. I have the figures here about the improvements there have been in the decline in the number of applications that have gone against Agency advice. The latest figures I have for 2004–05 are that 92% of known decisions made by local planning authorities were in line with Agency advice. That is an improvement from 83% in 2001–02. We are seeing some improvements in that. In fact, the applications that were permitted by local planners against Environment Agency objections have dropped from 17% in 2001–02 to 8% in 2004–05. I do not doubt that the measures being proposed within PPS25 will improve the situation further.

Q270 Mr Vara: Minister, would you not accept that the figures can be a bit deceptive because one application for 2,000 homes is one application compared to 1,000 applications for individual homes, and so we need to look at the individual application itself rather than the number of applications?

Mr Morley: Yes, I do accept that. Again, on applications, if you just take those very big developments, the numbers approved against the EA advice have dropped from 17% in 2001–02 to 12% in 2004–05. I also understand that the Agency

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has won a landmark judicial review against a planning authority. I think that will have significant implications.

Q271 Mr Vara: You mention the consultation process. When do you think the Agency will have increased powers?

Miss Nason: The consultation should finish some time around March. The intention is to introduce the new arrangement from the autumn.

Q272 Mr Vara: Is it going to be the case that they will be given stronger powers? You mention a consultation stage.

Mr Morley: It is a consultation but I think the case is very strong. I would not say that the people I talk to in any way form a balanced or scientific sample but, in terms of the proposals from the wide range of stakeholders I have spoken to, this seems to be widely welcomed.

Q273 Mr Vara: Would you be prepared to say that with regard to the Government's Sustainable Communities Plan for 2003, which proposes that there will be 120,000 homes planned for the Thames Estuary floodplain, we may not see those homes if the Agency advises against?

Mr Morley: We will have to see what the Agency says about it. You have to understand that PPS25 is not a blanket ban on any development in any floodplain. What it quite rightly states is that planning authorities should take into account the potential for increased flood risk in terms of the application. That means that the application could be turned down if it is regarded as just too much of a risk, but it could also mean that the developers, as part of the planning permission, as a condition, would have to contribute to defences, enhanced defences, even strengthening of defences for downstream communities that may be affected by upstream development. It very much depends on the circumstances. While it is true that the Thames Gateway area is in a floodplain, so is London for that matter. The standard of flood defence for most of Thames Gateway is to a 1:1000 level. That is a pretty high standard of defence.

Q274 Mr Vara: Climate change is bringing changes—

Mr Morley: Not to 1:1000 or we will all be in dead trouble because that is higher than in central London, Chairman.

Q275 Mr Vara: Minister, you would appreciate, would you not, that there is not room for 120,000 more homes in central London to be built?

Mr Morley: Absolutely, unless you build them very high. Yes, that is right.

Q276 Mr Vara: The comparison is somewhat nebulous, if you will forgive me for saying so. If the Environment Agency advises against housing in Thames Gateway, would that be taken into account?

I note the caveats about developers putting in other reinforcements and so on. If the advice is against, would the Government take note of it?

Mr Morley: We will certainly take note of it. It would be irresponsible not to take note of it, but we are talking hypothetically about what the nature of the objection could be and what steps could be taken to address that. I repeat that you can potentially have development, depending on the assessment that you make, depending on the standard of flood defence, and on whether or not you would require the developer to make a suitable contribution if that was needed.

Q277 David Taylor: Almost at the start of your evidence, Minister, in answer to the Chairman who asked about the nature of contacts on a day-to-day basis with the Environment Agency, you said that you frequently ask them, for instance, to review functions and budgets. I think I recall what you said accurately. Is it not in the nature of organisations that functions will always be released reluctantly to other bodies and budgets will always be consumed comprehensively? You seem to be quite happy about the Environment Agency being the largest organisation of its kind, if I heard you correctly—a sort of Red Army or the Indian Railways of government agencies?

Mr Morley: Not as big as that, Chairman.

Q278 David Taylor: That is in terms of being enormously large. You are happy about that and you do not think it has become a sort of dyspraxic leviathan not knowing quite which way it is headed at any one time?

Mr Morley: I am confident that is not the case. I repeat the point that you should never think that anything should ever be set in stone, that you should always evaluate the performance, the outputs, the efficiency of any organisation, whatever it is, and that includes government functions as well. I think the Agency has a good record. For example, in relation to its own budget, the Agency has been very effective in terms of finding efficiency savings. This might be a matter to put the Agency itself.

Q279 Chairman: We will do that.

Mr Morley: I am sure you will. Compared to many other organisations, I think that it has a pretty good record on this.

Q280 David Taylor: I worked in the public sector a long time. Efficiency savings are regularly cited by top managers in organisations when all they have done is to delete from the establishment posts which have never been filled and called them efficiency savings. I am not saying that is quite how it worked with the Environment Agency. Could you cite a couple of key examples of really hard-headed decisions which have led to significant efficiency savings?

Mr Morley: I really think, in all fairness, that is a matter to put to the Agency because, as an independent body, how they manage their budgets,

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where they find those savings and how they apply them are quite properly matters for them and their board.

Q281 David Taylor: They get their budgets from Government.

Mr Morley: That is true, and from some charges.

Q282 David Taylor: Yes, of course. The Environment Agency spends about £3 million a day of our money in the present financial year, of which about £2 million a day comes from government grants-in-aid and so on, and the remaining £1 million a day comes from charges and things of that kind. Do you believe that this is the best form of finance that a large Agency of this kind can depend on and utilise?

Mr Morley: I think there has to be a combination of grant-in-aid and revenue that it raises in charges for the work that it does. As I said earlier, Chairman, I think the charges should be no more than are necessary to carry out their functions. Conversely, I also think that it is important to check that grant-in-aid provided by the public purse is not being used as some kind of subsidy for industrial functions when those should be quite properly making a contribution. To be clearer in terms of efficiency, may I say that we do have a joint efficiency programme between the EA and Defra in terms of looking at their budget. The Environment Agency itself is benchmarked in relation to its efficiency targets. It has an efficiency target of over 2.5% year-on-year, incidentally. If my memory is right, they have managed to achieve that target. Again, that is a question that you can put yourselves. At the moment, the Environment Agency is the second largest financial contributor to Defra's efficiency portfolio and is forecasting to deliver at least £106 million over the SR04 period.

Q283 David Taylor: It sounds like a phrase written by an accountant in some ivory tower. I spent years doing that, so I am not very impressed by it.

Mr Morley: It is entirely up to you to talk to the Agency about that. We would expect a body like the Environment Agency, amongst all our agencies, of which we have quite a large number in the Defra family, to scrutinise their budget effectively to make sure that they are applying their funds as efficiently as they can.

Q284 David Taylor: How much freedom of movement does the Agency have in terms of the grant-in-aid which is transferred to them? Is it in tightly controlled pools of expenditure? The RSPB in particular said that there should be less ring-fencing of finances which would allow the Agency greater flexibility. I am going to ask you a question in a moment about oil storage regulations but that one will do for the moment.

Mr Morley: It is true that some of the Agency's funds are ring-fenced. That is done because they are carrying out functions for a specific purpose and they are funded for the specific purpose which they are carrying out. Not all their funds are ring-fenced

in this way. The Agency does have some flexibility in relation to its budgets. For example, it can determine its own priorities and it can move funding around within its own finances. It is a combination of both.

Q285 David Taylor: You described, right at the very start, one of the important responsibilities of the Environment Agency as pollution control. There is a number of basic regulatory regimes that are associated with that, such as the oil storage regulations. I do not want to go into too much detail. How important are those to the delivery of government objectives? Why is it that the Agency has just £80,000 annually and nationally, as I understand it, for this regime? That can only cover a public information campaign, which means that many sites for the oil towns are hardly ever seen by the Agency from one year's end to another, perhaps even one decade's end to another.

Mr Morley: You need to take a risk-based assessment on a range of regulatory functions and oil storage is one of those. These, of course, are matters which can be reviewed. I know that a number of parliamentary colleagues have raised issues about oil storage regulations, some of the functions of which, if my memory serves me right, are for local authorities and not just for the Agency.

Q286 David Taylor: How tolerantly do you treat a response by the Environment Agency in relation to a criticism that you may enter against their reforms that their finances are too tight to be able to deliver properly? When the Committee went to see the Environment Agency before Christmas—and I was not part of that group—I hear that one comment made was that there is tight resourcing and a lack of adequate financing in some areas.³ Are you sympathetic to that type of attitude?

Mr Morley: I think it is fair to say, Chairman, as you will know from your own experience, that there is not a government body, department or agency that would not like a bit more money in relation to how it functions, and that includes myself, Chairman. The Agency's budget has increased substantially in some areas, like flood and coastal defence, and in that area by 40% in real terms since 2002 alone. In relation to its functions, I come back to the point that the Agency does have flexibility in determining where it wants to put resources in relation to its functions and priorities and where it thinks that the money needs to go. On the wider picture of its overall budgets, its responsibilities and its functions, we are about to embark on the CSR07 major spending review, and of course we would expect the Agency to bring to us their business plans and proposals for that budget round in relation to their functions. That would be considered in the normal way.

Q287 David Taylor: You are reasonably content, as one of the responsible ministers, that the £1,000 million that is allocated to the Environment Agency

³ The Committee visited the Environment Agency on 8 December 2005.

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through grant-in-aid and other forms of finance is effectively used in the great majority of cases to deliver the Government's agenda?

Mr Morley: In terms of how the Agency applies its budget, I do think it applies it effectively, yes.

Q288 David Taylor: Has it been looked at by any of the audit bodies in recent times?

Mr Morley: It does go through an audit process and through the National Audit Office process. Of course, I have regular meetings with the Agency. I go through that and approve its corporate plan, and I also attend its board meetings and talk to the board as well, but not all board meetings.

Q289 Chairman: Who actually determines the basis of the cost recovery model that the Agency must follow in recouping its charges for those areas where it makes a charge?

Mr Morley: The Agency does a lot of the development work on that itself because the Agency is best placed in relation to its staffing times, staffing requirements and resource requirements, but they do consult with our own department. There is also Treasury guidance in relation to cost recovery, which they would be obliged to follow, like all agencies and all departments. Sue Ellis has a lot of involvement in relation to this on the waste side.

Mrs Ellis: The Environment Agency does have a charges group which includes people from the Department with an interest in specific areas. For example, one of my members of staff attends that group to look at waste charges specifically across the piece.

Q290 Chairman: The reason I ask the question is that there is a sort of tension between those in the commercial world, who may feel that they are being charged too much, and the requirement at the Agency to recover costs. I suppose there are issues of transparency as to exactly what costs they are recovering and whether those are fair charges. Unlike a commercial transaction, there is not anybody else you can go to for the functions which the Agency performs. In the model, who ensures that their charging regime is fair?

Mr Morley: They do have to produce a regulatory impact assessment, particularly when introducing new directives, and the charging is addressed in the RIA. Within that, of course is how the charges have been calculated. Those have to be approved by the Department, of course. I often talk to various stakeholders who tell me that they think that some of the charges are a bit on the steep side. It is quite right and proper that they are challenged and that the Agency justifies how it has come to its conclusion.

Q291 Chairman: Nobody disagrees with the fact that there should be a proper cost recovery, but because, from what we can see, there is a lack of transparency, you have a monopoly provider of permits and of the services that are charged for, but you have no idea how the price is set.

Mr Morley: It is set on in the Treasury guideline. The Treasury guideline is that the costs, in terms of the permits or the functions, are no more than the costs to the Agency in terms of carrying out its duties. The Agency will include how it has calculated those costs within the RIA.

Q292 David Taylor: Is that on a marginal cost recovery basis or an average cost recovery basis?

Mr Morley: I would not have thought it would be marginal cost recovery. Incidentally, the Environment Agency has its own Charges Review Group which looks at these issues. It would be on the minimum cost which allows them to carry out their functions. I would hazard a guess that in some functions there may well be a marginal cost basis, but you would probably average that out.

Q293 David Taylor: Would you write to us separately on that, please?

Mr Morley: Yes, certainly.

Q294 Mr Rogerson: Just rounding of the discussion on charging policy, do you think that a disproportionate amount of funding that the Agency gets comes from the charging as opposed to grant-in-aid?

Mr Morley: No, I do not think there is anything disproportionate about it. The largest amount comes from grant-in-aid but I do firmly believe in the polluter pays principle. I do think that when you are carrying out regulatory functions, particularly in order to ensure that there is no pollution and that there is proper management, then of course the Agency needs to carry out those functions properly. It is worth saying, Chairman, that in relation to the way the charges are applied, that encourages good practice; we should not forget that function of it, too. I would not say the charges are disproportionate.

Q295 Mr Rogerson: You have just stated your belief that the polluter pays principle is the best way to go. In the way that the charging structure works in terms of permits, is it not fair to say that in some cases those who are abiding by the rules are paying for the cost of enforcement?

Mr Morley: There is a risk of that and that is why I am a very strong supporter of risk-based approaches. The idea of risk-based approaches is that you can evaluate in relation to a number of criteria—their record and membership of professional bodies—various organisations that the Agency deals with in relation to those companies that have good performance so that you can take some of the burdens off the good performing companies and thereby direct more resources to ensure that there is enforcement of the poor performing companies. I very much support that approach.

Q296 Mr Rogerson: Do you think there could be a mechanism of a fining system so that those caught out could bear more of the cost than the permit side of this?

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Mr Morley: I think there is an issue in relation to environmental fines. They have increased in recent years. Sadly, I think there are still examples where, in my view, the fine does not reflect the severity of the offence. I still think there are some issues to look at there.

Q297 Lynne Jones: On that point, you may be interested to know that industry representatives said that they would agree with an increase in fines. There are many compliant industry users but there is concern that the cowboys are getting away with it and then the compliant industries are having to bear the costs.

Mr Morley: Absolutely and I think that is a very good point. Those companies that break regulations are doing so often to give them a competitive advantage by cutting corners and costs in terms of competing with decent companies that are applying the proper health and safety and environmental standards. I think it is quite right and proper that we should have levels of fines which reflect that but also reflect that some of the illegal activities are potentially very profitable. I think the fines should also reflect that in terms of deterring the activity.

Q298 Lynne Jones: Is the Government going to do anything about that?

Mr Morley: We have been talking about a review in terms of a wider concept of environmental justice and thinking about whether there is a case for special training for magistrates, dedicated courts, different forms of fines, remediation penalties, for example. We are thinking about whether there is scope for that.

Q299 Mrs Moon: I want to take that further, if I may, Minister, by looking at the sources of income in the 2005–06 budget. There is nowhere there that you can demonstrate the income that has come from your policing role and from fines on those illegal operators unless it is under “other income”. Would it not be appropriate also to be able to demonstrate the sort of success, if you like, of you following the polluter pays principle and demonstrate that those who are polluting and breaking regulations are being forced to contribute to this system? It is not clear and it does give those who abide by regulations a negative message that the good are not rewarded.

Mr Morley: I think there is a case for this both in terms of some of the money going back in relation to enforcing perhaps to the sector it came from but also the concept in some cases where you may get environmental damage that is not deliberate but due to poor management. Instead of having a fine, they would actually have to contribute to the clean-up or remediation. These are wider concepts. In terms of how fines are applied, currently the bulk of them go to the Treasury and into the Consolidated Fund. The Treasury will argue that the fine income which goes into that fund does go back in relation to aspects of how the money is recycled back to the Agency through grant-in-aid, for example. That would be their argument because they would prefer to have that flexibility within the Consolidated Fund

rather than ring-fence fines. There is an argument for this. You may have noticed that we have introduced this within the Clean Neighbourhoods and Environment Bill where local authorities are now allowed to keep some of the fines that they generate through environmental crimes to use for enforcement. We are not against the concept, but there are two sides to that argument.

Q300 Lynne Jones: We touched earlier on flood risk management. Some of the people who have provided evidence have referred to our ageing flood and coastal defences and the risks posed by climate change, which will make matters even worse. I understand the OST’s Foresight Report makes reference to the point that spending on flood defences will have to increase. The ABI is saying that there needs to be at least an extra £30 million a year on top of the savings. I understand that the Environment Agency is committed to saving £15 million a year, which is then supposed to be recycled. Do you accept that there is an increase in the backlog in the maintenance of our flood defences and risks for the future? Is the Government going to be making available sufficient funds to deal with these problems, over and above what the Agency can save themselves?

Mr Morley: I sat on the Foresight Programme myself. It was originally chaired by Professor King, the Government Chief Scientist. Now I have taken over the programme. We have an annual assessment of where we are in relation to the effects of climate change and flood defence. We are taking that into account in relation to our planning and forward programmes. We have substantially increased the flood defence budget. It is currently round about £570 million. As I mentioned, that is a 40% real terms increase since 2002. We do have to take into account the findings of bodies like the Foresight Programme which is a 50-year programme and so it is quite long term, and that is important. We do need to look at what investments we need to make in relation to flood and coastal defence. That includes maintenance. I am not sure there is a huge backlog of maintenance. As the budget has increased, there has also been a high level target set for such things as surveys of flood defence assets to look at their condition. The Agency is working through those high level targets. We also have to take into account capacity as well. The spend has increased so much that we have sucked in more engineers and more contractor companies. I think that we can manage the capacity but we do have to have a planned expansion in relation to what we are doing. We are spending very large sums of money at the moment in this area.

Q301 Lynne Jones: You have not answered my question about whether you will be spending enough. Whilst we all know that there have been new defences provided, the issue I really want to ask you about concerns the existing defences. You do not accept that there is an increase in the backlog there?

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Mr Morley: I am not sure.

Miss Nason: Certainly I would say that we have recently given increased flexibility to EA to look at its total flood defence grant-in-aid spend and what it should spend that money on so it can best reduce flood risk. It will look at the relationship between its spend on the maintenance of assets with its spend on new defences or on flood warnings, *et cetera*, and will best spend its money in terms of what it can deliver in terms of reduced flood risk. That is an important increased flexibility we have just given them. They will certainly be addressing that. In terms of maintenance of assets, they do have to differentiate between the assets and concentrate on the ones protecting the most assets at risk. For example, they might wish to put more money into improving the assets in urban areas perhaps where there are large assets at risk, and they can work with farming communities to have different approaches perhaps to managing flood risk in agricultural areas. That is the kind of policy they are busy working on at the moment.

Q302 Lynne Jones: We saw some evidence of that in Essex.⁴

Mr Morley: That is right. Essex is a case in point where the case for maintaining some of the flood embankments is, in some cases, very weak. There may be alternative ways of addressing that. There is a consultation going on at the moment.

Q303 Lynne Jones: So far, the Environment Agency has not provided you with evidence that, in terms of those assets which do need to be maintained, the situation is getting worse rather than being held or getting better?

Miss Nason: No, I do not think I have seen that evidence. We have certainly set asset condition targets within the corporate plan. My impression has been that those targets are being met. The corporate plan of course does reflect, and I am sure the Agency will explain this to you in more detail, the fact that there is a long way to go to get the assets in the condition in which they would like them to be. There will be a programme over the next few years to achieve that. That is a fair point. As I say, we are tasking them with the increased flexibility to look at what will best deliver reduced risk for communities between their capital and their maintenance programmes. I suspect it is moving money around in terms of maintenance that is required as much as more money.

Q304 Lynne Jones: So things are getting better where they need to?

Mr Morley: As a direct answer to your question, in terms of the increased spend, and of course we are seeing more defences and more maintenance, it is inevitable that there will have to be more spend. As apart of the spending review which we are just about to embark on, we will have to make our case to the Treasury in consultation with the Environment Agency about what is the appropriate level of spend.

We will also have to justify that in relation to a cost-benefit analysis and we have very good data on that. We will make our bid as part of the spending review.

Q305 Chairman: Can I probe a little bit about exactly where the repository of knowledge and advice lies on flood risk? Would you say that the Environment Agency is, if you like, the centre of best practice and knowledge? In other words, it is the place to go if you want really top quality advice on flooding policy?

Mr Morley: They do provide top quality advice and they have top quality engineers. It is not the only source of information. We have our own engineers in Defra. There are independent consulting companies where you can receive independent advice. There is a number of sources of advice from very good flood and coastal defence engineers.

Q306 Chairman: In terms of strands of policy and thinking, are there lots of bits of what I call creative tension in the world of flood defences? I was intrigued in your own Department's evidence—and it was about the nearest thing we got to the veil of all is sweetness and light being lifted—in paragraph 36 where you said: “It is therefore inevitable that there are sometimes differences between the EA's advice and Government's eventual policy decision.”⁵ That was a very Delphically written little sentence there. Then you went on teasingly and said: “For example, although ODPM has long had a close and constructive working relationship with the EA on developing policy on flood risk planning, the EA has at times challenged some aspects of government policy for creating sustainable communities, and on development and flood risk.” That sounds to me like one of those wallpaper jobs that is trying to cover over a lot of cracks, differences of opinion about these matters. The Thames Gateway is a classic. Seemingly, we are about to embark upon building houses in a floodplain. You, Minister, earlier on gave us some indication that the risks were perhaps lower than had been billed. Then we have the ODPM that wants to have these houses. We have the Environment Agency that says, “Hey, what are you doing? There are lots of risks”. We have you standing somewhere in between. I get the impression there are too many players trying to determine the risks for flood policy. Who holds the ring? Who is Mr or Mrs Flood in the Government?

Mr Morley: You do get differences of opinion in relation to some of the planning issues and some of the strategic planning issues. The Agency has every right to make its view on it. ODPM of course sometimes disagrees with their analysis, and they have every right to do that. In those circumstances, we have to have a careful analysis of what the level of risk is and what the concerns of the Environment Agency are. I come back to the point that we do have to take that into account and take decisions on this. Some of those decisions may involve some amendments in relation to the plans to take into account the concerns of the Environment Agency.

⁴ The Committee visited Abbots Hall Farm, Essex, 30 November 2005.

⁵ Ev 114

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Mrs Moon: Can I just ask who bears the risk in terms of the person who buys the house? Ultimately, whoever has come up with the final yea or nay, and we assume since the house is built it is a yea, it can go ahead, who should carry that responsibility should that decision be wrong?

Q307 Chairman: For example, in this homeowner's pack, do they need a little message from you saying, "Mr Morley says this house is okay to buy from a floodplain point of view"? Is that what we should be having?

Mr Morley: It is a very interesting concept, Chairman.

Q308 Mrs Moon: Where do the insurers come in?

Mr Morley: The homeowner's pack could be a very useful vehicle for alerting people as to whether or not—

Q309 Chairman: They might have to block up the holes with the floodwater coming in.

Mr Morley: You may have to take into account that the property is in a flood risk area and then you may want to ask what is in place to reduce that risk and whether there is an onus on the buyer in relation to the fact you may have to take some risks or measures in terms of flood mitigation. I think that is quite right and proper. These are issues which are matters for planning because it is the planners who take this into account in relation to the actual permission that they give. They need to weigh up the evidence, including the contribution that the Environment Agency gives.

Q310 Mrs Moon: So it is going to be the local authority?

Mr Morley: It is a very difficult one. I suspect that there is some get-out clause for local authorities and their planning authorities. Really, for new planning it is the planning authority that ought to take into account flood risk.

Q311 Lynne Jones: They are being heavily leaned on by Government to produce x numbers of new homes.

Mr Morley: There are many local authorities who are very keen to produce x numbers of new homes for all sorts of reasons I think we would all support. Sometimes planning authorities get frustrated by the fact that the Environment Agency, quite properly, is giving them advice either that they should not build in certain areas or they may have to take what they regard as very expensive measures to mitigate the risk, but that is a function of the Environment Agency.

Q312 Mr Vara: Moving on but staying on the subject of relationships, Minister. In evidence to the previous Committee, Baroness Young, the Chief Executive of the Environment Agency, said that the relationship between the Agency and Natural England was "very rich". She went on to say that it was important to highlight the boundaries and that they should be established, "written down very

carefully otherwise we could tread on each other's corns".⁶ The last time that we had a statutory revision of the relationship the Agency has with other bodies was in 2002. When, and how, will there be revisions concerning the Agency's relationships with outside bodies, particularly bearing in mind the establishment of Natural England?

Mr Morley: As I mentioned earlier on, I think there is a good relationship between the Environment Agency and the newly appointed Chair of Natural England. I know that the Chairs of all the agencies have been meeting regularly and co-operating regularly. One of the very good examples of partnership I mentioned is between Natural England and the Environment Agency in relation to on-farm management of diffuse pollution, for example. I very much welcome that. The MoUs are designed to establish those boundaries. I think that approach is the right one to take when you are talking about reviews because you can have a kind of statutory boundary, theoretically you can do that, but things change all the time. If you have very restrictive statutory boundaries then you might find very soon they become outdated and very restrictive within the way that the bodies work. I would prefer to see the bodies work in a more fluid way where they establish between themselves where their own boundaries of responsibilities should be, where there are overlaps, and there are bound to be some overlaps, and in some cases some partnership working.

Q313 Mr Vara: Minister, that is fine but there comes a point when you need to establish issues of responsibility. When things get difficult the buck starts getting passed. To go back to the earlier subject, you talked about local authorities, developers and poor old householders. It is all very well everyone having a nice fluid relationship but if you have got Joe Public with a £100,000 mortgage and water three feet deep on his ground floor, then he wants to know where he stands and everybody is passing the buck. Likewise, Natural England is a large organisation, it requires to have some boundaries set, and if you are saying matters remain fluid you are either contradicting the chief executive, who wants clearly defined boundaries—You nodded then, are you disagreeing with the chief executive?

Mr Morley: Not at all.

Q314 Mr Vara: In that case, if the chief executive says there need to be clearly defined boundaries, the answer that we really would appreciate is when. I appreciate the argument of fluidity and discretion, which is fine, but for the sake of certainty, and we are talking of major issues and passing the buck, the buck has to stop somewhere under certain circumstances.

Mr Morley: Of course it does. There is no question of passing the buck. I make it very clear when I use the expression fluidity that what I mean is from time

⁶ Environment, Food and Rural Affairs Committee, Fifth Report of Session 2004–05, HC 408-II, *The Government's Rural Strategy and the draft Natural Environment and Rural Communities Bill*, Q 37

25 January 2006 Mr Elliot Morley MP, Miss Sarah Nason and Mrs Sue Ellis

to time the boundaries will change, but that is not contradictory in terms of establishing clearly defined boundaries of responsibilities. There is no contradiction there in relation to what the chief executive has said and what I am saying. All I am saying to you is I would not wish to have a system that was so cumbersome and so restrictive that it would make it very difficult for different agencies to co-operate and work in an integrated way. Water is a classic example where you do need an integrated approach that takes into account such things as agri-environment policies, agricultural regulation like nitrate sensitive zones, our biodiversity policies, our SSSI policies and our flood risk policies. You can see right away there are a number of discrete areas of responsibility and it is clear which agency has them but they are going to overlap. What you need to do is develop an overall strategy where you can have this holistic approach. Catchment planning is one way of doing that and the Agency has been developing that very well. In terms of flood defence, it is clear that the Agency has responsibility and we have actually strengthened that, again in response to recommendations from this Committee in earlier reports where the Committee said it was important that there was one body so you did not have any instance of buck passing. There was a situation in

flood defence where you had a split between coastal authorities, the Environment Agency, internal drainage boards, and in some cases there were issues of drains as well, and there needed to be a much more co-ordinated approach and we have given the Agency that approach. The drains are still the responsibility of highways or sewage companies but, nevertheless, there is a need for being clearer in some cases about where the areas of responsibility lie. We have tried to address that as well as not being too restrictive in other areas like catchments with the catchment plannings but you do need a holistic approach.

Q315 Chairman: Minister and colleagues, thank you very much indeed for coming and, as always, giving very helpful and useful information to the Committee. We shall reflect carefully upon what you have said. I had perhaps wished that you might have lifted the odd veil a littler higher on some of these mouth-watering comments in your evidence but we will weigh those observations carefully when we come to produce our final report. Thank you very much.

Mr Morley: Always a pleasure to come before the Committee. This is my first appearance in 2006.

Chairman: May there be many more; I am sure there will be.

Supplementary memorandum submitted by Department for Environment, Food and Rural Affairs

Letter to the Chairman of the Committee from the Minister for Climate Change and Environment, Department for Environment, Food and Rural Affairs, 5 March 2006

THE ENVIRONMENT AGENCY'S COST RECOVERY THROUGH CHARGES

During the oral evidence session in relation to the Environment, Food and Rural Affairs Committee's inquiry into the Environment Agency on 25 January, I agreed to write and confirm how the Environment Agency calculates its costs, whether on an average or marginal basis.

The Environment Agency recovers its costs on an average cost recovery basis. This approach is consistent with the Treasury's Fees and Charges guidance, which states that "charges are usually based on the average unit cost of the item or service".

To calculate its charges, the Agency will assess the standard unit time, while ensuring quick and efficient delivery, for each type of permitting and compliance activity and the grades of staff involved. The standard unit will then be multiplied by the hourly rate for regulatory staff, while taking into account other direct costs such as national insurance and pension contributions, supervision, training, travel, equipment and materials. A similar process is used to calculate the costs of the associated process management and regulatory policy resource input. An apportionment is then made on an appropriate basis to absorb the attributable costs of corporate policy and communications, support services and facilities. The Environment Agency's accounts are audited by the National Audit Office on an annual basis.

Whilst the costs related to each charging regime are calculated on an average basis, in schemes where the Environment Protection Operator and Pollution Risk Appraisal (EP OPRA) is in place the proportion of these costs recovered from individual chargepayers will vary according to risk. Having calculated the cost in an area where EP OPRA does apply, the cost charge to the operator will be recalculated based on the operator's score. This provides an incentive for sites to manage their risks effectively; it also gives a more

accurate reflection of the Agency costs (higher risk sites usually have a higher cost of regulation). This process is being rolled out across the majority of Agency charging schemes.

Elliot Morley MP

Minister for Climate Change and Environment
Department for Environment, Food and Rural Affairs

March 2006

Memorandum submitted by Environment Agency

SUMMARY

- Our aim is to look after the environment and make it a better place for people and wildlife, for present and future generations.
- We are a modern regulator and our risk-based approach has delivered real environmental improvements to air, land and water.
- We want to provide a good, consistent service and give value for money. By targeting our limited resources and streamlining our activities we have become more effective at protecting the environment and have made savings.
- We work to build good relationships with our customers, the public and a wide range of other stakeholders. We look forward to a constructive working relationship with Natural England.
- We know we have more to do. Climate change and flood risk are just two of the challenges ahead. We advise government, the public and stakeholders on ways to better manage natural resources and reduce and adapt to environmental risks.
- Our new Corporate Strategy will take us forward to 2011. We have reviewed our priorities and look forward to the Committee's views on our future direction.

1. INTRODUCTION

The Environment Agency welcomes this inquiry which takes place as we approach our 10th anniversary.

We are an executive non-departmental public body, sponsored by Defra and the Welsh Assembly Government. We play a central role in protecting and enhancing the environment. Our work is primarily aimed at reducing pollution and waste, managing water and rivers, protecting wildlife species and their habitats and promoting the use of our rivers for recreation. Among our many responsibilities, we work to ensure that air and water are clean, we protect against flooding and pollution, we promote wiser use of resources and we work to combat environmental crime.

Working with the Government's strategy for sustainable development, we have set out our clear, long-term objectives for the environment in a long-term Vision for the Environment. This vision was published in 2001 and is being implemented through successive five-year strategies. We consulted widely on both our Vision and our five-year strategies.

Our Vision for the Environment and the strategies to implement it focus on nine environmental themes.

We want two things:

- a better quality of life, and
- an enhanced environment for wildlife.

This means that we need to protect and improve the basic elements of the environment, to provide:

- cleaner air for everyone,
- improved and protected inland and coastal waters, and
- restored, protected land with healthy soils.

To do this we need to make some fundamental changes and help achieve:

- a greener business world, and
- wiser, sustainable use of natural resources.

And we will need to manage two major and very real risks by:

- limiting and adapting to climate change, and
- reducing flood risk.

The Strategy also outlines the Environment Agency's five strategic roles and how it will develop these in order to achieve its environmental outcomes.

They are:

- *Efficient Operator*—we take direct action locally to safeguard and improve the environment, for example by building flood defences to reduce the risk of flooding to vulnerable homes and businesses, managing navigation on our major rivers and looking after wildlife on sites we own. Our programme of efficiency savings means we get the most for the environment from our resources and are economic with charge-payers' money.
- *Modern Regulator*—we deliver for the environment by taking a risk-based, proportionate approach that drives improvements and rewards good performance, but takes tough action against those who fail to meet acceptable standards.
- *Influential advisor*—we advise government, in the EU, nationally, regionally and locally on the development and implementation of environmental policy and strategy, based on our scientific knowledge and our wide operational and regulatory expertise. We take an independent knowledge-based approach. We provide advice to all those partners and others who need to act if our environmental outcomes are to be achieved.
- *Active communicator*—we promote information about the environment in ways which highlight the need for change. We report on the state of the environment on a regular basis. We are active in public debate, persuading key stakeholders that environmental change is needed, for example through World Environment Day, the *Spotlight Report* on business environmental performance. We target our communications eg to people at risk of flooding. We actively engage with local communities and authorities, regional bodies, industry and other stakeholders.
- *Champion of the environment* (within the context of sustainable development)—our primary purpose is to promote the safeguarding and improvement of the environment, but we ensure that we understand the social and economic implications of our decisions and policies.

We are now consulting on our new strategy for 2006–11 called *Creating a better place*. This sets out how we will develop and continue to work towards our Vision. The document takes into account Defra's own five-year strategy and the Welsh Assembly Government's developing Environmental Strategy for Wales. We value the Committee's views in shaping our future direction.

Each year we publish our programme of work agreed with Government in our Corporate Plan and set out our progress in our annual report which is laid before Parliament.

In the 10 years we have been here, we have achieved real success for people and the environment across air, land and water. The recently published State of the Environment report shows what is going well in terms of environmental outcomes and where challenges remain. We do not underestimate the scale of the challenges that lie ahead and to succeed we will need to work ever more closely with government, industry and the public to create a better place for people and wildlife.

2. HOW SUCCESSFUL THE ENVIRONMENT AGENCY HAS BEEN IN ITS ROLE AS ENFORCER OF ENVIRONMENTAL REGULATION AND CONTROLS, AND HOW WELL IT MANAGES ITS WIDE RANGE OF ACTIVITIES

We are a modern regulator and our risk-based approach has delivered real environmental improvements to air, land and water. We take an integrated approach to river catchment management, enabling us to manage and advise on the interconnected needs of flood risk, water resources, conservation, fisheries, recreation and navigation.

2.1 *Modern regulation*

Our approach to regulation focuses on environmental outcomes. We use a risk-based approach to prevent or minimise environmental impacts on air, land and water by targeting our effort where it is most needed. We look for the right balance between improving the environment, rewarding good performance, reducing administrative burdens and taking tough action on those who fail to meet acceptable standards or operate illegally. This approach complements the use of taxes, trading schemes, voluntary agreements, advice and information and environmental management systems in a modern approach to regulation which achieves effective environmental outcomes.

This approach, working in partnership with others, has produced a track-record of continuous environmental improvements:

- *Water quality*—Bathing water quality and the biological quality of rivers is the best ever. In 2005, 99% of bathing water passed the EU's mandatory standards, compared to 95% in 2000. Over 71% of rivers were of good quality in 2004, up from under 69% in 2000.
- *Wildlife*—With our partners we have made significant progress in improving wildlife habitats and in achieving the outcomes of our Species Action Plans. For example, otters have spread to 36% of rivers in England and 71% in Wales.
- *Land*—In the first six months of 2004–05, we enabled the clean up more than 1,300 ha of contaminated land, against a target of 677 ha.

- *Greener business*—44% of the sites we assessed in 2004 had the highest standards of environmental management. Pollution incidents caused by businesses are the lowest on record. Between 2000 and 2004, serious incidents declined by more than a quarter.
- *Natural resources*—Hazardous waste production at the sites we regulate is at its lowest on record, declining by almost a fifth between 2000 and 2004. At the same time, the recovery of all wastes produced at those sites is at its highest ever. In 2004, more than half the waste produced was recovered for further use, compared to about a third in 2000. We have also worked with companies we do not directly regulate in order to improve their environmental performance.
- *Air quality*—The industry we regulate has reduced its releases of pollutants to air. Between 2000 and 2004, the release of dust (PM₁₀) and 1,3-butadiene has more than halved, volatile organic compounds have been reduced by 40%, and sulphur dioxide has decreased by a third.
- *Flooding*—Five million people in England and Wales are at risk of flooding. Climate change could see the number of people at “high” risk rising from 1.5 million to 3.5 million by 2080. Since 2002 we have provided improved flood protection to over 72,000 homes by building new defences and improving existing ones. We reduce average annual flood damage by about £2 billion per year.
- *Climate change*—We take account of climate change in everything we do and are planning for the impacts across all our areas of responsibility. We are also the competent authority for the EU Emissions Trading Scheme. We are recording more greenhouse gas releases from the industry we regulate because more sites (such as waste sites) are now reporting their emissions to us. However, between 2003 and 2004 there was a decrease of 0.5%, and we are now in a position to more accurately assess the impact of the industry we regulate and better advise on both reducing the causes and limiting the impact of climate change.

Many of our modernisation initiatives were recognised as models of best practice in the Hampton Review on regulatory inspections and enforcement, published in March 2005.

Our risk based approach set out in our publication *Delivering for the environment: A 21st Century approach to regulation* and our web guidance tool “NetRegs” for small and medium-sized enterprises were specifically endorsed in the Review.

However, we do not have control over the whole process of regulation. We are heavily reliant on Europe and our sponsor departments to provide legislation that is straightforward for business to understand and for us to implement. We are working with Government and other stakeholders to overcome some significant barriers that remain. For example we would like to see:

- A simpler regulatory framework (including statutory guidance) at EU and domestic level that enables more proportionate risk-based approaches. A simplified, consolidated and more consistent framework will deliver greater transparency and predictability and reduce burdens for business. For example we are working jointly with Defra on the Environmental Permitting Programme to consolidate and simplify existing Waste Management Licensing and Pollution Prevention and Control permitting regimes.
- Clarification of the policy/delivery interface. Greater delegation to the Environment Agency, for example of waste exemption-making powers, would allow us (in consultation with business) to iron out inconsistencies across different regimes and increase the effectiveness and responsiveness of the regulatory system, while reducing complexity for business.
- Developing advisory services. We recognise the vital role of advice in assisting businesses to achieve compliance. However the funding of such advisory services is challenging. Without a grant from the Treasury Capital Modernisation Fund, NetRegs would have taken 25 years to reach its current status. We are working on future funding mechanisms to further develop NetRegs and for other advisory services.
- A single designated Government Department policy lead on Producer Responsibility regulations. These ensure those who produce goods take responsibility for their disposal. A single lead would ensure clear accountability and consistent regulatory approaches. Currently the lead is divided between DTI and Defra.
- A project-managed approach by government working with the Environment Agency to the implementation of EU and national legislation, allocating clear responsibilities and timescales to ensure legislation is implemented in a timely way and gives business and the regulator adequate time and clarity to make preparations.

2.2 Enforcement and prosecution

Enforcement and prosecution are important tools underpinning our work as a modern regulator. We use a range of measures, from warnings and cautions to prosecutions, to protect the environment and improve people’s quality of life. We have been continuing to direct our efforts where they are most needed, towards poor performers and illegal operators.

In 2004 we successfully prosecuted 233 limited and public limited companies, 18 more than in 2003, resulting in fines totalling £2.3 million. However, we are always working to improve our performance by addressing key barriers such as:

- *Low fines.* Whilst we have had some substantial fines for major cases (for example £240,000 for Sevalco, £150,000 for Thames Water and £75,000 for Pizza Express) the average fine for business in 2004 was £8,500. This is £550 less than in 2003.
- *Inconsistency in sentencing.* This is considerable, and is due in part to the lack of familiarity that courts have with environmental cases. We prosecute approximately 750 cases a year involving all types of offenders, corporate and individual. With approximately 38,000 magistrates across the country, the likelihood of them handling environmental casework on a regular basis is remote. We believe a number of magistrates should be trained and given greater experience by all environmental cases being grouped together and heard by them.
- *Lack of deterrence.* There are no recommended fine levels or entry points for the courts with the result that fines are often less than the profit gained. We need a general principle that no one should profit from environmental crime and powers for the criminal courts to order companies or individuals to clean up the pollution they have caused.
- *More flexible penalties.* For larger companies, we need the courts to be able to use penalties that will gain the attention of the boardroom, shareholders and customers. These could include higher fines coupled with new penalties such as adverse publicity orders, corporate probation or community benefit orders and remediation orders.
- *Regulator-applied penalty powers.* These would enable the regulator to propose the payment of a penalty by an offender as an alternative to court action. The offender would be free to accept or reject the proposed penalty. It would be important that penalties imposed by the courts were equivalent to or higher than the administrative penalties. This would provide a faster and more effective process for cases where there is no dispute about responsibility for environmental damage.

2.3 Recreation and navigation

Our work on recreation and navigation in inland and coastal areas provides opportunities for people to enjoy the environment and improve their health. We manage nearly 1,000km of Britain's rivers, and are the Harbour Authority for Rye and the Conservancy Authority for the Dee Estuary. More than a million people buy fishing licences from us each year and a further two million fish on an occasional basis.

Our integrated catchment management means we are ideally placed to integrate the positive benefits from recreation with the sometimes conflicting needs of flood risk management, water supply, biodiversity and fisheries protection. Recent improvements we have made include:

- opening up new stretches of river for canoeing and kayaking;
- creating new havens for wildlife on rivers, wetlands and waterways;
- making sure the places people fish rival the best in the world.

2.4 Marine

We have recently published our marine strategy and welcome the opportunity presented by the forthcoming Marine Bill. We want the Bill to introduce a system of marine spatial planning, better protection measures for marine biodiversity and fisheries and clear, allocated responsibilities for managing and regulating activities in the marine environment.

2.5 Water resources

We are responsible for managing water resources in England and Wales to balance the needs of people, businesses and the environment. Anyone who wants to take a significant volume of water from rivers, lakes or groundwater must apply to us for a licence. There are 23,000 licences controlling the abstraction of about 36 billion litres a day.

We take the lead with the water companies in planning future water resources. We have catchment abstraction management strategies setting out future policies for abstraction to ensure the environment is protected. Our *Restoring sustainable abstraction* programme is dealing with environmental problems caused by historic over-abstraction. We review and advise ministers on water companies' drought plans and long-term water resources plans to make sure that water resources are properly managed.

Our view is that the long-term sustainable management of water resources requires urgent effort and investment in demand management and water efficiency as well as development of new water resources, including reservoirs. This includes compulsory household metering in water-scarce parts of south-east England, along with stricter regulations governing the environmental performance of new developments and action to retrofit water efficiency measures to the existing housing stock.

3. WHETHER THE AGENCY OPERATES EFFICIENTLY AND PROVIDES GOOD VALUE FOR MONEY

Our operating budget in 2005–06 for protecting and improving the environment and flood risk management is £1 billion. This comes from income raised from charging schemes and Government grants and other income generated from our activities. Wherever possible we ensure that the polluter or beneficiary pays our costs.

We aim to provide good value for money by applying tight budgetary controls and all project expenditure must be justified on both environmental and economic grounds.

3.1 *Increasing efficiency*

Recent increases in efficiency have been our best ever, delivering £17 million of savings in 2002–03, £20 million in 2003–04 and £26 million in 2004–05. Our target for 2005–06 is £30 million and latest forecasts show we should achieve this figure. We believe that we are capable of exceeding the £25 million target for both 2006–07 and 2007–08.

These savings have been delivered through various projects at both national and local level and in the back office and at the frontline. These include the on-going development and implementation of a single Finance and Human Resources IT system, introducing an integrated flood risk management structure, developing a new Floodline warning system, improved procurement processes, restructuring Customer and Business Services and the creation of a new National Customer Contact Centre.

Activity-based costing is providing management information that will be used to identify and share good practice across areas and regions that will further improve our performance and efficiency. It is currently being implemented in four processes: water quality permitting, waste permitting, water resources permitting and water quality sampling across four areas.

These savings are required to meet inflation pressures and so pass onto our customers through lower charges or to reinvest into the business to meet new environmental and legislative workloads.

3.2 *Procurement*

We have recently completed our third external benchmark study comparing procurement operations against 120 public and private sector organisations. Results indicate that we perform high in the upper quartile in the delivery of strategic procurement. In addition, our sustainable procurement operations have been benchmarked against 12 international sustainable procurement leaders. We were placed first in the UK and second internationally. Any procurement contract in excess of £25,000 has to go through a sustainability risk assessment that examines the whole life costs. For example, in purchasing pumps for the Wheal Jane Minewater Treatment Plant, full-life costs were assessed for each alternative including maintenance and energy consumption, resulting in the lowest overall cost being secured.

3.3 *Performance management*

We measure our effectiveness through an integrated performance management system based on a “Corporate Scorecard”. This measures our strategic objectives through key performance measures to ensure that we continue to improve our performance and deliver greater savings. It ensures that there is a single framework of measurement by which Agency staff can judge their performance and the Board can monitor Agency performance and account to ministers and Parliament.

3.4 *Modernising regulation and efficiency*

Our Modernising Regulation Change Programme is increasing the efficiency and effectiveness of the delivery of our regulations. Targeting our regulatory resource to where it is most needed delivers better environmental outcomes and allows us to pass on savings that we make to our customers.

Examples of this include:

- *Saving money.* From 1 April 2005, holders of 23,000 low-risk abstraction licences were released from the licensing regime as a result of measures we proposed for the Water Act 2003. These holders (around 48% of total abstraction licences) will save approximately £1 million a year in total.
- *Targeting resources.* We have reduced the number of low-risk waste inspections from 125,000 to 84,000 a year, freeing our resources for more detailed site audits of higher-risk sites and to tackle illegal operators.
- *Cutting red tape.* Working with Defra and industry we pushed for modern, risk-based approaches to new legislation. As a result, at least 500,000 potential new low-risk hazardous waste producers did not need to register with us, saving them around £14 million a year.
- *Cutting paperwork.* We are increasingly looking to develop electronic applications which make life easier for our customers. For example on-line applications for fishing rod licences.

4. THE STRUCTURE, GOVERNANCE AND ACCOUNTABILITY OF THE ENVIRONMENT AGENCY

The Environment Agency aims to be an open and transparent public body. The environment belongs to all of us and we consider that we are accountable to everyone. We have a number of ways of involving people in our work and making them aware of our decisions.

4.1 *Structure and Governance*

We currently have 14 board members from a wide range of backgrounds mostly appointed by the Secretary of State for Environment, Food and Rural Affairs. The Welsh Assembly Government appoints one member. We work closely with Defra to actively encourage applications and appointments from ethnic minorities and disadvantaged groups. All appointments are made in accordance with Nolan principles.

As required by the Environment Act 1995, each of our seven regions and Environment Agency Wales has three statutory committees (Regional Flood Defence Committee, Regional Fisheries, Ecology and Recreational Advisory Committee and a Regional Environmental Protection Advisory Committee). The chairmen of each of the committees and, in the case of regional flood defence committees, some of the members, are appointed by the Secretary of State.

4.2 *Organisation*

As a national organisation we are able to regulate major industries on a consistent basis across the country, work with national organisations, tackle cross-boundary pollution and deal with environmental criminals who will go to great lengths to avoid detection and prosecution. At the same time, we are structured to deliver local, on the ground environmental improvements tailored to local conditions through our Regional and Area teams.

Our customers and stakeholders have impressed upon us the need for consistency in our approach. In response, we have successfully implemented an internal restructure (Better Regulation Improving the Environment, or “BRITE”) that has produced greater consistency and efficiency, for example by the provision of clear technical advice from national experts to front line staff. We have also restructured to focus in one place functions best performed once on a national basis for the whole country.

We value the skills and commitment of our staff and recognise the benefits of a workforce that reflects the diversity of the communities we serve. We continually look for ways to improve the way we manage and develop our people and have been awarded accreditation as Investors in People. Our annual staff survey reported in 2005 that 83% of employees would recommend the Environment Agency as a good place to work. This has improved steadily over the last five years. Our programme to increase the diversity of our staff is also starting to be reflected in the people we employ.

4.3 *Accountability*

Our Board meetings and the meetings of all our regional statutory committees are open to the public. Board agendas and papers are available on our web-site in advance of meetings. We consult the public on proposed policies and work extensively with trade bodies, non-governmental organisations, the general public and local, regional, Welsh Assembly and central government. We also work constructively with other organisations in England, Scotland and Northern Ireland, Europe and internationally.

Formally, we are accountable to Ministers and through them to Parliament. We are also accountable to the Welsh Assembly and subject to scrutiny by many Committees of both Houses and the Assembly (for example, the Environment, Food and Rural Affairs Committee, the Environmental Audit Committee and other select committees, including the Public Accounts Committee). A report on our activities and our annual accounts and their audit by the National Audit Office is laid before Parliament each year and published. A separate report on our activities in Wales is prepared and submitted to Welsh Assembly Government.

We are subject to investigation by the National Audit Office, the Auditor General for Wales and Parliamentary and Local Ombudsmen. We have a publicly available complaints and commendations procedure. We are also accountable to those we regulate via appeals against our decisions and action in the Courts. We make information on the environment and on our activities widely available. Many documents are available for public inspection on the Agency’s public registers and we provide information in accordance with, and, where resources permit, beyond, the requirements of the Environmental Information Regulations.

5. ITS RELATIONSHIPS WITH DEFRA, DEFRA-SPONSORED BODIES AND THE REST OF GOVERNMENT, INCLUDING THE AGENCY'S ROLE IN THE PLANNING SYSTEM

5.1 *Sponsorship arrangements*

We are an executive NDPB sponsored by Defra in England and by the Welsh Assembly Government (WAG) in Wales. We are accountable for our activities in England to the Secretary of State and she in turn is accountable to Parliament for these activities, for our charging regimes in England and Wales and for our expenditure in England. We are accountable through WAG to the National Assembly for Wales for our activities and expenditure in Wales.

Each year we agree a programme of work with our sponsors which will take forward our corporate strategy, deliver on government targets and which is published in our corporate plan. We discuss our progress formally with Defra ministers twice a year and present it in our annual report at year-end. For Wales we produce a separate corporate plan with an annual programme of work prepared in response to a Remit Letter issued by the WAG minister. Our progress is formally discussed on a quarterly basis with WAG officials and twice a year with the minister. We also produce a separate annual report and accounts for Wales.

5.2 *The Environment Agency's role as an advisor*

The Environment Agency plays a critical role in providing independent and expert advice to government on environmental matters.

We use our knowledge and practical experience as a regulator and operator to advise national, regional and local government as well as other bodies about the state of the environment and the impact of current policies and practices. Using our experience of practical implementation, we make recommendations to government about how policies and their delivery should be implemented to protect and enhance the environment.

5.3 *Effective partnership working with government departments*

We work with Defra to promote the environment across government. Our Chief Executive and Chairman have regular meetings with ministers and officials across Whitehall and our policy and operational experts work in close partnership with colleagues in government departments, including ODPM, DfT, DTI, DoH, Cabinet Office and the Treasury.

We contribute to the delivery of a number of the Government's Public Service Agreement targets and we have provided the evidence to underpin a number of the Government's policies and commitments.

We also worked closely with the Defra Sustainable Development Unit on the development of the Government's sustainable development strategy *Securing the Future* including the data for some of the sustainable development indicators that Government uses to assess progress in delivery of the strategy. We are also working closely with Defra in taking forward initiatives in the strategy, for example developing policy on environmental inequalities.

We have worked closely with Defra on the development of domestic legislation (for example the Clean Neighbourhoods and Environment Act 2005 and the current Natural Environment and Rural Communities Bill). We advise and assess the operational implications and effectiveness of a wide range of proposed policy and legislative developments that have implications for the environment, including new duties originating from EU legislation. Implementation of the Water Framework Directive provides an example of such partnership working.

We have worked closely with ODPM on a number of issues related to sustainable communities and planning. For example we provided an expert input to Planning Policy Statement PPS10 *Planning for Sustainable Waste Management* through the secondment of one of our waste policy staff to the ODPM to assist with its drafting. We were also involved with the Sustainable Buildings Task Group and the development of the Code for Sustainable Buildings. We have also been active in ensuring that the Thames Gateway and the growth areas take account of environmental issues, including flood risks, energy and water efficiency, sustainable construction, infrastructure and green space. The recent government statement on housing growth identified us as advisers to ODPM on the location of new housing growth areas.

We work closely with the Treasury and the Cabinet Office to ensure more modern approaches to regulation which ensure maintenance of proper environmental standards.

Each year we provide around 1000 briefings for ministerial correspondence and Parliamentary Questions to Defra and other government departments.

In Europe, we have increasingly worked with government to improve the practicality and effectiveness of individual EU regimes and to help modernise EU legislation and regulation. We work closely with and help direct the network of EU regulators and the network of EU Environmental Protection Agencies.

5.4 Partnerships with other agencies

We work with other government agencies, particularly English Nature, the Forestry Commission and the Countryside Agency, with whom we have recently signed a Memorandum of Understanding (MoU) on joint working. An example of collaborative work is the joint guidance we produced with other agencies on Regional Spatial Strategies and Local Development Frameworks *Environmental Quality in Spatial Planning*. We have similar collaborative arrangements in Wales. For example we worked with the Countryside Council for Wales and Forestry Commission to produce a joint report on the state of the Welsh environment *A living and working environment for Wales*.

We have also recently signed a MoU with the Department of Health and Health Protection Agency which sets out arrangements for a collaborative programme of work linking health and the environment.

5.5 Partnerships at the local level

Our advisory and partnership role is actively pursued at a local level. We work with Local Strategic Partnerships to help drive a better quality of life for local people.

We are committed to do more to help local authorities and others improve urban and rural environments, particularly in disadvantaged areas and to deal with environmental inequality and the links between a poor environment and poor health.

5.6 Effective land use planning

The Agency advises on land use planning, including advice on regional planning (Regional Spatial Strategies), development plans (Local Development Frameworks) and planning applications.

In some cases our role is defined in statute. For example we are a “specific consultation body” in respect of Regional Spatial Strategies, Local Development Frameworks and Supplementary Planning Documents; a “consultation body” for Sustainability Appraisal; and a “statutory consultee” under Article 10 of the Town and Country Planning General Development Procedure Order for certain applications and under the Strategic Environmental Assessment (SEA) and *Environmental Impact Assessment Regulations*.

A recent example is our work to assist the development of Regional Spatial Strategies (RSS) in the South East and East of England. In both cases we have helped to map pressures on the environment, particularly in relation to water resources and water quality. We have proposed policies that address the impacts we have identified in our submissions and evidence to Examinations in Public. We have provided guidance jointly with other environmental agencies on RSS in *Environmental Quality in Spatial Plans*.

Each year we are consulted on around 60,000 planning applications. For example, on issues such as flood risk we are effectively a “watchdog” on the application of national government policy. We report annually on the way Local Planning Authorities have used our advice on planning and flood risk and this evidence base has been especially helpful to the ODPM in its current review of Planning Policy Guidance note PPG25 *Development and Flood Risk*.

6. THE AGENCY’S RELATIONSHIP WITH NON-GOVERNMENTAL STAKEHOLDERS AND THE GENERAL PUBLIC, AND HOW THE AGENCY MONITORS SATISFACTION WITH ITS SERVICES

In recent years we have further increased our efforts to build open, honest and constructive relationships with stakeholders and the general public. We actively seek a broader-based advisory system which goes beyond our statutory advisory committees. We need these relationships to help us make the environment a better place.

Our primary aim is environmental benefit and we tread a balanced path between often-competing interests of a range of stakeholders.

6.1 Monitoring satisfaction

Fundamental to these relationships is a good understanding of our different audiences. We therefore have a full market research programme, which amongst other things tells us how satisfied people are with our work and the services we provide. We have assessments of satisfaction from corporate and personal customers, civil servants, Members of Parliament, local authorities and journalists. We are now broadening this to include a wider range of stakeholders. Results over a number of years show a growing favourability and trust in our work.

We also use market research to inform the development of our services. One of the best ways for us to be more responsive is to incorporate a good understanding of others into our work from its inception. As we are the only provider for most of the services we provide we have a duty to ensure that the services really reflect customer and stakeholder needs and aspirations as well as delivering effective environmental outcomes.

6.2 *Working with business*

We work closely with a range of business, trade and professional bodies. One key component of our work with business are our Sector Plans developed jointly with a range of business sectors, for example the cement, nuclear, chemicals, farming, water and waste industries. These describe the environmental performance of each industry and how they can improve. They set out environmental priorities, objectives and indicators of performance typically covering the next five to fifteen years and have timetables for key actions for both industry and ourselves.

We have received a lot of support for this approach from industry, who see Sector Plans as a tool to help with their long term planning, going beyond traditional regulation by looking at the issues facing their sector from a wider perspective.

6.3 *Meeting the needs of the general public*

Our work with the general public is built around those affected by specific environmental issues, such as waste permits for a particular site or our campaign on flood awareness. We have worked hard to promote United Nations World Environment Day, seeking a very wide range of partners and aiming for behaviour change by companies, organisations and the general public. However, the resources we can apply are small compared to the campaigns that can be run by central government. We are not resourced to run large-scale campaigns aimed at the public at large.

The Environment Agency also has a comprehensive Customer Charter and our national Customer Contact Centre, which provides a single point of contact, takes an average of 4,000 calls a day. Services such as Floodline, *What's In My Backyard?*, our website and our publications serve millions. Our strategy for organisational development puts customer needs at the heart of what we do, accepting that every member of staff has a contribution to make.

6.4 *Working with communities and others*

Our *Building Trust With Communities* programme is an approach that puts the concerns of others into the heart of our work, treating them as partners. For example, in the Devon village of Shaldon, where we have identified a risk of flooding, we have not simply offered the community a flood defence scheme or even a choice of schemes. Instead we are working with stakeholders from the beginning, assessing the nature of the problem and the scale of the risk together. Next we will work together on possible solutions. We will still have our professional view, but we accept that the views of others matter too.

Our work to tackle the serious problem of flytipping is an example of where we work co-operatively with local businesses, the public and key partners such as local authorities, the Regional Development Agencies, Envirowise and the Police. We aim to improve levels of detection and enforcement through the Business Resource Efficiency and Waste programme and use of data from the *Flycapture* database we developed and manage on behalf of Defra.

6.5 *The wider debate*

We play our part in the wider environmental debate. We have ongoing constructive dialogue with a number of non-governmental organisations as well as providing regular briefings for elected representatives from all parties in local government, Cardiff, Westminster and Brussels.

7. THE AGENCY'S RESPONSIBILITIES FOR FLOOD DEFENCE AND FLOOD MAPPING, INCLUDING GUIDANCE TO THE PUBLIC

7.1 *The scale of the risk*

Over five million people and two million homes and businesses are at risk of flooding in England and Wales with assets valued at £250 billion. However this risk may increase as much as 20 fold in the future as the climate changes, with wetter winters, sea level rise and increased storminess.

7.2 *Our role in flood risk management*

We have a supervisory role in all matters relating to flood risk management in England and Wales and are empowered to construct and maintain flood defences, provide flood warning and advice and flood incident response. We currently spend over £450 million a year on flood risk management. This is funded by grant from government and through limited raising of funds locally. Our Chief Executive is accounting officer, but Regional Flood Defence Committees also have an executive role in resource allocation and policy implementation. They consist of a chairman and members appointed by Defra (in Wales the Assembly) and a majority representation from local authorities. Projects costing £50 million or above are referred to Defra for approval in England and above £5 million in Wales to the Assembly.

The Government's new strategy for flood and coastal erosion risk management *Making Space for Water* will give us an extended role in England. In addition to our present duties we will in future oversee the management of flood risk from ground water, surface runoff and urban drainage, as well as the integrated management of coastal erosion and flood risk. The details of these new responsibilities are currently subject to further work and discussions between Defra, other stakeholders and ourselves. From April 2006 we will provide grant aid for all eligible flood risk management capital projects that local authorities and Internal Drainage Boards wish to undertake.

7.3 Specific action we take

Irrespective of resources it will not be possible to prevent all flooding. What we can do is to manage the risk of flooding so that both its likelihood and potential impacts are reduced. In brief, we map where flooding might take place, take action to reduce the probability of a flood event where possible, monitor weather conditions and warn and inform people where and when unavoidable flooding is likely to take place. In addition we provide a range of other social, economic and environmental benefits associated with flood risk management activity.

Whilst we have done much to manage the risk of flooding, our work would be assisted by:

- *Increased resources for flood risk management.* Whilst we recognise and welcome the recent increases in flood risk management funding, the threats and challenges which lie ahead demand further investment in future years.
- *Surface water drainage strategy plans.* Urban flooding is a particular problem because of the number of contributory causes including run-off from roads and built developments and the number of organisations involved, each with its own responsibilities. Local authorities in collaboration with water companies and the Highways Agency as appropriate should prepare surface water drainage plans for their areas. We look forward to contributing to work in this area.
- *Focus on the vulnerable.* Climate change is increasing the likelihood of the need for evacuation due to flood risk. We will play our part in developing an appropriate response. The focus of local authorities and others should be on those most vulnerable.

7.3.1 Flood Risk Mapping

Appropriate action can only be planned and prioritised if the extent of the risk is known. We have previously invested £25 million in mapping the likely areas at risk from river and coastal flooding using the most advanced technology available and continue to invest in new technology and survey. The results have been used to inform our input to local authority planning services and underpin the flood map that is now available to the general public via our web site. We update our flood map regularly, investing some £8 million per year. The flood map is an essential companion to the Government's guidance to local planning authorities on development in the flood plain (ODPM PPG25). The European Commission consider us to demonstrate best practice on flood risk mapping and warning in Europe.

7.3.2 Development control

We are involved in the planning system by providing all planning authorities (regional and local), with consistent information on flooding issues. We provide advice on the preparation of their development plans and associated strategic flood risk assessments and also on site-specific flood risk assessments to those proposing developments.

We are opposed to inappropriate development in flood risk areas and advocate restoration of the floodplain wherever possible to enable it to function naturally. Development in the flood plain has reduced in recent years. However we still find our advice ignored in some cases. In 2004, about 693 houses were built in flood risk areas against our advice. However, we hope that new guidance being prepared by ODPM will reduce such occurrences. We anticipate changes to the planning system to ensure that significant developments in the flood plain proposed against our advice will be referred to ministers.

7.3.3 Management of flood defences

We take a strategic approach to the planning and management of flood defence systems. We do this through strategic planning frameworks, Catchment Flood Management Plans and partnerships with local authorities on Shoreline Management Plans and Estuary Strategies, which identify risks and solutions.

Our target for reducing flood risk to people is to increase the number of homes and businesses benefiting from flood risk management activity including the use of permanent and temporary defences and warning systems where permanent reduction of flood probability is not possible. We have committed to, and are on target to achieve, an improved standard of protection to 72,000 households in England in the Government's Spending Review (SR) 2002 and 85,000 houses in SR2004.

In addition to new defences we also manage and maintain 40,000 kilometres of river in England and Wales, which includes some 24,000 kilometres of raised flood defences and 45,000 structures such as barriers and sluices, the best known of which is the Thames Barrier.

7.3.4 Flood warning and advice

We monitor water levels and flow in river and coastal locations and use this data to forecast river and sea levels and condition. We disseminate flood warnings to around 1.2 million homes and businesses in England and Wales and try to encourage those at risk to take effective action to prepare for and respond to flood warnings. We provide a 24-hour telephone advice and information line, called Floodline (0845 9881188). We continue to invest £30 million a year in improving our flood warning service and encouraging its take up by householders and business and are shortly to launch new services which will provide a range of media by which the public can receive warnings, including to mobile phones and by text messages. We are planning to extend the geographical coverage of the service to achieve a coverage of 1.68 million people at risk by 2010.

7.3.5 Flood incident response

Our experiences during autumn 2000 and more recent floods have shown that an effective response to extensive flooding relies on people's ability to work together. The first national flood exercise to test this combined response was carried out in June and July 2004. The scenario covered an extreme event, up to a 1 in 1,000-year occurrence and with extensive flooding affecting nearly half of England and Wales. We, along with our partners will take action to implement the lessons identified in the exercise. It involved local and national emergency response authorities. In addition, local resistance fora are focussing increasingly on effective response to emergencies, including flood risk.

7.3.6 Sustainable Development

Our Flood Risk Management programme also provides wider benefits to society and we are responsible for helping to deliver the Government's aim of sustainable development. We strive to ensure that a range of social and economic benefits accrue from our work. We are specifically responsible for delivering a range of biodiversity targets through flood risk management. Often what is good for biodiversity also benefits flood risk management. For example saltmarshes are nature's coastal defence. Wetlands created in the right place and at the right scale can provide flood risk benefits as well as biodiversity and recreational opportunities and a healthier environment for local people. We increasingly look to wider land use and catchment-wide solutions to flood risk management problems. These have the potential for providing benefits in other policy areas such as agriculture, forestry and land use planning.

Flood risk management schemes can also help promote significant regeneration and improvement of local amenity particularly in urban areas.

8. HOW THE ORGANISATIONAL CHANGES BROUGHT ABOUT BY THE NATURAL ENVIRONMENT AND RURAL COMMUNITIES BILL WILL AFFECT THE ROLE OF THE ENVIRONMENT AGENCY

8.1 We welcome the Natural Environment and Rural Communities (NERC) Bill and in particular proposals to create Natural England as an important partner to help us protect and enhance the environment. We worked closely with Defra during the development of the legislation and look forward to Royal Assent in the New Year. We welcome the fact that Natural England's overarching purpose is distinct from, but complementary to our own functions.

8.2 We need to work together, with our clear and distinct roles, to deliver sustainable flood risk management, sustainable farming and in tackling diffuse pollution from agriculture on a catchment-wide basis. We have signed a memorandum of understanding with the Natural England confederation (English Nature, Countryside Agency and the Rural Delivery Service) and the Forestry Commission in order to cement this relationship and ensure efficient working and joined-up customer delivery.

8.3 The agri-environment funds, which Natural England will control, will need to achieve not only the objectives of biodiversity, landscape, access and recreation laid out in the NERC Bill, but also our aims of protecting the natural resources of air, land and water. We would like to see Natural England given clear guidance on using the substantial agri-environment funding (currently, in excess of £300 million) to achieve both its and the Environment Agency's objectives.

9. HOW THE AGENCY'S WORK IN IMPROVING WILDLIFE HABITATS WILL TIE IN WITH NATURAL ENGLAND'S WORK ON BIODIVERSITY

9.1 We already work closely with English Nature in our roles as competent authority under the Water Framework Directive and Habitats Directive, as the lead for water and wetlands under the England Biodiversity Strategy and a key player in helping Government achieve its target for improving the condition of Sites of Special Scientific Interest (SSSIs). Our work also contributes to improving the quality of wildlife habitats in the wider countryside, for example by improving water quality.

9.2 Together we have secured £1 billion of investment to tackle problems at 172 river and wetland SSSIs, agreed a work programme to deal with problems at Habitats Directive sites and started a programme to improve water level conditions on 60 priority wetlands. We also have an annual target for creating 200 hectares of new saltmarsh, mudflat and other wetland habitats through our flood risk management work. All this will help English Nature achieve the Defra Public Service Agreement target for improving the condition of SSSIs by 2010. We fully expect this working relationship to continue and develop further with Natural England.

10. THE ENVIRONMENT AGENCY'S FORTHCOMING CORPORATE STRATEGY 2006–11

As described earlier, we have a long-term vision for the environment—a better place for people and wildlife, for present and future generations.

In 2002 we published our first corporate strategy, *Making it happen*, which set out what we planned to achieve over five years. A lot has already been achieved, but the world in which we work and the environment we protect has changed since 2002.

We are now preparing our new corporate strategy for 2006–11, *Creating a better place*. This new strategy will set out how we will create a better place for people and for wildlife.

It will continue to focus on the nine themes which underpin all our work: we want a better quality of life and an enhanced environment for wildlife; this means we need to protect and improve the basic elements of the environment to provide: cleaner air for everyone, improved and protected inland and coastal waters and restored, protected land with healthy soils; to do this we need to make some fundamental changes and help achieve a greener business world and wiser sustainable use of natural resources; and we will need to manage two major and very real risks by limiting and adapting to climate change and reducing flood risk.

Our strategy will have some new flavours within these themes. It will for example address: environmental inequalities, the links between a poor environment and poor health, tackling diffuse pollution and cleaning up contaminated land (including in the 2012 Olympic site in east London). The strategy will also develop further the five roles (efficient operator, modern regulator, influential advisor, active communicator and champion of the environment) which will enable us to achieve our environmental outcomes more effectively.

We will also focus on improving the diversity of our staff, committees and services, improving our health and safety performance and becoming more responsive to customers. We will make further progress in doing more, better, faster, with less.

In developing the new strategy, we have taken into account:

- State of the Environment reporting (attached), drawn from our own environmental monitoring data, to learn from what has gone well and define the major environmental challenges we face (eg climate change and diffuse pollution)
- Looking ahead to the social, economic and political events and trends which will affect the environment (eg climate change or the impact of new development on water resources and waste)
- Government priorities, in particular *Securing the Future* (the UK Sustainable Development Strategy), Defra's five year strategy and the Welsh Assembly Government's developing Environmental Strategy for Wales; we have also taken into account moves towards better regulation, efficiency and more localised delivery.

We have consulted our customers and stakeholders on our draft strategy and how we can work with them to achieve it. There has been support for our high-level priorities but also useful feedback on the detail of our plans. We will take this into account before publishing our final strategy in early 2006.

The new strategy will drive our priorities for the next five years. It will be implemented through our corporate plan and will form the basis of our performance management, including our biennial reports to Defra and NAW. Our national priorities will also be translated into plans by each of our regional teams to take account of regional and local priorities.

A copy of the consultation draft is enclosed together with an analysis of the consultation responses.¹

¹ Not printed.

11. CONCLUSIONS

We have a clear vision, roles and sense of purpose, set out in our Vision and corporate strategy. We are delivering for the environment as a modern regulator and efficient operator within an ambitious programme of efficiency savings. We are increasingly influential in helping Defra and other government departments set practical legislation and policy and we are a champion for the environment advocating from our basis of science, knowledge and on the ground experience. We are committed to working better with customers and stakeholders and are breaking new ground in the way we work with communities.

Looking to the future, everyone has a stake in protecting and improving the environment and we will need to continue to build constituencies of support across government, with the general public and business community.

Environment Agency

December 2005

Further memorandum submitted by Environment Agency

THE ENVIRONMENT AGENCY—FINANCIAL OVERVIEW

INCOME

The Environment Agency receives funding from many sources. The sources of funding can be split into two broad types: funding from Government and funding raised from charge-payers.

In 2005–06 the funding from Government is budgeted at circa £650 million, some 65% of total funding. The vast majority of this is provided through Grant-in-Aid (or GiA). GiA is received from Defra for activities in England and the National Assembly Wales for activities in Environment Agency Wales.

GiA is used to fund elements of work in flood risk management (where it is known as Flood Defence GiA—FDGiA), environmental protection, fisheries, navigation, recreation and conservation. In addition to GiA the Environment Agency also receives amounts from Government awarded as grants or contributions for specific projects.

The funding raised from charge-payers is based on the principle of polluter pays—that is costs incurred in the licensing, monitoring and regulation of activities with potentially negative environmental impacts are recovered from the individuals or organisations undertaking those activities. Such activities, range from multinational companies undertaking large-scale industrial processes to locally based waste operators requiring a licence to operate.

In 2005–06 the funding from charge-payers is budgeted at circa £350 million, some 35% of total funding. The majority of charge income is received from operators undertaking either water abstraction or activities that discharge pollutants into the environment. Typically the Environment Agency will charge operators a fee for the initial consideration and grant of a licence, an annual monitoring (or subsistence) fee and a fee for licence variations or surrenders.

The Environment Agency also has the capacity, subject to certain limits, to carry-forward unspent amounts (ie balances) in flood risk management and water resources accounts. In any given year an amount may be drawn from those balances for use as income in that year.

An analysis of 2005–06 budgeted income levels is provided in the Annex.

EXPENDITURE

The Environment Agency's expenditure on individual functions (eg flood risk management, waste management, fisheries etc) is constrained by the principle of ring fencing. Ring fencing operates to ensure that the amounts raised from Government and charge-payers for a particular activity are then spent on that activity. So for example, income raised from the waste management industry through waste management licensing must not be diverted to fund flood risk management works.

Some activities and expenditure items are described as multi-functional. This means that the activity and expenditure benefits more than one function. For example, a building may house staff from a number of functions in which case the costs of the building are allocated in an appropriate proportion across those functions. A breakdown of functional expenditure within 2005–06 budgets is provided in the Annex.

In the case of GiA funding there is a degree of flexibility in that element allocated for the purpose of environmental protection, navigation, recreation and conservation functions. In any given year the Environment Agency can balance expenditure between these functions as the income and expenditure position becomes apparent through the financial year.

The Environment Agency's financial controls recognise a number of key business units. These are the eight Regional units, Head Office and a number of National Services and Centres, the largest of which are the Corporate Information Service and the National Laboratory Service. The size of a region's expenditure budget is, unsurprisingly, closely related to the scale of their Flood Risk Management programme and to a lesser extent the number of industrial processes within the geographical boundary.

A significant proportion of the Environment Agency's expenditure is on staff costs. Nearly 35% of annual operating expenditure relates to salary and wage costs, some £370 million. Other material expenditure items are payments to contractors and consultants, particularly in relation to the construction of Flood Defence schemes.

A time-series illustration of the Environment Agency's expenditure as requested by the Committee is provided below, together with a graph charting the same figures.

Environment Agency

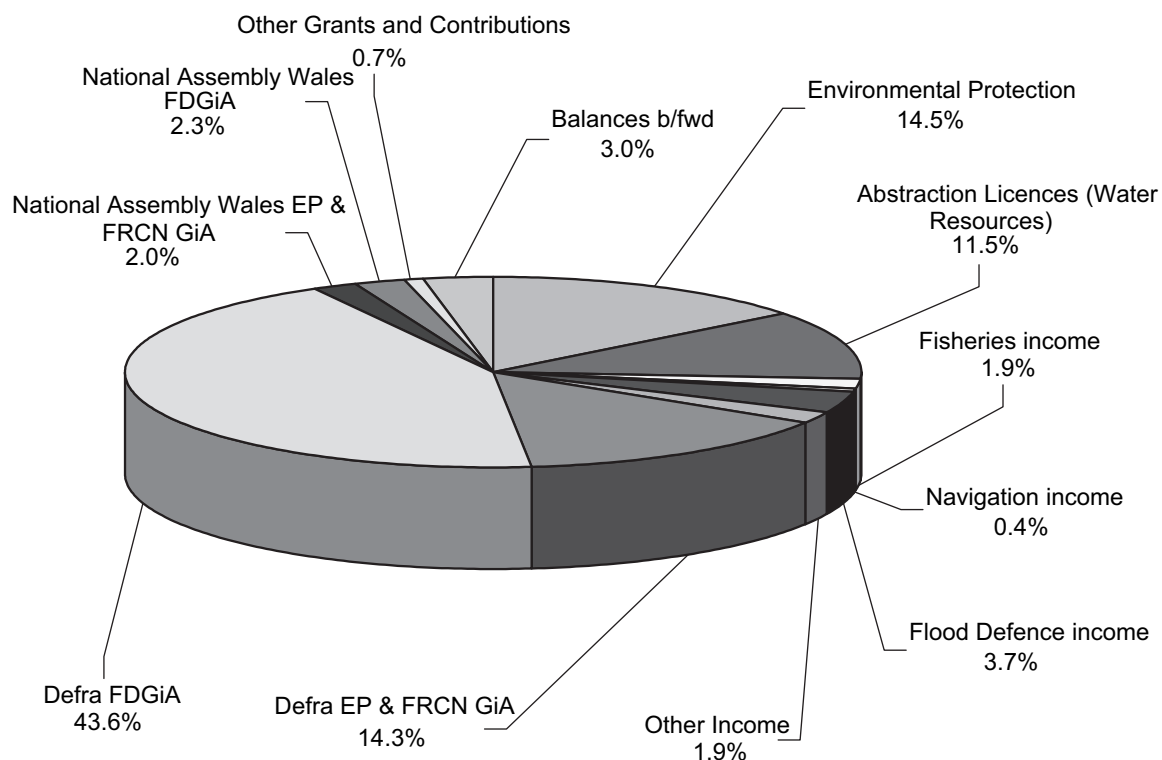
January 2006

Annex

SOURCES OF INCOME WITHIN 2005-06 BUDGETS

<i>Income Streams</i>	<i>£m</i>
Environmental Protection	149
Abstraction Licences (Water Resources)	118
Fisheries income	19
Navigation income	4
Flood Defence income	38
Sales of Assets	2
Interest received	5
Other income	13
Other Income	20
Total Environment Agency generated income	349
Defra Environment Protection & FRCN GiA	147
Defra Flood Defence GiA	448
National Assembly Wales Environmental Protection and FRCN GiA	21
National Assembly Wales FDGiA	23
Other Grants and Contributions	7
Total Environment Agency Government funding	647
Use of Water Resources balances b/fwd	1
Use of Flood Risk Management balances b/fwd	30
Balances b/fwd	31
Total Environment Agency funding	1,027

Source of Income 2005/06



Key to abbreviations used

FRCN—Fisheries, Recreation, Conservation and Navigation

GiA—Grant in Aid

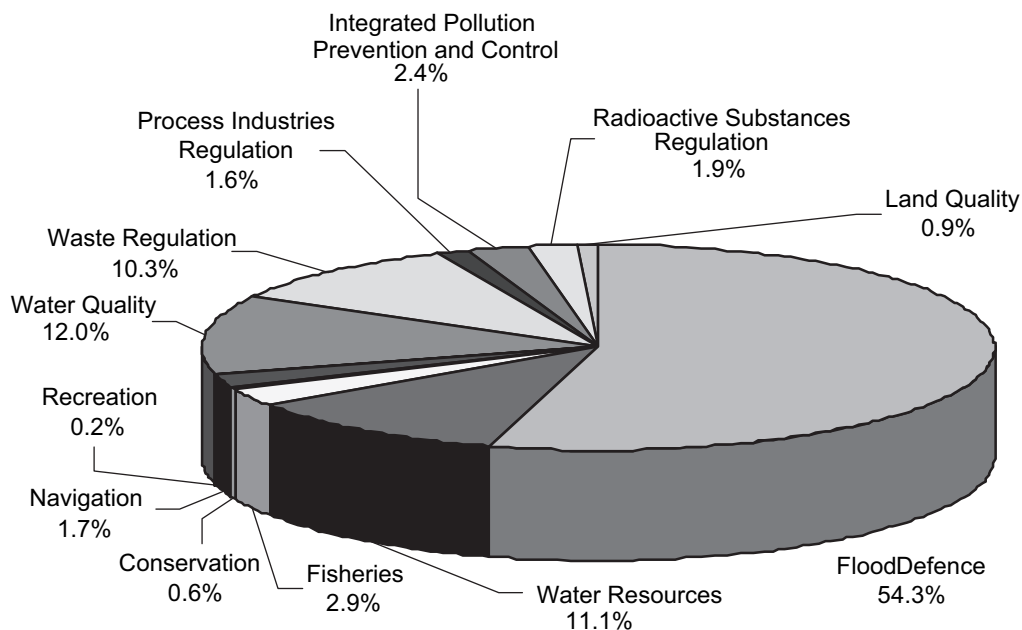
FDGiA—Flood Defence Grant in Aid

EP—Environmental Protection

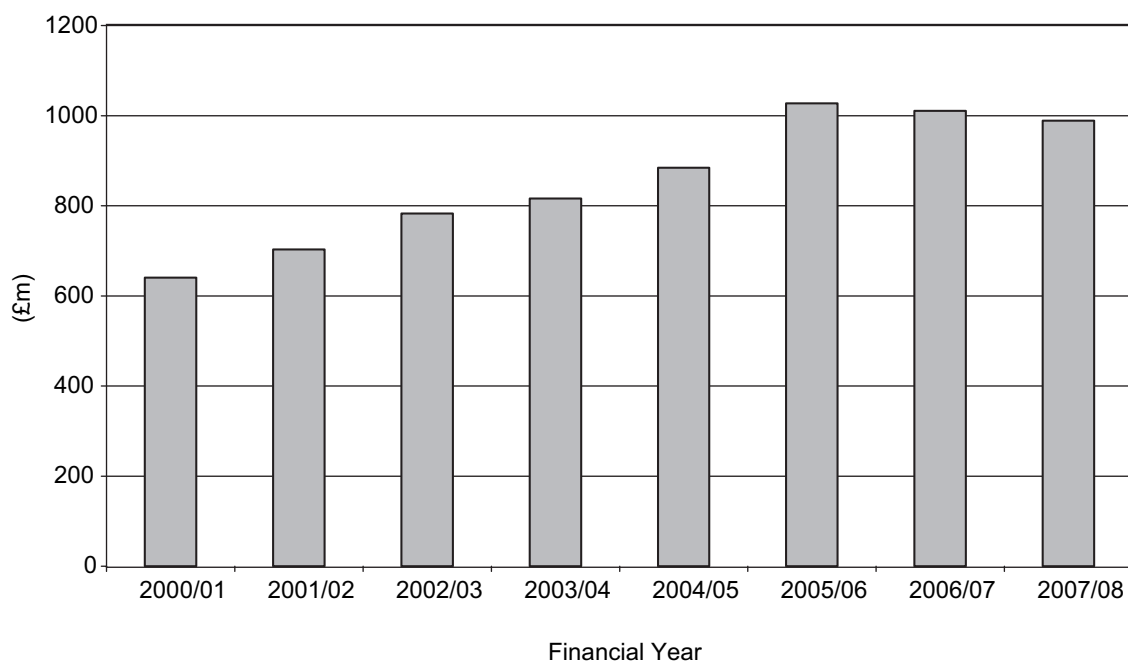
Functional expenditure within 2005–06 budgets

<i>Function</i>	<i>£m</i>
Food Defence	551
Water Resources	113
Fisheries	30
Conservation	6
Navigation	17
Recreation	2
Total Water Management expenditure	720
Water Quality	122
Waste Regulation	105
Process Industries Regulation	17
Integrated Pollution Prevention and Control	24
Radioactive Substances Regulation	19
Land Quality	9
Total Environmental Protection expenditure	295
Closed Pension Fund	12
Total Environment Agency expenditure	1,027

Functional Expenditure 2005/06



Environment Agency Total Expenditure (£m)



A time-series of Environment Agency expenditure

Agency expenditure by function (£ million)	Actual 2000-01	Actual 2001-02	Actual 2002-03	Actual 2003-04	Actual 2004-05	Budget 2005-06	Planned 2006-07	Planned 2007-08
Water Management								
Flood Defence	275	326	383	391	425	551	513	484
Water Resources	91	99	100	105	117	113	120	127
Fisheries	23	23	27	29	32	30	30	31
Conservation	7	7	8	7	8	6	6	6
Navigation	9	11	11	12	16	17	19	19
Recreation	2	2	3	2	3	2	2	2

<i>Agency expenditure by function</i> (£ million)	<i>Actual</i> 2000–01	<i>Actual</i> 2001–02	<i>Actual</i> 2002–03	<i>Actual</i> 2003–04	<i>Actual</i> 2004–05	<i>Budget</i> 2005–06	<i>Planned</i> 2006–07	<i>Planned</i> 2007–08
Environmental Protection								
Process Industries Regulation (PIR)	26	25	23	20	21	17	13	10
Radioactive Substances Regulation (RSR)	10	10	10	12	14	19	17	14
Integrated Pollution Prevention and Control (IPPC)	3	5	8	16	21	24	35	34
Waste Regulation	73	74	77	82	87	105	103	105
Water Quality	103	101	110	114	119	122	125	129
Land Quality	7	8	8	9	9	9	9	9
Other grants and Unfunded pensions	13	13	16	17	12	12	16	16
Total expenditure	640	703	783	816	884	1,027	1,010	989

Witnesses: **Baroness Young of Old Scone**, a Member of the House of Lords, Chief Executive, and **Sir John Harman**, Chairman, Environment Agency, gave evidence.

Q316 Chairman: Can I welcome once again for our final evidence session in our look at the Environment Agency, Sir John Harman, the Chairman of the Agency, and Baroness Young, its Chief Executive. May I thank you and, indeed, your staff sincerely on behalf of the Committee for the very helpful presentation which you laid on for Members of the Committee which gave us all a very interesting insight into the many and varied activities for which you have responsibility. May I also thank you for your written evidence. I was intrigued that amongst the many publications which the Environment Agency produce there was one that arrived on my desk last year entitled *A Better Place: State of the Environment 2005*. I thumbed my way through this and you expressed views on an enormously wide range of environmental subjects but some of them you do not have direct policy responsibility for, particularly in the field of transport where there are a lot of emissions which affect climate change but for which you do not have a remit. Now here we are 10 years on since you started. In the light of this comprehensive document, *A Better Place*, are there things which you think your Agency ought to be doing which currently, going back to what the Minister said when he talked about your statutory remit, you are not able to do presently? In other words, should we have a more comprehensive Environment Agency than we have got at the moment?

Sir John Harman: Thank you for the opportunity to present oral evidence to your Committee, Chairman. I think that is a very good question. If you do not mind, I am going to answer it by going back to where we started in 1996. Of all the things that were expected of us, I suppose the two that should stand out most for myself and my board were that the Agency should firstly be an effective integrator of regulation on the various emissions to land, air and water through the various environmental media. That has been a key task for us, to understand how the impact on all those media works and to bring the regulation together. The other thing, and it is specifically mentioned in the Act—it is odd that the top document in both our piles, by the way, is the same one, Chairman, congratulations—is the duty to contribute to sustainable development and we have ministerial

guidance to explain to us how that should be done. I go back to those founding principles because the board and the Agency have had to figure out what those duties mean. They must mean judging success by what happens in the environment, by environmental outcomes. None of the pages in this book is unrelated to a statutory function. On the example which you gave—traffic emissions—clearly we have no regulatory locus on traffic emissions but we have a huge responsibility on air quality shared with local authorities. It would not be possible for the Agency to take an intelligent view of its duties to contribute to sustainable development and, incidentally, to monitor and report on the environment, if we were simply to report on air quality along the lines of what goes up an industrial regulated chimney, it has to be placed in context. Whatever statutory boundaries are defined, I think our general purpose obliges us, not just gives us the opportunity but obliges us, to form an opinion and report on a basis that is sufficiently wide for the reader to understand the context. I do not think you can talk about air quality unless you also mention traffic. After all, it is the basis of almost all air quality zones that local authorities have declared, and we advise them in those declarations. It is a good example of where our wider role invites us to take a stand on issues which are beyond the strict statutory limit, but that also brings with it an obligation which is that because we are therefore providing information which impinges on other people's roles we should work in partnership with a wide range of other organisations and, indeed, not just to see regulation as the end but the means to an environmental end and that we ought to use a range of approaches to solve any particular environmental problem and that means a great deal of working with others. You invited the Minister to think about what relationships the Agency should have with other bodies, it would be a huge map that would be drawn if you were really to try to describe the relationships we need in order to undertake our central role, which is that which is laid out in the Act and the guidance we have had since.

Q317 Chairman: Baroness Young, do you want to comment?

25 January 2005 Baroness Young of Old Scone and Sir John Harman

Baroness Young of Old Scone: Two things. One is we do always have a statutory duty to report on the state of the environment which takes us into the wider range of issues that are in the *State of the Environment* report. You did ask whether there were things that we might like to do that would make our portfolio, as it were, more comprehensive, more rounded. I am slightly nervous of the comment that was made early on that organisations always want to take stuff on rather than give stuff up. This is not empire building but simply some tidying that I think needs to be done. There has been mention of the Marine Bill and I do think we need to have our proper place as an organisation in whatever emerges from the Marine Bill so that we can carry out our functions in terms of water, the Water Framework Directive, and flood risk management, coastal protection. I think we do need some spring cleaning of the responsibilities for air quality. The recent Buncefield explosion has demonstrated that managing air quality on a local authority by local authority basis is not sufficient when we have a big incident that spans a number of local authorities. I think there is a bit of tidying of responsibilities needed there. There are issues to do with chemicals regulation where there is a current discussion on who will become the Chemicals Agency for the UK and there we would want to put the very strong view that this fits well with our regulatory role in the chemicals industry processes at the moment and with our environmental responsibilities. Of course, we do want to make sure that in future we have got a proper place working with farmers alongside Natural England because the role of land management is going to be very crucial in the implementation of the Water Framework Directive. Last but not least on my little shopping list, I think it would be useful to explore the exact split between ourselves and government departments on policy, not just our role in helping government departments think through policy and negotiate policy in Europe but the reverse end of that, which is when does policy stop being political policy and start being the way we implement things, in which case it might be more appropriate for a delivery body like the Agency to agree the policy and the nuts and bolts of how overarching government policy will be delivered rather than that being determined in the first stage by the government department.

Chairman: That is certainly a point that came up in other evidence.

Q318 Mr Reed: Bearing all of that in mind, and it is all very, very useful, would the Agency have a fixed view at this stage on what is probably the biggest issue facing the country, which is energy policy?

Sir John Harman: That is an area where our statutory role is the regulation of power generation, large power generation, so we have a role but it is not a major policy role. In that, we put evidence to and supported most of the outcome of the discussion around the Energy White Paper two years ago and were pleased to see the emphasis that gave both to energy efficiency—we have a huge theme in our work on the wise use of natural resources, so of course we

are very much in favour of enhanced energy efficiency—and on renewables because of carbon policy. Both of those things follow from our core role. Our view on this particular episode we are going through now is we would not want to see those basic principles abandoned. We think it is important both for the economy and the environment of the United Kingdom that we should get better at the use of resource, including energy, and obviously we have to get hold of carbon. If your question was about do we have a view on the nuclear argument, we do as well but I will stop there in case I am answering one question too many.

Q319 Mr Reed: No, not at all. It is interesting that you mention it. What would that be?

Sir John Harman: I should not invite questions! Our view is based upon our statutory role. As you know, we regulate the storage of nuclear materials and emissions from nuclear processors, the safety aspects being the responsibility of the Nuclear Installations Inspectorate. As a result of that responsibility, of course, when material comes out of the nuclear process as waste we have a regulatory stance and an interest and, although it is a theological point as to when solid nuclear material is discarded and becomes waste, let us put that to one side, we would be very clear in saying that we want to see a clarity about UK policy on radioactive waste management before we embarked on creating any more of the stuff when there is plenty of it already. There is also a connected issue to the remarks I made just now and that is it may be the case in practice that if there was a coherent and national drive for new nuclear there may not be room in the investment markets both to afford that and to keep up the pressure on investment for renewables. Whatever else happens in the energy economy, I do not think that we can envisage a future energy economy which does not have a substantially greater renewable component than we have now. Anything that will take investor initiative, investor incentive, away from that sector would be a pity in our view. It is not an absolute rock solid certainty that nuclear would do that but there is a danger which must be navigated.

Q320 Mr Reed: Related to that in many ways would be the resources at the Agency's disposal. Do you believe that you are sufficiently resourced to do what is asked of you by Government, by Defra? How do you feel you measure up with your desire to "do more, better, faster, with less"?

Sir John Harman: It is a question to which I am tempted to give the same answer as the Minister. He was absolutely right of course, every body with a responsibility like ours would always like some more funding, but let us put that rather obvious comment to one side. To answer your question, I would give two somewhat different answers. One as regards expenditure on flood risk management and one as regards, if you like, the rest, but which is mainly environmental protection funding. As Mr Taylor was pointing out, our budget for the year we are presently in is just over a billion, £1,027 million, of

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which 551 is for flood risk management. That has seen a substantial increase in recent years, particularly the year we are now in, that is the year which has seen the biggest step up. I would only echo on flood risk management perhaps two things that came out in Dr Jones' discussion with the Minister. First of all, we believe that this level of spending on flood risk is a step on a longer journey which was described quite closely by the Foresight recommendations that in the long-term the UK ought to be aiming for approximately a billion pounds a year and at the moment it is 551 in this present year through the Agency (there are other operators too). We see this as an upward trend, it will need to be. The second observation I would make is we are now at a level where I think it is reasonable to say, as Miss Nason was indicating, that we are at a level of expenditure where we can probably say the condition of assets can be held, it is no longer deteriorating, and we are putting more emphasis in that area. On flood risk management, we would like more, we think the kind of change pressures indicate an increasing path of need and we think the present level of expenditure, level of investment, is correct for the present time. As the Minister was indicating, there is a challenge to us to make sure we have got the resources to deliver that programme with competition for engineers and so forth. On the other side of the Agency's expenditure, the Minister said, and Members have quoted, nearly £650 million comes in Grant-in-Aid; but a lot of that is flood defence Grant-in-Aid, 448 from Mr Morley's Department and 21 from Wales. This is a rough approximation. The remainder has stayed more or less static in real terms over the period of the Agency's existence. I have been with the board since 1996 so I can speak from experience. This is the area where new duties come along and are absorbed by the Agency and eventually create new charging schemes, but there is always that pressure. Just to give you an indication of the size of that, we currently administer for UK Government 120 regulations. 54 of those have come in since 1996 and have had to be absorbed as we have gone along in what in real terms is a relatively static quantity of money. The danger is of being given new unfunded duties. For instance, a lot of our activities on farms because of political decisions come out of the GIA rather than by a charging mechanism which means that GIA is being continually challenged and we are continually having to—I am sure if Mr Taylor was here he would quiz me on the efficiency—plough back efficiency savings in order to maintain our level of service against this rising demand, if you like, which is expressed through new regulations and doing that within rather the same resources that we have always had. We do feel the shoe is pinching there. We do argue annually, as Mr Morley indicated, over resources but the board is an experienced board, the executive is experienced, and we manage with what we have got. I would clearly like a bit more because it means, for instance, on enforcement of waste regulations, fly-tipping and so forth, almost all of that money comes from Grant-in-Aid but the more we have, the more we can do, it is as simple as that.

Q321 Mr Reed: There is a real danger then that the expertise of the Agency is being spread too thinly.

Sir John Harman: There would be a danger but I do not think we are at that stage at the moment. One of the things we are charged with—there is a quote in the ministerial guidance—is we are expected to maintain ourselves as a centre of expertise and excellence in a range of functions, and we do that. Part of the advantage of being rather big is we have resources to maintain expertise but—I will defer to the Chief Executive on this—I think it is at the operational end rather than the policy expertise where just covering the number of things we have to do makes the job feel most stretched, but we are doing it well within the resources we have.

Baroness Young of Old Scone: Could I come in on a couple of points. I think the Chairman is right in saying in terms of flood risk management we have had a major increase and the big stretch for us is to spend it well. We are rising well to that challenge but we will soon have got that under our belt and be ready for another growth spurt. The thing we have got to always remember is the more flood defences we create, the more maintenance money we need to maintain them. I think the maintenance issue is an issue for the future without a doubt. On the business of the remainder of the funding, the non-flood risk management stuff generally speaking, under the cost recovery provisions where we have got a charge for a particular activity once we have set that activity up, and there may well be an unfunded process at the beginning of it, we are able to recover the costs and that should maintain a balance. We should be getting back what we spend, that is part of the rules. The areas that most tax us are those areas which are not charge funded, for example some of our navigation functions or some of the regulatory regimes that are regarded as not being appropriate for charging, for example in some of the agricultural regimes where we have got a large range of people who we regulate and no visible forms of support to do it with, so we have to cut and paste, as it were, our Grant-in-Aid to make sure that we focus on the highest priorities. I think those are the areas that I would be most concerned about in terms of funding pressures for the future.

Q322 Lynne Jones: There was some discussion with the Minister about the ring-fencing of budgets and he did say there was flexibility but we have had other evidence suggesting that there are a high number of funding streams that are ring-fenced which leads to the Agency having to develop highly complex accountancy and budgetary regimes to reflect this inflexibility. Who is right, this witness or the Minister who says you do have flexibility? Are you wasting money on accountancy because of the inflexibility which would be better spent elsewhere?

Sir John Harman: I am sure our finance director would say we do not always agree with the accountants. I think they are both right. I am sorry to answer in that way. When the last Committee did its inquiry, I think our evidence at the time was there were 80 something different ring-fences. I remember my grandmother's mantelpiece which had a jam jar

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for the gas and a jam jar for the electric and so forth; we had 86 jam jars on the mantelpiece and you could not transfer half a crown from one to the other. That has got better. One way it has got better is that flood defence now comes under national Grant-in-Aid, it is not regionally split as it was. For every major charging scheme, for instance for pollution prevention control, which is a major regime for us, there is a ring-fence because clearly the people putting into that scheme want to ensure they are paying costs that are relevant to their own regulation and not to something else. There is still a large number of ring-fences. Grant-in-Aid is largely unhyphenated. There are bits of the rest of it—flood defence clearly is there for flood defence—which are hyphenated, but not very many. Largely the Agency can move funds around, the other 140 million or so, which is non-flood defence Grant-in-Aid. For instance, in this last year we shifted a substantial sum of money in light of the state of our navigation assets into improving the navigation assets. There is a degree of flexibility but if you have the wide range of functions we do have, short of stopping something, although we have discretion, it is rather limited. The truth is there is discretion but it is not wide.

Q323 Lynne Jones: Are you calling for any change in this or are you saying you are at an optimum point of flexibility coupled with transparency in terms of your re-charging?

Sir John Harman: I will pass this to the Chief Executive. The only thing I would say by way of introduction is personally I do not see that we should be asking merge the charging schemes for different regulations but what we would like to see is a simplification of the regulatory process so that more of these regimes come into common vehicles, say waste licensing and IPPC, and the more that happens the more flexibility you get with the funding. I would like to see fewer ring-fences but I do not advocate the abandoning of the polluter pays and the cost for that particular regime being transparent for the payer.

Q324 Chairman: Can I just be clear, when you talked about transparency for the person who is being charged, if anybody who has a charge says to you “how is this calculated”, do you provide them with a detailed explanation?

Sir John Harman: Every charge payer gets an explanation of the system and the charges with the bill.

Baroness Young of Old Scone: In terms of the flexibility of the ring-fencing there is a real tension because obviously if people want maximum transparency that must mean there has to be a clear ring-fencing of money coming in, money going out and visibility of what happens in the intervening process. We are pretty transparent in the way that we determine our charges and consult on them. There is a Charges Review Group, which you heard about, which involves the Government, the trade associations and some of the bigger charging partners and representatives of SMEs. We have got

our own regional committee structure that also has industry reps. We consult every year on charges but we have also got an overarching policy statement which describes how our charges are set up. When we charge anybody we send them a leaflet that shows how the charge is made up. About 18 months ago now there was a joint Defra/Agency review of charging principles that the Treasury, the DTI, the Cabinet Office and Welsh Assembly Government also took part in and agreed the principles by which we charge. Our charges are agreed each year in detail by the Secretary of State. We have managed to keep them below inflation levels for the last three years as a result of our efficiency programmes. If industries do not like our charges, in many cases they can take a risk-based approach and by improving their performance get a lower charge on our OPRA risk-based charging programme. That can make quite a bit of difference to them, £7,000 difference in the fee for example. I think we are doing quite a lot. We can let the Committee have the huge amounts of documentation we have. This is our consultation on next year’s charging scheme which I think is pretty transparent even if it is rather huge. There cannot be many stones left unturned by this document.

Q325 Chairman: I am sure that is probably true. I was reflecting on the fact that there was quite a lot of criticism in the evidence we have had, particularly from those in the waste field, that charges still seem to be on the high side versus what you are talking about, which is supposedly if they can see that they are fair and reasonable because it is transparent those comments would not have arisen.

Baroness Young of Old Scone: Can I just pick that up. In terms of some of the processes that are currently underway with the waste industry, they do reflect a number of things. They are quite time consuming, particularly for PPC regimes because they are new, the waste industry are coming into them for the first time, and we are continuously improving the process on both sides, both improving their ability to give us sensible information and our ability to streamline and reduce the complexity and do faster the permitting process. I think there is lots that can be done jointly with industry to reduce costs by getting (a) more sensible permitting regimes and (b) better performance from the industry in coming forward with their applications.

Q326 Mr Reed: A very final question on resourcing and the sufficiency of it. In a previous life before entering Parliament I used to work alongside the EA in the nuclear industry and always found the Agency to be nothing but effective and helpful, and that is undoubtedly the case. Not everybody sees the role of the EA like that, however. For instance, the Port of London Authority has said that the Agency tends to: “exceed the purposes for which it was established and to be dismissive of others’ roles, even where duties and powers are complementary” and it believes that this is a “tiresome and counterproductive” trait.⁷ How would you respond to criticisms like that

⁷ Ev 223, Executive Summary

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and other criticisms which tend to drift along the line that the Agency exceeds the purposes for which it was established?

Sir John Harman: I noticed that in the PLA's evidence and, indeed, various comments from the waste industry. We take them all quite seriously. In both examples you have just mentioned, I have contact with people in those organisations and generally I do expect to be told if they think we are getting it badly wrong and I have not received such messages. Indeed, some of the messages from the waste industry are contradictory depending on who you talk to. I am a bit disappointed to read them first in written evidence. On a serious point, our relationship with industry is as a regulator, we are not there to do their bidding but, on the other hand, we want it to be a positive and workmanlike relationship and we do want to hear and react to these criticisms, and sometimes we believe the criticism is ill-founded. To answer your question how would I respond to the PLA, I would quite like to go and have a discussion with the PLA on why they think that because I had not been aware of that. Sometimes it turns out that the evidence was written by somebody not wholly connected to the leadership of the organisation, but we will find out whether that is true or not.

Q327 Lynne Jones: Can I ask, were you sent the PLA evidence by the PLA?

Sir John Harman: Most of your written witnesses, if that is a thing you can be, have had the courtesy—not all of them—to share their evidence with us. Obviously we respect the confidence it is offered in but that demonstrates the relationships we have. I have seen the PLA evidence, yes, I hope the Committee does not mind that. I think it was the decision of the PLA just to let us know what they were saying, which is fair enough.⁸

Q328 Mrs Moon: I think you would agree that part of your remit is also driving up standards and it is part of regulation to start raising standards. Two areas that have come out of the evidence we have had are people have welcomed the risk-based approach and largely the people who responded to us have also taken on board the issue of the polluter pays, but there is still a feeling from many of those who have come to us that there is a level of grievance, if you like, that they do not feel they have had the regulatory dividend they hoped for from the risk-based approach, that the Agency's primary target is still not those who are poor performers, that those who are not playing the game are not having a disproportionate degree of regulation, there is still far too much regulation on those who are complying and who are, in fact, meeting regulations.

Sir John Harman: Personally, I am quite pleased you are getting that response because in a sense it demonstrates an appetite for a deepening of, I was going to say in UK policy terms but anywhere in the world policy terms, this regime of having some

calculable basis for establishing regulatory risk and then applying it to variations in the charges, which is very new. We are at the forefront of this and we anticipated when it came in that there might be more opposition than there has been from industry. It is good to hear people say, "Let's see a bigger gradient". Let us take the waste industry, where I suspect some of those comments may have come from. Whatever you do to a waste site in terms of the public protection role you cannot decline the regulatory effort to zero, there has got to be a regulatory effort. I would agree with them that there is not as much gradient perhaps between the lowest and highest performing operators as there might be, and we are trying to extend this the whole time. There was a suggestion some years ago around the time of the last Committee inquiry into the Agency of a policy called incentive charging where the charging would be used as an incentive on the company to promote good environmental performance. But if you do it within cost recovery you can never really escalate the charges to a level which is going to incentivise a boardroom because it is always going to be within the envelope of costs. The more dramatic versions of incentivised charging not really being available to us, we are doing it within the cost envelope. We would like to see more differential, and I am glad that people have said that to you. I think this is an area of policy that is moving. Barbara was referring—it was a sort of Sir Humphrey remark—to the policy of implementation. That is the sort of thing we mean by the policy of implementation, what can we do about how regulations are applied. The more discretion we have over that the smarter the job we can do.

Q329 Mrs Moon: Are you happy that the Agency is moving towards targeting those who are seen as poor environmental performers?

Sir John Harman: Yes.

Baroness Young of Old Scone: For example, we have reduced our routine inspections which used to be applied uniformly across all waste sites from 120,000 to 80,000 and we are going down even further in the following year, and targeting much more those sites which would benefit from in-depth audits where we can take a team in for a number of days and do a full-scale analysis of a site where there are particular difficulties. That is on a risk-based approach where the reduction in inspections comes to those companies who are either low-risk intrinsically or have a good environmental performance record through our OPRA system which very carefully rates those sites and companies. Also, the issue of the way in which we focus on the big, bad and ugly, the illegal end, the companies or individuals who quite frankly flout environmental regulation has increased considerably. We have been focusing on larger scale criminal activity, particularly in the waste field. We have now got special enforcement teams in every region. We have concentrated the experience of our investigation officers, and there was a recent television programme that some of you may have seen that highlighted that. We have been lucky to get additional money from the Landfill Tax fund,

⁸ The Environment Agency has since advised that the comments regarding written evidence made in response to Q327 were incorrect.

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BREW, to help increase our work on waste dumping jointly with local authorities and, of course, we have set up the Flycatcher database which helps all local authorities and ourselves to get good intelligence to help with enforcement of waste offences. We have done a major exercise in the last year on waste exports through the ports. There is a much greater focus now on the illegal and nasty end, a much more risk-based and proportionate approach to legitimate business, if I can say it like that. We must not lose sight of the fact that legitimate business still has to get prosecuted fairly regularly, that we are still prosecuting company directors of quite major companies. Not all big legitimate businesses have got a completely unsullied record. We do have to keep our focus on the total spectrum.

Q330 Mrs Moon: In terms of your policing role and prosecutory role, one of the issues that was raised, and it was raised with the Minister, was the issue of the fact that nowhere in your income does it demonstrate the costs of prosecutions and your targeting of those illegal operators who do make large sums of money from their illegal operations is being used to offset the costs to those who are operating legally. Would you agree that those who are regulated, those who are paying for regulation, who are registering and are appropriately licensed, are in fact within that licence fee having to pay for your policing role of those who are not? You said you are demonstrating what your costs are covering when people apply for a licence but within that are you able to demonstrate that they are not paying for your policing of the illegal operators?

Baroness Young of Old Scone: It depends very much on the regime. In the regimes there is a specific mention regime by regime of what enforcement role will be included within the charges. Some regimes do not include any enforcement even for legal operators and others include an element of enforcement for legal operators but not illegal operators. It is a mixed picture. The majority of our enforcement work on illegal operators comes from Grant-in-Aid, not from charges.

Q331 Mrs Moon: Do you know how much you generate each year from prosecutions?

Baroness Young of Old Scone: We are not permitted to keep our fines at all.

Sir John Harman: The figure we keep is zero, but about three million for the last year that I have is the total of all prosecution fees.

Baroness Young of Old Scone: We have explored with Treasury whether we could keep our fines but, to be honest, they were monumentally not keen and £3 million quite frankly, until fines get a lot bigger, is not worth making too much heat and steam about, it is not going to solve all of our enforcement issues.

Q332 Mrs Moon: Would you comment on whether the Environment Agency is constrained by its lack of funding from Government? What areas would you see the Agency neglecting because of lack of funding? From my own perspective, can I ask you to comment on the fact that in terms of conservation

you have six million to fund your work in that area as opposed to, say, fisheries of 30 million. Are you finding you are neglecting some areas because of funding constraints? Should you use those flexibilities that the Minister talked about?

Sir John Harman: To come straight to the point of your question, I do not believe that we are neglecting any area of our brief. In answer to an earlier question I said that at the moment we believe we are able to do a reasonable job but, of course, it is resource constrained and of course we could always do a bit more. It is natural that people with interests in particularly, say, water recreation or navigation will always say we should spend a bit more on that function. The issue you raised, the conservation issue, is very important and it has been a matter for the board to discuss on numerous occasions. The six million that is quoted there is the cost, for instance, of our specialist conservation officers and I think for some of the work we do on SSSIs. The work that the Agency does on conservation goes right across a lot of other cost centres. For instance, the biggest one is flood risk management. When a flood risk capital scheme is done it is a design requirement that any opportunity that that spend represents for enhancing conservation is taken. Therefore, if one were to add up all the expenditure that the Agency makes that could be said to be relevant to the aim of conservation it would come to a great deal more than £6 million. The issue for us as a board is to ensure that because our duty on conservation says that we should have regard to or promote it—I cannot remember the verb from the Act, I could look it up if I had time—across all our functions. There are a number of obligations like that. Our job is to ensure that there is sufficient input, if you like, from the other things the Agency does.

Baroness Young of Old Scone: If you look at some of the big investments in biodiversity and conservation they come from areas where we have played a key role, but not our money. The successive price rounds that the water companies go through under the asset management programme process, a five yearly process of setting water prices, have generated almost £1 billion for conservation and biodiversity in a 10 year programme of which we are in the middle. The work we are doing on the Habitats Directive with English Nature looking at which consents need to be withdrawn or amended in order to protect Habitats Directive sites is going to generate a programme of something up to £800 million over a period of years. All the work we do on improving the quality of waters, both in terms of quality and quantity in the rivers and on the coastal areas, has an impact on biodiversity. Our work on water as a whole has a huge impact on wetland conservation and on the species that depend on the wetlands. I have six million a year which is our direct costs which is a tiny, tiny part of our total biodiversity impact.

Q333 Mrs Moon: If I can move forward on to the issue of your income. I have got the details of your income here. A lot of people who gave evidence felt that a disproportionate amount of your income

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came from industry and that increases in regulatory charges were coming disproportionately their way. I think one of them quoted a rise of over 2,000 per cent which gave them great cause for concern and they felt there was a lack of generation of income from other sources. Would you agree that was true? What other sources of income could you see coming your way and would you like to see coming your way? Who are the other people who should be paying for your roles and functions?

Sir John Harman: First of all, on the industry side I think quite a lot has been said in both the previous answers and your session with the Minister about the charging regimes. They are what they are, they are based on full cost recovery. There is an oft-quoted issue, which is not principally for us because this is an established part of Treasury policy that we are applying here, that we are probably unique in Europe at going for complete full cost recovery. If you are an industry which has a plant in England and a plant in Germany, for the same kind of service on IPPC you are probably facing different charging bases because more of it is borne by the taxpayer in different economies. In Scotland, for instance, more is borne by the taxpayer, although I understand the Scottish Executive is seeking to migrate closer towards full cost recovery. We have always been open to odious comparisons. It is entirely to do with the fact—I support this principle—that we recover 100% of costs. There is an aside: because I noticed you were getting this sort of comment I did look up the regulatory costs for one of the commentees, which is BIFFA Waste Services. They have probably got as many different licences, premises and sites as any company in the United Kingdom. Their overall regulatory cost was just under three-quarters of a million last year, which I think is quite high actually, but that is less than one-tenth of 1% of their turnover. I think you have got to see this in some kind of perspective. What are our other sources of income? Very few. We have the ability, as any other large public corporation, to sell assets if they become redundant, we have got income from interest and so forth, the Treasury take it all into account. We do have a little income, but it tends to be project-based, which we derive with partners on things we are doing together. A typical example would be European funding for habitat improvement or, in the case of Wales, the fisheries programme in Wales has been European funded, but these are rather minor, they are not significant to our core effort. They enable us to do additional things that we otherwise would not be able to.

Baroness Young of Old Scone: We have been pretty successful in increasing our external income from basically selling expertise and information. We are hitting our target of about £60 million income from that sort of source but I think we are getting quite close to the point where we will run out of road at some stage. I do not think there is a huge element of additional growth available to us there. It is things like taking our data and benefiting from the intellectual property rights and selling some of our services that we use for our own internal purposes to

other external bodies, and also increasing the amount of money we get from European sources for project work.

Q334 Mrs Moon: I am always intrigued that in terms of planning applications you are often asked to give quite comprehensive responses but you get no payment.

Sir John Harman: We get no income from it, no. Thank you for noticing that.

Q335 Mrs Moon: I have noticed that sometimes your reports in response to planning applications are required to be. The question I asked the Minister was who is ultimately going to be responsible for this if it goes wrong in terms of building on floodplains and that is an area where you are required, and will be increasingly required, to give comprehensive responses but the applicant, especially if they are large developers, is not going to be making any contribution to you, it is purely going to be to the local authority. I was just wondering if you had raised that?

Sir John Harman: We have raised it, and thank you for helping us to raise it again, I think it is important. As chance would have it, we came here from a meeting where we were looking at flood defence expenditure for next year and we reckoned that in order to service, so to speak, the PPS25 work we will be doing, we will probably need an additional 40 planning officers across the country. That will come out of flood defence expenditure because it is related to a flood defence function, but we receive no income from the planning regime for that, you are quite correct.⁹

Baroness Young of Old Scone: There are some areas, not necessarily external income but planning related income, where we do think that we need to raise the issue. For example, in the recent Pre-Budget Statement we were given a responsibility for helping assess the sustainability of the growth zones for ODPM. If ODPM were laying an additional duty on a local authority the new burdens regulation would mean money would have to follow it. We feel we could perhaps raise that as an issue.

Q336 Chairman: I might have missed it but did you quote a figure for what the costs are of providing all of these bits of advice in terms of planning?

Sir John Harman: I did not.

Q337 Chairman: Would you like to hazard a guess?

Sir John Harman: No. I would like to let you know when I know the answer, Chairman. May I do that?¹⁰

Chairman: Yes, that would be very helpful to put it in perspective in relation to the number of applications that Madeleine Moon mentioned and the potential increase in task which you are facing

⁹ The Environment Agency would like to clarify that this extra resourcing follows a workforce review looking at all EA planning activity and policy, including PPS25.

¹⁰ Ev 159

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because certainly in the planning field the cost recovery from the local authority point of view is an equally important issue.

Q338 Sir Peter Soulsby: As we commenced on this inquiry you very helpfully described to us, and in some cases reminded us, at the informal meeting we had with you the size of the Environment Agency and the very considerable scope of its responsibilities. You have reminded us again today of the very wide range of responsibilities that you have to enforce the particular regulations. As you have described, you are also charged with being a Champion of the Environment and within that with the provision of education, advice and, indeed, you also have some responsibilities as a provider of services, particularly recreational services of one sort or another. These roles are potentially in conflict, incompatible. How do you cope with the balance between them?

Sir John Harman: The conflict is not marked. If you put any two roles together you would probably find conflict. I am not aware this has been a particular issue for us. Going back to the beginning of your question, the issue for us is more how to interpret and live up to the role that either we describe or sometimes other people describe for us. This role, "Champion of the Environment", was coined by your predecessor Committee, it was a product of the last inquiry. We have had to figure what that means. It has to be in the context of two things. First of all, in the context of the UK's approach to sustainable development as a whole. Within that effort we must have regard to social and economic factors and that is one of our duties actually, it is laid out in the legislation, but we come from the environmental corner so in that sense we are the spokesperson, if you like, for things that are related to our functions—climate change is related to our functions—within sustainable development. We talked earlier about the Agency's role in monitoring, reporting. It is really important that we communicate as well as we can. What I do not think we can ever do, and we have never said we could do, is be a kind of public advocacy/campaigning body principally. We have channels, obviously, we have 12,000 staff for a start and they are locally and regionally present, so there are plenty of channels of communication, but we are more a vehicle for messages than a campaigning organisation. The difficulty I have had with this phrase has been not in accepting it describes part of our role but not getting led too far down the assumptions it might make. I think it is quite a difficult one for the Agency. We have clearly to use our knowledge of the UK environment and our knowledge of environmental processes to act as the champion of the environment within sustainable development, but for some people that means acting, if I may say so, like an NGO, but we are not an NGO. We are not principally a campaigning body, we are an informing and, as you say, educating body. Barbara may want to add her own aspect to that. From the point of view of the Board, there has been quite a discussion about exactly where on this spectrum the

Agency should stand and it should never get further than a logical connection back to its statutory function would take you, in my view.

Baroness Young of Old Scone: I think the dichotomy between regulation and advice is one that we do not really sign up to, to be honest. We interpret regulation in a much broader sense. Regulation is not just giving permits and checking whether they have been adhered to, it is about how we achieve better environment, working with businesses which we are in a regulatory relationship with. Some of that will be strict tick-and-check regulation, some of it will be advice, some of it will be trying to get better policy frameworks, better economic instruments, and as a last resort influencing public opinion. It is using all the tools which can be put together, working with businesses to improve their regulatory performance. So the kind of average approach of an Agency inspector with a company will be to work with them on the site, try, through a process of negotiation and discussion, to get them to improve their performance, give them a bit of help and advice, and only if that does not work to then come in and say, "If you do not get better, we will have to give you a written warning, and if that does not improve, we will start putting different conditions on your permits, and if that doesn't improve we are into prosecution." I think we would only go straight to the, "You're nabbed" approach if it was something which was so gross by a company which really ought to have known better, or where there had been big damage to the environment where we have an automatic prosecution policy. But, generally speaking, we prefer the partnership advisory approach as a first step. If we were separated off and only doing the tick-and-check regulation, "You're nabbed", and some other body was doing the advice, we would not get the benefit of that interaction and, to be honest, you would have to duplicate the expertise in a lot of cases to be able to do so. One of the worries we have with the comments that industry makes about the dichotomy between our regulation and advisory role is, there are quite a lot of businesses, particularly medium and smaller enterprises, who really want us to be their tame consultant, they want us to tell them how to do it, but we cannot be the consultancy service to the whole of British business. Businesses have a responsibility to understand what their environmental responsibilities are and we give them as much information and advice as we can in a generic sense to help them with that. With SMEs our Net Regs Programme has doubled in size over the last years and is now accessed by a quarter of a million small and medium sized enterprises, but we cannot give bespoke tailored advice to every single business about every single issue, because they have got to (a) get some understanding internally within the business and (b) use some of the external commercial consultancy services for some of the more complex issues. Business will always want more from us.

Q339 Sir Peter Soulsby: But the fact is you do give advice and it is put to us there is a lack of clarity about when you are acting as an adviser and when

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you are acting as an enforcer. I quote the words of the CBI when talking about the experience of particularly small companies and their wish to be able to receive advice from you, "A visit from an inspector to give advice may lead to enforcement actions."¹¹ That therefore discourages them from seeking advice.

Baroness Young of Old Scone: There is a bit of a bogeyman feel about some of this. They are anxious, and that is obviously a communication issue we need to pick up, to reassure people that a visit from us does not automatically mean we are going to nab them for something. In some cases, when they are grossly out of line and where the environmental damage has been quite major, we really do have to take immediate action. But I hope we are not taking a disproportionate approach to that. We do recognise the need to work more with some of the umbrella bodies for small and medium sized businesses to try and assure them that we are not out to catch them out, we are out to get their performance better rather than to catch them.

Sir John Harman: I think it is a fair point but I would distinguish between large and small businesses. It is really rather unlikely a small business will get an inspector visit from the Agency unless they have a permit for something, and if a business is sufficiently impacted to require a licence or permit it is probably sufficiently big to understand the duties which go with that. In those cases, where the relationship is bound by a permit, let us say, the relationship is as Barbara has described it; mostly there is an understanding that we are there to regulate but we also want to give advice. When it comes to SMEs, there is a reticence and reluctance to call on the regulator for advice, which is why our main channel to small businesses, which is Net Regs, is done entirely anonymously; there is no knowledge by the Agency that you have consulted it. What we have tried to do is work with representatives of small businesses in 100-odd sectors to provide on the web the basic starting-kit for what you can do if you are a small printer or a small wood treatment facility or something. We recognise that there is an underlying problem for any regulatory body there. Most of our industrial stakeholders, if you like, seem to want us to give more advice, and it is our duty to do the ones we can in that area, bearing in mind it is unfunded. Net Regs is funded by a Treasury grant.

Q340 Sir Peter Soulsby: You have mentioned Net Regs, can I ask you about your plans for the development of that? Particularly, you referred to future funding mechanisms which you were hoping to develop to enable you to do that.

Baroness Young of Old Scone: The Net Regs is jointly-funded between the Environment Agency here, SEPA, Northern Ireland and we do have funding from BREW, from the Landfill Tax fund, for development for the next year. I am desperately trying to remember the three developments we have for next year. One is a kind of risk assessment product which small companies will be able to use to

assess their environmental risks. We are increasing the number of sectors which are currently covered; there are about 110 sectors, small and medium sized industry sectors, covered. There is one other development and I have completely forgotten what it is but we can certainly let you know. We can do a lot more on the development of Net Regs if we had more funding but we have to cut our coat according to our cloth. We are very pleased with the amount of take-up we have had so far, but we have only got a quarter of a million SMEs out of the 4 million SMEs in the country, so there is still a lot to do.

Sir John Harman: We had 2.1 million pages circulated last year, which is quite substantial.

Baroness Young of Old Scone: The three projects for next year are improving the clarity of the site with personalisations for individual user's needs, so you will be able to get a personalised package on it. Second, the self-assessment tool which I talked about to allow businesses to measure their risk and how compliant they are. The third one is, what do I do with my business waste feature, which will particularly focus SMEs on re-use, recycling and disposal options based on individual postcodes, so it can tell them what they can do in their immediate area to handle their waste.

Q341 Mr Reed: Building on Sir Peter's point, much of the evidence we have received highlighted inconsistencies in the Agency regulation around the country, within various sectors, between geographical regions and often between the policy centre and inspectors on the ground. This has been referred to by some as a "pick 'n' mix" approach towards regulation. Would you accept that?

Sir John Harman: We would not accept that. You will get a two-part answer, one from me and one from Barbara. I make the slightly obvious point that one man's inconsistency is another man's flexibility, and we have voices off arguing for both more flexibility at local level and more consistency. I think this issue of consistency is a key one for the Agency. Of the operational issues which were flagged up by the last Committee inquiry, this was one I thought had real force at that time—several of them had real force but this was one we needed to address. A lot of work has been done within the Agency since then to be much more analytical about those processes which really should be reflecting and reactive to local differences and plant differences, in other words tailor-making processes, and those which ought to be nationally consistent. It must be the case that similar processes in different parts of the country are regulated according to the same framework agreement, obviously taking into account the local circumstances of the plant or who lives close and all this sort of stuff. This is where I will pass the ball to Barbara, the Board has required the Agency Executive over a period of years since then to continually sharpen up the consistency issue without becoming uniform, without having a kind of national permit you just take off the shelf and shove at somebody. My view of our success on that is that I think we have come a tremendously long way. We will never be free of accusations of inconsistency. If

¹¹ Ev 26, para 32

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we were there might be a problem, we might be not very flexible about what we are doing and not very intelligent about how we react to local circumstances, but I am absolutely confident that the Agency has over the last five or six years made a huge impact on consistency of process and it has taken a lot of organisational change to do it, which is where Barbara comes in.

Baroness Young of Old Scone: We took very much to heart the concerns that existed when I first arrived at the Agency about lack of consistency and we have put a lot of measures in place to improve our performance there. We now have a process management system which means there is a single consistent process for each regime established on a national basis. There is a help desk associated with that too so if anybody in our regions or areas is in any doubt about how a particular regime should operate they can get definitive advice on a particular issue which is the same advice right across the country. For the major permits, particularly for the PPC, Pollution Prevention and Control, we have introduced a national system of special permitting groups who are the kind of permit factories and can produce a consistent permit faster and cheaper, and that has reduced our determination time for permits by about 40% since we set them up. We are also looking at more integrated, streamlined and standard permitting, which would mean for simply processes there is a common consistent standard. We are reinforcing all that with training for staff in new regimes and also our front line staff, our environment officers, have an externally-accredited training and development programme that focuses on consistency in enforcement and inspection. We have standardised site inspection forms, guidance, and we have now a compliance assessment process which is standard so there is a common benchmark to assess whether individual sites are complying or not, which is a nationally consistent one. Of course our risk assessment system is a nation system also, so companies are being assessed and risks are being assessed in a standardised fashion. All of that you might think might lead to a lack of local flexibility but we do build into all these processes the ability to take account of individual circumstances, of companies and their locations and the particular circumstances of their activities. Increasingly in the work we do on regulation, we are taking an outcome based approach and leaving it very much for local negotiation between inspector and company as to how they achieve those outcomes, so that can help with local flexibility. It is always going to be a struggle between national consistency and local flexibility.

Q342 Lynne Jones: If you heard the earlier evidence, you will know there has been some suggestion you have had difficulty in retaining and recruiting specialist staff. Could you comment on that?

Baroness Young of Old Scone: We have a low turnover rate in the Agency, at about 7.5%, which is considerably below the public sector average of 11½% and the private sector average of 20%, but we have some areas where we have quite a degree of

difficulty in recruiting and retaining staff. One is flood risk engineers where we have introduced a foundation degree which will bring them into the first stages of engineering and develop our own as it were, and we are working with the Institute of Civil Engineers on a general national shortage of civil engineers across the country for a variety of purposes. We have run a series of recruitment campaigns. On hydrologists and geo-morphologists we also have a black hole, which has been common across the country, not just us, where a whole variety of university courses have been closing down and we have been working with the universities to try and re-invigorate those and put an improved career structure in place and provide in-house development. With town and country planners we are in competition with local authorities and where, to be honest, our salaries have got less competitive and we are having to look at how we can improve the competitiveness of that, but also to grow our own, to take staff with perhaps little experience and develop their experience in a structured way, again seeking accreditation from the Town and Planning Institute for our in-house development activities. So there are a number of areas where we are struggling, in common with many employers, and we are putting measures in place to try and improve them.

Q343 Lynne Jones: Do you think young people when they are looking for a career are aware of the opportunities in this area? The work you do is probably not well known. We have already made reference to some of the booklets you put out and how you communicate your work, but I do have to wonder what the purpose sometimes is of these. This booklet says it is, "To explore how people's environment can affect their health", but one wonders whether that is really your function. I am not sure who these kinds of booklets are directed at. MPs get them and we do not have much time to read them. How are you publicising your work? You also have stakeholder interests which you are supposed to relate to. Have you got a strategy for this? Perhaps part of the spin-off of such a strategy would be that young people might be motivated to go into some of these areas where there are shortages.

Sir John Harman: To start with what you finished with, although Barbara was drawing attention in response to the earlier question to the areas where there are difficulties for recruitment, in general recruitment for environment officers we are an employer of choice for a lot of young graduates in the relevant disciplines. I forget what the proportion is but there is a huge over-subscription in general recruitment for environment officer jobs in the Agency. I personally do not fear we are badly known among the young graduate population workforce.

Q344 Lynne Jones: But among people who are deciding what subjects to take?

Sir John Harman: If we are looking at engineering, which was one of Barbara's examples, and in fact all Barbara's examples were scientific of some sort, we share with all other employers in those areas the generic difficulty that we do need to do more to

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engage young people at the time they are choosing specialisms, which go right back to A level choices or even before, in seeing these careers as things they want to do. There is a lot of peer pressure which moves people away from science. Being a mathematics teacher by initial profession, you are going to get me on a hobbyhorse if you are not careful. So we do need to continually think about ways of addressing that. On communications generally, we have quite a large and comprehensive, take my word for it, communication strategy. If you wish, we will send it to you. We do have to be careful who we think we are talking to, and I think your example of the Health Document is a good example, we need to make sure it goes to the right people. The purpose of that is that we do have statutory duties to protect public health and this is exploring what that means. The audience there is a rather large number of people who are at the interface professionally between health and environmental standards where a lot of work needs doing, but perhaps it has not made that terribly clear.

Q345 Lynne Jones: There has also been some criticism that a lot of your information is web-based. A little earlier you mentioned small companies and there are some very small companies, perhaps with older people, who do not have access to the web. Is there a problem there?

Baroness Young of Old Scone: One of the things we have been looking at in our communication strategy is hard-to-reach groups, if I can put it that way. There are two or three particular examples we have been working hardest on. One is minority communities, particularly in our flood risk management exercises, and also in terms of local environmental quality, particularly fly-tipping and waste dumping, and we are working with very different groups to communicate with those communities which are not the standards ones. We are getting out and about within the communities, and that is where we have the benefit of being a regional and area based organisation, because we do have 12,000 staff out there on the ground to talk to their local communities. That is actually proving quite useful because we are combining that with a big push to increase the diversity of our employment pool and those two are coming together. We are also looking at how we talk to older people and people with disabilities in terms of flood risk management who are particularly vulnerable, and small and medium sized enterprises who are in exactly the position you outline—the ones who are older, one man bands, not likely to adopt net-based technologies—how we can get at those, through trade bodies, through local trade publications, through the sorts of events they might attend. So there are a whole variety of ways in which we can try and enrich the way we communicate with the key stakeholders.

Q346 Lynne Jones: You have a science programme. What does that mean? Are you doing research?

Sir John Harman: We need to be, because of the range of duties, some of which are very obviously intensely scientific, intelligent consumers and commissioners of scientific knowledge and really quite discriminating in how we do that, making sure we get the relevant stuff. So it is largely commissioning, understanding, influencing research and keeping abreast of science in the areas which most impact on us. There is an Agency Head of Science. How much do we spend on science?

Baroness Young of Old Scone: About £15 million. Most of our science is trying to pull together science from a whole variety of others' original researches; we do very little of our own research though we do commission some. We also work with a group called the Environmental Science Funders Body, which covers all the commissioned environmental science in this country, so we can get some co-ordination and we are not overlapping and duplicating. That involves us, Defra, some of the research institutes and some of the universities, to try and make sure that the research budgets we have all got are used in the most effective way collaboratively.

Q347 Lynne Jones: There was criticism that some of your policies may not be very environmentally friendly. Examples given were not allowing bottom ash from incineration of bird and poultry waste to be used in fertilizers and insisting on landfill. Another criticism was about gravel from rivers, that it had to be removed rather than deposited at another part of the river. What are the reasons for those decisions which do not, on the surface, seem sensible? Would you care to comment?

Sir John Harman: There is a long story behind each of those examples you have given.

Q348 Lynne Jones: We have not got time for that.

Sir John Harman: The issue with bottom ash is that we do have a general view that bottom ash can be re-used as a secondary aggregate, but when it is mixed with fly ash, which is usually dioxin-rich, there has been a problem. There have been problems which have led to the examples you have given. Barbara, you may or may not recall, there was a case a few years ago when you appeared on *Newsnight* with a brick to demonstrate it was a breezeblock made out of this ash and there was a controversy about whether this contained dioxins or not. The confidence of the public in that product does depend on ensuring that the dioxin-heavy fraction, which is the fly ash, is separated. The issue there was the bottom ash which was mixed with other things. We worked quite hard at that time to find legitimate outlets for bottom ash. Some of the problems actually hinge around the legal definition of what is a waste and I do not want, at this time of the evening, to embark upon that, unless you are feeling very strong in your constitution.

Q349 Chairman: The only thing that is worrying me is that this is the first time I have heard of an interviewee with Mr Paxman taking a brick along with him. Can you tell us something about gravel?

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Sir John Harman: This is dredgings, in this particular case I would think, from the Thames.

Q350 Chairman: The argument was about taking gravel from one side of a weir and putting it on the other side which might be a good bed for fish spawning, so why did the gravel have to be treated as waste?

Sir John Harman: I do not know the details of that one, perhaps we had better get back to you on it, but I guess it is to do with the European definition of what constitutes a waste.

Baroness Young of Old Scone: I find it difficult to think that taking from one side of the weir to the other is actually creating a waste. Dredgings have been a problem.

Chairman: It does bring us full circle back to the question we addressed at the beginning, which is your involvement both nationally and at European level in determining policy. As Lynne was indicating, sometimes when you see the results of that, to us as interested lay people we say, "What?" There may be a reason but we will correspond with you on that.

Q351 Mr Rogerson: I am tempted, but not at this late stage of the proceedings, to start talking about compost and when that is a waste and not a waste. We have talked briefly about planning and your role, particularly where it applies to flood risk areas and flood plains. Do you believe the Agency is taken seriously enough by central government when looking at those considerations in terms of major strategic planning?

Sir John Harman: You are going beyond just the PPS 25 point here?

Q352 Mr Rogerson: Yes.

Sir John Harman: I think the answer to that is, yes, though I can think of examples where we have had to be fairly insistent in order to get that degree of agreement and jointly address problems. I thought when you put a similar question to Mr Morley that you could not have separated me much from his answer. That was the point at which I think you accused him of being rather diplomatic with his language. Let us take the sustainable communities and the housebuilding programme. We have had a number of cases where we have had to say to local promoters of development and ODPM, for instance, there are impacts of a development which simply have not been taken properly into account. If I might give a case in point, Corby, which I think I mentioned in the informal session at Millbank, where the proposals, which had gone to quite an advanced stage of strategic and indeed detailed planning in the locality, simply were not supported by adequate drainage and sewerage arrangements, and the study and preparation which ought to have been done to allow that development to come forward had not been done at the right time, and so consequently the intervention did delay what otherwise would have been the time-path of the development. Having got to the point where the intervention was made, I have to say there has been considerable joint work to problem-solve, and that

pattern of addressing something rather late but addressing it effectively has been replicated in a number of places. Where we have got to now, at the beginning of 2006, as a result of these episodes is that we now have a concordat with ODPM about how both sides will ensure the other side is properly informed and engaged, and a very effective working relationship has sprung from that. It does reflect the fact that we have a proper interest not just in the limited issue, which is important enough in itself, of PPG 25 and preventing flood risk impacting on development, but also on the wider issues such as water resources—is there enough water in the region, is the drainage system adequate. We have become involved in the discussion around building standards, for instance. It is only a few weeks since I gave evidence to the next door Committee about that. So there is a range of quite proper things we are involved in, and as a result of a few bumps in the last 18 months the relationship with the ODPM on those matters is now much more open and much more effective and we are happier with the way we are now than we were, say, 18 months, two years ago.

Q353 Chairman: The Minister alluded to the fact that some of the events which may be termed flood risk were 1:1,000 year events. Was that right? Did I understand him correctly?

Sir John Harman: The question had been raised in the context of the Thames Gateway and he was pointing out that the standard of defences for the majority of the Thames Gateway, that part which is protected by the Barrier and the downstream defence from the Barrier, was designed to a 1:2,000 years return period. Climate change and rising sea levels has now eroded that to about 1:1,000 years. His comment was—as I understood it anyway, let me not speak for him but this is what I think I heard—that although these areas enjoy, if that is the word, the highest level of flood protection in the United Kingdom, that does not absolve developers from considering what the consequences of inundation might be, and in areas where the greatest risk lies how to mitigate that or indeed avoid it altogether by not building there, which is the essence of PPG 25.

Q354 Chairman: It might be helpful for you to reflect on what seems to be something of a paradox in this area, and perhaps let us have a note on it. I am still not entirely clear about, if you like, the meaning of a clear message from you, saying there is a risk. If one looks at a risk of an event occurring—for the sake of these discussions let us stick on 1:1,000 years—I presume it could occur in year one or year 999, and what we do not know is what are the odds of that event occurring within that thousand year time span. Given the value of the assets which might be involved, it does add an interesting mathematical calculation as to, "Do I take the 1:1,000 year risk or do I take a more conservative view of the land development?"

Sir John Harman: I am glad you use probability, not many people like to do that, but in fact the message is there is a 1:1,000 probability in each year of such

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an event happening. It is a constant probability and it is just as alive at the beginning of the period as it is at the end of the period; it is a 1:1,000 probability in any one year. That is a better way of putting it and one we prefer but most people do not get their teeth round that one, so congratulations. Although that is a statement about the design of the defences, it is not actually a statement about the risk behind them at all points, because the risk can come from rivers, from drainage and other things, and it is the obligation of the developer and those proposing the development to show they have assessed risk and have reacted appropriately. The main reason that we will object to or turn back applications is because they are not accompanied by a convincing or even any sort of flood risk assessment, which is what they are obliged to give. In the Thames Gateway there are strategic area-wide flood risk assessments being done simply because it is important for developers to know where the major risks are, and that is work which is currently being done and in the case of the London Gateway has been completed.

Q355 Chairman: I think it would be genuinely very helpful to us to have some commentary on this and whether you consider the existing mechanisms of evaluating and responding to those risk messages are as good as they should be. I come back to the point that I probed with the Minister, which is the relationship between the advice you will give and the advice his Department may give, and indeed the advice that ODPM will create for themselves. It seems to me there is quite a lot of advice but some people taking the risk do not necessarily follow that. We had some evidence at the beginning from the insurance industry, who build upon your own flood mapping exercise with a more focused form of risk identification, which again put a further dimension

on this, because you might say before you build you want to go to an insurer to see if you are going to get insurance.

Sir John Harman: We would be very glad to do that, Chairman. I would just say that although I would accept the insurance industry has a more focused approach they may not be more accurate.

Q356 Sir Peter Soulsby: A little while ago you described yourselves as a regional and area based organisation. I think I am right in saying that your regions and your areas are very different from those other organisations have. Is that a problem, particularly when you are developing relationships with partners?

Sir John Harman: It is a problem which can be resolved. Because the regions are aggregations of areas, let me talk about areas. The basis for our area boundaries is what were in 1996 the local authority boundaries closest to the watershed. I say 1996 because some of them have changed since then. They follow the administrative boundaries closest to the watershed because our operational basis is the integrated management of water. There are problems but they are relatively easy for us to internalise and resolve. The main one is to make sure we can present information and advice based on government and local authority administrative boundaries, and the answer is, yes we can. We spend quite a bit of time ensuring our systems provide for that. We have units in each region whose business it is to liaise and advise the existing government and regional administrative units but based on standard government regions.

Q357 Chairman: Thank you very much indeed for your evidence. There are one or two further issues we would like to drop you a line about which we have not had a chance of probing you on because of time constraints. As always, thank you for your evidence today and your written evidence and also for the briefing; it is much appreciated.

Sir John Harman: Thank you, Chairman.

Further supplementary memorandum submitted by the Environment Agency

SUPPLEMENTARY MATERIAL

Q337 (transcript): *Could you provide a figure for the costs involved in providing planning advice, specifically in relation to the number of planning applications and the potential increase in such applications?*

1. Total costs associated with the Environment Agency's work in support of planning and development control are currently estimated to be around £8 million per annum. This covers the direct costs of the planning liaison workforce, IS/IT systems development and support, plus management support and overheads.

2. The Environment Agency responded to around 65,000 consultations from Local Planning Authorities (LPAs) in 2004, and around 54,000 in 2005. This reflects our focus on "higher risk" consultations (around 65% of workload) in order to free resource to deal with the expected rising workload of Local Development Frameworks.

3. We expect the number of higher risk, complex applications to continue to rise so that it becomes an ever-higher percentage of our workload as we reduce lower risk consultations through tools such as standing advice. Current trends indicate a workload of 50,000 per annum (almost all high risk and complex) by 2008.

In 2005 we responded to almost 1,500 consultations on new style local plan documents, including sustainability appraisals. We expect this workload to rise steeply as increasing numbers of English LPAs start preparing their Local Development Frameworks under the new system.

4. As well as investing in IT, the Agency has recently taken the decision to increase its annual expenditure on planning staff in order to deal with rising complex workload and the expected increase in workload for local (strategic) plans. This will be reviewed as the reduction in strategic plan work, and the increased use of IT systems and e-Planning, allows us to reconsider resource use.

Q350 (transcript): *The argument was about taking gravel from one side of a weir and putting it on the other side which might be a good bed for fish spawning, so why did the gravel have to be treated as waste?*

5. During oral evidence we offered to provide more information on this issue. In the absence of a specific example from witnesses, we are providing some general information on our policy on gravel removal from rivers.

6. The Environment Agency has a policy on the removal of gravel from rivers. This states that we are generally against the removal of gravel, other than where specifically allowed for navigation or proven to be essential in specific locations for flood risk management or water supply purposes. We developed this policy to safeguard river geomorphology and channel habitats upon which many birds, invertebrates, plant communities and fish depend. We recognise that historic gravel dredging activities caused a legacy of problems including channel destabilisation, bank erosion, poor water and sediment quality and a consequent reduction in biological diversity. This is also why we would expect any proposal to move gravels within a river to be carefully evaluated to ensure that it is both sustainable and environmentally acceptable over the long term.

7. The question of whether gravel removed from a river is defined as waste would depend on the circumstances and the intentions of the person removing it. If the gravel is being sourced for another purpose then it may not be waste, whereas surplus gravel that needs to be discarded would be waste. As we do not know the case in question we are unable to speculate as to what might have been the problem. We do have an obligation to ensure that we provide all sectors with a consistent regulatory approach to definition of waste issues. This is not pursued dogmatically and we act mindful of public interest.

8. There are examples in “flashy” rivers (those that experience large and rapid changes in flow) where in-situ gravels become shifted over time and could beneficially be moved within the river to re-create riffles and spawning beds for fish. Under these circumstances the gravel would not be a waste.

Q355 (transcript): *Can you provide some commentary on the process of risk assessment in terms of planning and flood protection?*

(Please note that in providing this response we have considered “planning” to mean the Town and Country Land Use Planning system and not the broader catchment planning aspects of flood risk.)

9. Planning Policy Guidance Note 25 (PPG25)—Development and Flood Risk, provides current Government guidance on risk assessment in terms of town and country planning and flood protection. PPG25 is currently under review and ODPM are consulting on Draft Planning Policy Statement 25 (PPS25) which strengthens the role of spatial planning in managing and reducing flood risk as well as the process by which flood risk is considered at all stages of planning. Draft PPS25 also strengthens the links between spatial planning, flood risk management planning and emergency planning. Catchment Flood Management Plans and Shoreline Management Plans are seen as providing essential information to and dialogue with the planning sector to deliver cross-organisation sustainable flood management.

10. PPG 25 and DRAFT PPS25 emphasise the need to adopt a precautionary approach to the issue of flood risk, avoiding it where possible and managing it elsewhere. The uncertainties inherent in flood prediction are recognised, together with the likely increase in flood risk due to climate change, which introduces even greater uncertainty. PPS25 also encourages Local Authorities to seek opportunities to reallocate existing development to areas of lower risk and utilise opportunities that regeneration and growth provides to reduce risk through making space for water. When allocating land in development plans or deciding applications for development at any particular location, those responsible for the decision are expected to demonstrate that there are no reasonable options available in a lower-risk category.

11. Local planning authorities should follow the sequential approach set out in PPG 25 (paragraph 30) as below:

30. *The Government looks to local planning authorities to apply the risk-based approach to the preparation of development plans and their decisions on development control through a sequential test. Developers seeking sites for housing and other development should also have regard to this test. Accordingly, in drawing up or revising policies in development plans and in considering applications for development in cases where plans do not yet reflect the following, local planning authorities should give priority in allocating or permitting sites for development, in descending order to:*

- (i) **areas with little or no potential risk of flooding (annual probability less than 0.1%)**—These areas would have no constraints on development other than the need to try to secure that development does not increase run-off from the site to greater than that from the site in its undeveloped or presently developed state;
- (ii) **areas with low potential risk of flooding (annual probability between 0.1% and 1.0% for rivers, 0.1-0.5% for coastal areas)**—These areas would be suitable for most development but essential civil infrastructure, such as hospitals, fire stations emergency depots etc, would require guaranteed access in times of emergency due to extreme flooding;
- (iii) **areas with high potential risk of flooding (annual probability greater than 1.0% for rivers, 0.5% for coastal areas), which are already extensively developed**—In practice, large parts of these areas are likely to be at only low to moderate risk of flooding because they are already adequately defended. These areas will generally be suitable for further residential, commercial and industrial uses, provided there are adequate flood defences, that buildings are designed to resist flooding, that there are suitable warning and evacuation procedures in place and that new development does not add to flood risk downstream. Such areas will generally not be suitable for essential civil emergency infrastructure unless access can be guaranteed in times of flood;
- (iv) **areas with high risk of flooding (annual probability greater than 1.0% for rivers, 0.5% for coastal areas), which are currently undeveloped, including the functional flood plains defined in paragraph 24**—These areas are generally not suitable for residential, commercial and industrial uses unless a particular location is essential, eg for navigation and water-based recreation uses and essential transport and utilities infrastructure. Where residential and other uses are permitted they should be provided with adequate flood defences, be designed to resist flooding and suitable warning and evacuation procedures should be in place. Residential uses should generally be limited to job-related accommodation, such as caretakers and operational staff. General-purpose housing or other development comprising residential or institutional accommodation should not normally be permitted. However, exceptions may need to be made where extensive areas of land fall into this category, eg in low-lying parts of eastern England, and in other locations where alternative sites in areas at lower risk are not available. In such areas, further development may be needed to avoid social and economic stagnation or blight, or to allow existing development to be adequately protected. Authorities in these areas should, however, pay particular attention to design and mitigation issues and warning and evacuation arrangements, in full consultation with the Environment Agency, other operating authorities and the emergency services;
- (v) **areas at highest risk from flooding (including those areas behind defences that offer a standard of defence less than 1% for rivers or 0.5% for coastal areas or elsewhere, where there is a significant risk that failure could lead to rapid inundation by fast-flowing water)**—These areas may be suitable for recreation, sport, amenity and conservation uses provided adequate warning and evacuation procedures are in place, and for essential transport and utilities infrastructure. Industrial, or commercial development should not normally be allowed. Further residential uses should only be permitted in wholly exceptional circumstances, where no alternative is possible, eg the operational uses noted in (iv) above, and these must be subject to fully suitable mitigation design and warning/evacuation conditions. There should be a general presumption against any extension of general-purpose residential land uses in such areas.

12. The new draft PPS25 strengthens the risk based sequential test by adding a new table D2 which considers land use vulnerability. Local Planning Authorities undertaking the sequential test are now steered to allocating land in lower flood risk areas first, and then ensuring that any development planned in areas of flood risk are compatible with that flood risk. Highly vulnerable developments, such as hospitals with A&E, Emergency services which need to operate at times of flood and sheltered accommodation, are “not to be permitted” in flood zone 3, high probability.

13. The new Draft PPS25 proposes an exception test as set out below:

In areas where there are no alternative sites for development in lower risk areas because there are either constraints on those areas or because areas of higher risk are extensive, new development may well be essential to maintain the viability and vitality of the community and deliver sustainable development. The new exception test in PPS25 provides a way of managing flood risk in a transparent and consistent way so that necessary but safe development can go ahead in such areas.

The exception test can be used where the sequential test has shown that it is not possible for the development to be located in zones of lower probability of flooding or the vulnerability of the proposed use needs further consideration. The exception test should be applied as early in the planning process as possible. In Local Development Documents it can be used to allocate the location of development and for drawing up criteria-based policies against which planning applications can be considered.

14. The exception test has four criteria, each of which must be satisfied:

- The development must make a positive contribution to sustainable communities;
- It is on developable brownfield land where this is available;
- A Flood Risk Assessment shows that the residual flood risks are acceptable and manageable within the general level of risk applicable to the area; and
- The development makes a positive contribution to reducing or managing flood risk in the area concerned.

15. Where development is proposed in a flood risk area (zone 2 and 3) or a development greater than 1ha for flood zone 1 (to take on-board surface water and increasing risk elsewhere), a Flood Risk Assessment (FRA) must be submitted with a planning application to ensure no inappropriate development takes place and that occupants remain safe in times of flood.

16. The Environment Agency is a statutory and non-statutory consultee for various elements of the spatial planning process. We are a “Key” consultee for the Regional Spatial Strategy and Local Development Framework processes, along with their associated Sustainability Appraisals. This allows us to ensure all new plans and strategies include appropriate policies on a number of key issues, including Flood Risk.

17. In addition, we are a statutory consultee for a number of individual planning applications, dependent on their type and/or location. These are set out in Article 10 of the General Development Procedure Order 1995. At present we are not a statutory consultee for flood risk, although we are a statutory consultee for “development involving the carrying out of works or operations in the bed of or on the banks of a river or stream”. Local planning authorities are simply advised in PPG25 to consult us when an application for development raises flood risk issues. Most local authorities do appear to consult us, but there is a danger that we may not always be consulted when there is a flood risk issue. ODPM is at present consulting on a proposal to make us a statutory consultee when development is proposed in areas of flood risk as part of the PPS25 consultation package.

Do you consider the existing mechanisms of evaluating and responding to risk messages to be as good as they should be?

18. The principal method of evaluating and responding to risk messages is through the production of an appropriate Flood Risk Assessment (FRA).

Whilst PPG25 (Appendix F) provides information on what an appropriate FRA should consider, our experience has shown that local authorities and developers constantly seek further guidance from the Environment Agency. ODPM plan to release a Practice Guide in support of the new PPS25 and this document will help provide more information and assistance.

19. Unfortunately, four years after the publication of PPG25, large numbers of consultations are still being submitted to local planning authorities (and then the Environment Agency) without an appropriate/satisfactory FRA. This deprives us of important information we need to determine our response to flood risk issues. The lack of a satisfactory FRA accounted for over half (53%) of all Environment Agency sustained objections on flood risk grounds to planning applications in 2004–05. Draft PPS25 however provides greater clarity and stronger policy on FRAs, requiring Regional FRAs and Strategic FRAs as part of Regional Spatial Strategies and Local Development Frameworks, and site-specific FRAs to accompany individual planning applications for development in flood risk areas. In addition ODPM are proposing to introduce a standard planning application form which would require developers to submit an appropriate FRA before a planning application could be registered.

20. Some local planning authorities continue to grant planning consents in flood risk areas where the Environment Agency has lodged a formal objection on flood risk grounds. ODPM are currently seeking views on proposals for a standing flooding direction in respect of major developments for which a planning authority proposes to grant permission, despite there being a sustained objection from the Environment Agency on flood risk grounds. If adopted, this standing flooding direction will help ensure appropriate responses to flood risk messages where new development is concerned.

21. There is always room for improvement in mechanisms and responses in respect of planning and flood risk. However, the proposed PPS25, together with Government, local authorities, developers and the Environment Agency learning from experience will all contribute to this goal.

ADDITIONAL QUESTIONS

1. *Why have 40% of permits issued to waste operators to meet the IPPC and Landfill Directives been subject to appeal?*

22. Our records show that around 26% of the landfill permits determined have been subject to appeal. It should be noted that nearly 50% of the total number of landfill appeals were against our refusal to permit. Our revised generic landfill permit will lead to the majority of these operator appeals being largely resolved.

23. The landfill sector does have a high appeal rate compared with other sectors brought into IPPC. The transition of long-established landfills into a new style of regulation (PPC), whilst also needing to meet the tougher standards set down by the Landfill Directive was always going to be challenging for all concerned. Many existing sites are either not able to meet the Landfill Directive requirements, or would require prohibitively expensive works and a number have closed as a result. A number of fundamental policy issues arise from the need to implement the Landfill, IPPC and Groundwater Directives at the same time. Some of these will be determined through proceedings in the High Court, others are being resolved through the appeal process. 29 of the 48 appeals against conditions are currently held in abeyance, meaning that we are working with the operator to seek resolution. This does not represent the mass permitting problems alleged by some.

Why have less than half of the applications been issued?

24. We did not receive all the applications at the same time. Applications were phased in “tranches” so that we dealt firstly with the higher risk, more complex sites.

25. Many of the outstanding applications were received in recent tranches and are therefore still within their determination timescale. We did recognise the challenges that PPC permitting presented to us and the industry, and establishment of our Strategic Permitting Groups has helped to cut the average determination time for landfill applications by 20%. Communication with industry has also improved as the re-permitting process has progressed, which is also assisting in resolving permitting issues more quickly.

What are the current costs to the Agency of this “administrative inefficiency”?

26. The grant of a PPC permit is not a simple administrative process. We have to make a detailed technical determination of a site specific landfill proposal that, if approved, will be relevant to that local environment for many decades. Noting this and the landfill sector’s difficulties with PPC-style regulation, it is perhaps not surprising that in seeking to discharge our obligations to the environment we sometimes find ourselves at odds with some of the applicants. We have done our best to resolve the conflicts without unnecessary expense, but there remain several fundamental differences of view. These stem primarily from a lack of clarity in the Directives, and it is necessary—and in everyone’s best interests—that these are resolved through the formal mechanism of appeals or judicial reviews. We believe that our revised generic landfill permit, developed in light of experience and further understanding from Government, will lead to the majority of operator appeals being largely resolved. We do not accept that this process has been subject to “administrative inefficiency”.

2. *The Government is currently consulting on the content of the proposed Home Information Packs. Do you believe a flood report for the property should be included within these Packs?*

27. Yes. Across England and Wales there are over five million people in two million homes at risk of flooding, yet two-fifths of people are unaware of the threat to their lives and their property. We therefore believe an assessment of the risk of flooding to a property is an essential element of the conveyancing process.

— *If so, would the Agency charge for providing the relevant data?*

28. We understand from our discussions with ODPM that Home Information Packs (HIPs) will be provided by a number of commercial organisations. We would charge for the incorporation of our data in these commercial products based on their use of our Intellectual Property.

29. As we understand it, the intention is that HIPs will be provided in the form of commercial products tailored to the needs of the vendor, rather than vendors making individual enquiries to owners of specific data sets. It would therefore be unlikely that we would be asked to provide data direct to an end user for the purposes of HIPs.

— *How does the Agency calculate the charges it makes for providing data? Are individuals and businesses charged the same rates?*

30. We charge commercial royalties on businesses who re-sell our data. We calculate such charges by reference to market forces and in accordance with the Reuse of Public Sector Information Regulations (ROPSI), the Treasury “Wider Markets” initiative and other relevant competition law.

— *Where else other than the Agency can this data—if required—be obtained?*

31. As the statutory body responsible for managing flood risk, we have invested heavily in understanding flood risk and we are recognised as the authoritative source of flood risk information for England and Wales.

32. We currently license the data relating to flood risk to many commercial providers of property search products, many of whom we expect to become providers of HIPs. All resellers of our data receive it on equal and transparent terms (in accordance with the RoPSI Regulations and the OPSI's Information Fair Trading Scheme).

33. Our flood risk information is also provided to some 500 government, public and not-for profit bodies, including:

- Association of British Insurers, and through them to insurance companies
- Central Government Departments
- Welsh Assembly and Government Offices
- Local Authorities for spatial and development planning
- Emergency services and emergency planners for planning and responding to floods

34. We make our information as widely available as possible so there is a clear and consistent message on flood risk from rivers and the sea in any location across England and Wales, and that message is based upon the best available data.

3. *To what extent is your increasing involvement in policy-making a consequence of having to interpret broadly written and poorly-defined primary legislation?*

35. We feel that there is much that could be done to codify and define the structure of regulation. We see enormous advantages in developing a simpler, consolidated regulatory framework that will reduce the burdens on both business and ourselves.

36. EU environmental legislation is often drafted in “piecemeal” fashion, resulting in incoherence, inconsistency and overlapping requirements. This can lead to primary legislation that is poorly defined. As an example of confusion, even the term “pollution” is defined differently in different EU Directives.

37. This has the effect that EU law is transposed into national legislation in a piecemeal fashion and cannot be easily integrated into existing legislation. Together, this silo approach at EU and national level results in legislation that is piecemeal, overly complex and leads to delayed or ineffective implementation.

38. We believe that the EU should adopt a common regulatory code for the environment. A common code could cover such issues as definitions, permitting, consultation periods, and monitoring arrangements. A first step would be to start with Waste legislation. This would reduce the administrative and financial burdens on the public and business, since the legislation would be clearer and easier to understand. It would also make transposition easier for Member States.

39. There is much that can be done at a national level too. Again, the norm is for legislation to be developed in separate regulatory silos. The result is a different format each time, with different administrative requirements. A common regulatory framework would avoid this.

40. We are now working with Defra on developing a common regulatory framework for two major licensing systems¹ from differing EU directives. We are seeking to extend this to other regimes (and other EU directives) in the future.

41. Given the incoherence and inconsistencies in legislation, the EA from time to time fills a policy void as we have to take the regulations, apply them at an operational level and make them fit real life situations. A purely legalistic view cannot do this.

42. We think it is time to re-visit the policy/delivery interface with Defra. We would like to see greater delegation to the EA of operational policy and regulatory decisions, for example exemption-making powers. We think this would allow us to reduce inconsistencies across different regimes and increase the effectiveness and responsiveness of the regulatory system. It would also be more transparent to the public and business.

43. In the meantime, and based on our regulatory experience, we have put forward numerous specific simplification proposals, as potential regulatory reform orders, to improve specific pieces of legislation.

4. *How satisfied are you that Defra consults you often enough in the initial stages of discussions?*

44. We are encouraged that there is an increasing commitment from Defra to involve us earlier in the decision-making process. We are seeing improvement.

¹ The Environmental Permitting Programme is aiming to combine the major licensing regimes of Pollution Prevention & Control (PPC) and Waste Management Licensing.

45. Historically, Defra regarded EA as merely technical support and did not engage us in policy discussions. In the past there was a difference in focus between Defra and the EA with Defra's focus sometimes on avoiding infraction.

46. This can lead to a compressed timescale to plan for implementation, additional administrative burdens and increased business uncertainty.

47. However, as stated above, there is now recognition of the need to bring the EA to the table earlier. There have been two very positive initiatives. Firstly, a programme and project management (PPM) approach has been introduced for developing policy, regulation and negotiating positions. This allows a more systematic involvement of key stakeholders, including the EA at the earlier stages of policy development. Secondly, we have signed a Concordat on EU & international Relations with Defra, which encourages the earlier involvement of the EA in EU decision-making.

48. We have already seen the benefits of these approaches, for example, in the work on the revision of the Emissions Trading Directive. In our experience, joint project management has resulted in better working between the EA and Defra; effective joint planning; open communication and a greater focus on deliverables.

49. The initial PPM projects have been a good step forward but for it to make a real difference, the discipline of PPM has to be rigorously applied throughout Defra. It is not sufficient for it to be adopted selectively.

5. The Committee received evidence that suggests the Agency is failing to meet its deadlines for implementation of the Habitats Directive. Why are you failing to meet your targets on creation of saltmarsh and other wetland habitats?

50. Our annual flood risk management performance to create saltmarsh and other Biodiversity Action Plan habitats depends on the size and number of schemes being progressed in any particular year. Consequently, there will be years when a major scheme is completed and the target is more than achieved and others when schemes have not yet delivered habitat increase.

51. For example, the Paul Holmes Stray managed retreat scheme on the North shore of the Humber estuary in 2003 created 80 hectares of saltmarsh, whilst the Alkborough managed retreat scheme (also on the Humber) will create about 400 hectares of saltmarsh in the next two to three years. There will also be years when schemes which, because of limited opportunities, create only small areas of habitat creation are completed. The result is a "spikey" performance and years when the 200 hectares annual target is missed.

How can this be rectified?

52. We recognise that more needs to be done to maximise opportunities and establish a more effective cumulative habitat creation programme. To help with this, we are developing, with English Nature's advice, detailed Regional habitat creation targets. This will mean that habitat creation targets are built into flood risk management programmes at an early stage and responsibility for delivery is firmly delegated to a more local level, within an overall national strategic plan. This should help to improve delivery because up until now there have not been formal local targets to deliver proactively, rather than just opportunistically, the necessary actions.

Should Natural England have direct responsibility for all Habitat Action Plans, with the Agency taking an advisory role where these coincide with flood risk management responsibilities?

53. We recognise that the UK Biodiversity Action Plan (UKBAP) process is a complicated one, but giving Natural England direct responsibility for all 45 Habitat Action Plans would not improve performance. This is because delivery would still depend on actions by the operational organisations, which have the biggest influence on specific habitats. The Environment Agency leads on key wetland habitats since we have the biggest influence on the key issues of water quality, quantity and flood risk management. The current arrangement, whereby lead responsibility reflects the influence of operating authorities such as the Environment Agency, increases the chances of action being delivered, because there is a corporate responsibility to deliver a Government target.

6. *Further information on Environment Agency Charging—how the EA responds to requests from business for detailed information on the breakdown of charging, including details of generic and web-based documents and specific responses.*

54. The Environment Agency provides an extensive range of communications and opportunities to discuss charges in an open and transparent way:

- a. Consultation document—this provides details of the impact of cost increases on different types of charges, for groups of chargepayers, and breaks down the various elements of any charge increases.
- b. Leaflets—where there are significant changes to schemes or charges we send out leaflets with bills for annual charges which provide an explanation of the reasons for the changes and a breakdown of the elements which make up any increases (see Annex A)².
- c. Website—we publish detailed information on the principles and processes involved in developing our charging schemes and setting charges, as well as providing details of the charges for each of our schemes. More specifically, regarding the breakdown of our charges:
 - For our main charging schemes, we publish leaflets that break down the reasons and impact of any charge increases.
 - We have placed a document on our website entitled “Costs and charges for environmental licences” which describes how we bring charging principles together in order to calculate costs and charges. Charges for Pollution Prevention and Control permits are used as examples (see Annex B)³.

http://www.environment-agency.gov.uk/business/444669/?version=1&lang=_e

- d. Stakeholder fora—we engage with our stakeholders through a number of standing groups (eg EP Charges Review Group) and ad hoc meetings with trade associations (eg ESA) where we respond to requests for information, including on the make up of charges.
- e. Specific requests—requests received from individuals are usually concerned with the individual’s own charges. These are usually channelled through our National Customer Contact Centre phoneline (NCCC), our Finance Departments (Exchequer and Financial Accounting Service (EFAS) or EA Wales Finance) or come direct to the Charges Team, either via stakeholder fora, by e-mail (we advertise a specific e-mail query address in our consultation documents and leaflets) or post.

Where a query relates to the basis or calculation of the charge, this is usually dealt with by EFAS or EA Wales Finance, with reference to local (Regional) Environment Officers where the query is of a technical nature. Other charging queries, or where the basis of the charge is disputed by the chargepayer and cannot be resolved locally, are referred to the Charges Team in Head Office for a decision and response. This ensures a consistent approach and response to chargepayers.

Examples of recent specific requests

Received through stakeholder groups:

- COMAH Charging Review Group—breakdown of the hourly charge out rate, supplied at the meeting on 26 October 2005 (Annex C)
- Advisory Committee on Packaging—presentation to committee on 6 October 2005, breaking down the costs and charges for producer responsibility (Annex D)

Received from individual chargepayers/businesses:

- Typical query received via the NCCC re the method of charging for disposing of sewage effluent (Annex E)

See the attached documents for more information (please note that customer details have been removed from the attached response to a typical query).

We believe we provide transparent information about changes and how they are reached. Regulated industry may not like the final outcome but they are fully involved in the process.

Environment Agency

February 2006

² Not printed. Available at:

http://www.environment-agency.gov.uk/business/444669/587179/504799/508992/?version=1&lang=_e

³ Not printed. Available at:

http://www.environment-agency.gov.uk/commondata/acrobat/costs_and_charges_1017235.pdf

Annex C

ENVIRONMENT AGENCY

ANALYSIS OF 2004–05 HOURLY RATE

	£	%
Gross salaries of staff actually carrying out COMAH work and their managers and support staff	63	55
General admin. expenditure	13	11
Corporate services	13	11
Operational management and strategy	23	20
Capital charges	3	3
Total hourly rate	115	100

Annex D

PRODUCER RESPONSIBILITY: UNDERSTANDING THE COSTS AND CHARGES

INNES GARDEN, EP CHARGES PROGRAMME MANAGER

OUTLINE OF PRESENTATIONS

Overview of:

- how we regulate;
- how cost worked out;
- how charges are derived;
- budget setting;
- performance monitoring.

Important to see whole picture so understand how costs derived.

PACKAGING REGULATED BY:

One central National Waste Registration Unit:

- 10 staff dedicated to registration work.

Compliance and enforcement:

- 40 person years of direct regulatory effort;
- Delivered by multifunctional staff;
- So of the order of 300–400 staff working part time on packaging;
- Based in 26 Area Offices (for local delivery).

REGULATION OVERSEEN BY:

Agency Process Management:

- Oversee the regulatory process.
- Audit service delivery.
- Maintain systems (eg application forms guidance etc).

Agency Policy:

- Set strategic direction.
- Provide policy advice/interpretation.
- Support Government departments.

TRANSPARENCY OF CHARGES

Working with stakeholders on information to help explain charges.

Looking to develop a standard methodology.

Provide information that chargepayers want in an efficient manner.

More informed debate.

But limited Finance resource!

PRINCIPLES OF CHARGING

Government Policy:

- Polluter Pays Principle.
- Treasury Guidance.
 - Includes definition of relevant costs.

Hence regulator charges operator for:

- permits inspection compliance etc;
- designed to recover all relevant costs.

LEGAL CONSTRAINTS

Cost Recovery:

- Can only recover the cost of our work.

Cost Reflectivity:

- Charge levels reflect the level of effort.

Ring fencing:

- Income is ring fenced to each charging scheme.
- No cross subsidising.

CONTROLS ON CHARGES

Charge setting:

- Consultation before changes.
- Approval by Defra SoS (and Treasury).

Ongoing checks include:

- Defra, DTi and Treasury need to be satisfied.
- Annual audits of accounts (NAO).
- FMPR.

STANDARD APPROACH TO FINANCIAL MODELLING FOR EP

All charges derived from a standard approach:

- Builds from bottom up.
- Starts with effort required for eg Producer Responsibility.
- Then adds on all other relevant costs.
- Calculates total costs.
- Derives charging levels.
- Using December 2004 version—updated for budget allocation purposes.

DIRECT COST OF STAFF INVOLVED IN REGULATION:

Profile of Producer Responsibility activities
multiplied by

Unit times for different types of PR activity

Gives Effort Profile.

Apply staff profile and costs

Gives Direct Costs.

EXAMPLE—REGISTRATION DETAILS

<i>Registration Summary</i>	2005–06	2006–07
<i>Number of Company Registrations:</i>		
Individual Registrants	528	500
Scheme Registered members	4,485	4,500
Total Registrations	5,013	5,000
<i>Number of Registered Company Subsidiaries:</i>		
First 4 in a group	244	350
3rd to 20th in a group	182	125
Remainder in a group	—	25
Sub-total Registered Company Subsidiaries	426	500
<i>Number of Scheme Registered Subsidiaries:</i>		
First 4 in a group	2,120	2,100
3rd to 20th in a group	650	750
Remainder in a group	22	150
Sub-total Scheme Registered Subsidiaries	2,792	3,000
Total Number of Registrations	8,231	8,500

UNIT TIMES

Data available from:

- Historical experience.
- Previous workload models.
- Discussions with:
 - Policy.
 - Process Management.

REGISTRATION UNIT TIMES

<i>Registration Hours Profile</i>	<i>Unit Times (hours)</i>	
Individual Registrants		2.90
Scheme Registered members		1.00
Individual and Scheme Registered Subsidiaries		0.00
	<i>f</i>	<i>Unit Times (Hours)</i>
Preparation of Registration Pack	1	150

REGISTRATION WORKLOAD = NO OF REGISTRATIONS * UNIT TIMES

<i>Registration Hours</i>	2005–06	2006–07
<i>Company Registration Hours:</i>		
Individual Registrants	1,531	1,450
Scheme Registered members	4,485	4,500
Total Registrations	6,016	5,950
<i>Registered Company Subsidiaries:</i>		
First 4 in a group	—	—
3rd to 20th in a group	—	—
Remainder in a group	—	—
Sub-total Registered Company Subsidiaries	—	—
<i>Scheme Registered Subsidiaries:</i>		
First 4 in a group	—	—
3rd to 20th in a group	—	—
Remainder in a group	—	—
Sub-total Scheme Registered Subsidiaries	—	—
Total Registration Hours	6,166	6,100

STAFF COSTS

Includes:

- Salary.
- Employer's NI contributions.
- Employer's pension contributions.
- Training.
- Travel and subsistence.
- Equipment Tools and Materials.

Plus:

- Cost of Management.
- Any locally provided specialist support.

PR REGISTRATIONS—HOURLY COSTS

Registration Hours

<i>Variable Costs</i>	<i>Cost per hour (£)</i>	<i>Time Percentage (%)</i>	<i>Weighted Cost (£)</i>
Grade 1	17.87	0	0.00
Grade 2	23.00	80	18.40
Grade 3	27.22	10	2.72
Grade 4	34.64	0	0.00
Grade 5	45.77	10	4.58
Grade 6	62.70	0	0.00
Grade 7	68.61	0	0.00
Totals		100	25.70

REGISTRATION DIRECT STAFF COSTS

<i>Registration Hours</i>	<i>2005–06</i>	<i>2006–07</i>	<i>2005–06 Costs</i>	<i>2006–07 Costs</i>
<i>Company Registration Hours:</i>				
Individual Registrants	1,531	1,450	£39,352	£37,265
Scheme Registered members	4,485	4,500	£115,265	£115,650
Total Registrations	6,016	5,950	£154,616	£152,915
<i>Registered Company Subsidiaries:</i>				
First 4 in a group	—	—	—	—
3rd to 20th in a group	—	—	—	—
Remainder in a group	—	—	—	—
Sub-total Registered Company Subsidiaries	—	—	—	—
<i>Scheme Registered Subsidiaries:</i>				
First 4 in a group	—	—	—	—
3rd to 20th in a group	—	—	—	—
Remainder in a group	—	—	—	—
Sub-total Scheme Registered Subsidiaries	—	—	—	—
Preparation of Registration Pack (hours)	150	150	£3,855	£3,855
Total Registration Hours Costs	6,166	6,100	£158,471	£156,770

TOTAL “DIRECT” STAFF COSTS

Costs arise from:

- Registration.
- Compliance.
- Accreditation.

ADDITIONAL COSTS:

Covers items such as:

- Accommodation/heating/lighting.
- Locally supplied Legal, Personnel support.
- Field staff computers, email, and other software support.
- Policy and Process Management.
- Contribution to other Head Office costs.

TOTAL COSTS

<i>Costs arise from</i>	<i>How Derived</i>	<i>Total Cost (£K)</i>	<i>% of total</i>	<i>Split</i>	
Costs of staff doing packaging work Costs of direct management of these staff	From modelling of “Direct Costs”	1,969	49.7		
Office Accommodation Heating Lighting	From EP Charging Cost allocation model	741	18.7		
Locally provided support services eg Legal Personnel	Uses Time Recording data			£3,145	79.3%
Computers and software support	Returns from Regions	243	6.1		
Current Cost Depreciation and Rate of Return	Based on Treasury Guidelines	63	1.6		
National Processes Management National Policy	Calculated from “Direct Costs” of staff involved	129 212	3.3 5.3	£212	5.3%
Contribution to relevant costs of running the Agency	From EP Charging cost allocation model	608	15.3	£608	15.3%
Total		3,965	100.0	£3,965	100.0%

COST OF RUNNING THE AGENCY

Each charging scheme picks up its relative contribution to:

- Board, Chief Executive, Directors.
- Head Office Support Functions eg:
 - Personnel, Health & Safety, Finance, Procurement etc.
- Head Office accommodation.
- Research and Development.
- National Centres and Services.

CHARGES

Set to recover costs.

Individual charges related to work and cost of individual items eg:

- registration;
- compliance (subsistence);
- accreditation.

Charges targeted within these bands if significant difference in effort:

- eg reproprocessors above/below de minimus.

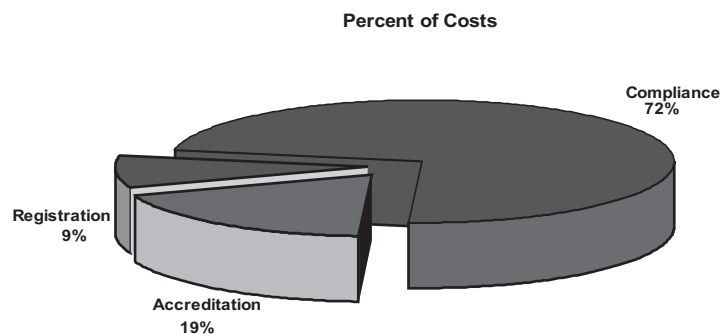
PR CHARGES

<i>Income Charges</i>	
<i>Main Registrants:</i>	
Individual Registrants	£768.00 EA registration companies—paper 500
Scheme members	£558.00 Scheme Registered companies—4,500
<i>Subsidiaries—Compliance</i>	
First 4 members of a group	£180.00 per subsidiary
5th to 30th members of a group	£90.00 per subsidiary
Remaining members of a group	£45.00 per subsidiary
<i>Reprocessors/exporters</i>	
Above de minimus	£2,590.00 Number of accredited reprocessors/exporters above de-minimus
Below de minimus	£500.00 Number of accredited reprocessors/exporters below de-minimus

COMPARISON OF INCOME AND COSTS

	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11
	(£)	(£)	(£)	(£)	(£)	(£)
<i>Summary of Income</i>						
Individual Registrants	405,504	405,504	405,504	405,504	405,504	405,504
Scheme members registration	2,502,630	2,502,630	2,502,630	2,502,630	2,502,630	2,502,630
First 4 members of a Group	425,520	441,000	441,000	441,000	441,000	441,000
5th to 30th members of a group	74,880	78,750	78,750	78,750	78,750	78,750
Remaining members of a group	990	7,875	7,875	7,875	7,875	7,875
Reprocessors/exporters—Above de minimus	523,180	647,500	647,500	647,500	647,500	647,500
Reprocessors/exporters—Below de minimus	52,000	50,000	50,000	50,000	50,000	50,000
Total Charges Income	3,984,704	4,133,259	4,133,259	4,133,259	4,133,259	4,133,259
<i>Summary of Costs</i>						
Total Registration Costs	353,005	342,327	342,361	342,361	342,361	342,361
Total Compliance Costs	2,875,662	2,866,729	2,865,979	2,865,979	2,865,979	2,865,979
Total Accreditation Costs	655,637	756,413	756,542	756,542	756,542	756,542
Grand Total Costs	3,884,304	3,965,469	3,964,883	3,964,883	3,964,883	3,964,883
Inflation		99,137	198,273	297,410	396,547	495,684
Grand Total plus inflation		4,064,605	4,163,157	4,262,293	4,361,430	4,460,567
<i>Difference between Income and Costs</i>	<i>100,400</i>	<i>68,654</i>	<i>–29,898</i>	<i>–129,034</i>	<i>–228,171</i>	<i>–327,308</i>

BREAKDOWN OF COSTS



BUDGET ALLOCATION

Costs arise from	How Derived	Total Cost	Allocated to
Costs of staff doing packaging work	From modelling of "Direct Costs"	£1,998	Region/Area Budgets
Costs of direct management of these staff			
Office Accommodation Heating Lighting	From EP Charging cost allocation model	£741	
Locally provided support services e.g. Legal Personnel			
Computers and software support		£243	
Current Cost Depreciation & Rate of Return	Based on Treasury Guidelines	£63	
National Processes Management	Calculated from "Direct Costs" of staff involved	£129	Relevant Head Office Budgets
National Policy		£212	
Contribution to relevant costs of running the Agency	From EP Charging cost allocation model	£608	
Total		£3,994	

PERFORMANCE MANAGEMENT

Regions/Areas/Head Office:

- assigned budgets;
- set Key Performance Indicators (KPIs).

Hierarchy of KPIs.

KPIs monitored up to Director/Board level to check on service delivery.

EFFICIENCY SAVINGS

Agency has set efficiency targets to meet.

These are:

- 2005–06: £30 million.
- 2006–07: £25 million.
- 2007–08: £25 million.

TYPICAL QUERY RECEIVED VIA THE NCCC RE THE METHOD OF CHARGING FOR
DISPOSING OF SEWAGE EFFLUENT

Dear

DISCHARGES TO CONTROLLED WATER CHARGES: REFERENCE XXXXX

I refer to earlier correspondence concerning charges for your consent and I am pleased to note that the charge in respect of your consent has now been corrected and that your account will be credited £172.47 as a result of this.

The charging scheme, which has been in place since 1999, stipulates that “*where a consent or authorisation restricts a discharge from taking place for a consecutive period of three months or more during a year, the charge shall be reduced by 4% per calendar month of restriction*”. This assumes a special condition is included on the consent which states the months during which discharges can be made.

You will appreciate that the aim of subsistence charges is to recover the full costs associated with the regulatory activities. There are activities that need to be carried out regardless of when discharges are actually made, such as collection of environmental chemical and bacteriological samples, maintenance of public registers, technical investigations and dealing with enquiries from the public. Consequently we can only reduce charges to a certain level and under specific conditions. We are, however, carrying out a fundamental review of this scheme and will take into account any issues such as this during the development stage.

Please find enclosed a leaflet which provides details on the Parliamentary Ombudsman who you may contact on issues such this.

I trust this clarifies the position.

Charges Project Accountant

Further supplementary memorandum submitted by the Environment Agency

ENVIRONMENTAL LIABILITIES DIRECTIVE

This Directive extends the polluter pays principle and introduces an EU-wide regime to ensure that those responsible for environmental damage are liable for the costs of prevention and remediation of that damage.

Although the Environment Agency (EA) already has extensive powers to deal with environmental damage, the Directive places new duties on the EA, as we are one of the main competent authorities for its implementation. Current work suggests that around five significant pollution incidents may be caught by the Directive each year, with an additional highly significant incident every five years or so.

The EA has been a member of the Defra Steering Group since it began, and has contributed to Sub-Groups where appropriate.

We are not currently a member of the Stakeholder Consultation Group, but do not feel this has been necessary given our involvement with the Steering Group. Outcomes of the Stakeholder Group are reported back to the Steering Group, and the EA has also attended seminars to discuss the Directive along with business and trade bodies.

We understand that Defra plan to go to public consultation on the transposition policy options and preferences for the Directive in spring 2006. We have contributed both to drafts of this consultation document and the draft Regulatory Impact Assessment.

Environment Agency

March 2006

Written evidence

Memorandum submitted by Louis Jankel

1. *How successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities;*

The Environment Agency (EA) is not always master in its own house and has to endure frustrations from legislators. A recent example is “Chemicals entering the environment” where the white paper proposals are seen as economically too onerous on the industry; meanwhile less ethical elements put our environment at risk.

In what the EA attempt they manage to achieve significant impact and effect. Their excellent implementation of the plethora of EU water quality regulations is an example to the other national environment management departments across Europe.

2. *Whether the Agency operates efficiently and provides good value for money;*

Within what they do, they have a culture that is “value” centred. In some areas, they are very efficient with their use of money. I would recommend River Thames Navigation section where real initiatives to produce good value are involving not just all levels of staff but stakeholders as well.

The antithesis of this is the current consultation on Water Abstraction. Here the EA has been “brow beaten” by the water companies into removing any element of incentive charging on annual water consumption. If it is policy to persuade the public to economise on water use, then why should not the water companies to do the same? What a marvellous opportunity to force the water companies into efficiencies by charging them more for water if they do not improve performance. I would suspect water loss from leakage might improve dramatically if the water companies’ P&Ls became involved. This Water Abstraction consultation is not one of the EA’s finer works and if enacted in current form will rebound with considerable bad publicity.

3. *The structure, governance and accountability of the Agency.*

See the reply to item 9.

4. *Its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency’s role in the planning system.*

The example I offer I have observed over the past three months. Recently the EA set the annual increases in navigation charges to be paid by their customers. The “agenda” was dictated entirely by Defra and this caused serious conflict between the EA and their customers. The history to the saga is not uncommon. After some 25 years of under-funding by government on navigation infrastructure, Health & Safety has demanded a significant increase in Grant in Aid (GiA) paid by Defra to the EA to regularise and renovate the assets. The cost has been a further £5 million extra GiA for each of the years 2005/6/7. Defra effectively demanded that the EA impose significant increases on their sorely grieved customers of some 8.5%. [The history, unknown or unacknowledged by Defra, was that in the 1980s a 25% license increase was agreed between the NRA and users to generate a fund to enlarge three small constraining locks. One lock, Hambleden, was completed but the remaining funds, supposedly ring-fenced, were arbitrarily absorbed for general repairs and the GiA reduced by the amount of the fund. This renege promise still rankles with users especially as the 25% license increases still apply. This bad faith has never been acknowledged by Defra and even until today causes significant difficulties and suspicion for the EA’s relationship with River Thames users.] At the very last moment, the final 2006 license settlement was grudgingly accepted by Defra at 6.9%. There is real concern now that Defra may “punish” users and the EA by declining to continue the extra capital GiA needed to overcome the past under-funding. There is a compelling argument that requires a continued GiA at the current level for another eight years! This capital requirement for navigation is over and above that needed for flooding protection although both are inextricably linked. The commitment by Defra to this planning need seems to be used to imposed conditions when Defra wish to dictate EA policy.

5. *The Agency’s relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services.*

This is an area that the EA has been active and successful save for the point covered in answer 9.

The EA, where it interfaces with the public, has made significant efforts at improving communication and do try to make sure what they say is what is heard.

6. *The Agency’s responsibilities for flood defence and flood mapping, including guidance to the public.*

General “ignorance” is endemic among the public. Living in an area subject to flooding leaves me bemused by the general indifference by the population to the problems of flooding, until that is, water appears where it should not. Flooding happens somewhere else—until! Hold a meeting on flood precautions in the autumn and nobody will turn up. Hold a meeting after a wet winter when flooding occurred and the hall will burst to overflowing with irate members of the public. It will take a flooding disaster to bring the matter home to the public. In the mean time, information is available. Further money spent on advertising the warning system would be of suspect value.

7. *How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency.*

Time will tell but it is to be hoped that the general management of the environment will improve. The committee will be monitoring this and it must be left there initially.

8. *How the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity.*

There seems to be a real desire to co-operate and, from what I have seen so far, harmony reigns.

9. *The Environment Agency's forthcoming corporate strategy 2006–11.*

There are two major items here.

The first covers the item of the strategy that is described as the “Big Picture” (page 5 of the strategy consultation document). I use the analogy that this section is a Vermeer when what we need is a Rubens. The 2006–11 should be a part of a much greater strategy that covers the next 50 years or longer. Capability Brown designed his landscape gardens with the certain knowledge he would never live to see the finished product. This sort of planning dimension by the caretaker of the environment is an anathema to political government that struggles to think as much as five years ahead. A two generation long term strategy is a missing must.

The second item is another omission and that is referred to in previous “replies”.

The EA has taken a stance that must have been based on budgetary considerations. If this is the case it is no less wrong. Defra and the EA have a duty of care for the environment. They have been charged and assumed the task of preparing government and the public for the needs to improve the conditions under which we shall continue to live. The existence of climate change has introduced a degree of guesswork as nobody knows quite where we are going. Currently the UK could be facing a general increase in temperature and a shift into a “Mediterranean climate”. On the other hand there are those that suggest that the Gulf Stream will cease and we shall experience a significant drop in average temperatures! Whatever the truth there is uncertainty. It must be the duty of the EA to cover all contingencies. To do this best is to educate the public in coping with each and every significant change that manifests to allow the least impact on the ecology. Currently, save for a single very successful instance, the EA has no involvement in any form of formal education. There is no central education budget nor any form of educational department or any relationship with any educational body. Certainly some small local initiatives exist but only with other people's goodwill and money. However, the mentioned exception, all the more relevant because of its success, is the learning centre at the Thames Barrier.

The EA should be in the educational lead position, influencing the Department for Education and Skills to introduce significant ecological and environmental studies at Key Stage One, Two and Three. The EA should be closely involved in the delivery of tertiary degree education, fashioning these courses to have relevance to the likely needs of the industry during the life of the graduate. A simple cost benefit analysis for the next 25 years covering the benefit of an inclusive education involvement by environmentalists would show potential savings of billions over the period. An ingrained attitude to environment and ecology needs in today's youth and tomorrow's public, must be very beneficial. The EA consider that others are currently charged with the educational task, but who is better able to know what to include within any curriculum? The reality is that currently the EA has abrogated its responsibility by a presumption of delegation and does not even bother to monitor any supposed delegation! There is no ecology or environment lobby of the stature that should exist if the EA undertook the job. The committee should respectfully ask the EA to justify such an omission.

One final emotive point. There are some 800 schools within five kilometres of the River Thames. Each year, a number of children drown in The Thames from preventable accidents. Every summer the police spend significant time chasing children jumping into the water from river infrastructure. What is the cost of a simple video to highlight the dangers of swimming unsupervised in the river? Even better three videos, one directed at each of the educational key stages. Such a video should be used at any school for those PE lessons that are rained off. The cost of such a video must be worth the money if it prevents the death of just one child.

Louis Jankel

November 2005

Memorandum submitted by WyeCycle

EXECUTIVE SUMMARY

WyeCycle is a community business, carrying out a wide range of environmental work in the village of Wye, Kent. Established in 1989, we operate the longest running kerbside collection of organic material in the UK, alongside dry recyclables, furniture, WEEE, HHW, biodiesel production, Farmers Markets. Average waste production in Wye is 250kg/hh/yr, compared to the UK average of around 1,000kg.

WyeCycle have for many years had an uneasy relationship with the Environment Agency, with the fundamental issue being the failure of waste licencing legislation to recognise the existence of small scale community enterprise. This long running dispute culminated in WyeCycle recently appearing in court for not having a waste management licence, and we use this experience as the basis for our submission to this enquiry.

The attached documents set out the flaws within the current waste licencing regime as it relates to the community sector. Our proposed solution, as submitted to Sir John Harman, is also attached.

We thank the committee, in anticipation of some swift action to resolve the current problems we describe.

Richard Boden
WyeCycle

Firstly, three facts

1. Of the 20 million households in the UK, none have their domestic refuse managed in a more environmentally benign manner than the 1,000 households served by WyeCycle. Domestic waste levels in Wye have been reduced to an average of 250kg/hh/yr, against the national average of 1,000kg, and WyeCycle are recognised as being pioneers in the field of sustainable waste management. We have created four full time jobs, and provide work experience and volunteering opportunities for people with mental health and other problems.

2. In 16 years of operation, WyeCycle have never caused, or been accused of causing, a single pollution incident. Let's be quite clear, the charges against WyeCycle are not that we have polluted the environment but that we have operated without a waste management licence.

3. Waste licensing legislation, as it relates to the community sector, is a shambles. This is a fact widely acknowledged by the Environment Agency (EA) and Government, as well as the hundreds of community sector projects operating illegally on a daily basis.

It is this third point upon which WyeCycle wish to focus by way of mitigation.

Waste licensing legislation is a shambles. The irrationality of the legislation, combined with the inconsistency and incompetence of the EA in enforcing it, make it impossible for community groups to comply.

(A) Examples of the bizarre nature of waste licensing:

4. Under the Waste Management Licensing (WML) regulations 1994, the following materials can all be handled without a waste management licence: Old tyres, Oil, Solvents, Refrigerants and halons, Paper sludge, Poultry Litter.

It is, however, illegal to collect the leftovers from a jumble sale and sort the clothes for developing countries, books for recycling, pots and pans for scrap etc, without a licence. This is not just a hypothetical interpretation of the law; the EA have told WyeCycle that we cannot do this at our yard without having a licence.

5. Under the WML regulations, it is illegal to collect garden waste from your neighbours, compost it, and give them the compost back without a licence. Enforcement of this law has varied widely, with some EA regions turning a blind eye, some enforcing it to the letter, and some saying form a "compost club" so your neighbours are also members of your project.

Due to widespread acknowledgement of the stupidity of this law, the national Community Composting Network were told in a meeting with Steve Lee, then head of waste at the EA, that the EA would ignore this law. Nevertheless, in some parts of the country the EA continue to threaten community groups with enforcement action if they sell or even give away their compost. In the case of WyeCycle the EA have ignored this law, allowing us to sell our compost without a licence. How can you comply with the WML regulations when your local EA operates a "pick'n'mix" attitude towards the rules? Why do you need a licence to compost garden waste but not to burn it?—thousands of landscape gardeners and council parks departments are continually burning their waste, blithely ignored by the EA.

6. If a householder has, for example, three items of furniture to get rid of, they have two choices. They can send a cheque for £10 to Ashford Borough Council who will then come and collect all three items and dispose of to landfill, or they can send a cheque for £10 to WyeCycle. If we get to the household and only two items of furniture are sellable through our furniture store, the law says we must only take these two items and leave the third—which the law says is "waste"—behind. The householder would then need to send a further cheque for £10 to the council to get rid of this item. Clearly, next time they had furniture to get rid of they would just let the council have the lot for landfill. WyeCycle therefore take all three items, and the council come into our yard once a fortnight to take unusable furniture to landfill. This is by far the best system—for the householder and for the environment—yet it is illegal in the absence of a WML.

7. By collecting waste wood in Wye, and reusing as much as possible before letting the annual Guy Fawkes bonfire have the clean residual (the mdf, painted etc going to landfill), WyeCycle handle our communities waste wood in the most environmentally manner possible. In any other community, an annual trawl round local houses for bonfire night results in all manner of dangerous material being burned. Yet we are told we must have a WML to handle waste wood, while other more dangerous disposal routes are ignored.

(B) What you have to do to get a licence (which is rather dependant on how well the EA understand their own rulebook).

8. The EA have for years told WyeCycle we needed a licence, and that the lowest licensing band was “less than 5,000t of waste a year”. We handle 25–50t of waste a year. Such a licence would cost WyeCycle around £5,000/yr. (application fee, staff going on courses, staff being assessed by EA, changes to operating practices etc). Our total turnover is around £100,000/yr, of which 30–40k has to be raised through grant aid, with a constant struggle to pay our staff even the minimum wage.

9. WyeCycle recently identified a “less than 500t/yr” licence in the EA’s own list of charges; when we challenged the EA on this they admitted we could operate under such a licence but they “haven’t processed many of them” ie they hadn’t heard of it before. This licence costs £134/yr; although the staff inspection costs etc still make it prohibitively expensive. Up until the day we received the summonses, our local EA officers were bending over backwards to help us apply for this licence; they obviously knew the regional office were going to prosecute and were/are acutely embarrassed about the fact they have failed badly in not identifying this level of licence to prevent all this happening. (In actual fact this licence only allows storage of waste not sorting, meaning we couldn’t sort jumble sale leftovers, but the EA either don’t understand this or are prepared to turn a blind eye; either way further evidence of the shambolic state of the legislation.)

(C) WyeCycle have done everything in their power to move this issue forward—both for their benefit and the community waste sector as a whole—yet the EA/DEFRA have failed to act.

10. WyeCycle have spent years highlighting the need for reform of the WML regulations as they relate to the community sector. Over the last two years we have written repeatedly to, amongst others:

- Sir John Harman, Chair of EA.
- Wil Huntley, Head of charges at EA.
- Dr Andrew Skinner, Director of Environmental Protection at EA.
- Elliott Morley/Ben Bradshaw/Tony Blair.

We have copies of all these letters and replies received, clearly demonstrating both our efforts to become legal and the abject failure of all the above to understand the issue never mind act on it. Four years ago WyeCycle were paid by the EA to go to London and give a room full of EA people a presentation on the community waste sector and the challenges it faced, yet still nothing has been done to resolve the issues we highlighted.

(D) The left hand of the EA doesn’t know what the right hand is doing.

11. For years the EA have said they were concerned about the watercourse in WyeCycle’s yard. We have responded by saying “Tell us what you would like us to do and we will do it”, yet they have always refused to give any advice. We have recently been told by Kent County Council planning department that the waste management arm of the EA have said the watercourse should be capped, but the biodiversity arm are saying that it shouldn’t. How are we supposed to operate when faced with such shambolic regulation?

(E) The EA show an alarmingly poor grasp of the subject matter.

12. EA officers have a very poor understanding of sustainable waste management. To give one example: In a witness statement by an EA officer, he says “Mr Boden referred to material in various stages of decomposition as mature, nine-month-old compost. . . This statement did not make sense to me, as compost produced at (a different site) I am familiar with is mature after 16 weeks.” For the EA to have such a poor knowledge of the subject must cast serious doubt on their credentials.

(F) The EA are being totally disproportionate in their assessment of risk.

13. The EA have spent a large amount of time and resources putting together a case against WyeCycle, whilst acknowledging that we do not pollute the environment. Meanwhile:

- Within a one mile radius of WyeCycle’s site there are numerous examples of illegal and polluting waste disposal; fly tipping and burning. Photos of all of these are available. The EA drive past and ignore all of these every time they come to our yard. This is directly relevant to our case for two reasons; firstly because it demonstrates disproportionate treatment of WyeCycle, secondly because

it needs to be understood that the existence of groups such as WyeCycle prevents such illegal waste disposal by providing a local outlet. The flytipped cookers and bags of garden waste are not from Wye where we provide a comprehensive service, they are from areas where less facilities exist.

14. Out of the 750,000 households in Kent, all but the 1,000 served by WyeCycle send their kitchen waste to landfill. How often do the EA prosecute landfill sites for seagulls carrying food off and dropping it in neighbouring fields and gardens to spread disease? or for having waste stored outdoors? or for smelling? or for being near watercourses? Kent sends domestic waste to a 200 acre landfill site at Rainham, the nearest thing to hell on earth you will find in the UK, literally on the banks of the Thames. Do the EA consider this to be a threat to human health or the environment?

15. WyeCycle wish to use this case as an opportunity to call on the Environment Agency to spend less time trying to enforce poor legislation and more time getting the legislation amended to reflect the scale of the community sector. In that way, we could all work together to achieve our common aim of a cleaner environment.

(G) Waste Management Licensing regulations.

16. As you are aware, I have written on several occasions to you and your colleagues urging a review of waste licensing legislation as it applies to small community groups. Nothing has happened, with the result that on 1 November WyeCycle appeared in court for not having a waste management licence. I enclose details of the case, and would urge you to spend some time reading through this to get a further understanding of the shortfalls in the current regulations.

17. Can I urge you, once again, to take some action on this issue. Leaving things as they are is not an option; to do so would commit the community sector and the Environment agency to spending all their time in court arguing over this issue while the polluters are left to carry on polluting. To summarise the situation:

18(i) Under the current regulations, if you handle one tonne of waste a year you have to comply with the same licensing requirements and fees as someone handling 5,000 tonnes of waste a year.

(ii) This makes it impossible for small-scale community groups to carry out local, community based action on waste reduction, as well as making it impossible for the Environment Agency to consistently enforce the law.

(iii) The solution is for a deminimus/ exemption to be introduced for anyone handling minute quantities of waste, followed by a couple of new charging bands with lower fees and lower levels of paperwork than the current "0-5,000t/yr".

(iv) We would suggest:

To handle/treat the following tpa of waste, the following shall apply:

0-10	Exempt (no paperwork)	£0
11-100	Licence (minimal paperwork; who, what, where etc).	£100
101-500	Licence (more info required, similar to existing requirements but less complex)	£500
501-5,000	Licensed, as per current regulatory requirements and charges for 0-5,000 tpa.	

19. Thank you in anticipation of some swift progress on this issue. I would suggest that the above could be introduced under the Agencies existing powers to vary licensing requirements, demonstrated through the regular issuing of guidance on low risk waste activities. I note that the Environment, Food and Rural Affairs Committee have just announced an enquiry into the work of the Environment Agency, and shall be submitting our thoughts and comments to this.

WyeCycle

November 2005

Memorandum submitted by Augean Plc

INTRODUCTION

1. Augean Plc is one of the UK's market leaders in the management of hazardous waste, providing advice and cost-effective solutions to UK businesses' waste problems. We work in partnership with our clients to provide long-term answers to the treatment and disposal of their waste.

EXECUTIVE SUMMARY

2.1 The work of the Environment Agency is essential.

2.2 Management of the Agency needs to focus on bringing more consistency to regulation across the country.

2.3 The current industrial climate seems to punish those who want to deliver compliance whilst ignoring, knowingly or not, those who choose to break the law.

2.4 The Agency is much segmented with each area applying different standards of regulation.

2.5 The Agency might consider being staffed by fewer better trained officials who can not only understand the science but also take good measure of threats to the environment. Industry experience would be a significant benefit to the skill set of staff at the Agency.

2.6 The Agency need to focus on assisting compliant operators not seeking to “trip them up” to prove their value.

2.7 Independent annual review of the Agency’s overall performance should be complemented by a quick appeals and arbitration mechanism for the rapid resolution of disputes between Agency officials and regulated entities.

2.8 The Agency’s reputation within industry is poor. Anyone setting out to deliver innovation within the sector first has to consider the Agency’s detrimental effect on the development.

AUGEAN PLC RESPONSE

3.1 Our comments on the performance of the Environment Agency are restricted to the company’s direct experience of its people and regulatory procedures. While we believe strongly in the need for good environmental regulation, we also believe that, in many respects, the Environment Agency could improve on being a strong, effective and evenhanded regulator.

3.2 We make the following points in response to the request for evidence issued by the select committee.

How successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities;

4.1 The arbitrary manner in which officials conduct their work can result in companies being targeted for investigation without the existence of objective evidence to warrant such action. It appears common that the Agency targets organisations that, by their own objectives, are easy to score against whilst turning a blind eye to the real criminal waste operators.

4.2 We and many of our colleagues in the industry cannot understand why the Agency cannot regulate the known criminals in the sector. The Agency seems not to focus on targeting real environmental crime. This is often brought about by the Agency’s inspection regime which views organisations on their presentation rather than auditing the waste streams which are actually handled.

4.3 Local Agency officials appear to have little guidance as to how to apply a risk-based model of regulation. Instead of looking for regulatory breaches which might result in genuine harm to the environment, some officials give the appearance of preferring to uncover minor transgressions which do not involve material harm to the environment. [This may be because it enables officials to show their superiors that they are doing their job, while avoiding the difficult task of confronting genuine polluters.]

4.4 We do not consider it acceptable for officials to take more than three weeks to read or even receive company mail. Moreover, we are concerned about the care taken with company forms and documents which can in some circumstances be commercially sensitive. They should not be carried between office and home but be properly filed in locked cabinets on secure Agency premises.

4.5 The compliance costs for companies that the Agency brings in its wake are excessive. These can take the form of management time, legal, economic, public relations and other consultancy costs.

Whether the Agency operates efficiently and provides good value for money

5.1 Our key efficiency concerns about the Agency centre on the technical competence of the officers dealing with waste management operations. We have found on numerous occasions that the time it takes to resolve a technical issue with the Agency, and the ability of the officers to efficiently understand the objectives, add both time and cost to the operator and the Agency. We have also experienced over zealous officers involved in over regulation to create more issues than necessary therefore creating avoidable costs.

The structure, governance and accountability of the Agency

6.1 The current structure of the Agency is difficult to understand. As a waste manager, Augean Plc ought to be able to understand the Agency’s structure, its governance and accountability—but this is not clear nor fully understood. Therefore other organizations who may not interface with Agency as regularly as Augean are even less likely to understand the Agency’s structure.

6.2 The Agency operates on an Area Team basis, with a National Team lead. While the Area Team dominates the regulation of operations, it is rarely qualified to take on all the complex technical issues involved in waste management. Augean finds it difficult to access the right person with the right aptitude to deal with assisting the company on its operations.

6.3 While the structure, governance and accountability of the Agency could be strengthened, the biggest improvement the Agency could make would be to improve the training of its staff. We do not see the need for a new body to replace the Environment Agency—just a need for better and more consistent application of regulation. Any changes to governance structures should be geared towards the consistent application of regulation across the country.

6.4 Safe regulation of the hazardous waste industry requires a level of scientific understanding which is rarely found in the Environment Agency. Too often, companies like Auegan Plc have to explain to the Agency how the science works. Misunderstanding of the science can both delay our operations and result in competitor companies being allowed to breach regulations. For example, some hazardous waste operators are able to perform “sham” treatments to turn hazardous waste into non-hazardous waste without the Agency intervening.

6.5 The Agency should employ scientific specialists with experience of working in business who can act as referee for local Agency officers faced with decisions involving complex scientific processes.

Its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency's role in the planning system

7.1 The Agency does not appear to have officers who are trained to understand the planning system. When the Agency has crossed responsibility boundaries with other Government bodies, it has created avoidable issues and costs to all parties. Where the planning system is effective and well understood, we have seen frustration from other Government bodies at the lack of understanding displayed by the Agency when it is consulted on planning matters.

The Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services

8.1 The integrity of the Agency's relationships with non-Governmental stakeholders depends upon the consistent application of regulatory principles. Organizations which deal with the Agency should receive feedback as to how the Agency is improving its services.

8.2 The Agency is inconsistent in the manner of its conduct in different geographical regions. Relations with Auegan's landfill sites in the North East of England, for example, are cordial and regulatory work is carried out relatively efficiently; whereas in the East of England, work at Auegan's sites has been delayed by a heavy handed and excessively bureaucratic approach of local Environment Agency officials.

8.3 The Agency is also inconsistent in the way it treats different companies. For example, a derogation was granted by the Agency to Waste Recycling Group to enable it to win a contract to dispose of chemical waste from batteries. Auegan applied for the same derogation and was refused without a consistent explanation from the Agency, despite winning the contract.

8.4 The monitoring of Agency services could be conducted by an independent body which would consult stakeholders on its performance. Under the current arrangements, few companies would dare criticize their inspectors for fear that they would then be targeted for over-zealous inspection in future. The independent body could report to the Secretary of State and Parliament annually.

8.5 If a body disputes the view taken by the Environment Agency, it has little recourse to justice except through judicial review or the Parliamentary Commissioner for Administration. These processes can often take months and the delay can impact detrimentally on commercial operations. We therefore recommend that a quick appeals and arbitration mechanism be introduced, whereby a company can lodge a claim with an independent arbitrator who can help resolve disputes that arise without prejudice to future legal proceedings.

The Agency's responsibilities for flood defence and flood mapping, including guidance to the public

9.1 No comment.

How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency

10.1 No comment.

How the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity

11.1 No comment

The Environment Agency's forthcoming corporate strategy 2006–11

12.1 The corporate strategy for 2002–07 presented great goals for the development of the Agency but its subsequent performance does not seem to have been reviewed thoroughly against the objectives set. The corporate strategy should target key deliverables. The strategy statement is not easily accessible for the public. Stakeholders have not been made aware of the strategy and its objectives.

Augean Plc

November 2005

Memorandum submitted by Andrew Needham

1. EU Commission has warned EA to “step up the pace” on implementing the Water Framework Directive (ENDS report attached¹).

The cost of implementation in the UK has been estimated to be about £12 billion. There is concern from agriculture and industry on the cost benefit analysis—and how the directive for good ecological quality would be enforced.

2. As a County Councillor representing a rural area I know that NFU have been very vocal to Government.

There is also the issue of responsibility for diffuse pollution.

3. So until all this has been resolved, I think that EA have been right to proceed carefully.

There is a need to coordinate the five relevant plans (see below)

WATER FRAMEWORK DIRECTIVE

4. The main priority for local government is the EU Landfill Directive—for which there will be massive fines from DEFRA for non compliance.

On the other hand the Water Framework Directive will be achieved by “voluntary means”. There are five relevant plans.

5. These are CAMS, CFMPS, FAPs, RBMP and WLMPs:

(i) Catchment Abstraction Management Strategies (CAMS)

Strategies for the management of water resources at a local level. Catchment Abstraction Management Strategies make more information on water resources and licensing practice publicly available and allow the balance between the needs of abstractors, other water users and the aquatic environment to be considered in consultation with the local community and interested parties.

(ii) Catchment Flood Management Plans (CFMPS)

Catchment Flood Management Plans are strategic planning tools through which the Environment Agency seeks to work with other key decision-makers within a river catchment to identify and agree policies for sustainable flood risk management.

(iii) Fisheries Action Plans (FAPs)

Fisheries Action Plans are local plans developed in partnership between the Environment Agency and local angling and fisheries groups, with input from conservation and other interest groups. FAPs cover canal and still-water fisheries as well as rivers. They may cover a wide range of issues from fish habitat, through to angling promotion and land management. Each FAP is different and reflects the concerns and priorities of local angling and fisheries interests.

(iv) River Basin Management Plan (RBMP)

For each River Basin District, the Water Framework Directive requires a River Basin Management Plan to be published. RBMPs are reports or strategies that set out how the environmental objectives for all the water bodies within the River Basin District will be achieved. The plans will be based upon a detailed analysis of the pressures on the water bodies and an assessment of their impacts. The RBMPs must be reviewed every six years.

(v) Water Level Management Plans (WLMPs)

Water Level Management Plans provide a means by which water level requirements for a range of activities, including agriculture, flood defence and conservation, can be balanced and integrated. Provides the strategic policy framework for the effective preparation of local planning authorities' development plans.

6. All these plans are relevant to the Water Framework Directive. For example CAMS will control over abstraction which can lead to low flow—and reduced dilution for diffuse and other pollution.

¹ Not printed (August 2005—ENDS Report 367).

7. There are also Fisheries Action Plans (FAPs) which are developed in partnership with local angling and fisheries groups and other interests.

All these five plans are interrelated and need to be coordinated for WFD priorities.

Andrew Needham

November 2005

Memorandum submitted by John W Gittins

THE ENVIRONMENT AGENCY INQUIRY

1. I am given to understand that the Parliamentary Environment, Food and Rural Affairs Committee has decided to examine the work of the Environment Agency, and has requested evidence on a wide range of points relating to its work and effectiveness.

2. As an interested individual, having worked with the Agency and its predecessors for over 35 years, I wish to offer the following observations:

3. In respect of the Agency's relationship with non-Governmental stakeholders and the general public:

- (a) In general the Agency has built-on the experience of its predecessors in an effective manner.
- (b) However, this is not so in respect of the manner in which it operates its Regional Fisheries, Ecology and Recreation Advisory Committees. In particular the composition of their membership, which have an imbalance in the number of representatives from the Angling/Fisheries and Riparian interests. In a democratic country this calls into question the *raison d'être* of such bodies.

4. How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency:

- (a) With the establishment of Natural England, by combining the Countryside Agency, English Nature and the Rural Development Service arm of DEFRA, there will be a far more effective voice for nature and landscape conservation, open air recreation and direct linkage with farmers and landowners through the work of the RDA. Therefore, building on the excellent work of the three existing bodies, in particular, the Countryside Agency in the field of Access to Open Country, has the time not come to see the new agency have the key role in respect of access to rivers?

5. How the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity:

- (a) A very sound case could be made to ensure that Natural England is the lead agency in all matters relating to biodiversity and that the Environment Agency works to this body as a junior partner.
- (b) I note that whilst biodiversity is specifically cited in your request for evidence, landscape is not. I would wish to see landscape having a much high profile in the future work of the Environment Agency, doing so in close partnership with Natural England. There is currently good practice in this area on which to build. For if the environment sustains us as creatures, it is the landscape which describes us as cultures.

6. I however have one particular area of concern as to the effectiveness of the Environment Agency and its predecessors, this is in regard to their inability to take the necessary steps to ensure greater access to rivers for the purpose of canoeing.

7. It is a disgrace that in contrast to Scotland, the public in England and Wales are denied access to and along 98% of rivers. This situation is unique in the world. As you are aware, in Scotland, there is a traditional right to roam in respect of both land and water, which is enshrined in the Scottish Land Reform Act 2003.

8. The current efforts to conclude voluntary agreement to stretches of some rivers in England, for example the Mersey and Teme are totally inadequate. In spite of what the immediate past Minister for Rural Affairs, Landscape and Biodiversity has stated and what the current Minister has restated as recently as on the 14 November 2005, has the time not come for HM Government to seriously consider the need for primary legislation to allow canoeists to use such natural resources. For after all, a legal right of access to rivers will: (i) Provide benefits for the public; (ii) Provide benefits for local communities; (iii) Protect wildlife, landscape and the environment.

9. In conclusion, I wish to reiterate, that while the Environment Agency in its current form has made substantial progress in a number of areas, there is still room for improvement, with consideration that some of its functions be taken over by other agencies, for example, Natural England. I would be happy to expand on any of the above points.

John W Gittins MA, BSc, Dip Educ, FRSA, FRGS

November 2005

Memorandum submitted by Torbay Council

FINDINGS OF THE FLOODING WITHIN TORBAY REVIEW PANEL (A SCRUTINY REVIEW COMMISSIONED BY TORBAY COUNCIL'S OVERVIEW AND SCRUTINY BOARD)

1. The following evidence addresses the below key point which is being investigated by the Select Committee:

The agencies responsibilities for flood defence and flood mapping, including guidance to the public.

EVIDENCE TO BE CONSIDERED BY SELECT COMMITTEE

2. In the summer of 2004 Torbay Council's Overview and Scrutiny Board conducted a review into flooding within the area of Torbay. The committee that conducted this investigation was known as the Flooding within Torbay Review Panel.

As part of the review the Panel gathered evidence and information from the Environment Agency on flooding and flood prevention in Torbay.

3. The Panel were informed that the Environment Agency had undertaken a major flood alleviation scheme on the Galmpton watercourse in Torbay in the light of severe flooding that took place on 24 December 1999 which resulted in a fatality. It was explained to the Panel that the Galmpton watercourse was the responsibility of the Environment Agency as it was a main watercourse and that although the watercourse was small it was highly susceptible to flooding.

4. The work carried out by the Environment Agency at Galmpton primarily consisted of the implementation of new or replacement culverts which would reduce the chance of collapse or blockage. The Agency also incorporated overflow screens in case the culverts became overwhelmed. This work was carried out in 2003 at a cost of £500,000.

5. When the Panel met with a representative from the Environment Agency to consider the success of the work they had undertaken at Galmpton the Area Flood Defence Manager for the Environment Agency stated that he considered the project to be a great success. This evaluation of the scheme was endorsed by stakeholders such as Galmpton Resident's Association who stated that they were highly impressed with the scheme and the follow up work that had been carried out by the Agency in regard to informing local residents about their rights and responsibilities in relation to the local watercourse.

6. The Resident's Association also stated that the alleviation scheme had undergone a major test on 22 June 2004 when heavy rainfall had hit the area. Nevertheless they stated that the scheme had dealt with the extra rainwater well.

7. Overall the Resident's Association stated that they were very happy with the work the Agency had carried out at Galmpton.

8. Later in the review the Panel were informed that from 2006 the Environment Agency would be taking responsibility for Torbay's Critical Ordinary Watercourses or COWs and that the Agency had also introduced at Torbay Council's request a coastal flood warning for areas of the South Devon coast which are exposed to easterly weather conditions.

9. Finally the Panel stated that they were impressed that the Council's Drainage and Structure section worked closely with the Environment Agency on a number of projects in relation to flooding. They were also pleased to discover that many of these projects were also carried out in co-operation with South West Water and the Meteorological Office.

Mark Hammett

Overview and Scrutiny Officer to the Flooding within Torbay Review Panel

November 2005

Memorandum submitted by UNISON

1. INTRODUCTION

- (a) UNISON is the main recognised trade union representing the employees of the Environment Agency (EA) UNISON's relations with the EA date from the agency's establishment in 1996 and can be traced back to its forebears—the National Rivers Authority and the Water Authorities up to 1989.
- (b) UNISON has a clear commitment to the environment and has campaigned for many years on issues including sustainability, public transport, conservation and the management of our water resources. UNISON is wholly committed to the concept of a strong independent environmental regulator and will support measures designed to protect and enhance the UK's natural environment.

2. THE EXECUTIVE SUMMARY

- (a) UNISON believes that it is essential that the EA retains an independent scientific capacity through its laboratories and that the public interest would be compromised if the onus for monitoring was moved away from the EA to the dischargers.
- (b) UNISON would welcome a reform of the EA's funding streams to create a more flexible and dynamic approach to environmental regulation.
- (c) UNISON believes that within the budgets approved for the EA there ought to be more freedom and flexibility to enable the bargaining process to proceed without the need for specific approval of an annual pay remit.
- (d) UNISON would support the creation of a new EA power that would enable it to refer any proposed planning permission that did not comply with the EA's views (provided they were founded on a statutory basis) to either the Minister for review or when appropriate to a public enquiry.
- (e) UNISON continues to support the WFD's concept of catchment based stakeholder consultation. This need not involve the creation of another committee bureaucracy, but instead a commitment to consult stakeholders on significant developments and capital schemes and would lead to consultation when it matters not according to a pre-determined cycle of meetings.
- (f) UNISON believes that the operations delivery workforce should be maintained at a level sufficient to respond to all forecastable events.
- (g) UNISON urges the Government and the EA to consider the nature of its emergency response capability once and for all. This will allow UNISON and the EA to put in place the appropriate staffing arrangements to meet that need.
- (h) Based on the "one stop shop" approach UNISON supports the placement of the Drinking Water Inspectorate within the EA.

3. THE INQUIRY'S QUESTIONS

The Inquiry is seeking responses to eight different questions and UNISON has set out its submissions in the same order that they appear in the public notices.

- (i) *How successful the EA has been in its role as enforcer of environmental regulation and controls and how well it manages its wide range of activities?*
 - (a) Currently the EA is preparing to transform the way in which it regulates the environment through the "permitting" process under the banner of, "Modern Regulation". UNISON has a number of serious concerns about the projected outcomes of this review.
 - (b) However in the past five years or so the EA has, in the opinion of the employees directly involved, achieved a satisfactory level of performance in both its compliance and enforcement work. The existing permitting work concerns the granting of permits for discharges to water, land and air and dependent upon the legislative basis the EA grants a licence, a permit or a consent. The EA's experts often work proactively with applicants in the lead up to the submission of an application to encourage understanding and acceptance of the EA's requirements and to reduce the chances of subsequent refusal or further iteration. Once an application is submitted there is a legal requirement for the EA to respond within four months. However internally the EA's own target is to respond within eight months. This reflects the complexity of some applications. Although applicants pay a fee to obtain their consent this does not cover the cost to the EA of processing the application, thus the "polluter pays" principle is not being followed. UNISON believes that the costs should be fully reflected in the fees payable.
 - (c) UNISON's EA members who are experts in the field have expressed grave reservations about the move to a new regime called, "Modern Regulation". The proposed new process will rely to a much greater extent on web based technology and self regulation. Maybe unfairly the vision has been labelled as "tick box regulation". The new approach is seeking to dramatically reduce the amount of proactive work done by EA experts and instead applicants will be expected to obtain their own specialist advice.
 - (d) The EA's enforcement staff have also expressed concerns that under the new process they will have insufficient information from the new applications to properly monitor and enforce the terms of the consent. In fact UNISON understands that the plan is that for long term consents the applicant will be expected to self monitor.
 - (e) The regulation of waste poses particular challenges. The move to a self monitoring regime will place a worrying reliance on waste operators' integrity to act in full compliance of the law and the terms of the consent.
 - (f) The existing legislative basis of the EA regulatory duties is fragmented and leads to inefficiencies in permitting, monitoring and enforcement. UNISON would welcome a consolidation of environment legislation to create a much more coherent framework of regulation.

- (g) There is particular concern over the future role of the EA's laboratory services. Up to now they have been required to carry out scientific tests on samples collected as part of the monitoring regime. It is envisaged that a move towards self monitoring will lessen demand for these services and thus threaten the viability of the laboratories. UNISON believes that it is essential that the EA as an independent regulator retains an independent scientific capacity through its laboratories and that the public interest would be compromised if the onus for monitoring was moved away from the EA to the dischargers.

(ii) *Whether the EA operates efficiently and provides good value for money?*

- (a) As already referred to in (i) above the present legislative basis for the EA's various statutory responsibilities are very fragmented. This difficulty is also compounded by there being a high number of funding streams that are ring fenced. This situation leads to the EA having to develop highly complex accountancy and budgetary regimes largely to reflect the inflexibility of the current legislative position. UNISON would welcome a reform of the funding streams to create a more flexible and dynamic approach to regulation.
- (b) The Financial Memorandum that governs the funding arrangements between DEFRA, Treasury and the EA place unnecessary restrictions on the pay bargaining process between the EA and its recognised trade unions. The present arrangements require the EA to construct a pay settlement bid for submission and clearance by DEFRA and Treasury. This process goes beyond compliance with any broad political guidance that may be forthcoming from time to time concerning the level of pay increases. Instead it tends to undermine the internal bargaining process between the EA and the trade unions. UNISON believes that within the budgets approved for the EA there ought to be more freedom and flexibility to enable the bargaining process to proceed without the need for specific approval of an annual pay remit.

(iii) *The structure, governance and accountability of the EA?*

- (a) The present arrangements for appointing the EA Board seem to be working satisfactorily and in recent years the membership of the Board has been enhanced and today staff feel much more confidence in the Board than in previous years.
- (b) At regional level there is an obligation to have three separate committees—a Flood Defence Committee, a Fisheries, Ecology and Recreation Committee and an Environment Protection Advisory Committee.
- (c) At area level there are Area Environmental Committees in most but not all areas.
- (d) In Wales there are special relationships between the EA Wales and the Welsh Assembly Government but there are no equivalents for the English regions.
- (e) UNISON is a strong supporter of stakeholder engagement and believes that the EA needs to be accountable and accessible to the public. An obstacle to the development of clear lines of accountability is that the boundaries of the EA and other authorities are not coterminous. Regions are based on water catchments boundaries but these are different from the River Basin Catchments identified in the Water Framework Directive. Then there are the political boundaries of local government and parliament that are different again. This tends to impede openness and transparency and does not assist accountability. (See further comments below on Stakeholder engagement)

(iv) *The EA's role in the planning system.*

The EA is a statutory consultee as part of the local government planning regime. However the EA does not have a veto in the event that a planning authority chooses to ignore in whole or in part the views of the EA. This is particularly worrying concerning land known to be vulnerable to flooding or under consideration for waste disposal. UNISON would support the creation of a new EA power that would enable it to refer any proposed planning permission that did not comply with the EA's views (provided they were founded on a valid statutory basis), to either the Minister for review or when appropriate to a public enquiry.

(v) *The EA's relationship with non governmental stakeholders and the general public, and how the EA monitors satisfaction with its services?*

- (a) It is an unfortunate fact that public awareness of the EA and its role in society remains low, especially within inner city areas. This is partly a consequence of the style and mode adopted by the EA in its public consultations. Most EA material seems to be written for a specialist or at least an informed readership and therefore it is not easy for a non committed person to gain access to the EA either to get information or to respond to consultations. Also an over dependency on web based communication leads to the disenfranchisement of many less privileged people. It was a

matter of regret to UNISON that the scope offered by the Water Framework Directive to create catchment based stakeholder democracy has not yet been exploited. However UNISON also accepts that to do so properly costs money and part of the blame must be borne by DEFRA who made it clear that no additional finance would be made available to set up stakeholder fora catchment level.

- (b) The EA engages in a limited form of monitoring of public perceptions of it. There is a customer charter that requires the EA to monitor complaints and in addition every two years a survey of MPs is undertaken. In UNISON's view neither of these is sufficient to satisfy the legitimate need for the EA to be transparent and accountable. UNISON continues to support the WFD's concept of catchment based stakeholder consultation. This need not involve the creation of another committee bureaucracy, but instead a commitment to consult stakeholders on significant developments and capital schemes would lead to consultation when it matters, not according to a pre-determined cycle of meetings.

(vi) *The EA's responsibilities for flood defence and flood mapping, including guidance to the public.*

- (a) Among the many duties placed on the EA perhaps the most important from a public perspective is the incident and flood response work. In recent months UNISON has worked closely with the EA to restructure its Incident and Flood Risk Management capacity. The results of this effort are welcomed by UNISON particularly the consolidation of the manual and craft workforce into the new organisational structures. However UNISON has some concern that the EA plans to reduce the size of this workforce and to compensate for this reduction by requiring other non specialist staff to turn out when serious incidents and floods occur. There are health and safety concerns on behalf of both the non specialist staff who may find themselves working in unfamiliar circumstances and also from the emergency workforce themselves who fear that they could be working alongside personnel who are not fully up to the task. UNISON believes that the operations delivery workforce should be maintained at a level sufficient to respond to all forecastable events.
- (b) The EA is sometimes seen as the fourth emergency service providing a 24/7 cover responding to emergency incidents and floods around the clock. However to date this cover has been provided by day time workers providing a standby and call out service. As time has gone by the nature of standby for many EA staff has significantly changed from a passive role to a more increasing amount of phone work overnight and during weekends. There are questions that need addressing about exactly what is expected of the EA in terms of its emergency response role. If the public really do want a 24/7 service then in UNISON's view this cannot be satisfactorily provided through a system of standby and callout. UNISON urges the Government and the EA to consider this aspect of the EA's work and resolve once and for all what kind of emergency response society expects. This will allow UNISON and the EA to then put in place the appropriate staffing arrangements to meet that need.

(vii) and (viii)—*How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the EA? How the EA's work in improving wildlife habitats will tie in with Natural England's work on bio diversity?*

- (a) The potential overlap between the EA and Natural England is a recognisable concern. However UNISON is aware that both organisations are developing a Memorandum of Understanding designed to achieve clarity of purpose and to avoid potential duplication. While this is welcome and will certainly be beneficial to both organisations, it will not be sufficient in itself. UNISON believes that a communications strategy needs to be developed designed to explain the respective roles of the two bodies and which takes account of the different needs of different stakeholder groups. One size clearly does not fit all.
- (b) Based on the "one stop shop" approach UNISON supports the placement of the Drinking Water Inspectorate within the EA. This will bring together for the first time all the principal water regulation under one roof. Such a consolidation of roles would also make it easier for the general public to understand how the water environment is regulated.

(ix) *The EA's forthcoming corporate strategy 2006–11*

UNISON is unable to comment on this strategy as it is no longer available for access on the EA web site. (as at 29 November 2005)

UNISON

November 2005

Memorandum submitted by Mrs Mary Horner

1. I am willing to present oral evidence to the Committee if that would be helpful, to illustrate the experiences of the stakeholders deliberately silenced by the work of the Environment Agency—the effects on the health and well being of the local population.

INTRODUCTION

2. In 1995 and in 1996 I wrote to you in respect of the two Inquiries your Committee held into the Impact of Cement Manufacture. That correspondence was prompted by my family's health problems associated with near-by Castle Cement, and the failure of the Environment Agency to stop the harm. Despite your excellent reports, which were both critical of waste burning at Clitheroe, due to the local topography and meteorology, nothing has improved.

SINCE THE 1997 REPORT INTO IMPACT OF CEMENT MANUFACTURE

3. Hundreds of thousands of tonnes of hazardous chemical wastes have been burnt in the two wet kilns. They have just been shut down, but the third kiln has now been transformed from burning coal only to 100% waste burning. The dispersion of emissions from kiln 7 is worse than ever, both from the top of the stack, the low level stacks, and the fugitive releases. It is about to be licensed by the Environment Agency to burn 100% wastes, allegedly in accordance with the EC Waste Incineration Directive. . .

DEATHS

4. Five out of the dozen of us who objected strongly to the burning of chemical wastes at Castle Cement 10 years ago have since died of cancer. Others are ill. They, like myself, objected because we personally experienced at first hand the odours and the health effects, such as sore throat, wheeziness etc, when the plumes visibly came through our homes and gardens. The National Physical Lab scientists in 1995 suffered eye and throat irritation and asthma attack under Castle Cement's plumes. The LIDAR machine proved that the plume was NOT visibly grounding at the time the NPL suffered the same odours and health effects as residents; the plume was at least 50 metres above the ground at the time. The NPL scientists proved that the odours were not sulphur dioxide. The true causes of the odours in the gases have never been admitted. £5 million was allegedly spent on a scrubber to remove sulphur dioxide, which was never at a level to cause the odour. The scrubber was used as an excuse for the Environment Agency to increase the sulphur content of waste fuels. Demisters removed the moisture, so that the plume was not visible, but it appears they are no longer working.

5. Most of those five who have already died met with the MPs when the Environment Select Committee came to Clitheroe. They and the rest of us fought for the health and future of our children and grandchildren. Since 1997 everything has gone backwards.

Since 1996 and to this day, my family have continued to leave our home when conditions mean the risk of the undiluted emissions drifting through our hill top farm. Castle Cement's own Report (May 1996) showed our sparsely populated hill top suffered the highest risk. Our next door neighbour has now started chemotherapy for cancer.

6. We fear for our childrens' future, and for their childrens' future

The Environment Agency refused to listen to medical advice 12 years ago:

- (a) Dr Irving Spurr at Weardale stood up at a public meeting in Weardale and said that if they burnt chemical wastes in cement kilns, there would be:
 - (a) brain tumours;
 - (b) Damage to unborn foetuses.
- (b) Keith Harrison, ex BP Technical Director, told a local meeting that toxic metals which are carcinogenic, in emissions, would cause cancers.

- (c) Dr Dick van Steenis prophesied 12 years ago, that unless toxic waste burning in cement kilns was stopped there would be a mushrooming of:
- (a) cancers in eight to 12 years time;
 - (b) birth defects;
 - (c) deaths from heart failure.

7. Dr van Steenis visited the expert toxicologists in the USA. They gave him the research findings which proved that waste burning caused a change in particle size, so that the majority were now less than PM2.5, with an unbelievable increase in surface area on which the toxic metals were carried deep into the lungs. Literally dozens of research studies since confirm the increase in death and disease from waste burning and pollution.

8. Dr Irving-Spurr and Dr van Steenis were both heavily criticised by those with vested interests.

It is time the UK Government also brought in the limit on PM 2.5's. A rudimentary analysis of the ages considered premature in the Obituary column of our local paper, and of the numbers of children carrying inhalers to local schools would show just how accurate their knowledge was.

90% of particulates from Tyre burning emissions at Clitheroe were less than PM2.5, compared to 16% with coal only.

9. This huge change into PM 2.5's and the huge increase in environmental harm was never evaluated, by the Environment Agency, nor was the cost to the UK economy from the National Health Service bill.

10. It is frightening to realise just what is going on locally—and nationally. MP's must realise that without a change in behaviour by our Government the health of our families will not prevail over the greed of foreign owned, hazardous-waste burning cement businesses, and the weaknesses of those in responsible positions who succumb to the powerful lobbying of corporate interests.

11. The Environment Agency have been emasculated. They are lap-dogs to Central Government. They have no power to overturn central Government policies, instead they are left to put on a public display pretending that there is no harm to health or the environment—to justify the impossible. All they do is licence the levels of pollution which big industry says it can profitably reach—repeatedly ignoring the known, and entirely predictable, health effects.

12. The imminent “decision” by the Environment Agency in respect of the Waste Incineration Directive permit for Castle Cement, Clitheroe is a graphic example of the corruption in the Central Government system. In order to be able to justify a “YES” decision, apparently already made by Central Government/DTI, the Environment Agency have:

- (a) refused to accept or acknowledge objections by fax, by e-mail, and by recorded letter, as in my own case.
- (b) refused to put decisions out to public consultation, despite the need to treat them as a “Substantial Change” eg because of:
 - (i) the doubling of quantities of animal wastes, from 55,000 tpa to 97,500 tpa
 - (ii) the extra quantity—10,000 tonnes per annum—and toxicity—unevaluated—of BY-PASS DUST. BY-PASS DUST is purely a result of waste burning, since none is produced when burning coal only.
 - (iii) the building of a vessel in which to mix BY-PASS DUST with water, and leach out phosphates, nitrates, chlorine, water soluble metals etc, which are then to be disposed of to a secret destination, later to the public sewer!
 - (iv) use of 100% waste fuel in kiln 7, with no need to burn any coal, despite the national average being just 6% waste as fuel.
- (c) Ignored the lack of after-burners, an essential safeguard in the WID.
- (d) Refused to accept or investigate complaints from residents—so there is no response to reports of chemical odours which in the past have been confirmed as leaks of chemical wastes—it appears Castle Cement are self regulating, with no way that they can be investigated only by prior appointment—there is no safety protection for us at nights, week-ends, bank holidays etc.
- (e) in relation to “AWDF” publicly claimed the opposite to what Ben Bradshaw, DEFRA Minister, has confirmed in writing. In reply to my MP, the Minister stated that “AWDF” does contain Category 1 Specified Risk Material which are the parts most likely to carry BSE infection and which are removed by law from all bovine animals over six months old (brains, spinal cords etc).

He also confirmed that AWDF does contain fallen stock dead and diseased animals picked up off farms for incineration. Despite these written admissions at Cabinet level, the Environment Agency reduced objections to the proposed burning of animal waste by

- (i) assuring the public that “AWDF” did NOT contain any risk of BSE (from which comes the risk of vCJD) at the public exhibitions
 - (ii) assuring the public that AWDF was only from animals fit for human consumption ie no dead or diseased stock from farms. This was in order to fulfil Government policy, the supply contracts between the renderers, Pointons, and Castle Cement having apparently been agreed before the “trial” to show it was safe began, according to the DTI web-site.
- (f) accepted as valid, the Application to burn Agricultural Waste Derived Fuel (AWDF), despite the Planning Permission approval being restricted solely to ANIMAL Waste Derived Fuel (also AWDF!). (Agricultural waste is to be banned from on farm burning and burial, so extra incineration capacity will be needed, which the Government does not appear to have made extra provision for except—in cement kilns. According to the European Waste Catalogue, agricultural waste covers plastics, pesticides, heavy metals etc, as well as animal wastes etc—a much wider spectrum of wastes than the planning permission allows.)

Latest

13. As I write this, at the end of November 2005, Castle Cement is still officially waiting for a Decision by the Environment Agency on whether it will be granted a permit to operate their Clitheroe works under the EC Waste Incineration Directive. Those MP’s who were on the Environment Select Committee in 1996 may remember that there were two wet kilns burning chemical wastes, and one more modern one which was not. Despite the severe criticisms, waste burning in the two wet kilns continued during the intervening nine years, and have only just stopped this last month.

14. Meanwhile, the third kiln has been permitted to burn chemical wastes, then tyres, and recently trialled “AWDF”, variously described as “animal waste derived fuel”, “Agricultural WDF” etc. The decision following the trial has not yet been released. The “success” was to be measured without any reference or analysis of the extra phosphates and nitrogen in animal waste. Apparently burning animal waste for the high “gate fees” ie disposal charge is only viable if the phosphates can be extracted part way through the kiln system—hence the importance of the By-Pass Duct, from which the volatile gases are extracted, condensed—onto the fine dust particles, then disposed of as waste dust, which is high in the toxic elements. This is completely separate and distinct from the dust extracted at the end of the kiln system—normal cement kiln dust, which is fed back to the kiln on kiln 7. Phosphates weaken cement.

15. Just like all the previous “trials”, the outcome of the AWDF trial is not in doubt, since it appears the DTI (Department of Trade and Industry) were involved in a Press Release dated May 2005, which boasted of a re-use for animal waste in a contract between Pointons, animal renderers, and Castle Cement, involving 70,000 tonnes per annum animal waste being burnt in the cement process. The 6 month “trial” began about the same time as the DTI Press Release about the contract was issued!

16. Again, there is little doubt but what the WID application will be passed: firstly because it was never advertised, nor put out for consultation, despite it being a Substantial Change (due to the doubling of both the quantities of AWDF and Cemfuel applied for, compared to those used and quoted as maximum in the trials): secondly because the Environment Agency appears to refuse to acknowledge receipt of objections, both sent by e-mail, fax, and by recorded letter; thirdly because it appears £millions are at stake, in the form of Carbon Tax rebates, based on legally binding agreements between the UK government and cement works owners in return for the increased burning/disposal of wastes year on year in cement kilns.

17. Since 1997, it appears that Central Government have dictated what permits are issued. They, and the DTI, apparently decide what are granted, not the Environment Agency.

18. It appears this has to happen since the DTI has, I believe, entered into contracts with the polluters, upon which £millions are at stake.

19. Indeed, the Government’s own “recycling” targets are based on contractual agreements between Government and the cement industry. These depend on a year on year increase in cement kilns being used to “co-incinerate” all manner of wastes. These arrangements seem independent of whether they can do so safely or not.

20. The Government was fore-warned of the major increases in waste disposal, due to many new EC Directives eg Landfill Directive, ban on on-farm burial of dead and diseased animals, ban on on-farm burning and burial of agricultural waste etc etc. The Government’s forward planning seems non-existent—beyond the use of cement kilns.

21. So it was that when a local boy sought leave for a Judicial Review of the Environment Agency’s decision to permit chemical waste burning in the third kiln at Castle Cement, Clitheroe, in 1999, he was opposed not only by the Environment Agency and Castle Cement, but also by Central Government. In fact not one, but TWO Secretaries of State were represented by barristers in Court, in addition to those from the Environment Agency and Castle Cement.

How can this strength of intervention/dictatorship, at public expense, be justified?

22. The signal was clear—no individual could afford another Judicial Review of an Environment Agency decision. To do so would risk exposure to the full costs of all Interested Parties on losing, as well as one's own—three paid to the Treasury, one to a global multi-national. What chance had my son?

23. These tactics illustrate why the UK Government has not ratified the European "AARHUS CONVENTION", whereby it should be within any individual's means to be able to successfully challenge a decision of the state.

24. Perhaps the intervention of TWO SECRETARIES of STATE, in addition to the Environment Agency, and (Castle Cement,) sums up the current worth of the Environment Agency.

- (a) Health and the cost of ill-health, to an individual, or to the NHS, are not a consideration, whatever the evidence.
- (b) The Government does not think the Environment Agency is up to the job . . . at least not up to the job they are demanding of them—they are treated as lap-dogs to administer Government Policy.
- (c) Central Government is willing to spend whatever tax payers money it takes, to prevent its reliance on cement kiln incineration being interfered with.
- (d) Central Government threatens to bankrupt any private individual or firm who risks challenging a decision and losing in a Court of Law. By fielding any number of Secretaries of State as Interested Parties, their combined costs could be awarded against the applicant.

25. It is not a good time to be a conscientious Inspector in the Environment Agency.

It is not a good time to be a pregnant mother—not for the foetus or the mother.

It is not a good time to live near a polluting process, especially a waste burning cement kiln, whatever your current health status.

It is not a good time to dare to oppose the State in a Court of law.

It is not a good time to be seen to publicly expose the apparently criminal actions of the State, in granting permits under the Waste Incineration Directive to cement kilns which have inadequate dispersion, have no after-burners, which cannot meet industry standards on emissions, which apparently have pre-signed contracts for £millions of Carbon Tax refunds dependent on increased waste disposal. Please, help us, and the conscientious ones in the Environment Agency.

Mrs Mary Horner

December 2005

Memorandum submitted by UK Petroleum Industry Association (UKPIA)

EXECUTIVE SUMMARY

1. UK Petroleum Industry Association is the trade association representing the oil refining and marketing industry in the UK. Our members own and operate the UK's nine major crude oil refineries and supply a high proportion of the oil product market, and we have a strong record of reducing our impact on the environment. We interface with the Environment Agency in several areas associated with environment protection, and our comments mainly refer to this activity rather than to flood defence or water management.

2. The Agency has a wide range of statutory duties and is a Competent Authority for much important EU environmental legislation. In the discharge of these duties it is of fundamental importance that it should command the respect of all stakeholders as a firm and fair regulator.

3. UKPIA's main concern is to be allowed to compete on equal terms with refineries in other EU member states, and thus to be able to maintain the flow of major investment projects needed to sustain the UK refining industry and energy supply security. We are concerned that the Agency appears committed to gold-plating and over-zealous regulation beyond Government policy or EU directives as interpreted in other member states. The associated significant extra cost would weaken the UK refining industry, because we are open to continental and international imports and competition.

4. Examples discussed below include the enforcement of national air quality objectives on industry beyond the requirement to use Best Available Techniques, the application of the Habitats Directive to pre-existing refineries as if they are new plans or projects, the development of Refinery Sector Guidance to provide a benchmark for Best Available Techniques which exceeds the requirements agreed between EU member states, and the Agency's draft Corporate Strategy.

5. UKPIA believes the Agency's primary function in environmental protection is as an executive arm of Government with unique statutory duties and powers. We believe this role should bring with it the obligation to follow and support policies laid down by Government or Parliament such as Cabinet Office guidelines on better regulation, commitment to sound science, costs and benefits, consultation, and the balances required by Sustainable Development.

6. We are concerned by the draft Corporate Strategy which extends Government policy on air quality, yet makes little mention of the Agency's constitutional position and the limitations outlined in para 5 above. We believe the Agency should not seek to appear as a green NGO with an agenda separate to Government.

7. The Agency is a very large organisation with an unnecessarily complicated organisational structure, which does not consult effectively with stakeholders, and which dismisses evidenced arguments without good reasons. There are signs of poor internal communication. We believe simplification could produce a stronger and more focused management structure, better discussion of the principles of legislation and policy implementation with stakeholders, and would also be more cost-effective. This should be supported by strengthened accountability for the implementation of Government policy.

INTRODUCTION

8. UKPIA and its members have several important interfaces with the Agency's activities on environmental protection, but less contact on the other activities of flood defence and water management:

- Refineries are regulated under Integrated Pollution Control and EU directives such as Integrated Pollution Prevention and Control (the PPC Regulations), Seveso II (COMAH Regulations), Large Combustion Plant Directive, Air Quality Directives etc. For these the EA performs the vital statutory role of UK Competent Authority. UKPIA meets regularly with Agency officials on matters concerning the regulation of refineries. UKPIA is also a member of the Agency's Pollution Inventory Advisory Group to develop and improve public information on emissions from regulated industries.
- Oil distribution terminals are subject to COMAH, and to the Groundwater directive, for which the EA is Competent Authority. They also interface with local authorities on air pollution control. The oil industry has recently completed joint work with the Agency to revise and update environmental guidance for oil distribution terminals.
- Petrol filling stations are mostly under local authority control, but can interface with the EA on water discharge consents, groundwater issues, and contaminated land.
- Waste oil and oily water comprise one of the UK's largest hazardous waste streams, mostly arising on customers' premises. UKPIA is keen to see that regulated collection, recovery and disposal operations work smoothly, and we are active in Defra's Hazardous Waste Forum.
- Oil spills into water, usually arising from customers' premises, are a major contributory factor in the Agency's annual report on pollution incidents. We work with the Agency and other industry bodies to better target and promote pollution prevention work as part of the Oil Care Campaign.
- UKPIA is a member of the Agency's Environmental Protection Charging Review Group, which provides comment and advice on the Agency's charging schemes.

ADDRESSING THE TERMS OF REFERENCE OF THE INQUIRY

How successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities.

9. In our experience the Agency's refinery inspectors are doing a good job as enforcers of regulation and are well respected for their professionalism.

10. Our concerns are at the national level with non-inspector staff, and with over-implementation and lack of consultation or dialogue on the interpretation of legislation, as exemplified in the paragraphs 11 to 13 on national air quality objectives, Habitats Directive, and Sector Guidance Notes for IPPC.

11. The Government's Air Quality Strategy of January 2000 explains that while EU air quality limit values are mandatory (as in other member states), industry will not normally be required to take measures to comply with UK national air quality objectives beyond Best Available Techniques Not Entailing Excessive Costs (paras 360–362). Defra's departmental guidance *IPPC—A Practical Guide* adds that significant contribution to significant non-compliance with national air quality objectives will normally be unacceptable, without defining significant. The Agency is interpreting this to mean that the national objectives must be met in Refinery Sector Guidance Notes (para 13 below), and in its Corporate Plan (para 26 below). For refineries the key difference is for the short-term objective for sulphur dioxide, where the UK national objective specifies compliance at 99.9% of the time, compared with 99.7% of the time for the EU limit value. Although technical this difference could cost UK refineries £100 million in capital.

12. The Habitats directive of 1992 was transposed into UK law by the 1994 Regulations SI 2716. Whilst we agree with the Agency on the need to demonstrate the general duty of avoiding deterioration to EU designated sites, we disagree with the Agency's view that pre-existing refineries are new plants and projects to be subjected to an entirely different test of no adverse effect and we have submitted detailed expert legal advice to support this. The Agency has repeatedly refused consultation or real dialogue with the industries concerned despite promises to do this in June 2003. At the time of writing we are still pressing the Agency to enter rational discussion of the legal and scientific criteria to comply with the directive's requirements, despite having first raised concerns nearly three years ago.

13. The EU directive on Integrated Pollution Prevention and Control is transposed into UK law by SI 2000 No 1973 and requires industrial installations to use Best Available Techniques (BAT) to prevent pollution. EU guidance on BAT for most sectors has been agreed by member states and provides a non-binding benchmark. The Agency is developing its own UK guidance, and we are concerned where this appears to require more onerous conditions than the EU guidance or suggests unrealistically low costs for abatement plant. With costs of perhaps £100 million per UK refinery at stake there is a risk that a more hostile regulatory environment in the UK could undermine the sustainability of the refining industry.

14. The Agency is an extremely large organization with a wide diversity of activities. These can be grouped broadly into flood defence, water management, and environmental protection. The Agency is still organized primarily on a regional basis, rather than around these three distinct activity areas, and we believe there is scope for improvement.

Whether the Agency operates efficiently and provides good value for money.

15. A large number of staff are employed on environmental protection activities in the Operations and Environmental Protection Directorates, most of whom are not inspectors. The costs of non-inspector staff are then allocated to inspection activities and charged out to industry, resulting in high charges per activity, or per man-day of inspector's work. The numbers of non-inspector staff seem high and we suspect they could be better organized on a national basis.

16. We do not understand the current split of non-inspector staff between "policy" and "process", especially as work which is truly policy is—or should be—the responsibility of Defra and the devolved administrations.

17. We would welcome a better quality of consultation or dialogue on key issues of interpretation (eg on Habitats para 12 above), and consider this more important than cutting costs at the Agency. Too often the officials we meet on a regular basis do not appear to have the authority to progress issues of concern.

The structure, governance and accountability of the Agency.

18. For reasons explained above, we believe the Agency's structure could be improved. The trend in the oil industry is towards a simple global organization focused on common activities (eg refining), and away from regional multi-functional organizations.

19. Whilst we have contact with executive directors, we have no contact with non-executive Board members. We are concerned that the Agency appears to have a green agenda outside Government policy, and we would like to see the accountability of the Agency as an executive arm of Government strengthened, with the duty to respect Cabinet Office guidelines.

Its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency's role in the planning system.

20. We have limited competence to comment here, however we find it difficult to establish who is responsible for interpreting legislation between officials in Defra and the Agency. The Habitats directive and national air quality objectives are prime examples.

The Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services.

21. The Agency's relationship with UKPIA is less good than that of Health and Safety Executive, where there is more open discussion at senior level of regulatory issues in the *Chemical and Downstream Oil Industry Forum* (CDOIF), and a structure which provides a strong organisational focus on the major hazard industries in Hazardous Installations Directorate. If we wish to query the interpretation of the legislation we know which manager is empowered to ensure the issue is properly discussed, and we meet him three times a year because he chairs the cross-industry consultation group CDOIF.

22. The Agency has just monitored the satisfaction of UKPIA with its services for the first time, and it seemed a thorough survey. Our main concern is to improve the level of consultation or discussion on major policy issues of cross-industry importance such as implementation of the Habitats Directive and national air quality objectives, and on issues of specific industry importance such as Refinery Sector guidance on BAT. Too often the current dialogue seems to repeat the Agency's view and dismiss evidenced views from industry, as for example on Habitats or the enforcement of national air quality objectives.

23. Our members are concerned that the role of the inspector as local representative of the Agency is diminishing, that he seems to have less influence internally and to be less well informed of developments at national level, resulting in less consistency.

The Agency's responsibilities for flood defence and flood mapping, including guidance to the public.

24. The UK's nine major crude oil refineries are all on estuaries, and the prospect of rising sea levels is of concern for energy supply security in addition to the general issues of flood defence. There are local issues to be developed, and the more general issue of who should pay.

How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency.

25. We do not yet understand the implications of this.

How the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity.

26. We are very concerned with the implementation in the UK of the Habitats directive, which appears to be very much more onerous than in other EU member states.

The Environment Agency's forthcoming corporate strategy 2006–11

27. We have responded in detail to the Agency on their draft Corporate Strategy. Our biggest concern is the section on *Cleaner Air for Everyone*, and in particular the commitment to enforce national air quality objectives beyond the requirements of the PPC Regulations (ie beyond BAT). This is beyond the law and current HMG policy as set out in the Air Quality Strategy para 360, and is a clear commitment to gold-plating and to discrimination against UK industry. It will favour imports from other EU member states and make it harder for UK industry to compete with EU locations for future investment. It is contrary to wider Government policy on gold-plating as re-affirmed by the Chancellor in his budget speech.

28. This is an example of a wider concern that the Agency appears reluctant to acknowledge the limitations imposed by its constitutional position. The Agency has a privileged position with a wide range of statutory duties. It should avoid gold-plating and overzealous enforcement, keep to sound science, and accept wider HMG policies and the balances with economic and social issues required by sustainable development. The document reads too much as a green manifesto rather than the corporate strategy of an executive arm of Government. In this sense it under-sells and diminishes the Agency.

29. The Agency is an extremely large Government Agency with a remarkably wide range of activities, statutory duties, and roles, eg adviser in EU negotiation, informer of Government policies, regulator, enforcer, promoter of good practice, provider of advice to SMEs, etc. We suggest the Corporate Strategy would benefit from more discussion of these roles and duties, to place them in the context of environmental needs, EU and UK law, and hence to clarify how the challenges of the future should be addressed, and the targets for the Agency.

30. UKPIA made the following specific comments on the text:

- Pages 25–27. It is not true to write that the objectives set out in the Air Quality Strategy must be met. They are targets for local authorities to aim at, not limit values, and the requirement on industry is that measures beyond BATNEEC will not be required. HMG's policy in this area is clearly set out in the Air Quality Strategy para 360. It has not been superceded, and the more ambiguous statements in *IPPC—A Practical Guide* have not been agreed with other Government Departments and therefore are not Government policy. It is important to accept this caveat to avoid damaging competitiveness of British industry and creating a hostile regulatory environment in the UK which will discourage future investment. And it is certainly inappropriate for the Environment Agency to seek to re-define Government policy in this area.
- Page 25: It is misleading to describe road transport emissions as uncontrolled—it is an extremely active area of EU policy with a raft of legislation enforced, eg via vehicle standards, MOT, etc. Fugitive emissions from industry are not “uncontrolled”—they may be harder to control. And the Government's own expert group on acidification (NEG-TAP) paints an entirely different picture of improvement because acid rain deposition has been and continues to be reduced towards levels not seen for a century. This section is alarmist propaganda rather than sound science.
- Page 27 The origin of these reductions in air emissions is not explained and has not been shared with us. We have no idea whether they are realistic and deliverable within the law, or a sensible allocation of society's resources.
- Page 44 We do not know where the target to reduce waste from regulated industry by 15% has come from.
- Page 49 Emissions from trading sectors meet the NAP target of 736, etc. This is to miss the point of the EU trading scheme. The total EU cap will be met, but companies are free to buy and sell, and it doesn't matter if UK operators buy allowances from EU operators to enable them to emit more CO₂.

Memorandum submitted by British Ports Association and the United Kingdom Major Ports Group**EXECUTIVE SUMMARY**

We believe that it is important that the Government should clarify the role of the Environment Agency (EA) in relation to the management of the marine environment. One of the problems with the present arrangements is the large number of Government Departments and Government Agencies which have responsibilities in this field, so it is particularly important that the role of each should be clearly defined. The EA has a clear statutory remit in relation to coastal and flood defence, water quality and the management of waste. Yet the Agency is increasingly seeking to become involved in all questions of environmental protection and conservation, which is complicating an already difficult situation. If and when the Government's plans to establish a Marine Management Organisation (MMO) come to fruition, the need to clarify the role of the EA will become even more pressing. We would strongly oppose any suggestion that the EA should take over the role foreseen for the MMO.

INTRODUCTION

1. The British Ports Association and the United Kingdom Major Ports Group are the associations which represent the UK ports industry. There are some 120 commercial ports in the UK and all belong to one or other association. We welcome the Committee's decision to conduct an inquiry into the work of the Environment Agency (EA) and are pleased to submit this paper which comments on some of the issues raised in the terms of reference for the inquiry, in particular the Agency's relationship with Government departments and other Government Agencies.

2. The ports industry in England and Wales has regular contact with the EA both at national and local level. The Agency chairs a Port Sector Group which meets periodically to provide a forum for discussion at national level of matters of mutual interest. We also have regular meetings with the Agency on specific topics, such as the implementation of the Water Framework Directive. Our relations with Agency staff are generally good, and our general impression is that they are helpful and well intentioned, although their speed of response often leaves a lot to be desired.

3. By definition seaports straddle the border between land and sea, and most are situated in estuaries, many of which contain Special Protection Areas or Special Areas of Conservation designated under the European Birds or Habitats Directives. Ports are very sensitive to their environmental responsibilities and the industry is in full support of the concept of sustainable development. 95% of the country's international trade passes through our seaports and from time to time ports find it necessary to develop and improve their facilities to handle the increasing volume of trade and to adapt to changing patterns of shipping. The effect of such developments on the environment can raise difficult issues, and it is often necessary for the developer to spend considerable resources in providing mitigation or compensation for the possible environmental harm which his project is claimed to cause. In addition some of the ongoing operations of ports, such as the handling of waste and maintenance dredging (routine dredging of existing channels to maintain a minimum depth of water) can give rise to problems because of their environmental implications.

THE PROBLEM

4. There is general agreement that the current arrangements for the management of the marine environment are unsatisfactory, and we hope that the Government's proposed Marine Bill will provide a better regime. One of the problems is the large number of different government departments and agencies who are involved in different aspects of marine environmental protection and whose roles are not always clearly defined. In England the bodies in question include DEFRA itself (who have responsibility for environmental policy in general and who also administer the licensing regime under the Food and Environmental Protection Act), English Nature, Department for Transport, ODPM, the Maritime and Coastguard Agency and the Environment Agency. The EA has certain clearly defined responsibilities in connection with coast management and flood defence, the management of waste and also with river management and water quality, a responsibility which will be significantly increased when the Water Framework Directive is fully implemented.

5. However, the Agency also regards itself as having an overarching responsibility in respect to all matters to do with the environment. The opening words of a recent press release were

“We are the Environment Agency and it is our job to look after your environment in England and Wales and make it a better place”.

It is unclear how this responsibility relates to that of other agencies, notably DEFRA and English Nature. This can cause problems, first because the Agency is becoming involved in issues where its locus is not clear, and secondly because the Agency sometimes proposes measures which are at odds with the policy being

pursued elsewhere in Government. We consider that the Agency is overstepping its statutory remit and is increasingly becoming involved in, and complicating, issues of marine conservation and development in which it was not previously involved.

6. The attached note contains some examples of the problem.

THE WAY AHEAD

7. We referred above to the Government's proposal to introduce a Marine Bill which is likely to contain provisions for the establishment of a Marine Management Organisation (MMO) which will assume some (yet undefined) role in relation to the management of the marine environment which will probably include administering a regime of Marine Spatial Planning. If the MMO is to be given responsibility for objective resolution of the inevitable conflicts which port developments can pose, it is essential that it should be freestanding, and not have links either to conservation agencies or to sectional interests. For this reason we would strongly resist any suggestion that the EA should become the MMO. Moreover the advent of yet another player in the game will reinforce the need for the Government to give guidance on what exactly the role of the EA is in relation to marine environmental protection. The Agency has a number of specific functions, such as flood defence and water quality, and we have no problem with this. But many of the issues which it has recently sought to become involved in are essentially issues of policy which are for DEFRA to address, assisted, in the case of conservation matters, by English Nature. In other cases the EA has disagreed with other Agencies who also have responsibilities in this area. The advent of an MMO makes it even more important for the Government to clarify the future role of the EA in relation to the marine environment.

8. We are at the Committee's disposal to enlarge on the foregoing if they would find that helpful.

EXAMPLES OF PROBLEMS

A. *Use of Dredged Material on Land*

The dredging of the navigational channel required to improve access to the Port of London and Medway Port will generate considerable material (about five million tonnes), which is not contaminated or polluted and would be very useful for use in landside construction work. The ODPM are most anxious to ensure that the maximum beneficial use is made of such material, because it reduces the requirement for quarrying or other forms of aggregate extraction. However the Environment Agency regard the material in question as waste, despite leading counsel's advice to the contrary, which means that it would be subject to the arrangements for licensing and control over its movements and more seriously, will much reduce its attractiveness for use in civil engineering work, thereby undermining the Government's own policies in this area that support its sustainability objectives. Claims for "risk-based" or "light touch" regulation do not match reality in this case, not withstanding some relevant judgements by the European Court.

B. *Maintenance Dredging*

For some time the ports industry, DEFRA and English Nature have been in discussions about the handling of maintenance dredging in areas which have been designated under the Habitats Directive. A protocol was eventually agreed whereby the ports in question would put arrangements in place to enable English Nature to assess the effect, if any, of the dredging on protected sites. The protocol was agreed in principle but it was decided it should be trialed in three locations before it was brought into general use. The trials were well advanced when the Environment Agency insisted that they also became involved, and as a result of their intervention significant further work was required. We remain unclear as to what their role is in this particular matter, given that English Nature is the statutory advisor to Government on nature conservation matters (such as the Habitats Directive).

C. *New Tower Pier*

When the New Tower Pier was built by the PLA the EA insisted that glass paving inserts be included in the concrete bank seat (from which the brows lead to the pontoon) to allow illumination of the foreshore beneath, supposedly for the benefit of the fauna thereon. The resulting redesign added cost and delay but was of modest, if any, value since the sunlight comes from the opposite side of the river. The result of this was significant cost, all borne by public bodies, with no commensurate benefit. Nor was it clear why the EA had a responsibility to seek to benefit the fauna in question.

D. Bird Roosts on the Thames

The EA insisted that barges be left on moorings on the Thames at Wandsworth to serve as bird roosts, although this was subsequently criticised by English Heritage who thought that it damaged local archaeological interest. Similarly, the Agency required two remaining piles of the old Battersea Festival Pier to remain derelict and unsightly, on the grounds that birds use them as perches. Again, the Agency's role was not clear.

E. Trimley Marshes

English Nature have designated two SPAs on this site, one on either side of the sea defences. The EA opposed the designations, but were eventually overruled. When the Port of Felixstowe proposed to undertake sea defence work in order to protect the two SPAs the EA refused them consent. The issue was eventually resolved, but it provided a good illustration of two agencies in disagreement with each other with no means of settling the matter in a sensible way.

F. Cathodic Protection

EA, when consulted by DEFRA on FEPA Construction Licence applications have objected to the use of sacrificial cathodic protection for steel sheet piling. Despite this matter having been raised with them some two years ago, both formally through the Port Sector Group and informally locally, no scientific argument has been put forward as to why such a system of protection should not be utilised. It is recognised as one of the most economic solutions to the problem of accelerated low water corrosion. Despite discussions this objection is being maintained on newer applications, with no justification produced.

British Ports Association and the United Kingdom Major Ports Group

December 2005

Memorandum submitted by the Committee of the Residents Against Toxic Site (RATS)

1. INTRODUCTION

1.1 The Residents Against Toxic Site is an environmental group in the town of Houghton le Spring near Sunderland in the north east of England.

1.2 We have strong concerns about Biffa Waste Services' Houghton Quarry Landfill, on the highest point in the middle of town less than 200 metres from homes, shops and businesses. It is a huge sub-aquifer site, deep within the Magnesian Limestone and Permian Sands aquifers, supplying potable water to south Sunderland and eastern Co Durham. It is because of this site that we have had dealings with the north east section of the Agency, Tyneside House Newcastle upon Tyne NE4 7AR.

1.3 Our observations are based on this. We initially expected the Agency to regulate the site which pollutes the environment. When we realized that the Agency was failing, on 17 July 2001 we wrote to 16 north east newspapers. We asked for anyone with experiences of the Agency, good or bad, to contact us. All answers were complaints.

1.4 This Submission relates to our observations on: the Environment Agency's accountability; its success in its role as enforcer of environmental regulation and controls; its role in the planning system; its relationship with the general public.

2. ACCOUNTABILITY.

2.1 After our first dealings, we became concerned that the Agency was not fulfilling its statutory duties as defined in the 1995 Environment Act. We phoned Tyneside House to inquire to whom it was accountable and were told "Nobody really".

2.2 We thought it should be accountable to the Minister for the Environment. Several times over the last 10 years we reported our concerns to ministers with no success. In many of our dealings, the Agency deceives us and others.

2.3 In July 2001, we made a complaint to the Office of the Parliamentary Ombudsman backed by copies of evidence. The Ombudsman asked the Agency if any of our allegations were true. The Agency said they were not and the Ombudsman dismissed our complaints. We made a further complaint about the granting of a PPC Permit for this site on 28 September 2004. The Ombudsman has yet to report back.

2.4 We have always presented substantial evidence about the way the Agency has behaved to back our allegations. It appears that no-one is interested. Evidence is available relating to all statements in this Submission.

2.5 We made a complaint to the European Commission on the grounds that the Agency was circumventing EU legislation transposed into UK law, but not being applied. The Agency sent information, presented by the UK and the Commission dismissed our complaints. We asked to see the evidence but this was refused on the grounds that the UK authorities had requested it be kept confidential. We appealed to the European Ombudsman and he obtained the release of the UK Opinion and evidence. We could prove that some of this information was untrue. The Commission has since re-opened our case.

2.6 To attempt recourse to the law to try to get the Agency to fulfill its statutory duties is prohibitively expensive for ordinary people.

2.7 The Agency appears unaccountable. It is taken to be “the expert” in environmental matters. It is consulted as such. Thus, when complaints are made against it, they are dismissed because it is the Agency which is the “provider of expertise”.

3. HOW SUCCESSFUL IT HAS BEEN IN ITS ROLE AS ENFORCER OF ENVIRONMENTAL REGULATION AND CONTROLS

3.1 The Agency did not enforce the Waste Management Licence for the above site in force between 1993 and 2004, when it was replaced by the present PPC Permit. It fails to enforce the PPC Permit.

Day-to-day running of the site and air-borne pollution.

3.2 Biffa has always failed to run the site in accordance with its licence. Lack of daily site cover for putrescible wastes means the site gets covered in scavenging birds, vermin and flies. The Agency takes no effective action saying these come from residents’ own activities. Site traffic covers the main road in greasy mud. The Agency says this is merely “staining”. Biffa dumps light loads in high winds. This blows out and coats the surrounding environment and large sheets of plastic blow onto the adjacent A690 road which has 17,500 vehicles a day. The Agency promised to prosecute for severe littering in 2001 but did nothing for two years, then said they were not going to pursue the matter. By this time it was too late for residents to take action. The Agency now claims that they had no evidence that litter comes out of the site, despite the fact that Agency officers had witnessed it and we took photographs of them doing so. For nearly 10 years polluted dust has been allowed to blow out. Biffa has only had to install monitoring equipment two months ago. Biffa digs into emplaced waste and re-uses it for site engineering. The Agency does nothing. The site gives rise to a sickening stench all hours. The Agency claims it is “damp soil” or municipal waste being tipped close to the fence. The Agency takes no action to protect residents.

Pollution of the aquifers.

3.3 It is a statutory offence to pollute aquifers. The Agency carried out no research before it allowed the site to open to see if it was a safe place for the dumping of rubbish. Despite the National Rivers Authority having published “The Policy and Practice for the Protection of Groundwater” in 1992, the Agency did not impose these guidelines on the tip. The tip is in highly fractured and faulted unstable rock, heavily undermined and suffering active subsidence. It is in the exposed scarp, the main aquifer recharge area, only $\frac{2}{3}$ mile south of the public supply extraction well, on the north-east flow route directly from the quarry. None-the-less, the Agency put it in Source Protection Zone 3—water would take 300 days travel time from site to well, so all tipping allowed with a liner. Areas further away from the well, under a deep layer of clay with little water recharge, were put in Zone 2—less than 300 days, only inert tipping. The Agency also contributed to and published a research paper “The Properties of the Major Aquifers in England and Wales” (Allen *et al* 1996) showing the transmissivity rates in the Magnesian Limestone would give a maximum 110 days travel time from site to well. Despite this, the Agency has always reassured the Drinking Water Inspectorate that there is no hydraulic continuity between the site and the supply well.

3.4 The Waste Management License contained an aquifer protection clause, number 58 which stated there must be a two metre clearance between the base of the waste and the highest natural level of the groundwater. In 2000 the residents suspected the site was within the groundwater. The Agency denied it. We subsequently proved it and asked the Agency to impose clause 58 to protect the water resources. The Agency refused saying that its legal advice was that this clause only related to the first deposit of waste. This was nonsense. Evidence subsequently showed that the two metre clearance had never been in existence from

1992 and that Biffa had only considered a one metre clearance to have existed in 1995. However they gave false assurances to “maintain the two metre clearance” when they applied for a licence to tip Special Waste in 1997 (never obtained). It is an offence to make false statements in support of a licence application. The Agency did nothing. By the time Biffa applied for a PPC Permit the Agency accepted that the site had a base level of 68 metres Above Ordnance Datum and the highest groundwater was 75m AOD. Research presented to the Agency in 2002 showed the highest level could be 85m AOD.

3.5 The Agency admitted in internal documents that it was not designed to be a sub-aquifer site. Part of the site base has never been lined and much was improperly built leaving it particularly vulnerable to high water levels.

3.6 The water monitoring boreholes show repeated examples of pollution. The Magnesian Limestone is highly fissured and faulted so water flows through it like interconnected pipes. The Agency knows this and that the pollutants will flow towards the supply well in flushes. Yet it argues that pollution can only be measured as a build-up of chemicals. The Agency is also aware of the high levels of pollution showing in boreholes, such as pH levels up to 11, which is so alkaline that it would cause severe burns. It denies that aquifer water in the quarry floor has registered pH13, although it admitted this in internal documents. The Agency head at Newcastle, spoke to the Press about the Uranium presently showing up in the boreholes, claiming it is coming out of the Limestone. There is no Uranium in the limestone whatsoever. The Agency has also claimed that landfill gas which is showing up in the gas monitoring boreholes is coming out of the Magnesian Limestone. This is also untrue.

PPC Permit

3.7 Newcastle Agency officers and Sir John Harman informed us repeatedly from 2000 onwards that “If this was a new application it would not be allowed now”. When Biffa applied for a PPC Permit we asked if the legislation now in place would apply to the Application, including the Groundwater Regulations, and whether this was a new Application or just a continuation of an existing site. We were assured it was new and that all legislation would apply. However the Agency did not apply any of the protective legislation, arguing later that only the 1974 Control of Pollution Act applies, being the only legislation in force when the then owners, Greenways, first applied for a licence in 1985.

3.8 Many statements made by Biffa in their Permit Application were clearly false. For example, to minimize the possible effects on the local population they claimed that the site was $\frac{2}{3}$ mile north of Houghton. In reality it is in the centre. They submitted maps showing the site surrounded by green fields, when much is surrounded by an urban environment. Much of the Application was a tissue of lies. Biffa refused to list the materials they wanted to landfill, which meant objectors could not comment on them.

3.9 However, the Agency granted the Permit and an extensive list of toxic materials which Biffa could now landfill. Previously in 1997 Biffa had to apply for a new planning permission (application withdrawn 2001) because the current one stipulates “non-toxic”. A correct planning permission must be in place for a Permit to be granted. However, the Agency granted the Permit despite knowing that the types of waste granted was contrary to the planning permission. They also granted a licence for landfill gas engines without a planning permission being in place.

3.10 At the same time the Agency refused all other applications from smaller operators for landfill sites on the Magnesian Limestone because of “risk to the aquifer”.

3.11 We would observe that some Agency officers used to work in the waste industry. Some leave the Agency for the waste industry. Some carry out private contracts while still employed at the Agency. This relationship is far too cosy to enable independent regulation.

4. ITS ROLE IN THE PLANNING SYSTEM

4.1 The Agency frequently advises other regulatory bodies and Sunderland Council planning department that the site is safe claiming independent studies prove this.

4.2 However, Biffa’s Risk Assessment for the effects on the aquifers of the presently constructed site was based on a computer model called LandSim. The Agency received a letter in 1997 advising that the LandSim model was totally unsuitable to be applied to the site, and yet they accepted Biffa’s claim that it proved that the site would have no effects on the water. The Agency also claims independent studies prove that Biffa’s “independent experts” (commissioned and paid for by Biffa) are correct. However, the Agency paid for the firm Golder to give the OK to a Report by Golder working for Biffa and the Agency paid for the firm ESI to give the OK to a Report by ESI working for Biffa. It seems that the phrase “conflict of interest” has never darkened the doors of the Environment Agency.

4.3 When the Agency commissioned a Report by a firm called Halcrow which was highly critical of Biffa, the Agency refused to accept it and instead an Agency internal E-Mail records the decision to “equip Biffa on how to answer the points raised”.

4.4 The Agency has issued Sunderland planners with reports saying borehole pollution comes from a wide variety of sources, not Biffa. These excuses include: landfill gas coming from old coal mine workings or from the Limestone: totally untrue. Water pollution comes from run-off of chemicals from the nearby A690 road: untrue—the A690 steeply grades away from the boreholes. Material the farmer spreads on his fields causes it: untrue—pollution includes Manganese, Lead and Iron and the fields are downstream from the tip. Deliberate vandalism: untrue—no sign of borehole vandalism and none reported to the police. Water pH 11 caused by mortar falling in the hole and pH 13 caused by landfill of rubble from an old building: impossible.

5. ITS RELATIONSHIP WITH THE GENERAL PUBLIC

5.1 Despite repeated requests, the Agency has refused to meet residents since January 2002. However, Baroness Barbara Young told MP Fraser Kemp July 2002 “we are seeking to build a more positive relationship with RATS and have attended their meetings”. In a letter to us dated 27 July 2005 she stated “our attendance (at your meetings) has not been productive”, “the most effective way to continue communication with your group is by written correspondence through the Parliamentary Ombudsman”.

5.2 The Agency has told us heavily polluted materials dumped at the site are “commercially confidential” which keeps them secret.

5.3 The Agency has denied us access to the public records held at Tyneside House since 2002 saying it is “a paperless office and a girl would have to leave her computer for you to use”. We must write requests which have sometimes been denied us on the grounds “in providing responses to your previous requests for information we have cumulatively exceeded that limit”.

5.4 Overall the residents were unsurprised to read an internal Agency E-Mail (07/03/02) that the EA should not take actions in which could result in “a lengthy and complex legal battle with Biffa” “political fall out with Sunderland” and “close scrutiny of the Agency’s actions with regard to this site”.

6. EXECUTIVE SUMMARY

6.1 The Residents Against Toxic Site is an environmental group in the town of Houghton le Spring near Sunderland in the north east of England. We have had dealings with the north east section of the Environment Agency based at Tyneside House Newcastle upon Tyne NE4 7AR. Our dealings centre on a large landfill site in the middle of our town. Our observations are based on this. Our comments are restricted to four topics.

6.2 Accountability. We are concerned that it is the Agency’s lack of accountability which has led to it not fulfilling its statutory duties to protect the environment. It is unelected and gives the appearance of being a law unto itself. There appears to be no-one actually in charge who can force it to carry out its role effectively.

6.3 How successful it has been in its role as enforcer of environmental regulation and controls. The Agency is failing in its duties which means that the public has limited environmental protection. The Agency frequently gives us false information, contradictory information, and refuses us information. It fails to protect our environment, air and water resources. It allowed the above site to open and remain open despite having evidence of pollution and that it could not operate in a manner safe for the environment. It subsequently granted Biffa a PPC Permit when it said it would not. We are concerned about the movement of Agency officers to and from employment in the waste industry.

6.4 Its role in the planning system. The Agency is a hindrance to environmental protection. It is seen as “the expert” to whom other regulatory bodies defer, when it actually has little in-house expertise. The Agency gives provably false information to elected representatives and bodies such as local authorities and the Drinking Water Inspectorate. Its seemingly authoritative reports lull these bodies into a false sense of security that all is well. In the case of Sunderland Council, the Agency tells it what it wants to hear.

6.5 Its relationship with the general public. The Agency treats the public with contempt. We are “the enemy” if we dare to question it or suggest that it is not doing its job properly. It operates as a “closed shop” together with the waste industry and the planning authority, effectively excluding the public. We frequently prove the Agency being untruthful, but it repeats and extends its web of mis-information.

6.6 Conclusion. We can only make observations based on our own experiences, but we are aware that we are not an isolated case. The Agency is weak, being frightened of the legal clout of big business and afraid to take actions which would be unpopular with local authorities. The Agency’s lack of regulation of landfill sites needs urgent independent investigation. There appears to be little regulatory control over the Agency. Management needs increased accountability to force the Agency to carry out its statutory duties.

Committee of the Residents Against Toxic Site

December 2005

Memorandum submitted by Kent County Council

Comments by Kent County Council as County Planning Authority on the relationship with the Environment Agency on Strategic Planning Issues

INTRODUCTION

1. These comments relate to the effectiveness of the Environment Agency (EA) as a statutory consultee to Kent County Council as a strategic planning authority. Specifically it explores the input by the EA to Kent County Council in its role as:

Waste Planning Authority both for Development Control and Waste Forward Planning, Minerals Planning Authority, Development Control Authority for applications under Regulation 3 of the Town and Country Planning General Regulations 1992 and Enforcement Authority for Minerals and Waste.

2. KCC'S ROLE AS WASTE AND MINERALS PLANNING AUTHORITY

2.1 *Development Control*

Under the GPDO the EA is a statutory consultee on a substantial proportion of "County" matter proposals. Like other statutory consultees the EA is obliged (under Section 54(4) of the Planning and Compulsory Purchase 2004 Act) to provide a substantive response to consultations within 21 days.

County Councils, like District Councils, have strict Development Control performance targets (measured by national BVPI 109). In a recent government consultation it has been proposed that an element of Planning Delivery Grant to County Council's (for 2006–07) be linked to improvement in the speed of determination of waste applications.

2.2 KCC has been experiencing problems with obtaining satisfactory responses from the EA within reasonable deadlines. The issue was raised locally via the Area Office in summer 2005 and was subject to a joint EA/KCC workshop in October 2005. However, this has failed to resolve the issues that have since been discussed at national level and with ODPM.

2.3 The principal issue relates to waste proposals that require a second stage permit from the EA (whether a Waste Management Licence or an IPPC permit.) Specific difficulties have arisen when such permits are dealt with by a "virtual" EA national permitting team, known as the Strategic Permitting Group (SPG). Specifically, there is a view within the EA that to offer detailed comments at the planning stage on pollution/health issues would "fetter" their decision making at the subsequent stage. The outcome has been to cause significant delay in the determination period for a number of significant planning applications. The Committee may be aware of assertions by some sectors of the waste industry that the planning process has been too slow to deal with important proposals. The KCC position which was also referred to by a number of experienced figures at the recent DEFRA/ODPM PPS10 Regional Planning event is that the delay is being caused by the delay in planning authorities receiving appropriate advice from bodies such as the EA. KCC fundamentally disagrees with the EA view on the fettering of their permitting role and it is understood that other strategic (County) authorities support the KCC position. Specifically, pollution and public health are material planning considerations (both national advice and Court cases support this view). The EA of course owes its origins to a number of discreet organisations, all of which originally had a public health or pollution remit. Secondly, whereas the planning process deals with the acceptability of particular sites for a particular use, the EA has the role of determining the acceptability of a detailed process, and of the operator to undertake the process. As part of this permitting process they are also charged with applying strict controls on emissions to atmosphere. In carrying out this role the EA can also take into account tests of technical competence, financial security and previous convictions, which are not planning considerations.

2.4 KCC urges that this issue be resolved expeditiously with explicit advice to the EA of its correct role in the planning process. Without this clarification the delivery of the large numbers of waste facilities required to meet Government targets will be delayed.

2.5 *Nature Conservation*

Unlike with pollution/health issues, the EA is constantly providing detailed responses to minerals and waste consultations on "nature conservation". Despite KCC advice that we do not need such advice (as it duplicates advice from English Nature) often responses on consultations predominantly cover nature conservation. KCC in the past has attempted to obtain EA agreement to a protocol whereby they only provide such advice on species or sites for which the EA is a lead authority under the Kent Biodiversity Agreement, ie those species predominantly water based.

Clearly there is a need for the Agencies such as English nature and the Environment Agency, which have a duty of regard to biodiversity to work in a far more integrated manner. KCC would request that a protocol is adopted or preferably an agreement is entered into (see Natural environment and Communities Bill, Part 8, Charter 1, paras 71&72) by the EA and EN nationally to ensure that there is a more consistent approach and to avoid duplication of efforts and waste of resources providing information which the Planning Authority is not seeking.

3. MINERALS AND WASTE FORWARD PLANNING

3.1 KCC as relevant authority for preparing Minerals and Waste Development Frameworks are finding it difficult to engage the EA in the process. Specifically, the EA appear to have a lack of specialist “hydrogeological” resource to offer comments on site allocations within a reasonable timescale.

4. KCC’S ROLE AS PLANNING AUTHORITY FOR REGULATION 3 DEVELOPMENTS

4.1 KCC is also experiencing difficulties in the degree of confidence, it can assume on EA responses particularly in response to flood risk. Our experience is of confused responses, which fail to distinguish between outline and full applications and do not make the EA position clear. Whilst we recognise the difficulty the EA is in, in relation to areas at risk of both fluvial and coastal flooding, the inconsistency of responses is a cause of concern and again leads to delay in determination periods.

4.2 The EA also provides excessive comments on nature conservation issues on Regulation 3 developments.

5. KCC’S ROLE AS ENFORCEMENT AUTHORITY

5.1 KCC operates to a published Enforcement protocol. A large proportion of KCC cases relate to unauthorised “waste” activities. Whilst we are aware of the Protocol Number 6 between the LGA and EA dated January 2005 our experience is that it is not being followed “on the ground” by the vast majority of EA officers. Our experience is that EA officers are rarely interested in taking enforcement action and take many months to reach decisions on cases that are having a severe environmental impact.

5.2 Secondly, we have major concerns that in dealing with applications for exemptions under the Waste Management Licensing Regulations that the EA is not undertaking the “relevant objectives” as set out in Regulation 17(4). If they are doing so, the process is not open and officers of Kent CC more often than not would not have reached the same conclusions. We have case examples of sites for which the EA has issued an exemption for which KCC has subsequently had to resort to formal Enforcement action to have waste materials removed. This raises serious questions as to whether EA officers are appropriately qualified to form such judgements. It is recommended that further consideration needs to be given to how effective the “exemption” system operates. The KCC view which is, we understand, supported by many other waste planning authorities that it is being abused to avoid landfill tax on inert materials. This has resulted in significant quantities of apparently “inert” materials being wasted at inappropriate locations in the countryside as opposed to being directed to sites requiring such materials under the terms of their planning permissions to achieve the approved restoration scheme.

6. CONCLUSION

KCC firmly believes that there is considerable desire within the community for a powerful Agency being seen to carry out its role in an open, transparent and efficient manner. With a move to increased public engagement in planning, this desire can only increase. However, the EA is increasingly viewed by the public as an organisation that lacks a political will to use its powerful enforcement and regulatory powers. Whilst understanding the desire in terms of efficiency to move towards a risk based regulation policy this appears to have swung too far in terms of the impact it is now having on public bodies and especially local authorities in the performance of our duties. We believe that this reflects a total under-resourcing of its front-end environmental protection functions. Our experience is that the EA also needs greater public accountability and a step change within the corporate body to meet this higher public expectation. KCC is willing to expand upon these comments if further elaboration would be useful.

Kent County Council

December 2005

Memorandum submitted by Michael Ryan

THE FAILURE OF ENVIRONMENT AGENCY (EA) TO REGULATE HARMFUL INDUSTRIAL PM2.5 EMISSIONS

1. EXECUTIVE SUMMARY

1.1 The EA’s failure to regulate harmful PM2.5 (particles of 2.5 microns and below) emissions from power stations, incinerators, cement works, brickworks and some other industrial processes has caused a massive increase in sickness and premature death, which is likely to continue unless your Parliamentary Committee takes early and effective action. These PM2.5s have increased exponentially due to switch in fuel from coal to hazardous waste mixes.

1.2 The UK only monitor PM10s, ie particles of between four and 11 microns (a micron being one millionth part of a metre), despite proof that the critical upper size of particles to enter the lungs is PM2.5 and particles doing most harm are within the range PM1 to PM2.5.

1.3 There is no effective public health system in the UK to examine the patterns of sickness and premature deaths resulting from industrial PM2.5 pollution despite there being considerable published research on the subject by Dr Dick van Steenis and others.

1.4 If the UK adopted the US Clean Air Act of 1997 we could easily reduce the annual NHS bill by £24 billion. The US saved \$193 billion just from reduced hospital visits and days off work according to the White House Office of Management and Budget report which was featured in the *Washington Post*, 27 September 2003. HM Treasury failed to reply to Paul Marsden MP after he raised this issue on my behalf in October 2004. My letter to Paul Marsden MP is at www.ukhr.org/obesity.

1.5 The failure of the EA to regulate and reduce toxic airborne emissions can be proved and this statement will make use of a case study in Shropshire and also my birth defect research at www.ukhr.org as only part of the proof.

1.6 The failure of public health professionals, whether in Primary Care Trusts (PCTs) or Health Protection Agency (HPA) or elsewhere to study locations and causes of sickness and premature death patterns and take effective remedial action shows a gross dereliction of duty.

1.7 There are two case studies with this report, the first is based in Shropshire and focuses on a range of health parameters and a major unregulated source of PM2.5 pollution, which has caused and is continuing to cause great loss of life. The second is based in Greater London and refers to variations in rates of babies born with defects, a set of data that has been gathered by the government since January 1964 with the aim of “providing early information of causal factors of congenital malformation” (*The Times*, 6 January 1964, “Scheme to notify malformations”). The principles of each case study apply elsewhere.

1.8 I’ve read and agree with Dr van Steenis’ e-mailed submission (25 November 2005), having discussed the matter with him. We both agree that the best solution would to replace the EA’s failed role as a regulator with an Environmental Police Force under the direction of HM Treasury, whose money is at stake for the cost of failure of regulation and also because HM Treasury is the controlling department of the Office of National Statistics (ONS), whose extensive data proves that what is written here is correct and can be used in future to demonstrate that regulation is taking place, unlike today. Such a new department should also be subject to external audit to prove effectiveness. Dr van Steenis would be able to provide expert advice on setting up and auditing such an establishment.

2. BACKGROUND

2.1 Dr Dick van Steenis carried out a childhood asthma survey in West Wales [*Lancet*, 8 April 1995] and found 38% of four-to-five-year-olds in Whitland to be chronic asthmatics compared with just 1% in Aberaeron and other locations upwind of the oil refinery/power station complex at Milford Haven waterway. Dr van Steenis also obtained the cancer admission rates in high and low asthma zones and found a 20-fold differential, ie the high asthma zone had a cancer admission rate that was 2,000% higher than the low asthma zone. Dr van Steenis also obtained the referral rates to consultant psychiatrists for clinical depression in high and low asthma zones and found a nine-fold differential, ie the high asthma zone had a referral rate that was 900% greater than the low asthma zone.

2.2 Dr van Steenis has shown that at least 20 illnesses/health parameters are caused by industrial PM2.5s and the Shropshire Case Study, which started with childhood asthma, is detailing the variation in rates of about half the list.

2.3 The devious role of the EA in public health was clarified during Prime Minister’s Questions on 16 November 2005, when Tony Blair MP failed to confirm that the EA “must at all costs protect the people . . .” in response to the question by Jim Dobbin MP. There is no protection from the EA, just an illusion of protection to deceive the public.

3. CASE STUDY 1: SHROPSHIRE

3.1 I have replicated Dr van Steenis’ asthma survey in Shropshire and obtained the percentage of children in years 3 to 6 who bring inhalers to school for asthma. The highest was 100% in a school immediately downwind of a brickworks. The lowest was 1.9% in a school that was upwind of both the brickworks and also Ironbridge Power Station, the power station being a major source of industrial PM2.5s in Shropshire. The asthma survey is reported at www.ukhr.org/asthma and the variation in percentages of asthma inhalers brought to school can be seen to be higher downwind of the power station, prevailing winds being mainly west-south-westerly, with north-westerly winds being the second most common.

3.2 The rates of infant mortality by electoral ward were obtained and found to be higher downwind of Ironbridge Power Station and the brickworks.

3.3 Telford & Wrekin PCT's 2004 report included ward maps showing highest premature death rates due to both cancer and also coronary. These high death rate wards coincided with wards with high infant mortality and were also in locations with high childhood asthma.

3.4 Dr Dick van Steenis and I met Michael Gwynne (Coroner for East Shropshire) on 27 June 2005 and showed him the above data and Dr van Steenis gave his opinion that suicides would be mostly clustered in the same electoral wards with high rates of infant mortality etc. Mr Gwynne was sceptical, but offered access to his register and subsequent examination has proved Dr van Steenis to be correct.

3.5 Dr van Steenis had earlier spoken to Dr Catherine Woodward at Telford & Wrekin PCT regarding Ironbridge Power Station and a meeting was due to be held, but was cancelled by the PCT. The patterns of illness and premature deaths in Telford & Wrekin must, or should, have been known to Dr Woodward whose own 2004 report referred to high rates of suicide and infant mortality.

3.6 I have requested data from Telford & Wrekin PCT under Freedom of Information; some has been refused (suicide data by electoral ward) and some was false (infant death data by electoral ward failed to match that obtained from the ONS). I also received a threat of a libel action by the Chief Executive of Telford & Wrekin PCT for suggesting in my letter that Dr Woodward was responsible (through her negligence) for more deaths than Dr Harold Shipman.

3.7 The health parameters in Telford & Wrekin PCT that have been studied so far include: infant mortality, stillbirth, childhood asthma, diabetes, COPD, suicide, sudden unexplained deaths, age standardised mortality rates (ie life expectancy), premature cancer deaths and premature death from coronary disease. The correlation of high rates of the above (most by electoral ward, two by GP practice and asthma by school catchment) in the same locations should have been apparent to Telford & Wrekin PCT and their forebears years ago.

3.8 I first raised the issue of excess deaths downwind of Ironbridge Power Station with Michael Gwynne (Coroner) on 2 December 2004. Beacon Radio interviewed me on 14 February 2004 and broadcast several news items about emissions on 15 February 2005 and included statements by Richard Pennells [manager of Ironbridge Power Station], who stated the following in the 10.00 am broadcast: "We monitor our emissions on a minute-by-minute basis, 24 hours a day, 365 days a year. We can categorically prove we are not a danger to public health." I wrote to Richard Pennells and also the EA after the Beacon Radio broadcast requesting copies of any medical reports that backed up Richard Pennell's claims. Both declined to send me any medical report and I later discovered [through the asthma survey and other health research under Freedom of Information] that no such report can possibly exist unless it is fraudulent, because the PCT refuse to analyse their own data.

3.9 I have raised concerns about the "Unlawful killing of Shropshire citizens" with Shrewsbury & Atcham Borough Council (SABC), Shropshire County Council, Bridgnorth District Council and Telford & Wrekin Unitary Authority by e-mail in October 2005 but all that has happened is that SABC have referred the matter to public health professionals, having earlier claimed on 13 October 2005 to "have been advised that the (medical) evidence does not support (my) concerns". SABC failed to send me a copy of the "evidence" that must also be false, just like that which Richard Pennells referred to on Beacon Radio in the broadcast of 15 February 2005.

3.10 There's a possibility that excess rates of sickness and premature death downwind of Ironbridge Power Station, and other industrial processes around the UK, are known about but covered up. If that is so, it's reasonable to assume that there might be bribery of certain officials responsible for monitoring of airborne emissions or public health to do nothing. If there have been financial inducements to public servants to turn a blind eye to the effects of emissions from Ironbridge Power Stations, such an action is little different to a police officer who, although aware of a Dr Shipman-like character murdering patients, allowing it to proceed in exchange for some financial reward from the murdering doctor.

3.11 Simon Conolly, Chief Executive of Telford & Wrekin PCT, wrote the following to me on 13 June 2005: "Whilst the PCT retains an open mind on this subject (excess premature deaths due to Ironbridge Power Station emissions), I should explain that your views that there are adverse effects from the emissions (from Ironbridge Power Station) is at odds with the professional advice that the PCT has allegedly received from the EA and the HPA. Accordingly, in order to use NHS resources to the best effect, I am not prepared to ask my staff to become engaged in a detailed investigation unless a clear and justified case is put to us that there may be harmful effects associated with the power station emissions."

Mr Conolly's letter had earlier invited me to write to the PCT in order to "explain the scientific case that you (ie Michael Ryan) are alleging in respect of the power station emissions". The data now gathered is such that his only course of action would be to sack Dr Catherine Woodward and then resign in disgrace. The removal of Dr Woodward and Mr Conolly is overdue because Mr Conolly has admitted reliance on "professional advice from the EA and HPA" instead of looking at the facts, many of which are published in Dr Woodward's public health report of 2004. If Mr Conolly had been an effective manager, he'd have studied my letter of 4 June 2005 very carefully—then asked Dr Woodward to investigate the possibility that emissions from Ironbridge Power Station might be causing excess premature deaths. They should have interviewed Dr van Steenis and myself. If Dr Woodward carried out such an investigation, she'd have reached the same conclusion as me in much less time and thereby saved many lives. It was both foolish and counterproductive of Mr Conolly to show Dr Woodward my letter as my accusing her of negligence must prejudice her against me.

3.12 Shropshire is a large, mainly rural county. Out-of-hours GP services are provided by "Shropdoc", which might result in a home visit from a GP 50 miles away. The Director of Shropdoc (until his death, aged 46, earlier this month) was Dr Steve Hugh. Dr Hugh's medical practice was at Stirchley and he had lived mainly in Coalbrookdale before moving a short distance to Little Wenlock. Coalbrookdale is in the electoral ward of Ironbridge Gorge, which has the shortest life expectancy by far of any of the 33 wards in Telford & Wrekin (according to ONS) and is also the closest to Ironbridge Power Station. It seems probable that Dr Hugh's sudden death, whilst on a walking holiday in Spain, was due to a heart attack. His premature death is like so many others who have lived and worked downwind of Ironbridge Power Station and where lives will continue to be cut short until effective action is taken to prevent hundreds of premature deaths per annum.

4. CASE STUDY 2: GREATER LONDON BIRTH DEFECT RATES

4.1 Using unpublished ONS birth defect data released on the instruction of Ruth Kelly MP, I've calculated rates of babies born with defects in each of the 31 Greater London PCTs for the years 1995 to 2002. Birth defects are known to be caused by radioactivity, organophosphate pesticides/herbicides and industrial emissions of PM2.5s as described in my report at www.ukhr.org.

4.2 If birth defects were randomly distributed, then any of the Greater London PCTs will have a one in 31 chance of having the highest rate in any year. If the same PCT has the highest rate for two consecutive years, the odds are multiplied ie the odds are 1 in 961 of occurring by chance. Bexley PCT had the highest rate of babies born with defects in Greater London for each of the five years 1998 to 2002 and the odds against that sequence being a chance event are one in 28,629,151, ie about twice as unlikely as winning the National Lottery with a single £1 ticket.

4.3 Bexley is the only London Borough with an incinerator authorised to burn radioactive waste (White Rose, Sidcup) according to information supplied to me by Barbara Young, Chief Executive of the EA, in her letter of 23 December 2002. Bexley is also home to the Crossness sewage sludge incinerator which was used to dispose of sewage sludge after dumping sludge in the North Sea was banned on environmental grounds in 1992. This sludge contains heavy metals and other chemicals that are damaging to health when inhaled. The numbers of babies recorded as being born with defects in Bexley for the years 1995 to 2002 are as follows: 24, 33, 33, 56, 48, 66, 65, and 59. It should be noted that scanning techniques for detecting defects have improved considerably since 1995 and so the defect numbers in later years are an understatement of the true scale of the problem.

4.4 Islington PCT, in the heart of the largest urban area in the UK, was chosen as the "control" in my analysis of birth defect data. Islington's birth rate is only slightly less than Bexley's and yet the numbers of babies born with defects during the years 1995 to 2002 were: <5, <5, 10, 5, <5, 12, <5, and <5. The ONS refused to divulge actual numbers less than 5 (<5), hence my inability to state whether the rate of babies born with defects in Mid Devon PCT during 2002 was "merely" 39 times greater than the rate in Islington (assuming four babies with defects in Islington) or whether the Mid Devon rate was 2,526 times greater than in Islington (assuming one baby with a defect).

4.4. Greater London PCTs with slightly lower rates of babies born with defects than Bexley are mostly clustered downwind of Grondon's radioactive waste-burning incinerator at Colnbrook. The published ONS birth defect data showed Hillingdon to be the worst London location for birth defects in 2000 and 2001 and John McDonnell MP asked a series of Parliamentary Questions in 2004 after he met Dr van Steenis and I on 9 March 2004.

4.5 As Slough PCT will also be adversely affected by PM2.5 emissions from Grundon’s incinerator, I’ve examined the rates of babies born with defects in Slough PCT as well as the 31 Greater London PCTs to determine how many times each PCT is featured in the worst 10 PCTs during the eight years 1995 to 2002 and found the following:

<i>Primary Care Trust</i>	<i>Number of times in top 10 for birth defect rates (out of maximum of 8)</i>	
Bexley	7	(highest 1998 to 2002)
Croydon	7	(highest in 1996 and 1997)
Hillingdon	7	(third highest in 2000 and 2001)
Wandsworth	7	(second highest in 1996,1997 and 1998)
Harrow	6	(second highest in 1999)
Slough	6	(fourth highest 2000 and 2002; fifth in 2001)
City and Hackney Teaching	5	(highest in 1995)
Kingston	5	
Tower Hamlets	5	
Hounslow	4	(second highest in 2001 and 2002)
Hammersmith and Fulham	4	
Ealing		
Sutton and Merton	3	
Southwark	3	
Lewisham	2	
Enfield	2	
Greenwich	1	(seventh highest in 1999)
Haringey Teaching	1	(joint fourth highest in 2002)
Richmond and Twickenham	1	(fifth highest in 2000)
Waltham Forest	1	(third highest in 1998)

A Greater London map showing point sources of industrial PM2.5s would explain variations of birth defect rates and other health parameters. Bexley is also affected by emissions from SELCHP (Lewisham) and Littlebrook D Power Station. I raised these issues in my statement to the recent public inquiry using unpublished ONS birth defect data—yet my evidence was wrongly criticised by pro-incinerator “expert” Professor Jim Bridges, whose seven page report on my statement was erroneous as detailed in the *South London Mercury*, 23 November 2005. Professor Bridges stupidly quoted from non-existent published birth defect data for Bexley and then, through Lovells (his solicitors), refused to retract his erroneous report after I reminded Professor Bridges that I had access to unpublished ONS data.

Michael Ryan
December 2005

Memorandum submitted by Revd Douglas J M Caffyn

1. This paper considers “the Agency’s relationship with non-Governmental stakeholders and the general public”.
2. In the paper it is claimed that the Agency gives too high a priority to Angling at the expense of other recreations.
3. Good government requires that Government Agencies treat each of their client groups fairly.
4. Evidence:
 - (a) The founders of the Agency gave statutory priority to Angling over other recreations. It is required to promote angling without qualification, it is only required to promote other recreations as it thinks desirable.
 - (b) The Agency has appointed to its Statutory Regional Fisheries, Ecology and Recreation Committees:

91	people whose main interest is Angling and Fisheries	63%
17	Navigation	12%
14	Recreation	10%
13	Conservation	9%
10	Other	7%

The committee membership does not reflect the interests of the general public.

- (c) The Agency retains funds from the Angling Rod Licence exclusively for Angling. Funds for boat licences and other recreations are not retained exclusively for these activities. So although there are many anglers who use the rivers for which the Agency is the Navigation Authority they contribute nothing to the cost of maintaining these rivers.

- (d) The Agency spends a disproportionate amount of Government Grant in Aid on Angling.
- (e) The Agency spends a disproportionate amount of the funds which it receives from non-Government sources on Angling.
- (f) The Agency has a disproportionate number of staff working for Angling.
- (g) The Salmon and Trout Association claim on their web-site that they have influence greater than their number would warrant. This is because the Agency bows too easily to pressure from Angling organisations.
- (h) The committee chaired by Lord Moran to promote Angling has too great an influence on the Agency's decisions.
- (i) The Agency regularly claim that there are four million anglers. The Office of the Comptroller and Auditor General have examined the evidence for this claim and state that the figure is unreliable. The Agency produce no figures for people engaged in other recreational activities.
- (j) The Agency fails to acknowledge the reduction in the number of people fishing on rivers which has fallen from about 5,000,000 in 1950 to about 500,000 licensed river anglers today.
- (k) The Agency fails to publicise the fact that of the claimed 2.6 million freshwater anglers only 1.3 million purchase a rod licence. There is a loss to the Exchequer of about £25 million each year.
- (l) While the Countryside Agency is actively engaged in establishing where there are public rights of way on land, the Agency refuses to try to establish where there are public rights of navigation on non-tidal rivers.
- (m) The Agency allows free access to the Mole Relief Channel for anglers but has failed to come to an agreement with the British Canoe Union about the use of the channel for canoes. The Agency seeks to put much stronger restraints on the use by canoeists than it requires for anglers.
- (n) The Agency allows live-baiting on the waters it owns despite the fact that this activity is considered barbaric by many anglers and most non-anglers.

5. The Committee are asked to recommend that the Agency should increase its work on the development of recreations other than angling.

Revd Douglas J M Caffyn

December 2005

Memorandum submitted by Mr and Mrs Irwin

1. Horrendous Molotov war type gasses used repeatedly, and are well known to us to be the weapons of mass destruction . . . and were never able to be contained because the burial chamber was sighted on a hill, and these gasses constantly used on us and were manufactured by Viridor, ever since 2001's Foot-and-Mouth. We were repeatedly shaken awake from our beds this caused severe damage to our lives and nervous systems etc, because these perniciously vile gaseous stenchs repeatedly coming from those rotting carcasses, human excreta and household waste etc, were all mass buried at that time into an overlarge landfill/landrise cell of seven acres, and sited far too close to the community, and all these remained fermenting and putrefying etc and uncovered until 2003.

2. We were constantly being made so ill from these gassings and were completely unable to drive our cars! No windows could be opened because of the vilest of stenchs and swarms of flies. We the forgotten Foot-and-Mouth prisoners made victims in our homes!!! We believe that the Environment Agency was forced to change all safety procedures to accommodate these horrendously Toxic loads etc.

3. Our Dogs West Highland White Terrier column, November 4, 2005, page 36, Diane Irwin gives news of a BPIS win for her Rishtte Glamis (born 9.3.05) under judge Jane Lilly at the Bodmin Open Show October 23. For all the usual winning reasons Diane is pleased with Glamis success, but there is much more—sheer relief at being able to breed healthy and obviously winning stock again, I would say.

4. As since the 2001 Foot and Mouth Diane's kennel has been under attack from pollution caused at the time, first sterility then abortions and central nervous system damage, sudden deaths, deformities, now the community has high asthma, cancer, birth defects and (800)Parkinson figures. Diane has campaigned incessantly, her efforts had lead her to work alongside a panel of experts who also agree that the fore mentioned problems occurred since 2001 F&M out break, known as the World's Worst Plague.

5. For all these reasons Diane feels communities that were also subjected to so much pollution due to the F&M must be informed and therefore she would be only too pleased to hear from anyone who may feel they have suffered in similar circumstances" by Marjorie Dickinson.

Also enclosed is a copy of my letter published 17 November 2005, Shropshire Star Mail:

Letters to the Editor: I would like to thank the Shropshire Star's Newspaper and their website, ever since 2001's Foot-and-Mouth I have been forced to research information regarding birth defects etc caused to my dogs from pollution, so was pleased to find those type of letters on;

www.shropshirestar.com . . . Written by Michael Ryan, Shrewsbury. I also found another very interesting website; www.countrydoctor.co.uk written by Dr Dick Van Steenis . . . I would now very much like to thank, both of these aforementioned gentlemen by my acknowledgement.

Because of the health problems first caused to my dogs then us, so many of these unusual problems are well known to be associated with pollution caused since 2001's Foot-and-Mouth's pyre etc, and this now is proving to be the causal link in several different areas of the country; Kingsteignton, Highhampton and Oakhampton (and now Chudleigh, Highweek, Kidderminster, Worcester)

Recently three out of four of my dogs born during that time have only just managed to produce their first litters, at such an unbelievable late age of almost five!!! Organo Phosphates and Formaldehyde are well documented to be the causal link. With an exceptionally great team of experts supporting me, I am now able to continue with them to collect further information.

All these seemingly Terrorist War Type Gas Attacks etc seemed to be clearly allowable living conditions by the several governing bodies, because this was all seen to be such a safe life style for us to be placed into by the Environment Agency . . . Whom we naturally believed were in place by Government to take care of us. Especially as we should all expect them to look after and save the Environment?

Under Common Law the Tort of Nuisance is described as an act or omission on certain land that unreasonably interferes with or disturbs another person's right of enjoyment of other land. Public Nuisance is a criminal Offence as well as a civil wrong and only applies if the defendant's act or omission is affecting a significant section of the public as a whole; a petition of 600 affected gave signatures these were handed over to Mr Richard Younger Ross MP in front of the MEP delegation led by Mr Graham Watson. Viridor Landfill Site and Buckland Sewage Treatment Works are the Pennon Group and have committed a criminal offence and a civil wrong against us, by not being able to contain these horrendously pernicious war type gasses, repeatedly released and allowed to torture us, from the rotting carcasses mass buried into household Waste, and tonnes of human excreta etc, at the grossly mismanaged Viridor landfill/landrise.

Mr and Mrs Irwin

December 2005

Memorandum submitted by Prudential Property Investment Managers Limited

INTRODUCTION

1. We welcome the opportunity to submit evidence on a number of two of the Committee's terms of reference:

The structure, governance and accountability of the Agency

2. In our experience there is a lack of clarity as to the scope of the responsibility which the Secretary of State for Environment, Food and Rural Affairs has for the work which the Environment Agency carries out. In respect of a recent matter relating to the Agency's role in the planning process we wrote both to the relevant minister within DEFRA and the relevant minister within the ODPM. In the same post we received responses from both, each indicating that the other Department was the appropriate Department to address the issue.

3. The Agency has an important role to play with regard to delivery of the Government's sustainable communities programme. In view of this role it is right that the ODPM as well as DEFRA should have oversight of the Agency's activities, but there should be close co-ordination between both Departments so that issues do not fall between the cracks.

The Agency's relationships with DEFRA, DEFRA-sponsored bodies and the rest of Government, including the Agency's role in the planning system

4. The Agency has an advisory role with regard to planning matters. Paragraph 18 of PPG25 states that the "Environment Agency has a supervisory duty for all matters relating to flood defence".

5. In our experience, the Agency interprets its role as wider than that of a provider of expert advice, but will on occasion, where it is sufficiently concerned as to a proposal or its policy implications, actively seek to ensure that the Government and local planning authorities accept the Agency's standpoint on the matter, without regard to the need to balance the issues with which the Agency is properly concerned against other considerations. This approach is potentially harmful to the democratic process and to the achievement of national and local planning policies in so far as a variety of considerations will need to be taken into account in respect of any major development proposal, some of which fall out with the Agency's remit.

FURTHER INFORMATION

6. We would be happy to discuss these issues in more detail or provide more detailed supplementary evidence if this would assist.

Prudential Property Investment Managers Limited

December 2005

Memorandum submitted by National Association of Fisheries and Angling Consultatives

INQUIRY INTO THE EFFICIENCY OF THE ENVIRONMENT AGENCY

1. The National Association of Fisheries and Angling Consultatives (NAFAC) is the national body for local and regional angling and fisheries stakeholder groups who between them represent the views of more than 400,000 anglers and others with an interest in our fisheries.

2. NAFAC has for many years worked closely with the Environment Agency (EA), and its predecessor the National Rivers Authority (NRA) and we acknowledge the wider responsibilities of the EA and what it has achieved, in particular in the protection and development of fisheries and the promotion of angling. However, we believe that there is a clear distinction between the EA's statutory responsibilities to maintain, develop and improve fisheries and their recreational remit in the promotion of the sport of angling. In this connection the quality of fisheries and the water environment generally is the responsibility of the whole community and not simply those who may exploit it for recreational or even commercial purposes. Indeed whether or not a "fishery" is exploited for angling it should be clear that the water environment is the very basis upon which the whole biodiversity of life depends and as "Guardians of the Environment" the EA has the major role in its protection and sustainability.

3. NAFAC is pleased to submit evidence to this Inquiry as follows.

4. We believe that nationally the EA has been quite successful in its role of enforcer and carries out its wide range of activities well given the political and financial constraints imposed on it. Of course there is a degree of regional variation and there are many areas in which we would wish them to be more active but which would require additional funding.

5. The EA generally operates efficiently and provides good value for money but we would wish that the various impactors, abstractors and polluters pay more for the damage their activities cause to the environment. Furthermore a substantial proportion of any such income should be spent on restoring the damage their actions have caused and not simply swallowed up in bureaucracy.

6. We believe the structure of the EA is reasonable although a good many of our members believe that the "fisheries" function has suffered following the recent re-organisation whereby many posts were combined with other functions of the Agency. We believe the EA does try to be accountable to its stakeholders through a number of routes not the least of which is its statutory committees and other organisations like NAFAC.

7. The relationship between the EA and Defra and the rest of Government appears to be generally very good. However as "Guardians of the Environment" we believe the EA should be and seen to be entirely independent and its future funding should not be dependent upon those relationships. We also believe that the EA should have greater powers in respect of planning, especially as far as flood defence implications are concerned.

8. The EA's relationship with NGOs and other stakeholders as far as fisheries and angling matters are concerned is generally very good although there is a variation between regions. Of course it is always difficult to satisfy all of the people all of the time but generally the EA does well given its limited resources. NAFAC is actively working with the EA to improve this aspect of its role and to enlarge the geographic coverage of fisheries stakeholder groups.

9. As far as flood defence matters are concerned we believe the EA acts in a far more holistic way than in the past. Their recently launched Flood Management Plans evidences this. However, we believe that local authority planners and developers must be made to accept the flood risk advice that the EA gives.

10. NAFAC does not yet fully understand the changes brought about by the Natural Environment and Rural Communities Bill but it is important that biodiversity and the sustainable future of our natural environment is the first priority when any changes or planning are proposed. For example where recreational activities which may have unsustainable and adverse impact on biodiversity and the welfare of the environment, the Sandford principle should remain the governing factor.

11. The EA's work in improving wildlife habitats must be closely related to that of Natural England and duplication of effort and financial resources must be avoided through the development of clear guidelines and close liaison.

12. NAFAC believes the recently published EA corporate strategy is an excellent document that sets out a clear agenda for the next five years. It is important that the plans and strategies result in actions and are not simply aspirations that are not achieved through lack of resources.

13. The points stated above are those we would wish to bring to the attention of the Inquiry. We would be pleased to attend before the Committee if required to develop any of the matters raised.

14. In summary NAFAC is of the opinion that generally the EA performs its many tasks well but lacks the necessary funding to do all that we would wish.

National Association of Fisheries and Angling Consultatives

December 2005

Memorandum submitted by Central Council of Physical Recreation (CCPR)

BACKGROUND

1. CCPR is the independent voice for sport and recreation in the UK. It represents 270 national organisations, including 170 UK and English national governing bodies of sport.

2. CCPR and its member organisations, particularly those within the Water Recreation and Outdoor Pursuits Division have a very keen interest in the work and remit of the Environment Agency (EA) and in particular the recreation and navigation department of the EA. This paper has been based on consultation with CCPR members, however some membership organisations have also chosen to submit individually evidence, for example, The National Association of Fisheries and Angling Consultatives and The British Canoe Union, enabling them to comment on issues specific to their activities or areas of interest.

3. CCPR does enjoy a good relationship with the EA and in particular the recreational team and we look forward to working together on future projects.

4. Recreational activities that take place on or alongside, the inland waterways of the UK have an enormous economic benefit to local communities. This can be highlighted by the effects on the economic viability of the countryside caused by the loss of expenditure from sport and recreation following the Foot and Mouth outbreak illustrates starkly the central impact of these activities to rural affairs. Furthermore recreational activities which take place in rural locations have a key and highly important role to play in sustainable development.

5. The CCPR welcomes the opportunity to submit a written response to the Environment, Food and Rural Affairs committee enquiry into the Environment Agency.

CCPR'S RESPONSE WILL FOCUS ON THE FOLLOWING SPECIFIC POINTS

How successful the EA has been in its role as enforcer of environmental regulations and controls, and how well it manages its wide range of activities

6. CCPR acknowledges that the EA's remit is very wide ranging and as a result there is a concern that the culture and primary functions (control, environment protection and regulation) of the EA can be seen to directly clash with its less developed role as a recreational body. CCPR believes that recreation and access can work in harmony with environmental protection and conservation interests. This can be demonstrated through the work of The Best of Both Worlds project, which is a combined project supported by The Countryside Agency, English Nature and CCPR, which provides good practice guidance to people who are trying to improve opportunities for outdoor recreation whilst avoiding adverse effects on the natural environment. CCPR welcomes the involvement of the EA's recreation team within the Best of Both Worlds project and CCPR hopes that the essence of the project can be incorporated into the EA's policies and practices.

How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency

7. CCPR supports the creation of Natural England as a powerful public body with an integrated remit for conservation, biodiversity, access and recreation. CCPR is concerned that as Natural England will have a statutory duty for access and recreation, there is the potential for overlap as the Environment Agency will continue to have a statutory duty for the promotion of access and recreation for a number of water recreation activities, such as canoeing and angling. It is CCPR's understanding that the relationship between Natural England and EA will be based on a Memorandum of Understanding. CCPR recommends that all stakeholders should be made aware of this MOU and its context, so that all stakeholders can gain a fuller understanding of the new relationship. In addition, CCPR believes it would be useful to outline to all stakeholders how specific projects and issues involving both the EA and Natural England will be taken forward in the future.

The Environment Agency's forthcoming corporate strategy 2006–11

8. CCPR would welcome a section in the corporate strategy 2006–11 dedicated to recreation and navigation. As outlined above, the overlap in remits between the EA and Natural England is a concern and the recreation section within the corporate strategy could help to define the roles that EA and Natural England will have for access and recreation.

CCPR

December 2005

Memorandum submitted by Prospect: Environment Agency Branch

EXECUTIVE SUMMARY

- There is still a lack of clarity as to where the income from fees and charges on industry is spent.
- Prospect is concerned about the high turnover rate among specialist staff eg hydrologists and geoscientists.
- The predecessor committee recommended that the Agency reconsider its decision to downgrade its Integrated Pollution Prevention and Control (IPPC) staff: a new threat to this recommendation is planned.
- Around a quarter of the Agency's white-collar staff are employed by Head Office. Prospect is worried that the centralisation of control will lead to impoverishment of jobs at the point of delivery.
- The BRITE (Better Regulation Improving the Environment) Project appears to have failed but the lack of an honest and open report on the project is preventing the necessary learning.
- Much of the Agency's IT provision has been launched without sufficient testing, leading to delays, inefficiencies, additional costs and huge levels of staff frustration.
- The Agency's production of guidance, templates and applications for operators appears to be on an exponential growth to the detriment of clarity and succinctness.
- Prospect believes that the Agency's approach to health and safety is contrary to the advice on good practice given by the Health and Safety Executive and may not meet the requirements of the Health and Safety at Work etc Act 1974.
- The Agency is moving towards a charging scheme that offers incentives to operators for good environmental performance. However, one aspect of its proposals threatens the concept of natural justice.
- The increasing use of standard conditions in permits issued under Integrated Pollution Prevention and Control (IPPC) may not meet the Agency's legal obligations to deliver the objectives of the EU Directive and domestic legislation.

1. INTRODUCTION

Prospect is one of the recognised trade unions in the Environment Agency. It was formed as a result of a merger between the Institution of Professionals, Managers and Specialist (IPMS) and the Engineers' and Managers' Association (EMA). IPMS submitted written and oral evidence to the Environment Select Committee's 1999–2000 inquiry into the workings of the Agency. Prospect's submission today picks up on the Agency's response and actions following that inquiry's report.

2. FEES AND CHARGES

Although the Agency is moving to a risk-based charging scheme for Integrated Pollution Prevention and Control (IPPC) waste and process industry operators the charge rate for the latter is still linked to the old "inspector day rate". This was £1,215 in 1999–2000 and is now £1,305. The rate was based on recovering all overheads associated with the regulatory regime through the field inspector. He was assumed to work 220 days per year spending 60% of his time on chargeable work: some £172,000 per inspector per year. Of this some 38%—£65,500—goes in direct costs of employing front-line staff (gross salaries, national insurance, pension contributions and travel and subsistence). The remainder is split as follows:

37% (£63,700 per front-line inspector per year) goes on the development of policy, technical advice and supervision of service delivery by Head Office + some centralised service delivery carried out once nationally;

16% (£27,500 per front-line inspector per year) in regional support—management, accommodation, finance, human resources, legal and administrative services;

7% (£12,000 per front-line inspector per year) on information technology—personal computer, billing and permit tracking systems.

The original inspector day rate was based on an average inspector salary of £35,000; today's rate equates to nearly £38,000.

The Committee might wish to examine where all of this money is spent given that the cost recovery legal provisions and the Agency's Financial Memorandum forbid the cross-subsidisation of activities.

3. TREATMENT OF SPECIALISTS

Prospect represents specialist staff in hydrological (water catchment modelling and planning), geoscience (contaminated land, landfill engineering) and civil engineering (flood risk management) posts. In parts of the country where workload for these posts is significant there is difficulty in recruiting and retaining such staff. The Agency's pay system seems to be incapable of rewarding such staff sufficiently despite the use of one-off "loyalty" bonuses.

Anecdotal evidence suggests that in some areas of the Agency the hydrology expertise is stretched so thinly that some members of teams involved in water abstraction licensing have less than full understanding of the water catchment models (ie the science behind the decision making on how much water may be abstracted without threatening springs, streams and rivers). These models have been developed jointly with the water plc's who are the main abstractors.

The inability to recruit and retain experienced geoscience staff has led to the situation where existing staff are being denied repeatedly the opportunity to undertake short-term assignments in the Agency's policy and process units. This impoverishes the delivery of eg contaminated land remediation in two ways. Firstly, the field officer is denied exposure to the policy-making milieu that would broaden his appreciation of the bigger picture. Secondly, without field officer input the policy-making lacks the essential "muddy boot" feel—a phrase much used by Ed Gallagher, the previous Chief Executive.

The problem of recruitment in Flood Risk Management is compounded by the Agency's insistence on candidates being chartered engineers for posts not requiring that level of qualification to do the job.

The failure to address properly the treatment of specialists threatens the technical resilience of planning and delivery in these areas and the Committee might care to examine the impact this may have on the Agency's ability to protect water resources, land and property at risk of flooding.

4. INTEGRATED POLLUTION PREVENTION AND CONTROL—DOWNGRADING OF THE PROCESS INDUSTRY SPECIALISTS

The predecessor committee recommended that the Agency reconsider its decision to downgrade these staff. An uneasy standoff during the last five years is being replaced by a plan to introduce 70 lower-graded officers (see Fees and charges above) to carry out this work over the next three years. These officers are graded in Agency terms as AS4U that in 2005–06 equates to an entry salary of £19,884. This rises to £23,839 after eight years in the job. (NB The Agency's pay structure is designed to move staff up to a market median salary for similar jobs—based on data provided by Hay Consultants—after a maximum eight years in post). The Committee will note that even after eight years experience these staff will be earning a salary of around one third of the sum allocated to the employment of front-line staff and some £14,000 less than the figure used to derive the inspector day rate.

The Committee might wish to examine whether such a downgrading may threaten the technical resilience of the Agency's delivery of continued environmental improvement from major industry and the high-level outcomes of EU legislation.

5. CENTRAL COMMAND AND CONTROL AND THE IMPACT ON JOB QUALITY

Somewhere around 2,500 staff are now employed by Agency Head Office, between them producing some 3,500 pieces of guidance, instruction or template. Apart from the sheer impossibility of following all of these documents field staff are suffering impoverishment in their roles due to the disempowering influence of this central command and control style.

Example 1. The Agency has sought to develop risk-based regulation through its Environmental Protection Operator and Pollution Risk Appraisal (EPOPRA) scheme and Compliance Assessment Scheme. This is part of its wider modernising regulation agenda (Delivering for the environment—a 21st century approach to regulation). For example in PPC, the EPOPRA score seeks to assess the risk presented by a site and to target regulation according to that risk. This is an admirable principle but the practice is perhaps less admirable. The EPOPRA scheme is unduly complex, and although the Agency has recently modified it to reflect operator performance the impact of this on the total score (and charge) is insignificant especially for large scale and complex sites, where the need for good operational practice is greatest. The compliance assessment scheme is unnecessarily bureaucratic and displays the typical Agency approach of trying to micro-manage Area activities without the ability (or effort) to monitor whether such procedures have been implemented or indeed have been successful. This is not to criticise the basic principles but in this

as in most areas of work Agency has failed to recognise that “less is more” ie the approach should be to minimise internal bureaucracy, guidance and procedures involved, not to make these as complex and exhaustive as possible.

This is of course connected to the issue of training and competence of staff and the balance between employing well trained, experienced staff capable of exercising discretion and employing less well trained and experienced staff who are not so capable and who in consequence need much greater direction.

The committee may wish to consider whether the Agency is developing its modern regulation in an effective way both in terms of its procedural approach and in terms of staff competencies.

Example 2. The PPC regime has progressively replaced IPC from 2000. The PPC regime does extend the scope of IPC (by covering energy efficiency, accidents etc) and has a wider application than IPC (farms, the food and drink sector) but PPC closely mirrors IPC in both its technical requirements of operators and its procedural and administrative requirements of both the Agency and Operators. The IPC regime had an excellent record for effective permitting to time and budget and one might have expected Agency to build on this for PPC. The Agency, however, chose not to do so but to put in place a team-based approach to permitting. The reason for this seems to have been to make a break for political reasons from the IPC regime. The team-based approach was so ineffective in delivering permits on time that the Agency decided to centralise PPC permit determination into the “strategic permitting group” (SPG). This group has expanded to around 170 staff although this has not been sufficient and in fact much permit determination has been contracted out to contractors. Despite much hard work by staff in SPGs, many of whom are experienced staff with practical experience of regulation, the fact is that

- SPG is struggling to meet the internal target of 8 months to determine permits (the statutory target is actually four months and this was routinely achieved in IPC);
- The quality of permits in particular from contractors is poor, requiring much corrective work by Agency staff;
- It is questionable whether the SPG approach has been cost effective.
- In excess of 100 appeals have been lodged against permit conditions

This is compounded by the fact that most of the complex industries (power stations, iron and steel, chemicals) was previously regulated under IPC with relatively little change required to bring these under PPC. The new entrants are both relatively simple (food and drink) and environmentally less harmful.

The performance of SPGs in our view arises from the combination of a flawed centralised approach and a failure to adopt a risk based approach to technical issues.

The committee might wish to examine how effective the SPG has been in practice in terms of permitting to time and cost, and also to examine the quality of the permits issued, including whether conditions in permits are proportionate and risk-based.

6. FAILURE OF BRITE

Much was made of the Better Regulation Improving the Environment (BRITE) project for improving communication lines and transferring resource to the front line to cope with new duties. Unfortunately it became, in the words of the Chief Executive, a “disaster we must not repeat”. After three and a half years the project delivered negligible additional resource to the field, contributed to the “command and control” problem highlighted above and failed to even mention one of the largest new duties: Integrated Pollution Prevention and Control. It is believed that two reports have been compiled but not released to staff or trade unions.

Many of the shortcomings of BRITE have been repeated in the Incident and Flood Risk Management (IFRM) Project. In the short term the Project failed to identify and address the impacts of the changes on the Flood Risk Management (FRM) programme in 2005 and 2006. In the longer term it threatens to repeat the “command and control” problems of BRITE. By way of example National Flood Risk Assessment (NaFRA) work is being delivered once nationally to amend the Agency’s published flood maps. This is producing work of poor quality that is unrealistic in terms of level of risk in many areas and which disregards the local knowledge and experience of area staff.

Prospect suggests that the Committee might care to examine the findings of any audit of the BRITE benefits realisation delivery.

The Committee might also care to ask for a review of the implementation of IFRM.

7. UNTESTED IT SYSTEMS

The structured testing of new IT systems is now being taken seriously in the Agency with the in-house appointment of a team to recommend and oversee software and system testing. This is a vast improvement on the situation where the specification and programme of testing were left to individual project managers (sometimes employed under contract) or, incredibly, to the project software suppliers! There is still scope, however, for Project Executives to force the pace of change against expert advice. One such occasion was

the switching off of the National Time Recording System more than 12 months prior to the date when its replacement—Oracle Time and Labour (OTL) (part of the larger 1B1S system) was fit for purpose. This led to the loss of 12 months' time recording data that is needed for reconciling expenditure against income from regulatory charges and grant-in-aid.

The Committee might wish to inquire as to how such reconciliation was effected in the absence of time recording information in 2004–05.

8. AVAILABILITY AND CLARITY OF GUIDANCE—OVERWHELMED BY PAPER

The predecessor Committee recommended that the Agency “. . . continue to give priority to the clarity and openness of its regulatory requirements and to seek further ways to improve such clarity and openness.”. Since then the Agency has produced an overwhelming quantity of guidance, templates and application forms. In fact the Agency's web site alerts PPC applicants to the fact that the application package is so big each document could take 40 minutes to download from the internet and that they should request the information be sent on compact disc. For example the Fuel and Power sector application form runs to 163 pages; the sector guidance note to 123 pages; the site report (a statement on any contamination of the land under the site) guidance and the EO OPRA scoring sheet similarly-sized. All of this may seem fairly daunting to operators who are new to the regulatory regime but, astonishingly, there are no shortened versions for operators who are merely converting from IPC to PPC. The Agency's centralised permitting function has been treating existing IPC operators as if their activities were new to the Agency. All previous interactions with the Agency (and its predecessors) are invisible: files containing inspection reports, improvement plans completed, details of enforcement action, neighbourhood complaints, independent monitoring reports, incidents and accidents, audit findings—all going back as long ago as 15 years—are ignored. Instead of “bolting on” the additional requirements of PPC—state of the land below the site, noise, waste minimisation etc—to an already-proven, highly successful IPC regime [Introduction to DEFRA's Financial Management and Performance Review (FMPR)] the Agency has chosen to start afresh and charge the full fee.

The Committee might wish to question whether such an approach meets the spirit of “Better Regulation” and, more recently, Hampton.

9. HEALTH AND SAFETY

A paper “Health and Safety—Securing a Step Change” [EA(05)30] was endorsed by Agency's Board on 11 May 2005. This paper states that the Agency needs to give a sharper focus to Health and Safety. It proposes to build on the Health and Safety strategy by a step change programme focussed less on process and more on people. While it is stated that there will continue to be a need to work on policy, process and systems the focus is to be centred on people and their behaviours.

Focussing on people and their behaviour is a method of improving safety but it is only effective if it leads to an examination for and removal of hazards. In the paper emphasis is placed on campaigns and the use of display boards. The use of poster campaigns has been shown to be of negligible value and is rarely used by safety professionals as their main tool. Indeed emphasising the behaviour of individuals instead of examining management systems has not been considered by safety professionals to be a prime tool in improving safety for some 30 years. It was in late 1960's that the change to examining management systems commenced. Since then it has proved highly successful in those companies where directors and managers consider safety performance as a direct result of their decisions. This principle underpins the basis of the Health and Safety at Work Act 1974, which places the main duty on the employer and emphasises those aspects over which the employer has direct control. These are equipment design, equipment maintenance, procedures, training, and supervision of staff. The Health and Safety Executive have published guidance on the management of health and safety, (HSG65 Successful health and safety management first published 1991). The HSE's approach identifies two factors; immediate causes and underlying causes. The underlying causes are those concerned with management and organisational factors and research by HSE has identified that failings in management systems underlie most accidents. One of the key messages in HSG65 is to recognise that “accidents, ill health and incidents result from failings in management control and are not necessarily the fault of individual employees”. It particularly points out that accidents “usually arise from organisational failings that are the responsibility of management”.

The Committee might wish to examine the Agency's approach to securing the health and safety of staff and members of the public.

10. INCENTIVE CHARGING—EXTRA-JUDICIAL PUNISHMENT ON OPERATORS

The risk-based charging scheme, based on EPOPPA (Environmental Protection Operator and Pollution Risk Appraisal) scores, is influenced by the number of breaches of permit conditions occurring throughout the fiscal year. As a principle this sounds fine. Where a breach has resulted in a successful prosecution or an improvement or enforcement notice that is uncontested (ie the operator did not exercise his right of appeal or such an appeal was denied) then it would be fair to raise the annual subsistence fee as part of incentive charging. However, most breaches of permit conditions do not result in the type of enforcement action

outlined above. They are simply recorded by Agency staff on a computer database linked to the billing system. This means that operators will not have recourse to any independent method for contesting such alleged breaches and hence no chance of influencing any decision to raise the subsistence charge.

The Committee might care to examine whether such a system squares with the concept of natural justice.

11. FETTERING DISCRETION IN EXERCISING REGULATORY POWERS

The Agency is charged with determining applications made under the Pollution Prevention and Control (PPC) Regulations to deliver the obligations under the EU IPPC Directive. The regulations cover new activities (ie new sites), activities not previously regulated under analogous regimes and activities which were subject to the integrated pollution control (IPC) provisions of the Environmental Protection Act 1990. The PPC regulations require that permits contain conditions to deliver all of the objectives of the Directive particularly that all appropriate preventative measures are taken against pollution through application of the best available techniques (BAT). The Agency is issuing permits containing standard conditions that transfer the onus onto the operator of the site to determine BAT for himself in several key aspects. There are two main problems with this approach:

- (a) the Agency has accepted a fee—in some cases in excess of £100,000—with the application, presumably to carry out a BAT assessment of the operator's activities;
- (b) there is recent case law that supports strongly the contention that the regulator should carry out the BAT assessment. [*R v Daventry (Thornby Farms)* and *R v Chester City Council (Quinn Glass)*]. In both cases the regulator was the local authority but both were working within the same legislation as the Agency.

The Committee might care to inquire into how the use of standard conditions may conflict with legal requirements.

Prospect: Environment Agency Branch

December 2005

Memorandum submitted by Association of Drainage Authorities

The Association respond on behalf of the Internal Drainage Boards (IDBs) which are established in the 1.2 million hectares of lowland areas which are highly sensitive in terms of flood risk and land drainage. In some 800,000 hectares, much below sea level, land use can only be maintained through the evacuation of water by means of pumping. The land use ranges from supporting the heavy industry, including oil refineries, and petrochemical complexes on Humberside, to the grazing areas in North Norfolk and the Somerset Levels.

The Association recognises the wide ranging role of the Environment Agency in environmental protection and since 1995 the awareness to environmental issues has been very considerably enhanced across the public, business and other sectors. At the time of its proposed establishment the Association registered concern as to how the flood defence function, our primary concern, would, as an operational activity, be embraced within what would be seen, almost exclusively, as an environmental protection body. With the experience of 10 years some of the difficulties which were envisaged have materialised.

The following observations are made in respect to the Flood Risk Management functions of the Agency.

1. FUNDING

The funding of flood risk management, as exercised by the Agency, has been enhanced very considerably in recent years and this is contrary to the position as anticipated by many including the Association. The increase has unquestionably been, in no small part, generated by extensive flooding, notably in 2000, by an acceptance of the increased uncertainty arising from global warming, and, not least, through the efforts of a highly informed Minister in Elliot Morley, determined to reduce the impact of flooding and successfully articulating the case for additional funding. The Government are to be complimented on this and also in promoting the Foresight Project which gave greater understanding as to the possible scenarios within which flood risk would need to be addressed in the longer term.

Flood Risk Management is a long term business and sustainability is achieved only through a long term commitment to the service which must be underpinned by an equally long term commitment by Government to future funding.

2. RELATIONSHIPS

Since its inception the Agency has increased substantially in size, and as such appears governmental. This perception is furthered through a more centralised approach to the service delivery and the transfer, increasingly, of functions previously undertaken by the Flood Risk Management Division of Defra. In its dealings with bodies identified as stakeholders/partners it consults widely but whether that consultation

provides real benefit in developing the best policies and solutions may not be easy to demonstrate. A measure would be the incidence when the consultation provides a constructive input either by promoting new or amending Agency thinking on issues. The confirmation of an organisation being more receptive to other views could be improved, possibly through more selective consultee engagement, or the timing of the process and style of consultation document such that the “die being cast” impression is not given.

3. FLOOD DEFENCE

3.1 *Awareness*

The Agency have been hugely successful in the raising of public awareness to flood risk, achieved through both an enormous publicity effort reinforced by the maps of flood risk areas. That “heavy rainfall” introduced in a weather forecast is, almost without exception, accompanied by references to flood risk, demonstrates very clearly the progress the Agency has made.

This success, and particularly the impact and public access to the flood risk maps, raised high anxiety among both householders and insurers and this was inevitable. It is essential that the flood risk maps are viewed for what they are, an indication that there is a risk issue to address, which in planning terms is of great significance, and that the level of risk may be such that individual property owners could take some self-help measures. It is essential that interpretation of risk is retained at a sensible level such that it is controlled in a way which does not significantly inhibit development and economic growth.

3.2 *Operations*

The Association fully recognises the importance of the aquatic habitat as provided within river channels and adjacent land, particularly where wetness enhances that environment and its biodiversity. It equally recognises the need to provide and maintain adequate levels of flood protection and manage water levels to sustain land use.

In reality reaching both these objectives in many situations is not achievable, and whilst in some, sensitive environmental management for the benefit of conservation is possible in others this is not the case without increasing the flood risk to property, land, and, in many situations, environmental assets.

The Environment Agency by its very title face difficulties when they need to maintain channels to a high standard of hydraulic efficiency requiring the removal of both channel and bankside vegetation and the dredging of accumulated silt and its spreading on the adjacent riverside meadows. Some observers, without thought of flood risk, would consider this not to be the actions appropriate to a body charged with environmental protection. Maintaining channels is a somewhat simplistic operation, carried out successfully over many decades, but increasing regulation makes this far from straightforward. Dredging a channel is presently subject to control under six European Directives.

In the face of regulation and other pressures it is not surprising that there is evidence that less of this type of operational work is being undertaken, with the effectiveness of some work reduced, in a commendable effort to be seen to be accommodating all of the interests. In the majority of flood events, resulting in property inundation, local comments/accusations are made that the river is not as frequently maintained as was the case in the past. Whilst these lay persons views are not based on an understanding of river engineering they are not without foundation and can not be dismissed.

The Agency should make a concerted effort to demonstrate the crucial need to maintain the channel system to control flood risk and that this must be done on a regular basis with the inevitable short term and temporary damage to the environmental interest. Such impact should be considered not in a strictly local way but set against the overall position which will demonstrate that the Agency are making a major contribution to the improvement and sustainability of county’s aquatic habitats.

Without this positive assertion the deterioration of channels, on which substantial former public investment has been made, will deteriorate at an accelerating rate and in some locations flood risk to property will increase in contradiction of the Government’s objectives.

3.3 *Flood Defence Committees*

The Agency is a national body providing what is a local flood defence service. Whilst there will be an impact on the national economy and Government funding the public interest in the service is exclusively related to the areas in which they live and work and the level of flood risk which applies.

Since the inception of the concept that flooding is of national concern and must be addressed by public bodies the legislation has provided for committees, comprising “local” members, to oversee the function. In place at the present time are Regional Flood Defence Committees which are executive and responsible for ensuring the appropriate flood defence needs within their area are met. The description of them being “robust and having a meaningful role” is often quoted and never has that position been more crucial.

The Committees are ideally placed to demonstrate that the Agency is not remote, and is accessible at a high executive level, and that the discussions and decisions incorporate local interest and knowledge. It is of course crucial that the membership of the Committee represents appropriate interests to provide that knowledge and awareness of local needs. Elevating the profile of the Committee and increasing their involvement, and hence commitment of the members, must be beneficial to both the public and the Agency.

Association of Drainage Authorities

December 2005

Memorandum submitted by the Chartered Institution of Wastes Management

The Chartered Institution of Wastes Management is pleased to provide the following evidence to the Committee on the work of the Environment Agency.

1. THE AGENCY'S ROLE

There have been questions in recent years regarding the appropriateness of the Agency developing and implementing policy particularly in the waste sector. The Institution believes that it is essential that the Agency uses its practical experience to develop regulatory and strategic policy. This, however, should not be undertaken in isolation, but in close cooperation with Defra. The Agency should be an integral part of the review of strategic policy and its detailed role should be considered in the development and workings of any Strategic Waste Authority/Network under the waste strategy review.

The Agency's most important role for the waste industry is as a regulator. Often the interface between the Agency and partner regulators is complex—eg in fly-tipping response and enforcement. This needs to be guided by clear protocols and with appropriate resources available to both organisations. The Agency's credibility rests on performing its regulatory role efficiently and effectively, and only where this is being delivered should the Agency use resources in an advisory role. It is clear, however, that the Agency has valuable experience and information to offer in this respect—although businesses will often prefer to get advice other than through a regulatory body.

2. RESOURCES

The Agency needs to be fully resourced for all its activities. Fees and charges paid by operators for permits and for compliance monitoring are partly risk/performance-based. The Institution would like to see further development of this approach to incentivise reduced risks and good performance. However, the Agency must also avoid being seen as only “regulating the regulated”. As Grant-in Aid reduces, pressure grows on non-directly funded activities such as enforcement and prosecution. The waste management sector is highly regulated and compliant businesses need to know they are not having to compete with non-compliant or illegal activities. The Institution is happy to support short term proposals to resource activities such as flytipping response through a variety of “additional” sources (eg the landfill tax funded BREW fund), but sees this as no substitute for proper steady-state funding of these essential activities.

3. EFFECTIVENESS

The Agency faces a natural tension between centralised and local service delivery, and between copious guidance / standardisation and local pragmatism/flexibility. This industry depends on Agency openness and consistency to allow fair competition. Where services need a high degree of skill and specialism they should be centralised as far as possible. The creation of Strategic Permitting Groups has concentrated most PPC permitting into three teams and this has undoubtedly helped the highly complex process of re-permitting all landfill sites. Delays in preparation and issue of permits is one of the most consistent criticisms of Agency performance from our members—especially where this is done through localised teams. Other complex tasks such as hazardous waste site audits need similar expert teams, and this approach should be followed wherever possible to support consistency. Localised service priorities are inevitable given different circumstances in different areas but a high degree of national standardisation and guidance is clearly essential—one man's flexibility being another's unfair competition. Training and preparation of Agency staff to assimilate and use this guidance is essential, and CIWM would like to see greater encouragement of staff to take up appropriate professional institution membership with continuing professional development.

The Agency also suffers from too many “generalist” staff and not enough specialists. Some waste-related skills areas such as landfill gas control have been left to dwindle.

4. RELATIONSHIPS WITH STAKEHOLDERS

Generally the relationships between the Agency and its stakeholders are good. There are examples of good practice from the Landfill Directive Implementation Group, the Hazardous Waste Forum and the Agricultural Waste Stakeholders Forum of which the Agency are keen supporters. The dialogue at these groups with the Agency has been open and constructive, some positive initiatives including the development of guidance has resulted. Such a positive dialogue and partnership development can only be improved by providing the Agency with greater funding certainty.

5. EXECUTIVE SUMMARY

The Institution has some positive experiences from its dialogue with the Agency over recent years but wants to see further improvement in:

- greater clarity in the strategic policy role of the Agency including delivery of timely and comprehensive guidance—and how this role will fit in with other organisations in providing an integrated service to monitor and support sustainable waste management strategy
- Long term and dependable funding for non-chargeable activities—especially enforcement and development work with partner organisations
- Development and retention of staff with key specialist technical skills, and continuous development for its staff.

Finally and most positively the Agency has done a lot to communicate better with its stakeholders in waste management. CIWM would like to see more of this supported by a greater certainty of long term funding.

CIWM

December 2005

Memorandum submitted by Dairy UK

EXECUTIVE SUMMARY

Dairy UK represents milk processors, co-operatives and bottled milk buyers throughout the UK.

Dairy UK believes that the Environment Agency is improving in its role as enforcer of environmental regulation and controls and largely aims to forge good relations with industry. However, in certain regulatory areas, Agency fees are excessive. The number of complex forms that members are required to submit is reducing. There is an inconsistency of service from the Agency at local level; however, this issue does not arise at central level within the organisation. It is seen that levels of compliance are not proportional to risk.

Evidence was requested on the following points:

- how successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities;
1. The view of Dairy UK is that the Environment Agency is improving in this role and in the way it manages its activities.
 - whether the Agency operates efficiently and provides good value for money;
 2. It is the view of our members that the Environment Agency does not provide good value for money. Too much of its income is generated from industry. This is not in proportion with the pollution risk that is posed by our members. Members experience excess bureaucracy and additional costs in varying permits, alongside high annual fees.
 3. Our members believe that the ongoing fees of the two main schemes, Pollution, Prevention and Control (PPC) and EU Emissions Trading Scheme, are excessive.
 - the Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services;
 4. It is seen that the Environment Agency is making it easier for industry to work with them. For example, forms have become clearer and more user friendly. It is the experience of Dairy UK that the Agency, at a policy and management level, is willing to work with the industry body in a helpful and consistent way. However, at a local level Agency staff is highly inconsistent in terms of policy implementation and attitude and sometimes lacking in interpersonal skills.
 5. Dairy UK believes that the Environment Agency should adopt a more consultative approach to pollution prevention, rather than the current blunt legislative tool. Future regulations should be proportional to risk.
 6. Members report that the MCERTS tool is over burdensome for business and does not focus on relative risk and involves excessive implementation and replacement costs.

7. Within the EU ETS only 5% of EU ETS installations are responsible for 80% of emissions within the scheme. Installations caught by EU ETS in the dairy sector are an extremely small part of the wider scheme, but are still burdened with over regulatory compliance measures that have been designed with the top 5% installations in mind.

Dairy UK

December 2005

Memorandum submitted by OFWAT

BACKGROUND

1. The Office of Water Services (Ofwat) is the economic regulator of the water and sewerage industry in England and Wales. Until 1 April 2006 its functions rest formally with the Director General of Water Services, Philip Fletcher. From 1 April 2006 they transfer to the Water Services Regulation Authority (WSRA). Our duties are laid down in law and we make judgements about how best to fulfil these duties.

2. The Environment Agency is a large organisation with a very wide-ranging remit. Our work with the Agency relates mainly to its actions and responsibilities affecting the water and sewerage industry. We have developed constructive and productive working relationships with the Agency in those areas. The Agency's responsibilities for the water industry broadly cover regulating and enforcing water abstraction, consents and quality standards in inland, estuarial and coastal waters. We recognise that the Agency's duties are very much more wide-ranging than this.

OUR DUTIES

3. Our duties as economic regulator and those of the Environment Agency as environmental regulator are complementary. Our views do not always coincide. However, we and the Environment Agency work hard to understand each other and to arrive at satisfactory outcomes. Thus, in setting price limits we have a duty to enable efficient companies to finance and fulfil their functions. This may lead to debate with the Agency on the cost-effectiveness and where appropriate cost-benefits of particular programmes and projects. Our aim is to set price limits that are as high they need to be to enable each company to maintain their service quality and performance and make further improvements including environmental requirements but no higher than they have to be for customers.

ENVIRONMENTAL IMPROVEMENTS

4. Water and sewerage customers, through their bills, have invested heavily (£50 billion since 1989) to enable the companies to maintain and improve their networks. We are concerned that the Agency's focus on championing the environment should not be at odds with the goal of achieving value for money, which we seek for all parts of the industry's agreed investment. The extent to which the environmental programme is driven by the statutory requirements established mainly through the European Directives affects the scope for such requirements.

5. At the last price review we set average price limits of 4.2% (plus inflation) per year for the five years 2005–10. Of the £16.8 billion capital investment we assumed the companies would make in the next five years, £5.5 billion is to improve drinking water quality and the aquatic environment. The remainder is required to maintain the companies' infrastructure; improve their supply/demand situation; and improve service levels to customers particularly by investing to safeguard homes against the risk of sewer flooding. Our decisions are set out in "Future water and sewerage charges 2005–10: Final determinations."

6. In making our decisions on the scale of the enhancement programme we worked closely with the Environment Agency. During the two years before we announced our final determinations we consulted widely with many stakeholders including the Environment Agency, English Nature and Defra as well as the companies themselves and customer representatives. Using the initial Ministerial Guidance (published in January 2003), the Environment Agency worked with the water and sewerage companies and provided a list of potential environmental improvements. The companies included their cost estimates for these in their draft business plans in summer 2003. We then jointly appraised the proposals, deciding whether they were required to meet legal obligations or could be justified as worthwhile using the Agency's newly developed cost benefit methodology. The list of environmental improvements included in the final determination package (for both the water and sewerage companies) was the outcome of this joined-up regulation between the Agency and ourselves.

7. We particularly welcomed at this price review the developments that the Agency has made to the methodology of the cost benefit analysis it applies to possible improvements to the aquatic environment. We would like to see it developed further and used more widely to determine the optimum means of achieving environmental improvements.

8. We are working with the Agency, Defra and others on this to develop the way in which we work in partnership. We are also working closely with the Environment Agency and others on the Collaborative Research Programme to inform the process and the decisions to be made to fulfil the requirements of the Water Framework Directive. Economic analysis can help in integrating, optimising and deciding the appropriate measures to deliver justified environmental objectives at the right time. We consider that well-founded cost benefit analysis is essential in identifying the most sustainable outcomes.

9. We work closely with the Agency in a number of areas. For example, when the customer research was undertaken at the price review in 2004 we worked with the Environment Agency and seven other stakeholders in a joint steering group to commission two studies into customers' views. We worked together to produce questionnaires on the costs and outputs of different investment packages which customers were asked to comment on. This information helped each of the stakeholders to understand customers' priorities and how much they were willing to pay. This helped both of us to establish our priorities for this price review.

10. At previous price reviews individual stakeholders had largely commissioned their own research and there had been a tendency for each organisation to interpret the data and ask questions that suited their particular objectives. For the 2004 review all stakeholders agreed a joint research report. Although the results were not always subsequently presented from the same angle there was a more consistent approach than at previous price reviews.

WATER RESOURCE PLANNING

11. Every five years each of the water companies is required to review its 25 year water resource plan. The companies prepare these plans for the Agency; the Water Act 2003 now makes this a statutory requirement. We work closely with the Agency, Defra and the companies to scrutinise these plans and ensure we all have the information we need to fulfil our respective duties. The approach is supported by quarterly joint meetings. The Agency's focus is on securing that the companies' plans will allow them to meet the resource needs of their customers over the long term. We have co-operated on the development of a modelling framework—EBSA (the economics of balancing supply and demand)—that we use to check the companies' plans.

12. In addition to the work that we undertake with the Agency on water resource plans, we are also both members of the Water Saving Group. Fellow members include Water UK, waterwise, Defra and CCWater. This provides a forum for all the players in the water industry to work together to encourage households to reduce their consumption and use water efficiently.

MODERNISING REGULATION

13. We welcome the work that the Agency is taking forward as part of its modernising regulation agenda. The move to risk-based regulation will potentially reduce the charges placed on companies, and hence customers, and allow the Agency to adopt a more flexible approach to its monitoring work. We recognise this work is at a relatively early stage but looking forward to seeing how it develops.

MEMORANDUM OF UNDERSTANDING

14. The Water Act 2003 requires us to develop an MOU with the Agency to make arrangements to promote cooperation and exchange of information, and consistent treatment of matters which affect us both. We are working with the Agency, Defra, the Welsh Assembly Government and CCWater to develop a general template for the series of MOUs required by the Act. We will need to work with the Agency to set out the specific items that need to be included in our MOU. We expect to have a final agreed MOU to be laid before each House of Parliament shortly after the WSRA is established on 1 April 2006. This will set out formally the constructive way in which we work together.

Ofwat

December 2005

Memorandum submitted by Thames Water Utilities Ltd**1. BACKGROUND**

1.1 This memorandum addresses the first four points identified by the House of Commons Environment, Food and Rural Affairs Committee which are outlined in the Committee's press notice (No 9, 3 November 2005) announcing the new inquiry into the work of the Environment Agency.

1.2 As the largest water and wastewater services company in the UK, Thames Water serves over 13 million customers across the London and Thames Valley area, from Kent and Essex in the east to the edge of Gloucestershire in the west.

1.3 Within that 5,000 square mile operating area, Thames Water is responsible for 100 water treatment and 349 sewage treatment works, approximately 20,000 miles of water mains and 42,000 miles of sewerage network and 2,246 sewage pumping stations, many of which are located close to rivers and watercourses.

1.4 The Environment Agency regulates a number of our processes and activities including water abstraction licensing, effluent (wastewater) discharge consents, energy from waste power generation through Integrated Pollution Control, recycling of sewage sludge to land, waste management and Duty of Care.

2. EXECUTIVE SUMMARY

2.1 This memorandum focuses on the management, efficiency and structure of the Environment Agency and its relationship with other regulators and we have therefore restricted our comments to the first four points of the Committee's press notice.

2.2 For Thames Water, partnership is a fundamental driver in ensuring an effective relationship with all our regulators, including the Environment Agency. Our evidence to the Committee is therefore designed to identify those areas where performance and effectiveness can be improved and to offer practical solutions, which may help to achieve this. Key areas are:

2.2.1 The need for more consistent, integrated, and "modern" regulation, both in approach and implementation of policy, between the different regions and divisions of the Agency. Further embedding of sustainability into regulatory decision-making ensuring the overall net environmental benefit of different regulatory requirements is taken into account.

2.2.2 A clearer focus on co-operation and knowledge sharing with the water industry and other stakeholders to ensure greater alignment of company and regulatory objectives, and realistic (and therefore attainable) targets.

2.2.3 Additional clarity on the role of the Agency *vis à vis* other regulators, for example, demand (for water) management.

3. DETAILED COMMENTS

3.1 Support for non-regulatory activities, such as working to improve the quality of water sources by tackling the problem of diffuse pollution, requires a sustained, long-term investment of resources and expertise in partnership-based projects. This needs clear coordination and good communication between Environment Agency HQ, the specialist centres and operational regions (including sub-divisions). This has been undermined by frequent changes in structure and personnel such that some significant issues have not been handled consistently.

3.2 In some instances addressing one environmental issue can have either a positive or negative impact on another, separate issue. For example, there is growing acceptance that greenhouse gas emissions need to be reduced. One of the main sources of these emissions is from energy use. However, tighter wastewater treatment standards—to improve river water quality—often result in increased demand for energy. Often the solution for improved wastewater quality is based on hard engineering or plant retrofits that are energy intensive. Alternative methods of treatment, for example, reed bed filtration, are often inappropriate due to the location of the works, the volume of wastewater requiring treatment and the lack of available space. In this situation how are the differing environmental impacts assessed? Does improving river water quality rank higher than minimising our contribution to climate change? There is a need for a more integrated approach when assessing the impact of individual regulatory requirements—the focus should be on the whole environment, to ensure decisions are based on a net environmental benefit.

3.3 A partnership-based approach is essential in ensuring the delivery of regulatory objectives. It builds trust between the Agency and those they regulate, enabling the development of a more efficient, modern regulator,² ensuring that Agency resources both in staff time and regulatory control/audit are targeted at

² Environment Agency: What do you think? Creating a better place, Corporate Strategy 2006-11 consultation paper (page 14—taking action to create a better place).

those environmental issues and operations of most concern. In our view a greater use of self-monitoring/audit could be employed by the Agency, drawing on the model successfully used by the Drinking Water Inspectorate (DWI). We also fully support the recommendations put forward in The Hampton Review.³

3.3.1 Greater co-operation should also improve mutual understanding of Agency and water companies' priorities and ensure timely provision of advice and guidance. This would help, in the case of the Periodic Review process for example, to ensure the Agency objectives and requirements are built into companies' strategic business plans from its onset.

3.4 To ensure that the Agency is seen as an efficient and effective regulator, timely and clear guidance on the implications and requirements of new or amended regulations and the issuing of permits and standards would be of considerable benefit. Delays in advice and guidance have knock-on impacts for operators particularly where processes need to be altered or additional management controls implemented to ensure new standards are met.

3.5 There is a need for clarification of the Agency's role with respect to interfacing with other regulators. For example in the case of leakage control, it would be helpful if the Agency agreed leakage targets with Ofwat, rather than providing an alternative view of what leakage targets should be.

Thames Water Utilities Ltd

December 2005

Memorandum submitted by British Soft Drinks Association Ltd

1. *How successful has the Environment Agency been in its role as enforcer of environmental regulation and controls? How well does it manage its wide range of activities?*

BSDA recognises that the Environment Agency (EA) faces considerable challenges to deliver an improved environment. However, the EA's success in its role as enforcer of environmental regulation and controls can at best only be described as limited. BSDA believes that having two regulators (EA and SEPA) within Great Britain is unhelpful to business. BSDA manufacturers, with operations in both Scotland and England, find that there is no common approach between the two regulatory bodies. BSDA would support any proposal which sought to align these two regulatory bodies into one organisation, saving public cost, administrative burden and business frustrations.

2. *Does the Agency operate efficiently? Does it provide good value for money?*

The IPPC permitting process for the soft drink sector illustrated the disparity that exists between central and regional parts of the Agency. Several BSDA members have commented that strategies/policies developed and agreed centrally were inconsistent with the approach taken by local enforcement officers, making the application process difficult and at times frustrating. The permitting process was further confounded by the application CD-ROM "Food, Drink and Milk Regulatory Package" which regularly required updating in an effort to iron out its flaws. BSDA members were also critical of the EA's efficiency in dealing with IPPC applications with some still waiting for approval of their applications after several months.

BSDA is also concerned about the EA's efficiency in dealing with Producer Responsibility, where for many years we have heard of much concern about their lack of effectiveness.

3. *Describe the structure, governance and accountability of the Agency?*

With examples already provided, it is clear that the regional structure of the EA is ineffective. To reflect the increasingly technical nature of the EA (eg IPPC, WEEE, Producer Responsibility, Hazardous Waste, etc) a national organisation represented by national officials should be developed. Currently the EA is inconsistent, over prescriptive and bureaucratic in its requirements of business. BSDA recommends the EA should do more to foster good relations with the businesses it regulates.

4. *Describe the Agency's relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency's role in the planning system?*

At times there appears to be a great amount of overlap between DEFRA and the EA in terms of the information that they provide. However, on specific issues, for example Producer responsibility, the EA could do more to support the efforts of Defra.

5. *Describe the Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services?*

As mentioned previously, BSDA recommends that the EA do more to foster good relations with the businesses it regulates, a key stakeholder whose views are not adequately considered.

BSDA would also recommend that the EA review its website and telephone information service. BSDA members have criticised both services for being unhelpful, complicated and time consuming.

BSDA is not aware how the Agency monitors satisfaction with its services or its method for reporting back to the wider stakeholder community.

³ Reducing administrative burdens: effective inspection and enforcement. Philip Hampton. March 2005. HM Treasury.

6. Describe the Agency's responsibilities for flood defence and flood mapping, including guidance to the public?

Good information on flood defence and flood mapping is available on the website. However, it is questionable whether the general public are fully aware of the information available.

7. Describe the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency?

8. Describe how the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity?

9. Describe the Environment Agency's forthcoming corporate strategy 2006–11?

The EA's Corporate Strategy priority "... to make fundamental changes to help achieve a greener business world" fails to acknowledge the huge steps already taken by British businesses and what further steps are actually feasible. BSDA is concerned that the EA will force through improvement plans (which under IPPC they have the power to do), focusing on what they believe is the right thing to do without understanding and engaging fully with businesses.

The EA must ensure that businesses are treated equitably. Decisions taken to regulate the environment must be cost effective and risk-based. A failure to do so will only alienate industry from engaging fully in further debate on the environment.

BSDA supports the opinion of its members that the EA should have a specific strategy to support market based approaches and mechanisms, especially for Producer Responsibility, and that the EA should give DEFRA greater support in this area of environmental enforcement.

British Soft Drinks Association Ltd

December 2005

Memorandum submitted by Port of London Authority

"We are the Environment Agency. It's our job to look after your environment and make it a better place—for you, and for future generations"

from the Environment Agency website

EXECUTIVE SUMMARY

The Port of London Authority works closely with the Environment Agency at a local level and our powers, duties and expertise are often complementary. We try to use this fit to deliver effective environmental protection, for which we share responsibilities.

Unfortunately, we sometimes find the Agency's central policy direction to be unhelpful in particular cases, but seeking resolution with local operational teams can prove slow and time-consuming at best, impossible at worst. Examples are given of both the positive and the negative aspects of the relationship.

Further, we also encounter a tendency by the Agency to exceed the purposes for which it was established—exemplified by the quote above—and to be dismissive of others' roles, even where duties and powers are complementary; this is tiresome and counterproductive.

INTRODUCTION

1. The Port of London Authority (PLA) welcomes the Committee's decision to inquire into the work of the Environment Agency (the Agency) and is pleased to make this submission to aid the process.

BACKGROUND

2. The Port of London Authority was established by Parliament in 1908 to own and run the dock systems on the Thames and to control and regulate the river from the tidal limit by Teddington Lock in West London to the sea (about 95 miles). It presently operates under the Port of London Act 1968 (PoLA). The PLA reports annually to parliament through the Secretary of State for Transport who also appoints the Chairman and a number of other members of the Authority. It is a Harbour Authority, a Competent Harbour Authority (ie a pilotage authority) and a Navigation (lighthouse) Authority under various other enactments.

3. The PLA receives no financial support from the government, it has no shareholders and it makes a surplus only for the purposes of paying tax and providing for its future expenditure. The PLA is run on commercial lines and collects its revenues from its users, some of them regulated by statute such as conservancy charges under the Harbours Act, some on normal commercial terms in competition with other providers.

4. The PLA has environmental duties and responsibilities flowing from section 48A of the Harbours Act; it acts as a competent authority under the European Birds and Habitats directives and implementing UK Regulations for a number of important European Marine sites that fall within the PLA's jurisdiction; and it has responsibilities for SSSIs under the Wildlife and Countryside Act 1981 and the Countryside and Rights of Way Act 2000.

5. The PLA owns most of the riverbed between Teddington and Southend-on-Sea, and has statutory licensing responsibilities under PoLA for any works or dredging in the river or estuary within the PLA's jurisdiction (over 400 square miles). This has three further consequences for its environmental obligations:

- (a) the PLA routinely acts as an environmental regulator for the river and estuary and has become expert in those areas for which it is the lead authority, particularly hydrodynamics and the environmental effects of dredging;
- (b) the PLA exercises varying levels of stewardship over a number of European and national conservation sites, not only as a competent authority or due to any impacts under review, but also as the owner of the foreshore on which a number are located; and
- (c) because of the extent of these responsibilities, the high conservation importance of some of the areas it controls and the wide technical span of these interests, the PLA has actively built good working relationships with other environmental regulators and NGOs whose expertise can assist it to fulfil its responsibilities for the environment. These include English Nature, the Agency and the RSPB.

6. A good example of productive working relationships on these matters is the Dredging Liaison Group for the Thames, set up under an independent Chairman by the Thames Estuary Partnership of which the PLA, the Agency and English Nature are founding members, to improve two-way understanding, information sharing and transparency in the PLA's decision making on dredging. The Group is attended by the three organisations noted above along with other public and private sector interests. It has been extremely successful over the last five years in achieving its objectives, and it is regarded as a model by Defra and DfT who both attend its regular sessions.

THE PLA'S RESPONSE TO THE TERMS OF REFERENCE

7. The PLA's geographic interest covers three Agency regions and direct working relations between the PLA and the Agency are many and varied. They are generally good and constructive. Examples include:

- (a) local operational and wider policy liaison between the Agency (running the Thames Barrier) and the PLA (managing navigational safety in the vicinity of the Barrier);
- (b) liaison on dredging matters, both at the Dredging Liaison Group (see 6. above) and directly;
- (c) liaison on river works applications to the PLA and responses to planning applications affecting the river;
- (d) constructive engagement on the Water Framework Directive and its future application to the Thames, particularly the work carried out by the Agency on initial water body characterisation, etc, on which the PLA submitted detailed responses during the consultation programme;
- (e) constructive engagement on the Thames 2100 flood risk project being conducted by the Agency on behalf of Defra, including extending and sharing the PLA's hydraulic model of the Thames, and being consulted by the Office of Government Commerce during its examination of this project;
- (f) making routine applications to the Agency where the PLA's interests impinge on the Agency's responsibilities for flood defences;
- (g) liaison between the PLA and the Agency on recreational use of the Thames and operational matters as adjacent navigation authorities; and
- (h) liaison during consideration of major projects, including the London Gateway scheme, to ensure mutual understanding.

8. In this way, the PLA respects the Agency's statutory role and co-operates in efforts to discharge it. However, the PLA has had a number of concerns from time to time over the Agency's approach to the PLA's statutory role, as another environmental regulator (alongside its safety responsibilities) and as the lead regulator, by statute, for a number of areas of activity on the Thames. It is in these areas that good liaison and productive working relationships come under strain from time to time.

9. These problem areas seem to be policy led from the Agency's centre as we appear to get caught up in strategic initiatives which outstrip the Agency's statutory powers, or otherwise infringe the PLA's own powers and obligations. Two examples of this are given below (para 14 *et seq*).

10. Under the managerial model which the Agency operates, Policy—Process—Delivery, there has been a proper effort, in our view, to centralise Policy formulation to a greater degree and to restrict local units to interpretation and implementation on the ground, in pursuit of efficiency and consistency. At

one level, we applaud this: formerly it was a regular complaint that different regions and areas took differing approaches when fulfilling statutory responsibilities. In the event, however, this centralisation and prescription has given rise to two new problems: one probably unavoidable, the other more serious.

11. Firstly, local interpretation of central policy in the light of local facts or conditions—as moderated by prescribed processes—inevitably can lead to inconsistencies, something that perhaps should be accepted since the alternative would be complete centralisation and a consequent sclerosis.

12. The second problem is perhaps the more serious, namely, that policy and, to a large extent, ready-made interpretations of it now come from the Centre to operating units who have little discretion to take account of the local facts or circumstances. This would be acceptable provided those affected by the regulatory processes were able to engage in an informed discussion with central staff whose generic decisions and guidance drive the regulatory decisions on the ground. We have found in practice that this is often not the case, as shown in the examples below. Policy makers are willing to share their conclusions widely, but do not respond to reasoned cases on why their opinion is at variance in particular situations with court decisions or statutory frameworks.

13. To summarise on this point, therefore, we perceive a growing problem with the Agency's recent organisational restructuring. While most routine operations are handled efficiently on the ground within central policy frameworks, the occasional more difficult or novel issue, perhaps stimulated by a change of Agency thinking (as in the case of waste regulation, see below), tends to become a major obstacle to relationships between the PLA and the Agency. The PLA always seeks to ensure that it operates within current law and its own part of it, but Agency officers with whom it interacts can find themselves unable to answer for Agency policy, or even to answer policy questions, and simply hand down contentious decisions as settled. This is an inadequate response to regulation where there are good cases to be made that the Agency is acting outside its proper or lawful authority.

Example 1: The nature of clean dredged fine sand: waste not, want not.

14. The PLA requires the Princes Channel, several miles out to sea north of Herne Bay in Kent, to be deepened to improve navigational access to the port and safety. This operation will produce about five million tonnes of uncontaminated fine silty sand which could either be disposed of to sea (under a Food and Environment Protection Act licence from Defra), or made use of on land.

15. Physically suitable dredged material that is not contaminated is a resource that should be used elsewhere; it is not waste in the usual understanding of the word. Government policy presses for alternative and beneficial use of such material wherever possible, before it considers a licence for disposal to sea. This accords with OSPAR and the London Convention on deposits at sea to which the UK is a signatory.

16. The sustainability agenda clearly requires such dredged material to be used beneficially to avoid a requirement to source virgin material. The government's commitment to sustainability is evident in the aggregates tax regime that explicitly discourages unnecessary use of virgin materials where suitable alternatives are available, and includes an exemption from tax for material from navigational dredging to improve its take-up in the market place.

17. The Agency meanwhile has repeatedly stressed its aim to pursue "risk-based" or "light-touch" regulation, thereby placing minimal impediments in the way of a flourishing economy and ensuring those restrictions that have to be maintained in the interests of environmental protection are fit for purpose and commensurate with the hazards and risks they prevent or protect against.

18. In this case, however, things are not working out that way. The Agency has declared that all material dredged for navigational purposes and used on land should be regarded as waste and regulated under a waste management licence. It should be noted here that although the PLA is addressing the issue from the perspective of its Princes Channel project, we know from other ports that the problem is widespread and represents a significant departure from sustainability and risk-based/light-touch regulation.

19. We therefore see an Agency that is increasing bureaucracy, preventing compliance with government policy (or making it more difficult and expensive), adding difficulties in achieving sustainability, increasing costs to industry, and in some cases delaying the achievement of the ODPM's housing targets on brownfield sites, such as the Thames Gateway, which can often require substantial amounts of low-cost but clean material for land raising or remediation.

20. This is an unnecessary obstacle as all the required controls for using such material are already in the planning system and would be applied in exactly the same way for navigational dredged material as for virgin material. The PLA recognises that waste controls have a proper place, but they are being misused in this case.

21. The Agency's position is based on the European Waste Framework Directive (WFD) and its legal definition of waste which, it contends, gives no leeway. We are confident that this view is incorrect following judgements by the European Court of Justice (ECJ) since 2002.

22. The Agency has not explored its reasoning with us in any detail, but it appears to be drawn from a simple reading of the WFD's definition of waste (which could indeed be held to catch dredged material in its net, however counter-intuitive that seems). However, this reading can undermine the formal policy objectives included in the WFD that stress the need to make full use of materials rather than treat them as waste.

23. In an important judgement by the European Court of Justice (ECJ) on the definition of waste in 2000 (*Arco Chemie*), the court included in its judgement the UK Government's response to this contradiction:

“The United Kingdom Government further states that production residues, which may constitute useful by-products, and may be used as a raw material without further processing, in the same way as any other raw material of non-waste origin, comprise part of the commercial cycle and do not constitute waste.”

24. At the time, this was a prescient view by the UK government as it took the ECJ several further cases, beginning with “*Palin Granit*” in 2002, to give full legal force at a European level to the interpretation of the definition of waste that the UK was calling for in 2000. We see here, therefore, a situation where the UK's common-sense solution to a previous flaw in European legislation had been picked up and corrected through formal European mechanisms, and in pretty quick time too. Unfortunately, the Agency does not yet appear to have taken these judgements on board and so rejects the direction taken by the ECJ since 2002.

25. The PLA sought legal advice on this from Rt Hon Lord Kingsland QC who found that the Agency is incorrect in its interpretation of the WFD, and we supplied copies of his advice to the Agency, Defra and others in September. We have had no response yet on why the Agency feels his conclusions to be incorrect. It should be noted that although the instructions were drafted in terms of Princes Channel, the legal arguments and Lord Kingsland's conclusions could be expected to apply in other similar cases.

26. It is also regrettable that while the Agency is responsible for managing operational waste issues as the competent authority on behalf of Defra, Defra has been slow to issue the necessary policy guidance in a changing situation. Defra's guidance on the definition of waste (11/94) has not been regarded by Defra or the Agency as authoritative for some years, owing to a string of ECJ judgements, but its revision is still awaited thereby allowing a policy vacuum at government level to endure.

27. The PLA is disappointed that the Agency will not engage on this complicated and technical/legal matter, as it remains convinced that the Agency is regulating incorrectly, failing in its proclaimed pursuit of “light-touch” or “risk-based” regulation, wrongly stifling sustainability, and is costing the economy money. In one scheme in the Thames Gateway, the proposed imposition of a waste management licence led the contractor to cancel plans to use about a million tonnes of material from Princes Channel and use more expensive virgin material instead. The switch of delivery transport from river to road will add 90,000–100,000 tipper truck movements to an already congested area, a direct result of over-zealous environmental protection.

Example 2: Misuse of the Thames Region Land Drainage Byelaws

28. These Byelaws dating from 1981 support the Agency's work in land drainage on the Thames, providing a range of necessary powers to manage its responsibilities, particularly the integrity of flood defences along the river banks.

29. The Byelaws include general and widely drawn savings for anything done under statutory rights or powers by a number of other bodies, including any navigation, harbour, pilotage or conservancy authority (ie the PLA). This means the Agency does not have the power under these bylaws to interfere with the PLA's proper management of the river under its own statutory powers, just as the PLA respects the Agency's responsibilities to look after its flood walls and ensure their continued fitness for purpose.

30. Recently, however, the Agency has begun pressing for control over dredging and construction works in the Thames, all of which are regulated by the PLA under PoLA (as well as planning controls), in part by claiming powers under these Byelaws that have not been granted to it. The Byelaws were made for an explicit land drainage purpose, and although the governing Act has now been subsumed into wider legislation, we are advised that the purposes of the Byelaws must remain restricted to land drainage until or unless explicitly amended and confirmed as such by the Secretary of State.

31. The PLA has drawn this excessive zeal to the Agency's attention a number of times, in private and in public, as river users have become concerned and confused. An informal agreement was quickly reached at senior level that the Agency was acting incorrectly by exaggerating their powers to third parties, but that has not resolved the problem which has now been running locally for over two years. The PLA offered a memorandum of understanding some months ago to document its oral reassurance to the Agency that, as always, it would continue to respect the Agency's duties in respect of its flood walls, in return for which the Agency was asked to make greater efforts to have its operational staff desist from making improper representations to applicants for works on the Thames. That offer is still being considered by the Agency.

I trust that this reflection on the relationship between the PLA and the Agency, which includes both positive aspects and areas of concern, will be helpful to the Committee and inform its inquiry as it proceeds.

Port of London Authority

December 2005

Memorandum submitted by Devon Community Composting Network

1. It's difficult for me to respond to this review under the framework that is given—especially given the time frame and the demands on my time.

2. Evidence is asked for—which I do not have—only years of working with the Agency, primarily in working on Exemptions from waste licensing—risk assessments—for prospective sites and meetings with officials over legislation etc.

3. The first thing to say is that I think that the job of the Agency is difficult to criticise as they are only policing some extremely badly drafted legislation that we have laboured under for more than a decade now. Talking to grass roots recycling, reuse and composting projects there is enormous frustration with the legislation and red tape process. Projects, who are trying to reduce waste and protect the environment come up against the most ridiculous and often contradictory legislation, Spreading raw manure around is OK (even though it is potentially highly polluting) but stabilising it by composting first and then spreading it requires more legislative control.

4. Trying to run a “zero waste” reuse centre is fraught with looking at exemptions for every single material brought in and our local officer was bamboozled by what to do with mixed buttons as they could be made of plastic, horn, metal, wood etc—so which exemption did they fit under? We desperately need a low level exemption—or license for these small projects. The Agency don't seem to know what alternatives can be offered to groups.

5. The second thing to say is that in Devon where I mainly operate I find that the Agency officers have really tried hard to understand and work with our sector. The attitude has changed from viewing us as people that needed curbing and controlling to one where I feel that they are very supportive of our activities and are aghast at the proposed charges for Waste Exemptions.

- how successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities;
- whether the Agency operates efficiently and provides good value for money;

6. I do think it is extraordinary that I am still getting calls from projects that are told that they cannot start their project on a proposed site because the Agency tells them that, “because it is within 250 metres of a sensitive receptor that they cannot proceed.” Rather than advising them that, “because they are within 250 metres, that they have to undertake a site specific risk assessment.” I have also heard of numerous instances from other parts of the country, sometimes a simple plan of the site will suffice—with other groups a risk assessment undertaken by a third party is needed. As for good value for money—well it's free for exempt projects at the moment—which is how we would like it to remain.

- the structure, governance and accountability of the Agency;

7. The Agency has changed its structure—I have not noticed this having made any great changes from the way we work with them. I thought that the local officer would be seeking advice from other areas when they didn't have the experience, I don't think that that has been happening very efficiently.

- its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency's role in the planning system;

8. I can't really comment on this other than to say that the Agency always tells me to lobby Defra for changes. Do Defra listen effectively to the Agency?

- the Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services;

9. See under comments above

- the Agency's responsibilities for flood defence and flood mapping, including guidance to the public;
- how the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency;

- how the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity;
- the Environment Agency's forthcoming corporate strategy 2006–11.

Devon Community Composting Network

December 2005

Memorandum submitted by the Association of Electricity Producers

1. The Association of Electricity Producers (AEP) is the UK trade association representing electricity generators. It has some 100 members ranging from small firms to large, well-known PLCs. Between them they embrace nearly every generating technology used in the UK, including not only conventional large-scale generation but a variety of technologies, some of them innovative. Contact details for the Association are given at the end of this paper. The Association represents one of the largest industrial sectors regulated by the Environment Agency. We are looking to develop our constructive dialogue with the Agency and we welcome the opportunity to contribute to the Committee's inquiry. The key issues we would like to address are the need for:

- Better communication and consistency between the strategic and operational parts of the Agency.
- A clearer policy lead from Defra and a less interpretive role for the Agency.
- More alignment between environmental regulation and Government policy on energy and the environment within the broad context of sustainable development.
- A more proportionate and risk-based approach to regulation that is focused on environmental outcomes.

THE STRUCTURE, GOVERNANCE AND ACCOUNTABILITY OF THE AGENCY

2. The Agency is a very large and disparate organisation. As a result, there are occasions when decisions made at the centre are not taken into account at regional or local level. That can lead to inconsistencies and local variations in the regulation of power stations and may also lead to the delay of some permit applications. Whilst, at the centre, the Agency may aspire to the goals of its corporate strategy, at the local level its actions can seem to be at odds with these, with a tendency to appear risk averse and over influenced by environmental pressure groups and the fear of legal challenge.

THE AGENCY'S RELATIONSHIP WITH DEFRA

3. We would like to see Defra take a firmer lead in setting environmental policy, giving the Agency clear direction and guidelines. In some cases (eg the regulation of waste), the strength of the Agency's advisory role appears to result in the creation of policy by default and the introduction of measures in a narrow context that can appear to run counter to the broader objectives of sustainable development. In several areas, the Agency appears to be both policy-maker and regulator.

THE AGENCY'S RELATIONSHIP WITH OTHERS

4. We would like to see the Agency strike a better balance between, social, economic and environmental needs. The Government's Energy White Paper of 2003 emphasised the importance of the interaction between environmental considerations and energy issues, and our industry has embraced that idea, but the Agency can sometimes appear detached from broader issues and therefore rather blinkered in its approach. The planning process for new power stations is an area where the Agency's approach can appear inconsistent with wider Government policy objectives and the focus on narrow issues at the expense of broader environmental, social and economic benefits can result in considerable delays and increased investment risk.

5. The Agency could improve the balance of its approach by building a closer working relationship with the Department of Trade and Industry and the Power Generation Sector, and there are some indications that this is happening. For instance, we are encouraged by the way in which the Agency worked with Government and industry to establish the detailed arrangements for the implementation of the EU Emissions Trading Scheme and we are pleased with progress on discussions about the regulatory framework for the emission of sulphur dioxide, oxides of nitrogen and dust from power stations in the period to 2008. However, more work needs to be done to ensure that the Government's medium-long term environmental and energy objectives are fully taken into account by the Agency.

6. For the Power Generation Sector, the Agency's relationship with the Scottish Environment Protection Agency is highly relevant, because the electricity market includes the whole of Great Britain and regional differences in environmental regulation could lead to undesirable market distortions. Although the link with the market in Northern Ireland is not as strong, we would like to see consistent regulation between mainland Britain and the Province, where appropriate.

7. We would also like to see the Agency rely less on its lawyers when interpreting Directives and Regulations and formulating guidance and more on the intent of the policy makers. There is a balance to be struck between a blunt literal approach to legal texts and a more informed purposive approach that avoids unnecessary, and potentially costly, “gold-plating”. The adoption of a strict literal interpretation has, in some important cases for the sector such as the use of ash and biomass, not led to the best practical environmental outcome and more should be done to assess the impacts of decisions made by the Agency’s legal advisers. Indeed, the Agency’s decisions sometimes appear to be at odds with the objectives of EU and UK Government policy, focusing on detail rather than intent.

THE AGENCY’S FORTHCOMING CORPORATE STRATEGY 2006–11

8. We support the Agency’s goal of adopting a modern regulation agenda and its move towards risk-based and proportionate regulation founded on good science. However, the pace of that transition has been too slow to avoid problems with, *inter alia*, the regulation of byproducts classed as wastes and the implementation of Integrated Pollution Prevention and Control.

9. There is a need for the Agency to focus on environmental outcomes rather than the micro-management of industrial processes that are the responsibility of plant operators.

10. The Power Generation Sector features as a consistently high performer in the Agency’s own annual regulatory review. Under the Agency’s modern regulation agenda, we would like to see proportionately more effort devoted to the sectors and installations that are not performing so well.

Association of Electricity Producers

December 2005

Memorandum submitted by British Canoe Union

How successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities

1. The EA cannot properly promote and develop recreation hampered by an over precautionary Access Policy as stated below.

Access Policy—“We will promote increased access where it does not adversely impact upon existing use and users, or the economic and conservation value of the site and associated area. We will encourage access where managed solutions can be found to remove adverse impacts, resources allowing”

The Agency remains overly defensive in their approach to recreation and the access policy statement reflects this position. The policy does not give the stakeholder any confidence the Agency will be imaginative in creating access and supporting new users and recreation activities. It implies a “no can do culture” to promote exclusivity rather than integration. A more positive and inclusive policy is required.

2. The EA recognises there are up to 4 million freshwater anglers in England and Wales and can only account for the sale of 1.2 million rod licences. This suggests there is a shortfall of many millions of £s in lost revenue that could cover GIA for fisheries that is funded by the taxpayer.

Whether the Agency operates efficiently and provides good value for money

3. From a navigation perspective the service received varies with local management. There are examples of users paying more and having infrastructure removed to reduce facilities. The removal of unsafe canoe portage points at locks on the River Nene without replacement is a particular example. Conversely, on the River Medway there is a current programme for new and refurbished canoe portages.

4. Without a measure of the staff efficiency and cost benefits arising from the restructuring project BRITE comment cannot be given.

The structure, governance and accountability of the Agency

5. Regional Fisheries Ecology Recreational Advisory Committees. Membership of most of these statutory committees is unbalanced, dominated by angling and fisheries members (over 50%, and some angling/fisheries interests have taken other seats to increase this to 60%+). This majority group protects their self-interest. The Access Policy commented on earlier can be used to obstruct activities.

DEFRA appoint RFERAC chairmen who are nearly all from a fisheries and an angling background. Recruitment from a more diverse base to include females would be a welcome development. RFERAC’s need a review of their representing the community and structure.

6. The Recreation Function is under funded, and needs more staff skilled in understanding people management in recreation. At national level there are two officers and a total compliment of 15 in the regions with a £1.9 million budget.

7. At national level and in some regions, the Recreation function is separate from Fisheries. This structure should be extended to all regions and areas. Where Recreation and Fisheries are not divorced in the regional and area offices, invariably the Recreation Officer reports to the Fisheries Conservation Recreation Manager who will almost certainly be from a fisheries background. This subordinate arrangement is not healthy for decision making taking into account the Agency policy to separate the functions.

NB The Agency persists in keeping the recreation of angling under Fisheries and all other recreational activity under Recreation. All recreation should be treated under a common management.

Its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency's role in the planning system

8. DEFRA has for many years chronically under funded the Agency navigations. 23% of the navigation infrastructure in a dangerous state of dis-repair in H&S terms, additional funding has finally been provided this year and promised for the next three years. It may well be reduced should the Treasury choose. The Agency has struggled to gain funding, BW managed to gain DEFRA funding much earlier to put their network into better order.

9. The Agency has plans and aspirations we welcome to promote participation and interest in water recreation, particularly navigation. Having gained additional funding, DEFRA has required the Agency to hike boat registration charges by 6.9% with the prospect of like increases in following years. There is every reason to believe that this increase will be a barrier to Agency aspirations and participation with potential for reduced income.

DEFRA needs to accept that Agency navigations have an important amenity value to the wider community, and to take this into account, increases in charges for boat users should be scaled down.

10. The Agency is dependent on future DEFRA funding to complete the "Strategic Planning for Water related Sport and Recreation." We query how the Agency can plan ahead and stakeholders have any certainty of a national outcome in these circumstances and expect the work to be done with only 15 officers in the field. We also query the value of this work that will be used by Regional Development Agencies, Regional Sports Boards etc if it does not include investigating where navigation rights exist on non-tidal rivers.

11. The Agency should have increased powers to challenge and over rule local authorities granting planning consent in flood plains and where the existing infrastructure ie water supply, sewage treatment works are inadequate to support development.

12. Transport and Works Order for navigation. User Groups have completed negotiations with the Agency that lasted three years. Continuing legal differences of opinion between the Agency and DEFRA solicitors could further prolong this process with more consultation and expense to user groups. The Agency and DEFRA need to resolve their differences.

The Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services

13. Apart from flooding, the general impression is that the public have little or no idea of what the Agency is or does.

14. From a navigation and recreation perspective the Agency should have a fair idea of stakeholders satisfaction from the feedback at its user forums.

Agency's responsibilities for flood defence and flood mapping, including guidance to the public

15. The agency is responsible for flood defence and must have powers to negate any developments or policies that would create a risk of flooding.

How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency

16. The relationship between Natural England and the Agency will be based on a MoU. Stakeholders need sight of the MoU to gain a fuller understanding of the new relationship.

17. The culture and primary function (control, environmental protection, licencing and regulation) of the agency directly clashes with its attempts to be a recreational body. It would be sensible to draw a line between these two very different roles and perhaps consider encouraging the move of the recreational function into Natural England.

Natural England has recreation and access at a higher profile in their brief combined with the skills of the Countryside Agency in these areas. The Countryside Agency has had recent involvement in a DEFRA commissioned study for access to water and brought their skills to this project.

How the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity

18. There is already an overlap between EN and EA. We would see this continuing with EN becoming the larger part of Natural England.

The Environment Agency's forthcoming corporate strategy 2006–11

No comment

British Canoe Union

December 2005

Memorandum submitted by Cllr Mrs Patricia Wyatt

I have had many meetings with various personnel working for the Environment Agency. Regarding matters appertaining to water problems in our area, they have been dealt with satisfactorily.

However, as a Rugby Borough Councillor, dealing with matters appertaining to the general environment and quality of life in this area, the service by the Environment Agency is simply not acceptable. The residents I represent including myself and family, live within two kilometres of the giant cement factory and unless the powers of the EA officers is significantly strengthened and without the fear of compensation being awarded to applicants, the public cannot be awarded an environmentally friendly and enhanced healthy life. Industry is far too powerful and mighty which leads to complex complications and lack of confidence.

In my opinion Defra is too cosy with Government, and all the bodies need in-depth scrutiny.

I am running out of time like Cinderella.

Cllr Mrs. Patricia Wyatt

Lawford & Kings Newnham Ward (Independent)

December 2005

Memorandum submitted by Thames Fisheries Consultative Council

1. This organisation, Thames Fisheries Consultative Council (TFCC), has for many years worked closely with the Environment Agency (EA), and its predecessor the National Rivers Authority (NRA). We represent 10 catchment based fisheries and angling consultatives within Thames Region of the EA, (approx 80,000 individuals). We acknowledge the wider responsibilities of the EA and what it has achieved so far in the protection and development of fisheries and angling. We also acknowledge the dedication and hard work of all staff at the EA. It should be clear here that we differentiate between Fisheries and Angling, whereas the Agency does not in many cases. We believe a Fishery is the aquatic eco-system in which fish are the highest form of life and angling (fishing with rod and line) is the exploitation of a fishery. We believe that for many reasons the quality of a Fishery is an environmental responsibility of the whole community, and not just those who exploit it, either practically or ethically. In real terms there are many fisheries which are not fished, but are important breeding grounds for fish and the whole food chain on which they depend. This then leads on to higher forms of life, more familiar with the public, such as kingfishers, herons, otters and many others. They all depend on the quality of all our water resources such as rivers, lakes, and canals. Many of these are natural in origin or man-made, but they are all affected by our actions. It is the responsibility of the EA to enhance, protect, police and monitor these areas.

2. Our Regional members report back to us on many issues relating to the EA. Many are good, but in the way of things, some are not so. The EA has many responsibilities, mainly relating to Flood Control, Navigation, Recreation and Fisheries. We also think that Angling should also be a responsibility of Recreation, and should work more closely with Fisheries. In passing, anglers contributed nationally nearly £18 million last year in the form of Rod Licences, which we are assured is all spent on fisheries. We also think that there should be a more stable form of financing fisheries than relying so heavily on rod-licence income.

3. The first main criticism is that Fisheries appears to have been downgraded in the list of priorities, since the recent re-organisation (BRITE). Specialist, and in the main very dedicated, staff have been "generalised" into a pool of multi-skilled operators dealing with the areas mentioned earlier. This has led to a constant change of personnel, at both Local and Regional level, so real lasting relationships cannot yet be established, and thus no two way ongoing communication carried out. Anglers, possibly the main eyes and ears of the Agency, report pollution incidences on the number requested (0800 807060). The speed of response immediately depends on whether or not it is "office hours" and the knowledge and skill of the responder. The response time and quality can vary within Regions, but there are instances of a poor, and in many cases a disastrously late investigation. This can have an affect on effective possible prosecutions. If I was an unscrupulous polluter, I would dump at week-ends.

4. Another area of national concern is the development of Fisheries Action Plans (FAPS). This was an optimistic avenue for all interested bodies, not just anglers, and led by the EA, to get together and produce a plan for the development and exploitation, for the public good, of fisheries on a catchment or river basin basis. There have been some initial successes in Thames Region, the Kennet FAP, still to be implemented, and the Lee FAP, but there are many more to be done and at the present rate it could take something like 20 years to cover the whole Country. It needs more investment in money, time and effort, but the will must be there, and this is not evident in the higher echelons of the EA, well not to us at the base. The EA must abide by the Habitats Directive, but we feel that we shall still see fish spawning beds of gravel still being dredged in the name of Flood Control or Navigation, and Water Quality deteriorating.

5. Privatised Water Companies also come under great discredit. Many feel that the EA, as the enforcer of environmental regulation and controls, is not strong enough in its monitoring and prosecution, where appropriate, in such areas as discharges from Sewage Treatment Works, storm discharges, water abstraction and the management of drought prevention measures. Recently there was the disastrous pollution of the River Thames in London, which killed many tens of thousands of fish, just after some were saying that the river was cleaner than it has ever been.

6. Again can we stress that much of our criticism is levelled at the political policy makers and not at the hard working and dedicated staff of the EA, who at ground level are doing their best to make the “system” function. We are more than willing to send one or more representatives, or give detailed written evidence to the Committee if required.

Thames Fisheries Consultative Council

December 2005

Memorandum submitted by the Met Office

SUMMARY

1. The Met Office provides meteorological, climatological and related input to the Agency which helps it to discharge its responsibilities for flood defence and flood mapping.

2. Further, the Agency and the Met Office have a collaborative framework which facilitates an exchange of operational information and guides joint research activities which, by undertaking collaboratively, deliver enhanced benefits to the public.

3. The procedures for warning the public in relationship to fluvial and coastal flooding are well developed, with the Agency providing warnings which are informed by outputs from the Met Office.

4. The procedures for warning the public in respect to pluvial flooding events are less well developed than for other flood warnings. Currently there is no consistent method for warning or informing the public on pluvial flooding events, and there would be benefits from bringing this in line with other types of flood events.

5. There are a number of areas where the Met Office and the Agency believe the coordination of their collaborative activities could be improved. These include:

- a more integrated rainfall-to-catchment-to-coast approach to flood protection;
- both improving air quality in our cities and enhancing our Chemical, Biological, Radiological and Nuclear (CBRN) civil contingency response through a more joined-up approach to air quality and dispersion modelling; and
- working together to improve our understanding of the impacts of climate change in order to deliver more rounded policy guidance on effective mitigation and adaptation strategies.

6. More detailed information on these points is attached in Annex 1. This summarises recent communications between the Chief Executives of the Met Office and the Agency, which seek to identify areas for improving the delivering of services to both the public and to Government Departments.

7. The Met Office has identified, as a key theme within its Corporate Plan, to work more closely with the Agency. The on-going dialogue with the Agency aims to put in place a clearer framework and timescale for the delivery of these improvements, which we hope will be reflected in the Agency's new Corporate Plan.

Met Office

December 2005

AREAS WHERE THE MET OFFICE AND THE AGENCY ARE LOOKING TO WORK MORE
CLOSELY TOGETHER TO IMPROVE PUBLIC BENEFIT—OUTLINED IN RECENT
CORRESPONDENCE BETWEEN AGENCY CHIEF EXECUTIVES

FLOOD WARNING SYSTEMS

Over the next five to 10 years significant development in both the accuracy and resolution of Numerical Weather Prediction (NWP) models is expected. We are keen to ensure these improvements are pulled through into the operational delivery of flood warnings by the Environment Agency. Experience in the past has shown that unless specific effort is focused in operational pull-through, developments in “upstream” capability often do not result in commensurate benefit for “downstream” operational services. The benefits gained from NWP improvements will be maximised if coordinated effort is focused in the area of operational pull-through into the flood warning service. This is true irrespective of the source of flooding (assuming weather is a significant driver) and therefore it is proposed that focused effort in this area, undertaken jointly by the Met Office and the Environment Agency, can underpin the delivery of improved operational services with better integration and cooperation as welcome outcomes.

PLUVIAL/FLUVIAL FLOODING

We appreciate that both DEFRA and the Environment Agency are looking towards integrated flood management in the future. We understand that in terms of providing a service to the public this should not differentiate between the sources of flooding (tidal, fluvial, pluvial, groundwater, sewers). The Met Office is keen to support the EA in delivering this vision and believe that we can offer considerable support particularly with respect to the fast response flooding (eg pluvial and sewer flooding), where the amount of “hydrology” that can be involved in any forecasting will be limited. We are keen to ensure our expertise in hydro-meteorology and development work already undertaken in the area of forecasting for pluvial flooding is exploited fully with the EA; we need to explore together the opportunities for strengthening our joint capability. We suggest that there may also be benefit in undertaking a joint strategic analysis and review of how best to improve forecasting of flooding from all sources.

OCEAN MODELLING AND SHELF SEAS

The Environment Agency has already initiated a project to enable the Met Office, Proudman Oceanographic Laboratory and HR Wallingford to produce a co-ordinated plan to improve the operational systems for warnings of coastal flooding. The plan is likely to include proposals for improvements to the transformation of offshore to near-shore wave forecasts and investigations of the potential benefits for surge predictions from 3D models, like the POL Coastal Ocean Model System (POLCOMS), and coupled hydrodynamic-wave models, like POLCOMS-WAM.

The shelf seas modelling capability that we are developing in collaboration with Proudman Oceanographic Laboratory and Plymouth Marine Laboratory already includes nowcast and short-period forecasts of the marine ecosystem. We would very much like to explore with the Environment Agency the potential for application of this capability to improved monitoring and understanding of water quality and harmful algal bloom events in coastal waters.

Both of these initiatives are part of the wider programme of work of the National Centre for Oceanographic Forecasting (NCOF)—a collaborative group of agencies involved in ocean and sea shelf modelling. We believe that the Environment Agency would make a valuable contribution to the work of NCOF and would welcome the opportunity to discuss this further. More information on NCOF is available at <http://www.ncof.gov.uk/>.

AIR QUALITY

The Met Office has a number of air quality and dispersion models that form part of the tools available for the Government's response to Chemical, Biological, Radioactive and Nuclear (CBRN) civil contingency events, the development of which has largely been funded by support from DEFRA and MOD. The Met Office is planning to improve the resolution of these models, providing very high resolution street canyon predictions that will improve the Government's CBRN response. In particular, these tools will have the ability to predict the dispersion of high-risk chemical releases and to underpin research into the impact of concentrations of poor air quality in local areas of interest. We have yet to explore the potential benefits of combining this work with the capabilities of our health forecasting team. We believe that this is an area in which the Met Office and the Environment Agency can work closely together to significantly improve the air quality in our cities.

CLIMATE CHANGE

The Met Office's Hadley Centre leads the world in climate change predictions and research. The principle focus of this work is providing global and region predictions and in investigating the human impacts on a changing climate. More recently, the Hadley Centre has developed tools that improve our ability to undertake impact modelling. A recent example is the work on attributing anthropogenic climate change to the Heatwave of Summer 2003. We believe that the Met Office and the Environment Agency could work together in a number of areas to improve the capability to provide local early warnings on the impacts of climate change.

Met Office

December 2005

Memorandum submitted by Yorkshire Water

SUMMARY

1. This submission is in response to the Committee's press release dated 3 November, announcing the inquiry to examine the work of the Environment Agency. The submission has been structured to address the areas highlighted in the press release and represents Yorkshire Water's view in specific areas relating to the Agency's operation.

2. The response focuses on three key areas of the Agency's operations:

- The Agency's duty to undertake and adhere to the principles of cost benefit analysis and the failure to do so effectively. This means that short term "end of pipe" solutions rather than tackling the sources of diffuse pollution tend to be sought. This approach results on higher costs to society as a whole and does not reflect the principle of polluter pays.
- The Agency's lack of internal processes to control its own costs, which results in cross subsidies between different aspects of its operation, with reference to the example identified by a recent National Audit Office report. The opportunity to make efficiencies in regulating environmental licences is also reviewed.
- The final area relates to how interpretation of policy defined by Defra, often results in driving additional costs for the water industry as a result of the Agency's need to provide technical guidance. This guidance does not take due cognisance of costs and benefits, which results in increased bills for our customers.

HOW SUCCESSFUL THE ENVIRONMENT AGENCY HAS BEEN IN ITS ROLE AS ENFORCER OF ENVIRONMENTAL REGULATION AND CONTROLS, AND HOW WELL IT MANAGES ITS WIDE RANGE OF ACTIVITIES

3. Whilst the Environment Agency has been successful in its primary role as enforcer of environmental regulation and controls, it continues to struggle at times to consult in a timely and or appropriate manner, and in particular to understand and apply the Duties it has under the Environment Act 1995, Section 37, to undertake and adhere to the principles of cost benefit analysis. This failure can lead to the Agency seeking water companies to invest in assets which will not provide good value investments.

4. The failure is due to a number of factors, which include the Agency's lack of resources to undertake robust river modelling to understand the impact of particular discharges and what might be achieved through tightening of the consent conditions versus controls which could be applied to diffuse sources of pollution.

5. For example, in the lead up to the 2004 Periodic Review, the Environment Agency was pressing for additional storm tank storage at our Knostrop Waste Water Treatment Works, which would cost in the order of £75 million. It was modelling by Yorkshire Water that showed that the expected improvements in river quality arising from providing this additional investment would not be achieved. Whilst the Agency was persuaded by the argument, the fact that the proposed investment was ever considered shows a lack of understanding in the balancing of costs versus the benefits to the environment for this particular investment.

6. Similarly within the first year of this five year investment programme, the Agency have withdrawn requirements for us to make a number of significant investments under the Freshwater Fish Directive, as investments had been requested at assets which discharge to controlled waters with no such environmental requirements.

7. The Agency continues to be hamstrung by poor legislation drafted in Europe. An example of this, which is driving wide scale appeals on discharge consents, is the application of the 1976 Dangerous Substances Directive. This Directive requires the cessation of discharges which contain substances which

are ubiquitous in the sewage such as Cadmium which enters the sewerage system, all be it at very low levels, in faeces. Poorly thought through legislation not only diverts resources away from more important matters, but drives unsustainable practices and investment programs in industry. It is essential therefore that the Agency intervene in a timely manner in Brussels and support Defra in its endeavours to influence the legislative process early on to make sure that our MEPs take the economic, social and holistic environmental consequences of their decisions into account before approving new legislation.

8. The Agency has on several occasions failed to consult effectively on key issues such as changes to their consenting policy arrangements that have the potential to drive significant amounts of new investment by the water industry. This issue has been discussed with the Agency nationally, who have agreed to review not only the timeliness of their consultation processes, but the way in which our trade association and key customers such as water companies are informed of such changes .

9. The regulatory framework in which the water industry operates is governed by a five year investment cycle. This framework can leads the Agency to be forced to seek “end of pipe” solutions rather than more cost effective longer term softer engineering solutions, which may be more cost effective such as those to tackle diffuse pollution from agriculture. This increases the pressure on water companies’ customer’s bills rather than making the actual polluter pay. We hope that the Water Framework Directive with its “cost beneficial” test will be fairly and transparently enforced to ensure that the best value solution to pollution challenges are enforced, and not those which are politically expedient.

WHETHER THE AGENCY OPERATES EFFICIENTLY AND PROVIDES GOOD VALUE FOR MONEY

10. There is a fundamental issue over value for money that arises from the Agency’s dual role as a regulator and operator. The confusion between its regulatory role and its operational role leads to cross subsidy.

11. This is no more apparent than in the cross subsidy identified in the recent National Audit Office report on Efficiency in Water Resource Management,⁵ which identified a cross subsidy between water resources and land drainage. This is particularly relevant given the Agency’s consultation on their proposed water abstraction charges scheme.⁶

12. The approach taken by the Agency in the consultation states that in order to recover costs to compensate abstractors who no longer have access to a licensed abstraction, monies must be found to compensate such users. In terms of the water industry, which is responsible for the vast majority of water abstracted, there are effective systems to raise the required funds.

13. However, the proposed combination of a regional abstraction charge and a national compensation charge is inconsistent and illogical and does not take account of the areas of inefficiency identified by the National Audit Office. Indeed the national approach of compensation charging as recommended is incongruent with the Water Framework Directive, which divides the UK into River basins for the purpose of cost recovery and the setting of investment obligations.

14. Requiring water companies to make new investments in water resources is not new, with funding for such schemes being paid for by the customers who benefit from such investments, which is a parallel to the polluter pays principal. Cross subsidising such investments outside water company boundaries breaks this regulatory principal and is incongruent with the incentivised regime set up in 1989.

15. Yorkshire Water pays an annual charge of approximately £5 million which impacts on our customers bills. There is a lack of transparency on what these monies are used for by the Agency, which means that we are not able to challenge charges adequately. The company interfaces with offices in York Leeds, Birmingham and Bristol. We believe that with appropriate rationalisation, regulating our activities in Yorkshire could be done for significantly less than the current costs.

16. The lack of transparency is because the Agency does not currently the have detailed management information systems required to make any assessment of the scope for efficiencies. This is a failing, highlighted in the NAO report, which is totally unacceptable, and would not be tolerated in any normal business and particularly the in water industry, where significant real efficiencies in operating costs have been delivered over the past 10 years.

17. With respect to waste water discharges the Environment Act 1995, Section 41, gives the Agency the power to make charges to recover the costs of regulating environmental licences.

⁵ National Audit Office, Environment Agency Efficiency in resource management, June 2005.

⁶ Environment Agency, Review of the water abstraction charges scheme, September 2005.

18. The Environment Agency's published data⁷ on the activities related to consenting and monitoring discharges and the proportion of the costs associated with each activity are listed below:

(a) Consenting & Direct Administration	25%
(b) Discharge monitoring and control	11%
(c) Monitoring (chemical & bacteriological)	17%
(d) Biological monitoring	6%
(e) Laboratories	26%
(f) Public register	3%
(g) Miscellaneous	12%

19. Much of the monitoring and laboratory analysis duplicates work carried out by Water and Sewerage companies, who monitor the performance of their own operational sewage treatment plant. This monitoring is required to facilitate optimisation of the operation of the sewage treatment works and give early warning of any potential risk of non-compliance with the discharge consent.

20. By comparison the Drinking Water Inspectorate monitor companies compliance with the Water Supply (Water Quality) Regulations through an audited self monitoring process.

21. If companies are able to demonstrate robust auditable processes for a product that is essential for their customers, then a similar process should be more than adequate for monitoring discharges to the environment.

22. In 2003–04 the total cost to the water industry of charges for discharges was £44.5 million.⁸ Based on the break down of costs detailed above, the Agency's costs could be reduced in the longer term by between 30–40%, which equates to £13.4 million–£17.8 million.

23. This assessment assumes that if companies carry out their own sampling and laboratory analysis, there would be no need for the monitoring (17%), laboratory (13–17%) and administration (up to 6%) costs within the Agency.

24. Whilst the companies would incur additional costs associated with setting up and maintaining a quality controlled process, these additional costs would be considerably less than the estimated Agency savings because of the level of duplication that can be eliminated, with net savings in the order of £6.9 million–£8.9 million per annum.

25. As a result of identifying this potential saving as part of the Government's drive to reduce Red Tape, a pilot project has been set up involving the Agency and the water industry to test the potential for making these savings and develop the process for self monitoring of waste water treatment works discharges. This will report its findings in 2006.

26. With the introduction of the WFD, there is the potential for moving towards whole catchment style consents rather than individual discharge consents. This approach would not only facilitate a company's ability to deliver required outputs more effectively and efficiently, but also enable the Agency to focus effectively on monitoring and control of the environment. This concept is also being explored with the Agency.

THE STRUCTURE, GOVERNANCE AND ACCOUNTABILITY OF THE AGENCY

27. The Environment Agency is a very large organisation with responsibilities that overlap with Natural England. There is often a conflict between its role as an advisor and as a regulator, which is not clear and can cause confusion. In business terms it is a conglomerate where the disbenefits outweigh the synergies. Its various roles in relation to water, let alone other sectors, are government policy adviser, regulator, operator and public information provider. To drive efficiency and effectiveness these roles should be clarified, rationalised and re-structured to drive a more effective cost effective regulator.

28. From an accountability view point the Agency needs to embrace the Better Regulation Task Force principle, however the lack of transparency is often lacking.

ITS RELATIONSHIP WITH DEFRA, DEFRA SPONSORED BODIES AND THE REST OF GOVERNMENT

29. Defra's role is to set environmental policy, whilst the Agency's role is to enforce this policy. However through the interpretation of that policy, the Agency continues to effectively make policy by the issuing of technical guidance as the primary legislation is broadly written and often not clearly defined. For example with respect to the Water Framework Directive, the Agency is designated as the competent authority and it will make recommendations through the programme of measures which will drive potentially very large costs for the water industry *et al.*

⁷ Environment Agency Annual Charges for Discharges to Controlled Waters 2004–05.

⁸ Source Ofwat June Returns Table 22 Activity Costing Analysis—Sewerage Service.

30. It is the programme of measures which drives investment not the policy, which calls into question how Government adequately controls costs of both the Agency and industry and has regard to costs and benefits which is the basis of so much law written in the EU and applied in the United Kingdom.

31. It is also the lack of appropriate cost benefit assessments that causes unnecessary tensions between the economic regulator, Ofwat, and the Agency at the time of a periodic review of prices in the water industry.

32. As a result of the above the Agency's advice often lacks a holistic view, with a concentration on standards rather than providing an assessment of the whole impact of solutions. This calls into question the interpretation of sustainability and the response to the national strategy in this area, with frequent insufficient attention paid to who will pay.

Yorkshire Water

December 2005

Memorandum submitted by British Cement Association

EXECUTIVE SUMMARY

1. The UK cement industry enjoys a positive professional relationship with the Environment Agency at all levels, as demonstrated by the development of the cement sector plans with performance targets for both organisations for 2006 and 2010.

2. As with any organisation, there are a number of areas within the Agency's operations where improvements could be made:

- 2.1 delivery of regulatory provisions on time;
- 2.2 greater consistency within the organisation; and
- 2.3 improved communications with critical stakeholders.

3. Despite their different goals, there is common desire of the Agency and the cement industry to work together towards better regulation, improvement of the environment, and better communication with stakeholders.

INTRODUCTION

1. The BCA is the Trade Association representing the cement industry in the United Kingdom, and its four members—Castle Cement, Lafarge Cement UK, CEMEX Cement, and Buxton Lime Industries—are responsible for the production of all the cement manufactured within the UK, which accounts for over 90% of the cement used.

2. The UK industry has an annual turnover of £750 million, and provides direct employment for ~3,500, and indirect employment for ~15,000.

3. BCA's four member companies operate 15 cement-producing plants across the UK, eight belonging to Lafarge Cement UK, three each to Castle Cement and CEMEX Cement, and one to Buxton Lime Industries. Of these cement works, 13 are regulated by the Environment Agency, one by SEPA, and 1 by the Department of the Environment in Northern Ireland. Some member companies also operate their own landfill sites and have EA contact with closed landfills.

4. The cement industry works with the Environment Agency at many different levels—EA Board; Senior Management; Policy (Process Industry Regulation); Regional Directors; Inspectors. Recent involvement includes:

- 4.1 Modification of the Substitute Fuels Protocol, (SFP);
- 4.2 Implementation of environmental regulation such as the IPPC Directive and the Waste Incineration Directive, see paragraph 7.3;
- 4.3 Development of BREF guidance at EU level, through membership of European review group;
- 4.4 Response to EA, Defra and other consultations, and provision of data to EA Consultants.

5. In addition to these mandatory schemes and the non-statutory SFP, the industry is involved in a number of voluntary schemes and initiatives, viz:

5.1 Environmental management systems: 100% of UK cement works are accredited to ISO 14001, and additionally 73% have EMAS;

5.2 Development of the EA Sector Plan for the cement industry, launched on 22 November 2005;

5.3 BCA Sustainable Development Initiative: First report launched at House of Commons on 1 November with Jonathon Porritt, Sir Neville Simm and Alun Michael. An important component of this work is the on-going programme of stakeholder engagement, an initiative, in part, in a response to discussions with EA staff.

5.4 World Business Council for Sustainable Development Cement Sustainability Initiative, (WBC CSI), which is subscribed to by all UK cement companies.

5.5 Revitalising Health and Safety, (RHS), an initiative in which the industry is committed to a 30% year-on-year improvement of its safety performance, based upon 2003.

6. The UK cement industry broadly enjoys a positive professional relationship with the Environment Agency, and whilst there are aspects of the performance of each organisation that do not meet the requirements of the other, there is a common desire to work together towards better regulation, improvement of the environment and better communication with stakeholders.

ENVIRONMENT AGENCY REGULATORY FUNCTIONS

7. Implementation of Regulation

7.1 The BCA notes that whilst grant in aid is reducing, the Agency's remit is continuing to expand, most recently to cover the Waste Electrical and Electronic Equipment Directive, (WEEE), provisions and shortly to be extended to the Registration, Evaluation, Authorisation and Restrictions of Chemicals, (REACH), provisions.

7.2 The cement industry reported its experience with the implementation of Integrated Pollution Prevention and Control, (IPPC), to the House of Lords European Union Committee.⁹

7.3 Although the permit applications were duly made by August 2001, the time defined within the legislation, (when the BCA submission to the Select Committee was made), only four of the 15 had been finalised by the EA in May 2003, the final permit being issued in 2004. We regard this time delay as excessive.

7.4 More recently, the industry has come within the ambit of the Waste Incineration Directive. All permit applications had been made by 31 March 2005 for determination by June 2005. At the time of submission of this evidence, 2 December 2005, two out of the nine permits in England and Wales had been finalised—a further permit from SEPA in Scotland was also outstanding. At the time of writing, the EA is requesting extensions for these determinations to 28 December 2005, the WID effective date.

7.5 Against this, the cement industry welcomes the future target that the Agency has set itself in the EA cement sector plan—the determination of 75% of permit applications and variations six months of target time. However, this still leaves room for further improvement.

7.6 The cement industry also welcomes the progress that has been made with the application of the Substitute Fuels Protocol following its modification in February 2005—all three applications for new uses of waste-derived fuels progressed according to the specified time scale.

EFFICIENCY OF ENVIRONMENT AGENCY OPERATION

8. Issues of consistency

8.1 Experience of BCA Member Companies supports the CBI view that the local level is where the greatest variation in EA interaction with business occurs. The quality and experience of local experience of local inspectors varies considerably, as do their opinions, advice and actions on environmental matters, eg OMA Audits are not currently consistently scored.

8.2 There is also a lack of consistency between the policy makers in head office and local inspectors. For example, the EA Sector Plans were drawn up on the basis of delivering environmental improvement at the sector level, yet some local inspectors have attempted to include sector targets into permit conditions—an outcome that the BCA was assured would not occur.

8.3 The cement industry invests a great deal of time in assisting EA personnel to understand the details of the cement making process. It is frustrating for companies who have done this when the officer/inspector moves on and the have to devote a similar effort for their replacement.

8.4 During 2005, there have been 3 lead PIR (Process Industry Regulation) Policy Managers to date, and a further change early in 2006 has been announced.

8.5 In contrast, the BCA welcomes the opportunity to work with the UK representative from the EA on the revision of the EU BREF on cement and lime sector, (relating to the Information Exchange required by the IPPC Directive) This was established through the assistance of Defra Air Quality Division.

⁹ BCA evidence to House of Lords Select Committee on the European Union—"European Union Waste Management Policy", HL Paper 194, 18 November 2003, page 105.

9. *Communications with the Industry*

9.1 The cement industry notes the loss of the “one stop shop”/ “first stop shop” approach that the Agency was meant to bring. Prior to the formation of the Agency, industry was involved with three regulators: NRA for discharges to river and abstraction; local authority for waste- and planning-related issues; and HMIP for cement manufacture and radioactive substances.

9.2 The range of activities remains similar, but each is now dealt with by the Agency. However, there is still no single point of contact—one office deals with PPC, one with EU Emissions Trading Scheme, one with radioactive substances, one with water discharge, and another with landfill permitting and a further office with landfill monitoring. In addition, there is the Strategic Permitting Group, SPG, dealing with the Waste Incineration Directive. This fragmented approach is not consistent with a “one stop shop”.

9.3 Industry experience with SPGs in relation to the WID and landfill applications has highlighted inconsistency between areas. In many cases the officers lack the necessary local site knowledge and sometimes have little knowledge of the manufacturing processes and issues involved.

9.4 There appears to be a lack of communication and co-ordination of the officers in the various functions, each making site visits solely in relation to his/her own function. Better co-ordination could give efficiency savings for both industry and the Agency and would be in line with the objectives of better regulation.

9.5 The BCA notes the practice of the Health and Safety Executive which operates a “single point of contact” for firms for all enquiries.

9.6 BCA supports the CBI’s view that there should be better representation of industry on the Environment Agency Board.

10. *Communication with Stakeholders*

10.1 In 2005 under its Sustainable Development Programme, following a stakeholder mapping exercise undertaken by Forum for the Future, a meeting of the industry’s major stakeholders was held. This stakeholder engagement initiative was in part, in a response to discussions with EA staff.

10.2 This will continue to be an important component of BCA’s sustainability initiative and on-going programme of stakeholder engagement is planned.

10.3 BCA Members through their Sustainable Development Programme will continue to develop better stakeholder dialogue at local and national level. The industry looks to the Environment Agency to support these initiatives.

11. *Other Issues*

11.1 Use of consultancies for EA Research and Development The Environment Agency uses environmental consultancies for specific R&D projects. Whilst BCA has no objections to this per se, the consultancies used place substantial reliance on cement and other companies for the provision of data, the majority of which has been submitted to the Agency and/or is on public registers.

11.2 BCA notes the potential for efficiency savings through better briefing and management of these consultancies, and more efficient sharing and archiving of data submitted by industry to the Agency. However, the Association is cognisant of the scale of the Agency’s data storage issues—15 terabytes of data on a number of IT systems.

11.3 Rising Operational Costs The cost of operating an industrial process to today’s standards is considerable, and many parts of the Agency appear to be unaware of the extent of these costs and how some of their decisions increase these further.

11.4 With regard to plant costs, expenditure of the UK industry in meeting the requirements of the Waste Incineration Directive was estimated to be ~£12 million.

11.5 An example of the costs relating to the EA regulation of a single, typical cement works are given in Annex I. The cement industry operates 15 works within the United Kingdom.

11.6 Whilst the cement industry does not object to expenditure on improvements based on sound science, this is not always the case, for example ambient air monitoring.

11.7 The industry concurs with the CBI’s comments on the EA consultation for contentious licences. Whether or not a licence is contentious is not necessarily a direct reflection on the performance of the operator, who also incurs additional costs in dealing with contentious licences.

11.8 Comparison with Mainland Europe Early information relating to the implementation of WID indicates that regulatory bodies in mainland Europe are adopting a less rigorous interpretation in the draft permits than in England and Wales. This reflects this situation for IPPC.

LEGISLATIVE DEVELOPMENTS AND STAKEHOLDER DIALOGUE

12. *Legislative Developments and Stakeholder Dialogue*

12.1 The BCA believes that the implementation of new legislative provisions, the move towards “better regulation”, and development of stakeholder engagement are three critical areas to be addressed jointly by the cement industry and the Environment Agency in the future.

12.2 The industry welcomes the greater access to environmental information and the appointment of an Information Commissioner, the possibility of increased regulatory flexibility through the proposed use of civil law remedies by the Agency, and the increasing dialogue with industry stakeholders at a sector and local level.

12.3 The implementation of the Public Participation Directive provides the opportunity to develop the lessons learned through the Substitute Fuels Protocol into an UK exemplar for use across a range of industries.

British Cement Association

December 2005

Annex I

EXTRACTS FROM REMAS¹⁰ ANALYSIS OF PROPORTIONATE REGULATORY FEES

The data below were produced as part of the REMAS project undertaken by cement manufacturers (and others) in conjunction with the Environment Agency.

Annual fees paid by a typical cement works to Environment Agency

<i>Regulation Fees</i>	£	<i>Regulation Fees</i>	£
Water Discharge Consent Fees (per annum)		IPPC Permit Application Fees (One-off cost)	40,000
Water Abstraction Licence Fees (per annum)	14,000	IPPC Permit Variation Fees (per annum)	14,000
Waste Management Fees (per annum)	4,500	Independent Emission Monitoring Fees specified by Regulator (per annum)	60,000
On site landfill WML (not required covered by PPC)		<i>Others</i>	
IPPC Annual Fees (per annum)	12,000	Regulator check monitoring	8,000
GHG emissions trading	9,000	Equipment calibration ¹¹	
PPC landfill application fees (one off)	16,000		
PPC landfill subsistence fee	8,000		

Total annual fees for site:

£43,000 Agency charges

£103,000 Emission monitoring costs

Memorandum submitted by The Salmon & Trout Association

The Salmon & Trout Association (S&TA) is an international organisation representing the interests of game anglers, fishery owners and managers and affiliated trades. We have 15,000 individual and 85,000 club members.

S&TA has a close working relationship with Environment Agency (EA), especially the Fisheries Department, with whom we work to maintain, improve and develop fisheries, the statutory duty of the EA under the Salmon & Freshwater Fisheries Act 1975 (taken on by the Environment Act 1995). However, several issues require urgent review within the EA:

1. We do not believe that the EA has the necessary resources required to carry out its statutory fisheries responsibilities to the full and, therefore, the Fisheries Department operates under at a distinct disadvantage. In particular, the monitoring programme necessary to ensure the health of the aquatic environment cannot be operated efficiently, with the consequent risk of damage to habitats from such impacts as agricultural diffuse pollution, inefficiently treated sewage and excessive water abstraction.

¹⁰ REMAS is a three-year project designed to examine environmental management systems (EMS) currently in place in business and industry across EU Member States. remas aims to demonstrate that companies and organisations who implement EMS show better overall environmental performance.

¹¹ Although not included in this analysis for REMAS, there is the additional cost of ~£35,000 for QAL 2 payable in 2006 and then every three years or when fuel/processes change. [QAL 2 is a permit requirement relating to the calibration of continuous monitors to standard EN 14181.]

2. S&TA is also of the opinion that the EA's internal departments do not liaise closely enough, with the consequent result that fisheries and environmental issues are often considered secondary to other responsibilities. This is particularly apparent with flood defence programmes, which we believe do not take into account the enormous benefits that could come from environmental-friendly schemes, such as re-establishing wetlands, particularly in upland areas, rather than the more draconian, downstream operations which often destroy aquatic habitat in the interests of draining water as quickly as possible from a catchment.

3. This is also apparent in the planning process, where S&TA does not believe that the EA always takes environmental issues as importantly as it should over the commercial interests of water-dependent industry. This has become especially noticeable in recent planning applications from watercress producers in the South of England, where one EA area has raised no objection to applications, despite on-going internal EA research into the impacts of the industry on the aquatic environment.

4. S&TA also believes that environmental issues, especially those impacting fisheries, should be taken more seriously in the Catchment Abstraction Management Strategy (CAMS) process. Although water supply is obviously a vital service to the community, we do not see a sufficient urgency in establishing research to find alternative methods of supplying water, which would not impact the environment as severely as does direct in-river or aquifer abstraction.

5. S&TA believes that, post "Brite" reorganisation, the dedicated fisheries service has suffered through an attempt at a more integrated approach to the EA's operations which, as described above, has not always worked. S&TA would therefore wish to see a return to dedicated fisheries teams, which are far better integrated into the general operations of the EA.

6. We also believe in a "Polluter Pays" principle, whereby those responsible for environmental damage should be forced to pay for remedial action. Such funds raised should be entirely ring-fenced for improvements to the aquatic environment, so relieving some of the resource problems.

7. Although we do not yet fully appreciate the changes which will result from the Natural Environment and Rural Communities Bill, S&TA believes it is important that biodiversity and the sustainable future of our natural environment is the absolute priority when any changes or planning are proposed. For example, where recreational activities which may have unsustainable and adverse impact on biodiversity and the welfare of the environment, the Sandford principle should remain the governing factor.

Finally, notwithstanding the above, S&TA believes that the EA generally operates efficiently within the restrictions placed upon it by a lack of resources. Better coordination between the EA's various departments, with increased emphasis placed on protecting the aquatic environment as a matter of priority, backed up by far better funding, would result in an extremely efficient organisation.

The Salmon & Trout Association

December 2005

Memorandum submitted by Fisheries and Angling Conservation Trust Ltd

1. Fisheries and Angling Conservation Trust (FACT) is a company limited by guarantee that was formed in January 2005 to protect and promote the interests of angling and recreational fisheries in the UK. FACT encompasses the work undertaken hitherto by the National Angling Alliance (NAA), the Moran Committee, and the Joint Angling Development Board (JADB).

2. Fisheries & Angling Conservation Trust Limited (FACT) is pleased to submit evidence to this Inquiry as follows:

3. It is generally felt the Environment Agency is successful in its role of enforcer and there is a strong commitment within the Agency to manage its wide range of activities effectively given the political and financial constraints imposed upon it. However, following the restructuring of the Environment Agency in 2002 there is wide concern that both regional and area fisheries functions have been downgraded with specialist members of staff being incorporated into general functions. As a result of local biodiversity variations central control and management is not always appropriate and consideration must be given to more local management of river catchments.

4. It is considered the Environment Agency does its best with its limited resources but perhaps it could be more effective if additional funding was available through targeting the likes of the abstractors and polluters to pay for the damage they cause to the environment. There is an over emphasis on centralised strategy and policy formation and there needs to be a better balance struck and tailored to local needs.

5. We believe that the Environment Agency despite its lack of Fisheries resources does make every effort to be accountable to its stakeholders and does consult widely. As previously mentioned there is wide spread concern that the "fisheries" function has suffered a significant dilution as a result of the 2002 restructuring.

6. Within the Environment Agency (and, indeed, Defra itself) there needs to be more co-ordinated planning between departments, with fisheries and the environment given a higher profile than at present. The Environment Agency must be entirely independent and its future and funding should not be dependent upon its relationship with Defra.

7. It is considered there needs to be greater use made of non-Governmental stakeholder's expertise and resources and to involve such bodies in the decision making process at both national and local level. There is within fisheries and angling a great deal of hands on experience and knowledge which has been built up over a number of years but all too often this is not engaged by the Environment Agency and could therefore be improved.

8. FACT is also of the opinion that the EA's internal departments do not liaise closely enough, with the consequent result that fisheries and environmental issues are often considered secondary to other responsibilities. This is particularly apparent with flood defence programmes, which we believe do not take into account the enormous benefits that could come from environmental-friendly schemes, such as re-establishing wetlands, particularly in upland areas, rather than the more draconian, downstream operations which often destroy aquatic habitat in the interests of draining water as quickly as possible from a catchment.

9. There is a need for a clearer definition of where the responsibility for action lies with regard to the protection and enhancement of aquatic habitats and particular species. Having two regulatory bodies issuing consents eg for work on rivers, leads to unnecessary delays. Within the Environment Agency (and, indeed, Defra itself) there needs to be more co-ordinated planning between departments, with fisheries and the environment given a higher profile than at present. The Environment Agency is the competent authority to deliver the Water Framework Directive (WFD), yet unless this co-ordination is established, it would seem that some Environment Agency policies could actually be working against the ethos of WFD.

10. We consider the Environment Agency's corporate strategy to be an excellent document but the test will be in its ability to carry out the tasks and to have the appropriate levels of support and funding.

11. In summary we would stress that any failings in the Environment Agency's ability to deliver is considered to be as a result of overall policy and not a reflection on the hard working staff of the Agency who appear to be making every effort to do the best they can within the limited resources available. We will be pleased to attend before the Committee if required.

Fisheries & Angling Conservation Trust Ltd

REPRESENTING:

Anglers Conservation Association (ACA)
Angling Trades Association (ATA)
Professional Coarse Fisheries Association (PCFA)
National Association of Fisheries & Angling Consultatives (NAFAC)
National Federation of Anglers (NFA)
National Federation of Sea Anglers (NFSA)
Salmon & Trout Association (S&TA)
Specialist Anglers Alliance (SAA)
Association of Stillwater Game Fishery Managers (ASGFM)
Atlantic Salmon Trust (AST)

December 2005

Memorandum submitted by Chemical Industries Association

1. KEY POINTS

1. The Environment Agency should aim to deliver environmental improvement and protection within the overarching context of Sustainable Development, recognising the need for an appropriate balance between environment, social and economic interests.

2. We welcome the EA's public commitment to uptake risk-based outcome focused regulation and their public support for the focus of Hampton review earlier this year. Equally we are pleased to see their ongoing commitment as the government looks to implement the Hampton recommendations as part of their broader better regulation agenda.

3. The concept of "risk based regulation" and "regulatory dividend" should be enhanced within the Environment Agency so that charges and resources can be targeted where they will make the most improvement towards a sustainable future for the UK and Europe whilst not undermining the socio-economic aspects of sustainability.

4. The EA has yet to find an appropriate balance between rigid enforcement of the law, consistency and pragmatism.

5. The CIA would like to see an increased business representation on the Environment Agency Board.

6. DEFRA's role of providing clear guidance to the regulators should be reinforced especially in the area of waste legislation.

7. The EA should continue to build closer links with SEPA, Department of Environment in Northern Ireland and the Health & Safety Executive to ensure alignment of regulatory approach and recognise the integrated nature of Health, Safety and environmental management in UK business.

8. For a number of years, the CIA and EA have worked together on many initiatives to implement good practice and improve environmental performance supported by an appropriate and effective regulatory framework. The EA should concentrate on making the optimum use of partnerships with Trade Associations, because it is a more efficient way of influencing companies than dealing with them individually.

9. The EA should become more engaged with the public in explaining the principles, definitions and its role with regard to Sustainable Development. Equally the EA is well placed to highlight individual responsibility opposite sustainable development.

10. The CIA commends the EA on the ambitions stated within its 2006–11 Corporate Strategy.

2. GENERAL COMMENTS

11. The CIA welcomes the EFRA Committee's action in seeking stakeholders' views on improving the performance of the Environment Agency. The CIA sees this as building on DEFRA's Financial and Policy Management Review of the EA carried out in 2000–01.

12. Since the 2000–01 review the EA has been developing a risk-based approach to environmental regulation, has worked towards consistency in enforcement and has engaged with the CIA and other stakeholders to improve communication both at local and national level.

13. We welcome these and strongly encourage the EA to pursue its efforts. In particular, we would like to see the EA concentrating more on operators with the "worst" performance while giving a real regulatory dividend to operators with good environmental performance.

14. We are pleased that the Agency sees itself as a key enabler in the implementation of Sustainable Development (SD) and we support the role the Agency has to play in moving forward SD as part of its normal business. We would expect the Agency to work closely with DEFRA in particular to ensure that the regulatory framework and guidance within which it operates, considers what is holistically best for the environment. This is of particular relevance to the sustainable management of waste and the Environment Agency's interpretation of the definition of waste, which needs addressing so that the EA can take this aim forward credibly.

15. We would strongly encourage the EA to adopt a more advisory role, as we believe that this could contribute towards raising the standard of environmental performance and stimulate a more open and transparent dialogue between regulators and regulated with the common aim of a sustainable future.

3. CREDENTIALS

16. The chemical industry in the UK employs 225,000 directly nationwide, and accounts for 2% of UK GDP and 11% of manufacturing industry's gross value added. (Within the EU as a whole, the chemical sector employs 1.9 million people). The sector invests over £2 billion annually in new capital equipment plus £3.8 billion on R&D. The Chemical Industry will account for around 20% of all PPC permits—the single largest sector to be regulated under PPC by the Environment Agency.

17. The CIA comprises 150 members, based at 200 manufacturing sites nationwide. It is the predominant trade association and employers' federation for the industry, and embraces a wide range trade sectors, product types and business activities.

18. Responsible Care® is a self-imposed commitment by chemical companies worldwide under the auspices of the International Council of Chemical Associations (ICCA). It is designed to help companies continuously improve the health, safety and environmental performance of their operations and products. In the UK, where the Responsible Care® initiative has been in operation since 1989, compliance with the Guiding Principles of Responsible Care®, and self-assessment of responsible care management systems, is mandatory for all CIA members.

19. The CIA publishes information concerning the environmental, health and safety performance of its member companies on an annual basis in the Responsible Care® Indicators of Performance.

20. In its new guiding principles and goals for sustainable development, launched on 6 July 2004, the Association has committed, by 2010, to achieve a 25% overall reduction in hazardous waste, a 20% reduction in water use, and 11% improvement in energy efficiency; together with a significant reduction in our environmental burden. More details of this programme, including guiding principles and a goals brochure, can be downloaded from http://www.cia.org.uk/newsite/downloads/Sustainable_Development_Brochure.pdf

21. The CIA and its member companies engage extensively with the Environment Agency at all organisational levels and throughout its regulatory activities for environmental protection, particularly those for IPC/IPPC. We can also draw on our experience of working with other regulatory bodies, such as the Health and Safety Executive (HSE), with whom we have a good working relationship that has delivered sustained performance improvement. We are thus well placed to comment on many of the questions raised in the consultation document.

4. ANSWERS TO QUESTIONS POSED BY THE INQUIRY

4.1 *Efficiency & Value of Money*

- How successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities;
- Whether the Agency operates efficiently and provides good value for money;

22. In its annual Spotlight report entitled “*Doing the right thing*”, the Agency reported a decrease in the number of industrial incidents since the year 2000. The report also stressed that nearly two thirds of all reported pollution accidents were from sources that the Agency does not regulate.

23. Whilst these results may represent success in enforcing environmental regulations, their enforcement should be seen within the broader context of sustainable development. Requirements for compliance with environmental legislation should be practicable and enacted over an agreed time-scale to enable smooth implementation by business. The aim of environmental improvement needs to take into account the sustainability of businesses and communities, which are equally important strands of Sustainable Development.

24. Whilst we recognise that the use of Strategic Permitting Groups (SPGs) has considerably reduced the delivery time of PPC permits and improved consistency of output, we are concerned however that “quantity” may have been prioritised over “quality” in some instances. For example, we have been made aware of cases where local inspectors have had to vary permits immediately after issue. The work of the SPGs may be speeding up the issuing of permits but it does not necessarily make the process of obtaining an appropriate permit more efficient, for the EA or the companies involved. We would suggest that SPGs work more closely with local inspectors both in the discussion of issues during the application and the detail of the permit. Furthermore, we have also come across examples of relatively long delivery times under other regimes regulated by the Agency. We believe therefore that the Agency should investigate the possibility of extending these groups into all their environmental protection activities.

25. We also feel that the EA has yet to find an appropriate balance between rigid enforcement of the law, consistency and pragmatism. For example, there have been occasions where EA policy guidance has been followed to the letter of the law, rather than the intent, with little flexibility or risk based application. This has led to disproportionate demands being made on the regulated companies. Moreover, there are still concerns that complaints on how individual inspectors have interpreted the requirements could endanger good working relationships. The CIA was instrumental in setting up the Chemical Enforcement Meeting Action Plan (CEMAP) initiative to deal with such situations. As a result of CEMAP, consistency of behaviour has no doubt improved but there remains much more work to be done.

26. It is essential that the communication link between the Agency’s policy teams, the SPGs and local inspectors be strong. Clear guidance and training of inspectors, particularly new inspectors, is vital in preventing misunderstandings both within the Agency and with industry and minimising the cases of inconsistent enforcement. We are aware of occasions where such misunderstandings have hampered the speed of the Agency’s decision-making process and led to delays in issuing permits/licences.

27. The CIA fully supports the Agency’s move towards a risk-based approach to regulation with the development of the EP OPRA scheme under the PPC regime. It is our view that the scheme requires further development to achieve its challenging aspirations and we welcome the Agency’s willingness to engage with us in continuing the process of developing the scheme.

28. We feel that the Environment Agency should pursue its effort to achieve full transparency in the charging process by providing more background information on their efficiency savings and how these are passed onto stakeholders.

29. The CIA helped initiate the launch of the “Regulation & Recognition” project earlier this year, with a view to supporting and improving effective regulatory enforcement. The project’s aim is to achieve a consistent, cohesive and balanced level of targeted regulatory intervention, proportionate to the effectiveness of a site’s risk management and SHE operational performance. The EA is one of the partners in the project along with SEPA, HSE, the Tank Storage Association, the British Chemical Distributors and Traders Association and some Trade Unions. We are firmly of the view that operators whose performance is “above average” should receive fewer interventions and benefit from a regulatory dividend. This would allow the EA to better target more of its finite resources where it is most needed, ie on the poor performers, to gain more benefit for the environment. Should we derive a regulatory dividend from this project and other activities, we would acknowledge that significant financial penalty should be considered in the event of deliberate non-compliance.

30. The Environmental Permitting Programme (EPP) is a new DEFRA initiative addressing the “Better Regulation” agenda. EPP is currently perceived as being likely to improve the Agency’s efficiency by standardising the licensing process and hence reducing the administrative burden on both the Agency and industry. While the CIA supports initiatives such as this in principle, we remain to be convinced of the business case underlying the proposals.

4.2 *The structure, governance and accountability*

31. Whilst we acknowledge that the manufacturing industry is well represented on the Regional Environment Protection Advisory Committees, only one of the fourteen members of the EA board has significant manufacturing experience. By way of comparison, at least four of the ten HSC board members have industrial backgrounds. The CIA would like to see an increased business representation on the Environment Agency Board. We feel that a larger representation of the manufacturing sector would be particularly relevant and valuable as this sector makes a significant contribution to the social and economic growth of the UK. Manufacturing industry is not just a major customer and funder of the EA, but also a key solutions provider for many environmental issues.

4.3 *Relationships*

Its relationships with DEFRA, DEFRA-sponsored bodies and the rest of Government, including the Agency’s role in the planning system.

32. The Environment Agency has a number of interfaces at the technical level with its counterparts from the devolved administrations, DEFRA and other relevant government departments and the industry.

33. The Chemicals Regulatory Forum (CRF) is one such example. The CRF provides a mechanism for the EA and HSE to work with the chemical industry to focus on regulations emerging, for the most part, from Brussels and consider how to best identify, influence, manage and implement proposals, policy and, ultimately regulation. The CIA views CRF as an excellent opportunity to encourage an integrated approach and believes that the full involvement of the Environment Agency and other relevant regulators plus their sponsoring departments offers greater chance of success. The CRF complements both the CEMAP and Regulation & Recognition pilot projects.

34. Another example is the Hazardous Waste Forum, which has proved to be a good vehicle for liaison and discussion on a wide range of waste related issues. The Forum is presently chaired by DEFRA, which we believe should continue as its focus is on forward-looking policy issues.

35. It is our view that DEFRA’s role of providing clear guidance to the regulators should be reinforced especially in the area of waste legislation. For example, we believe that the UK’s interpretation of the definition of waste is posing a barrier to the sustainable management of waste and is in conflict with the Government’s Sustainable Development Strategy. In this instance, the complete lack of guidance from DEFRA has not helped, leaving companies to interpret historic EU case law to try and achieve certainty of view.

36. We would also expect the EA to be engaged at an early stage in discussions with DEFRA on the practicalities of regulatory enforcement. We have observed early engagement of the EA in stakeholder consultation groups on the transposition of the Water Framework Directive and would be keen to see the same happening for the transposition of other directives such as the Environmental liability directive. Looking ahead, this could be of critical importance with regard to the implementation of REACH should the EA become the competent authority.

37. Our member companies generally manage safety, health and environmental matters as an integrated activity. The major legislation on safety (COMAH) and environment (IPPC) are similar in nature and the Agency, SEPA and HSE are the joint competent Authority for the COMAH regulations. Moreover if their bid is accepted the EA and HSE could become the competent authority for REACH. Hence there is need to continue cooperation between the Agency and:

- SEPA and the Department of Environment in Northern Ireland, to avoid wide differences in enforcement practices and procedures (our members have sites in all devolved regions).
- HSE, to make maximum use of common data and arrange for coordinated site visits so as to avoid unnecessary burdens on operators. This is currently being investigated under the CIA led Regulation & Recognition project and was also investigated under the CEMAP initiative.

The Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services.

CIA relationship with the Environment Agency

38. CIA has enjoyed a good working relationship with its key regulators and particularly the Environment Agency over recent years. This is enabled through regular high level policy meetings with the EA together with ongoing meetings and contact on operational matters at the national and local levels.

39. The most visible and practical expression of our improving relationships with key regulators was the successful Chemical Enforcement Meeting Action Plan (CEMAP) initiative involving CIA, HSE, SEPA and the Environment Agency. CEMAP improved communication and consultation mechanisms between the regulator and the regulated and dealt with examples of disproportionate or inconsistent enforcement.

40. As a response to CEMAP, regulators have been invited to attend CIA Responsible Care® cell meetings. These cells, which are widespread throughout the UK, are open to CIA members, allied industries and emergency services. The remit of these cells is to share best practice in line with the fundamental principles of Responsible Care®. As a demonstration of mature these relationships are, EA and HSE staff sometimes attend throughout cell meetings rather than being excluded.

41. The CIA is a member of the Environment Agency's stakeholder group on environmental protection charges review. We fully supported the creation of this group and believe that being involved in early discussions on charges has made the process considerably more transparent. There remains however further work to be done to clarify the charging criteria.

Relationship with the general public

42. DEFRA has announced that Grant-in-Aids will shortly cease to cover the cost of "contentious licences", and the Environment Agency is presently consulting on proposals to spread the costs on industry. The Agency has acknowledged that a licence can be qualified as contentious independently of its level of environmental hazard and will ultimately be defined by public perceptions of risk. With this in mind, we think that the Environment Agency should have a strong leading role in preventing contentious licences and for example, develop guidance of "best practice" for both its employees and the industry. Furthermore, we think that the Agency could work more closely in partnership with the industry to brief the general public on any relevant new environmental policy developments and consultations. The EA already attends some local liaison community meetings organised by the industry and we feel that this should be extended.

43. More generally, given the agency's level of public trust, we believe that it could play a part in explaining some of the principles and definitions of sustainable development to the public. The Agency's first responsibility is to the environmental pillar of sustainable development by engaging the public in a debate on the issue and encouraging sustainable behaviour for example in the area of waste disposal and water usage.

4.4 *The Environment Agency's forthcoming corporate strategy 2006-11*

44. The CIA supports the Environment Agency's forthcoming corporate strategy for 2006-11 and the Agency is to be commended for its ambitions. We particularly welcome the Agency's acknowledgement that it is the response by business that has led to environmental improvements. This is also in line with the development of Agency's Sector Plans, which are aimed at improving environmental management and performance within industry sectors and go beyond what is currently achieved through regulation. The CIA is fully involved in the development of the recently launched Chemical Sector Plan in which we were pleased that the Agency appreciated many of our voluntary initiatives in determining performance indicators. We look forward to working with the EA in taking forward their Sector Plan and our own sustainable development goals.

45. The CIA has long been calling for the Agency to focus its efforts where it will have the most impact on improving environmental performance and protection, eg on those with poor environmental records. The EA through the proposed strategy appears to now fully acknowledged this is the direction it should take. Further evidence is the development of risk-based instruments such as the EP OPRA scheme for PPC permit and its extension soon to all their environment protection charging schemes. However, we have yet to see a real impact on charges and regulatory controls for operators with good environment performance.

46. The CIA was encouraged to read the EA's Strategy statement recognising the need to balance its role as a regulator with that of an influential advisor. We feel that taking a more advisory role should raise the standard of environmental performance through increased awareness of good practice by the regulated. This would also stimulate a more open and transparent dialogue between regulators and regulated in the common aim of a sustainable future.

Chemical Industries Association

December 2005

Memorandum submitted by Absorbent Hygiene Products Manufacturers Association (AHPMA)

AHPMA is the UK Trade Association for the disposable nappy, continence care and feminine hygiene product industries.

With reference to the terms of your inquiry, we would like to address the following point:

Does the Agency operate efficiently and provide good value for money?

1. In May 2005, the Environment Agency published a Life Cycle Assessment¹² on disposable nappies and washable cloth nappies, taking into account both home and commercial laundry. This was carried out by independent consultants and the Environment Agency concluded from this report that there was little or no difference in the overall level of environmental impact of either type of nappy.

2. This study cost in excess of £200,000 and took four years to complete. It was peer reviewed and conducted to ISO standards. It also confirmed the results of previous studies conducted by industry.

3. The result of this study however went against the grain of Government and NGO activity to discourage the use of disposable nappies in favour of cloth nappies. As a result, a second study on nappies is to be conducted, and will once again be commissioned by the Environment Agency on the instructions of DEFRA. The second study is expected to select a specific type of cloth nappy and develop scenarios for best practice ie low washing temperatures, “A” rated washing machines, line drying as opposed to tumble during etc—suggestions that have already been made in the first Life Cycle Assessment. The scope is under discussion

4. AHPMA seriously questions whether this is a good use of Environment Agency time and public money.

5. AHPMA would also question what part the Environment Agency might have in such decisions to commit further resources. Is their role to advise Government on the merits of such follow-up work? Is it to carry out DEFRA’s request for further work?

6. Where there is clearly little to be gained by further work on nappies, shouldn’t the Environment Agency be in a position to redirect funding to areas where bigger environmental gains can be made?

7. Industry was delighted to work alongside the Environment Agency along with other stakeholders. The Environment Agency found itself in the midst of a contentious and emotive issue on publication of this report which received wide media coverage both in the UK and globally. Some MPs were also critical of its report. The Agency conducted itself impartially, in a thoroughly professional manner, being completely even handed to all parties.

8. Despite concerted campaigns in favour of cloth nappies, consumers remain unconvinced. The market share for disposable nappies appears unchanged with 95% of parents using disposable nappies full time.

9. The impact of any type of nappy is miniscule in comparison to many other everyday activities and products. Disposable nappies contribute to household waste (2.4%)¹³ and to waste which is landfilled (0.1%). Cloth nappies consume energy, clean water and detergent. Neither type can claim environmental superiority.

10. Separately, DEFRA have already committed £2.8 million to the Waste Resource Action Programme (WRAP) nappy waste minimisation campaign 2003–06, and have indicated that further funding will be forthcoming for 2007, after which the WRAP project will cease. The project appears to have fallen far short of its target to divert 35,000 tonnes of waste pa from landfill, with a WRAP projected forecast to divert just 5,000 tonnes in the coming year.¹⁴

AHPMA members would ask that the Environment Agency has the power to make formal recommendation not to conduct further work in projects where it takes the view that such work does not provide good value for money.

Absorbent Hygiene Products Manufacturers Association (AHPMA)

December 2005

¹² Environment Agency Life Cycle Assessment of Disposable and Reusable Nappies in the UK.

¹³ “Analysis of household waste composition and factors driving waste increases.” Dr Julian Parfitt. WRAP. December 2002.

¹⁴ WRAP Annual Achievement Report 2004–05.

Memorandum submitted by Gill Pawson

CONSULTATION RESPONSE

1. Its success as an enforcer of environmental regulation: The principle concerns here are:
 - (a) the difference between different offices/regions on the approach to enforcement ie no consistent approach which I assume stems from a lack of guidelines from national level and possibly a lack of training of individual officers;
 - (b) the EA appears to have picked on the easy targets ie those that they know about because they have registered exemptions or Waste Management Licences and are prepared to try to work with them, whereas those operators who have prevented access to sites or tried to intimidate officers have been allowed to get away with huge operations that are completely deregulated—examples can be provided to the committee if needed;
 - (c) with the change in the Waste Management Licence exemptions in the summer which now means that all exempt composting sites (plus some licensed sites) need a landspreading exemption for the use of the compost on land, the Agency is not pursuing a programme of contacting all registered exempt and licensed sites and giving them a deadline for submission of the landspreading exemption (again it is a question that they have picked on the easy targets rather than devising a proper programme to get all operations regulated which is making the playing field very uneven).
 - (d) on the issue of odour from composting, they are all too ready to close sites without taking expert advice on whether the complaints received are justified. So, once a local resident or campaign group finds out that the EA will be much more receptive to their complaints than the Environmental Health Officer, they then just bombard the office with a complaint every time they know that the operator is turning compost—even if they do not actually experience any nuisance. If they are too ready to take the easy way out of having to deal with complaints—they need to learn lessons from the EHOs who have had to deal with this sort of complaint for years and are much more objective.
2. Value for money and efficient operation: They seem to spend far too much time on a limited number of sites without looking at getting a consistent approach across the whole composting industry, therefore not efficient or value for money. Also, they take far too long on many issues—they should acknowledge that they do not always have the technical expertise needed for a project and agree to buy it in from the private sector, to help to speed jobs up.
3. Accountability: This is a MAJOR issue. In local government if there is a problem with something, it is easy to go to talk to the Head of the Department, the Chief Executive, the local Councillor, the Head of the Council, to seek a resolution. The EA's complaints procedure is a last resort and even then it is a bit of a joke. The EA MUST introduce a section in each region staffed with officers who can act to resolve problems between applicants or operators and their own internal departments and who will have the responsibility to make a final decision ie to override his colleagues in the technical or licensing departments. These people must be ACCESSIBLE on a day to day basis.
4. Relationship with ODPM on planning: Here the issue is one of speed of response to planning applications—it is a bit better than it used to be but still often not within the 21 days provided for in the Planning and Compensation Act. Also, the officers responsible for co-ordinating the response to the planning authorities do not appear to be given any instruction to talk to the applicant or their agent before issuing their response. Therefore letters of objection are sent to the planning authority, which then take ages to resolve and this whole step could often be avoided if the EA Planning Officer were to talk to the applicant to see if additional information or changes to the scheme could resolve the objection—a holding letter could be sent to the LPA saying that negotiations were underway, so that everyone knew what was going on.

Gill Pawson

December 2005

Memorandum submitted by William Bond

1.1 I am a landowner and riparian owner, and also a specialist ecological contractor working across all regions of the UK. In the past I have got so frustrated with EA's dogmatic approach to regulation that I have joined the EA SW REPAC committee to try and change things from the inside. The following views are therefore based on experience from both within and outside the EA, and very much reflect the muddy boot aspects of the business.

2. Summary

2.1 EA are effective enforcers, but intense focus on systems and procedures means that many opportunities to advance their environmental objectives are wasted. They are perceived by stakeholders as well intentioned, but too often a hurdle to achieving our common objectives due to their emphasis of negative regulatory duties over positive supportive/advisory roles.

Evidence has been requested on the following points:

3. As an enforcer

3.1 EA is generally effective as an enforcer. However, enforcement should be tied to pragmatic regulation, which is where EA is so bad it often undermines its own objectives. As specialist ecological contractors many of the projects we are involved in require EA consent. All will be supported in principle by EA, but the vast majority struggle to get consent for even the most basic and harmless operations because Agency staff are focused on following set procedures, rather than the desired outcome. This may be good regulation, but it is not beneficial regulation.

4. Whether the Agency provides good value for money

4.1 As a contractor to the EA one is reluctant to bite the hand that feeds us, but it has to be said that EA procurement procedures are so obsessed with standards and process that they are the most wasteful clients we have. The lack of scope for staff to use their initiative means that prices for work are loaded by the addition of anything extra that might be relevant, without any equivalent process for unloading the excess. A job for the EA will therefore cost 20–50% more than doing the same job for any other client, without any gain in the quality of the work.

5. The Agency's relationship with non-Governmental stakeholders

5.1 Frustration is the key word.

- Frustration that important works are delayed by EA procedural machinations.
- Frustration that funding opportunities are lost because EA cannot give approval to worthwhile projects within funder's timeframes because it is bogged down in the details.
- Frustration that common sense decisions cannot be made in the field, because practical consents are being dealt with by administrative rote.
- Frustration that EA staff who are sympathetic feel bound by the system to make decisions they recognise are sometimes counter-productive.

5.2 For our clients, mainly managers of important nature conservation sites, the procedures seem designed to frustrate the very work the EA is supposed to promote. The inability to obtain EA consents promptly is the most frequent, and most serious, cause of environmental restoration projects which have been proposed failing to be executed.

5.3 A comparison with English Nature may be useful. Nearly all the work we do will require consent from both EA and EN, and will help them fulfil their biodiversity and/or other targets. We will see around £100,000 pa of work lost or curtailed due to problems or delays getting EA consent, compared with less than £5,000 from EN. On site, minor amendments to an agreed working plan needing approval can usually be obtained from EN by telephone confirmed in writing. EA will usually require the whole process to be started from scratch.

5.4 To us as contractors the emphasis on quality through administratively heavy procurement procedures rather than the standard of work is disheartening.

5.5 As a landowner and riparian owner I see river improvement and restoration works that could be done, being shelved because EA make it so hard and expensive for themselves to actually carry out even simple tasks.

5.6 Staff are well meaning, professional and honest; but they are not empowered.

6. The Agency's work in improving wildlife habitats

6.1 All the sections above lead to one conclusion; to a far greater extent than is necessary for good regulation the EA acts as a disincentive and a brake on work improving wildlife habitats. Increasingly the difficulties in the process, and lack of field experience of staff dealing with the regulations, is seen as a reason to modify best solutions to avoid the need, as far as possible, of obtaining EA consent. Funds will be lost, and opportunities passed by.

6.2 I have recently been in correspondence with EA over the new proposals to charge for water abstraction. In their response they defend the need to regulate, and there are valid reasons to regulate. But a private response from EN, to whom I also wrote, comments “If a mechanism was to be designed to frustrate wetland restoration in flood plains, indirectly, it would be difficult to come up with something much more effective.”

6.3 I can think of no better way than this quote of summarising the well meaning, but often counterproductive regulation of the EA.

William Bond

December 2005

Memorandum submitted by Women’s Environmental Network

BACKGROUND

Formed in 1988, Women’s Environmental Network (WEN) is a national membership charity, which educates, informs and empowers women and men who care about the environment. It campaigns on environmental and health issues from a women’s perspective.

Women’s Environmental Network campaigns on waste prevention from a consumer perspective, advocating the right for consumers to have access to waste-avoiding services and products, so that they are able to consume in a more sustainable manner.

WASTE PREVENTION CAMPAIGN SUCCESSES

WEN initiated the *Waste Minimisation Act 1998*, which gives local authorities power to introduce waste reducing measures and promote waste preventing ideas.

The Real Nappy Project promotes practical alternatives to wasteful disposable products. Nappy waste prevention and composting were selected to spearhead waste minimisation in the UK implemented by WRAP (the Waste & Resources Action Programme). WEN organises the annual Real Nappy Week and co-ordinates a network of groups, activists and partnerships between authorities, health services and nappy services.

25 Ideas for Local Authorities encouraged councils to adopt waste prevention across the whole scope of their work, by providing practical approaches.

WEN is involved in the *National Resource and Waste Forum’s (NRWF)* current research project, *Towards a UK Framework for Household Prevention*. This project is intended to help local authorities and community-based organisations develop and implement household waste prevention programmes. A toolkit for local authority household waste prevention has been published and NRWF is now researching how policy can assist household waste prevention. The NRWF is supported by the DTI, DEFRA and the devolved administrations.

RESPONSE TO EFRA INQUIRY ON THE ENVIRONMENT AGENCY

WEN wishes to address the issues of the Environment Agency’s relationships with Defra and Defra-sponsored bodies, including WRAP (the Waste & Resources Action Programme); and the Agency’s relationship with non-Governmental stakeholders and the general public.

Summary

In the way that the Environment Agency conducted, concluded and presented its Lifecycle Assessment of reusable and disposable nappies we believe that the Agency failed in its job of looking after our environment and “making it a better place for people and wildlife for present and for future generations” [EA Corporate Strategy, 2006–11].

This is a symptom of the position of the EA in relation to Defra. If the Agency were simply carrying out Defra’s waste policy, as WRAP does, it would not have been possible for a report to be presented in such a way that it worked against Defra’s and WRAP’s aims in promoting reusable nappies. More clarity is required about how waste policy is developed and implemented.

Evidence Section 1

1. WEN was involved in the Environment Agency Lifecycle Assessment of reusable and disposable nappies (LCA). When the report was published, WEN rejected the report because it was seriously flawed. In the way it conducted, concluded and presented the Assessment we believe the Agency failed in its job of looking after our environment and “making it a better place for people and wildlife for present and for future

generations” [EA Corporate Strategy, 2006–11]. The Assessment over-estimated the environmental impact of current real nappy use, ignored the many variables currently existing in real nappy use and ignored the greater potential for technological improvement that real nappies present. By refusing to accept responsibility for the impact its conclusion was likely to have on consumer behaviour, we believe the Agency has failed in its relationship with the public. See more detailed comments in Section 2 below.

2. In addition, after the report came out we had confidential calls from EA staff, unhappy about how it had been handled internally, notably that the report was not passed to their science section to review before being released, that EA staff received very little information about it while it was underway and were not invited to participate in the users survey, and that it did not apply the guiding principles it uses in other areas of operation, such as pollution control, of best available technology not entailing excessive costs (“BATNEEC”) or ecologically best available technology (“ECOBAT”).

3. We and other organisations criticised the report and in the response from the EA to our letter was the following statement:

4. “The report and subsequent discussions have also highlighted the need for the disposable industry to work with Local Authorities on the effective recovery and re-use of the raw materials used in their products. This is important because WRAP predictions suggest only 35,000 tonnes of nappy waste will be diverted (sic) from landfill as a result of their programme. This will leave at least 350,000 tonnes of disposable nappies destined for landfill.”

5. From this statement, it is obvious that the EA are using the cautious targets WRAP has agreed (in order to ensure they are achievable) as a limit on the amount of waste that can be prevented through promotion of reusable nappies as an alternative. It appears that they have no concept of waste prevention activities increasing and thus enabling the amount of waste to be reduced rather than continuing to grow. They see no possibility of the market for reusable nappies growing and enabling more and more parents to avoid the waste caused by disposables. While they criticise the throwaway society in their publications, they are in fact tending to act as a brake on development of the alternatives that consumers need in order to change their behaviour. They are affecting policy, when they should be implementing (or at least not impeding) the spirit of it, which is to reduce and reverse waste growth, in order to conserve resources.

6. On the EA’s website, they say that they are working towards the following situation: “Business, public agencies, other organisations and individuals will minimise the waste they produce. They will reuse and recycle materials far more intensively, and make more efficient use of energy and materials.”

7. They also say: “We encourage reuse and recycling and support the development of facilities to deal with hazardous waste.” However, while they inform consumers about reuse and recycling of used items, they do not encourage the type of reuse that avoids waste being created in the first place. WEN has found the EA’s attitude to have been unhelpful in this area of waste prevention as shown by the way the LCA was conducted and presented to the media and the public.

8. What happened with the nappy LCA is a symptom of the position of the EA in relation to Defra. If the Agency were simply carrying out Defra’s waste policy, as WRAP does, it would not have been possible for a report to be presented in such a way that it worked against Defra’s and WRAP’s aims in promoting reusable nappies.

9. The anomalous position of the EA is also shown by the fact that in the current review of Waste Strategy 2000, the EA is a body which has to be consulted in its own right, alongside Government Departments. We would obviously expect them to be involved, but as an adjunct to Defra, not as if they were a separate Government department.

10. More clarity is needed over who develops waste policy: it should be Defra as a Government Department, and the EA should not have undue influence over policy.

Section 2

1. The report was flawed because it was based on poor science. WEN had many concerns, some of which are listed below:

- the fact that the EA survey of parents’ use of disposable and reusable nappies was not made available to the public at the time the LCA was published: we know it was difficult for at least one journalist to get hold of it, causing a crucial delay;
- the sample for the reusable users surveyed was totally inadequate: fewer than 200, compared with over 2,000 disposable nappy users. Only 11 users of laundry service. It does not matter how extensive the report is if environmental impact allocations are based on unreliable key assumptions resulting from an inadequate survey;
- the decision to use data relating to terry users alone further reduced the samples resulting in very small numbers of respondents informing key assumptions. One example among many is the basis for the number of cloth nappies owned, which was based on only two respondents and accounts for a significant proportion (13.8%) of the global warming impacts of the reusable system in this analysis. WEN contended that this assumption significantly over-estimated the number of cloth nappies owned;

- the failure to take into account that one set of cloth nappies may be used for more than one child or that some parents buy second hand nappies, although the report assumed that cloth nappies are retained for re-use at the “end of life”. This is not only contradictory but could be a case of double counting;
- the use of cost to determine energy use in retail and for transport home is patently wrong. Because the disposables industry has had a price war over the past few years causing the price of their products to drop significantly, this is converted in the LCA to a lower use of energy. On this basis all the disposables industry has to do to improve environmental performance is to drop their prices further;
- use of one data set for manufacture of pre-fold nappies used for laundry service provides unreliable data which has the potential to be skewed;
- failure to conduct informative “sensitivity analyses” to provide useful information, such as:
 - reduction of energy used in laundry services with a more concentrated customer base; and
 - reduction in environmental impacts if a household adopts a sensible washing routine such as: using 24 nappies, washing them at 60°C with an eco-detergent in an energy efficient machine and hanging them out to dry.

2. The Environment Agency failed to provide useful advice. While we recognise the limitations of the LCA as a process, the Environment Agency has a duty to provide advice to the public on behaviours which will benefit the environment. This issue received extensive media coverage resulting in widespread confusion. The Environment Agency statement about looking at using fuller loads and washing at lower temperatures was too vague to be helpful, and suggested that reusable nappies perform poorly in environmental terms. The Environment Agency should have provided information clearly stating how parents can use real nappies to reduce environmental impact: parents can save waste confident in the knowledge that laundering them causes no more global warming than disposable nappies; a parent who is currently using 24 nappies and washing them in an energy efficient machine at 60°C is already achieving 24% less global warming impact than the report suggests. Parents needed to receive clear messages like this from the Environment Agency, and it did not give them.

3. Furthermore, despite requests from WEN, the Environment Agency failed to make it clear that participation on the board of the LCA did not equate to approval of the report or its findings. Both the Real Nappy Association, which had left the board two years before the report’s publication, and WEN were presented as supporting it. Indeed in correspondence and conference after publication the Environment Agency suggested that the board had “agreed” the report. This was not the case. At no point did the board agree or sign off on the report. WEN submitted criticisms up to the final date and made it clear that we would have to reject it in its current form.

4. A question and answer briefing we understand was given to EA staff to help them respond to enquiries about the report, reveals the inadequacy of the Agency’s understanding of its responsibility to promote environmentally friendly behaviour.

“Question 2: How will the EA measure the impact of this report?”

We don’t intend to measure the effect of the report. Further, we don’t understand what impact we should be measuring—if there is no difference between the different nappies, then any effect of the report is not relevant. What we are doing is to use the report to seek environmental gains in relation to both disposable and reusable nappies.”

5. This response shows they have failed to grasp the difference between how they believe people are actually using nappies and best practice use. There is clear evidence that, if used properly, real nappies can significantly reduce environmental impacts, in comparison to disposable nappies. Concluding there is no difference is likely to discourage parents from choosing real nappies and therefore to have a negative environmental impact.

6. Finally, we wrote to the Agency on 8 June 2005 requesting that they put the record straight about WEN’s involvement and calling for an urgent review and immediate action to address the widespread public confusion the report had caused. To our knowledge the agency has not yet done either.

Women’s Environmental Network

December 2005

Memorandum submitted by the National Farmers' Union

INTRODUCTION

1. The National Farmers' Union (NFU) welcomes this opportunity to submit evidence to the EFRA Select Committee inquiry on the Environment Agency. The NFU represents the interests of 55,000 farmers and growers across England and Wales. We and our membership, have frequent meetings with the Agency at all scales of its operation, and feel well able to respond to the Committee's inquiry.

2. The Select Committee inquiry is launched at an important time for the Environment Agency: implementation of Lord Haskins proposals to "modernise rural delivery" and in particular establish Natural England is on-going; Defra has launched its strategy for regulation and charging "Partners for Success" 29 November; and, the tide of environmental regulation and cross-compliance obligations shows little sign of abating. In this context the performance of the Environment Agency and how it achieves the outcomes set for it by Ministers is of great importance to farmers and growers.

3. We have chosen to respond in turn to the questions raised in the invitation to submit evidence. We will of course be pleased to enlarge on this submission should we be requested to do so.

1. How successful has the Environment Agency been in its role as enforcer of environmental regulation and controls; how well does it manage its wide range of activities?

4. The Environment Agency is the competent authority for a wide range of regulations of direct relevance to the farming and horticultural communities (eg the Nitrates Directive, Environmental Protection Act, IPPC Directive and the Groundwater regulations). This growing range of regulations is itself a challenge—not only for farmers who have to adapt their business practice, but also for the EA's inspectors who must competently inspect compliance and advice on best practice. During 2005, aspects of the Agency's regulatory inspections have fallen within the scope of CAP cross-compliance and EU rules about inspection reporting complied with.

5. We would prefer that the Environment Agency is not evaluated on its performance as an "enforcer". Our preference is that the Agency achieves its defined outcomes—in the case of the Environment Agency, a well managed countryside with reducing levels of pollution, set out in its Vision¹⁵ document—using a range of approaches, most often advice, best practice and explanation.

6. Therefore we welcome the Environment Agency's effort to improve the agricultural knowledge and capability of its staff via training courses and recruitment programmes. Such training will assist the Agency deliver regulatory services to the farming community. Evidence we have gathered in East Anglia during autumn 2004 suggests that relationships have improved due to this type of training.

7. However, with the increasing importance of agriculture in the Agency's work, such important initiatives must be maintained; recruiting staff with agricultural backgrounds can also result in a more effective agricultural inspection programme. We understand that new recruits to the Environment Management teams are given an initial rigorous training programme—but this initial training should not be a one-off. With increasing demands on Agency staff time, we fear that training requirements can be neglected and personal development needs not delivered. This is especially important for front line agricultural inspection staff. For example those involved in cross-compliance compliance should be encouraged to undertake the FACTS training course, as this would greatly improve the agronomic knowledge required for effective NVZ inspections.

2. Does the Agency operate efficiently and provide good value for money?

8. The Committee's question raises important issues of how to evaluate the Agency's effectiveness and efficiency. We share the objective that the Environment Agency should operate both effectively and efficiently—with Government policy now seeking cost-recovery for regulation, farmers will benefit indirectly from efficient Agency operation. Efficient and effective operation should mean that the Agency's environmental outcomes are achieved at the lowest cost to the taxpayer and to those who are regulated.

Consequently the type of activities we would expect an effective regulator to take would include:

- Focusing inspections action where non-compliance is anticipated or risks are greatest (eg targeting visits to those businesses operating in high risk areas, and/or operating higher risk activities).
- Supporting compliance with non-regulatory advisory services and practical demonstrations of good practice.
- Using enforcement only where negligent action and/or alternative remedies are unlikely to result in the desired outcome.

¹⁵ <http://www.environment-agency.gov.uk/commondata/acrobat/vision.pdf>.

9. Consequently, we do not believe that the Agency's effectiveness should be evaluated simply against its operating costs, the number of prosecutions or staff numbers. Rather we assess the Agency on the quality of relations with the farming and horticultural communities and its contribution to the sector's environmental performance.

10. We are concerned, therefore, that an increasing emphasis on the Environment Agency as a regulator can undermine its effectiveness. We have received worrying reports that some inspections have been mechanistic or inflexible. An example of this has been the use some EA inspectors make of Defra's increasingly outdated RB209 guidance¹⁶ on fertiliser recommendations for crops. This guidance is not a definitive rule as some EA inspectors appear to regard it but a backstop in cases where agronomic advice is lacking (newer varieties of wheat and barley show different yield response to those typically used in RB209). As highlighted above, staff would operate more effectively if they had more appropriate training and background knowledge and interest in their key subject areas such as agriculture.

3. The structure, governance and accountability of the Agency

11. We have a good working relationship with the Environment Agency across its operation. It is clear to us that it is genuinely committed to work with and understand the farming community. We have highlighted above the Agency's efforts to train its front-line staff, which is supported by a farm-focused policy unit which has good links to the Agency's Board. This relationship is important to us and has allowed us to discuss candidly some of the very real challenges farmers and growers will face, such as the introduction of the Agricultural Waste regulations. During our discussions we have highlighted our anxiety over the apparent conflict between the Agency as advisor and regulator.

12. While these institutional arrangements are important, it is also important that the Agency maintains accountability directly with the farming community. In this respect its Regional Environment Protection Advisory Committees (REPACs) are an important link with local people; that each REPAC has farmer representation and that REPACs have a real opportunity to comment on Environment Agency policy is welcome. The Committee may wish to explore the performance of REPACs during its inquiry.

4. Its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency's role in the planning system.

13. We have become aware of some tensions between the Environment Agency and Defra in recent years. The most apparent of these has been differences about the interpretation of the EU Waste Framework Directive for agricultural wastes, and in particular the treatment of manures and slurries. While healthy discussion is to be welcomed, these differences have left some in the farming community wondering which level of government is making policy, and which delivering policy: a distinction on which Lord Haskins made valuable conclusions.

5. The Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services.

14. Our impression is that the general public still lack awareness of the full range of the Agency's responsibilities, many think that it is responsible for flooding issues only. The Agency's relationship with farmers is also confused. The organisation has promoted itself to agriculture as working with farmers to achieve positive outcomes but the onset of cross-compliance inspections has re-opened the prospect of the Agency as a penalising regulator (even though it is the RPA is in fact the Agency determining whether a penalty should be applied).

15. Another example of farmer confusion is over fly-tipping, a very serious issue across the country. The so called "new and easier" way that Agency was going to prosecute fly-tippers appears to be at best inconsistent, even within a single county. In reality unless the landowner sees the fly-tippers they appear to have little support. Some Devon farmers report that local EA staff will not deal with minor dumps (ie 10 bags of mixed waste dumped on an SSSI, SPA, SAC is considered "minor"), instead farmers are referred to the local District Council. However in other parts of Devon, Agency staff helped to remove fly-tipped waste. The message that comes across here is that of inconsistency, even within counties, and a lack of co-ordination with local authorities.

6. The Agency's responsibilities for flood defence and flood mapping, including guidance to the public

16. The Agency's work on flood and especially coastal defence has received a mixed reception from farmers and growers. Generally all would agree that this work has been high profile and achieved good awareness, even if the Agency's ambition to raise water levels for biodiversity reasons conflicts with productivity objectives. For example, in the Gloucester area, the Agency has done good work in maintaining

¹⁶ <http://www.defra.gov.uk/enviro/pollute/rb209/>.

flood defences and swift action at necessary times has been appreciated. However, their communication could be improved to members of the public, as could the inference that urban flooding is caused by unsustainable land management.

17. The scale of budgets allocated to maintenance of river banks and drainage systems is a real concern. The reduced scale of spending allocated to maintenance can result in unmanaged and unpredictable flooding combined with a reduced storage capacity.

Similar concerns have been raised in respect to coastal defences, where a combination of reduced budgets and a greater priority for biodiversity conservation appears to be undermining vital coast protection standards. Communication of the Environmental Agency's policy and in particular maintenance standards is critical information for those farming and living in vulnerable locations.

7. How will the organisational changes brought about by the Natural Environment and Rural Communities Bill affect the role of the Environment Agency?

18. The introduction of a new influential land management agency, Natural England, will present communication and co-ordination challenges for both organisations. As yet we are unclear neither how the two organisations will co-ordinate their operations nor how land managers will be expected to differentiate their services. While some have characterised the Environment Agency as the regulator and Natural England as the advisor, we know that this is not only inaccurate but also undesirable, for reasons set out above.

8. How will the Agency's work in improving wildlife habitats tie in with Natural England's work on biodiversity?

19. For the reasons set out above, we too will take a close interest in this aspect of the two organisations work.

SUMMARY

20. In conclusion we welcome this opportunity to submit evidence to the Select Committee. The Inquiry is timely and well focused, as the work of the Environment Agency has very real implications for the farming and horticultural communities. We have seen a marked improvement in face-to-face contact between agency staff and farmers in recent years and believe that this is bringing benefits for the Environment Agency's desired outcomes set out in its vision. We have also valued our contact over forthcoming environmental legislation, notably the implementation of the agricultural waste, IPPC and Water Framework Directives.

21. Having said this, we are concerned that the Environment Agency's undisguised regulation role and at the same time desire to act as an advisor is becoming increasingly unsustainable. At a time when farmers can lose significant proportions of the Single Payment for minor technical infringements of cross-compliance requirements, their willingness to engage with the Agency must be constrained. If the Agency is to retain constructive contact with the farming community at farm level it must maintain a well informed, technically competent and motivated workforce focused on environmental outcomes, rather than enforcement and penalty.

National Farmers' Union

December 2005

Memorandum submitted by Mrs Jacqueline R Rowland

1. For your consideration, I wish to place before you evidence of the failure of the Environment Agency in the following areas:

- how successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities;
- its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency's role in the planning system.

2. The Environment Agency has failed to act to protect the public and the environment against the placing of large quantities of contaminated waste on a common on the South Downs. The common, Telscombe Tye, is part of the area designated to become The South Downs National Park. It has the highest level of AONB status.

3. Approximately 4,000 cubic metres of construction waste were deposited between April and September of 2004, to form a bund. The bund contains approximately 4,000 cubic metres of waste. It covers an area of 11,500 metres squared according to the developer. It is in fact larger than this.

4. The Environment Agency stated that the general exemption the SDCB has for use of suitable materials for the maintenance, improvement and construction of highways, covers this use of imported waste. On 10 November they were unable to definitely confirm that this covers the work, as the bund is not part of the highway, and its purpose is to protect adjacent land. They are taking advice on this. They state that there is precedent but have not indicated what this is.

5. The demolition waste was not pre-treated and is extensively contaminated with plastic, metal, wood and glass. A survey by AMSTECH, a specialist company, subsequently employed by the SDJC, on 3 November 2005, confirmed the presence of asbestos present in the material, Chrysolite and Amosite, classified as high risk.

6. The Sussex Downs Conservation Board (SDCB), now amalgamated into the South Downs Joint Committee (SDJC) manages the site for the owners, Telscombe Town Council. The SDCB employed Wealden Environmental to do the work.

7. The SDCB wrote to Lewes District Council describing the construction as a small earth bund 18" high using earth from the site, and used the reply, stating that the bund did not require planning permission, to deceive East Sussex County Council, and public objectors.

8. The SDJC state that there was no formal written specification for materials or design of the bund, as quotations were invited over the telephone.

9. It is clear from subsequent events that the SDCB failed to exercise due diligence in checking the waste brought to the site was clean chalk.

10. The construction did not have the necessary permissions for planning, waste development, and from the Secretary of State, s194 Law of Property Act (1925).

11. The Environment Agency finally inspected the site, and East Sussex County Council ordered work to stop. A retrospective planning application was submitted, and refused in July 2005.

12. The SDJC is currently negotiating to submit a fresh planning application for the bunding, supported by a clean bill of health for the waste from the Environment Agency. There is visible evidence that the waste is still contaminated, and that no action has been taken to remove contaminants just beneath the surface. The view taken by the Environment Agency is not supported by the evidence.

13. On the 4 May 2005 the Environment Agency wrote to state that the contaminants had been removed. This was clearly not the case.

14. 10 May 2005 the Environment Agency wrote to say that they had instructed the Board to remove the contaminants.

15. Wealden was on site in October, on the instruction of the SDJC to remove visible contaminants from the top 12" of the bund. An officer from ESCC and members of the public observed material resembling bonded asbestos visible on the surface of the bund, where the workmen had disturbed it on 19 October 2005. ESCC ordered that work stop, and workmen leave the site on the 20 October. This is the material referred to in the AMSTECH report.

16. The surveyor expressed his opinion severally to the man who commissioned his report and to Mrs Bonny, of the Asbestos Awareness Campaign that the asbestos had come in with the waste, and in his view specialists should remove the waste. The Environment Agency sent Mr Casebow, an expert, to look, and he confirmed that in his opinion, there were pieces of asbestos present on the surface of the bund.

17. Faced with the cost of removal, and the lack of written specification in the contract, members of the SDJC have made unsubstantiated claims that the asbestos could have been planted and that they contracted for clean chalk. Their claim should be viewed in the light of their earlier attempt at deception and their unlawful act in carrying out the construction without the proper permissions.

18. The Tye is exposed to salt winds from the Channel. These scorch vegetation and will desiccate the surface of the bund. Cows grazed on the Tye, and illegal motorbike activity damage vegetation and break down the surface of the bund. There is evidence of badgers' activity that will bring contaminants to the surface. It is likely that the bund cannot be effectively sealed, and contaminants will come to the surface. Any asbestos is likely to be desiccated by the winds and fibres could be dispersed, and endanger neighbouring communities, walkers, and children who play on the common.

19. The Environment Agency asserts, following a visual survey of the surface of the bund, that the only contaminants left are only a couple of pieces of metal and plastic, and a few pieces of asbestos. It claims to have insufficient evidence to take any further action. It does acknowledge that there is asbestos present in hard core around a cattle trough but claims to be powerless to act on this, as it is agricultural land.

20. The attached photographs taken around the same time as the Environment Agency survey show clearly that they are in error regarding the extent of visible contaminants.¹⁷ There are numerous small pieces of plastic, glass, metal strips and reinforcing rods, and lengths of cable visible on the surface. The extent of asbestos contamination can only be verified by specialist survey and test.

¹⁷ Not printed.

21. This is in conflict with the view of ESCC officers in the planning report, that “the only practicable and thorough option would be to use a grader or similar machinery. The planning application does not include the use of such machinery and I consider that its use on the Tye would not be appropriate. In practical terms, the complete removal and processing of material would be necessary to achieve the applicant’s intention.” The Environment Agency is aware that this has not been done.

22. The remaining contaminants are damaging to the environment and hazardous to people, animals, and wildlife on the Tye. Animals ingesting this material are at risk. A reinforcing rod through a horse’s foot could lead to its destruction. A child could be seriously injured falling onto a metal rod.

23. It is an abnegation of responsibility for the Environment Agency to pretend that the waste is clean and claim that it has no power to act. The public must question the purpose of its existence at taxpayers’ expense.

24. This is not a suitable site for landfill. The Tye is the only open space on this densely populated and deprived coastal strip for families to enjoy.

Mrs Jacqueline R Rowland

December 2005

Memorandum submitted by Severn Trent Water Ltd

1. SCOPE OF SUBMISSION

1.1 Our submission concentrates on the issue raised in the terms of reference “how successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities”. We set out below our views on aspects of this issue relating to the water industry.

2. ENVIRONMENT AGENCY ACTIVITIES

2.1 Delivering the environmental programme

The Environment Agency has successfully coordinated the implementation by water and sewerage companies of a considerable programme of new environmental legislation, driven by EU directives. The EA and water companies have generally worked together effectively to deliver a programme on time and efficiently. We do, however, have some concerns about the development of the environmental programme.

2.2 Assessing environmental benefits

The Environment Agency acts as an environmental champion as well as a regulator, and we consider that this can, at times, result in environmental improvements being made where the benefits do not justify the costs.

2.3 In this context, we feel that the environmental programme for PR99 was based on estimates of benefits from a limited number of studies. The method of transfer of these estimates to assess benefits for a very large number of schemes resulted, in some cases, in overstatement of benefits. In addition, a piecemeal approach, assessing each scheme individually, fails to take into account willingness or ability of consumers to pay for a large programme of measures.

2.4 We welcome the Collaborative Research Programme which is currently under way, for developing methodologies for assessing benefits and costs for implementation of the Water Framework Directive. What remains to be established is how the results of this work will be translated into detailed local measures—the link between national policy and local EA action is not always clear. We also have some concerns about whether consultation is taking place sufficiently early in the process to ensure that methodologies can take into account stakeholder views.

2.5 Sustainable Solutions

We feel that the implementation of tighter sewage treatment discharge consents may not, taken overall, have always been the most sustainable environmental solution, taking into account the additional power costs involved in treatment processes. More attention should have been given to addressing sources of diffuse pollution—we welcome the consideration being given to such solutions for the Water Framework Directive. This will require government policy interventions as well as action by the Environment Agency; we welcome recent statements by Minister of State for Climate Change and the Environment on the consideration being given to these potential measures.

2.6 *A Long-term Framework*

In order to deliver efficient solutions, a longer-term view needs to be taken of environmental improvements which will be required. In the past, there have been changes in sewage treatment works consents which have been implemented in several steps; if the ultimate requirement had been known, then improvements could have been delivered more efficiently. The Water Framework Directive provides an opportunity to consider environmental improvements within a longer-term framework. Recent Environment Agency initiatives to implement its “modernising regulation” strategy will also assist in this. Recent proposals involve giving water companies the ability to select at which works to implement tighter standards, in order to improve river quality, and to implement plans within the context of long-term objectives for river quality.

Severn Trent Water Ltd

December 2005

Memorandum submitted by Halcrow Group Ltd

EXECUTIVE SUMMARY

The work of the Environment Agency is wide and varied and the evidence provided relates to the areas in which we work as a supplier to the Environment Agency across England & Wales.

It has been our experience that the Environment Agency are constantly striving for further improvement and this is underpinned by the delivery against corporate targets, to which they have aligned themselves and their suppliers.

Specific examples of success include:

- The substantial numbers of properties that now benefit from reduced flood risk.
- The balance the Environment Agency achieve in delivering value for money flood defence schemes, whilst still achieving environmental enhancement.
- The demonstrable value savings across the Environment Agency’s capital delivery programme that equate to in excess of £7 million in 2004.
- Collaboration and training within the overall project delivery teams to achieve the Egan and Latham goals for the construction industry.
- The way the Environment Agency has become an integral part of the planning process despite not having statutory powers within that process.
- The significant public awareness that exists of flood risk within England & Wales and the transparency of flood risk achieved through the flood mapping.

<i>Points of Evidence</i>	<i>Response</i>
<p>1. How successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities</p>	<p><i>In its enforcement role.</i></p> <p>1.1 It is sometimes apparent that the Environment Agency’s environmental protection role conflicts with their duty to secure the proper use of water resources, due to risk that (abstractive) water use may threaten water-dependent habitats. The comment is made specifically in relation to the work underpinning PR04, where quantitative justification sought by the financial regulator for schemes to be included in Environment Programme proved challenging.</p> <p>1.2 The water resources role also causes tension with the financial regulator/water companies, with the Environment Agency wishing to see greater investment in demand management and the others questioning its cost-effectiveness. Inability to predict and cost environmental dis-benefits with confidence compounds this difficulty.</p> <p>1.3 Despite these issues, foundations have been laid for some good environmental outcomes from the AMP 4 period. The Water Act 2003, which requires companies to conserve water in their operations, will also help. However a regulatory regime that looks to minimise abstractions, rather than focus on particular ways in which abstracted water is used/wasted (eg leakage control) may be less contentious and complex to regulate.</p> <p>1.4 PR04 showed that the Environment Agency have vastly improved its effectiveness in water resources regulation; it would benefit from reinforcement of the message to consumers by Government and other stakeholders that water is a scarce and valuable resource</p>

*Points of Evidence**Response*

Managing a wide range of activities.

1.5 Whilst the Environment Agency operates in many different disciplines the specific evidence we would like to submit is in relation to flood risk management. In this discipline governance is well prescribed with project boards and project teams set up to drive projects forward, proactively and efficiently. These teams engage and include key stake holders where appropriate (eg English Nature) to ensure that all schemes implemented are sustainable in the social, economic and environmental sense.

1.6 A key component of the Environment Agency's ability to drive sustainability in all that they manage is the Environment Agency's environmental procedures which are based on best practise and are complied with even when there is no statutory requirement to carry out specific environmental assessment works. The Environment and sustainability is a key part of everything they do.

1.7 The sustainability of flood risk management projects is further supported by the integrated teams that operate on projects thereby ensuring best value delivery in many of the Environment Agency's target areas is achieved. This has been strengthened further by the setting up of the National Environmental Advisory Service (NEAS) to drive excellence in the field of the environment on all projects.

1.8 Whilst implementation of the enhancement is often achieved at a local project level, the many projects are connected through high level strategic assessment on a catchment basis that links and compares benefits in one key area such as flood risk management with the environmental objectives for the catchment. Forward thinking in terms of habitat creation projects and complying with the need for compensatory habitats are essential in this process, as is the need to look wider in terms of making space for water and the whole water cycle.

2. Whether the Agency operates efficiently and provides good value for money

2.1 We have been working with the Environment Agency under the National Environmental and Engineering Consultancy Agreement (NEECA) since 2000 and over this period it has become apparent that the Environment Agency has made significant changes in the ways it delivers and significant improvements have resulted. Some examples of this include

- Delivery of SDA targets, by getting all suppliers to focus on programme and risk. The SDA targets are a clear deliverable of the Environment Agency and its flood defence functions (combined with the National Capital Programme Management Service) are focused on achieving (and are achieving) these goals. The delivery against the SDA targets clearly demonstrates the value of corporate targets within the public and private sectors and the benefit of alignment of client and supplier goals.
 - The alignment of suppliers is driving added value delivery. For example recorded value engineering saving through 2004 resulted in excess of £7 million of savings. This is in line with the Achieving Excellence targets. Examples of the type of added value delivery being achieved are given in the tables 1 to 4 below. (projects 1 to 11);
 - Collaboration, team working and joint training to improve the way flood defences are delivered in the UK. For example the Environment Agency and its suppliers have invested in "masterclass" training, h&s improvements etc; to ensure the right culture and procedures are in place to start achieving the Egan and Latham goals for the construction industry. This training combined with challenge within the project team to deliver value for money and the Environment Agency targets has resulted in many successful projects.
 - A key performance indicator system is in place to drive continuous improvement in every project and every supplier, thereby continuously improving the value for money service provided.
-

Table 1

PROJECT EXAMPLES

	<i>Project 1</i>	<i>Project 2</i>	<i>Project 3</i>
Project title:	Broadlands (PFI) Flood Alleviation Project.	Lower Lancaster Flood Alleviation Scheme	River Rother Tidal Walls Flood defence project
Location:	Norfolk	Lancaster	Rye, East Sussex
Details of successes and failures on the commission	<ul style="list-style-type: none"> — excellent relationships with external stakeholders through early and focussed consultation resulting in “right first time” planning applications, so mitigating key project risk. — innovative and sympathetic flood defence designs received a local award. — In excess of 100 houses will be protected. 	<ul style="list-style-type: none"> — National Review Group (NRG) comment “good example of how the project team and NEAS can work well together”. — £17k predicted fee saving through risk management. — early communication of issues with EIA team identified and addressed. — 800 houses will be protected. 	<ul style="list-style-type: none"> — excellent relations formed with over 40 landowners to ease planning application and construction work. — approval of the business case for the scheme by NRG on first sitting. — engaged with flood defence client to meet O&M needs. — forecast delivery within approved business case budget. — 652 houses will be protected.
Value added to the project	<ul style="list-style-type: none"> — improved flood defence that also met targets for recreation and ecology. — co-location of project staff improved financial control, and decision making. — developed comprehensive GIS for whole Broadland system. This provides extensive data to be easily accessed by the design team and all stakeholders. 	<ul style="list-style-type: none"> — proposed option to create woodland, wetland and open water habitat. This provided environmental enhancements to 37,500m² that helped towards our joint environmental targets. — used existing hydraulic computer models to build on the work of others rather than reinventing the wheel on this project specifically. 	<ul style="list-style-type: none"> — £1.1million saving on capital cost through use of “soft engineering” solutions, facilitated by a £10k fee increase. — 700m³ of concrete waste eliminated from project by incorporating existing walls into new design. — 12,000m² of sheet piling removed from project by use of brushwood mattress.

Table 2

PROJECT EXAMPLES

	<i>Project 4</i>	<i>Project 5</i>	<i>Project 6</i>
Project title:	Quaggy River Flood Alleviation Scheme,	Boscastle Flood Defence Scheme,	Mold Flood Alleviation Scheme
Location:	Lewisham & Greenwich, London	Cornwall	Mold, Flintshire-North Wales
Details of successes and failures on the commission	<ul style="list-style-type: none"> — contributes 616 properties to SDA27 target. — significantly enhances the local environment 	<ul style="list-style-type: none"> — immediate response by the EA following the flood event enabling design to be completed and construction to commence less than a month after the flash floods with 1st phase completion in December 2004. 	<ul style="list-style-type: none"> — concept to start of construction in 12 months — contributes 200 properties to SDA target — environmental enhancement incorporated into the scheme (eg otter refuge) — phase 2 works delayed by funding constraints

	<i>Project 4</i>	<i>Project 5</i>	<i>Project 6</i>
Value added to the project	<ul style="list-style-type: none"> — £400k public enquiry avoided through effective public consultation and stakeholder engagement — 2 month saving on design programme enabled start at optimum time of year — 30,000m³ of material recycled on site — £20k of saving through the re-use excavated gravels — £350k saving through value engineering 	<ul style="list-style-type: none"> — used a form of contract incentivised against time to reflect the need for urgent delivery of the works — contributes 12 properties to the SDA27 target. Houses protected within 3 months of a major flood event 	<ul style="list-style-type: none"> — £30k saving made through design amendment to avoid uncharted services — £20k saving through embankment design facilitated by £6k fee increase — Significant additional contaminated land costs (current estimate in order of £600k) avoid by £2k increase in fees—awaiting final approval

Table 3

PROJECT EXAMPLES

	<i>Project 7</i>	<i>Project 8</i>	<i>Project 9</i>
Project title:	Humber Estuary Flood Defences	Bulverhythe Sea Defences	Thames Barrier Rising Sector Gates—100 year life—Stage 3
Location:	Nr Leeds	Nr Hastings, East Sussex	London
Details of successes and failures on the commission	<ul style="list-style-type: none"> — the collaboration between consultancies on the EA framework to provide a combination of skills fulfilling Environment Agency requirements and programme environment-led flood defence project — development of strategy and PAR documentation to accommodate scope and diversity of project — 39,000 properties identified as at flood risk—Do Nothing scenario 	<ul style="list-style-type: none"> — NRG gave positive feedback, particularly on environmental reporting — re-use of existing materials in new groynes and revetment, minimising waste and reducing costs — active engagement of Agency stakeholders — SDA target contribution of 777 properties will be achieved by November 2006 	<ul style="list-style-type: none"> — early reconnaissance in summer 2004 identified better than anticipated condition — focus on improved H&S and evidence gathering for future monitoring and maintenance. — establishment of track record for improved future asset management of the gates — failures: Programme delivery has been hampered by splitting down of stage 3, phase 1, however, this has enabled better in-project learning
Value added to the project	<ul style="list-style-type: none"> — collaboration with another NEECA consultant enable us both to ensure that the EA had best people available in the right place at the right time. — please refer to the essay answer overleaf. 	<ul style="list-style-type: none"> — £350,000 saving in maintenance costs through whole life cost approach — we brought innovation gained through preparation CIRIA Rock Manual — £15,000 saving in SI work, due to existing knowledge 	<ul style="list-style-type: none"> — enabled release of intellectual property to the EA from original designer — estimate £10,000 saving on fees, through management of risks — deferred non-essential remedial works due to improved knowledge of gate condition saving potentially £1 million pa for each year of postponement

<i>Project 7</i>	<i>Project 8</i>	<i>Project 9</i>
		— use of industry leading non-intrusive investigation and monitoring techniques

Table 4

PROJECT EXAMPLES

	<i>Project 10</i>	<i>Project 11</i>
Project title:	Harbertonford Flood Defence Scheme	Preston Gauging Station Replacement, South Devon
Location:	Harbertonford, South Devon	
Details of successes and failures on the commission	<ul style="list-style-type: none"> — reservoir storage area for wildlife habitat seen by Defra as best practice — washland creation — promotion of migratory fish pass — enhanced river habitat and reduced future maintenance — improved “connectivity” with river — Green Apple award for environmental enhancement to a civil engineering project 	<ul style="list-style-type: none"> — design check list developed to assist with future designs — no reportable H&S incidents on site by working proactively with planning supervisor/contractor — project cost increases although final project delivered £57,000 below approved budget
Value that you added to the project	<ul style="list-style-type: none"> — integrated engineering and environmental team in design development out of one office — reduced riverbank protection and dredging through channel improvements made in conjunction with the RRC — use of natural bedrock to form scour pool downstream of dam avoided cost/impact of a traditional concrete solution — habitat creation provides recreation and amenity value in keeping with the local landscape 	<ul style="list-style-type: none"> — £11,000 saving through additional SI investigation and cost analysis — £1,000 saving by use of innovative cable route — existing design used to reduce design costs

<i>Points of Evidence</i>	<i>Response</i>
3. The structure, governance and accountability of the Agency	3.1 No comment
4. Its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency’s role in the planning system	<p>4.1 Historic development of new housing in areas vulnerable to flooding shows relationship with planners has been insufficiently effective in the past.</p> <p>4.2 Recent changes to planning guidance may fix this problem and early indications from the implementation of PPG25 (Planning Policy Guidance 25 : Development in flood plains) are very positive, with active engagement occurring between developers, the Environment Agency and Planning departments.</p> <p>4.3 Further improvements would be achieved if the requirements of PPG25 were supported by statutory authority for the Environment Agency within the planning process.</p>
5. The Agency’s relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services	5.1 We are not party to the methods used in this monitoring, but a good indication as to the success in this area is the Environment Agency’s ability to deliver projects. If the stakeholders and public are not engaged with successfully then project delivery is significantly delayed. There is always room for further improvement, but currently the relationship is sufficient to enable the Environment Agency’s delivery targets to be met.

<i>Points of Evidence</i>	<i>Response</i>
	5.2 Over the course of the last 5 years there has been a noticeable improvement in the way the Environment Agency communicates with all parties.
6. The Agency's responsibilities for flood defence and flood mapping, including guidance to the public	<p>6.1 There has been significant work in this area over the last 5 years, with SDA 27 targets for protection of 80,000 houses a key deliverable. Examples of projects delivering these targets are described in Tables 1 to 4. The use of the Defra priority scoring system to determine the best use of public money in a given year is an effective system that encourages focussed scheme assessment and delivery.</p> <p>6.2 The delivery of flood defence solutions on the ground is supplemented by flood warning/awareness activities. This includes flood mapping which has significantly improved awareness of the public, through information published on the Environment Agency's web site. This area is improving all the time and is becoming more efficient through the use of framework suppliers who are investing and developing technology in response to significant demand.</p>
7. How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the EA	7.1 No comment
8. How the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity	8.1 No Comment
9. The Environment Agency's forthcoming corporate strategy 2006–11	<p>9.1 The corporate strategy as proposed will we believe develop and transform the Environment Agency and their suppliers, with a clear delivery focus of creating a better place for people and wildlife for present and future generations, in England and Wales.</p> <p>9.2 There is clear direction on what the end desired result is and what the Environment Agency intends to do in order to achieve these end goals.</p> <p>9.3 The Environment Agency's suppliers are also aligned with this vision for "Creating a Better Place" as demonstrated by the following statement of commitment from the 6 most significant delivery consultants to the Environment Agency of whom we are one.</p>
	<p>CREATING A BETTER PLACE THE NEECA2 CONSULTANT'S CONTRIBUTION</p>
	<p>The National Engineering and Environmental Consultancy Agreement 2 (NEECA2) comprises a major framework agreement between the Environment Agency and six of the leading multi-disciplinary consultancies operating in the UK—Arup, Atkins, Black and Veatch, Halcrow, Jacobs Babbie and Royal Haskoning. This framework constitutes a significant opportunity to help Create a Better Place and the NEECA consultants are committed to assisting the Environment Agency with this endeavour. This will be achieved principally by assisting with the delivery of a programme of measures to reduce flood risk. However, the NEECA2 Consultants will seek to reduce flood risk in a manner which also enhances the built and natural environment and increases biodiversity. To achieve this we will work collaboratively with the Environment Agency and their full supply chain. The NEECA2 consultant's particular contribution to CaBP will be as follows:</p> <ul style="list-style-type: none"> — We will drive forward measures to improve health and safety through a programme of education, awareness-raising and performance monitoring. — We will promote the adoption of measures to minimise the disruption caused by construction activities and to maximise the quality of completed schemes given the available budgets. — We will seek new and innovative ways to reduce flood risk at reduced cost to the tax payer.

<i>Points of Evidence</i>	<i>Response</i>
	<ul style="list-style-type: none"> — We will seek to actively engage the public in the decision-making process so that flood risk management measures implemented receive the backing of the communities which they aim to protect. — We will ensure that the CaBP objectives are at the core of the Framework Charter. — We will play an active role in the Employer’s Forum to identify, develop, use and retain good people with well-developed skills. — We will each take forward any company specific actions, through our Supplier Development Plans, which contribute to achieving the CaBP objectives — We will communicate our activities, successes and lessons learnt through a framework newsletter.

Halcrow Group Ltd

December 2005

Memorandum submitted by Veolia Water Group

EXECUTIVE SUMMARY

1. The Environment Agency has developed a distinct role as regulator of man’s activities in the environment. It has made considerable progress in putting together policies and procedures that are coherent, sustainable in the long term and affordable. Further refinement of the Agency’s role and structure may be required to allow it to perform effectively its core responsibilities. As a large, historically bureaucratic organisation, it needs to recover a past emphasis on science based decision making and a commitment to highly skilled and empowered workforce. The organisation has the potential for greater efficiency through the use of shared resources across regions and innovative delivery mechanisms of its key outputs.

THE ENVIRONMENT AGENCY AS AN ENFORCER OF REGULATION

2. The Agency has an important role in policing human activities which impact upon the environment. In some instances however it appears to behave as an incumbent NGO rather than a regulator.

3. We would welcome a radical re-appraisal of the balance of the Agency’s priorities on pollution enforcement. It is our experience that the Agency is a poor enforcer of pollution incidents, except where they are very straight forward. There is a demonstrable preference for pursuing transient pollution such as water from excavations as they are easily visible and yet many long term legacy pollution issues are frequently ignored or dealt with on a non priority basis, and little action is taken to clean them up. The Agency are not pro-active in preventing pollution of groundwater and timescales in pursuit of polluters eg under Part II(a) of the EPA—Contaminated Land Regulations is ponderous, often with an absence of programme or targets. Cost of determining the guilty party and lack of sufficiently qualified staff to undertake these assessments are often quoted as the reason why these are not pursued. Complex legislation and ill-defined roles/responsibilities are also to blame. Consequently we are concerned that the polluter pays principle fails to be applied by the Agency and water company customers are continuing to carry the cost burden of end of pipe solutions.

4. Environmental enforcement receives a lot of publicity, but on the ground the outcomes are frequently inadequate to address the issues. Lack of suitably qualified staff hinders robust assessment of options and the ability to follow through with implementation of solutions.

5. The poor link between the quality and quantity regulatory functions often causes internal conflicts and can lead to confusing and unmanageable outcomes.

6. In recent years the Agency seems to have become increasingly proactive in enforcing abstraction licence and discharge consent conditions, and has taken due action for any exceedance minor or otherwise and with little regard to actual environmental impacts or operational practicalities. In comparison, 10 years ago the approach was more relaxed, flexible and pragmatic taking more account of overall public interest and not so driven by stringent enforcement rules.

7. The Agency is often unable to meet the three month determination period for abstraction licence applications as set out in the Water Resources Act 1991. This leads to increased uncertainty for water companies and other applicants in developing water supply schemes. The timescales for determining water abstraction licence applications remain protracted in many cases (taking up to 12 months and sometimes several years). Whilst the complexity of applications may preclude a decision in three months, (and the period will soon be extended to nearly five months as described in the recent Defra consultation report), a decision within six months should be feasible assuming all the necessary information has been provided by the applicant.

8. This will become increasingly important as the Agency moves towards time-limiting licences—this will require significantly more licence applications to be made, (to renew licences before they expire), and the process needs to be improved. In particular, the Agency’s policy on time limits means that all licences in a particular catchment will expire on the same date which in our view could lead to a large back-log of licence determinations. The situation will be exacerbated if companies seek to implement a rolling programme of renewals in order to maintain licences for a period that will allow mobilisation of alternative resources in the event of a non-renewal.

DOES THE EA OPERATE EFFICIENTLY OR PROVIDE GOOD VALUE FOR MONEY?

9. The Agency’s primary function should be as an enforcer of regulation. This responsibility is often diluted and confused by the Agency’s propensity to take on tasks it does not have a duty to undertake. A greater concentration on core tasks would go a long way making it more efficient and effective. It is not a policy organisation and should not get involved in EU policy development.

10. We regard the Environment Agency’s hydrometric activity as efficient. There is a comprehensive network in place and information is shared with water companies and other licence holders in a timely and effective manner. We believe that current levels of expenditure and resources must continue to be deployed in view of the vital importance of hydrometric data for water resources management and other functions of the Agency.

11. Other areas need improving. The four tier division of the Agency into area-regional-national-policy causes conflicts and there is poor internal communication between these groups. This leads to differing messages being given, depending on which level one is addressing and an inefficient decision making process. Our experience is that the Agency are often slow to respond or act on a request, or turn round a piece of information. They appear to have to consult on several levels and dimensions of their hierarchy, which inevitably delays any reply. This seems especially so when a quick response is requested eg a request for data or opinion on a drought permit application. Any meeting with the Agency seems to involve a surprisingly high number of the staff for which we are charged, easily outnumbering any other organisation. This is especially evident at CAMS meetings.

12. The current arrangements for water resources management lead to confusion and overlap both within the Agency and with Ofwat. The policy centre at Bristol is recognized but there is poor definition of the relationship of the two -supra-regional groups with water companies and regions. The current arrangements do not accommodate dialogue on integrated catchment issues as required by the Water Framework Directive and River Basin Management Plans. The CAMS process that is a fundamental tool in assessing resource availability is constrained to look at resource issues and does not extend to reflect quality of water in the environment. The Agency have not responded to water company preferences for multi-disciplinary teams and to streamline communications for example with a single point of contact for key customers such as water companies.

13. The technical skill levels within the Agency’s water resource function are continuing to decline at a time when the challenges of water resources management are increasingly complex. Whilst headcount has not decreased (and actually appears to have increased), the technical competence of the water resources function has declined in the last five years. Roles that would previously have been held by experienced hydrologists, hydro-geologists or water resource experts are increasingly being held by less experienced graduates from other disciplines who often lack the necessary appreciation of the complex nature of water resource management. This in turn leads to a less flexible and more bureaucratic regulatory approach that is not able to respond effectively to complex problems. For example, the use and development of water resources modelling has declined within the Agency in recent years in favour of more simple spreadsheet tools which cannot properly represent highly integrated water resource systems.

14. There is a need for greater transparency in relation to the Agency’s calculation of water abstraction charges so that abstractors can see how the income is spent and the level of efficiencies being made by the Agency’s water resources function. Better forecasting of future charges is also required to help abstractors in their financial planning.

15. We have already commented to the Agency on its proposals for the new abstraction charges scheme. We remain concerned at the scale of increases in charges proposed over a short period of time, and the consequent impact on water company bills to customers.

16. Bearing in mind the above it is still difficult to understand where money is generated and spent within the Agency, thus value for money cannot be easily determined although our overall impression is that the EA does represent reasonable value for money but there is considerable room to improve by developing experience in depth and a multi-disciplinary approach that facilitates its relationship with external stakeholders. Where resources do exist the Agency should make better use of them by sharing skills and effort across existing “Region” boundaries.

THE STRUCTURE, GOVERNANCE AND ACCOUNTABILITY OF THE EA

17. The EA Board is not truly representative or as transparent as it could be. It comprises mostly academics and local politicians. Industry per se is not adequately represented. All too often the Agency's decisions reflect a dearth in data and thus a precautionary approach and yet lack a commitment to develop sound science as a basis for improved processes in the future.

18. Divisions within the Agency are apparent for example with the Water Framework Directive where "quality" and "quantity" issues are separate within the Agency until "under Board" level. This is a characteristic born of different funding streams and ignores synergies of policies and practice that would benefit stakeholders.

19. As stated above, the responsibility structure of the Agency can lead to confusing and even contradictory advice/guidance. Different approaches and communication strategies are evident between different Agency Areas, Regions and National. This is also reflected in the relative competence and retention of staff.

20. The reorganization of the Environment Agency (BRITE) in 2002–03 resulted in a greater separation of the licensing process from water resource planning, together with the move from Regional water resources planning to Supra Regional planning (but with a high degree of autonomy still at local Area level). From our perspective, this has led to a less co-ordinated approach to licence application determinations and water resource planning issues. This represents a loss of efficiency as discussions and agreements now have to be reached at two completely different levels within the Agency, posing questions about inbuilt redundancy in the Agency's structure. We believe there must be scope for a more coordinated and efficient approach that saves on Environment Agency resources and effort and does not leave the water company exposed to potential conflict between Area and Supra Regional views. The Agency's various functions need to work more closely in reaching policy decisions and taking an holistic approach to environmental protection. In quite a few cases, policies adopted by one part of the Agency conflict with proposed environmental solutions being promoted by another part of the Agency.

21. The EA are not accountable. Accountability for actions and decisions is not clear and in some cases non-existent, eg millions of pounds spent on PPC site surveys by the paper industry not subsequently required. It carries out many consultations and yet appears to disregard many of the views expressed with little change in strategy or tactics and no explanation. This is merely a rubber stamping exercise. This suggests an organizational structure that is not receptive to external influences and with an inherent view of the power of their position and accordingly that the EA have no reason to adapt to other views.

EA RELATIONSHIPS WITH DEFRA, DEFRA SPONSORED BODIES, THE REST OF GOVERNMENT AND THE PLANNING SYSTEM

22. The Agency appears to operate in an improved way in recent years in conjunction with DEFRA and the rest of Government to the extent that the Agency is at risk of being seen as a "puppet of the state". The credibility of the EA would improve if it was seen to defend strategies that may not be entirely consistent with a political agenda at times. An example is the current proposals for Abstraction Charges which appear to satisfy direction given by DEFRA and yet are directly contrary to the logic of existing standard charges.

23. In the water resources arena the Agency often duplicate and overlap with the activities of Ofwat. They do not appear to consult with Ofwat before publishing consultations or policies and these two organisations are often seen as out of step and duplicating work. The Agency needs to work more closely with Ofwat and CC Water in developing the regulatory framework for water resources and supply-demand balance. For example at the 2004 Periodic Review, there was a lack of agreement on a number of key areas, including water efficiency funding and dealing with the uncertainty presented by the Habitats Directive. Further work is also required to align EA and Ofwat water resource regulatory reports and submissions to reduce duplication of effort by water companies. We welcome the additional duties on both organisations under the Water Act 2003 for consistency and co-ordination and look forward to sight of the forthcoming Memorandum of Understanding between them.

24. The Agency however appear to hold little or no discussions with the Drinking Water Inspectorate, whilst that organisation drives significant investment affecting many of the Agency's interests. Improvements in this relationship might highlight understanding of their distinct and separate role.

25. The Agency however have been very helpful in recent months by acting as a go-between with ourselves and DEFRA, in the development of the Drought Contingency Plans due in draft by April 2006. The EA guidance has helped make sense of what has been complicated and occasionally unclear legislation.

THE EA'S RELATIONSHIP WITH NON-GOVERNMENT STAKEHOLDERS AND THE GENERAL PUBLIC AND HOW THE AGENCY MONITORS SATISFACTION WITH ITS SERVICES

26. There is a real danger of consultation fatigue—the Agency has issued a very large number of consultations in recent years on water resource issues, many of which have not resulted in any appreciable changes to policy or actions. The Agency should carefully consider the use of its consultation processes to ensure that they are targeted and meaningful, rather than merely to “tick a box”. We would be keen to see evidence from the EA clarifying how they have been influenced by the outcome of stakeholder consultations.

27. The EA has limited proactive dealings with the customer base apart from lobby groups. They often post information on their web-site as a surrogate for public consultation. We would encourage the EA to adopt a more pro-active stance in dealing with the general public for example in communications on reducing waste, encouraging recycling and water conservation.

28. The Agency needs to work more closely with other organisations in delivering its objectives. For example, the Agency should work more closely with the River Trust organisations to help deliver its environmental monitoring, management and improvement programmes.

29. The Agency could improve by evaluating their own performance in a critical manner. Stakeholders are rarely if at all asked for views directly on Agency performance. Such views have only been solicited through Government and Parliamentary vehicles until very recently when the Agency have been actively seeking feedback from participants in its meetings and workshops. This is intended to assess how appropriate and effective the meeting or workshop has been and is a welcome improvement in assessing effectiveness. The Agency may wish to consider publishing its Balanced Scorecard with Board papers once more.

30. Whilst “Spotlight on Business” has shown an improved element of balance, the Agency’s reports often highlight only good performance on its own part and do not draw attention to “near misses” or “lessons learned”. An example is the 2005 Annual Report on Pollution Incidents which highlighted only positive actions. It does not refer to the incidence of pollution events that go un-enforced or assess in any meaningful manner if it has discharged its statutory duty eg to enforce Groundwater Regulations; and does not identify where matters are protracted in progress. The Agency would benefit a great deal from demonstrating an even handed evaluation of its performance.

31. The level of communication is patchy and varies between individuals and areas/regions. Access to up-to-date data on rainfall, water levels and river flows can be difficult to obtain, even on a priority, non-verified basis. However, general data exchange is usually adequate.

THE AGENCY'S RESPONSIBILITIES FOR FLOOD DEFENCE

32. The new system of flood warnings and flood mapping are helpful, However, some flood defence works may be at variance with environmental and ecological requirements and thus give rise to conflicts within the Agency.

33. The Agency are not sufficiently proactive with customers and river users and would benefit from improved communication of their work. Three Valleys Water have four public water supply intakes on the River Thames and there has been no significant engagement to manage the risks of flooding.

34. There continues to remain limited synergy between the Agency’s responsibilities within flood defence and land drainage, causing some internal conflicts of interest and inefficient use of resources. There remains an argument for development of a new organisation entirely separate to its regulatory function.

HOW ORGANISATIONAL CHANGES BROUGHT ABOUT BY THE NATURAL ENVIRONMENT AND RURAL COMMUNITIES BILL WILL AFFECT THE ROLE OF THE EA?

35. We are not aware of any organisational changes and thus not in a position to comment.

HOW THE AGENCY'S WORK ON IMPROVING WILDLIFE HABITATS WILL TIE IN WITH ENGLISH NATURE'S WORK ON BIODIVERSITY?

36. The Agency and Natural England generally co-ordinate activities well, but there can be some conflicts. We would encourage improved co-ordination in this arena and in particular to continue to develop sound science in assessing the cost/benefit of environmental impacts.

THE AGENCY'S FORTHCOMING CORPORATE STRATEGY

37. We welcome the Agency's periodic Corporate Strategy documents and we will respond further at that time. It is of the utmost importance that all stakeholders are made aware of the Agency vision and objectives in respect of discharging their statutory, regulatory and discretionary roles.

38. We would welcome a robust vision for delivery of the Water Framework Directive in the Corporate Strategy. There is a risk that the Agency will not be able to efficiently deliver robust river basin management plans (under Water Framework Directive) to the very tight European Union timescales. In particular, the monitoring requirements of the Directive are very onerous and unlikely to be met in full within the specified timescales. This in turn may lead to inappropriate investment or actions that will not lead to real environmental improvements. The Agency is already behind its deadlines for implementation of the Habitats Directive where lack of environmental data has been one of the problems.

Veolia Water Group (Three Valleys Water, Folkestone & Dover Water and Tendring Hundred Water)

December 2005

Memorandum submitted by the Composting Association

1. INTRODUCTION

1.1 The composting and biological treatment industry is worth an estimated £20–30 million and is growing at rate of about 20% per annum. Companies include waste management publicly limited companies, privately owned composting companies, farmers and community groups. Currently over two million tonnes per annum of biodegradable wastes are composted, with one million tonnes certified to the British Standards Institution's Publicly Available Specification 100 for quality composts (Source: The Composting Association).

1.2 The UK's composting and biological treatment capacity needs to expand significantly over the forthcoming decade to meet the binding targets set in the EU Landfill Directive (EC/31/1999). An estimate of over 200 new composting/biological treatment facilities (with an average annual throughput of 45,000 tonnes per annum) will need to be established by 2020 (Source: The Environment Agency). In order to achieve this, planning permission, a waste management licence and a relevant approval by the State Veterinary Service (where catering wastes or animal by-products are treated) need to be obtained. These approvals processes are currently unacceptably long as there is no co-ordination or centrally developed logic between the various regulatory bodies. The role of the Environment Agency is therefore pivotal in helping England and Wales secure the appropriate level of biological treatment infrastructure and processing capacity in a timely manner.

1.3 The Association has consulted with its members in submitting this response about the Environment Agency (the Agency), and would welcome the opportunity to discuss any of the points raised in greater detail with the Committee. This response focuses on the Agency's role in regulating composting and biological treatment activities.

2. EFFECTIVENESS OF THE ENVIRONMENT AGENCY

2.1 There have been welcome improvements in the delivery of the Agency's responsibilities as Waste Regulator in England and Wales since their BRITE restructuring. Notwithstanding, there remain significant issues that currently impede the expansion and operation of the biological treatment industry ("the industry"). These are detailed below.

2.2 There appear to be inconsistencies and delays in translating national policies into practice. Difficulties have been experienced by the industry due to the inability of some Agency staff to interpret and apply theoretical knowledge "on the ground". In practice this means that some officers have been reluctant or unable to give advice or suggest alternatives when things do not go "by the book". There also remain important variations between individual members of staff and between area offices. Such inequities can stifle innovation, introduce unacceptably long delays, and do not create a "level playing field" for operators across the country, resulting in disproportionate commercial environments.

2.3 In many respects the Agency is viewed as an impedor of development by the industry rather than a facilitator. It has a powerful leadership role to play in specifying good practice criteria and helping the industry seek solutions to challenges brought about by its rapid growth. The easy option has been to state what it doesn't want to see without providing a clear steer about what it would like. This is often brought about through a lack of knowledge and confidence by Agency staff, and has resulted in "guidelines" being imposed as "law" without discussion. It has also led to disproportionate conditions being imposed on sites with little consideration of the real risks involved or their practicality.

2.4 In response to this, the Association took the initiative this year to develop and publish a Composting Industry Code of Practice in conjunction with the Cabinet Office's former Business Regulation Team. The Code was a result of extensive consultation between the industry and the UK's waste regulators. The Association anticipates that this will help provide a positive framework to assist the industry's development.

2.5 Agency staff's knowledge about other areas of its work (eg flood management, water abstraction, discharge consents, etc) appear to be more developed. This has resulted in a more conducive working relationship with industry, even though, in many cases, the same officers were involved. This clearly highlights a training need.

2.6 The Agency needs to be adequately resourced to enable it to inspect and regulate unlicensed or exempt activities to a far greater extent than it does at present. Sites that operate illegally or to poor environmental standards currently undermine legitimate business interests and damage the industry's reputation. This is especially important as the industry is developing at a rapid rate and will continue to do so for the foreseeable future to meet Landfill Directive targets. The costs of regulating and enforcing such sites need to be borne by those operators or recovered through the Courts; they should not be borne by the legitimate operator through increased fees. The Agency therefore needs to receive sufficient funding from Government to enable it to carry out this function effectively.

2.7 These issues were the root cause of the recent problems with proposals to amend the composting exemption in the Waste Management Licensing Regulations during the summer. After over five years in the making, they were pulled at the eleventh hour as the proposed fee structure would have unduly penalised small-scale community composting schemes in an attempt to enable the Agency to recover its costs. A more equitable fee structure needs to be implemented to enable proportionate regulation.

3. EFFICIENCY AND VALUE FOR MONEY

3.1 The Environment Agency is a large and complex organisation. As such, its ability to respond in a timely manner to the changing commercial environment brought on by governmental policy drivers is often painfully slow. In terms of national policies, it appears to have the right intentions to develop guidance documents and protocols. However, these can take years to work their way through the system, by which time they are outdated. For example, the Agency attempted to develop technical guidance on composting during 1999–2000 for both internal and external use. Despite extensive consultation with industry and the issue of a draft in 2001, it has never been finalised and remains unpublished. Much that is contained is now out of date.

3.2 From a commercial perspective the Agency does not always provide value for money to the industry, especially where problems or complex issues arise. The length of time it takes Agency staff respond to enquiries and concerns raised by operators varies markedly across the country, taking, in some instances, months. Such delays can be detrimental to business delivery, especially at the developmental stage. A greater understanding of the commercial pressures the industry operates under by Agency staff would be beneficial. Again this highlights another training need.

4. RELATIONSHIP WITH GOVERNMENT INCLUDING THE PLANNING SYSTEM

4.1 The Environment Agency is a statutory consultee during the planning process; hence it plays a key role during the development of new processing capability. The Agency does not always respond in a timely manner to the relevant planning authority, which has resulted in unnecessary delays being incurred. Again, the costs to businesses (and ultimately local authorities in implementing their waste strategies) can be considerable. Given the scale of development needed over the forthcoming decade, this points again to ensuring that the Agency is adequately resourced to carry out this important function.

4.2 Conflicts between the planning and licensing regimes do occur and these could be addressed on a practical basis through co-operative working between the various parties. The recent publication of the *Planning Policy Statement 10: Planning for Sustainable Waste Management* (July 2005) and the accompanying Practice Guide should assist in this respect.

4.3 There is also an important interface for the industry between the waste licensing regime and Animal By-Products Regulations. The latter covers the composting or digestion of catering wastes and animal by-products and is regulated by the State Veterinary Service (SVS). It requires the industry to treat these wastes in a manner that minimises the risk of transmissible animal diseases to an acceptable level. As such, they specify how composting/digestion facilities should be constructed and operated. There does not appear to be any sort of working agreement between the Agency and the SVS to ensure that contradictory constraints are not placed on the industry. The establishment of a formalised industry/regulator working group to address inconsistencies and operational overlap would be welcomed by the industry.

5. ABOUT THE COMPOSTING ASSOCIATION

5.1 The Composting Association is the United Kingdom's membership organisation, promoting the sustainable management of biodegradable resources representing the majority of compost producers in England and Wales. It actively promotes the use of biological treatment techniques and encourages good management practices throughout the industry. By advocating a suitable regulatory and economic framework, the Association works to ensure the long-term sustainability of the biological treatment industry. It currently has over 700 members including compost producers, local authorities, consultants, technology suppliers, compost users, academics, other membership organisations and individuals.

The Composting Association
December 2005

Supplementary memorandum submitted by the Composting Association

1. Following the Composting Association's submission in December to the Committee's inquiry, I am setting out a number of further observations that I would be grateful if you could consider.

2. An ambiguous relationship exists between the Environment Agency (the Agency) and DEFRA in terms of strategic policy making. This has caused the composting and biological treatment industry considerable uncertainty over recent years.

3. In its role as the waste regulator, the Agency necessarily needs to regulate extant legislation. However, as it employs technical specialists, it often finds itself defining policy in order to bridge knowledge gaps that exist within DEFRA; the latter being the result of the extremely fast turnaround of career civil servants, which curtails the development of an adequate knowledge base.

4. An example of this relates to the protection of soils and the use of composted materials on land. DEFRA published its Soil Action Plan for England in 2004, which sets out a framework to protect and enhance England's soils, making specific reference to composted organic waste. The Composting Association has developed (in conjunction with WRAP) the BSI PAS 100 for composted materials and runs a third-party certification scheme. This establishes baseline quality criteria (comparable to other national standards) and requires compost manufacturers to implement a comprehensive quality assurance system.

5. The Association has been calling for many years that quality compost, meeting the PAS 100 standard, should be deemed to have been "fully recovered" under waste law and therefore classified as a "product" for unrestricted use. To date this issue remains unresolved due to the following reasons:

- Legal opinion has been proffered from both DEFRA and the Agency's lawyers
- The Agency's soil scientists continue to argue that under *some* circumstances PAS 100 compliant composts may still cause harm to soils. It is unclear to what extent DEFRA is having a policy steer in this regard.

6. The latter illustrates the internal conflict the Agency experiences in attempting to carry out its function as "an efficient regulator", whilst simultaneously acting as "champion of the environment" and an "influential adviser". These issues relate to the perception and management of risk. Modern regulation accepts that risk can never be eliminated; rather it is controlled, enabling the Agency to divert its regulatory functions to those operators and activities that present the greatest risk to the environment. However, in their role as environmental "champions" the Agency necessarily takes a risk-averse point of view, attempting to eliminate environmental risk. The result, in practice, has been to impede the delivery of government policies, such as the Soil Action Plan, and has served to reduce the amount of quality compost returned to the soil to improve organic matter content. A situation where the benefits far outweigh the risks.

7. A further example relates to the recent life cycle assessment study into disposable and reusable nappies. Notwithstanding the limitations of the study, the "media spin" the Agency placed on its findings directly contradicted waste minimisation legislation and government's initiatives to reduce the amount of biodegradable waste landfilled.

8. Whilst recognising the Agency's role as a robust regulator, its track record for delivering licences and permits is somewhat lamentable. As expressed in our previous December 2005 submission (see attached and in particular points 2.3, 3.2), there is genuine fear amongst potential operators of Composting and Biological Treatment facilities, both small and large, that applications for "permits" under the Pollution Prevention and Control Regulations will fall foul of the risk averse mentality and suffer the same fate as Landfill PPC permit applications where there are currently in excess of 100 "appeals" pending due to refused applications. It is not unreasonable to suggest that the cost and drain on resources on both sides is entirely disproportionate to the risk.

9. These examples illustrate the inherent complexity in developing and implementing environmental strategies that cut across different government policies (waste, soil protection, biosecurity, agriculture etc) and the uncertain role the Agency plays as both waste regulator, adviser and champion of the environment. The part the Agency plays in defining and implementing policies therefore requires clarification.

10. The Composting Association has been recommending for a number of years that a body be established to co-ordinate some of these cross-cutting issues for the biological treatment industry, in order to streamline permitting and assist in policy implementation. Such an initiative would assist both the public and private sectors in meeting the many and complex challenges they face.

The Composting Association

February 2006

Memorandum submitted by the Air That We Breath Group and the European Cement Forum

1. In the response to the request for an evaluation of the public perception of the regulatory role of the Environment Agency, I would wish to have noted my comments as Chair of the Air that We Breath Group (500 members) and the European Cement Forum (247 groups).

2. My consultation role has pitted me in direct face to face meetings with the Agency over the last decade. Like all matters of issue consultation had gone through a learning curve that ranged from open hostility from both camps to where we are today, meeting regularly and in a healthy dialogue with our regional regulatory management team.

3. That is not to say we do not have areas of concern and lapse into our own camps, but this happens less often as we all appreciate each others' limitations of what is possible and what is not. Our Regional Agency Team deserve credit for appreciating the progress we have made and the relevance of public participation and consultation. We have arrived at the point where we both see the value of trying to formalise a national platform proforma of how to standardise public consultation across the country. To that end I will use my influence with my Cement Network to achieve that goal.

4. The Agency have already approached another Agency Team (Lower Severn) to see if any lessons can be learnt and passed on. I believe that the Rugby situation is causing them some concern and both camps are at an impasse. I do believe the national approach is a potential answer to this impasse.

5. I would not wish to catalogue the history of failures in regulation and problems we have encountered with the Agency as I hope the future offers more potential for growth, rather than dragging up old issues that only helps to isolate and polarise individuals. What should be central to our endeavours is for properly convened scientific trials of any novel fuel going into cement kilns, that were never designed to take them. Monitoring mechanisms should be standardised across the country and state of the art equipment used on those substances that cause concern such as dioxins/pcbs. That is not the case at this moment in time.

6. Nationally, the Senior Management of the Agency have fallen behind in their awareness of the value of public participation and consultation. The issue of the Revision of the Substitute Fuels Protocol I believe demonstrated how the policy division of the Agency tried to manage an issue which had already excited massive public disquiet. This led to Senior Agency Staff being untruthful to the Agency Board and also failed to address with the actuality, where the missing 1,000,000 tones of hazardous wastes had disappeared to at an EFRA meeting, last year. The truth was it had been reclassified as a fuel to go into kilns to be incinerated as a fuel. Again very contentious.

7. I believe the Agency has much to learn, as do the environmentalists. The best scenario is for us to work together and that despite those who would laugh, is possible. Incineration is on the political map, whether in cement kilns, waste to energy plants, incinerators, hwi's etc. I am pragmatist enough to realise that only by working together can we achieve the best for those people we all serve.

The Air that We Breath Group and the European Cement Forum

December 2005

Memorandum submitted by the Chairmen of the Environment Agency's Regional Environment Protection Advisory Committees in England

EXECUTIVE SUMMARY

E1. This paper describes the role, composition and activities of the Environment Agency's seven Regional Environment Protection Advisory Committees (REPACs) in England.

E2. The paper sets out the personal views of the Chairmen of the Committees on several of the key issues being considered by the Select Committee. Key points include:

- The Agency is an effective regulator. Its work could be made easier by greater awareness at EU and national level of the practicalities of implementing new laws.
- The Agency works hard to identify and deliver efficiency savings and is an exemplar to other national and regional bodies in this respect.
- REPACs provide an important means by which the public can call the Agency to account. The feedback provided by REPACs clearly influences policy and practice.
- The Agency is making substantial efforts to influence and to work with other bodies at Regional level. Nationally, we would like to see the ODPM tackling key environmental issues raised by the Sustainable Communities programme with greater urgency.
- REPACs provide the Agency with a direct, formal, statutory link to key stakeholders within each Region, and through them to wider networks. This is particularly important in relation to work to influence the funding streams and activities of other Regional public bodies.
- We would expect there to be close collaboration between the Agency and Natural England, not least over common concerns related to land management.

- We welcome the Agency’s draft corporate Strategy. REPACs have provided substantial feedback. We are also pleased that the Agency is developing regional strategies, which will enable it to engage more effectively with regional partners. We are keen to see even more emphasis in the strategies on tackling climate change and managing flood risk.

E3. Two annexes set out, respectively, the statutory basis for REPACs, and examples of several recent REPAC Annual Reports for 2004–05.

INTRODUCTION

1. The Chairmen of the Environment Agency’s Regional Environment Protection Advisory Committees (REPACs) in England welcome this opportunity to provide evidence to the Select Committee. This paper presents our personal consensus views, based on our collective experience as Chairmen. The paper should not be taken as representing the views of our Committees, or of the Environment Agency, or of our appointing Minister.

BACKGROUND

2. Section 12 of the Environment Act 1995 (see Annex 1) places a duty on the Environment Agency (the “Agency”):

- “(a) to establish and maintain advisory committees, to be known as Environment Protection Advisory Committees, for the different regions of England and Wales;
- (b) to consult the advisory committee for any region as to any proposals of the Agency relating generally to the manner in which the Agency carries out its functions in that region; and
- (c) to consider any representations made to it by the advisory committee for any region (whether in response to consultation under paragraph (b) above or otherwise) as to the manner in which the Agency carries out its functions in that region.”

3. REPACs sit alongside “Regional Fisheries Ecology and Recreation Advisory Committees” (RFERACs), and “Regional Flood Defence Committees” (RFDCs). Their remit and membership is set out in formal “Terms of Reference and Standing Orders”. REPACs focus on issues of policy and practice relating to regulated industries, waste management, energy generation, water quality and water resources, air quality, and the protection of land and soil. “Climate change” and “Sustainable communities” are examples of two major topics currently on our agendas. REPACs will also expect to discuss the implications of the Energy Review, including the potential role of nuclear power. We provide an annual report on our work to Ministers. Some examples are attached (see Annex 2).

4. Each Committee has a Chairman appointed by the Secretary of State for Environment, Food and Rural Affairs, and 20 members appointed by the Agency. Members come from several broad constituencies: local authorities (taken from different tiers, constituencies and political parties within each Agency Region), industry (eg water, waste, chemicals, energy), land (eg agriculture), and the environment sector. The Chairmen of the RFERAC and RFDC within the Region may also attend REPAC meetings. Most REPACs include members with an academic background. Many members are eminent specialists or leaders regionally, if not nationally, in their area of expertise. All REPACs bring together key regional stakeholders with an interest in the Agency’s work.

5. REPACs meet four times a year. In addition, interested members will also come together in Working Groups (actual or virtual) to consider specific issues (eg detailed proposals for the Agency’s various Charges schemes). Members are encouraged to perform three roles: “Adviser”, “Networker” and “Critical Friend”. The Committees provide:

- a regional perspective on national issues (eg “How will proposals for a new regulatory regime affect businesses, local authorities and the environment in this Region?”); and
- a regional input to regional issues (eg “How should the Agency react to the policies set out in the draft Regional Economic Strategy and Regional Spatial Strategy?”).

6. Under the terms of our appointment, we are expected to commit five days per month to our work for the Committees. We meet Environment Agency officials four times a year to discuss issues likely to come up in each succeeding round of Committee meetings. These meetings, chaired by a member of the Agency’s Board, are extremely helpful. We also have formal annual meetings with the Environment Minister, and the Agency Chairman and Chief Executive. There is further informal contact at other times. We also contribute to the Agency’s annual meeting of the Chairmen of all its Committees, and attend Agency conferences and other events as appropriate both nationally and regionally.

7. In our own Regions, we liaise closely with our Regional Director and staff in Regional Strategy Units. We also attend meetings of the “Regional Advisory Panel” which are held four to eight times a year. These are Chaired by the Agency’s nominated Regional Board Member, and attended by the Chairmen of the statutory Regional Committees in the Region, and the Regional Director. Other staff may also attend. The Panels:

- consider regional priority issues and regional performance;

- hold occasional visits to assess Agency activities “on the ground”;
- support regional influencing work by meeting key stakeholders from Government offices, Regional Assemblies and Development Agencies, Trade Associations, etc;
- coordinate the work programmes of the statutory Regional Committees, as necessary.

Issue 1: How successful has the Environment Agency been in its role as enforcer of environmental regulation and controls, and how well does it manage its wide range of activities?

8. Our overall view is that the Agency is an effective regulator. It takes its existing responsibilities seriously, and looks carefully at the most effective and efficient ways of delivering a continuing flow of new responsibilities. It has a clear and comprehensive policy on regulation. This rightly emphasises the importance of taking a risk-based approach and basing policies and processes on sound science. The Agency seeks to act according to the “Principles of Better Regulation” (consistency, accountability, transparency, targeting and proportionality).

9. The Agency consults a wide range of national organisations on its proposals. It also consults REPACs on significant measures. For example, REPACs are regularly invited to comment on the Agency’s annual Charging Schemes for Environmental Protection and for Water Abstraction. In our experience, the Agency receives valuable feedback from REPACs, and takes this properly into account in finalising its regulatory proposals.

10. We sometimes consider that the Agency’s work would be made easier if the EU Commission and UK Government took greater account of the challenges involved in implementing new regulations. In particular, it is important to have clarity about key elements in new regimes well before the deadline for implementation. This is needed to allow due time to develop new processes and charging schemes, consult widely, publicise new requirements among regulated businesses, and train Agency staff. If the “window” between decisions being made and the required date of implementation is too narrow, this work can be rushed, with accompanying risks that implementation will be unsatisfactory for all.

Issue 2: Does the Agency operate efficiently and provide good value for money?

11. We are impressed by the Agency’s efforts to identify and deliver efficiency savings year-on-year. In this respect, the Agency could be viewed as an exemplar to other national and regional bodies, which do not appear to set themselves such demanding targets.

12. We are also very conscious that the Agency is not specifically funded to cover many of the duties which the public expects it to carry out. For example, in relation to climate change, the Agency is specifically funded for work on future flood risk management, regulating enterprises under the Integrated Pollution Prevention and Control regime, and administering Carbon Trading. However, stakeholders and the public also expect Agency to be fully involved in mitigation, adaptation and communication activities on climate change. Similar comments apply in relation to the activities surrounding Sustainable Communities, and Waste.

Issue 3: The structure, governance and accountability of the Agency

13. REPACs play an important role in opening up the Agency’s activities in environmental protection work to scrutiny by regional stakeholders and the general public (our meetings are all open to the public). The Committees provide an important means by which the public can call the Agency to account for its actions. We are not aware of any other Non-Departmental Public Bodies which can be challenged through this sort of arrangement.

14. The feedback obtained by the Agency from our 140 Committee members clearly influences the development and implementation of national policy and practice, which in turn is reflected in how the Agency operates at Regional and Area levels. The feedback obtained is not only critical but also constructive. REPACs provide an arena in which the public can challenge, for example, the scientific basis of policies, the costs for industry, or the need to “join up” Agency initiatives with those led by others. Members often provide a useful “steer” on tackling difficult issues. This sort of informed input is particularly valuable in the early stages of policy development. It should be noted that the Agency provides a formal response to feedback from REPACs in subsequent meeting rounds, to show how it has taken account of our comments.

Issue 4: The Agency's relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency's role in the planning system

15. We are increasingly aware at Regional level of the substantial efforts which the Agency is making to work with Regional bodies (eg Government Offices, Regional Development Agencies and Regional Assemblies). REPAC Chairmen are well-placed to facilitate greater contact, for example by inviting speakers from these bodies to present strategy papers to REPACs. Regional Advisory Panels also regularly meet key individuals at Regional level. We are satisfied that good links are being fostered, although there is always a need to remind other public bodies of the Agency's stance on major issues.

16. We have been concerned recently that progress on some of the key environmental elements of "Sustainable Communities" is slow. For example, we all wish to see early implementation of revised Building Regulations which require improved resource efficiency in new buildings (for water, energy, etc) and a "Sustainable Buildings Code" which applies to both the public and the private sector. We also wish to see a stronger and more urgent focus on the provision of environmental infrastructure before new development occurs (eg for water supply, sewerage, waste management, and flood risk management). We are not convinced that the ODPM is tackling these issues with sufficient urgency, in consultation with Defra and the Agency, and we wait to see the effect of the recent Concordat between the Agency and ODPM.

Issue 5: The Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services

17. REPACs provide the Agency with a direct, statutory link to key stakeholders within each Region. Committee members in turn provide further links to more extensive networks regionally, often nationally and sometimes even internationally. Many REPAC members are influential players at these levels in their own right. For example, REPAC members with a background in the water industry may also be actively involved in relevant trade associations at both UK and EU levels. The same applies for members with experience in other industries, from local authorities, academia or the environmental sector.

18. As Regional Government institutions have become increasingly influential, we have seen greater emphasis placed on developing practical partnerships at this level. It makes sound sense for the Agency to seek to promote sustainable development not only through its own direct expenditure but also by influencing other public expenditure streams. The Agency works hard at Regional level to ensure that environmental thinking based on sound science is properly integrated into the policies and actions of others. REPACs, through their membership and activities, actively support the Agency in this work.

Issue 7: How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency

19. We would expect there to be close collaboration nationally and regionally between the Agency and Natural England, not least over common concerns such as how best to tackle diffuse pollution from agriculture and to regulate the management of agricultural waste. We are pleased that a formal "Memorandum of Understanding" has been agreed. REPACs and RFERACs already work closely together on these issues. Future aspects will be embraced within the Agency's responsibilities for River Basin Management Plans (under the Water Framework Directive). Many hours of discussion at REPACs (and RFERACs) have helped to bring these far-reaching duties into a practical framework which is admired by the EU.

Issue 9: The Environment Agency's forthcoming corporate strategy 2006–2011

20. We welcome the Agency's draft Strategy. REPACs have considered it in various ways: in Committee meetings, in Working Groups (often involving members from the other regional Committees), or in seminars with Committee members and other external stakeholders. A substantial quantity of informed feedback has been provided to the Agency, both on the national priorities themselves, and on how they should be tackled regionally.

21. We are pleased that the Agency is developing regional five-year strategies to be "nested" within the national strategy. This will enable the Agency to engage more effectively with its regional partners, for example in Regional Development Agencies, thereby influencing their policies and activities in turn, and providing the basis for new partnerships. The national and regional strategies should enhance awareness of the Agency's role, understanding of its work, and trust in its pronouncements on specific issues. Many REPACs will also help to develop regional priorities, known as "Local Contributions", as they did for the 2000–05 strategy.

22. We are keen to see an even stronger emphasis within the strategy on tackling climate change and managing flood risk. These two challenges set the context for the Agency's aspirations: to seek a better quality of life for people and a better environment for wildlife; to enhance the quality of water, air and land;

and to change behaviour so that businesses take greater account of the environment and we all use resources more wisely. We would also like to see some clear (numerical) targets, and prioritisation of the very many “good things” listed.

CONCLUSION

23. We hope that this evidence is helpful to the Select Committee. Issues 6 and 8 lie mainly in the province of the RFDCs and RFERACs, so we have refrained from commenting on these. We would be pleased to assist the Committee further in any aspect of its inquiry, as necessary.

Chairmen of REPACs in England:

Derek Norman, NW Region (Coordinator)

Ian Brown, NE Region

Susie Kemp, Thames Region

Susan Pyper, Southern Region

Philip Rees, SW Region

John Turner, Midlands Region

Alan Woods, Anglian Region

December 2005

Annex 1

SECTION 12 OF THE ENVIRONMENT ACT 1995

- (1) It shall be the duty of the Agency:
 - (a) to establish and maintain advisory committees, to be known as Environment Protection Advisory Committees, for the different regions of England and Wales;
 - (b) to consult the advisory committee for any region as to any proposals of the Agency relating generally to the manner in which the Agency carries out its functions in that region; and
 - (c) to consider any representations made to it by the advisory committee for any region (whether in response to consultation under paragraph (b) above or otherwise) as to the manner in which the Agency carries out its functions in that region.
- (2) The advisory committee for any region shall consist of:
 - (a) a chairman appointed by the Secretary of State; and
 - (b) such other members as the Agency may appoint in accordance with the provisions of the approved membership scheme for that region.
- (3) In appointing the chairman of any advisory committee, the Secretary of State shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee.
- (4) The members of advisory committees appointed by virtue of subsection (2)(b) above:
 - (a) must not be members of the Agency; but
 - (b) must be persons who appear to the Agency to have a significant interest in matters likely to be affected by the manner in which the Agency carries out any of its functions in the region of the advisory committee in question.
- (5) The duty imposed by subsection (1)(a) above to establish and maintain advisory committees is a duty to establish and maintain an advisory committee for each area which the Agency considers it appropriate for the time being to regard as a region of England and Wales for the purposes of this section.
- (6) It shall be the duty of the Agency, in determining the regions for which advisory committees are established and maintained under this section, to ensure that one of those regions consists wholly or mainly of, or of most of, Wales.
- (7) For the purposes of this section, functions of the Agency which are carried out in any area of Scotland, or of the territorial sea, which is adjacent to any region for which an advisory committee is maintained, shall be regarded as carried out in that region.
- (8) Schedule 3 to this Act shall have effect with respect to advisory committees.
- (9) In this section:

“advisory committee” means an advisory committee under this section;

“approved membership scheme” means a scheme, as in force for the time being, prepared by the Agency and approved (with or without modification) by the Secretary of State under Schedule 3 to this Act which makes provision with respect to the membership of the advisory committee for a region.

EXAMPLES OF REPAC ANNUAL REPORTS

ANGLIAN REPAC: 2004–05

Chairman's Foreword

“Adviser”, “Networker” and “Critical friend” are the three key roles performed by the Committee. Over the last year we have continued to offer constructive advice to the Environment Agency on national issues, and on those facing the Anglian Region. We have also contributed to other regional bodies, for example through our comments on the draft Regional Economic and Spatial Strategies. Raising environmental awareness through those represented by the Committee has also been a priority, especially in relation to the issues surrounding natural resources and waste.

Recent national surveys have underlined the need for the Environment Agency to continue to promote awareness of its role, understanding of its work, and trust in its remit. REPAC has an important role to play in all these areas. For example: we promote new environmental concerns through our networks; we help sharpen thinking on “what” and “how” to regulate through our advice to the Environment Agency; and by posing challenging questions we help the Environment Agency develop powerful arguments.

I would like to thank all those staff and members who have supported the Committee over the last year. We shall particularly miss Andrew Dare, who retired as Regional Board Member, and Julia Barrett and Erica Baldwin, who have moved on from the Regional team. Our emphasis on using sub-groups to focus attention on specific issues has also made heavy demands on many Members: I am very grateful to all those who provide their time and expertise to benefit the Environment Agency—and the environment.

Sustainable Communities

We welcomed the Environment Agency's full involvement in the debate over the Thames Gateway, Milton Keynes & South Midlands, and M11 London-Peterborough Corridor. These “Growth Areas” pose huge challenges for soil and water resources, air quality, waste and wastewater management, flood risk management and the provision of green space. We asked for high standards of water and energy efficiency to be set for new homes, and for environmental impacts to be minimised during construction. We also highlighted the need: for industry awareness; to involve water companies in development plans; and to secure funding for environmental infrastructure.

These themes were also reiterated in responses to the draft Regional Economic and Spatial Strategies. We stressed the need to integrate environmental thinking into all policies (eg to ensure that they are “proofed” against climate change), and highlighted the economic benefits associated with a high-quality environment. Environmental objectives, targets and performance indicators also need to be established, alongside those for the economy and society.

Climate change

We endorsed the Environment Agency's Regional Climate Change Strategy and offered comments on the review of the Government's national strategy. We emphasised the need for better “climate change proofing” of legislation and policy. We also sought more “joined-up thinking”: promoting the recovery of energy from waste, developing renewable feedstocks as alternatives to those derived from fossil fuels, and reviewing the issues surrounding nuclear power.

Water

We welcomed the outcome of the latest review of water company investment and pricing (“PR04”). A sub-group met to discuss some of the detailed concerns, and a letter was sent to the Secretary of State. We also continued to monitor preparatory work to implement the Water Framework Directive, and a sub-group developed a response to the Environment Agency's draft “River basin planning strategy”. Key concerns included streamlining the various water planning tools which have been developed in recent years, and taking a longer-term view.

Waste management

The last year has seen many important changes in waste regulation. Issues considered by us included the end of co-disposal of hazardous waste, the extension of waste licensing to agriculture, and the need for continued efforts to tackle unlawful waste disposal. Fly-tipping remains a particular concern. Emerging regional partnerships to tackle this problem need to be increased. Another priority is to find ways to make it easier for businesses and households to dispose of waste safely.

Regulation

The Environment Agency increasingly has to make difficult decisions regarding targets, service levels and resource allocation for Environmental Protection regulatory work. We support: a risk-based approach to regulation; focusing resources on tackling illegal operators; and minimising the regulatory burden for those businesses which show high environmental standards.

Sustainable farming and food

We commented on the Environment Agency's draft Soil Strategy, stressing the need: to obtain better data on soils; to give stronger emphasis to all aspects of soils (not just agricultural productivity) in planning policy; and to protect soils during development and construction work.

The Environment Agency won funds during the year for a six-month pilot project, focused on irrigators in the Middle Level, to collate and demonstrate good practice in sustainable water management. We welcomed this initiative, recognising that the findings would have relevance for the future development of the strategically-important salad and root crop sector in the Region.

Alan Woods

Chairman, Anglian REPAC

NORTH WEST REPAC: 2004–05

Chairman's introduction

This has been a challenging and interesting year for REPAC, with water, waste and climate change playing a large part in committee discussions. We recognise that a better quality of life depends largely on a healthy environment and this has increasingly been reflected in much of our advice to the Environment Agency.

The Water Framework Directive is a challenging and exciting piece of European Legislation that will affect our rivers, lakes and streams, groundwater, estuary and coastal waters. During the year we received reports on the work of the Ribble Project, initially researching methods for "Public Participation" in the planning process to influence European guidance and then moving on to "test" guidance on other issues such as cost/benefit analysis. We also saw the release of the River Basin Characterisation pressures and impacts maps and responded to the Environment Agency's River Basin Planning Consultation "Water for life and livelihoods".

The Landfill Directive came into effect in July 2004, when the co-disposal of hazardous wastes with non-hazardous wastes in landfill sites across the UK was no longer permitted. We were pleased to receive reports of no significant increase in illegal activity involving hazardous wastes, and are confident that the Environment Agency will remain vigilant, targeting resources at potential illegal activity.

Following the Financial Management and Policy Review in 2003, the Environment Agency initiated a review of formal stakeholder engagement, including Committees. Considerable discussion focussed on the role that regional Committees should play. One of the key issues was the contribution of Committees to policy development and consultation. It was concluded that REPAC is best placed to provide advice on the regional implications of policy and to have more of a focus on regional issues. This shift in emphasis will mean that we will be considering far more regional topics and would welcome communications and input from the region's stakeholders.

Periodic Review of Water Company Price Limits

The Committee continued to provide input to the Periodic Review of Water Company Price Limits. We fully supported the Environment Agency's environment programme for the North West region's water industry investment between 2005 and 2010. These are the plans for United Utilities' investment programme to deliver major improvements for communities and the environment in our region, and to meet the requirements of statutory EU and domestic law.

Members were concerned when Ofwat's final determination on price limits was published in December 2004 and reduced the region's required schemes for the next five years from £3.2 billion to £2.4 billion. Ofwat's proposal to limit the average increase in regional household bills over the five years was welcomed. However, the exclusion of improvement projects from United Utilities' plan was not acceptable and we were very disappointed with this response.

Climate Change

The Committee received a review of the UK Climate Change Programme and were invited to comment on the Environment Agency's position, mitigation and adaptation issues and the impact of climate change at a regional and local level. Members commented that the Environment Agency should play a part in contributing to the national debate. At the regional level, the Environment Agency should be an integral part of delivery on climate change policy to reduce greenhouse emissions and cope with the unavoidable impacts.

Derelict and contaminated land in the North West

The Committee was updated on the role and responsibility of the Environment Agency in promoting the regeneration of disused, underused and neglected land in the North West. The involvement by the Environment Agency at an early stage in the regeneration proposals to influence development policy was endorsed, as were the established links with other regional regeneration partners. We commented that all regeneration projects need to be focussed on the social and environmental outcomes, should take account of the principles of sustainability, and ensure the costs are justified by the benefits.

NETREGS—Information for Small and Medium Sized Enterprises

The Committee was briefed on the development of NetRegs as a web based UK-wide resource. The rise in the amount of environmental legislation prompted the development of the Environment Agency's NetRegs to help small and medium sized businesses understand their environmental obligations. The Committee recognised that the way forward was to promote and publicise NetRegs as sources of clear and consistent information.

Sustainable Development- review of position involving diverse groups and organisations in the North West

The Environment Agency has an explicit duty for sustainable development and the Committee was asked to consider several questions which could be summarised as "what more could the Environment Agency do in the North West?". Members believed that the Environment Agency should be involved in sustainable development in its widest sense, although there was a concern that there was a danger of it becoming too diffuse in some of its activities. Working with partners was seen as the key to achieving environmental improvements and ensuring that sustainable development is embedded in the region's planning, policy and development.

Environmental Protection Core Regulation: 2004–2005 Service Levels

The Committee was invited to comment on the pressures facing the Environment Agency through reduced income, and the need to deliver an increasing workload and new duties. REPAC supported the Environment Agency approach to dealing with the increased pressures through a programme of efficiency measures and risk based options, such as Operator and Pollution Risk Appraisal (OPRA). The Committee also supported increased funding for frontline operational delivery, particularly for the targeting of illegal activities.

Operational Monitoring Report

Each year REPAC receives a report which highlights achievement by the Environment Agency's North West Region against some of the performance measures for the year. We are pleased to report that the region has performed well with progress being made in its regulatory effectiveness, particularly in the Process Industry sector. There has also been considerable success with environmental outcomes. These include continued achievement against the mandatory standard for bathing water compliance and a slight increase in the quality of our rivers and canals as reported for 2003. The region has also performed well against its Customer Charter standards and remains on track for achieving its own environmental management targets.

Renewable energy

Members were invited to comment on the Environment Agency's involvement with the development of renewable energy at a regional level. The Committee recognised that the Environment Agency can play a significant role in the development of the renewables sector and thereby contribute to greenhouse gas emissions reductions. The Committee noted that to achieve the region's renewable energy target would require offshore wind, electricity fuelled by municipal solid waste and energy crop schemes. Members also made the point that generating electricity from nuclear energy is a carbon-free technology and believed that nuclear power should be considered as an option in limiting climate change.

Site visit

In April 2004, the Committee visited the Ribblesdale works of Castle Cement. Members had the opportunity to see the wet and dry kilns in operation, and this provided the Committee with an excellent opportunity to understand and appreciate the various stages of cement manufacture. The Committee members were impressed with the technology and automated processes at Ribblesdale, and gained a good understanding of the challenges and environmental issues associated with this product.

Derek Norman
Chairman, North West REPAC

NORTH EAST REPAC: 2004–05

Chairman's Foreword

It is a huge pleasure for me to introduce the annual report of the North East Regional Environment Protection Advisory Committee (REPAC) for 2004–2005. As its new Chair, I took on the “baton” on 1 April 2005 from Ian Bonas, who served the committee well since its inception. I myself sat on REPAC several years ago representing land-based industries and after a break it is great to be back contributing, as we do, by informing the Environment Agency of our views.

I am pleased with where I find the committee in 2005, though I think the work to be done in the next few years will be challenging. I am sure that many of the issues that we will tackle will be difficult as they involve cultural change in many places within our society. The topic that most epitomises this is of course climate change—which I know many of my committee members feel strongly about.

REPAC will continue to add value to the debates of the day, looking for regional angles on national and international issues and giving candid advice to the Environment Agency and the various departments of government when it feels the need.

1. *Introduction*

North East REPAC was set up nine years ago by Parliament. It has a general remit covering all of the Environment Agency's functions, but deals mainly with environmental protection issues.

We are led by a Chairman appointed by the Secretary of State for the Environment, Food and Rural Affairs and consist of 20 Members appointed by the Environment Agency. The members come from various interest groups including industry, local government, agriculture, waste and the environment sector. The Chairmen/lead members of the Area Environment/Contact groups attend all meetings as co-opted members.

We meet quarterly and are sometimes helped out by single-issue sub-groups for example Water Framework Directive Sub-Group (see 2.2.1). The membership of these groups is usually drawn from all of the regional statutory committees. The value of these sub-groups has been recognised by the Environment Agency as an effective way of examining complex issues in more detail.

Throughout the year we have continued to review our work to reduce the time spent on national issues and to focus increasingly on the regional implications of those issues and/or purely regional matters. We would like to congratulate the Environment Agency for its support in this successful move. The new approach has encouraged greater member involvement and participation. The fact that the Agency encourages its REPAC members to take a lead role in agenda items is much appreciated and welcomed. We are also pleased with progress made in reducing the amount of paper at meetings and also efforts to simplify committee papers by using plainer language.

We remain concerned at the general under-representation of Local Authorities at meetings, especially as the strong connection between the Environment Agency's work and development issues like the Regional Economic and Spatial Strategies become more evident. However, there are signs that local authority member attendance levels are on the increase and this is welcomed.

The tight guidelines for recruiting/retention of committee members means that the make up of the committee is changing regularly (currently there are only four members on the committee who have served for four years or more). We are fortunate that the quality of all the members, including the recently appointed ones, is excellent, but there is a limited pool of talented people who are willing to give up their time free of charge to serve on Committees like REPAC. Those that do, deserve the highest praise for their continuing support.

This report covers five meetings from 20 April 2004 to 19 April 2005. Some key messages are listed for each main item. These have been summarised to a degree and do not represent our advice in full. More information is available from the minutes of the meetings and the relevant minute numbers are provided for reference.

2. *What we have done during the year*

(a) Themes

At our meeting in January 2004, we considered a list of issues that could provide topics for debate in 2004–05 and beyond. After a voting process, we voted on our “top 5” priorities. Some of these issues, along with others arising from national items, have been dealt with as themes for meetings. Our feedback is summarised in the following paragraphs in the form of a number of key messages. Links to the Environment Agency’s environmental themes are indicated in brackets.

2.1.1 *Human health and the environment (better quality of life)*

This was the theme for the April 2004 meeting (Minute 19/04). Views were sought on health and environment issues to be addressed by the Environment Agency and on opportunities for working with others. The Deputy Regional Director of Public Health (Yorkshire and the Humber) was present and gave an outline of current regional health structures.

Key messages (Health and the environment)

We believe that:

- Role clarity and success measures in this area of work are vital;
- Finding the money to extend into health protection could be an issue when money is generally tight;
- A Regional Health Forum at officer level is a good idea;
- The two Environment Fora in the Region need to be involved in the health debate.

2.1.2 *Waste management (wiser, sustainable use of natural resources)*

This was the theme for the July 2004 meeting (Minute 35/04). In October 2004, we followed this up with a visit to a landfill site and waste recycling centre near York. One of our members, Malcolm Mundy, led on this item by giving his perspective on waste management. The discussion centred on use of waste as a resource and better waste separation and recycling.

Key messages (Waste management)

We believe that:

- Better communications is needed with the general public
- The Environment Agency should work with other agencies to raise the profile of disposal and recycling;
- Innovation and research into new technologies must be encouraged;
- Goods should be better designed for recycling and reuse;
- A carrot and stick approach is needed to minimise waste produced;
- There should be better kerbside collection facilities;
- There should be stronger enforcement and higher fines for flytipping;

We noted with pleasure that the Ridings Area Environment Group initiated, and continues to promote, a “Flytipping Summit” bringing together in a collaborative forum all of the local authorities and many other agencies who have an interest in and/or responsibilities for preventing flytipping. This summit was addressed by Barbara Young and is showing very encouraging consequences in terms of increased collaboration between the agencies to improve the ways that flytipping is addressed.

2.1.3 *Biodiversity (an enhanced environment for wildlife)*

This was the theme for the October 2004 meeting (Minute 49/04). We noted the Environment Agency’s statutory role and its obligations under the United Kingdom Biodiversity Action Plan. Progress in delivering this had been slow due to funding shortages.

Key messages (Biodiversity)

We believe that:

- Non-Site of Special Scientific Interest areas with potential for biodiversity gain must not be ignored;

- Better collaboration and partnership is needed between bodies involved in biodiversity eg in the way they collect and store and share data;
- Local Government/National Parks authorities should be encouraged to do more to promote biodiversity;
- Better links are needed with schools to promote the biodiversity message to young people;
- Public involvement and understanding of the term biodiversity needs to be strengthened by better communications.

2.1.4 *Climate Change (limiting and adapting to climate change)*

This was the theme for the January 2005 meeting (Minute 7/05). We considered a report on issues linked to the Climate Change Programme. We recognised the enormity of the subject and the need for long-term global action.

Key Messages (Climate change)

We believe that:

- Climate change is a global problem that needs effective national and international leadership;
- Better communications are needed at all levels to get the message across to the public;
- Personal responsibility towards lower energy consumption should be encouraged;
- There is a need for better public transport in urban and rural areas;
- There should be more incentives to encourage change in environmental performance;
- The growth potential of developing economies needs to be recognised as a factor;
- Export of United Kingdom expertise in renewable energy and low carbon technologies should be encouraged;
- There should be better integration at a European level to deliver climate change reductions.

2.1.5 *Minewaters (improved and protected inland and coastal waters)*

This was the theme for the April 2005 meeting (Minute 20/05). We were informed of the extent of the problem in the Region and the remedial work that has been carried out or is planned. This is a big problem and we expect to look at this again in the future. In the meantime, we will be visiting some sites in South Yorkshire to gain a better understanding of the problem.

Key messages (Minewaters)

We believe that:

- Money should be made available for funding discharges from metal mines as it is for coal mines;
- Landowners should be compensated for clean up work following outbreaks of minewater pollution;
- People affected by minewaters need to be informed and consulted in a variety of ways especially via the local press and existing consultative meetings;
- New developments like opencast schemes should include features to assist in the collection, abstraction and treatment of minewaters.

(b) Other Items

In addition to the “themes”, we have considered a few national and regional issues. The principal ones are summarised in brief below:

2.2.1 *Water Framework Directive (Minutes 48/04 and 4/05)*

REPAC is part of a joint committee sub-group to comment on the Water Framework Directive, the biggest piece of European Commission water legislation to date. The group met on 11 November 2004 to comment on maps assessing the pressures and impacts on the water environment and on 25 February 2005 to comment on River Basin Planning Consultation. Detailed comments have been submitted to the national team coordinating the Environment Agency’s input and we were pleased with the feedback received and to note that many of our comments have been put into practice by the Agency.

2.2.2 Charges 2005–06 (*Minute 5/05*)

We commented on the Environment Agency’s proposals for an increase in its charges for 2005–06. Though we noted the reasons for the increases, we were concerned about several aspects including:

- The harmful impact on industry’s ability to compete;
- The need for more openness on how efficiencies are worked out and costs measured;
- A need for a change in thinking in the Agency regarding costs and efficiencies. Many of the industries regulated by it have faced rising standards/requirements for several years despite reducing incomes and have successfully made big reductions in costs yet the Environment Agency attitude still seems to be “if you want us to do more then we need more money”. This is not a sustainable position;
- The absence of a split of the sums raised by Environment Agency regions;
- A general concern about the continuing rise in the cost of regulation despite better environmental performance by regulated companies.

2.2.3 Modernised Environmental Penalty Regimes (*Minute 21/05*)

We commented on and broadly supported proposals for more flexible environmental penalties. We particularly liked the idea of a fund for environmental work and the fact that good performers will benefit from the proposals.

2.2.4 Regional Contentious Issues (*Minute 24/04*)

We received a report and strongly supported the Regional Director in his handling of the so-called “Ghost Ships” issue. We will receive further reports on this issue at future meetings.

(c) Forward Look 2005–06

The following items are in the programme for 2005–06:

<i>Date</i>	<i>Item</i>	<i>Regional/National</i>
October 2005	Improving Air Quality	National/Regional <i>Special Topic</i>
	Habitats Directive—Review of Consents	Regional
	Consultation on final proposals for revised abstraction charging scheme	National
	Sustainable Communities and Sustainable Construction	National
January 2006	Waste Strategy	National <i>Special Topic (provisional)</i>
	Diffuse Pollution	National/Regional
April 2006	Working with Agricultural Industry	National/Regional <i>Special Topic (provisional)</i>

Note:

- (i) Water Framework Directive: Updates are submitted to each meeting. More detailed work is being undertaken by a Joint Committee Sub-Group.
- (ii) Corporate Strategy: “Creating a Better Place”: This is being considered by a Joint Committee Sub-group in September 2005. Its report will be presented to our meeting in October 2005.

Ian Brown
Chairman, North East REPAC

Memorandum submitted by Eunomia Research & Consulting

EXECUTIVE SUMMARY

In response to your request concerning the Environment Agency inquiry we offer the following plus the willingness to submit oral evidence on these issues. The scope of the evidence presented here addresses, in part, the following terms of reference:

- Concerning how successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities;
- Its relationships with Defra, Defra sponsored bodies and the rest of government, including the Agency's role in the planning system;
- The Agency's relationship with non-governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services.

These issues are addressed principally as they relate to the issue of waste policy, management and regulation. It is argued that the Environment Agency has overstepped its remit in the domain of policy formulation, significantly muddying the water in respect of the responsibilities of Defra and the Environment Agency. Furthermore, it is argued that Environment Agency research appears to proceed, at times, in a manner which shows limited appreciation of the policy context, and indeed, at times seems to undermine it. Finally, in areas where Defra appears to have ceded responsibility to the Agency (for reasons that are not always clear), the unfortunate consequence has been that resulting policy and guidance has been unsound.

RELATIONSHIPS WITH DEFRA AND RESPONSIBILITIES FOR POLICY DEVELOPMENT

1. The area of waste management policy has been one of quite considerable change in recent years. The review of the Waste Strategy by the Strategy Unit, which reported at the end of 2002, highlighted the complexity of (and resulting confusion from) arrangements for developing policy in respect of waste. As well as pointing out that responsibilities were being invested in two departments—DTI and Defra (and it might have added that ODPM has a significant role also in respect of local authorities and waste planning), it highlighted the fact that the Environment Agency was becoming involved in policy debates:

As well as DTI and DEFRA, the Environment Agency has also taken a role in trying to clarify policy. Whilst this is understandable, it adds to confusion. DEFRA and the Environment Agency need to work together to ensure there is a clear interpretation of EU waste policy from DEFRA, and the Environment Agency needs to play its role in ensuring this interpretation is used consistently in the provision of advice across regions.

2. In our experience, the relationship between Defra and the Environment Agency has not always recognized the increasingly political role being played by the Environment Agency, even as Defra itself—supposedly—retains responsibility for the majority of the development of waste policy. This is leading to a situation where Environment Agency staff are effectively pursuing agendas which are not always aligned with stated Government policy and objectives, frequently seeking to support their case with research which is ultimately supported (financially) by Defra.

CONCERNING AGENCY RESEARCH AND GUIDANCE

3. There are a number of instances one could site of the Environment Agency over-stepping the mark—frequently to the embarrassment of Defra staff (and sometimes to others within the Environment Agency)—in respect of their public pronouncements on policy and guidance in relation to waste management:

- Following two studies—separated by several years—of the potential impacts of composting facilities on health, the Environment Agency issued Guidance on the distance which should separate residential properties and compost facilities. This study was based upon the assumed desirability of achieving limits which were below the background levels measured in many of the recorded measurements. This Guidance has led to a heightened degree of stigma surrounding planning applications for compost facilities. There is also clearly inconsistency in the Guidance. We are not aware, for example, of a need to ensure that incinerators are located at sites where no citizens are exposed to above background levels of emissions such as sulphur oxides, oxides of nitrogen, particulate matter, secondary particulates, etc even though it is known that incremental changes in concentration of these pollutants do have impacts upon health;
- The recent fun and games surrounding the Environment Agency's announcements concerning the relative performance of disposable nappies and re-usable nappies was interesting for a number of reasons. The first was the fact that the research was based around a small number of responses from households as to how they use their re-usables; the second was the fact that the research was done at all at the time (given that WRAP had already been given responsibility to increase use of reusables); the third was the apparent silence on the part of Defra as regards the quality of the work or its implications for their plans for household waste reduction. This left the impression amongst

most people involved in waste management that the Environment Agency was intervening in policy matters in a completely uncontrolled manner—a sort of loose cannon over which Defra had lost control.

4. What concerns us is that the Environment Agency seems keen to grab headlines at any cost. One has the impression that the attitude is that “any news is good news”. The Environment Agency would appear to spend considerable sums of money on corporate communications, policy matters, and various head office functions. Not all of this expenditure appears commensurate with the role the body is supposed to play, and it would be interesting to know how much of those costs are recovered through charges levied upon industry (which are intended to cover the costs of regulatory functions).

5. In terms of research, the majority of Environment Agency research in respect of waste continues to be dominated by two themes: landfill and life-cycle assessment (LCA). The prominent position of studies on landfilling reflects a somewhat backward looking Environment Agency. As for the work on life-cycle assessment, the manner in which this has developed would appear to have been left very much for the Environment Agency to determine, with little or no input from Defra. The Environment Agency’s use of LCA to influence policy debates, and to seek to have its own LCA tools used in (for example) developing municipal waste management strategies has already had significant consequences, and it is our view that this programme of work needs to be monitored far more closely than it has been by Defra. The recent decision to abandon the concept of Best Practicable Environmental option (BPEO) in the Waste Strategy was a welcome move, and one which was partly influenced by ongoing frustrations at the clear possibility to make a case for anything to be the BPEO, and in particular, the lack of transparency in the life-cycle modeling often used in presenting cases for BPEO. Notwithstanding the desire of ODPM to see greater transparency in decision making, Environment Agency work on a successor to the seriously flawed WISARD model continues apace, even though no obvious use for the tool exists. (The revised Waste Framework calls for more by way of life-cycle thinking, but quite clearly stops short of recommending full-blown life-cycle assessment, which is frequently at odds with other approaches to assessment, including, for example, cost-benefit analysis).

6. Finally, in respect of research, the Environment Agency’s work in setting up the New Technologies Data Centre has been somewhat troublesome. The Environment Agency’s Waste Technology Data Centre website claims that:

- The Waste Technology Data Centre gives the facts on how waste treatment technologies work, as well as how much they cost to build and maintain.

7. It claims to provide:

- impartial information on the regulation, authorisation, performance and costs of waste management technologies and their overall environmental value.

8. The site shows marginally more than 20 technologies have been studied (the cost of this would be interesting to know), few with complete or informative details.

9. Amongst the technologies considered, the site looks at incineration. Evidently, this is a sensitive topic in the UK context. The data on costs (shown in full at Annex 1) for one facility suggests a cost of £15.37 per tonne. No one with any knowledge of the industry seriously expects an incinerator to cost just £15.37 per tonne today. It is not clear what the Environment Agency really believes this information should be used for.

10. Also, some interesting footnotes appear under the study concerning incineration, which many non-governmental groups might take issue with:

I regard this process as the reference point by which all other disposal routes for municipal waste should be assessed. The process offers a “one stop shop” in other words the unsorted and untreated waste enters the plant and is reduced to ash and energy only, no further processing is needed. The process and its technology is well established, reliable and cost effective. It suffers two main weaknesses:

- Public acceptability.
- Low overall thermal efficiency.

With respect to 1) above, a modern incinerator unlike its forbears is in air pollution terms a clean process. The degree of containment achieved by a modern plant is potentially exemplary and ensures litter and odours are both held within the confines of the building. In recent years architects and engineers have worked together to enhance the aesthetics of the plants, a number have been nominated for design awards and plume and cooling tower releases may be heated so as to minimise adverse visual impact. It is revealing as to how several of the newer plants remain unrecognisable by a proportion of the local population. Despite all of the above the prospect of building an incinerator is virtually guaranteed to provoke considerable, often impassioned and at times illogical opposition. This needs to be accounted and budgeted for.

11. The comments are highly subjective and are some distance from being impartial. This is one of the least partial comments on the Data Centre website, though the quality (and relevance) of the information provided in respect of many of the technologies presented is similarly poor in many cases. Finally, the technologies presented are a strange mix of the untried and untested, and the technologies which have some

operational track record. It is not at all clear how the choice of technologies was prioritized (if indeed they were) by those carrying out this research. Sadly, therefore, this is a resource which one would like to be able to point local authorities towards, but one cannot do so in any good conscience because the research is so partial, both in substance and in tone.

12. Recent comments from another Environment Agency official suggests a clearly unfavourable disposition towards biological treatment technologies. Perhaps this is one reason why the Environment Agency's proposal for monitoring the performance of MBT facilities for the purposes of the Landfill Allowances Trading Scheme has been protracted, full of uncertainties (which tend to be translated into additional costs in the context of tendering processes) and liable to impose significant additional costs in terms of monitoring of such facilities. It is to this issue which we now turn.

CONCERNING THE LANDFILL ALLOWANCE SYSTEM

13. The Landfill Directive attempts to limit the environmental impacts associated with landfill, specifically from the degradation of biological material. The Environment Agency is charged with being the monitoring authority for biodegradable municipal waste being sent to landfill.

14. One key problem with the whole system arises from the Agency's decision that 68% of any authority's municipal waste is biodegradable and that any biodegradable recycling is deducted from the authority's calculated biodegradable tonnage. Because of this, if an authority can target 1 additional tonne of biodegradable municipal waste for recycling/composting that did not previously enter the waste stream then 0.32 tonnes will be deducted from the authority's accounted tonnage of biodegradable waste set to landfill (even though the actual quantity has not been reduced). Consequently, this system encourages authorities to reduce the arisings of inert materials and perversely instead to increase arisings of biodegradable elements (for example by targeting trade recycling or what would have been managed in the garden through home composting). These two factors together mean that residual waste, which for the most part is currently landfilled, is allocated a biological content for accounting in the LATS system which may be radically different to the actual content. The Agency's approach falls short of the mark for guaranteeing compliance with the European legislation.

MONITORING PERFORMANCE OF MBT SYSTEMS

15. For reasons which remain unclear to us, Defra also ceded to the Environment Agency responsibility for monitoring the contribution of MBT systems to "diversion" of biodegradable municipal waste from landfill. This was a strange decision given the highly political nature of the decision. The Environment Agency guidelines¹⁸ on pre-treatment processes seek to quantify the degree to which the biogenic methane potential in input waste sent to an MBT process is eliminated prior to any subsequent landfilling of the residues. The approach attempts to estimate the equivalent amount of untreated BMW that would give the same biogas production as the landfilled MBT treated output. Continuing the mass balance calculation, the guidance document goes on to evaluate an "MBT reduction factor" which is the degree to which a facility reduces or eliminates the biodegradable element of the input waste. It does this with a series of aerobic and anaerobic tests. In doing so, the Agency appears to be labouring under a serious misapprehension that a biological treatment facility, which acts through the degradation process as it affects biodegradable materials, will, under a given range of operating parameters, always lead to the same level of reduction in biodegradability. Consequently, any such reduction factor which is intended to characterize a process would be expected to vary with:

- The composition of the biodegradable fractions, which will tend to be quite variable, both from one day to another, and across seasons;
- The residence time of the material in the process concerned;
- Operational parameters employed, such as airflow through the biomass in the case of aerobic processes, or the level of particle size reduction achieved in anaerobic processes.

It is quite possible to avoid this mess, and the potential to reduce the flexibility of processes to achieve varying levels of reduction over time, by concentrating on the outputs only. What is of interest, after all, is not the degree to which a process achieves a greater or lesser reduction in biodegradability, but how much biodegradable waste is landfilled. The Environment Agency guidance monitors for "the diversion of biodegradable municipal waste from landfill". But progress towards Landfill Directive targets might be more readily monitored by measuring the biodegradable content of what is landfilled. This, after all, is what landfill allowances are issued for, and what needs to be understood to assure compliance. Where direct methods can be used, presumably, they should be.

¹⁸ Guidance on monitoring MBT and other pre-treatment processes for the landfill allowances schemes (England and Wales), Environment Agency, August 2005.

COMPLIANCE WITH THE LANDFILL DIRECTIVE

16. Is there any benefit in multiplying an inaccurate biological tonnage by an MBT performance factor which itself is likely to be expensive to define, inaccurate where there is a changing flow of material and operating conditions, and potentially falsifiable? This cannot in any way give an accurate indication of the biological content of the output from such facilities. Our compliance with the European Landfill Directive is not going to be guaranteed by costly testing for evaluating MBT facilities, it is much more at risk of falling down due to the higher level (backward) methodology within the LATS calculation. That is not to say that MBT facilities should not be subject to critical environmental evaluation (especially where it would encourage competition), but the testing regime as established does not deliver the desired environmental objectives or the legislative mandates.

17. The Agency approach loses sight of what it is that MBT processes seek to do where they are used as pre-treatment processes prior to landfilling the material. Such processes do not only affect the potential of the material to generate methane in landfills. They also affect pH, leachate, etc. Hence, whilst, for the purposes of measurement, and for the purposes of allowing flexibility across different treatments, it may seem attractive to seek to measure the loss in biodegradability on a continuous scale, in practice, there may be benefits to restricting this flexibility to those treatments which reduce biodegradability below a specific threshold. Setting such a threshold standard would enable the material being landfilled to be handled in a different manner to raw residual waste with some degree of confidence. Amongst other things, the lay-out of gas collection infrastructure could be adapted to the nature of the wastes being received, and the nature of cover materials could be chosen to minimise the emission of methane from the cells where only pre-treated waste was accepted.

18. Material in landfill generates methane under anaerobic conditions. Since anaerobic decay is a slow and complex set of biological processes, anaerobic testing takes a long time and is particularly costly. Aerobic decay, and consequently testing, is much quicker, easier to conduct and considerably cheaper. The Agency guidance seeks to correlate an aerobic with an anaerobic test. Yet material treated for just a few days will behave more like stable material if using aerobic tests as the readily degradable carbon will have been lost, but anaerobic emissions (in landfill but also in laboratory tests) will reveal a much higher remaining biodegradable potential. This is why correlation between the two types of test is so difficult. These tests are likely to correlate better at high levels of stability (another argument for setting a minimum threshold of stability for MBT processes where some residue is landfilled). Even so, the guidance document does posit a correlation, and the evaluated performance of an MBT system relies heavily upon this. Unsurprisingly, the correlation comes with no proof of the accuracy or sensitivities. Lower in the paper, the specified test substance which the Agency requires should be used to calibrate testing is given a value for both the aerobic and anaerobic tests. It is, then, interesting to note that the two values lie 70% off the suggested correlation plot.

19. What this implies for the industry and for the UK's attempts to comply with the Landfill Directive is that costs are likely to increase as a consequence of this Guidance. There are two reasons for this:

- the first is that the testing regime is unnecessarily onerous. If the Agency believes that a correlation exists between aerobic and anaerobic tests, what is the point of demanding that both tests be carried out? Surely the lower cost test should suffice?
- the second point is that because the Agency has proposed the use of the more expensive biological methane potential test, then precisely because this test is not widely used, those technology suppliers involved in tenders which require minimum performance in terms of landfill diversion find that they cannot demonstrate this to the confidence of those procuring technologies, nor would-be financiers. As a result, costs escalate, and it becomes very difficult indeed to adjudicate on tenders for the provision of services to local authorities.

20. This is regrettable since MBT technologies are a) widely used elsewhere and b) likely to be capable of being constructed with shorter lead-times than most other residual waste treatment technologies. The additional costs and doubts which the Environment Agency's guidance and public pronouncements have implied seem likely only to deepen the crisis facing the UK in respect of meeting Landfill Directive targets. This strategic perspective seems to have been somewhat absent in the way this particular affair has been handled by the Agency, and by extension, by Defra.

Annex 1

WASTE TECHNOLOGY DATA CENTRE—COSTS AND REVENUES FOR INCINERATION
(OUR EMPHASIS)

Costs and revenues

Costs

Based on Tonnes per annum plant

Capital cost £51 million (at April 2006)

Depreciation period (Years): 15

Operating costs £/ te
 Capital: £20.23
 Staff: £6.97
 Raw Materials: £0.65
 Maintenance: £8.49
 Utilities: £0.54
 Fuel: £0.38
 Waste disposal: £3.93
 Total cost/te Input £41.19
 Revenues (£/te)
 Materials £6.00
 Nutrients £0.00
 Electricity £19.82
 Heat £0.00
 Total Revenue /Te Input £25.81
 Net cost (£/t) £15.37
 Land take (m2)
 Necessary:
 Actual:
 Reference plants:
 UK:
 Edmonton, London
 Cleveland
 Kirklees
 Isle of Man
 France:
 Approx 40EfW plants (Novergie)
 Eunomia Research and Consulting

December 2005

Memorandum submitted by Countryside Council for Wales

INTRODUCTION

1. The Countryside Council for Wales is the Government's statutory adviser on sustaining natural beauty, wildlife and the opportunity for outdoor enjoyment in Wales and its inshore waters. It champions the environment and landscapes of Wales and its coastal waters as sources of natural and cultural riches, as a foundation for economic and social activity, and as a place for leisure and learning opportunities. We aim to make the environment a valued part of everyone's life in Wales.

2. This submission will not cover all of the issues within the set terms of reference, but aims to clarify the CCW's working relationship with the Environment Agency and related issues. Our comments arise from two perspectives; from that of an executive and advisory agency working within the existing legislature and from dealing at first hand with the Environment Agency and Environment Agency Wales. While CCW's focus is on environmental legislation, now largely emanating from Europe, our powers are derived primarily from Westminster legislation, and our strategic agenda is guided by the priorities identified by the Welsh Assembly Government. It is also noted that the committee inquiry relates to the Agency's work in England and Wales, although the terms of reference do not include consideration of working arrangements with the CCW, as the equivalent to Natural England in Wales.

THE STRUCTURE, GOVERNANCE AND ACCOUNTABILITY OF THE AGENCY

3. CCW, the EA and EAW have a close interface with strong working relations, although both agencies have distinct but complementary roles in delivering Government objectives. It is important to recognise that the focus of EA's activity is much more regulatory than that of CCW. It does not have the same focus on nature conservation, landscape and encouraging enjoyment of the countryside that CCW's statutory responsibilities require.

4. The EA and CCW collaborate effectively on a number of key issues, and have a role to play in facilitating the shift towards a more integrated approach to delivery of shared objectives as outlined in Making the Connections and the wider Public Service Reform programme. Joint working has increased, particularly on agricultural issues such as catchment sensitive farming and diffuse pollution, although there are possibilities for further combined working in support of the achievement of common objectives.

5. The EA is split into eight regions UK wide, with EA Midlands responsible for administration within part of Wales. This means that CCW works primarily with EAW and EA Midlands. Current structural arrangements therefore do not reflect geographical or political boundaries (post devolution). Although it is acknowledged that environmental management requires an integrated approach and the adoption of common standards across administrative boundaries, current arrangements can be problematic in terms of cross-border differences in the legislative framework, policy and strategy priorities, approaches to implementation and related issues such as mechanisms for appropriate consultation and engagement. Although the full extent of its impact is unclear at present, the introduction of the Government of Wales Bill will undoubtedly lead to an increase in volume of Welsh-specific legislation. The current disparity between the structure of the EA regions, geographical and political boundaries requires consideration in the context of current arrangements as cited and the potential impact of an enhanced devolutionary settlement for Wales. In this context it is paramount that the EA takes account of these cross border differences in the legislative framework and strategic priorities in its own approach to policy, strategy development and implementation in Wales.

THE ENVIRONMENT AGENCY'S FORTHCOMING CORPORATE STRATEGY 2006-11 "CREATING A BETTER PLACE"

6. We welcome the Environment Agency's Corporate Strategy 2006-11 Consultation, "Creating a Better Place". It is important that environmental organisations set out clear visions and priorities, and in its current guise we note the important common elements that we must mutually reinforce:

- Emphasis on adaptation and mitigation of climate change;
- Quality of life, making it clear that the environment is hugely important to people for their health and well-being;
- A stress on ecosystems and the support services they underpin, especially air, water and soils. We share EA's understanding of the "big picture" and look forward to working with the Agency in Wales to put greater flesh on the bones of the detailed associations that underpin the Strategy.

7. We recognise, of course, that in Wales we work in the context of the Assembly Government and its over-riding strategies (sustainable development, economy, Wales Spatial Plan). The most pertinent of these is the forthcoming Wales Environment Strategy, in which both CCW and EA have been deeply involved. The WES will shape the work of CCW and EAW for some years to come and we look forward to clear collaboration in ensuring that both our individual organisations' strategies dovetail together and with the WES.

Countryside Council for Wales

December 2005

Memorandum submitted by Cluttons

1. I am a partner in the firm of Cluttons, Chartered Surveyors and Property Consultants. In our management of properties we come across the Environment Agency from time to time. At present I am involved with the Environment Agency on a flood alleviation scheme. I am acting for the owner of the land and the Environment Agency are seeking to compulsorily purchase part of our client's land. I therefore believe I would come under the relationship of general public and how the Environment Agency goes about its business in acquiring land for this flood alleviation scheme.

2. Obviously I am involved in detailed negotiations with the Environment Agency's agent but would have the following comments:

- I have found the Environment Agency's attitude unnecessarily aggressive and they are very quick to resort to the threat of compulsory purchase rather than actually seeking to negotiate. This is particularly noticeable when they use the weight of the Environment Agency and the costs that they can threaten me with to bully their way through and seem to use negotiation as a last resort. Obviously as a chartered surveyor I do come across other authorities with compulsory purchase powers and would say that others are much more willing to negotiate compared to the Environment Agency.
- In consulting on this scheme in which I am involved, although environmental issues were concerned, one of the most important aspects never considered was the total cost of this scheme and whether the actual positioning of the bunding could be relocated to reduce the compensation claim. The Environment Agency in their planning never consider this and we are now in a situation that once we start talking about what compensation is payable, it is much higher because they have

failed to locate it in a sensible position in relationship to our clients land ownership. The Environment Agency are now also using the excuse that they do not have the budgetary sums to pay compensation so therefore we are having to resort to expensive arbitration.

- The Environment Agency in using their compulsory purchase powers have specific rights to enter our clients land to carry out surveys and to carry out the work. This all seems relatively straightforward. However, the Environment Agency also does appear to stretch the definition of associate work. For example, associated works can include site storage compounds and mineral extraction off our clients land. I feel this is far more than is necessarily under CPO legislation.

Cluttons

December 2005

Memorandum submitted by Oldham Metropolitan Borough Council

1. INTRODUCTION

Following the announcement by the Local Government Information Unit (LGIU) on 10 November 2005 advising of the Inquiry being conducted by Parliament's Environment, Food and Rural Affairs Select Committee, Oldham MBC has considered the eight points of detailed interest to the Inquiry included with the link provided by the LGIU. Five of these in particular have been highlighted by the LGIU as being of relevance to Local Authorities.

Oldham MBC now wishes to respond on four of the eight points of interest where the Authority has experience of working in partnership with the Agency.

The comments offered relate to experience in working with the South Area of the North West Region of the Agency and working with the Agency at National Level. The comments are included in the following:

2. POINTS OF DETAILED INTEREST

2.1 Point of Detailed Interest—"How successful the Environment Agency has been in its role as enforcer of environmental regulations and controls and how well it manages its wider range of activities".

Response—No comments offered.

2.2 Point of Detailed Interest—"Whether the Agency operates efficiently and provides good value for money".

Response—No comments offered.

2.3 Point of Detailed Interest—"The structure, governance, and accountability of the Agency".

Response—The Council has concerns about how well the Agency's Regional Environmental Protection Advisory Councils (REPAC's) are able to engage efficiently with stakeholders. The Council understands that currently there is approximately one representative on each REPAC for every five Local Authorities where Oldham does not currently have a representative on the relevant REPAC covering the northern part of Greater Manchester.

In relation to the production of area based initiatives such as "LEAPS" based upon main river catchment areas where the boundaries are often not coterminous with Local Authorities, the Council whilst accepting this does not detract from the high quality of any initiative produced, views the difference in boundaries as being unhelpful in achieving public acceptance of Agency initiatives. The Council is aware of the "City Region" concept which may allow Gershon and other efficiency savings to be delivered and suggests the Agency consider this concept as one option to define boundaries.

2.4 Point of Detailed Interest—"Its relationship with DEFRA, DEFRA sponsored bodies including the Agency's role in the Planning System".

Response—The Council can only comment in part in relation to this Detailed Point. The Council is a Member of the National Society for Clean Air and Environmental Protection (NSCA) and plays an active role in the work of the Society where the Secretariat of the North West Division is currently based in Oldham. The Society works nationally based from Brighton on an intermittent but continual basis in partnership with DEFRA who sponsor many Policy, Research and Education Projects which DEFRA would otherwise find it difficult to complete within deadlines set by external influences. In connection with this work by the Society, the Agency regularly contributes significantly on a national basis providing expert witnesses who can comment effectively on strategic air quality, air pollution control, land contamination, sustainability and waste management issues. Without this input by the Agency the quality of the Society's outputs on Projects of this type would be difficult to maintain without other public sector and private sector stakeholders duplicating areas of competence. More detail of the work of the NSCA can be accessed by viewing the website: www.nasca.org.uk which reflects particularly in the work of the Council of the Society, the contributions of individual Agency expert witnesses.

2.5 Point of Detailed Interest—“The Agency’s relationship with non governmental stakeholders and the general public and how the Agency monitors satisfaction with its services.

Response—The Council can only comment in part on this point but accepts that as a Regional Government Agency, the Agency can never appear to respond operationally to incidents of concern to the public in the same way that a Local Authority is able to. Anecdotal evidence acquired from experience in providing services to the general public within the Oldham area confirms that the public still view the Local Authority as the regulator for all environmental incidents and they do not appreciate how responsibility for regulation and partnerships have developed since the inception of the Agency in 1996. The Council is of the view that this will not be remedied on a short term basis where as an alternative to publicity and the promotion of a public image, continual implementations of partnership working arrangements with bodies like Local Authorities is the most appropriate way of providing public benefit using finite resources. In the longer term through the continual delivery of high quality services, the Council is of the view that the Agency’s competences will be recognised by community stakeholders.

In terms of the monitoring of services the Council is aware that in relation to strategic areas of work the Agency builds in the monitoring of service through all initiatives implemented.

2.6 Point of Detailed Interest—“How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Agency”.

Response—No comments are offered in relation to this point.

2.7 Point of Detailed Interest—“How the Agency’s work in improving wildlife habitats will help with Natural England’s work on Bio diversity”.

Response—No comments are offered in relation to this point.

2.8 Point of Detailed Interest—“The Environment Agency’s forthcoming Corporate Strategy 2006–11”.

Response—The Council whilst not offering detailed comments on individual details of the Strategy wishes to provide general background comments. The Council is of the view that as a regulator, the Agency performs well in answering the demands made upon it but will never be able to appear to achieve good performance in the views of community stakeholders. This is felt to be related to continual under-resourcing and historically the Agency not being able to give a high enough priority to the work of operational field officers with whom local Council officers regularly liaise. Anecdotally community stakeholders will often pass the remark that environmental policing does not appear to be visible enough.

Additionally, whilst accountability arrangements exist in all areas of public service, there do not appear to be consistent opportunities to challenge local Environment Agency Enforcement decisions as currently can occur with the regulatory role implemented by Local Authorities. This has been of some importance to community stakeholders in the past with the Waste Licensing Regime and may acquire additional community importance in relation to the transfer to the Agency from Local Authorities of certain processes now regulated under Part A2 of Pollution Prevention and Control Act 1999 (PPC) Legislation which in the future will be regulated under Part A1 of the associated Regulations.

The Council has recent experience of working regionally in partnership with the Agency on a “Working Better Together” initiative which is tackling the serious issue of criminal fly tipping using the Agency’s “Fly capture” Information Technology database. The Council views the success of this initiative as a model which could lead to the development of similar partnerships for other technical areas and sees this as a way forward to effective partnership working in the future.

Oldham Metropolitan Borough Council

December 2005

Memorandum submitted by Environmental Industries Commission

Point 1. The Environmental Industries Commission (EIC)

1. The Environmental Industries Commission (EIC) was launched in 1995 to give the environmental technology and service (ETS) industry a strong and effective voice with Government.

2. EIC now has over 290 Member Companies and has grown to be the largest trade association in Europe for the environmental technology and service sector with the support of leading politicians from all three major political parties, industrialists, trade union leaders, environmentalists and academics.

3. EIC Members operate at the front line of pollution control in the UK and therefore have regular contact with the Environment Agency at a local and national level. EIC has developed a productive working relationship with the Agency. Senior Agency staff regularly attend EIC meetings to advise ETS companies on new legislation and policy to maintain regular industry consultation.

4. EIC therefore welcomes this opportunity to comment on this inquiry into the role of the Environment Agency.

Point 2. Role and Structure of the Agency

5. The Environment Agency is now approaching ten years old. Overall EIC considers the approach of a single body tackling the wide range of duties on environmental protection has been very successful.

6. EIC has a productive working relationship with the Agency and has found it open and positive in its communications with the environmental technology and services industry.

7. Five years ago when the Agency went through its five year “Financial Management and Policy Review (FMPR)” EIC recommended that “the Agency should retain its regulatory role as the heart of its work and focus on rigorous enforcement of environmental protection regime. The Agency can then build on success in this role to act as a champion of the environment and to lead the policy debate”. EIC believes the Agency has broadly been successful since then in marrying together its regulatory role and its role as a “champion of the environment”.

8. One concern on the structure of the Agency EIC raised as part of the FMPR was the strong regional structure leading to wide differences in the way which legislation was enforced across the country. This remains a significant concern for our Members. However the Agency has made major steps forward in this area through clear central policy making and guidance to staff. A current example is the move to dedicated “Account Managers” to accompany the new system of Mobile Treatment Licences for land remediation licensing.

Point 3. Resources

9. EIC’s main concern with the role of the Agency is that it has an ever increasing range of responsibilities for environmental protection but that the funding it receives does not increase in line with this extra workload.

10. In the field of environmental protection the Agency receives Grant in Aid Funding from Defra and raises funds through fees and charges on industry.

11. Major new responsibilities for the Agency include implementing the far reaching EU Water Framework and bringing in the IPPC Directive by October 2007. Charging regimes associated with such legislation rarely cover the full costs of implementation.

12. This means severe pressure is being placed on the Agency’s ability to enforce the basic regulatory regimes for pollution control. An example is the Oil Storage Regulations which came into force fully in September 2005. Oil spills are the biggest cause of environmental incidents in the country and the new Regulations cover hundreds of thousands of oil storage tanks. Yet the funding given to the Agency for this regime was just £80,000 to cover a public information campaign. Taking this approach risks bringing the regulatory regime into disrepute as the many sites with oil tanks are not covered by any other regulatory regimes and rarely see an Environment Agency inspector.

13 *Recommendation:* Local authorities have agreed with Government a “new burdens principle” that all new responsibilities placed on them should be funded. EIC would recommend the same approach is now taken to the Agency for its growing environmental protection responsibilities.

Point 4. Risk Based Regulation

14. The Agency has set out its aim to develop risk based assessment systems to target regulatory activity effectively and to encourage industry to use environmental management systems to drive environmental improvements. Its work in this area was welcomed by the recent Hampton review of regulators.

15. These approaches are to be welcomed as maximising the effectiveness of the Agency in the face of scarce resources. However they also carry considerable risks for the credibility of the Agency. Risk based enforcement if not properly implemented could undermine the level playing field both mainstream industry and the environmental technology and services industry seek. Furthermore to the extent that a risk based approach is a response to scarce manpower and other regulatory resources, there is clearly a danger that those whose activities have not been targeted will see this as a green light to ignore or downgrade the importance of effective regulatory compliance.

16. To ensure that a risk based approach does not reduce the effectiveness of environmental regulation EIC set out the following criteria in a paper in 2002 and considers they remain valid:

- There must be a baseline for effective environmental regulation—in terms of inspectors and other staffing per regulated installation, process or activity and the frequency of inspection, irrespective of any risk; this must be set at a level which maintains the credibility of the regulatory regime in the eyes of its customers.
- There must be an enforcement policy, including prosecution, which is as rigorous in dealing with non-compliance in non-targeted areas as that applicable to the targeted areas.
- The assessment of the level of risk must be done rigorously and reviewed at least yearly, as well as whenever there are significant changes to the operation or ownership of the process.

- Environment Agency staff must be fully trained to carry out risk assessments and given the resources to carry out their work effectively.

17. The Agency has largely followed these approaches in its implementation of risk based regulation.

18. *Recommendation:* The Agency should continue to introduce risk based systems of regulation with care. Industry should be in no doubt that regulations are there to be complied with, even if they have a relatively small individual impact, and that performance as well as systems will be thoroughly audited.

Point 5. Stimulating Innovation

19. Environmental regulation is essential to the effective running of the market and, therefore, to stimulating environmental innovation. However regulation must be designed and implemented to minimise the costs and to stimulate innovation, without undermining the benefits it delivers.

20. Increasingly policy makers are recognising the need to design regulation to stimulate innovation and to recast regulations which are too restrictive. Many of EIC Members concerns with working with the Agency stem from the regulatory requirements that the Agency is required to implement. The clearest example of this is the burden placed on the reuse of many materials caused by the wide scope of the definition of waste. The Agency has first hand experience of how regulatory requirements work in practice and it is important that Defra and other Government departments draw on this expertise in negotiating and implementing EU Directives.

21. *Recommendation:* The Agency should be actively involved in the negotiation and implementation of EU legislation to bring practical experience of implementing regulation into this process.

22. However there is already a major body of environmental legislation in place which is likely to be reviewed slowly and the way this is implemented is vital to environmental innovation.

23. Good regulation should always seek to welcome innovative approaches to achieve better standards. However for innovation to be successful the regulated industry must perceive benefits from adopting the new approach. A key concern from industry in adopting a new approach is that an extended permitting time will be needed.

24. It is quicker and easier for a regulator to approve tried and tested methods in regulated industry. The cost of any delay is borne by the regulated person. These costs may be significant. The regulator does not have to evaluate the business cost of extended periods to permit, but it is paramount for industry. Impacts are both the direct costs and effort of a longer permitting process, and the usually greater indirect effects of business delays and uncertain scheduling—including allocation of finance in forward business planning.

25. EIC believes there is scope for the Agency to take a more proactive approach to encouraging innovative approaches—for example through dedicated staff to process permit applications using innovative approaches. EIC has raised this issue with Agency and has been pleased that a dialogue has begun on this.

26. *Recommendation:* The Agency should take a proactive approach in the permitting process to encouraging innovative approaches to reducing pollution from the industries it regulates.

Environmental Industries Commission

December 2005

Memorandum submitted by Country Land and Business Association

1. The CLA welcomes the opportunity to respond to the EFRA inquiry into the Environment Agency (the Agency). We represent 40,000 land managers who between them own and manage half of the rural land in England and Wales. Our members are involved in many businesses including agriculture, forestry, fishing, tourism, waste management and delivering environmental services such as biodiversity and landscape. Many of members have contact with the Agency through their activities—we therefore have a strong interest in this inquiry and our comments are set out below.

Q1. How successful the Environment Agency has been in its role as enforcer of environmental regulation and controls, and how well it manages its wide range of activities

2. There is a problem where a regulation which the Agency enforces is not accepted by farmers, such as the Nitrates Directive—here there is little scientific evidence for the 50mg/l trigger level that requires an action plan to be put in place which can heal = veil impact how you farm. We expect the Water Framework Directive to take a more practical look and have more science based evidence and measures which are cost-effective. We consider that this is the right approach to take.

3. We have had mixed report as to how the Agency has approached regulation on farms—and this is often dependent on the individual officer. We are seeing some improvements, but there are still many cases where farmers feel that some Agency staff that come on farm are looking for faults, rather than assessing the regulation.

4. We understand that there is a need for regulatory framework, and that regulation is an essential tool for a small percentage of poor-performing farmers, but we would also stress that there are other ways of achieving more successful environmental delivery, such as the advisory role which we would like to see the Agency develop further. We are pleased that there has been a lot of progress within the Agency to try to understand the agriculture sector through their staff training programme.

5. We would like to see the Agency rewarding innovation and working in a holistic way to ensure all regulations and policy mechanism that cross the interface of environment and farming are join up and are moving in the same direction. We suggest that the high costs for certification of on farm biofuel plants, and the over regulation of biogas (AD) do not help innovative land managers take a new and more sustainable approach to their businesses.

Q2. Whether the Agency operates efficiently and provides good value for money; the structure, governance and accountability of the Agency

6. We are concerned that the Agency is over-stretched and under-resourced in order to carry out its duties, especially if we consider that Water Framework Directive implementation for which the Agency is the authoritative body, will require a substantial amount of resource if the aims and objectives are to be achieved.

7. We realise that the risk-based approach to regulation that the Agency has put in place is, in part, a response to this and we welcome it as a practical way forward—ie it should target the poor performers, however, we would like to be clearer about the criteria.

8. We do not agree that the Agency should increase abstraction charges to fund compensation to abstractors which have lost or had their licences modified to reduce environmental harm in Habitat sites. Those licences were given in good faith pre Habitats Directive implementation, so it is neither the fault of the licence owner, nor the fault of other abstractors that environmental damage has now been discovered on those sites. We are of the view that the funds should be provided by the central Government.

Q3. Its relationships with Defra, Defra-sponsored bodies and the rest of Government, including the Agency's role in the planning system?

9. It is essential that all the agencies that advise and have contact with land managers work together and send out the same messages that they would like farmers to act upon. Mixed messages are confusing and are not efficient ways of communicating.

10. Where Environment Agency takes a decision to objective to a planning application, it must be backed up by sound evidence based science. We are also concerned that the Agency's recommendations on development in the growth areas which are in the flood plain are being largely ignored and are likely to have detrimental effect on the rural economy in that area—eg surface water flooding of farmland from growth areas and reduced water resources for rural businesses.

Q4. The Agency's relationship with non-Governmental stakeholders and the general public, and how the Agency monitors satisfaction with its services

11. Communication by the Agency through the regional annual CLA/NFU/EA meetings works well where they are set up—we would like to see them set up in all regions. Day to day contact between land managers and Agency staff is variable but we are seeing an improvement, and are pleased that the Agency is responding by training their staff on agricultural issues. We have had positive reports back that some staff are more aware of agriculture as a business, however we have had some bad reports as well, for example:

- It has been reported that Agency staff have been informing the RPA if they have found that farmers are “over-dosing” their crops with nitrogen fertiliser in NVZ areas. This could lead them to be deemed “non-compliant” and there could be a threat to reducing their SFP. We are concerned as this is not the approach the Agency have taken in the past to deal with a first offence—according to them they take the view that a first offence should be a warning with advice which should be given to the farmer on what he should do to rectify the problem. We are therefore surprised and alarmed that the EA are not following normal procedure especially as SFP is jeopardised.
- A letter sent out to farmers which refer to cross compliance visits was recalled and reviewed due to insensitive wording, only when highlighted by a CLA member.

Q5. The Agency's responsibilities for flood defence and flood mapping, including guidance to the public

12. We are concerned that local knowledge that had a great input into the regional flood defence committees through the local flood defence committees is being lost. We saw the need for reform of these Committees to ensure a more efficient working, but we stressed the need for local input—we consider that this has been largely lost.

13. We consider that the Agency must put more funds into the maintenance of rivers and riverine and coastal defences—we believe that this would cut down substantial costs in the future flood defence budget. Landowners should also be able to contribute to defences and be allowed to maintain their defences—eg fill a hole in a flood defence where a storm has broken it loose, without having to go through a bureaucratic nightmare to do so.

14. We are aware of the Agency's expected future responsibility in coastal defence, but we are concerned that they may be unprepared for this new role.

Q6. How the organisational changes brought about by the Natural Environment and Rural Communities Bill will affect the role of the Environment Agency

15. The Environment Agency must continue with their advisory and supportive role, as this is the way to successful environmental outcomes. Partnership working between the Agency and Natural England will be essential to ensure that mixed messages are not sent out to farmers. The new catchment officers, which will be both the Agency and Natural England, in the Catchment Sensitive Farming project should reinforce this.

Q7. How the Agency's work in improving wildlife habitats will tie in with Natural England's work on biodiversity

16. As above.

Q8. The Environment Agency's forthcoming corporate strategy 2006–11

17. Our response is in the Annex.

Country Land and Business Association

December 2005

Annex

ENVIRONMENT AGENCY CONSULTATION ON THEIR CORPORATE STRATEGY 2006–11

18. The CLA welcomes the opportunity to respond to the Environment Agency's consultation on their proposals for a new corporate strategy for 2006–11. We represent 40,000 land managers who between them own and manage half of the rural land in England and Wales. Our members are involved in many businesses including agriculture, forestry, fishing, tourism, waste management and delivering environmental services such as biodiversity and landscape. We therefore have a strong interest in the Agency's strategy for the next six years. Our comments are below.

19. We are pleased to see that EA will be championing the environment in the context of sustainable development. This is key, demonstrated by the vital role of economic prosperity to the delivery of environmental goods. We are also pleased that the EA will continue the role of influential adviser and active communicator—we believe that advising and informing land managers on issues of concern, such as water quality, is essential to raise awareness, have a positive influence on changing behavior and ultimately achieve environmental outcomes.

20. We would like to direct the EA to the CLA's recently published environmental policy paper "Public Goods from Private Hands—why Nature needs Farming" available on our website www.cla.org.uk/environment and from CLA London Office, which lays out our principles for the delivery of environmental outcomes—ie increasing the delivery of environmental goods (eg landscape, biodiversity, heritage) and reducing the environmental bads (eg protecting water resources, water quality, soils) by following a series of core principles, taking an intergenerational time view, taking a science based approach, pursuing voluntary participation and working in partnership, adhering to proportionality, taking a decentralised approach, working with nature cycles and working with private property rights and responsibilities.

BIG PICTURE

21. Under the big picture we note that diffuse water pollution is raised, as it should be, but we would not like the emphasis on point source pollution to diminish. We recognise that point source pollution has reduced over the last 15 years but it still makes up a significant percentage of the overall pollution in rivers, ie current figures state water companies contribute 50–60% of the phosphorus, the key nutrient for triggering eutrophication, in rivers.

OUR PRIORITIES FOR THE NEXT FIVE YEARS

An enhanced environment for wildlife—Should this read aquatic wildlife?

22. We would like the EA to recognise that their vision must also be a “land managers’ vision” if it is to be delivered, after all 75% of England and Wales is managed by rural land managers. We do not consider that the Vision adequately engages with these individuals and for positive improvements in environmental delivery they must be using our principles set out in our Environmental Vision.

23. We note that the releasing of mink has had a significant impact in the decline of water voles by 90% and this is not mentioned—it is inferred that it is principally due to land management decisions, which is not correct.

24. The EA will be required to work with the new agency, Natural England, on sites of high environmental values, such as SSSIs. We would like to emphasise the need for good working relationship between these two agencies and good management of how this arrangement works on the ground for the individual land manager.

25. We would like clarification of the need for “providing new sites for wildlife . . .”. There is currently a network of high value sites, and with the new agri-environment schemes which are expected to cover at least 70% of the land in England. Through this we are expecting to see an increase in wildlife—rare, uncommon and common species on rural land. We are concerned that the designation of more wildlife sites is a backwards step and likely to discourage participation in schemes designed to bring about good environmental results. Instead conservation policy must be outcome driven, recognising the huge efforts of land managers towards delivering biodiversity.

Cleaner air for everyone

26. We would contest the comment that “in the countryside the fertilising effects of nitrogen . . . affect human health, wildlife and crops” and would like to see the research that has been used to come to this conclusion. Over time with better knowledge and technology and driven by cost/price pressures land managers have been more skilled in applying only the nitrogen that the crop requires, thereby reducing the leakage of nitrogen from the system. This is to being further encouraged by NVZs and nutrient plans under the ELS.

Improved and protected inland and coastal waters

27. Again we make the point that point sources of pollution should not be dismissed, although we note that it has reduced over the years, but it is still significant. Other sectors should have proportionate measures to reduce diffuse pollution. Engaging the land managers is key to tackling the agricultural diffuse pollution problem—this is done by raising awareness of concerns and allowing land managers to work within their businesses to come up with solutions in the context of other sectors also “doing their bit”. We are concerned as to the meaning of the point “regulate to tackle water pollution . . .”. We are in no doubt that a top-down regulatory approach will not achieve the best environmental outcomes achievable from land management.

28. We would urge the EA catchment officers and Natural England catchment officers who will be both advising land managers on reducing diffuse pollution from agriculture to work together to ensure that the advice is coordinated and not confused.

Restored, protected land with healthier soils

29. Defra in their soil action plan 2004 quoted that “For much of England’s soils there is no evidence of unsustainable management”—this does not seem to be recognised in this chapter. We are disappointed that the Agency does not seem to support working with farmers and engaging them. For true engagement the Agency must start to work in partnership with farmers allowing them to find the solutions that work on their farm. We are concerned that the Agency wishes to regulate the application of organic material to land...this is not the best approach to encouraging farmers to work with natural carbon and nutrient cycles. This should be done through plans and setting up a carbon trading mechanism for land managers to work within. There are many tools that will assist land managers to improve their soil management—raising the awareness of these tools to land managers—eg soil plan in ELS and EA’s best farming practices and we would be happy to work with the Agency to help promote these. We agree that we need to learn more about soil health through research which we hope will assist land managers to help inform their decisions about land use. It is not clear that land managers will be the recipients of this research.

A “greener” business world

30. Fly tipping is a huge problem for those who own rural land. A survey of fly tipping on agricultural land (funded by Government and the Environment Agency) highlighted the enormous problem of fly tipping in the countryside—ie 25% of farmers in the last five years have become victims of fly tippers at a cost of removal of £50 million. At present there is not a satisfactory mechanism for the removal of the increasing volume of fly tipped material on private land. A common and unfair occurrence is that it is often left to the innocent occupiers to pay for clean up of the sites. As well as being an eyesore in the countryside, fly tipped waste can cause also harm wildlife and livestock. For example, one of our members has found broken glass and battery acid dumped in a livestock field. This happens almost on a weekly basis, and must be cleared up by the occupier to protect the cattle from harm. Another member has persistently had the locks on a field gate cut and, as well as building rubble and domestic waste, has had 500 tyres dumped, with a cost of £5/tyre for clean up.

31. In addition to our suggestion that the local authority should be required to clean up waste on private land (if the occupier can establish that he has taken reasonable steps in all the circumstances to prevent fly tipping), we offer some other solutions which may help and the EA could become involved in/support, such as:

- allowing those disposing of fly-tipped waste to be exempt from paying landfill tax;
- having longer opening hours on the local landfill/recycling site which can significantly reduced evening and weekend flytipping;
- providing more education and information about fly-tipping, its unacceptability and proper disposal options;
- improving the quality and number of civic waste disposal sites;
- ensure that new EU Directives are “fly tipped” proofed—ie to be aware of the impact a new directive will have on fly tipping so that measures can be put in place to minimise it; and
- establish a fly-tipping “rescue fund”.

Wiser, sustainable use of natural resources

32. We are pleased that the EA will work with water companies to promote more efficient use of water, which we understood was, in any case, their obligation . . . We are concerned that some new housing developments do not take into account the demands and availability of water resources, and that this can have a negative impact on farming enterprises which are reliant on abstracted water. We would urge the Agency to encourage environmentally sustainable projects, such as composting, which reduce the amount of organic material that goes to landfill and provides a good soil improver, rather than over-regulating and adding unsustainable costs to these new businesses which makes them unviable.

Limiting and adapting to climate change

33. The Agency’s high inspection fees for biodiesel facilities and biogas installations do not help the Agency’s or the nation’s overall vision of reducing the production of greenhouse gases. We would like to see the cost and impact of regulation on those who are investing in business activities that are friendly to the environment, such as these, minimised.

Reducing flood risk

34. We would like to see the Agency put a greater priority for maintaining existing flood defences which includes keeping clear river channels. We agree that climate change is going to put more pressure on flood defences, and that rural communities, as well as towns and cities, which have social needs and entitlements, should be protected. It should not be assumed that the loss of quality or value of rural property—which may include significant investments in agricultural buildings and equipment—arising from reduced flood defences, is an acceptable price for them or the economy of these areas to be required to pay. We suggest that the Agency should support schemes from the flood defence budget that reward land managers for protecting towns and villages downstream by allowing their land to flood next to rivers and the coast. Thought should also be given to the role of and rewards to forestry for its water infiltration role.

Improving the way we do things

35. We agree that the EA needs to be a “high performing organisation that uses resources efficiently and hope that they will strive to achieve maximum efficiency.

Country Land and Business Association

November 2005

Memorandum submitted by the Chartered Institution of Water and Environmental Management

THE ENVIRONMENT AGENCY

The Chartered Institution of Water and Environmental Management (CIWEM) is the leading professional and qualifying body for those who are responsible for the stewardship of environmental assets. The Institution provides independent comment, within a multi-disciplinary framework, on the wide range of issues related to water and environmental management and sustainable development.

CIWEM appreciates that the deadline for comments in relation to this inquiry has passed. However, you mentioned to Justin Taberham that you would still be able to take into account comments submitted after this date so we would therefore like to make the following points:

1. CIWEM welcomes the existence of a dedicated environmental agency, and we support its ongoing existence and commitment to delivering improved environmental standards and protection. We are supportive of the role described in the Environment Agency's Corporate Strategy, which describes a modern regulator and surely reflects the aspirations of the majority concerned with the environment. It is therefore essential that the Environment Agency continues to be supported by Government, and that it receives proper resources to deliver its functions properly.

2. A change along the lines of those proposed in the Corporate Strategy would, we consider, represent a significant improvement on current performance and attitudes within the Agency. There is a danger that too often at present the Agency is a regulator slavishly applying its process manual rather than considering the environmental risks and costs in their broader context. For example, material is still being remediated (and excavated and dumped) that is of no proven risk to the environment, but which breaches Soil Guideline values (SGVs). We consider that SGVs and MCerts were introduced poorly and the application of MCerts to soils, apart from eluates from soils, gives the impression that such initiatives have not been fully thought through before being introduced.

3. We consider it important that the Agency should regulate its own operational activities, just as it would for any other operator. It should also share its operator experiences with others, and use the practical examples to show how operators can comply. The Agency should also, as a regulator, demonstrate best practice and there is evidence that competence in certain areas is not as high as it might be. For example, there is a lack of registered Specialists in Land Condition (SiLCs) in the Agency, which indicates that there could be better levels of expertise in the area of contaminated land management.

4. CIWEM considers that the Agency's website contains excellent information, but is so structured as to enable finding such information very difficult unless the searcher has the full url address. The search engine provided on the site often struggles to compensate for this. We would suggest that the website should be structured so that searches filter out press releases—or there should be a function to this effect. The NetRegs website requires further hyperlinking to make it into a useful tool.

5. The implementation of the electronic registration for the Hazardous Waste Regulations premises was poorly executed, leading to the collapse of the website. The telephone support line was poorly prepared and had no knowledge of how non-standard sites should be registered, eg tenants, temporary works etc.

6. We consider that the Environment Agency is still little known within the communities (both residential and business) that it serves—local communities in particular where many remain unaware of the Agency's role. Where known within the business community we suggest that the Agency is largely seen as a regulatory and enforcement body, rather than an educator—which is an important function alongside the regulatory duty. It also indicates that despite the best intentions of Agency upper management, there may still be significant areas for improvement in how well Agency staff involve and communicate with stakeholders and the wider public. We would therefore suggest that the education and community function of the Agency is rather weaker than we would hope to see.

7. CIWEM considers it unfortunate that the Agency's responses within the planning process are often ignored, leading to detriment in the longer term in planning decisions. Whilst the Agency has been named as a statutory consultee, we are not optimistic that this trend will change radically and in a time when we face greater threats from climate change and other pressures, it is important that the Agency's view is taken very seriously by planners.

8. The Agency has always had the potential to be a key player in habitat management and biodiversity, however it has suffered from a lack of resources in this area, and a predominant bias towards the more traditional fields of flood defence and regulatory enforcement.

9. More effort needs to be made on the one hand to encourage high standards of environmental management among responsible businesses and on the other hand to crack down more effectively on illegal operators whose activities pose unacceptable risks to the environment. Fines remain lower than we would like to see and there is a need to ensure that the penalty properly fits the crime where the environment is concerned.

Chartered Institution of Water and Environmental Management

January 2006

Memorandum submitted by Technical Advisors Group

1. TAG is a Local Government Chief and Senior Technical Officer's Group and generally advises the LGA in specialist areas. The Coastal and Fluvial Management Committee is one of TAG's committees and I have recently taken over the Chairmanship of that committee. Our comments are as follows:

2. "We would in the very limited time available wish to comment on the EA's role in some aspects of Flood Defence and in particular, the delivery of the National Flood and Coastal Defence Database (NFCDD).

3. The NFCDD project has been in progress since the serious floods experienced in 1998 and 2000 and has expanded in the last three years from its fluvial base to address the needs of the coastal strip, but it has unfortunately not taken full stock of the likely implications. Although this expansion did embrace the changes to the template type, screens for the imputing of data and endeavoured to enlist the help and support of Local Authorities (LAs), it did not widen the project in scope or funding to examine and address any potential differences between LAs' needs and those of the EA.

4. These differences have been aired on several occasions at the Defra Coastal Defence Forum but have yet not been fully acknowledged by Defra. EA support is not forthcoming to meet the LAs' resource costs including training, the delays caused by lateness in delivery and the consequential effects and the non-compatibility of the new "version 3" software to the corporate LA Windows XP platforms. The postponement of the launch of "version 3" to LAs that was originally scheduled for June/July 2005, but now is unlikely to roll-out en bloc before Xmas, adds further logistical problems for LAs and as a consequence is likely to have serious impacts on the provision of data for the next round of High Level Target submissions to Defra and certainly does not serve as a good example for future partnership working.

5. TAG feel that the EA have shown that they neither have the resource nor the organisation to adequately provide NFCDD to the coastal LAs. We similarly feel that they will not be able to locally deliver Coast Protection, as is currently being considered by Defra in their "Making Space for Water" deliberations. We feel the Environment, Food and Rural Affairs Committee need to take the above into account when considering the current workings of the EA and any thoughts the Government may have in extending the EA's role into the delivery of Coast Protection. Local Authorities are prepared to work with the EA in a partnership in both the delivery of NFCDD and Coastal Management, but the EA needs to recognise that the LAs have the skills and local resources to play a major part in that delivery.

6. We honestly believe that the EA are struggling to come to terms with partnerships with the coastal LAs as has been shown by their total underperformance in delivering NFCDD. We very much believe that NFCDD needs to be delivered to enable better management of the shoreline, but also feel that, on current performance, entrusting the local delivery of Coast Protection solely to the EA would not be in the best interests of the country. We feel that LAs forming partnerships with the EA, utilising all available resources and skills, is the effective way ahead in delivering both NFCDD and Coastal Management."

Technical Advisors Group

December 2005

Memorandum submitted by Land Network International Ltd

Note: Land Network was started under a series of DTI (Enterprise Initiative) programmes in the mid '90s. A national Network of farmers within a "reverse franchise" currently operate 17 on-farm composting sites recycling a range of municipal and industrial "wastes".

1. We take the view that the Agency has two jobs to do:

- (i) Enforce the law, ie catch the bad guys. In any society, this is fundamentally necessary and they do, at least partly, a good job.
- (ii) Enable good practice, ie help the good guys. On the whole, they are a dismal, even criminal, waste of national resources in this respect.

2. The Agency is restricted by two things:

- (i) Its own structure, organisation and staffing policies.
- (ii) Bad regulation which it is charged with enforcing.

3. Agency structure, organisation and staffing:

- (i) A statistic will help understand why the structure is flawed. There are 56 words in the Lord's Prayer, 229 in the 10 Commandments, and 35,709 in the eighth set of Notes for Guidance from Agency Head Office to officers on the ground (who, presumably, will have read the previous seven sets). The officer is a general practitioner who may have over a hundred different technologies on their patch. It is not possible for them to read all the paperwork coming out of Head Office. It is not possible, however well qualified and experienced they are (some are well on both, most are not), they can never have a "feel" for a situation on the ground.

Result: Bad judgements that cost too much and take too long.

- (ii) Putting a situation into “Process” of a series of internal consultations with officers who may be specialist (and may not) suffers from the inevitable bad decisions (because the staff concerned do not visit the site or meet the people, they exercise remote judgements).

Result: Bad judgements that cost too much and take too long.

- (iii) I have spent 10 years and, in real terms, probably several hundred thousand pounds Sterling, in training officers to understand just a little about what I do. They are all inexperienced in recycling, not trained adequately and do not have a culture of enablement. *Result: The original plan for the DTI was that we would, by now, have around 3,000 farms, each handling 2,000 to 4,000 tonnes pa on a proximity basis. We have been delayed and failed because of over-regulation. We have 17 operational sites, some fully Licensed, and will handle 300,000 tonnes plus by the end of the current year to March 2006. That is not enormous but it isn't trivial. We have never polluted.*

- (iv) The Agency's idea of efficiency is to introduce a call centre (very fashionable—it would be lower cost and probably no worse in time wasting if it were in India), or (much worse) to have Planning Liaison Officers who just create problems. Both are just another layer of bureaucracy that costs money and makes everyone frustrated and uncompetitive.

4. Bad Regulations:

To be fair to the Agency, its statutory duty is to enforce the Law. Some of the regulations are just wrong and counter productive. I will quote here a statement from a senior officer who has my respect. “As we have discussed before, we both know that there are many more wastes which are capable of conferring agricultural benefit is spread than are currently listed in the exemption. However, we have to work within the constraints of the legislation as it stands.”

Result: I could give you literally hundreds of instances where the legislation and the Agency's interpretation of it inhibits safe and sensible recycling.

5. Conclusions:

- (i) The Agency has a passable performance in policing, but not good.
- (ii) The Agency fails miserably, even criminally, in enabling those who are capable.
- (iii) The consequences for targets, the environment, the economy and individuals are moving towards the catastrophic.

6. Remedy:

- (i) Cut the staff by at least a third. Specialise the field staff.
- (ii) Train the staff to be comparable or better than the industries they serve in, pay them at least a third more and empower them to make decisions on their own, quickly.
- (iii) Use the skills already present in industry in self-regulation coupled to loss of licence to operate for those who break the rules and pollute. (We have a scheme which operates like a road driver's licence.)

Then, with the right leadership, we can do this job safely, to volume target and sustainably, environmentally and economically.

Land Network International Ltd

January 2006