

ENVIRONMENT AGENCY

US NAVAL VESSELS – Lessons Learnt Review

1. BACKGROUND

- 1.1 In November 2003, four redundant US Naval ships, part of a contract for the dismantling of 13 vessels, arrived in England. There was significant interest in their arrival from media and Non-governmental Organisations (NGOs). This is the first time the Environment Agency (the Agency) had received an application for Transfrontier Shipment consent for the import of ships to the UK for recovery. Friends of the Earth publicised the event, portraying the ships as placing the environment and public at risk and decisions made by a number of regulators were challenged in the Courts and the media. The Agency spent a substantial amount of time responding to and managing the situation. Ministers, Government departments, the European Commission and other regulators, including the US Environmental Protection Agency (US EPA), were also involved.
- 1.2 The four ships arrived in England without some of the permissions necessary for their dismantling, and are currently in a dock in Hartlepool in the North East of England. The Agency has, pending resolution of the situation, imposed licence conditions to prevent their dismantling and to ensure that their presence does not cause pollution to the environment. The ships are required to be kept in a condition that would enable, if necessary, their safe return to the US.
- 1.3 The Agency considers that the transport of ships did not pose a threat to the environment or human health, and indeed no harm has occurred.
- 1.4 The ships are all of immediate post-war design. They are empty structures, with only residual materials/fittings remaining inside and do not carry any cargo of waste. However, in common with other vessels of their age, they contain as part of their construction, materials containing asbestos and Polychlorinated Biphenyls (PCBs). All of the major PCB-containing items were removed in the US prior to their journey to England. The ships comprise 95 per cent by weight of metals, mainly iron and steel destined for recovery. All of the hazardous components such as those containing asbestos and PCBs can be safely disposed of in licensed facilities.
- 1.5 Currently, 400,000 tonnes of asbestos and 2,000 tonnes of PCBs are disposed of annually in the UK. The quantities that would be produced by dismantling these four ships are very small by comparison, with asbestos amounting to several hundred tonnes and PCBs to tens of kilogrammes.
- 1.6 Able UK Ltd, the company seeking to dismantle the ships, is responsible for ensuring that all the appropriate permissions such as planning and environmental licences are in place.

2. REGULATORY PERMISSIONS

2.1 Context

2.1.1 It is the responsibility of any business to ensure that all relevant permissions, including planning and environmental licences are in force for the activities it wishes to undertake.

2.1.2 The permissions required by Able UK Ltd to dismantle the ships included:

- Two planning permissions, one for the Graythorp dismantling facility, and one for the construction of a bund to create a dry dock. Hartlepool Borough Council is responsible for planning approvals and enforcing the planning regime.
- A licence under the Food and Environmental Protection Act 1985 for the deposit of substances or articles within UK waters either in the sea (any area submerged at mean high water springs) or under the seabed. This would include the materials needed to make the bund, and any dredgings to be disposed of at sea. The licensing body is the Department for Environment, Food and Rural Affairs(DEFRA).
- A Crown Estate Commissioners' permission. Able UK Ltd has two designs for its proposed bund. One rests entirely on its own land and the other (which is larger and would allow Able to construct permanent dock gates) rests on Crown Land below low water and requires Crown Estate permission.
- A Transfrontier Shipment (TFS) consent granted by the Environment Agency under the Waste Shipment Regulation (259/93 EEC) and the Transfrontier Shipment of Waste Regulations 1994. The notifier in this case was the US Maritime Administration (MARAD).
- A Waste Management Licence issued by the Environment Agency under the Environmental Protection Act 1990, authorising the deposit and treatment of specified wastes.
- A Certificate of Exemption for the import of asbestos to Able UK Ltd. This was issued by the Health and Safety Executive under the Asbestos (Prohibitions) Regulations 1992 (as amended).
- Approvals to move ships. These are awarded by the US Coastguard and the UK Maritime Coastguard Agency (MCA).

2.1.3. Able UK Ltd failed to ensure that it had all the relevant permissions in place before the ships set off for the company's facility.

2.2 Transfrontier Shipments

- 2.2.1 The main purpose of the Transfrontier Shipment Regulations Notification is to establish whether the proposed shipment represents genuine recovery, or is really a disposal activity (so named “sham recovery”). The Agency also assesses whether the proposed recovery facility has the required capacity and is properly authorised to deal with the waste. The Agency has three days to acknowledge a Transfrontier Shipments Notification, ie to confirm that all the necessary information is provided, and then a further 30 days to approve or refuse the request. In this case the Agency agreed that the ships were destined for genuine recovery and that the receiving facility had the technical capacity to undertake the recovery. However the existing Waste Management Licence did not authorise the treatment of the required tonnages or the dismantling of ships.
- 2.2.2 The Agency considered that the Waste Management Licence could be modified to encompass ships and the required tonnage, and that this could be carried out after the 30 day TFS consideration period had elapsed.
- 2.2.3 Although pre-application meetings took place with Able UK Ltd, they did not include other regulators. While the US EPA and MARAD inspected Able UK Ltd’s Graythorp facilities in February 2003, they did not inform or involve the UK regulators.
- 2.2.4 The Notifier (in this case MARAD) must have a valid contract with the consignee which includes the following obligations:
- the waste must be recovered
 - the notifier must take the waste back if the shipment has not been completed as planned
 - the consignee must provide as soon as possible (and not later than 180 days following receipt of the waste) a certificate to the notifier that the waste has been recovered in an environmentally sound manner.
- 2.2.5 The vast majority of Transfrontier Shipments are cargoes, therefore return of waste, if the shipment has not been completed as planned, is relatively straightforward. The situation is more complex when the shipment consists of ships, particularly the point at which they should be declared as waste and the range of permissions potentially required to enable the contract to be completed. The potentially novel and contentious nature of this shipment was not fully recognised by the Agency and consequently its broader assessment of the circumstances was insufficient.

2.3 Planning and Licensing Considerations

- 2.3.1 Not having the necessary planning permission at any stage would have made it impossible for Able UK Ltd to carry out its plan to decommission the ships.

2.3.2 Two planning permissions were required for the Graythorp facility:

- i) To cover the decommissioning of ships.
- ii) To cover the construction of a bund to permit dry dock working. This was subject to a “Grampian Condition” with 5 years to exercise. It emerged that there was a dispute between Able UK Ltd and Hartlepool Borough Council as to whether work on the bund construction had taken place during this period. If it had, this would in effect exercise the permission, which would otherwise be deemed to have lapsed.

2.3.3. Hartlepool Borough Council maintained that the 1997 planning permission which covered “marine structures” included ships, until this was decided not to be the case by the High Court in December 2003 in a case brought by local residents. The dispute between Able UK and Hartlepool Borough Council on whether any works had been carried out on the construction of the bund was only resolved on 7 October 2003 when the Council decided that the planning permission had lapsed. Throughout September 2003, the Environment Agency kept MARAD and the US EPA informed of the planning dispute with regular telephone calls, and also put MARAD in touch with Hartlepool Borough Council. Before the departure of the ships, the Agency advised MARAD that the ships should stay in the US until outstanding regulatory issues were resolved. This advice was ignored.

2.3.4 The original Waste Management Licence was issued by the Agency to Able UK Ltd on 31 October 1997. This licence was issued in accordance with practice at the time.

2.3.5 The original Waste Management Licence for the Graythorp facility was issued using what was then assumed to be an all-encompassing term: “offshore structures” and was believed to include ships. However, legal advice given to the Agency in mid September 2003 was that this term did not include ships. One of the modifications of the Waste Management Licence issued on the 30th September 2003 was to include ships. The Agency subsequently decided that this modification could not stand which was later confirmed by the High Court.

2.3.6 The law requires that planning permission is in place before a Waste Management Licence can be issued but is not needed for a modification to an existing licence. The failure of planning permission does not normally affect the status of a licence. In all cases it is the site operator’s responsibility to ensure permissions such as planning are in place to cover their proposed operations.

2.3.7 Hartlepool Borough Council’s decision that the planning permission for the bund had lapsed led Able UK Ltd to consider whether it could dismantle the ships in the wet dock rather than the proposed dry dock. The Agency’s consideration of the application had been on the assumption that dismantling would take place in the dry dock after a bund had been constructed. The Agency concluded that, amongst other matters, since wet dock working had not been assessed for the purposes of the Habitats Directive and Regulations and since the Waste Management Licence as modified did not prevent wet dock working, the modification of the 30th September could not stand.

2.4 Habitats and Environmental Impact Assessments

- 2.4.1 Able UK Ltd applied for a modification to their Waste Management Licence to increase the treatment capacity from 24,500 tonnes to 200,000 tonnes per year and specifically to include “ships”.
- 2.4.2 In accordance with the requirements of the Habitats Directive, the proposed modification was assessed by the Agency to determine whether there were likely to be any associated environmental impacts. However, Friends of the Earth challenged the Agency on the basis that it had not undertaken an “in combination” assessment. An “in combination” assessment takes into account the likely effect of the proposed activity in combination with the impacts of other permissions granted or proposed for activities in the vicinity of the affected site. An “in combination” assessment was then completed which concluded that dry dock dismantling would not have a significant effect. The modification was therefore granted. English Nature was involved in the approval process for all of the Habitats Directive assessments.
- 2.4.3 When the planning permission was removed (7 October 2003) Able UK Ltd then considered proceeding with a wet dock option. The Agency had not assessed the wet dock option as part of the Habitats Regulations Assessment and accepted at the end of October 2003, that its Waste Management Licence modification was flawed.
- 2.4.4 The Agency therefore concluded that the Habitats Assessment was inadequate and this was confirmed in the High Court judgement. The Environment Agency will undertake a new Habitats Regulations assessment if Able UK Ltd submits a new Waste Management Licence application. Able UK Ltd will be required to undertake an Environmental Impact Assessment for its proposed application for a new planning permission.

2.5 Future Regulatory and Policy Issues

- 2.5.1 Internationally the ship scrapping industry is predominantly located in India, Bangladesh, Pakistan and China where health, safety and environmental regulations are less robust than those in Organisation of Economic Co-operation and Development (OECD) countries.
- 2.5.2 The UK, as an OECD State, has agreed to the decision that commits freedom of movement of waste for recovery between OECD States.
- 2.5.3 The Maritime Coastguard Agency (MCA) estimates that approximately 750 ships of a weight greater than 500 tonnes are decommissioned worldwide every year. This does not include single hulled tankers of which there are approximately 2,000 worldwide. These will need to be decommissioned over the next five to ten years at an average decommissioning rate of 100 ships per year.
- 2.5.4 Most UK flagged ships are currently sold on to other countries rather than going direct to decommissioning. This includes military vessels. The MCA estimates that

direct UK flagged ship decommissioning each year is in low single figures. Current capacity for ship dismantling in the UK appears to be small.

3. Recommendations

The Agency believes that there are important lessons to be learnt for it, the other regulators and Government Departments from the experiences in relation to the US Naval Vessels. These are outlined below.

- 3.1 The TFS Notifier (i.e. applicant for TFS consent) must be made aware in each case that they are responsible for ensuring that all the necessary permissions are in place to allow the shipment to be completed. The Agency should consider whether a letter of assurance from the consignee to that effect could form a useful part of the application process. When granting consents the Agency should emphasise that the consent does not confirm the existence of all relevant permissions and that responsibility for ensuring those permissions are in place remains with the applicant and consignee.
- 3.2 The Agency should review the role of pre-notification discussions for transfrontier shipments. In potentially novel, complex or contentious cases the Agency should actively support collective discussions with the notifier and other regulators to seek to ensure full understanding and resolution of all regulatory issues. However, final responsibility must rest with the notifier.
- 3.3 The Agency must ensure that all the necessary Environment Agency permissions are in place prior to consenting transfrontier shipments.
- 3.4 DEFRA, English Nature and the Environment Agency should clarify the need for and nature of “in combination” assessments under the Habitats Regulations, and this should be reflected in the procedures adopted by the regulators.
- 3.5 The Agency needs to enhance its ability to recognise novel and potentially contentious issues and thus to be able to inform Government and communicate publicly the true nature of environmental risks and associated regulatory controls in a timely fashion.
- 3.6 The Government position on the issues raised by this incident needs to be clarified to establish:
 - A national policy on ship recycling including imports and exports and whether minimum environmental standards should be applied to all facilities involved in recovering UK flagged vessels.
 - If there is support for a UK ship recycling business sector.
 - Whether the Government should promote an international agreement on ship scrapping and recovery facilities.

**Environment Agency
April 2004**