

**IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH
DIVISION**

B e f o r e :

MR JUSTICE NELSON _____

Between:

**Lawrence West QC and Wendy Outhwaite (instructed by
Addleshaw Goddard, Leeds) for the Claimant David Hart QC
and Angus McCullough (instructed by Environment Agency
Legal Services, Bristol) for the Defendant**
**Hearing dates:
Monday 25th – Wednesday 27th July
2005** _____

HTML VERSION OF JUDGMENT _____

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1. **Mr Justice Nelson :**
2. The Claimant is a statutory water and sewerage undertaker within the meaning of the Water Industry Act 1991. It claims in this action declarations from the Court to the effect that it is not required to secure from the Defendant, permits pursuant to the Pollution Prevention and Control (England and Wales) Regulations 2000 in respect of work performed at six of its waste water treatment plants in the North-West of England. The Claimant provides water and sewerage services to 2.9 million homes and businesses in that area pursuant to a licence under the Water Act 1989, which privatised and restructured the water industry in the United Kingdom. It operates some 599 waste water

treatment plants incorporating 70 sludge treatment facilities and one stand alone sludge treatment facility, known as the Shell Green Processing Plant.

- 3.
4. The declarations are sought in relation to waste water treatment plants at Widnes, Wigan, Bolton, Davyhulme, Blackburn and Dalston. These have been chosen as test cases designed to determine the main issues of principle between the Claimant and the Defendant.
- 5.
6. Each of the Claimant's 599 waste water treatment plants receive waste water, which consists of domestic sewage, industrial trade effluent, and rain water run off. Once treated two major products are produced: either treated waste water which can be discharged back into rivers or other receiving waters controlled under the Water Resources Act 1991, or sludge which is either disposed of by incineration or landfill or recovered for use on agricultural land.
- 7.
8. The treatment to which waste water is subjected consists of :-
9. (1) **Preliminary treatment** which involves screening to remove large items of debris such as rags, plastic bags or pieces of wood, and grit removal where grit which has been washed into sewers from the road by rain fall is allowed to sink to the bottom of a tank and then removed. (2) **Primary treatment** where waste water is held in a large tank and heavy organic material falls to the bottom of the tank and is removed. This process is known as desludging and sludge produced from it is further treated as set out below. (3) **Secondary treatment** which is either by filter beds, where waste water is sprayed over stones to be oxygenated so that bacteria can feed off the organic matter in the water and purify it, allowing solid material to be flushed out, or by activated sludge, where waste water from the primary settlement tank is fed into an

activated sludge tank (namely one already containing bacteria) aerated with a giant whisk. The bacteria then feed on the organic matter to purify the waste water. There may be tertiary treatment for waste waters which are discharged to controlled waters. **(4) Dewatering** which is either by centrifuge or gravity belt thickener. **(5) Digestion**, either primary or secondary which involves slow cooking and then cooling to reduce the organic and pathological content allowing the sludge to be recovered and spread on land for agricultural purposes.

10. About 50% of the sludge produced by the Claimant is transported to Shell Green by being pumped through the Mersey Valley Sludge Pipeline. In order to be pumped through the pipeline the sludge has to have a water content of about 95%. Other sludge created in the waste water treatment is transported by tanker for further treatment or for spreading on land. The purified water is discharged to controlled waters.
- 11.
12. At the Shell Green facility the digested sludge is dewatered to achieve about 27-33% dry solids. About one-third of the sludge arriving at Shell Green is incinerated there or disposed of in landfill and the remaining two-thirds is recovered by spreading on farmers' fields. The above description of the process is taken from the Claimant's skeleton and the statement of Mr Colin Belshaw the Regional Assets Performance Manager for the Claimant.
- 13.
14. Four categories have been devised by the parties to describe the six test plants. Category 1 is the treatment of sewage sludge at Widnes. Here the raw sludge is dewatered through gravity belt thickeners and then tankered to Warrington for further treatment. At Warrington it is digested and sludge is then pumped from Warrington via the Mersey Valley Sludge Pipeline to the

Shell Green Processing Plant. There it is further thickened and then either incinerated or land filled or used for agricultural purposes or reclamation.

15.

16. Category 2 covers Bolton and Wigan. At Bolton the waste waters in their untreated or raw form are subjected to primary digestion before being transferred to Davyhulme for secondary digestion. From there they are pumped via the Mersey Valley Sludge Pipeline to Shell Green. As a contingency, sludge treated at Bolton can be centrifuged making a sludge cake for recovery purposes on land. At Wigan sludge is produced from waste waters by straining and centrifuging for recovery purposes. There is also a planned contingency route for its disposal via landfill or incineration in the event that no land is available upon which it can be spread for agricultural or ecological purposes. (Jan Tyson's second statement para 25).

17.

18. Category 3 covers Davyhulme where primary and secondary digestion of raw sludge, produced by its own waste water operation takes place. Davyhulme also receives partially treated sludges from Bolton and carries out secondary digestion on those sludges. All sludges treated at Davyhulme are then pumped via the Mersey Valley Sludge Pipeline to Shell Green. There are also routine contingency arrangements which have led to sludges being sent either to landfill or recovery (Miss Tyson's 3rd statement para 27).

19.

20. Category 4 relates not to the treatment of sewage sludge, but to the treatment of waste water from a brewery at Blackburn and a milk processing plant at Dalston. At Blackburn the Claimant pre-treats effluent from an InterBrew brewery, mixing the effluent with a fraction of general waste water. The brewery effluent is itself urban waste water, of high strength and biologically treatable. It is carried in an 800 metre pipe which connects the two

sites. Once treated it is discharged into the public waste water treatment works where it is blended with the main flow of urban waste water. At Dalston, Cumbria, the Claimant's waste water treatment plant treats both general domestic sewage from the local population and waste water from the milk processing plant. The Nestle factory is about 700 metres from the waste water treatment works and linked to it by a pipe. The trade effluent is industrial urban waste water of high strength and biologically treatable. It represents more than 50% of the load through the Dalston waste water treatment works.

21. **The Issues.**

22. 1. Are the provisions of the **Pollution Prevention and Control Regulations 2000** applicable to the waste water treatment activities or are they, as the Claimant contends, not intended to be of general application but to apply to limited, identified industrial activities and certainly not to waste water treatment including sludge treatment.
23. 2. Is sewage sludge 'waste' under Article 1(a) of the **Waste Framework Directive (75/442/EEC** as amended) (WFD) and if so, is it excluded under Article 2(b)(iv) of the WFD? The exclusion requires consideration of whether sewage sludge is 'waste in liquid form' and if not whether waste waters are 'already covered by other legislation'. 3. Is the treatment of sludge covered by the **Integrated Pollution Prevention and Control Directive 1996/96/61 EC**, the **Pollution Prevention and Control Regulations 2000**? This issue involves consideration of whether there has been a disposal in the sense set out in Annex IIA of WFD, by biological treatment or physico-chemical treatment as set out in D8 and D9 of WFD and section 5.3 of schedule 1 to Pollution Prevention and Control Regulations 2000. In particular it has to be determined whether there has been a disposal of non-hazardous waste which results in final compounds or mixtures being discarded. 4. Is the treatment of the beer effluent at Blackburn and the milk

effluent at Dalston covered by the **Pollution Prevention and Control Regulations 2000**? It is accepted by the Claimant that both the brewing activities by InterBrew at Blackburn and milk processing activities by Nestle at Dalston fall within the **Integrated Pollution Prevention and Control Directive 1996 (96/61/EC)** and the Pollution Prevention and Control Regulations which flowed from that directive. This issue involves consideration of :- a) Whether the treatment of the brewing effluent and the milk effluent was a directly associated activity of the activity of brewing carried out by InterBrew or milk processing carried out by Nestle. b) Whether there was a technical 'connection' between the brewing or milk processing activity and the waste water treatment activity. c) Whether the brewing and milk processing activities and the waste water treatment activities were carried out on the 'same site'. **The Legislation.**

24. **The Waste Framework Directive (75/442/EEC) (WFD)** as amended, states in one of its recitals that "the essential objective of all provisions relating to waste disposal must be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste".
- 25.
26. Waste is defined under Article 1(a) as :-
27. "'Waste' shall mean any substance or object in the categories set out in Annex 1 which the holder discards or intends or is required to discard."
28. The Commission was required to draw up a list no later than 1 April 1993 of wastes belonging to the categories listed in Annex 1. The categories of waste in Annex 1 include :-
29. "Q8 residues of industrial processes (e.g. slags, steel bottoms, etc.) Q16 any materials, substances or products which are not contained in the above categories." The Commission decision, drawing up the list of wastes

belonging to the categories as defined in Annex 1 was published on 3 May 2000 and amended in January and July of 2001. Chapter 19 of that list related to :- "Wastes from waste management facilities, off-site waste water treatment plants and the preparation of water intended for human consumption and water for industrial use." The following items were included in Chapter 19 :- "19 08 wastes from waste water treatment plants not otherwise specified 19 08 01 screenings.. 19 08 05 sludges from treatment of urban waste water."

30. The WFD defined a holder as the producer of waste or the person who was in possession of it and management as the collection, transport, recovery and disposal of waste including its supervision.
- 31.
32. Disposal is defined as any of the operations provided for in Annex IIA which states as follows :-
33. "DISPOSAL OPERATIONS NB This Annex is intended to list disposal operations such as they occur in practice. In accordance with Article 4 waste must be disposed without endangering human health and without the use of processes or methods likely to harm the environment." Included in the list of disposal operations is landfill (D1) and incineration (D10). D12 includes permanent storage, D13 blending or mixing, D14 repackaging and D15 storage of, or pending any of the operations listed in Annex IIA. Of specific relevance are the following disposal operations :- "D8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 – D12. D9 Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 – D12 (e.g. evaporation, drying, calcinations etc.)" Article 2 of the WFD states :- "1. The

following shall be excluded from this Directive : .. (b)
where they are already covered by other legislation : .. (iv)
waste waters, with the exception of waste in liquid form."

34. The recovery of waste is encouraged in Article 3 and Article 4 required member states to take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment in particular risk to water, air, soil, plants and animals without causing a nuisance through noise or odours. A permit system was established.
- 35.
36. Annex IIB defined recovery operations including R10 (land treatment resulting in benefit to agriculture or ecological improvement).
- 37.
38. After the **Water Act 1989** was passed, water supply and treatment was no longer a public service in the United Kingdom, though it remains one in much of Europe.
- 39.
40. The **Environmental Protection Act 1990** allows a local authority to deal with statutory nuisances such as odours or noise.
- 41.
42. The **Water Industry Act 1991 (WIA)** as amended appointed OFWAT (Section 1A) and continued the appointment of the Director-General of Water Services appointed after privatisation in 1989. The Act sets out general duties with respect to the water industry and empowers the Secretary of State to secure compliance by a water company of conditions or requirements under the Act. Where an enforcement order is breached a civil action for damages may be brought or an injunction obtained by virtue of Section 22.
- 43.
44. Section 94 of the Water Industry Act 1991 imposes on a

sewerage undertaker the duty to provide, cleanse and maintain a sewage system, make provision for emptying the contents of those sewers by means of sewage disposal works or otherwise. Any private premises is entitled to connect to an existing public sewer and a sewerage undertaker is obliged to take trade effluent but can impose conditions. The Secretary of State, the Director-General and a sewerage undertaker have an obligation to further the conservation enhancement of flora, fauna and features of special interest.

45.

46. On 21 May 1991, some two months after Article 2 of the WFD had been amended to include the words "where there are already covered by other legislation" the European Directive **Urban Waste Water Treatment (91/271/EEC) (UWWTD)** was published. Its recital included the following :-

47. "Whereas the recycling of sludge arising from waste water treatment should be encouraged; whereas the disposal of sludge to surface water should be phased out; Whereas it is necessary to monitor treatment plants, receiving waters and the disposal of sludge to ensure that the environment is protected from the adverse effects of the discharge of waste water; .."

48. The object of the Directive was to protect the environment from the adverse effects of waste water discharges. (Article 1) The following definitions in Article 2 are relevant to this case :-

49. "1. 'Urban waste water' means domestic waste water or the mixture of domestic waste water with industrial waste water and or run off rain water: 2. 'Domestic waste water' means waste water from residential settlements and services which originates predominantly from the human metabolism and from household activities; 3. 'Industrial waste water' means any waste water which is discharged from premise used for carrying on any trade or industry,

other than domestic waste water and run off rain water. 10. 'Sludge' means residual sludge, whether treated or untreated, from urban waste water treatment plants."

50. Article 11 states :-

51. "Member states shall ensure that, before 31 December 1993, the discharge of industrial waste water into collecting systems and urban waste water treatment plants is subject to prior regulations and or specific authorisations by the competent authority or appropriate body."

52. Article 12 states that "treated waste water shall be reused whenever appropriate. Disposal routes shall minimise the adverse effects on the environment."

53. Article 14 provides that "sludge arising from waste water treatment shall be reused whenever appropriate. Disposal routes shall minimise the adverse effects on the environment." Member states had to ensure by 31 December 1998 that the disposal of sludge to surface waters by dumping from ships, discharge from pipelines or other means was phased out and until those forms of disposal had been eliminated member states had to ensure that the total amount of toxic persistent or bioaccumulable materials in sludge disposed of to surface waters was licensed for disposal and progressively reduced.

54. **The Urban Waste Water Treatment Directive 1991** was put into effect in the United Kingdom by the **Urban Waste Water Treatment (England and Wales) Regulations 1994. (UWWTR)** These regulations supplement the duty imposed on the sewerage undertaker by Section 94 of the Water Industry Act 1991 and thereby becomes an enforceable duty under that Act. Regulation 4 states that the duty under Section 94 of the WIA shall include a duty to ensure that "Urban waste water entering collecting systems is, before discharge, subject to treatment provided in accordance with Regulation 5, and to ensure that :-

55. a) Plants built in order to comply with that Regulation are designed... constructed, operated and maintained to ensure sufficient performance.. b) Treated waste water and sludge arising from waste water treatment are reused whenever appropriate; and c) Disposal routes for treated waste water and sludge minimise the adverse effects on the environment."
56. Regulation 6 deals with discharges of treated urban waste water. Its ban on discharge of sludge to surface waters by 31 December 1998 has occurred and such discharge now ceased. It became the duty of the Environment Agency to deal with the quality of the discharges.
- 57.
58. Regulation 7 requires the sewerage undertaker and the Director-General and Secretary of State to secure that the requirements of Schedule 4 of the Regulations are met. That schedule, which relates to industrial waste water, requires the undertaker to "ensure that sludge can be disposed of safely in an environmentally acceptable manner." There are no relevant amendments which have been made to the Water Industry Act or to these regulations.
- 59.
60. On 24 September 1996 the **European Directive (Integrated Pollution Prevention and Control Directive (96/61/EEC)) (IPPCD)** was issued. Its stated objective was to provide an integrated approach to pollution control to prevent emissions into air, water or soil wherever practicable. It established a general framework to that end in order to achieve a high level of protection for the environment as a whole stating that the application of the principle of sustainable development would be promoted by an integrated approach to pollution control. It refers in recital 11 to the steps to be taken by the operator of the industrial activities referred to in Annex 1. That Annex includes as one of the industrial activities, Waste

Management. Section 5.3 of the section on waste management includes installations for the disposal of non-hazardous waste as defined in Annex IIA of WFD under headings D8 and D9 with a capacity exceeding 50 tonnes per day. In Section 6 of Annex 1 other activities include under 6.4(b) treatment and processing intended for the production of food products from... vegetable raw materials. This covers the brewing activities at Blackburn. Other activities under 6.4(c) also cover the treatment and processing of milk and hence the milk processing activities at Dalston.

61.

62. Article 2 of the IPPCD defines 'installation' as :-

63. "A stationary technical unit where one or more activities listed in Annex 1 are carried out, and any other directly associated activities which have a technical connection with the activities carried on that site and which could have an effect on emissions and pollutions."

64. **The Pollution Prevention and Control (England and Wales) Regulations 2000 (PPCR)** put that Directive into effect in the United Kingdom. The Regulations establish a system which requires permits to operate installations or mobile plants. (Regulation 9). A permit to carry out a specified waste management activity (which includes disposal of waste other than by incineration or landfill under Section 5(3) of Schedule 1), shall not be granted unless the Regulator is satisfied that the applicant is a fit and proper person (Regulations 10 and 4). The general provisions relating to the conditions of permits granted include a principle that installations and mobile plants should be operated in such a way that all appropriate preventative measures are taken against pollution, in particular through the application of best available techniques, and no significant pollution is caused. (Regulation 11). Best available techniques are defined in Regulation 3. Regulation 23 places a duty on the Regulator

to ensure compliance with the conditions and enforcement notices to achieve that can be served under Regulation 24. A suspension notice may be served on the operator of an installation or mobile plant, the effect of which is to cause the permit to cease to have effect. (Regulation 25). An appeal lies to the Secretary of State, (who also deals with appeals under the Water Industry Act), against, inter alia, refusal to grant a permit or the service of a suspension notice. (Regulation 27). It is an offence under Regulation 32 to operate an installation or mobile unit without a permit or to fail to comply with or contravene a condition of a permit.

65.

66. A directly associated activity is defined under Regulation 2. It means :-

67. "In relation to an activity carried out in a stationary technical unit and falling with any description in Sections 1.1 – 6.9 of Part 1 of Schedule 1, any directly associated activity which has a technical connection with the activity carried out in the stationary technical unit and which could have an effect on pollution" An 'installation' means :- "(i) a stationary technical unit where one or more activities listed in Part 1 of Schedule 1 are carried out; (ii) any other location on the same site where any other directly associated activities are carried out." **The authorities.**

68. In *R(Rusbridger) v Attorney General [2004] 2 AC 357* three criteria were identified for the granting of a declaration (i) the absence of any genuine dispute about the subject (ii) whether the case is fact sensitive and (iii) whether there is a cogent public or individual interest that can be advanced by the grant of a declaration. *Blackland Park Exploration Limited v Environment Agency [2004] ENV. LR 33* also establishes that declaratory relief can be granted in exceptional cases. I am satisfied that this case passes the *Rusbridger* test and that it is appropriate for the Court to consider the grant of declaratory relief.

- 69.
70. The approach to construing domestic legislation in a case where a European Directive lays down obligations is established in *Marleasing SA v La Comercial Internacional De Alimentacion SA Case C-106/89* where it was said that :–
71. " ..the member state's obligation arising from a Directive to achieve the result envisaged by the Directive and their duty under Article 5 of the Treaty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation, is binding on all the authorities of member states including, for matters within their jurisdiction, the courts. It follows that, in applying national law, whether the provisions in question were adopted before or after the Directive, the national court called upon to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the Directive in order to achieve the result pursued by the latter and thereby comply with the third paragraph of Article 189 of the Treaty."
72. I have adopted that approach but bear in mind the submission made by Mr Lawrence West QC on behalf of the Claimant that the Court can construe domestic legislation only in so far as the wording of the Regulations permit as this demonstrates the intention of Parliament. This is so, he submits, even if the Regulations are an imperfect implementation of the Directive. He submits that the Court can only interpret the legislation, it cannot rewrite it.
- 73.
74. On the issue of 'already covered by other legislation' I have considered the decision of the European Court of Justice in the *Finnish Chrome case (AvestaPolarit Chrome Oy [2004] ENV. LR 44)*. Both Community legislation and domestic legislation have to be considered whether they came into force before or after the amended WFD in April

1993. The UWWTD and the UWWTR both cover sewage sludge in this sense. The *Finnish Chrome* case requires that the other legislation must have 'resulted in a level of environmental protection at least equivalent aimed at (by the relevant Directive), even if the detailed terms of that national legislation diverge from those of the Directive.' (Para 59).

75.

76. At paragraph 52 the European Court said :-

77. "...national legislation must not merely relate to the substances or objects in question from – for instance an industrial point of view, but must contain precise provisions organising their management as waste within the meaning of Article 1(d) of the Directive. Otherwise the management of that waste would be organised neither on the basis of Directive 75/442 nor on the basis of national legislation independent of the Directive, which would be contrary to both the wording of Article 2(1)(b) of the Directive, which requires that the national legislation in question should cover the waste as such, and to the consideration expressed in the fourth recital in the preamble to Directive 91/156, which states that in order to achieve a higher level of environmental protection, the member states must, in addition to taking action to ensure the responsible removal and recovery of waste, take measures to restrict the production of waste particularly by promoting clean technologies and products which can be recycled and reused, taking into consideration existing or potential market opportunities for recovered waste."

78. The term 'discard' has been considered by the European Court of Justice in *Palin Granit [2002] 1 WLR 2644 at 2658* where it was said :-

79. "23. The term discard must be interpreted in light of the aim of Directive 75/442 which, according to its third recital, is the protection of human health and the environment against harmful effects caused by the

collection, transport, treatment, storage and tipping of waste, and Article 174(2) EC which provides that community policy on the environment is to aim at a high level of protection and is to be based, in particular, on the precautionary principle and the principle that preventive action should be taken. It follows that the concept of waste cannot be interpreted restrictively (see *Joined Cases C-418/97 and C-419/97 Arco Chemie Nederland & others* [2000] ECR I- 4475 paragraphs 36-40). 24. More specifically, the question whether a given substance is waste must be determined in the light of all the circumstances, regard being had to the aim of Directive 75/442 and the need to ensure that its effectiveness is not undermined (*Arco Chemie Nederland* paragraph 73, 88 and 97.)" **The Submissions.**

80. I have been greatly assisted by the skeleton arguments, the detailed oral submissions and the closing submissions. I have considered these with care. I propose here to give an outline of the submissions each party made to me.
81. **The Claimant's submissions.**
82. The Claimant's first submission is that neither the Integrated Pollution Prevention and Control Directive 96/61 EC nor the Pollution Prevention and Control Regulations 1996 apply to waste water treatment. The water and sewage industries are already heavily regulated under the Water Industry Act 1991 by the Secretary of State and / or the Director-General of Water Services, and the regulation of waste water treatment is specifically covered in the Urban Waste Water Treatment Directive 91/271 EC and the Urban Waste Water Treatment (England and Wales) Regulations 1994. The addition of an entirely separate regime would be unnecessary, costly, and confusing and cannot have been intended by Parliament. The regulation of waste water treatment has always been separate from that of waste generally. A proper interpretation of the Waste Framework Directive is that

that distinction is to be continued. The treatment of waste waters results in two major products, namely treated waste water which is discharged into surface waters and sludge which is to be disposed of by incineration or landfill or recovered. The treatment of sludge and water is inextricably mixed throughout. Urban waste water treatment is a unified whole until the process is complete and sludge has thereby become a separate entity from the treated waste water.

83.

84. A proper interpretation of the legislation demonstrates the recognition of the distinction between waste water treatment (including sludge) and the treatment of other waste. The legislation is concerned with activities not substances. The Integrated Pollution Prevention and Control Directive and the Pollution Prevention and Control Regulations apply to specific industrial activities as therein defined; they have no general application. Urban waste waters and sludge are not mentioned expressly in the categories of waste in Annex 1 of the Waste Framework Directive but are only caught by the catch-all provision in Q16. It is in fact the discard of waste, not the treatment of waste which the Waste Framework Directive and the Integrated Pollution Prevention and Control Directive and Pollution Prevention and Control Regulations are dealing with. This is demonstrated by the fact that the words 'disposal' and 'recovery' have a specific statutory meaning in the Waste Framework Directive, and both relate to discard. This shows that the legislation is intended to treat sludge as waste only when it has been separated from treated waste water and is ready for landfill, incineration or recovery. Until that time is reached sludge remains an integral part of waste water and is not intended to be covered by the Waste Framework Directive, the Integrated Pollution Prevention and Control Directive or the Pollution Prevention and Control Regulations.

85.

86. The protection to the environment provided by the Water Industry Act 1991 and the Urban Waste Water Treatment Directive and the Urban Waste Water Treatment Regulations is equivalent to that provided by the Waste Framework Directive, Integrated Pollution Prevention and Control Directive and Pollution Prevention and Control Regulations. An example of the confusion or chaos which would arise if the Pollution Prevention and Control Regulations were to apply to the waste water industry is that under the Water Industry Act 1991 the Secretary of State can substitute an administrator to fulfil the activities of a deficient sewerage undertaker, whereas under the Pollution Prevention and Control Regulations regime the activities would become unlawful and there is no provision for providing a replacement. As sewage can never be turned off the Pollution Prevention and Control Regulations regime cannot have been intended to take over from the Water Industry Act regime.
- 87.
88. There is no suggestion in the Pollution Prevention and Control Regulations that the Water Industry Act has in any relevant part been repealed or amended. The fact that 'sludges' appear in the Commission's waste lists does not determine whether it falls within Waste Framework Directive or Integrated Pollution Prevention and Control Directive or Pollution Prevention and Control Regulations. As sludge is not a waste in liquid form and waste waters are in any event covered by other legislation the Claimant's treatment plants cannot fall within the Waste Framework Directive regime.
- 89.
90. There is no express reference to waste water treatment in either the Integrated Pollution Prevention and Control Directive or the Pollution Prevention and Control Regulations and the comprehensive regulatory regime of the Water Industry Act in relation to statutory water and sewerage undertakers remains unamended. This can only

mean, Mr West submits, that separation between the treatment of waste water and other forms of waste continues.

91.

92. The Claimant submits that the 'waste waters' which enter its waste water treatment plants are not 'waste in liquid form' and are thus excluded from the Waste Framework Directive by virtue of Article 2.1(iv). As waste waters they are already comprehensively covered by the Water Industry Act and the Urban Waste Water Treatment Regulations and hence the exclusion under Article 2 applies.

93.

94. The essence of the submission that the sludge is not 'waste in liquid form' is that the sludge component of waste waters is simply part of the waste water and only ceases to be so when sludge cake is separated from the urban waste water. Were this submission not to be correct the consequence would be that the entirety of urban waste water treatment processes would fall under Pollution Prevention and Control Regulations as a 'directly associated activity' under Regulation 2 of Pollution Prevention and Control Regulations. The fact that the Defendant does not submit that the whole of water treatment plants are directly associated activities demonstrates the illogicality of its stance.

95.

96. The exclusion under Article 2 of the Waste Framework Directive applies even if the urban waste water treated by the Claimant is not waste in liquid form, but waste waters, as these are 'already covered by other legislation'. The Urban Waste Water Treatment Regulations, implementing the Urban Waste Water Treatment Directive and the Water Industry Act provide an equivalent level of environmental protection to the Waste Framework Directive regime. The Urban Waste Water Treatment Directive requires that sludge should be used, that the impact on the environment

in dealing with urban waste water and sludge should be minimised, and the disposal of sludge to surface water should be phased out and ceased. The Urban Waste Water Treatment Regulations deals expressly with the treatment of urban waste water and its components i.e. including sludge. The Water Industry Act provides for an alternative administrator, recognising the need for continuity of service as sewage is constantly produced. The duties under Section 94 can be enforced and civil claims brought for either an injunction or damages. The Defendant's submission that the Pollution Prevention and Control Regulations regime deals with odour and noise whereas the Water Industry Act and Urban Waste Water Treatment Regulations regime does not is incorrect as the Environmental Protection Act 1990 enables local authorities to deal with statutory nuisances such as odours and noise. Thus the activities of the Claimant at its treatment plants are specifically excluded from the Waste Framework Directive.

97.

98. The term 'which results in final compounds or mixtures which are discarded..' under D8 Biological treatment and D9 Physico-chemical treatment Annex IIA of the Waste Framework Directive cannot apply to any of the Claimant's processes which require further treatment before the final compound or mixture is produced. No final compound or mixture is created except at Shell Green save for instances where the compound or mixture is to go for recovery and so is outside Section 5(3)(c) of Pollution Prevention and Control Regulations, or in the limited number of circumstances where a planned contingency exists. Thus at Widnes the sludge is further treated at Warrington and Shell Green and therefore no final compound or mixture is produced; at Bolton most of the sludge goes to Davyhulme for further treatment and the planned contingency is sent for recovery and hence does not fall within Section 5(3)(c) of Pollution Prevention and

Control Regulations which is concerned with disposal and not recovery; at Wigan final compounds and mixtures are produced for recovery though there is a planned contingency which is sent for disposal and might therefore fall within the Pollution Prevention and Control Regulations if that regime applies to urban waste water treatment; at Davyhulme most of the sludge goes to Shell Green so there is no final compound or mixture, or where there is, it is sent for recovery, though the Pollution Prevention and Control Regulations could apply to a planned contingency whereby sludge cake is sent to landfill but only if the Pollution Prevention and Control Regulations regime applies to urban waste water treatment.

99.

100. Different considerations apply to the Claimant's plants at Blackburn and Dalston. Here the question is not sludge treatment but the treatment of brewing effluent and milk effluent. The Pollution Prevention and Control Regulations can only apply to the Claimant's pre-treatment plant at Blackburn or the treatment plant at Dalston if the activities there carried on by the Claimant are 'directly associated activities' under Regulation 2 of the Pollution Prevention and Control Regulations. The Claimant submits that neither of the activities carried on by it at Blackburn or Dalston fall within the definition of 'directly associated activities'. The Regulation requires that the activities are carried on 'on the same site' and this cannot be said to be the case either at Blackburn or Dalston as in the former case the pre-treatment plant is 800 metres away from the brewery and in the latter case the treatment plant is 700 metres away from the milk processing plant. The fact that they are connected by a pipeline cannot make them 'the same site' as if a mere physical connection was sufficient the words 'on the same site' would be otiose. Nor is a simple pipeline a 'technical connection' under Article 2 (3) of the Integrated Pollution Prevention and Control

Directive. If the Defendant was correct in its submission that either Blackburn or Dalston were 'directly associated activities' then, by the same logic, all the waste water treatment activities would also be directly associated activities at all of the Claimant's plants. The Defendant's submission that 'same site' should be read so as to include sites within a 1 mile limit is arbitrary and incorrect, as it is their submission that a principal user test can be inferred from the Pollution Prevention and Control Regulations. The Claimant has no technical connection with brewing or milk processing and is carrying out an activity of a wholly unrelated nature. The 'technical connection' under the definition of 'directly associated activity' has to be with the activity carried on i.e. brewing or milk processing and a physical connection with the place is insufficient. There is therefore no 'technical connection' at either Blackburn or Dalston.

101. The Defendant's submissions.

102. The Defendant submits that the Pollution Prevention and Control Regulations, on its proper construction, applies to the water industry and in particular the activities at sludge treatment plants. The Integrated Pollution Prevention and Control Directive requires an integrated approach to pollution control and it would be contrary to that purpose to exclude activities such as sludge treatment plants which are capable of causing emissions such as odour or noise. There is nothing in the Pollution Prevention and Control Regulations or the Integrated Pollution Prevention and Control Directive which indicates that it is not intended to apply to the water industry. The Defendant already has a significant role in regulating the activities of water and sewerage undertakers, in particular in relation to discharge consents. Schedule 10 the Water Resources Act 1991 enables the Defendant to attach conditions to any discharge consent and these on their face clearly affect the way the sewerage undertaker can perform its statutory

function. Failure to comply with such conditions may lead to a criminal offence under Section 85 of the Water Resources Act 1991. Any submission that the activities of the Claimant are effectively exhaustively regulated under the Water Industry Act 1991 is mistaken.

103.

104. The matter must however be considered by reference to the specific terms of the legislation. Sewage sludge is clearly waste under Article 1(a) of the Waste Framework Directive either under Q8 or Q16 of Annex 1. 'Sludges from urban waste water' are expressly included in the list of wastes set out by the Commission 19 08 05 and there is no doubt that the Claimant is the holder of the sludge and intends to discard it. It is the holder's intention which is significant not the identity of the holder. *Palin Granit* requires that 'waste' should be given a broad interpretation.

105.

106. The exclusion under Article 2 of the Waste Framework Directive does not apply, firstly, the Defendant submits, because the sludge is waste in liquid form, and even if it is wrong about that, it is waste waters not already covered by other legislation. A proper reading of the legislation indicates that sludge is distinguished from waste water. The two are treated as distinct once the sludge has been extracted (Urban Waste Water Treatment Directive Article 2(10), Articles 12 and 14 and recitals 9, 11 and 13). If sludge is not waste water, the Defendant submits, it is waste in liquid form; it is aqueous but more concentrated than waste waters and is specifically included in the list of wastes which it would not have been if it was itself part of urban waste water. Urban waste water is absent from the list, but sludge is included. The percentage of water contained in sludge does not assist in the determination of the question. Sludge cake and human bodies are both 70% water yet demonstrably are not liquid.

107.

108. Whilst there are regulatory provisions under the Water

Industry Act, the Defendant submits that these are not at least equivalent to that aimed at by the Waste Framework Directive (*Finnish Chrome paragraph 59*). This is because there is no system of permits within either the Water Industry Act or the Urban Waste Water Treatment Regulations such as exist under Article 9 and Articles 4 and 7 of the Waste Framework Directive. A permit can be refused under the Waste Framework Directive whereas there is no such preventative method under the Water Industry Act mechanism which is responsive. The principal provisions of the Urban Waste Water Treatment Directive / Regulations relate to discharges to surface waters and there are no precise provisions organising the management of sludge, such as those defined in Article 1(d) of the Waste Framework Directive re 'collection, transport, recovery and disposal of waste, including the supervision of such operations and after care of disposal sites.' The regulatory mechanism under the Water Industry Act and the Urban Waste Water Treatment Directive / Regulations is not therefore at least the equivalent of that achieved by the Waste Framework Directive and Pollution Prevention and Control Regulations.

109.

110. As to 'final compounds and mixtures' the Defendant submits that 'final' can only sensibly be read to mean that the process ultimately results in products to be discarded by means of the specified operation. The disposal operations in Section 5.3 of Schedule 1 to the Pollution Prevention and Control Regulations in wording taken from the Waste Framework Directive should be construed broadly and purposively.

111.

112. As to Blackburn and Dalston, the Defendant submits that the 'same site' should be given a broad interpretation so that the Pollution Prevention and Control Regulations are interpreted in conformity with the Integrated Pollution Prevention and Control Directive. The existence of the

words 'same site' do demonstrate, the Defendant accepts, that there is an additional requirement of proximity beyond the requirements of 'technical connection' and direct association of activities. Blackburn and Dalston on their facts fall within the broad definition of same site.

'Technical connection' must include a dedicated pipeline between two activities.

113.

114. The Defendant submits that the Claimant's plant treating the effluent from the brewery and the milk processing plant is performing an activity which is 'directly associated' with that performed at the primary site, because by treating the effluent it is performing a process necessary to the conduct of the brewing and the milk processing. The Defendant submits that the words 'directly associated' import an element of subsidiarity in the activity which is associated to the primary regulated activity. The 'directly associated activity' must 'serve' the primary activity. Such an interpretation prevents waste water becoming a directly associated activity of sludge treatment.

115. **Conclusions.**

116. I preface these conclusions with the comment that the interpretation of these provisions has not been an easy task. They are in various instances obscure or confusing and it is not surprising that the parties have changed their emphasis or stance upon various aspects of the legislation during the hearing and beforehand. The European Directives cannot define which existing domestic legislation will be effected by their contents; the pre-existing legislative structure dealing with the environment or pollution will vary from member state to member state. It might be hoped however that when the Regulations are drafted by a particular member state, here the UK, their effect upon existing legislation would be made clear. The framework into which the Pollution Prevention and Control Regulations fits however has not been stated in the

Regulations themselves and the Court must therefore do its best to interpret legislation without, as Mr West rightly submits, rewriting it.

117. **1. The application of the Pollution Prevention and Control Regulations 2000 to waste water treatment activities.**
118. The water industry is, as the Claimant submits, heavily regulated by the Water Industry Act 1991, the Water Resources Act 1991, and the Urban Waste Water Treatment Regulations. The latter regulations, arising out of the Urban Waste Water Treatment Directive show that a distinction has been drawn between waste water treatment and other forms of waste treatment. Neither this, nor the fact that urban waste waters and sludge are not mentioned expressly in the categories of waste in Annex 1 of the Waste Framework Directive nor the fact that there is no express mention of disposal to a sewer or to sewage operations, is determinative of the scope of the Pollution Prevention and Control Regulations, though all of the matters must be taken into consideration. Nor is it determinative that sludges appear in the Commission's list of wastes, as the decision expressly states that wastes included on the list are subject to the Waste Framework Directive except where the exclusion under Article 2(1)(b) applies.
- 119.
120. It is important in my judgment to note that one of the aims of the Integrated Pollution Prevention and Control Directive is to provide an integrated approach to pollution control to prevent emissions into air, water or soil wherever practicable. Article 2(1)(b)(iv) of the Waste Framework Directive as amended includes waste waters within its terms unless they are 'already covered by other legislation'. The criteria 'already covered by other legislation' was introduced by amendment on 18.3.91 within months of the Urban Waste Water Treatment

Directive which itself dealt expressly with the treatment of urban waste water including the treatment of sludge. I do not however regard the timing of the amendment as anything other than coincidental. I see no basis for restricting it to refer only to the Urban Waste Water Treatment Directive or alternatively to interpret it as meaning that waste waters were already covered by Urban Waste Water Treatment Directive. The 'other legislation' must be specifically considered to see whether it provides equivalent environmental protection to that provided by the Pollution Prevention and Control Regulations. Prima facie therefore waste waters, with the exception of waste in liquid form, are included in the Waste Framework Directive as amended unless already covered by other legislation.

121.

122. Furthermore, the Integrated Pollution Prevention and Control Directive Annex 1 Section 5 includes waste management as one of the categories of industrial activities referred to in Article 1 of the Directive. Under Section 5.3 of Annex 1 installations for the disposal of non-hazardous waste, as defined in Annex IIA of the Waste Framework Directive under the headings of D8 and D9, are included. It is difficult to escape the conclusion that sludge treatment plants are such installations, as they carry out either biological treatment or physico-chemical treatment as set out in D8 or D9 of Annex IIA.

123.

124. The Defendant has a substantial role under the Water Resources Act 1991 in relation to discharge consents. It may impose conditions to any consent and those may, as the Defendant submits, affect the way in which the sewerage undertaker performs its statutory function. (See for example *Water Resources Act 1991 Schedule 10 Regulation 4B – condition as to nature, origin, composition, temperature, volume and rate of discharge*). It is therefore apparent that the Defendant already has

substantial responsibilities in relation to sewerage undertakers' activities and the imposition of further responsibilities on them under the Pollution Prevention and Control Regulations is not inconsistent with the existing legislation.

125.

126. I acknowledge that the Pollution Prevention and Control Regulations permit system does not provide for a substitute administrator unlike the Water Industry Act 1991 and in theory there could be a situation in which the failure to comply with conditions of a permit under the Pollution Prevention and Control Regulations could render a statutory undertakers' activities unlawful without a mechanism for the substitution of an administrator to carry on to process in a lawful manner. This is a serious practical consideration but not one which is a bar to the proper interpretation of the legislation.

127.

128. When the integrated approach required by the Integrated Pollution Prevention and Control Directive is taken into account and the legislation both individually and generally considered it is in my judgment appropriate to conclude that the proper interpretation of the Pollution Prevention and Control Regulations is that it was intended to and does apply to waste water treatment activities. My conclusion as to the applicability of the Pollution Prevention and Control Regulations is fortified by my interpretation of the Waste Framework Directive and Integrated Pollution Prevention and Control Directive and Pollution Prevention and Control Regulations in conclusions 2 and 3 below.

129. **2. Is sewage sludge 'waste' under Article 1A of the Waste Framework Directive and if so is it excluded under Article 2(b)(iv) of the Waste Framework Directive?**

130. There can be no doubt that sewage sludge is 'waste' under Article 1A of the Waste Framework Directive either by

virtue of Q8, residues of industrial processes.. or Q16 the catch-all relating to any material, substances or products not contained in the above categories. The Claimant is clearly the holder of the sludge and intends to discard it. Sludges 'from treatment of urban waste water' are expressly included in the list of wastes 19 08 05 unless excluded under Article 2(b)(iv). Waste in a liquid form is not excluded in any circumstances; waste waters are excluded if they are already covered by existing legislation.

131. **Waste in liquid form.**

132. 'Sludge' is defined in Article 2 of the Urban Waste Water Treatment Directive as 'residual sludge, whether treated or untreated, from urban waste water treatment plants'. I accept the submission of Mr David Hart QC on behalf of the Defendant that the Urban Waste Water Treatment Directive, when read overall, treats sludges as distinct from waste waters once they have been extracted. (Article 2(10), Articles 12 and 14 and the 9th, 11th and 13th recitals). The reference to 'disposal of sludge to ensure that the environment is protected from the adverse effects of the discharge of waste waters' in the 12th recital does not detract from this conclusion. Whether or not 'disposal of sludge' is simply one of the potentially 'adverse effects' of the discharge of waste waters, I am satisfied that the overall effect of the Directive is to treat sludge as separate and distinct from waste water once extracted. Extracted sludge is 'residual sludge' whether it is 'treated or untreated'.

133.

134. This separate and distinct treatment is also apparent from the Urban Waste Water Treatment Regulations 4(b) and (c) and Regulation 2(1).

135.

136. I do not accept Mr West's submission that sludge is either an integral part of waste water, simply being an impurity

within it, or a solid once it has become a cake. As Mr Hart submits, the inclusion of 'sludges from treatment of urban waste waters' in the Commission's list of wastes suggests that sludges cannot themselves be urban waste water as if so they would not have been included separately in the catalogue of wastes under the Waste Framework Directive when (urban) waste waters were not so categorised. Furthermore the fact that other substances derived from non urban waste waters may amount to waste in liquid form does not prevent sludge from being waste in liquid form.

137.

138. I also agree with Mr Hart's submission that the percentage of water content does not enable one to distinguish between 'waste water' or 'waste in liquid form'.

139.

140. I conclude that sludge is waste and aqueous, but once it has been extracted from them, is more concentrated than waste waters, and hence is waste in liquid form. As Mr Richard Burnett-Hall said in his chapter on excluded wastes and activities involving waste in *Environmental Law 1995* a distinction may be intended between (consented) aqueous discharges, whether to controlled waters or to sewer, in which the concentration of any pollutants is very low, and waste materials and products which are in fact relatively concentrated aqueous solutions or suspensions.

141.

142. Although it is not strictly necessary in view of the above finding to consider whether waste waters are already 'covered by other legislation' I consider that it may be helpful for me to do so. I am clear that the case of *Finnish Chrome* requires there to be equivalent protection and this is not provided by the Water Industry Act 1991, the Water Resources Act 1991 or the Urban Waste Water Treatment Regulations. The absence of a permit system requiring measures to be taken in relation to noise and odour and

waste management plans, and the ability to refuse permits if such measures are not taken is a substantial form of pollution control. It enables odour and noise to be prevented in advance. No equivalent system exists under the Water Industry Act mechanism which is solely responsive rather than preventative. I am therefore satisfied that even if sludge is 'waste waters' rather than 'waste in liquid form' it is not 'already covered by other legislation'. Hence the exclusion under Article 2(b)(iv) does not apply.

143. **3. Is the treatment of sludge covered by the Integrated Pollution Prevention and Control Directive or the Pollution Prevention and Control Regulations 2000?**

144. There is no dispute that certain parts of the treatment carried out at sludge treatment plants are either biological treatment under D8 or physico-chemical treatment under D9 of Annex IIA of the Waste Framework Directive. The question which arises in relation to this issue is whether or not such treatment 'results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 to D12', such as incineration on land D10, permanent storage D12, blending or mixing D13, repackaging D14, storage pending any of the other operations D15.

145. **'Final compounds and mixtures..'**

146. I accept the Defendant's submission that 'treatment.. which results in final compounds or mixtures which are discarded..' means a process which ultimately results in products to be discarded by any of the specified operations. Biological or physico-chemical treatment may not result in a final compound or mixture where that treatment is carried out, yet it may be part of the process which results in a final compound or mixture which is discarded. It cannot in my judgment have been the intention of the legislature to exclude intermediate treatment operations except where the treatment occurs at

the same point as the ultimate disposal. This is contrary to the intention of the Integrated Pollution Prevention and Control Directive which is intended to prevent emissions into air, water and soil wherever this practicable and to the 3rd recital of the Waste Framework Directive which states that the 'essential objective of all provisions relating to waste disposal must be the protection of human health and environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste'. Those objectives cannot be achieved if treatment processes at intermediate plants are excluded. Furthermore the restrictive construction of D8 and D9 is inconsistent, as the Defendant submits, with the broad scope of D13 – D15 of Annex IIA covering disposal by, for example, blending or mixing and repackaging and storage. The wording of D8 and D9 is designed in my judgment to make it clear that treatment leading to recovery is not covered, whereas treatment leading to compounds or mixtures which are to be discarded by, for example incineration or landfill, are to be covered.

147.

148. I am satisfied that intermediate treatment is intended to be and is covered under D8 and D9 and that a broad purposive interpretation as well as the proper interpretation of the words of D8 and D9 lead to this conclusion. I have not found it necessary to rely upon Mr Hart's linguistic parallels with the French text.

149.

150. The consequence is that any intermediate treatment before the sludge reaches Shell Green which properly falls within D8 or D9 as biological or physico-chemical treatment and does not lead to 'recovery', is treatment which 'results in final compounds or mixtures which are discarded..'. Thus for example waste waters put through a gravity belt thickener at Widnes will be physical treatment which results in a final compound or mixture being discarded and to which the Pollution Prevention and Control Regulations

provisions apply. The fact that further treatment takes place at Warrington and Shell Green does not affect this. Such processes at Bolton, Wigan and Davyhulme which are either biological treatments or physico-chemical treatments under D8 or D9 will also be subject to the Pollution Prevention and Control Regulations save where the end product is sent for recovery. This also applies to planned contingencies which result in disposal or landfill as opposed to planned contingencies which result in recovery. Recovery operations are not subject to the Pollution Prevention and Control Regulations.

151. **4. Is treatment of the beer effluent at Blackburn and milk effluent at Dalston covered by the Pollution Prevention and Control Regulations 2000?**

152. The resolution of this issue depends upon the interpretation of 'directly associated activity' and 'installation' under the Pollution Prevention and Control Regulations 2000 and the phrases 'stationary technical unit' and 'a technical connection' and 'on the same site' within those definitions. The Integrated Pollution Prevention and Control Directive does not use the words 'same site' but 'on that site' (Article 2(3)).

153.

154. This is a formidable task; the language is obscure and its meaning difficult to grasp. It is accepted that both the brewing and milk processing fall within Section 6.8 of Schedule 1 of the Pollution Prevention and Control Regulations. The brewery and the milk processing plant both constitute 'stationary technical units'. The treating of effluent at both the brewery and the milk processing plant is no doubt essential to the process of brewing and milk processing. Whether in such circumstances it can be described as a 'directly associated activity which has a technical connection with the activity carried out at the stationary technical unit' is a more difficult matter. This cannot mean that the directly associated activities must be

the same as those carried out by the stationary technical unit, as in that case such activities would fall as much under Pollution Prevention and Control Regulations as those of the stationary technical unit itself. Nor can it mean that the directly associated activities must be carried out at a site owned or operated by the same person as Regulations 10(6)(a), 10(10)(b), 18(1), 18(3), 18(6)(a) all envisage installations or activities being operated by different operators.

155.

156. The directly associated activity has to have a technical connection with the activity carried out in the stationary technical unit. The words 'technical connection' could apply to a pipeline though it is unclear in what sense that would provide a technical connection between the brewing and the treatment plant, save in the sense that the pipeline connects the two premises and effluent is pumped through it.

157.

158. Even if the treatment of the effluent amounts to a directly associated activity which has a technical connection with the activity carried on in the stationary technical unit (of which I am doubtful) I am satisfied that the requirements of 'same site' in the definition of 'installation' are not met here. The words import, as the Defendant accepts, an additional requirement of proximity beyond the requirements of 'technical connection' and 'directly associated activity'. On the one hand the Claimant accepts that two parts of a site separated by a road or a river might nevertheless be regarded as same site so there does not have to be complete continuity. On the other hand the Defendant accepts that the position of the sites in relation to each other must be relevant otherwise a pipeline of several hundred miles connecting two sites would render them the same site. As a consequence the Defendant has sought to suggest an arbitrary 1 mile limit in order to make sense of the term. If a broad interpretation is not adopted it

is submitted the aims and objectives of the Integrated Pollution Prevention and Control Directive will not be met.

159.

160. It must be a question of fact on any individual case as to whether the directly associated activity is being carried out on the 'same site'. Here however where the distances are some 800 and 700 metres respectively I do not consider that any sensible interpretation of the words 'same site' could be applied here. The distance is too great. In any event I see no reason why the definition of installation should not refer to different, but directly associated activities carried out on the same site, such as by use of mobile plant.

161.

162. I confess to grave difficulty in construing 'directly associated activity' and 'installation' which I regard as ill-drafted and obscure. I am however satisfied that the brewing and water treatment activities are not being carried out on the same site and hence the Pollution Prevention and Control Regulations 2000 do not apply to the treatment of the effluent from either the brewery or the milk processing plant.

163.

164. I should add that it is arguable that the word 'association' suggests that the directly associated activity may be subordinate to that carried in the stationary technical unit but the provision is so obscurely drafted that I am unable to conclude that this is its clear meaning. Association can mean joining or combining or partnership as well as subordinate status.

165.

166. I come to the unsatisfactory conclusion that the wording of 'directly associated activity' and 'installation' are so obscure that it is not possible for me to provide any clear interpretation of them on the information before me.

167. **Conclusion.**

168. The Pollution Prevention and Control Regulations apply to the treatment plants in categories 1, 2 and 3 at Widnes, Bolton, Wigan and Davyhulme but not to Blackburn and Dalston in category 4. As will be clear from the course of this judgment this action raises difficult questions of interpretation and raises issues suitable for the Court of Appeal should either party wish to take such a course.

169.

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