

BRITAIN, THE EUROPEAN UNION, AND THE ENVIRONMENT

by

Kevin B. Vichcales
Western Michigan University

The historical relationship between Britain and the European Union (EU) has never been warm. It reflects the traditional British attitude that it not be encumbered by continental commitments, while attempting to remain actively engaged to promote its own national interests. Britain's predicament is not new. She has always been a reluctant and difficult partner, has always had a problem with the financial side of the EU, particularly their contribution to the budget; have continually demanded changes in agreements as soon as they were signed to accommodate her "special" circumstances; and has over the long run, followed a fairly self-destructive course so far as the rest of the EU is concerned.

Britain's reluctant or awkward partnership in the EU is well documented. Two examples are; Stephen George's *An Awkward Partner: Britain in the European Community* (Oxford University Press 1994), and Christopher Lord's *British Entry to the European Community Under the Heath Government of 1970-74* (Dartmouth Publishing Company 1993). However, the majority of the literature, has focused on the economic and social aspects without substantially addressing the area of environmental policy. Those works that have addressed this policy area have been of two minds. Those like Nigel Haigh who think that the EU has had a positive impact, by forcing Britain to respond to EU actions through stricter measures or a refinement of environmental thought, and those like Norman Lee who think that there has been so substantial impact to date which can be directly attributed to the EU.

I tend to agree with Haigh, that the EU has forced Britain to respond through direct legislative action and a refinement of environmental thought. However, I will argue that Britain's response to EU environmental directives reflect their traditional historical attitude of reluctance in their relationship to the EU. This can be demonstrated through an analysis of the implementation of both British legislation and EU directives. For the purposes of this paper I will focus on water quality and the relevant pollution control measures sought to achieve it.

OVERVIEW OF EU AND ENVIRONMENT

The original Treaty of Rome makes no mention of the environment and this continued until it was amended by the Single European Act in 1987. Nevertheless, the Heads of State and their governments decided in 1972 that the EU should develop an environmental policy and, since 1973, this has been presented in Five Action Programs (1973-1976, 1977-1981, 1982-1986, 1987-1992, and 1993-2000).

These programs contain the environmental policy intentions of the Commission and the Council of Ministers. To varying degrees, and typically after a considerable period of time, these have been translated into a series of Council Decisions (regulations, directives, recommendations and non-binding opinions). After a further interval (and, to varying degrees, given compliance problems) these have then been translated into member-state law to achieve formal compliance, to be followed later by practical compliance (i.e., implementation on the ground). The interval between the statement of intention and practical compliance can be substantial (in excess of ten years, in some cases) and the content (together with its associated costs and benefits) may be greatly transformed in the process.

OVERVIEW OF EU ENVIRONMENTAL POLICY

A very large number of environmental actions, principally in the form of directives, have been adopted by the Commission and the Council of Ministers since 1973 (Commission of the European Communities, 1987; Haigh, 1989). These have related to:

-water quality: regulation of the quality of drinking water, surface waters in rivers and the sea, bathing waters, ground waters, and of discharges into water;

-air quality: regulation of the concentration of pollutants in the atmosphere and emissions from both stationary and mobile sources of pollution;

-wastes: regulation of the collection, treatment and disposal of solid and semi-solid wastes;

-chemicals and other dangerous substances: regulation of the testing, marketing and use of dangerous substances, regulation of major accident hazards and of chlorofluorocarbons (CFCs);

-noise: regulation of maximum noise levels from stationary and mobile sources;

-wildlife and countryside protection: regulation for the protection of wildlife and their habitats, environmentally sensitive areas and trade in endangered species.

These actions have taken place within a policy framework which has evolved over the years as the Community's own environmental policy has matured. Initially, in the early 1970s, the policy emphasized the need for corrective measures to "clean-up" specific pollution problems. This has been a continuing element but it has subsequently been extended to include:

-anticipatory measures (i.e. planning and related actions designed to prevent new environmental problems being created, e.g. environmental assessment of new development projects; testing, before use, of new chemicals, etc.);

-multi-media measures (which recognize that pollution problems in one environmental medium cannot be satisfactorily regulated without considering repercussions on other environmental media);

-integrative measures (the integration of environmental protection measures into the policies and programs of the main economic sectors; "environmental protection requirements should be a component of the Community's other policies" (Article 130R(2) of the Single European Act));

-sustainable development measures (the complementary use of resource conservation and pollution control actions to promote sustainable development).

British environmental policy has been affected both by the specifics of the EU directives and by the overall policy approach within which they were formulated. However, there can be large differences, in content and timing, between an initial proposal from the Commission and the action which eventually takes place in the individual member-state. In the formulation stage draft directives are often modified, through member-state negotiations, before being approved. For example, one Department of the Environment (DOE) official outlined the negotiating approach adopted towards a particular directive which did not have governmental support, in order to minimize its adverse impact. -"In the end we dealt with the problem by negotiating in Brussels with our partners a directive which, whilst one may not think it is of any particular use, at least does not do any particular harm" (Evidence to House of Lord's Select Committee, quoted in Haigh, 1989, p.41). Securing delays and flexibility in implementation can further reduce the eventual costs of an action substantially below its original estimated cost. This has been a course of action which the British government has consistently followed to reduce the costs of pollution control. While the government has been relatively successful in this regard, the benefits of such legislation is lost.

BRITISH WATER POLLUTION CONTROL: OVERVIEW

The implementation of British legislation concerning water pollution control demonstrates the reluctance of the British government to fully implement control measures for the water environment. British legislation dealing with water pollution control since their joining of the EU includes; the Water Act of 1973, the Control of Pollution Act of 1974, the Water Act of 1989, the Environmental Protection Act of 1990, and the Water Resources Act of 1991.

The objective of the Water Act of 1973 was to resolve existing conflicts of interest between the various authorities concerned in water conservation and pollution prevention and to formulate a comprehensive water management plan on a river basin level. To achieve these objectives ten, multi-purpose, Regional Water Authorities were created. These Authorities took over responsibility for pollution control, resource conservation, fisheries and flood defense from the 27 River Authorities which had been created in 1948. In addition the new Regional Water Authorities took over responsibilities for water supply, sewage treatment, and in some cases navigation, from various other public authorities. (U.K. Laws, Statutes, etc. Water Act, 1973. 21 Elizabeth II).

The transfer of responsibilities for pollution control to the new regions was undertaken with minimal alteration to the content of existing water pollution legislation. The main difference was in relation to the consenting of sewage effluent and the potential conflict with the one Authority being both the pollution control authority and the major discharger of effluent. To circumvent the problem of the Authorities issuing consents for their own discharges, provisions were made in the Act for control by the Secretaries of State for the Environment and for Wales.

The sections of the Control of Pollution Act (COPA) dealing with pollution of water almost entirely repealed the Rivers (Prevention of Pollution) Act of 1951 and 1961, but were not fully implemented until the late 1980s. However, the system established by those Acts for water pollution control was on the whole re-enacted in COPA. The more important amendments were the extension of discharge controls to all tidal waters, advertising of applications and public consultation provisions for new discharges, and the creation of a public register of discharge consents and water quality monitoring data. This allowed third parties, for the first time, the opportunity to scrutinise hitherto confidential information, held by the Regional Water Authorities, regarding consents information, and effluent and water quality data. In cases where the Secretary of State or the Regional Water Authority choose not to prosecute, legal proceedings could be initiated by third parties, using data held on the Register. (U.K. Laws, Statutes, etc. Control of Pollution Act, 1974. 22 Elizabeth II).

The main purpose of the 1989 Water Act was to enable the privatization of the water industry and provided for the division of the Regional Water Authorities in the National Rivers Authority (NRA) and the private Water Service PLCs. The NRA was given the statutory regulatory responsibilities whilst the private undertakers were allocated the task of provision of water supply and sewage collection and disposal. The separation of the former Regional Water Authorities' regulatory functions, and their operational water supply, sewerage and sewage treatment responsibilities, was achieved with the prime objective of resolving the conflicting roles of the Water Authorities, and providing the commercial freedom to generate necessary capital investment in the water industry. Significant additions to pollution control provisions in the Act included provisions for Statutory Water Quality Objectives, Prohibition Notices, Nitrate Sensitive Areas and Water Protection Zones. (U.K. Laws, Statutes, etc. Water Act, 1989. 37 Elizabeth II).

The Environmental Protection Act of 1990 (EPA) introduced a number of significant new provisions for industrial pollution. In particular it provided for control of pollution to air, water, and land by "prescribed" (dangerous) substances discharged from identified "prescribed processes". Implementation of this Act is the responsibility of Her Majesty's Inspectorate of Pollution (HMIP) using the system of "Integrated Pollution Control" (IPC). Industrial sectors subject to IPC include, amongst others the Fuel and Power, Waste Disposal, Minerals, Chemical, and Metals Industries. The

introduction of "Integrated Pollution Control" (IPC) to these industrial sectors that use "prescribed processes" is being achieved in stages, and HMIP is gradually taking over the responsibilities of the NRA for discharges to controlled waters which arise from prescribed processes. The NRA retains responsibility for monitoring controlled waters affected by discharges from these processes. (U.K. Laws, Statutes, etc. Environmental Protection Act, 1990. 38 Elizabeth II).

The Water Resources Act of 1991 delineates the NRA's functions and general duties. Of particular importance to the pollution control function is the requirement for the NRA to exercise its powers so as to further the conservation of the natural environment and natural beauty. (U.K. Laws, Statutes, etc. Water Resources Act, 1991. 39 Elizabeth II).

The legislative Acts described above have formed an impressive record of public action in regard to the water environment, but they have fallen short of providing clean water to the British public due to a lack of vigorous implementation and enforcement.

Of these Acts, the 1974 Control of Pollution Act (COPA) is the best example of British governmental reluctance to comply with the spirit of the EU environmental programs, specifically in reference to public participation and scrutiny of data affecting water quality. The provision for the creation of a public register containing a listing of discharge consents and water quality monitoring data, was not implemented until 1985, eleven years after the passage of the Act. This register allowed third parties, for the first time, the opportunity to view previously confidential information, held by the Regional Water Authorities, regarding discharge consents information, and effluent and water quality data. In cases where the Secretary of State for the Environment or the Regional Water Authority choose not to prosecute for non-compliance, legal proceedings could be initiated by third parties, using data held on the Register.

This legislation proposed a significant change in the process of public pressure which could be brought to bear on the government. Specifically, the creation of the Register and the allowance for third parties to initiate legal proceedings gave environmental groups the power to sue for non-compliance. The ability of environmental groups to initiate legal proceedings has been the most effective tool of similar groups in the United States. The fact that this register was held from the public by the government for this eleven year period demonstrates the British governments reluctance to open up the policy implementation process to outside influences. The non-implementation of this provision protected the government from legal actions by denying third parties access to the information required to initiate legal action.

The reason why the register was released in 1985 and not even later is tied to the British government's desire to privatize the water industry, which was subsequently accomplished in the 1989 Water Act, and to eliminate this issue from the agenda of the then forthcoming General Election. Consistent public pressure and criticism of the government by environmental groups, over slow implementation of the water quality provisions of the Act, was threatening to become a campaign issue. The development of Green parties throughout Europe and at the local level in Britain, threatened to become a major force at the national level. In an attempt to prevent this, the government released the Register to demonstrate it's supposed commitment towards environmental issues. However, even then, the government used slight of hand tactics to cover-up its non-compliance record. It issued new larger discharge consents to the major polluters to fudge the records in the register so as to show compliance. Thus, the historical record of British implementation of their own environmental legislation demonstrates their reluctance to be true protectors of the water environment.

British reluctance to conform to specific EU Directives is dramatically demonstrated in their implementation of the EU Bathing Water Directive (76/160/EEC). This Directive, created in 1976, two years after Britain joined the EU, has a 19 year history which supports this conclusion.

The EU made standards for bathing water the subject for one of their earliest Water Directives (76/160/EEC). This Directive lists nineteen parameters for physical, chemical or microbiological quality, some of which are mandatory, requiring compliance, while others are only intended as guidelines. The two key parameters, which require mandatory compliance, are for total and faecal

coliform bacteria, which are related to the presence of sewage discharges (for which treatment facilities may be barely adequate when peak numbers of visitors arrive at a site). Bathing beaches to which the Directive applies have to be designated by the governments of the member states. This is accomplished through the identification of beaches where bathing has been traditionally practiced by large numbers of people.

National governments are also required to organize the necessary monitoring of water quality to obtain a sizable number of measurements to assess compliance. The number of beaches identified for this Directive can be increased each year, at the discretion of the member-state. Britain has had to add a great many beaches in this manner because, perversely, when the Directive first came into force, in 1985, the British government maintained that only 27 beaches needed to be considered, which is preposterous for an island nation. Shame over the likely results of beach water quality may have prompted this blatant fudging. A secondary factor may also have been the lack of monitoring infrastructure necessary to actually monitor the designated beaches. By 1988, 360 beaches came within the scope of the Directive, and by 1992, 416 had been so designated. (Kinnersley, 129)

British water quality compliance itself has steadily improved over the years, from 56 percent in 1987 to 78 percent in 1990 and 1992. Variations in water temperature and other natural factors can lead to numbers of beaches being on the borderline, meeting the mandatory standards in one year but not for two years together. But overall improvement is evident in three-year results, where 57 percent of beaches had no failures in the period 1988-1990. On the other side of the ledger only 12 percent of designated beaches failed in all years of this same three year period. (Kinnersley, 129)

In the important task of making information accessible to the public, the Marine Conservation Society and the Coastal Anti-Pollution League led the way in Britain by jointly preparing and publishing their Good Beach Guide. This was an independent voluntary initiative of real benefit to vacationers and many coastal towns, as well as a spur to improvement elsewhere. Since then, the Foundation for Environmental Education in Europe launched in 1987, with EU sponsorship, a Blue Flag campaign for coastal areas. Non-commercial ports can seek citations in this in a separate category from beaches. For the beaches, the criteria are wider and looser than the specific water-quality parameters of the EU Directive, but monitoring of the primary parameters of the EU Directive is a necessary qualification for participation in the program. In addition, standards for Blue Flag citations have been progressively tightened in respect to water quality over time, though deficiencies in the monitoring at some locations may cast doubt on the validity of some of the results.

The National River Authority, established under the 1989 Water Act, and responsible for water quality in Britain, publishes its own report, *Bathing Water Quality in England and Wales*. This document provides more detailed information than any award scheme could aim to do. Generally, all bathing waters are intended to comply with EU requirements by 1995, but the EU has itself been reviewing the Bathing Waters Directive because of implementation problems throughout the EU. The more recent Directive on Urban Waste Waters Treatment (91/271/EEC) will bring improvements generally to methods of sewage disposal to coastal waters and is directly linked to non-compliance of the Bathing Water Directive. Improvements in treatment processes having a direct effect on the quality of effluent that is discharged into water in the first place.

The NRA report also includes information published by the EU on comparisons of sampling frequency of coastal waters by all member states. Britain is one of only two states achieving the monitoring required of all relevant bathing waters, largely due to the efforts of the NRA. However, compliance with the mandatory coliform standards of the Directive is 76 percent: other member states, with the exception of Germany, have produced results between 85 and 90 percent, with Ireland in the lead at 97 percent. (*Bathing Water Quality in England and Wales*: no. 8, report for 1991, published June 1992; no. 11, report for 1992, published May 1993.)

In 1992 the Blue Flag scheme required for the first time compliance with a Directive standard of guideline and those of mandatory status, for coliform bacteria, and in 1993 this applied to the guideline standard for faecal streptococci too. This tightening of standards for Blue Flag qualification has

reduced British participation. In 1991, 63 applications gained 35 citations. In 1992, only 17 beaches were entered. These were all successful, but more than 100 beaches did in fact have the water quality of Blue Flag standards.

In Britain, the progress has been further confused by the Tidy Britain group, which administers the Blue Flag scheme, which has invented new awards for British beaches alone. Their awards may have other useful demarcations, for example between Resort Beach awards, involving twenty-eight land-based criteria, and Rural Beach awards, based on eight land-based features. But these new "Britain only" awards, also divided into Seaside Awards and Premier Seaside Awards, are more complicated, though requiring lower degrees of compliance with EU Directive standards than the now stricter Blue Flag scheme demands. The land-based criteria are easier to monitor reliably than water-quality criteria, but it is also true that average citizens are better able to judge land-based facilities for themselves. Thus, the new award scheme of the Tidy Britain group has some tendency to play down the factors on which reliable independent information meets a need.

The talk from ministers and others who have encouraged these new awards about them being "complementary" to Blue Flag assessments is not convincing. At best the new scheme is a distraction; at worst it may undermine the interest of British resorts participating in the EU Blue Flag campaign. More telling however is the level of compliance and the slowness of the British and other EU members to take the Bathing Water Directive seriously. The fact the European Commission started legal proceedings against Britain (and all other member states except Portugal, which was exempted until 1993), in June of 1989, four years after the deadline for implementation had expired, speaks to the problem in general, and to the Bathing Water Directive specifically.

The Bathing Water Directive has had a considerable impact on the state of the environment as well as on the environmental policy-making procedures in general, despite heated criticism from member states. First, the Directive is, among the general public, one of the most well-known and popular EU directives and has helped to increase the level of environmental awareness. After initial problems there is now better data available about the state of bathing waters (the reports are now annual, computerized, and easily assessable). It was, to a significant degree, the problems with the bathing water reports that led to a directive on "standardizing and rationalizing reports on the implementation of certain directives relating to the environment" contained in directive (91/692/EEC). Third, bathing waters have become a kind of environmental indicator; compliance with microbiological parameters made the monitoring of sewage necessary, and it has become clear that poor sewage treatment was in fact a widespread European problem. It was the Bathing Water Directive together with the North Sea Conventions that led member state governments to adopt the Urban Waste Water Directive in 1991 (91/271/EEC). This directive makes the treatment of sewage in collecting systems compulsory for urban centers of a particular size and will prohibit the dumping of sewage sludge at sea. The bathing water directive also illustrates that the original EU approach adopted in the 1970s and 1980s, which set standards dependent upon the usage of the water, or a particular substance emitted into it, was too mechanistic an approach, which has led directly to a more holistic approach as envisioned and outlined in the EU's Fifth Environmental Action Program. Britain has responded to these concerns by adopting the Integrated Pollution Control (IPC) approach which will take a more holistic approach based on entire ecosystems. However, they have also, characteristically hampered their own efforts at environmental management by also adopting the principle of the Best Technical Knowledge Not Entailing Excessive Costs (BTKNEEC) to the design, construction and maintenance of urban waste water collection systems necessary for the implementation of the EU's Urban Waste Water Treatment Directive. For Britain, this means that cost will become the overriding factor in water pollution control, not water quality. This in effect will hamper, if not defeat the intention of the EU directive, and therefore continue to impact the ability of Britain to comply with the Bathing Water Directive.

CONCLUSION

In conclusion, the primary reason for Britain's reluctant relationship with the EU derives from a political culture that overemphasizes their role in European and world affairs; features an electoral system which does not encourage third parties; maintains one of the smallest civil service bureaucracies in Western Europe; and the unique British empirical, inductive approach to any new idea, which contrasts with the declaration of principle followed by the working out of implications in the future, which the rest of the EU has followed since its inception. Together these factors have allowed the major parliamentary parties to resist becoming truly green in comparison to their community neighbors.

Of these factors, the empirical, inductive approach is the most important for understanding the others. Under this approach, the British want to know the exact implications of any new measure before any action is taken. This requires a level of specificity which in environmental policy making is unknown until attempts at control are actually made. In comparison, the rest of the EU starts with a declaration of principle or goal to be achieved. The implications of how to obtain such goals is left to be worked out in the future after several alternatives have been tried and the best means of attaining the goal becomes evident. A majority of British reluctance derives from this conflict in policy making. The British believe that such information must be known before they are willing to commit themselves to any particular approach. Unfortunately, in many cases this is unknowable. This position also creates conflict among the EU members as one nation consistently makes policy making difficult. These differences in approach can be explained from the different historical political development of the EU members. While continental nations have historically maintained large centrally controlled bureaucratic systems, Britain has maintained a small bureaucracy which was decentralized. While these attitudes and approaches were formed more than two centuries ago, they still remain the principle features of a conflicting political culture.

Britain's approach has been reinforced by the fact that the Conservative Party has controlled the British government for 16 of the 22 years that it has been a member of the EU. Thus, much of the analysis of Britain's response to anything deriving from the EU has to be understood within this context. There are three primary reasons why Conservative governments has consistently resisted environmental initiatives. The first relates to the nature of EU directives and centers upon the cost of implementation measures. Unlike the majority of European states who aim for strict quality controls in order to stimulate overall investment in developing abatement technologies, the British Government prefers to see environmental controls as being as cost-effective as possible, which inevitable entails waiting until funds become available. The desire to be cost-effective is further influenced by the Conservatives' desire to be as economically non-interventionist as possible in terms of industry, and a tradition which prefers flexible objectives rather than legally binding standards.

A second reason is the apparent geographical insularity of Britain from the rest of Europe. The fact that Britain does not share any national boundaries other than Eire, is surrounded by water and is influenced by westerly winds, has cultivated the idea of immunity from environmental pollution (Britain is an exporter of transnational pollution rather than an importer, especially acid rain to the Scandinavian nations). Linked to this is a certain ideological arrogance that Britain should not have to meet high costs to achieve standards which are perhaps desirable for continental Europe but are adequate for Britain. This was a point put across by Nicholas Ridley when, as Secretary of State for the Environment in July 1989, he criticized EU standards for tap water as being "ridiculous, extravagant and unnecessary". Moreover, this attitude is further extended by a lack of understanding of the transnationality of pollution.

A third reason for Conservative resistance to EU legislative pressures has been the reluctance to adopt the "precautionary principle" with respect to pollution control measures and an insistence that EU laws be based upon sound scientific evidence rather than emotion. This was a sacred cow of Prime Minister Margaret Thatcher, who in the early 1980s refused to accept that emissions from British coal-fired power stations were responsible for Scandinavia's acid rain. Despite pressure from the Department of the Environment's chief scientist Dr. Martin Holdgate, pollution control measures were held back until the scientific evidence proved Mrs. Thatcher wrong. However, the precautionary principle has gained ground recently as it has become evident that it is more cost-effective. Thus, once cost becomes a

consideration, whatever is cheapest to the government in the long-run becomes the best means of pollution control, whether or not in fact it is the best means of achieving a clean environment.

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