

CC 86

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH



From the Minister

The Rt Hon Kenneth Baker MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London
SW1A 0AA

21st April 1986

K. Baker

NBP

WATER PRIVATISATION: ENVIRONMENTAL PROTECTION

Thank you for your letter of 17 April. I am sorry that I was not able to meet your deadline of 18 April.

Like you, I was disappointed that there was need for me to raise these issues. I have to say that they had virtually all been raised in discussions between our officials. If the solutions you are now proposing had been offered then, it would have avoided the need for correspondence between us on the great majority of points.

I am nevertheless grateful to the further consideration that has now been given to the various points in my letter. In particular I find that the explanation you have given me on water environment protection zones, together with the redrafted paragraph, both clarify the position and resolve my concerns. I am therefore content.

I am also pleased that you have been able to meet most of my other points or provided the necessary reassurances. I still consider it unfortunate that you are unable to agree to the deletion of the reference in paragraph 1.5 of the consultation paper, to the increasing attention to the protection of the marine environment in consultation with our European partners. As I said in my earlier letter I feel this could be taken as endorsing the recent EC draft directive for disposals at sea. If you remain convinced, that this reference is necessary for wider considerations, I will not continue to oppose. But I must warn that the reference may lead us into difficulties at a later date.

The one point on which I do feel that a change is necessary is that the paper should mention the possibility of introducing charges for the work which our respective Departments carry out in considering applications for discharges. This falls squarely

/ within the Polluter ...

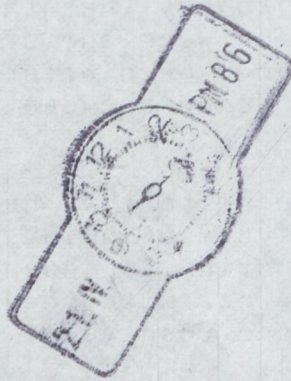
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P.T. 3

within the Polluter Pays Principle and should not be dismissed until it has received full consideration. If it is then shown impractical, so be it, but I must request that the paper leaves the way open and gives recipients the opportunity to comment.

I am copying this letter to the Prime Minister, Malcolm Rifkind, Paul Channon, David Young, Nicholas Edwards, John Moore and Sir Robert Armstrong.

Michael

MICHAEL JOPLING



CCBA



2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref: B/PSO/13864/86

Your ref:

17 April 1986

NSP

Jim McNamee,

WATER PRIVATISATION : ENVIRONMENTAL PROTECTION

Thank you for your letter of 16 April about water privatisation and our environmental consultation paper. As you will know, there has been extensive inter-departmental discussion on earlier drafts of this and we have made considerable efforts to meet the points which we knew were of concern on the agricultural side. It is therefore disappointing that your letter should now be raising so many matters but I will try to meet them in a way which will be satisfactory to both of us.

I cannot agree that we should drop the reference to water environment protection zones, but I think we can present what we mean by these rather better. Introducing these zones does not constitute a "new measure". The powers are all there at present in Section 31(5) of the Control of Pollution Act 1974 which was implemented last year. Other powers do not tackle the risks of pollution arising some distance up stream. The powers to vary discharge consents are of no assistance. The problems arise not from regular consented discharges but from spillages and negligent disposal of wastes and other pollutants. It would not be a satisfactory alternative to implement the powers given to water authorities in section 46(1-3) of COPA. Water authorities regard these powers as burdensome and virtually inoperable, and we are proposing that they should go.

Nor do I believe that the proposals put the voluntary approach to conservation at risk in any way. They are intended to catch practices which are likely to result in criminal offences. We could not defend applying the voluntary principle in such circumstances - especially since the offences can be prevented a good deal more cheaply than their consequences can be remedied. While I do not therefore see grounds to delete this section, I appreciate your concern that, used increasingly, it could damage legitimate agricultural interests. I have therefore / recast the section (as attached) in a way which ties it clearly to pollution risks and circumscribes its use to their problems which we clearly need to tackle. I hope you will feel that this reformulation meets your concerns.

Your more detailed points cause me less difficulty: the order below follows that in your letter:

(i) On COPA Section 32 I do not believe we can deregulate and at the same time emphasise continuing control by central guidance. But we will indicate that such guidance will be provided when appropriate.

(ii) Taking paragraphs 4.11 - 4.14 as a whole I do not believe that what we say about compensation for variation of consents will cause difficulties. However, if it will help, I am prepared to say, in the final sentence of paragraph 4.12 "in this case also the payment of compensation might (rather than 'would') not be appropriate".

(iii) I am prepared to amend the text to make it explicit that we would not expect to make regulations under section 31(4) of COPA on any agricultural practices effectively covered by the Code of Good Agricultural Practice (rather than just the two most important - silage and slurry - to which we explicitly refer). But this is on the clear understanding that if the present advisory code is not enough to reduce the current level of pollution incidents within a reasonable period we must look to other measures. I am concerned that the River Quality Survey may soon show that the long-term improvement in water quality has halted or gone into reverse, particularly within the agricultural regions, so we must be seen to have adequate powers available.

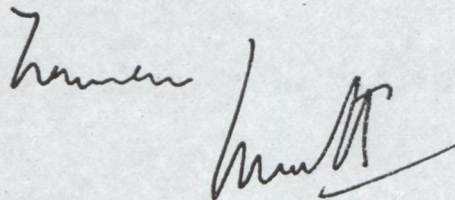
(iv) I confirm that I have no present plans to amend Section 39(2) of COPA which allows us jointly to hear appeals in certain circumstances.

(v) I do not think we should at this stage raise the possibility of charging discharges consent applicants for the time your department gives to commenting on certain categories of application on which they are statutory consultees. We would have to extend it to local authorities who see all such consent applications. Such a charging system could quickly collapse under its own complexity;

(vi) I do not believe that a statement that "The Government is giving increasing attention to protection of the marine environment" risks implying any change of stance on disposals at sea. I believe it is the least we can defensibly say on a matter of increasing concern.

(vii) I accept your point about the reference to anti-fouling paints.

It is inevitable that environmental policies affect a wide range of interests, and agriculture more than most. I hope that you will feel the changes I am able to make reasonably meet your main concerns, and that we can now move immediately to publication. As we have to allow 2 months for consultation, and our final instructions have to be sent to counsel in July, it is vital that we publish this month, and if you have any problems about agreeing to my proposals, I must ask that you let me know by Friday at the latest. Other colleagues, as you know, have already agreed the draft. I am copying this to the recipients of yours.

A handwritten signature in dark ink, appearing to read 'Kenneth Baker', with a stylized flourish at the end.

KENNETH BAKER

Proposed Revision

7.11. But smaller areas are also important. Here the proposed means of protection are the powers in the Wildlife and Countryside Act for the designation of Sites of Special Scientific Interest. Under present plans the Nature Conservancy Council expects that some 9% of the water courses may be so designated. Aquatic plants and animals may however be affected by pollution originating at some distance. In circumstances where pollution injurious to flora and fauna is arising, designation of an SSSI or use of other powers under COPA may not be appropriate. In these exceptional circumstances the Government will consider use of protection zone powers under section 31(5) of COPA (described in section 5 in relation to the protection of sources of water supply) to regulate those activities giving rise to the pollution, whether in the water or on the banks or associated land. This could prove a helpful addition to the existing machinery for conservation of the water environment.

LOCAL GOVT: Water 17d Pt 3



CCBA

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH



From the Minister

NBM

The Rt Hon Kenneth Baker MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London SW1

16 April 1986

WATER PRIVATISATION: ENVIRONMENTAL PROTECTION

Thank you for sending me a copy of your letter of 26 March to Nick Edwards together with a draft of the consultation paper foreshadowed in the Water Privatisation White Paper.

In terms of the overall structure of the paper, it is important to strike the right balance. On the one hand we must be seen in the context of privatisation to be maintaining effective protection for the environment. In addition, the forthcoming legislation will provide a useful opportunity to consolidate and, where appropriate, extend the environmental gains of recent years. On the other hand, any changes must clearly be seen as justified and appropriate. They must take account of the costs to be borne both by the WSPLCs and the individuals affected. They must not be of a nature likely to frighten off potential investors. Finally they must be consistent with our policy on deregulation.

A number of the options outlined in your letter are relevant to my areas of responsibility. I am glad to note that, as a result of discussions between our officials, many of our concerns have been met. The resulting draft which you have circulated now presents a useful basis for preparation of the final version. I do, however, have a few remaining concerns which need to be resolved before the consultation paper is issued and I fully agree with David Young's views on the need for a summary and preliminary compliance cost assessments.

I would like firstly to comment briefly on the overall style of the draft. I accept that we must be as clear as possible about our intentions. Not least, we must show the environmental lobby that there will be no lowering in standards following privatisation. But we must also consider the impression we give to potential investors on whom the success of the whole enterprise depends. I must say that, viewed in this light, I do find the present flavour of the document rather draconian and interventionist.

Turning to points of substance, my principal outstanding concern relates to Chapter 7. Although in general it strikes the right balance by signalling the Government's continued support for adequate

conservation measures, I do not see the need for further protection in the form of Water Environment Protection Zones, which would control activities on water, banks and associated land. The case for new measures of this sort is not made in your letter and it is not clear to me why such additional controls are considered necessary, bearing in mind the existing arrangements, including provisions to vary discharge consents in Section 46 of the 1974 Act, the separate arrangements for Sites of Special Scientific Interest and other provisions in the Wildlife and Countryside Act 1981. The new powers would involve an important element of compulsion and no provision for compensation. This would mark a fundamental change in Government policy, which presently relies upon a voluntary approach to nature and landscape conservation. It might well be seen as running counter to the Government's policy on de-regulation. I believe the creation of these powers would be seized upon by those who wish to argue that the voluntary approach has failed. This is not so. It is important therefore to exclude this proposal from the consultation paper.

My other comments are more on matters of detail. I accept that Section 32 of the 1974 Act can benefit from some changes (Chapter 4 of paper) but we still have reservations over leaving the decision on whether a consent for discharge is necessary to the discretion of WSPLCs. I am therefore strongly in favour of appropriate central guidance being given and believe the consultation paper should state that this will be done, instead of merely referring to it as one option (in paragraph 4.7). Such guidance should incorporate the guidelines agreed last year in respect of agricultural discharges.

In paragraphs 4.11 and 4.12 you discuss the extent to which the existing provisions to vary a discharge consent might be implemented, and I find it helpful that the text clarifies the extent to which compensation is available. However the concluding sentence of 4.12 suggests that compensation would not be appropriate under the new arrangements. This is a delicate issue and I do not consider it appropriate to rule out the possibility of compensation at this stage of the consultation process. I must therefore ask you to adopt a more open wording in this passage so that we are left free to take appropriate decisions in the light of responses to the document.

Paragraph 4.13 proposes the repeal of Sections 46(1) to (3) of the 1974 Act, in view of the new measures in Chapter 7. You may of course wish to reconsider this proposal in the light of my earlier comments on Water Environment Protection Zones.

In chapter 5 you rightly highlight the importance of the Code of Good Agricultural Practice in helping to minimise water pollution from farming activities. Paragraph 5.7 is particularly helpful in suggesting that regulations under Section 31(4) of the 1974 Act are unlikely to be necessary for the storage of silage and slurry (two of the activities covered in the Code). I would suggest however that the reference could be extended to all the activities included in the Code. The Section would then read "... The most important is the Code of Good Agricultural Practice, covering activities described in paragraph 5.4 above. In view of the Code it is unlikely to be necessary to make regulations for such farming

activities, but the Government ...". This is an important statement in that it recognises the role of the Code in avoiding pollution, highlights the Government's view that results are best achieved through the voluntary approach, and makes it clear that we are not looking for changes in respect of agricultural practices so soon after the adoption of the Code and other arrangements made last year.

The section of the paper dealing with Water Source Protection Zones is for the most part acceptable. However, I am uneasy about the proposal to remove the right of an individual to a local public enquiry in advance of controls being imposed. I recognise that the possibility of appeal to you, which might be followed by a public enquiry, would remain as a safeguard. However, in this case, controls which might have a severe impact on, for example, a farm business, would already have come into force. I consider that we should pay careful heed to any representations made on this possible change during the consultation process.

The Control of Pollution Act 1974 presently provides, in Section 39(2), that where there is an appeal against the withholding of a consent for discharge, a certificate can be obtained from this Ministry stating that the activity is good agricultural practice. The appeal is then considered jointly between ourselves. In the absence of any reference to this procedure in the consultation document, I would be grateful for your confirmation that it will continue.

On the fisheries side, my officials are, of course, consulted on a statutory basis on discharges into coastal and estuarine waters and I am glad to note that this provision will continue after privatisation. I also fully support the concept set out in Paragraph 3.6 of the draft consultation paper that you should set objectives and quality standards for estuarial and coastal waters with an appropriate timetable for implementation. I welcome the extension of the polluter pays principle as enshrined in Section 6, which has been developed here through the charges levied under the Food and Environment Protection Act 1985 (FEPA) and through the proposed introduction of charges for authorisations under the Radioactive Substances Act 1960. But I do not think that it goes far enough in that no provision is made in Section 6 for recovery of the costs that our respective Departments incur in considering applications to discharge. While the position may not be entirely straightforward from a legal point of view, I consider that it would be prudent at this stage of the exercise to put up a marker that the Government is considering the concept. Our officials can then look into the position in more depth during the consultation period and, of course, take on board any comments that are made by recipients of the consultation document.

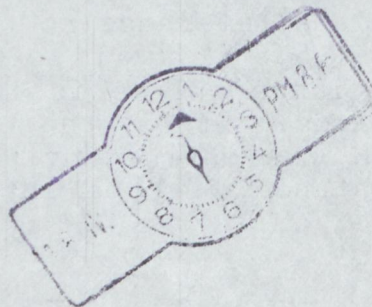
There are also two presentational points on the fisheries side that I would like taken on board. First, despite advice to the contrary by my officials a reference to the marine environment still occurs in paragraph 1.5. I fail to see the relevance of this to the privatisation issue unless it is intended as a reference to water quality standards. If so, the reference should be specifically to that aspect of the marine environment; otherwise I fear that the draft as it stands will be interpreted as a change of stance on

disposals at sea, which would be a particularly unfortunate development, bearing in mind our proposed lin on the draft EC Directive. Secondly I note that a reference to anti-fouling paints has now been introduced at Paragraph 7.6. This gives the impression that existing powers to regulate their use may be adequate. I thought it was clear that the current sanctions under COPA were in fact inadequate and that was why consideration is now being given to controls under Part III of FEPA. In these circumstances, I do not consider the reference to the paints problem to be at all appropriate and would prefer this sentence to be deleted.

I am copying this letter to the Prime Minister, Malcolm Rifkind, Paul Channon, David Young, Nicholas Edwards, John Moore and Sir Robert Armstrong.

James Bond
M. Jopling

MICHAEL JOPLING



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2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

NSM

26 March 1986

Jim Nick,

WATER PRIVATISATION: ENVIRONMENTAL PROTECTION

As you know, John Patten and I have all along seen protection of the water environment as a matter of the highest importance in the context of water privatisation.

This is partly because transferring a regulatory system to the custody of private companies is unusual, and raises genuine concern to ensure that they operate their powers fairly, and in the public interest. It is partly because of genuine concern that private bodies may not have sufficient regard to the conservation of the environment. It is also because there will be a number of other concerns, justified or otherwise, which the increasingly powerful environmental lobby will bring to the fore as our proposals go forward.

That was why we devoted a whole section of our White Paper to the subject. There has been a muted response to this so far. A recent Times leader questioned whether private bodies ought to be exercising regulatory functions, and there has been a limited amount of press and other public comment in the same vein. There are signs that we can expect more criticism of this kind unless we can show convincingly that our intention to protect the water environment will be given good effect. In the White Paper we promised to produce a consultation paper on this subject and I attach a draft.

This has been produced following very helpful discussions at official level with your own and other Departments. We have tried to reflect a wide variety of departmental concerns and I very much hope that you and colleagues will agree that this has been done. The draft of course builds on section 5 of the White Paper. Its most important recommendations are:

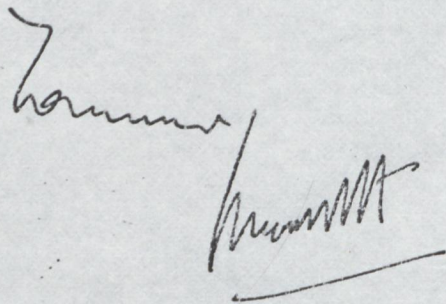
- a. retention by Ministers and privatised water authorities of their essential responsibilities, with some development of these where essential;
- b. river quality objectives to be given statutory force;
- c. greater protection for sensitive areas from which water resources are derived (this would be derived from present legislation);
- d. stronger safeguards against accidental pollution;

- e. development of the "polluter pays" principle;
- f. simplification of effluent discharge consent procedures.

In my view, this set of proposals will provide a much needed measure of improvement in our arrangements for environmental protection. It should go some way to settling the environmentalist's concern, whilst at the same time not imposing any unreasonable burdens - and indeed producing some benefits - for those who use our river system for discharging effluent.

Could I please have any comments by Friday 11 April? I will need to issue it by mid April if we are to take account of public comments in the drafting of legislation.

I am sending a copy of this letter to the Prime Minister, Michael Jopling, Malcolm Rifkind, Paul Channon, David Young, John Moore and Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to read 'Kenneth Baker', written in a cursive style. The signature is positioned above a horizontal line.

KENNETH BAKER

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cc BG



MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

NBPN,

The Rt Hon Kenneth Baker MP
Secretary of State for the Environment
2 Marsham Street
London SW1

January 1986

Dear Secretary of State

WHITE PAPER: PRIVATISATION OF THE WATER AUTHORITIES IN ENGLAND AND WALES

FILE WITH DAN

Thank you for your letter of 22 January in which you suggest a change in the arrangements that we had agreed in E(A) for flood defence and land drainage. You also refer to this in your minute to the Prime Minister of the same date.

As you say in your letter, the issue that you raise is of importance especially to the agricultural industry. In E(A) last November you told the Committee that it would be important to retain the flood defence and large drainage functions within the public sector through reconstituted Regional Land Drainage Committees. E(A) supported these arrangements, and I would be strongly opposed to altering them. Although you advance arguments for doing so, it is clear that the arrangements you have in mind would cause us severe difficulties - and particularly me as Minister of Agriculture.

Moreover this is a matter which we must resolve before we publish the White Paper. We shall at once be asked what we mean, and we cannot possibly say that we have not decided. I am afraid therefore that I cannot agree to the change you propose.

I am copying this letter to members of the Cabinet, John Wakeham, John Moore, Bertie Denham, and to Sir Robert Armstrong.

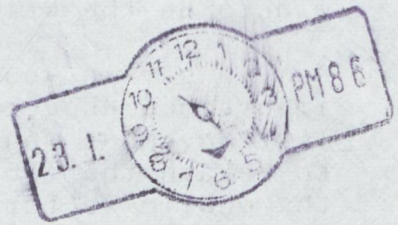
Yours Sincerely
C. Hurd

for MICHAEL JOPLING
(approved by the Minister
and signed in his absence)

LOCAL GOVT

WATER

PT 3



CC 36

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH



From the Minister

N.B.E.N.

The Rt Hon Kenneth Baker MP
Secretary of State for the Environment
2 Marsham Street
London SW1 2EB

10 January 1986

I have now seen a copy of the White Paper on Water Privatisation, and I can confirm that I would be content to sponsor the paper jointly with you and Nicholas Edwards.

You rightly mention in your minute the work that we need to do on the administration and financing of flood prevention and land drainage. Decisions in this area are long awaited, but they could only sensibly be taken once a decision to privatise water authorities had been initiated. I hope that you and my colleagues will urge their officials along with mine to give priority to this review so that we can reach decisions in the Spring and any necessary legislation can be introduced in the 1986/87 session. This will enable the arrangement to link smoothly with the programme for water authority privatisation and show the importance that we all attach to flood defence.

I am copying this letter to the Prime Minister, colleagues on E(A) and Sir Robert Armstrong.

MICHAEL JOPLING

LOCAL GOVT

WATER INDUSTRY

PT 3



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cebg



PRIME MINISTER

WATER PRIVATISATION - WHITE PAPER

Following consideration in E(A) on 19 November of the memorandum on Water Authority Privatisation submitted jointly by Nicholas Edwards, Michael Jopling and myself, we now submit a draft White Paper for colleagues' approval. This has been drafted to provide a clear statement of our policy and to meet the various points raised during the E(A) discussion.

In developing and clarifying our views on the form of regulation, John Patten and I have had the benefit of a report from Professor Littlechild which it is my intention should be published at about the same time as the White Paper. Section 4 of the draft White Paper follows his lead in proposing a system of regulating prices and service levels together; and the management would be motivated to make profits by achieving both as efficiently as possible. Our proposals also take full advantage of the potential for competition between the ten authorities in the stock market and in all other possible ways.

Flood prevention and land drainage cannot be dealt with in this White Paper though paragraph 3.10 states the new context in which the administration and financing of these functions must now be reviewed. On pensions we cannot go beyond the statement on para 7 of Section 1 until we have had discussions with the water authorities and the Treasury; the statutory water companies' employees are in the same pension arrangements as the authorities' and careful negotiation will be needed when the broad shape of our proposals has been disclosed. Tax issues too cannot be resolved unambiguously before water authority asset registers have been reviewed, but we shall not be under immediate pressure to show our hands on taxation. The proposals in Section 5 should allay the inevitable misgivings of the environmental interests, with careful presentation. The investors will have to accept them if water authorities are to be privatised at all.

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On water metering, the White Paper does I hope reflect your views as expressed in your Private Secretary's minute of 9 December. In particular it makes clear our support for the extension of metering, the advantages of economies of scale in installation and the need for large scale trials.

In conclusion I would just like to mention the statutory water companies. They are already in the private sector, so they are not the main focus of our policy. However, we do see advantage in their agreeing to convert themselves into PLCs and to come within the same regulatory framework as that to be established for the WSPLCs; our bill will provide for this voluntary transition. I am pleased to report that the initial response to this suggestion from the Water Companies Association has been quite encouraging.

As our policy paper E(A)(85)64 made clear, our aim is to legislate for water authority privatisation in the 1986/87 session, to incorporate all water authorities as WSPLCs as soon as possible after Royal Assent, and to be ready during 1987 to begin a sequenced flotation of all the authorities. This is a very tight timetable, and to hold to it is essential for the White Paper to be published very early in the New Year. I would therefore ask all colleagues to let me have any comments on the draft White Paper by Monday 13 January at the latest.

I am copying this minute to all Cabinet Colleagues and to John Wakeham, Bertie Denham, Sir Robert Armstrong and Brian Griffiths.

SWenderson

for

K B

*Approved by the Secretary of State and
signed in his absence*
23 December 1985

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