



**ABLE COMMENT ON ORAL EVIDENCE
TAKEN BEFORE THE ENVIRONMENT,
FOOD AND RURAL AFFAIRS COMMITTEE
RE: MARAD SHIP RECYCLING CONTRACT**

Date: 19-Nov-03



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Oral evidence

Taken before the Environment, Food and Rural Affairs
Committee

on Wednesday 19 November 2003

Members present:

Mr Michael Jack, in the Chair
Ms Candy Atherton
Mr Colin Breed
Mr David Drew
Patrick Hall
Mr Mark Lazarowicz
Mr David Lepper
Mr Austin Mitchell
Diana Organ
Joan Ruddock
Mrs Gillian Shephard
Alan Simpson
David Taylor
Paddy Tipping
Mr Bill Wiggin

Witnesses: RT HON PETER MANDELSON, a Member of the House,
examined.

Chairman: Ladies and gentlemen, there used to be a programme that began with the famous words "are you sitting comfortably, then we will begin". I think just about everybody is settled down. Before the outset of our witness examination can I say one or two things, we understand there may well be a vote in the House within the next few minutes, should that be the case the Committee will be adjourned for as short a time as possible, roughly speaking ten minutes, to allow us to go and vote and get back. As soon as the Committee is quorate we will start again. We will go on until there is an item to vote on. Ladies and gentlemen, I do want to make one or two things clear by way of a short opening statement



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before we hear from our first witness, the Member of Parliament for Hartlepool. I am aware that there has been a substantial amount of public interest in this particular issue, particularly from the North East of England. I have personally learned more about the number of newspapers in that part of the world in the last few days, judging by those who have rung me and asked what we are doing. I am also aware, and I think members of the Committee should be made aware that there are legal proceedings that affect some aspects of this particular matter and we will do our best to take that into account, because clearly there are matters that will have to be ultimately resolved in the courts. I am also aware that not everyone who would like to be a witness has been able to be called. We are in the middle of an inquiry into marine resources and environmental matters and we have suspended that inquiry so that we can look at the question of the so-called ghost ships issue. It is current and important but it has meant there is only one session at our disposal. Before we go to vote can I say for the record we have received written evidence from Friends of the Earth, Frank Cook, the Member of Parliament for Stockton North, the company Able UK, the Mayor of Hartlepool, Mr Drummond and the Royal Society for the Protection of Birds. Those documents are publicly available and they will be appended to the evidence that we receive. When the Committee has one-off inquiries such as this it has been our tradition in the past to simply allow the evidence to lie on the table and let others draw their own conclusions but the Committee reserves the right to revisit this area should the information that we receive merit in the judgment of the Committee a further and longer inquiry. I now adjourn the Committee for us to vote.

The Committee suspended from 2.37 pm to 2.50 pm for a division in the House

Q1 Chairman: Our first witness is the Right Honourable Peter Mandelson, who is the Member of Parliament for Hartlepool. Thank you very much for coming to give evidence to the Committee this afternoon. I think it would be helpful to the Committee if you could as an initial comment just outline the actions that you have taken in this matter as the Member of Parliament for Hartlepool?

Mr Mandelson: Chairman, I will, if I may, dwell on the politics of this partly because that is the area in which I am most qualified, being a politician, but also because it is politics rather than in many cases environmental facts that have now moved centre stage in this issue. At the outset I would like to thank the Select Committee for undertaking this work. I suspect this Select Committee is



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the only body with the credibility and the authority to establish the facts and resolve people's concerns about the issues that are raised. It has generated considerable controversy, as you know, but I doubt whether the town of Hartlepool is split 90 per cent to 10 per cent against the ships coming as the local newspaper's so-called poll has suggested and incidentally equally unscientific internet poll on the same newspaper's website this morning indicates a 59/41 divide in favour of letting the ships come to Hartlepool. There are understandable public concerns and as the town's Member of Parliament it is my job to take those seriously, and I do. These are that people are not sure why they should have to deal with other people's waste at all. They would like to think that everyone will clear up after their own and in a perfect world this is how it would be. They certainly do not want to see Hartlepool becoming a dumping ground for everyone else's waste, as if we are facing some endless tidal wave approaching us, of course that is not the case. There are other concerns, the directly elected Mayor of Hartlepool has said on more than one occasion that the United States is big enough and daft enough to look after its own waste, a contradictory statement but one I mention because it taps into the small vein of anti-Americanism that has become a minor feature of this whole business. This reasoning is not all that has driven the apparent outcry, the ships have been powerfully discredited by Friends of the Earth, local protestors and parts of the media as "a Controversial Fleet of Toxic Ghost Ships" or "the US Toxic Death Fleet", all routinely appearing in newspaper headlines for my constituents to read and become understandably alarmed by. "Toxic Time Bombs" and "Contaminated Rusting American Hulks", and much else besides. Indeed the *Hartlepool Mail*, which is published every day in my town, is still headlining it, its stories this week referring to a toxic fleet. There have also been claims of birth defects in Hartlepool resulting from the arrival of these ships, the decimation of wetlands and wildlife as a result of this waste disposal and recycling activity and of pollution slicks following the ships across the Atlantic to Teeside before these ships break up in pandemonium in the dock. These fears, and incidentally they are very real fears, they are not founded or justified but that it does not make them any less real in people's minds, I am afraid got hold before the real facts were properly set out or understood. It has, indeed, become difficult to raise one's head above the clamour and to get attention for alternative argument. I suggested recently in a Radio 4 debate with the Director of Friends of the Earth that that organisation was scare-mongering, by which I meant using half truths but also making statements that lacked any sense of proportion or perspective or scale, which conjured up terrible pictures in people's minds which were not justified. I do believe they have been crying wolf but I have I been immediately



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threatened by Friends of the Earth in a letter I have just received with legal action if I open my mouth to say any such thing again. I do not see why they should be afraid of debate and I am certainly not going to be intimidated. I mention this, Chairman, because there are many other people in my town, councillors, the Mayor and officials who have similarly been on the receiving end of what I regard as bullying activity and they are more anxious and less confident about standing up to it, and I think that has been a factor. This is the context in which Hartlepool Borough Council found itself in a very difficult position. Its original position in July was clear, and if I may quote the minute that I was shown, "The cabinet", that is the council's cabinet, not the real Cabinet, "has indicated that it supports the proposal which is a considerable significance to the economic regeneration of the area subject to strict conditions being met". The political campaign then got going with great ferocity and the Council found itself on the receiving end of a lot of warnings from Friends of the Earth and others that they would face legal action, and heaven knows what else, if is they persisted with the benign course as far as the ships are concerned on which they had originally agreed. As a result the green light that was turned on turned rather sharply to red after a great deal of uncertainty and indecision on the part of the Council, who then eventually unanimously agreed that they should ask the Secretary of State for Transport to turn back the ships, and they did.

Q2 Chairman: Can I just interrupt you there, you have given us a very helpful opening position in terms of setting the local scene. You just mentioned briefly the Secretary of State for Transport, and indeed there are other Government departments and their agencies involved in this, you said at the outset you were interested in the politics of this. There appears to have been something of a disconnect within Government about the handling of this matter and I wondered if you had analysed why such a disconnect might have occurred to the extent that an agency on the one hand says yes and then eventually its parent department is drawn into what has become a controversial matter in dealing with issues where the self same agency had said no. What do you think of the politics of that?

Mr Mandelson: What happened was that one loose thread was pulled and the rest of the embroidery of permissions and licences promptly unravelled. The thread I am talking about is the disputed planning permission that Hartlepool Borough Council originally said Able UK had to construct a dry-dock to make the fulfilment of the contract even more safe and environmentally sound than it might otherwise



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have been. What happened was that a question was raised about whether the planning permission that had been given to Able UK was an extant planning permission. This was rather difficult to resolve because the planning permission had originally been given by Teeside Development Corporation and unfortunately from the files that were passed on to Hartlepool Borough Council from the TDC the very relevant papers were lost that could determine clearly either way whether the planning permission was extant or otherwise.

Q3 Chairman: I think I am right in saying the Development Corporation did not exactly get a glowing report the last time the National Audit Office looked at it, does that reflect why this file was lost?

Mr Mandelson: I do not think so, I think the Audit Office were referring to more macro issues than the carelessness or otherwise that might have been applied to the passing over of the files. I gather unfortunately in this particular file a relevant paper cannot be located. The importance of this, Chairman, is this, all of permissions and the licences and all of the bureaucratic paraphernalia that had been lined up and put in order like a row of sitting ducks fell like dominos the other way once the thread of the planning permission had been disputed, because once the planning permission was disputed the Environment Agency then had to suspend the licence that they had given for the work to be carried out. Without an Environment Agency licence the European Union Directive on the transshipment of waste was transgressed, at which point the Government here had in effect to bow to the letter of that Directive and conclude that because the ducks were no longer sitting in their neat order the ships should be sent back. Now, whether that was the right and proper judgment for the Government to form at that stage is a matter for the Government to answer.

Q4 Chairman: A gentleman called Mr Stewart from Harrow very kindly wrote to me and gave me the benefit of his views and he painted a very interesting picture of your constituency. He talked about the fact that near where the site of the proposed change was to take place there was an ammonia fertilizer plant, a nuclear power station, a large factory with a cyanide store and many other industrial plants which may well have difficult and dangerous chemicals, substances and other things to deal with. Is that a fair description of the area concerned?

Mr Mandelson: I am not sure about the cyanide plant, but



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it is an industrial area. It has been rather misleadingly talked about as if Able UK and their facility is in the middle of the town, near a centre of population or a residential area. It is in Graythorp which is inside the constituency of Hartlepool but it is nowhere near any residential area.

Q5 Alan Simpson: Peter, I am pleased that you welcome the Committee's attempt to unravel some of this. Later we will come to the issue about the processes of making this decision. Can I just try and focus on the misinformation issues so that the Committee can be clear about what environmental risks are involved in this as a process and what we are being asked to deal with. You made two comments that I was puzzled about, one of which was to say that there is no toxic cargo on board and that there is no liquid PCBs on board. Can I be clear that as a Committee we are having to address the issue of toxic fabric on the ships and not the presence of liquid PCBs but the presence of solid PCBs that were in fact listed by the American authorities? Are those the substantive facts?

Mr Mandelson: It is not quite as simple as that for this reason. I talked about disputed facts or scaremongering and let me give you an illustration of this as you have touched on this. My constituents were left with the impression, because the wording tends to be loose and rather imprecise and poorly defined, that there are 800 tonnes of PCBs on these boats which sounds like a fantastically large amount to me and anyone else. On other occasions 700 tonnes or 300 tonnes have been the figures cited by Friends of the Earth and their allies. I have recently been informed that the scale of PCBs is more like one tonne rather than 800. Friends of the Earth also constantly refer to American reports and American assessments. For example, they quote an American report saying they contain hazardous substances such as asbestos and solid and liquid PCBs. They do not then go on and qualify that and explain that the liquid PCBs have already been removed from the ships thus creating the impression that this "toxic fleet" is sailing in our direction still full of liquid PCBs which, as I say, are variously weighed at 800 tonnes, 700 tonnes, 300 tonnes, it just sounds awful. The omission of that one signal fact that they had already been removed before they set sail completely transforms your judgment and your appreciation of what is involved were you to be let into that secret.

Q6 Alan Simpson: That is why I was trying to identify a common factual base that the Committee might start from.



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My starting point was the study done this year for PRP/Able UK which put out a figure of 700 tonnes of PCBs and that would be the solid form. *[ABLE COMMENT:- ABLE have never stated that there was 700 tonnes of PCBs on the 13 MARAD ships Able said that this material may contain fixed PCB's].*

Mr Mandelson: Not liquid.

Q7 Alan Simpson: We were talking just about the report given to the company that came up with the figure of 700 tonnes of solid PCBs. Is it reasonable for the Committee to accept that report done for the company as the factual base around which we should address other issues about the process of deciding how best to deal with the issues over the fleet itself?

Mr Mandelson: I am afraid that is a technical question which I am not qualified to comment on. As an avid reader of reports on this subject and receiver of other people's information all I can tell you is this information changes from the same source on a week to week basis.

Chairman: I think that is an issue we can return to with the Environment Agency.

Q8 Paddy Tipping: I just wanted to return to the point you were making about process. It is clear that planning permissions have been granted both by the TDC and subsequently by Hartlepool Borough Council. The argument is about whether the permissions currently exist and this relates to the missing file. The Chairman, quite rightly, has drawn attention to critical reports about the TDC in the past, but it is the case that when responsibilities were transferred back to Hartlepool Borough Council a lot of files were shredded and destroyed. It seems rather incongruous that an important issue like this should rest at the end of the day on a missing file and your constituents have had a great deal of concern and anxiety as a result. Having looked at the planning situation, ultimately it may be the case that a new planning application will have to be made, but conceptually there seems to be no reason at all why planning permission should not be given for activities of this kind in this area.

Mr Mandelson: There is absolutely no reason why planning permission for dry dock facilities should not be given and every environmental reason and justification for doing so



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because it would make the whole operation safer and better for all concerned, you are basically copper bottoming the whole process environmentally. I think it is really very unfortunate, given that doing this work in dry rather than wet conditions would enhance conditions of safety and protection, that the protesters are effectively saying that in the absence of a constructed bund or dam there is a danger to protected habitats and the same people are saying we are going to do everything we can to make sure you do not get your planning permission to build on because this is what the politics of this situation has become, with enormous pressure on Hartlepool Borough Council to use this mishap, loophole, technical deficiency, disputed extant nature of a properly once given planning permission in an effort to make sure the ships and the recycling work cannot be carried out in Hartlepool. I think the problem for Hartlepool Council is that whereas, quite rightly, in the evidence given to you by the directly elected mayor he talks about their planning responsibilities and functions, he also talks about the Council's responsibility to articulate public concerns. First of all, I think public concerns and the very articulate and powerful lobbying of a minority have become rather confused or even potentially confused in this situation. Secondly, my fear is that Hartlepool Borough Council's ability to determine this matter on pure planning grounds in the future will have become rather compromised by what I regard as the very outspoken political stand they have taken in this issue.

Q9 Diana Organ: You talked earlier about wanting to affect the politics of it and you have gone through what you call the colossal misinformation that has been disseminated about the ships and about the scaremongering by certain groups and certain elements of the media. Why would they do that? Is it that they want to embarrass Hartlepool Borough Council for their incompetence in handling the planning, is it that Friends of the Earth do not want to see recycling happening in England, or is it anti-American because they are not our Naval ships that have been broken up and recycled? Why do you think there has been this massive bullying and scaremongering? What are the politics of it? Why do it?

Mr Mandelson: I think you have to ask yourself why Friends of the Earth have taken this stand and Greenpeace have not. Greenpeace, who are a perfectly reputable, informed organisation with integrity are hardly slouches in coming forward and picking up on environmental issues. Why have we not heard their voice? Why do they take a different view? That really is something for Greenpeace versus Friends of the Earth to offer a view on. All I would say



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is that I think Greenpeace have a very real and legitimate concern - and it is one I share incidently - about the export of British vessels to conditions which may end up in their breaking up and recycling taking place in less suitable and less environmentally concerned conditions in India, Pakistan or Bangladesh and that is an export trade which I do not favour, which Greenpeace have spoken up on and started to make their presence felt about and I shall be joining with them in doing that, but that is quite different from saying that there should be no trade in this recycling activity whatsoever and very different from saying that a qualified, expert and professional yard and facility like the one provided by Able UK at Graythorp is not best qualified to take on these vessels and do the necessary work. I think it is important to register that 98 per cent of the mass of this ship is going to be recovered and recycled. This is not some awful trade in vast amounts of disgusting waste, the waste amounts to about two per cent or less and then will be safely disposed of under very strict conditions of safety and supervision by the Environment Agency, as has been done on many occasions in the past and will be done on many occasions in the future in the nearby landfill site at Seaton.

Q10 Mr Mitchell: Mr Stewart's description of Hartlepool is that you had better take on the job of writing Hartlepool's tourist brochures as well as the Labour Party's election manifesto next time.

Mr Mandelson: I do not do a bad job of promoting my time and all this scaremongering and bandwagon-ing has not helped.

Q11 Mr Mitchell: These are not exactly weapons of mass destruction.

Mr Mandelson: We are still looking for those elsewhere as you know.

Q12 Mr Mitchell: There was a very telling article in *The Independent on Sunday* which took the same line. So it is your view, assessing it as an environmental issue, that there was a deliberate attempt to stampede opinion by the creation of unrealistic fears?

Mr Mandelson: I want to make something absolutely clear to



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all members of this Committee: if there was any doubt in my mind about the environmental risk or the threat to the health of any single one of my constituents I would not be supporting this for any number of jobs that are being created in Hartlepool as a result of this business coming to Able UK. Let there be absolutely no doubt at all about that. If I thought there was a threat to human health or that our wetlands or our wildlife were going to be harmed then I would not go along with it for the sake of a single job in my town, but I have to make a judgment on the basis of the facts, not the alarums and falsehoods that are spread and I have to look at those agencies of government which are qualified to form a proper judgment. In my experience of the Environment Agency, English Nature, the Health and Safety Executive - and I have had very detailed correspondence between myself and Bill Callaghan, the Chairman of the Health and Safety Commission - about Able UK. Wherever my line of inquiry has taken me I have been assured that everything is covered, that the appalling consequences that have been spelled out by the protesters will not ensue, that Able UK are qualified, professional and experienced to do this job, as they have done in the past. Let me make one further point, if I may. We, in our town and across Teeside, have lost a colossal amount of industry and employment over the decades. We cannot bring back the past, nobody pretends that we can or that we should, but I do not believe that dirty jobs are bad jobs for Teeside or anywhere else in the country. Nor do I believe that the thousands of people and families on Teeside who earn their living from industries like the chemical works at Seal Sands or our remaining steel and pipe mills, all of which could be described as dirty jobs are bad jobs, they are not, they are people's livelihoods. In the case of this recovery and recycling work we are opening up the opportunity and the possibility of the town and its skilled workforce being able to meet a very real environmental need and opening up a major industrial opportunity which is in this area of recovery and recycling of metals and other materials, and the disposal of waste when that is involved. We provide an environmental service in doing that, we also bring business and jobs to Hartlepool, and the alignment of those two things is no bad or mean thing for the people living in my town.

Q13 Mr Mitchell: How many jobs will it create?

Mr Mandelson: On the immediate contract we are talking about work for a couple of hundred people but I am talking about the long-term future. There is a huge growth industry in cleaning up our environment locally, there is a huge potential in utilising new environmental



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technologies to eliminate and deal with waste. We should be growing into that new environmental industrial area, as I say, both to meet an environmental need in the world but also to bring much needed business and employment to the town.

Q14 Mrs Shephard: What do you want to happen?

Mr Mandelson: What I want to happen is for the planning permissions, the licences and all the rest of it to be put in order and I want people to co-operate and collaborate to make sure that happens very speedily, for the ships to continue as a fleet to Hartlepool where they can be properly, professionally and expertly recovered and recycled, and the two per cent-odd waste dealt with in a similarly professional way.

Q15 Mrs Shephard: Who should take the lead?

Mr Mandelson: I believe that the Government needs to practise a bit of diplomacy here between the Environment Agency, Hartlepool Borough Council, the European Commission and even, on a good day, Friends of the Earth.

Q16 Mrs Shephard: So the Government should take the lead?

Mr Mandelson: I believe it should.

Q17 Joan Ruddock: You have shown great confidence in the company Able UK and have made a very good case for the new industries of recycling and all the rest of it, but will you acknowledge that there is always some risk in these dirty jobs and the agencies combine to try to make sure the risks are kept to a minimum?

Mr Mandelson: Yes.

Q18 Joan Ruddock: One of the great principles of the disposal of waste is the proximity principle and it is appropriate that we try to deal with these matters as close to the point where the problem arises. I think it is in that context that there must be a lot of strong feeling about the journeys that these ships are making. I wanted to ask you whether, to your knowledge, Able UK has made any application to the Royal Navy to get as much work and



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as many jobs from the dismantling and disposal safely of our own ageing and rusting fleet, of which there are a considerable number of boats available now, as I understand it, for work? **[ABLE COMMENT:- For Information, ABLE have tendered to receive, remediate and recycle a ship from the MOD, ABLE offered a preferential price to what ABLE quoted MARAD but ABLE where informed that they were too expensive.**

Mr Mandelson: I would like them to do so if they have not because I am satisfied that they are experienced and qualified to undertake this work. I had come into my surgery a few weeks ago an individual who raised questions about the health and safety and protection of employees of Able UK. I took that seriously, I wrote to the Health and Safety Commission and its Chairman, Bill Callaghan, and I received a long and detailed reply which I will not bore you with, but the upshot of it is that this company, and its sister company, Stevenson's, have held licences to remove asbestos for many years. The review that they undertook when renewing Able's general licences showed that the companies have extensive experience of asbestos removal and the demolition of large power stations. They said in general the review did not cause any great concern at all to the Health and Safety Executive. It did show some enforcement notices, **[ABLE COMMENT:- There have been two prohibition notices placed on ABLE as the principal contractor relating to a sub-contractor on one project** not related to asbestos work which were later complied with. They made the point that complaints are often raised but in this case were found not to be justified. If we are looking to properly qualified facilities and companies who can undertake this work, my researches would indicate that Able UK is firmly in that category and well qualified, if I may say, to undertake work on behalf of the Royal Navy as well. I happen to think the proximity principle is an important principle, it is not an iron rule, and indeed you would need capacity to break up, recover and recycle all these materials and metals in every single developed nation of the world for that proximity principle to be applied with complete inflexibility.

Q19 Joan Ruddock: They do exist in the US.

Mr Mandelson: There is an argument about whether the US currently has the capacity to take on these and all the other ageing vessels that need to be recovered and recycled, I believe by 2006. That is the time limit in the US. I think that to meet that deadline it would be impossible to depend on US facilities exclusively.



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Q20 Mr Wiggin: Following your answer to Mrs Shephard, you must be very disappointed with Hartlepool Council for not being a little bit more nimble in issuing proper planning permission, but you must be furious with the Environment Agency for actually writing to Able UK telling them to stop the ships from setting sail after they had already set sail because that would obviously provide a great threat to Able UK because of the penalty clauses which meant that they could not possibly send the ships back even if they wanted to? **[ABLE COMMENT:- For information, The EA have never written to ABLE telling them to stop the ships from setting sail. On Thursday 30th October 2003 the EA visited ABLE and asked them to turn the ships around and send them back. ABLE stated that ABLE where of the opinion and legally advised that ABLE had acted correctly and had all permissions required in place and ABLE asked for an instruction in writing, ABLE have never received such.**

Mr Mandelson: On the issue of the planning permission, it is not a question of Hartlepool Borough Council issuing planning permission, it is a question of their disputing whether the already existing planning permission is extant or otherwise, about which the relevant paper from the files apparently cannot be located. On the other issue, I think the Environment Agency is better qualified to comment than I am about the exact sequence of events. I believed at the time, I may be wrong, the ships set sail in good faith in this sense, that they assumed all the licences, permissions and otherwise were in order or could quickly be lined up properly to satisfy all the relevant international legal requirements. I do not think anyone acted in bad faith, what they did do though was - I choose my words carefully - wobble in the face of a torrent of claims, allegations and legal threats and rather than wobbling I think they might have been better to stick their ground and see their detractors for their day in court rather than pull stumps, in my view prematurely.

Mr Wiggin: Thank you.

Q21 Patrick Hall: It is a matter of fact, is it, to you that these ships that are in Hartlepool now have no cargo, that there are no contents?

Mr Mandelson: No, they do not.



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Q22 Patrick Hall: That is a matter of fact?

Mr Mandelson: It is a matter of fact.

Q23 Patrick Hall: That is not only based on your own personal inspection but on the inspection of experts from the Environment Agency and others?

Mr Mandelson: I have been down there. I have not pored over every square inch of these ships, although I would be perfectly prepared to because I know it would be safe to do so, but I have questioned on site senior officials of the Environment Agency as well as those who run Able UK and I take their assurances at face value.

Q24 Patrick Hall: If there are no contents of the ships to be concerned about, what about the ships in themselves? You have seen them and spoken to experts. I see that a US judge described two of them at a judgment in October in the United States as being in a dangerously deteriorating condition, which could mean that some of the materials that they are made of, some of which may be dangerous.

Mr Mandelson: This has been another source of confusion, if I may say so, and probably deliberately created confusion. Let me explain why.

Q25 Patrick Hall: Are they in a dangerously deteriorating condition in your judgment?

Mr Mandelson: They have just got across the Atlantic Ocean.

Q26 Patrick Hall: We have said it would be unwise to send them back?

Mr Mandelson: I do not think it would be wise or practical to send them all the way back, given that we are now in winter rather than late summer. But, as I say, they were good enough to get across the Atlantic Ocean and they are certainly not disintegrating at Graythorp, I have seen that from my very own eyes.



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Q27 Patrick Hall: The judgment that was made in the United States was inaccurate, they are not in a dangerously deteriorating condition?

Mr Mandelson: If they were left to continue to fester, as they have been for so long, in the James River, yes they would continue to deteriorate, which is an unacceptable environmental outcome. If I can make this point: much has been made of the American Maritime Agency talking of these ships as an environmental disaster waiting to happen, if you look at the context in which that statement was made, Chairman - it is another example of the half truths about this - you will see that the view was if they were left to remain in their present deteriorating state, without any action being taken, and without proper movement and recovery and recycling of the materials involved, then indeed they would continue to deteriorate and become a greater environmental hazard. It was a plea to get rid of them, to have them dealt with, broken up, and their materials recycled, it was not a description of the toxic contents of these ships and their cargoes which had already been removed that was defined as the environmental disaster waiting to happen and yet you see how these clever elisions of fact and description ----

Q28 Mr Wiggin: Spin.

Mr Mandelson: I have throughout, since I sat down here, hesitated to use that word, Mr Wiggin. I am not going to rise to your bait. However, Mr Wiggin, it takes one to know one.

Q29 Patrick Hall: Could I just finish my point, Chairman. My point is that they may or may not be dangerously deteriorating - we can explore this with other people today - but you accept that they are in not a good enough condition to risk the return journey?

Mr Mandelson: I am not an expert.

Q30 Patrick Hall: Your judgment.

Mr Mandelson: My judgment is that it would be impractical and unwise to send vessels, which have indeed successfully weathered a transatlantic crossing, it would be unwise to send them back in winter, not least because they can be broken up and dealt with much more expeditiously - and I



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would like to think of Able UK - more professionally where they are.

Q31 Diana Organ: You said it would be unwise and impractical to send them across the Atlantic, even though they have just come across. I have to say Ellen McCarthy made it across in worse weather. They would be seaworthy enough to get back across the Atlantic, would they not?

Mr Mandelson: We cannot have it both ways. They are either terrible deteriorating things which are just about to break up and spill God alone knows what else all over Graythorp and my constituents or they are robust enough to send back across the Atlantic, we cannot have it both ways.

Q32 Diana Organ: Given the situation we have got two here now and two arriving shortly, and given we have a stalemate because of the legal challenge in the court and what the Secretary of State has said recently, would an answer not be to send them back until we can sort this out and, as I have said if Ellen McCarthy can make it single handedly I am sure that these hulls can make it back as well, would that not be the answer that we send them back and then try to resolve it? I was going to ask are they actually seaworthy enough to do the journey back? **ABLE COMMENT:- It would not be in the best interest of the environment to send the ships back. It would be foolish to send the ships back during the winter months. The ships would be able to go back to the US next summer subject to a further survey.**

Mr Mandelson: That really is for others to judge. All I am saying is that it may be an answer to send them back but I do not think it would be the ideal solution from everyone's point of view.

Q33 Diana Organ: Okay. Given that we might have them here for safe keep over the winter, who is picking up the cost of that safe storage? Is it the US Navy? Is it Able UK? Who is picking up the cost to make sure these ships are not a danger to anybody else and are kept in a reasonable state over the winter given that we might have terrible storms?

Mr Mandelson: As long as the cost does not fall on my council taxpayers in Hartlepool I really do not mind who



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is picking up the tab, and I do not know. One thing is for sure that towns people in my constituency will not be paying for it.

Q34 Diana Organ: It might not fall to the council but one way or another your constituents may be picking it up if it is not the US Navy who are picking it up?

Mr Mandelson: They had better be doing so very, very indirectly.

Q35 Mr Drew: From your understanding what is preventing the owners of these ships from sending the remaining ships to these shores at this time?

Mr Mandelson: What is stopping them sending the remainder of the fleet?

Q36 Mr Drew: They have a contract to have them dismantled in the UK, why have they not sent them? **ABLE COMMENT:-** *The plan was to tow 6 No. ships over in 2003 and 7 No. in the summer of 2004. The US Courts stated only 4 No. ships could come over at the current time. We understand that the case with regards to the other 9 ships will be re-heard in the US Courts in April 2004.*

Mr Mandelson: Because Able UK can only receive them if they have licensing and permissions without which the owners cannot allow them to set sail. Were they to do so they would be infringing the Transshipment of Waste Directive which would cause everyone to fall foul of the European Commission.

Q37 Mr Drew: That means, therefore, that there is effectively a contractual dispute or a legal dispute.

Mr Mandelson: Yes, there will be a very large contractual dispute which in the worse scenario could put Able UK out of business altogether.

Q38 Mr Drew: Or somebody else could be counter sued because of a decision which was taken which subsequently



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could be proved to be wrong?

Mr Mandelson: Yes. What should happen here is that we all know that the best condition for the work to be carried out is in dry dock not wet conditions. The issue of the planning permission could simply and should be simply put right - it is not rocket science this - the dam or the bund could be constructed by Able UK and the work proceed. The problem is that politics have intervened as well as a lot of anxiety and fear amongst my constituents which I hope this Committee will use its authority to help resolve.

Q39 Mr Lazarowicz: On this point of planning permission, even if the local government side of things has lost the file between Teeside Corporation and Hartlepool Borough Council, one would have thought that a company which was relying upon some form of planning permission for an activity would be able to produce it somewhere in its own files, the relevant documentation. The fact that Able UK cannot do that, does that not suggest a certain cavalier approach towards the regulatory framework?

Mr Mandelson: Absolutely the opposite is the case. Able UK contest very vigorously indeed and believe they have their side of the paperwork in order to convince a court, as it will be in December, that the planning permission is indeed extant. I have to say that there is no question of the planning permission being anything other than extant until the political bandwagon got going. Even throughout October Hartlepool Council was very reluctant to reach a firm view with any certainty whatsoever that the planning permission was not extant until the pressure became too great to withstand to be honest.

Q40 Chairman: Thank you very much. Can I for the record give a little bit of information to the Committee arising out of a number of questions we have had so far which may help with subsequent questions. From Able UK's evidence they state as follows that the waste on the first two ships which have arrived are "...liquid PCB's of zero (all removed), Non liquid potentially PCB contaminated material 68.2 tonnes, asbestos potentially contaminated materials 152 tonnes, oily water 62.2 tonnes and oils (including Lube oil and fuel) 342.19 tonnes.

Mr Mandelson: Chairman, that is very different from an 800 tonne toxic time bomb in my constituency.



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Chairman: I have to emphasise that is for the first two ships only but as a number of questions were posed on that, I hope that will be for the benefit of the Committee. Thank you very much for your evidence and can I thank Frank Cook also for being here and for his written evidence.

Witnesses: SIR JOHN HARMAN, Chairman, MR CRAIG McGARVEY, Dales Area Manager, and MR DAVID JORDAN, Director of Operations, Environment Agency, examined.

Q41 Chairman: Ladies and gentlemen, we have before us now representatives of the Environment Agency: Sir John Harman, Chairman, Mr David Jordan, the Director of Operations and Mr Craig McGarvey, the Dales Area Manager. I bet you thought that was going to be quite a job when they gave you the Dales Area Manager and now look where you have got yourself! The Environment Agency lies right at the heart of this particular matter. I wonder, Sir John, if I might just ask you how was it that in July you were so certain that everything was in order, that you ticked all the boxes and gave the green light to those in the United States that this was a proper contract that could be properly undertaken in the United Kingdom and that preparations could be made to set sail. The American Marine Agency are very clear in their public statements that in their judgment they would not have allowed these ships to set sail if they were not confident that the necessary permissions had been put in place, and yet here we are in October with the waters of the Atlantic getting choppy by the minute and suddenly the Environment Agency wake up and send out three Maydays saying "Stop, stop, stop" but they did not and they ploughed on and they are here. How is it that there appears to have been a radical 360 degree turn by the Environment Agency on this matter?

Sir John Harman: Thank you for the introduction. I am going to ask Craig McGarvey, because Dales area does cover the Tees, not quite as idyllic as you may have thought from your introduction, to perhaps take you briefly through the sequence because I think it is important the Committee understands that. I just want to start by saying that you had, until this morning, been expecting my Chief Executive, Barbara Young. Of course I will endeavour to be as helpful to the Committee as she would have been but unfortunately she is ill today and I have stepped in at the last moment.



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Q42 Chairman: I am grateful to you for that. Send her our best wishes for a speedy recovery. She is a very regular and excellent witness before the Committee. She was late last time because I think she was having a chat about this matter. I hope this has not worn her out. If Mr McGarvey is going to do that perhaps he could also, for the benefit of the Committee, just give some detail as to the processes that went on at each stage in confirming your statutory responsibilities and your reasons for the decisions you made at each of those stages.

Sir John Harman: That is obviously very important, that the Committee understands that sequence. Before Craig begins that sequence, which I hope will be very informative, can I just say that throughout this period from July to now we have been entirely consistent in terms of protection of the environment being our main concern. I do think that one description that Peter Mandelson gave earlier on in his evidence just now was he referred to the embroidery of permissions and, indeed, I think if Craig were to describe every part of that embroidery it would take far too much time. It is a very complex set of permissions which Able UK, or anybody else in the same position for that matter, has to assemble. I think one of the things that we need to do is to understand how they interconnect as far as possible. I also think that from our point of view, reflecting on the episode up to date, this incident, or the episode, is a quite useful hint of what we are going to have to deal with in terms of ship dismantling as the number of ships, for instance single hulled tankers, which are going to come offline in the next few years increases, over 2,000 worldwide. We do appear to have a viable ship dismantling industry in the UK and how we are going to handle the regulatory regime around that for a much larger scale than we presently experience is an issue which we are now turning our minds to. That is probably for the future. May I invite Craig to just give us the chronology in brief.

Mr McGarvey: Thank you, Chairman. It is a complex process. I will go through it at a fairly high level and then clearly you can interrogate me on some of those aspects. The Agency's role in this was to consider whether it was appropriate for these ships to come to the United Kingdom for disposal. That is done under some international regulations called trans-frontier shipment. When somebody comes to us and says they would like to bring something to this country for somebody else to recover, we have to ask ourselves a couple of questions and one of those questions is, is this just going to be dumped here as waste, and if it is it is not coming, or is this coming here for recovery and recycling, and if it is that is a legitimate



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international trade and is legally allowable and is an economically driven process. We asked ourselves the first question, was this for recovery, we looked at the content of the vessels and approximately 95 per cent of these vessels are for recovery, so it passed that test. **[ABLE COMMENT:- Incorrect. 98% will be reused and recycled]**. We also double check that it is not contravening any other international regulations and it did not. The second two checks are quite important. First of all, we do make sure that there is a financial guarantee in place so that if for some reason the company goes into liquidation or they are unable to complete the work then the people who sent the waste foot the bill for addressing it. Of course, we got a guarantee from quite a good source, the US Government. The fourth and final test is, is this waste going to go to a place that has the adequate technical capability and capacity to deal with it. Those were the questions before us in July and we had 30 days in which to make a decision on that. If we do not make a decision then the approval is deemed granted, and that is quite unusual, in most permitting processes it is usually deemed refused but in this it is deemed granted if we do not do something. We received the information from the United States and we looked at the Able UK facility, which in 1997 was given a waste management licence and planning permission to dismantle oil rigs and offshore platforms. **[ABLE COMMENT:- This is a little misleading, ABLE's planning permission covers marine structures which includes ships. (Please see confirmation from HBC on www.ableshiprecycling.com planning permission)]**. I think I am right in saying that the company originally tendered for the contract to dismantle the Brent Spar oil rig. The dock is a very big dock, I think it is one of the biggest in Europe at 24 acres. It had been built for constructing very large oil rig platforms and therefore lends itself quite well to dismantling large oil rigs. The facility already had the physical capability and the company had been involved in dismantling oil rigs for a number of years, albeit they had not actually done that with a dock gate in place. What they had been doing was bringing barges into the dock and then they would lift the modules out on to the dock side onto a specially constructed platform that we had required of them so that any of the materials in that process did not go back into the water. **[ABLE COMMENT:- this was not a requirement of the EA but was part of ABLE's proposal when ABLE applied for planning permission]**. At that stage all of our questions were answered and, therefore, we issued the approval within 30 days to the United States to say "This looks legal and sound and safe". We were aware that although the Able UK company had a waste management licence for this site for activities which were largely similar, and in fact I think the Brent Spar facility contained some more difficult substances, there were two items that needed addressing in the waste management licence. We said to the company, "In



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parallel, or as we move forward, there are some technical administrative processes we need to tidy up. We just need to increase the amount of material you can bring into the site", because that was limited on their licence, "and we also need to just make sure that the licence currently gives you permission to put offshore structures in place. *[ABLE COMMENT:- it was agreed between ABLE and the EA that we would define ships because even though the EA had previously (in February 2003) confirmed to ABLE that ships were covered in the Waste Management Licence due to the questions that had been raised by FOE to HBC ships were named for the avoidance of doubt]*. That should really be clearly defined as also including ships". We gave the approval and the company then started to modify their waste management licence to address those two other items. Our focus at that stage was very much on environmental risk and our understanding of what the vessels were, not carrying cargo but containing some materials which did need handling properly and, as we were advised, were going to be handled in a dry dock by a company with experience. We felt the whole process was a relatively low environmental risk activity. Then we began to get into the other planning permission issues which I can go onto now.

Q43 Chairman: I would just be interested if you could make clear, and just refresh my memory, and forgive me if I missed a point of what you just said, about the facility itself because you made the distinction between the operation of the company to date, bringing in barges and lifting things on to dry land, and the more ambitious project which we are debating today, which required effectively this bund and dock gates and other containments building. *[ABLE COMMENT:- for the avoidance of doubt, the MARAD contract is not more ambitious than previous works undertaken by ABLE at their TERRC and BRIE facilities. The contracts completed to date with regards to offshore oil & gas structures are much more technically demanding for load in and more likely to effect the local ecology]*. Did you in your consideration of putting the ticks in the boxes look in detail at any of those aspects to satisfy yourself that having said yes the job could actually be done?

Mr McGarvey: When the company made the application for its waste management licence in 1997, and indeed the planning permission as I understand it, that was to reinstate the dock gates. It had always been the company's intention to reinstall the dock gates. I guess you would need to ask the company why they had not done that in previous years and that may be related to their ability to obtain contracts to do the work and therefore make the financial commitment to do that work. We believe that was what the



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company was always going to do, that was in its original application, and this was consistent with that approach. Up until this time they had not needed to use such facilities because it had not had the contract which warranted it. Yes, I think you are getting to the material point, it was further down the line, as we began to understand from Hartlepool Borough Council first of all there were some questions about the planning permission and then there was the local authority trying to take a view on the planning permission and then seeking more information from the company and the company asserting it had planning permission and then eventually on 7 October Hartlepool Borough Council came to a firm view and publicly stated that the planning permission for this bund or dock gate did not exist.

Q44 Chairman: Winding the clock back a little bit, you were obviously confident of your position at the end of July otherwise you would not have said yes in the first instance. Let me just ask did you have any informal contact from the American Marine Agency before you got into the formal process of considering your position?

Mr McGarvey: Yes.

Q45 Chairman: When did that occur?

Mr McGarvey: I would have to look for the exact date.

Q46 Chairman: Was it some considerable time before?

Mr McGarvey: It was a few months before.

Q47 Chairman: A few months before, so at some time in spring this year you got wind that this project was coming along and that you would have to make some formal determination if an official request was received. There you are in a sense loitering in the pleasant part of the Dales area and you receive this message that the more industrial part might require a visit, did you go and pay a site visit and have a little look to familiarise yourself with what was on offer from Able UK?

Mr McGarvey: We transact several thousand permits a year, I would ordinarily go and visit every one of those to understand the situation.



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Q48 Chairman: You say ordinarily you would go, did you on this occasion with this particular one, did you go?

Mr McGarvey: No, I did not and the involvement was done by our licensing team and our local staff on the ground. There was a discussion, there was a discussion with the company earlier in the year who said "We think we might be getting a contract to dismantle ships" and then we were contacted by the United States. What we did then through our licensing team who are responsible for that was advise them of the legal requirements and the forms and the information they would need to provide for us to be able to process it. That would have been the discussion at the first stage. I personally did not visit. *[ABLE COMMENT:- This was only a modification and the work was similar to what ABLE has been doing on the site since 1996].*

Q49 Chairman: Before I hand over to Diana, just so I can understand, when this team of yours without your presence went to have a look, did they have a look at the missing bits in the Able UK's facility to say that if this thing is going to be safely contained here is an element which needs to be put in place? Did they ask themselves the question "Could it be?" In other words, once you had said "Yes, send those ships" everything else would fall neatly into place. Did they check it in detail?

Mr McGarvey: What would have happened, the application comes into a national team who manage the interactions with other countries and then they communicate with the local licensing team and the local enforcement officers and they draw on the knowledge of those people.

Q50 Chairman: Let me be very specific and ask the question did this team come back and say "It needs a bund and everything is in order to put it in place"? Did you get such a clear report from your team confirming that the full necessary facility could be put in place to enable this work to be done safely and in accordance with the enormously long check list, which I know you do go through because I have seen a copy of it, determining whether all the facilities are there for this work to be done properly?

Mr McGarvey: I believe our understanding at the time was that everything was in place, but I have to say - and this is a point the Committee might want to consider - in this



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process we do not go and scrutinise all the things that a company has to have in place. Any company which gets involved in any business clearly needs to comply with a range of legislation and it is their responsibility to make sure they look at those factors. At that time, we believe the company had the intent certainly to construct a dry dock and we had no indication at that time there was a planning permission problem.

Sir John Harman: Further than that, there are two licences for which the Environment Agency is responsible: transfrontier shipment which was the process that you, Chairman, referred to which concluded on 22 July and the waste management licence. The working plan for the waste management licence specifies quite properly in our view, and that was the reason why we were satisfied with the TFS, that the work should be done in a contained manner in so-called dry dock conditions. Therefore it was explicit in our minds that that was the process that the company was going to use and then when it became later evident that there was some question about their ability to construct that bund *[ABLE COMMENT:- not acceptable Able's ability has never been questioned]*, I think Peter Mandelson referred to a loose thread being pulled in the embroidery, well I think that is probably as good a description as any, the Agency had expected and still expects any dismantling to be done in dry dock conditions. Nobody has approached us for permission to do it any other way but I am very confident that they would not receive permission to do it any other way. *[ABLE COMMENT:- ABLE have existing permissions to carry out the works in the same manner that the majority of ABLE's competitors do in the western world]*.

Q51 Diana Organ: You said that Hartlepool made it clear that there was a problem with planning application for the bund that was necessary for the dry dock condition on 7 October. Only a week before on 30 September you granted the modification of 30 September. Were you having no qualms then, no concerns about the planning permission status then?

Mr McGarvey: A couple of points there. I think all the way through this process we have tried to take the lead in bringing together all the regulators so we initiated a number of meetings throughout August and September recognising actually there are a lot of different regulations and processes in play here and wanting to make sure everybody was communicating. We facilitated a number of meetings along those lines which included ourselves, Hartlepool, Health and Safety Executive, Maritime Coastguard Agency, Tees Port Authority, just to make sure



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that everybody understood how the whole jigsaw hung together as best we could but in some senses the legislation just is not designed like that. Yes, we did have knowledge of the emerging planning permission.

Q52 Diana Organ: The problem of it?

Mr McGarvey: The messages were somewhat confused, I have to say, and we were in contact with Hartlepool on a regular basis to try and understand it.

Q53 Diana Organ: What I am saying is only seven or eight days before, at the point that you granted the modification which let the ship be towed, did you not have any wind of any problem which meant that you might not then have issued or granted the modification and then said to the US Navy, "Do not come yet, we are not absolutely sure we have got all the ducks in a row, we need to think this one through a little further"? Are you telling me you granted that modification and yet you knew that there was a problem with the most critical bit in terms of facilitating the recycling of these ships because they had to have the planning permission for the dry dock?

Sir John Harman: The modification dealt with two rather narrow points. One were ships to be permitted, two what was the quantity - the volume quantity - to be permitted. Neither of those things requires the planning application. The working plan requires an extant planning permission but in the seven days or so you just quoted the Agency wrote to the Americans, to MARAD, exactly saying that they should not - I think it was 3 October - set sail because of this uncertainty. So the very knowledge of the uncertainty that you refer to was active in the Agency's mind and was acted upon.

Q54 Diana Organ: How clearly did you say to the US Navy, "Look, this is a big issue. It is no use you coming yet because we have not sorted it out", or was it just saying "We have got to sort out some detail about an extant planning permission"? I have to say the US Navy would probably have no idea about how we run planning applications in this country. How firm a message were you giving to them that we had major problems, that the thread was beginning to unravel?

Sir John Harman: I believe it is in the original



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documentation which was supplied to the Committee. One of my colleagues ----

Q55 Diana Organ: Yes, but I am asking you about how firm the messages were that you gave?

Sir John Harman: Which my colleague wishes to answer.

Mr McGarvey: What we did was we kept in touch with the United States' Marine Administration, MARAD, who actually own the vessels and are responsible for their disposal. We kept in contact with them and we put them in contact with the other regulators as well. We encouraged them to get in contact with the other regulators and we encouraged an exchange of e-mails from Hartlepool Borough Council to MARAD around about 20 September to get Hartlepool to say what the position was. On 30 September Hartlepool were still saying to us, "the matter is unresolved". That was what they said to us on the 30th, "the matter is unresolved". The responsibility for the vessels leaving the United States was the responsibility of MARAD. We have no legal jurisdiction in United States' waters. What we did in addition to that was we spoke to the United States' Environmental Protection Agency, who are effectively our sister regulators, and said to them, "Can you bring some pressure to bear on MARAD because you must have some regulatory role with them". At the same time we were keeping them well informed and trying to encourage them to engage with MARAD as well.

Q56 Diana Organ: But you were granting the modifications even though you knew there was a problem?

Mr McGarvey: There were other issues as well. There were a number of other permits *[ABLE COMMENT:- Not correct]*. There is something called a FEPA licence, so there were a number of other permissions, which we kept the United States informed of, and said, "These may compromise your ability to complete this contract as we understand the contract, and it may compromise your ability to complete this trans-frontier shipment approval and that could put you in a position where you need to repatriate the vessels." *[ABLE COMMENT:- the only licence that ABLE need which they have not got as yet to construct the bund is a marine construction licence from DEFRA. This has been issued previously and in normal circumstances it takes circa 10 weeks therefore ABLE had expected the licence to be issued by 22nd October 2003]*



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Q57 Candy Atherton: Going back to the United States' end, could you tell us something of the state of the ships when you were getting these permissions coming through? I have a number of questions, I will put them all and then you can come back on all of them. What state were the American agencies finding the four first ships in and what of the other nine, what is the state of them? Are they in a worse condition than the four that came over? Given that now we are being told that they are not in a position to go back to the United States, and the fact that I was rung literally two weeks ago to the moment by the Secretary of State to be informed there was a possibility they would be going into Falmouth when we had had no discussions, although let us be clear we have a lot of experience of ship repair, the state of ships and we have seen many more ships come in from other parts of the world with very different problems, but environmental problems we have some knowledge of but no previous information warning us this could happen which could have a huge impact, possibly, on the environment, the oyster fishery in the harbour, given that context that they were not in a position for safety to possibly go on to Hartlepool and could not turn back, what are the implications with these other ships? Those are a lot of questions but they are all linked together.

Sir John Harman: Craig seems to be answering a lot but then he has been dealing with the matter on the ground. I would just point out that anything we tell you is reported because the issue of how viable the ships are to sail is an issue for the maritime authorities both sides of the pond, so anything we tell you is our understanding of their position.

Mr McGarvey: I think your question was about the condition of the vessels.

Q58 Candy Atherton: Yes.

Mr McGarvey: The condition of the vessels, although clearly it is an environmental issue, is not an issue for us, it is an issue for the US Coastguard who inspected them and they also had to give something called a load line certificate to them which ensures they are stable, and then our Maritime Coastguard Agency also sent a surveyor to the United States who inspected them. I think we have made available to the Committee the reports that they produced. Those questions are ones you might want to pose to them in terms of what they actually did and what they were looking for, but as we understand it it was to ensure that these vessels were seaworthy and, therefore, were not posing an environmental risk when they entered UK



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waters. Those surveys have been done on certainly four, possibly six, of the vessels. The company's original intention was to bring six across before the winter weather set in and then bring the remaining vessels over in the spring. That was their original intention because going across the Atlantic in the winter is not good for towing vessels. I know this came up before and I will expand on that in a minute. The other nine are actually in the United States under a restraining order from a US court as a result of an action brought by NGOs in the United States. They are there pending that court hearing which starts in April of next year. In terms of the vessels going backwards and forwards and is that safe, we advised that the correct thing to do was for the vessels to return to the United States from where MARAD, if they so choose, could put everything right and if necessary start the process over again. We were advised by those who have the expertise, not ourselves, that the issue of them not returning at this time of year was not a matter of seaworthiness, it was a matter of towing things into the prevailing westerly winds, as I understand it. It is one thing to come with the westerlies, it is another thing to have something on a big long line behind a boat going into the westerlies.

Q59 Candy Atherton: Assuming the wind is in the right direction.

Mr McGarvey: There is a weather window for bringing boats across the Atlantic and that window is closed now until the spring.

Q60 Patrick Hall: Just to be absolutely clear, who applied for the trans-frontier shipment of waste notice?

Mr McGarvey: MARAD.

Q61 Patrick Hall: When?

Mr McGarvey: They contacted us before July but they made the application at the beginning of July. It was issued on 22 July.

Q62 Patrick Hall: So 1 July. Can that be confirmed?



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Mr McGarvey: I can confirm the date. On 26 June they made the formal application.

Q63 Patrick Hall: Was that the first that the Environment Agency was aware of this proposal?

Mr McGarvey: No. There were some communications earlier in the year. In February there was a communication from the company saying "We are thinking about dealing with ships", although they did not make any reference to this contract or where they were coming from, just asking some questions about their licence. Then it was a month or two later that they started to come forward and say "We think we have got a contract" or "We are in the process of getting a contract for these vessels" and we began to become aware of the US fleet, the MARAD ships. The vessels still belong to MARAD, they are owned by MARAD until they are completely disposed of, and they are MARAD's responsibility.

Q64 Patrick Hall: Presumably part of the information provided in making the application is the nature of the company that is going to deal with the recovery, is that correct? So was Able UK identified in the application?

Mr McGarvey: We want to know who the waste is coming from for recovery and we need to know where it is going to for disposal. Yes, MARAD were the people who had the waste and they were sending it to Able UK. What they provided to us in the application pack for this trans-frontier shipment notification was the contract between the two parties, which is fairly extensive, and it was that that we analysed as part of the process.

Patrick Hall: You said earlier that when an application is made you go through a number of questions, what it is for and that there is a financial guarantee in place, the capability of dealing with the recovery is actually in place. It is on the latter point I want to ask you because that is where it seems to me that we have got into all of these difficulties. It does worry me that you said that the Environment Agency does not check with every applicant that everything is in place before making a decision. It is on the record that you said that. Surely there are lessons to be learned even at this stage, and this issue has not unravelled fully yet. Why not ensure that the technical capability to do the job is actually in place on the ground before issuing any permission of whatever kind? In other words, if a dry dock is needed, that the dry dock is there, not just that there is a planning permission for



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the dry dock, and in this case there was not the planning permission for the dry dock either. Why not think about an interim statement of intent from the Environment Agency that says, "Yes, this sounds okay provided certain conditions are met and are in place" because how can it be acceptable for these ships to set sail without the dry dock being in place ready to receive them?

Q65 Chairman: I think our witnesses have got the message. Mr McGarvey?

Sir John Harman: I think it might as well be me actually. I think you have to ask yourself what are the options. As Craig pointed out, at the point the application was received - it was not the first we heard of it - you have then a period of 28 or 30 days, whichever it is escapes me but it is that sort of timing, in which to object or to refuse the application otherwise it is deemed to be granted. Therefore, the only choice you have, it would be nice to think there was another choice whereby you could say, "Well, can you leave this. We will not determine this until we have absolutely everything in place" but in fact once you have received the application you have to determine one way or the other 28 to 30 days. The question you have to ask is do you want the regulator to take a common sense view or to take a very conservative view?

Q66 Mr Wiggin: Same thing.

Sir John Harman: From Able UK's point of view there are two environmental licences to be obtained, we have mentioned them both. There are two licences under the Food and Environment Protection Act which are to do with dredging and going into the estuary bottom; there is permission from the Crown Estates [**ABLE COMMENT: not required**]; there is permission from HSE; there is planning permission - I nearly forgot that, how could I. There are a range of different regulatory bodies in play here. Each of them could say exactly the same, "No permission until everything is lined up". We do not regulate in that fashion. I believe, and I have looked at this in some detail, that my officials were correct to take a consensus view that the planning permission was, as far as they were concerned in July, extant, that it was a condition of the waste management licence that the disassembly had to be done in dry dock [**ABLE COMMENT: not correct**], very clear about that. We had no reason to refuse the TFS, I think it would have been unreasonable so to do.

Mr McGarvey: Can I follow up and elaborate. The point you



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raise is a very good question. How do the Agency issue these permits without understanding some of the planning permission issues? The time we do that is when a new waste management licence is applied for. When a new waste management licence is applied for, at that point we cannot issue it unless planning permission is in place and that is the time at which we do make sure that all those things hang together. Hence you can understand in this situation the company had a waste management licence, and those checks have been gone through at that point in time, and it is not uncommon later on down the process with lots of companies for us to modify their waste management licence when planning permissions have lapsed. For example, with a landfill site that is now being closed and being remediated, planning permissions might be in a completely different position but we would still issue modification, we would not go crawling back over the planning issues. Just to try and give some comfort around the fact that there is a connectivity between planning and decision making and we do not just pay no regard to it.

Chairman: I am stopping you there, if I may, David wants to come in and then Joan.

Q67 Mr Drew: Can I be absolutely clear about how much experience you have had of this process before this particular case? This is a new area I am led to believe we have got into, we want to know really did you have the robustness of a process in place before you tried it out for real? I would be very interested about the international context of this. I was in Chittagong last year where I saw the alternative way in which we break up ships. Is there an international pressure now to legitimise the ship dismantlement? Is this part of the process that we will now be going through much more in the future for the reasons, the numbers, you gave us some indication of? What would your experience be from what you have learned from this case?

Sir John Harman: It is an excellent question and I think it is one where the Agency itself cannot expect to give a whole answer. The framework within which ship dismantling is to take place, what is best practice, how is it assured is I think something which has to be addressed in policy terms. I will ask David Jordan to talk about how frequently we deal with just this kind of example.

Mr Jordan: We deal with a good number of TFS shipments every year. Usually these are shipments of materials which are contained as cargo. In this particular case it was very unusual because it was ships themselves. As Craig said earlier, we have a national team which deals with the



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front end of transfrontier shipments and that is to bring all that expertise together in one place and there are some very seasoned professionals. However it is true to say this has been a very unusual set of circumstances and it is, I believe, testing international law. Now I am not a lawyer and I will not, with your permission, try and answer this from a legal perspective.

Q68 Chairman: You could tell us what is unusual because that has really whetted our appetites.

Mr Jordan: It is unusual, as I said, because normally transfrontier shipments are things being carried by something. It is a ship with a container of a material which is then brought off and disposed of. In this particular case it was the ships themselves which set something of a precedent, not only that, it is a significant issue of scale. There are extensive discussions going on in the international community at a wide range of levels talking about how waste should and should not be moved between countries, that is very complex and I would struggle to answer that precisely but there is a lot of discussion going on at the moment. I think this is a critical issue, however, because, as was mentioned earlier, the review laws which will require single hulled and modified single hulled tankers - and these are not those by the way - modified and unmodified single hull tankers will need to be brought out of commission in, I think, 2005 and 2015 respectively. There are something like 2,000 of those worldwide and these will need to be dismantled in a very responsible manner. Getting a better grip on some of the international implications I believe is essential.

Q69 Joan Ruddock: I was trying to follow up on some of the points Diana made because I am still not clear. Sir John has given us the impression that in a sense you are obliged to give this permission in the circumstances you described yet you made conditions but it appears you had no intention of finding out if those conditions had been complied with, ie they are allowed to sail. Planning permission even if it was extant - and we do not know if it was - we are all familiar with planning permissions that never produce the goods. Did you have any idea how long it was going to take to produce this dry dock? Did you have any plans to check that the dry dock was in place and if you say the responsibility lies with the US and they should not have allowed those ships to set off at the point at which they did, does that mean that all liability now lies with MARAD and not with anybody else in these



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countries?

Sir John Harman: I do not want to make a statement about liability in general because it seems to me on the face of that that the question is capable of being split into liabilities of various sorts, and I think I cannot generalise about them all. I will ask one of my colleagues to contribute here but I am sorry if I gave the impression that we had not checked the situation. Mr Hall suggested that perhaps it would be better to wait until things are physically in place, in practice that is not what happens. I think it is too rigid a test to apply. Certainly it seemed to us, it was our understanding that planning permission existed, that it was the intention of the company to undertake these works, that was the basis upon which the TFS was granted, yes there was an option for us to refuse the TFS. Would that have been reasonable and proportionate at the time? Well, I think in the light of the evidence in front of the officials at the time it was reasonable to permit it, it would have been unreasonable to refuse. Here we are talking about the intent of the applicant. Now, it is the responsibility of the applicant, Able UK and MARAD between them as contracting partners, to line up the ducks in the row which Mr Mandelson talked about in his evidence. It is not the regulator's responsibility but I think that we took a wider view of our responsibility than just sitting on the regulatory licences and that is why it was the Environment Agency that first of all, as Craig said, drew the regulatory bodies together, informed MARAD that in our view by the time it became clear planning permission was in dispute - still is in dispute so let us leave it at that - that there did not seem to be the prospect of, as it is called, completing the TSF. The advice was not taken, two ships are now in Hartlepool. What are the options now? They are to repatriate the ships or to find a way of recovering them, presumably along the lines that we originally asked for. I said at the beginning of my evidence that it is the environmental outcome that we have had our eye on all the time. What we have ended up arguing about is the technical legalities of the licensing procedure.

Q70 Joan Ruddock: Can I question you on the technical legalities because you are saying in order to do the job and have the right environmental outcomes there had to be a dry dock.

Sir John Harman: That is not a technical legality. The technical legality I had in mind was this dispute that went to judicial review about the waste management licence.



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Paddy Tipping: I bet you have got big files on Able on this matter and I bet it is a growing file. Mr McGarvey, I think you told us earlier on that it is the case that on big planning applications the EA are consulted and you would have been consulted by the TDC at the time of the original planning application in 1997. What do your files show about the planning application? Did it go through?

Q71 Diana Organ: Is it extant?

Mr McGarvey: In fairness, I do not think that is a question for us to answer.

Diana Organ: They have lots of other files.

Q72 Paddy Tipping: I am asking you about your files.

Mr McGarvey: For completeness, in terms of the modification to the existing waste management licence that was applied for by Able, as part of that process we do consult the local authority. The question we were asking them was "In relation to this modification, can you advise us whether there are any planning matters that would be contravened?" That question was asked of Hartlepool and in that narrow perspective they responded that there were not any issues.

Q73 Chairman: They replied what?

Mr McGarvey: They replied that they had no objection to the modification because it did not contravene any of the planning matters as they saw them at that time.

Q74 Paddy Tipping: Back in 1997 you were consulted and you gave advice. You must have things on file. Subsequently you consulted Hartlepool about the modifications and they said, "No, there are not any real problems". That is all correct, is it?

Mr McGarvey: Yes.

Q75 Paddy Tipping: What are relationships like with



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Hartlepool Council now? How are you going to sort this out? If Mr Mandelson is right and the Government needs to come in and use its diplomacy and its push to sort this out, are you in a position to talk sensibly now to the council?

Mr McGarvey: We have a very good working relationship with the council. I have no doubt that we can continue to work positively with them. I do not think that is an issue for us.

Q76 Alan Simpson: In your opening remarks you mentioned that there is a range of international regulations that you have to comply with. I am sure you will be much more aware than most of the Committee about the EU regulations that constrain waste shipments and its recycling. Can you tell me, when you considered the original application did you believe that you were in compliance with Article 19.3 of the EC Regulation 259/93? It is the one that states that: "The applicant has to present a duly motivated request to the Member State on the basis that they do not have, and cannot reasonably acquire, the technical capacity and the necessary facilities in order to dispose of the waste in an environmentally sound manner." Effectively you made an assessment of the US capability of reprocessing its own waste and came to the view that they are not technically capable of doing so.

Mr McGarvey: First of all, I have not got the Directive you refer to in front of me, nor am I a lawyer, but I think what you are referring to is disposal of waste, for which the Committee have already referred to something called the proximity principle, and the proximity principle says if it is your waste dispose of it at home unless you can demonstrate to another member of the developed countries that you have not got the capacity. The proximity principle does not apply in this case because this was movement of waste from the United States for recovery. That was one of the first tests that it had to pass before we would give the TFS approval. If it had been waste to come here to be disposed of and got rid of, or put into landfill or incinerated, then the proximity principle would have applied and we would have said no, unless I suspect, as you just indicated, they would then go through a process of demonstrating they had not got that capacity. This was waste for recovery, not for disposal.

Sir John Harman: I do have Article 19 in front of me and it is imports of waste for disposal.



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Q77 Mr Wiggin: You said at the beginning that your whole ethic was to consider the environmental risk. You then tried to stop the ships. You have now got the worst of all worlds and we have got the ships here and your credibility really is in tatters. What are you going to do next?

Sir John Harman: If I can go back to the second part of that question. You say we tried to stop the ships and you connected that with our aim, as you quite rightly quoted back to me, of ensuring that the right environmental outcome is obtained. The reason why we concluded the ships had to be, ought to be, sent back, *[ABLE COMMENT:- this was not in the best interest of the environment]* and indeed in the end they were not, but that was our advice, was because we had come to the conclusion that the waste management licence was not properly made, *[ABLE COMMENT:- this is not correct. The question is, did the EA follow the correct procedure when considering ABLE's application?]* not that we had come to the conclusion that the environmental consequences of the method proposed for recovery was suddenly at fault. *[ABLE COMMENT:- This is not correct, the methods had not changed since ABLE first offered them to MARAD]* So we have not changed our mind on that latter part at all. What we want to happen now is that this issue about whether recovery can take place in the UK is resolved and that will take the resolution, which is largely a matter for the company to initiate, of the various regulatory issues but principally the dispute about planning. It will now require, I am advised, also the agreement of the European Commission for that to happen because the trans-frontier licence has not been completed. The alternative is repatriation. The Agency's view would be that proper recovery, properly regulated, would be the preferred outcome to all of this.

Chairman: I have let the questioning run slightly in a fluid fashion because there were natural lines of thought that were occurring and they needed to be followed up, but I would now like to return to a more structured discussion. If my colleagues would resume their places in the appropriate script it would be much appreciated.

Q78 Mr Mitchell: I am not sure where I am on my script. You must have realised right at the start that it was going to be big. At what stage did it reach the highest level in the Environment Agency so you could give a clear decision? "Here is a big issue, we are going to have to face it", at what stage did those bells begin to ring?

Sir John Harman: I would say at my level in early



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September, early to mid-September.

Q79 Mr Mitchell: A bit late, was it not, because all the permissions had been given then?

Sir John Harman: No, all the permissions had not been given then. At that stage the trans-frontier shipment permission had been given, the waste licence modification was in the process of being concluded. You are right, with hindsight it would have been great to say, "We spotted this one coming over the horizon", almost literally - I perhaps regret the use of that metaphor - and raised it earlier but it did not appear to the teams dealing with it that it had those elements to it at the time. It is easy to say with hindsight but it is true.

Q80 Mr Mitchell: So it was extracted from the Dales in late September?

Sir John Harman: It was being dealt with partly by Craig's area in the Dales and partly by the national unit for trans-frontier shipments. They were dealing with it and, as David pointed out, we deal with a large number of applications on their merits and it did not ring any alarm bells at that stage.

Q81 Mr Mitchell: It is a sorry story, is it not? How on earth is a firm meant to run a business? Not just being sycophantic to Peter Mandelson because of his new position in government but what he said made a lot of sense. How can a firm run a business in a competitive world, where people are bidding for contracts, when we have got the Environment Agency changing its mind and just bugging around this like?

Sir John Harman: With due respect, Mr Mitchell, we did not change our mind.

Q82 Mr Mitchell: You did. You gave permission for them to come and then you withheld it and you said "Don't come".

Sir John Harman: There are two permissions. Let me just go back to Craig's answer. When you invited him to give you the time line the questioning cut across the middle of his time line, so we never got to the end of it. There are two



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permissions that we are responsible for. We have spoken much about the trans-frontier shipment licence and the waste management licence, those are the two. The point at which the Agency advised the ships should return, and that was not on the basis of any environment judgment, was the point at which the legal challenge came into the waste management modification. We took legal advice and the legal advice we had was that the modification really was not valid, that it ought to require a new licence. That in itself would not have dissipated the problem over planning permission, which is still disputed and still extant, but it did mean that we then took the view that if a new waste management licence was required then the transfrontier shipment ought not to be undertaken until we have got that in place and we ask for the ships to go back. We would never at any point have changed our view about the environmental assessment of the process. *[ABLE COMMENT:- Why did the EA not write to MARAD or ABLE and clearly state that they would not allow the vessels into UK waters if that was the EA's position? Why didn't the EA take up ABLE's suggestion that they informed ABLE details of their problem and allow ABLE to consider the problem working with the EA to find a solution?].*

Q83 Mr Mitchell: But you did change the advice the Americans were getting? First of all you said "Come" and then you say "Go back, don't come". Talking to MARAD and saying "Keep your lads at home" to which they reply "The ships will continue to cross the Atlantic", quite understandably, I would have said the same thing myself. The point there is that you are using this abstruse argument about planning permission - which will take months and years possibly to resolve in Hartlepool the way they do things - as an excuse for covering your own backside for flapping about all over the place.

Sir John Harman: Craig will answer in a moment but can I just take the end of that question. It is our view, and has been all the way through, that the responsible recovery of these vessels can take place in dry dock. That is the key issue. After that view had been taken and TFS issued in July, any gyration on the part of the planning situation, any dispute about planning, cannot affect any more the decision on TFS but it can render it incomplete, unable to be completed. The issue is not using the planning permission to wave at MARAD, it is the fact that without planning permission there would be no adequate dismantling of the vessel. *[ABLE COMMENT:- The ships can be responsibly dismantled without the dry dock. The dry dock allows the work to be undertaken in a manner that is safer for the workforce, safer for the environment and will provide a larger benefit to the environment and local*



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economy. It is and always has been ABLE's intention to dismantle the MARAD ships in TERRC dry dock].

Q84 Mr Mitchell: All you are doing now is passing the buck back down to Hartlepool?

Sir John Harman: Certainly not. It is and remains, and I do not know how we can say anything different, the view of the Environment Agency that the proper dismantling of these ships requires a dry dock containment with a bund. When you say "dry" there will be some part of this process that happens while water is still in the dock and some part which happens when it has been drained, so dry dock is a bit of a misnomer. There is a proper way to do this and the only relevance, but it is a huge relevance, of the planning permission is that that is the means that the company has to undertake the proper dismantling. It is our view they should be dismantled properly, we could say nothing else and say nothing else today.

Q85 Mr Mitchell: What response did you get from, first of all, Able UK and, secondly, from MARAD when you told them on 30 October at the end of this meeting about that you had rescinded the modification to the waste management licence? *[ABLE COMMENT:- At this meeting the EA did not rescind the modification, they told ABLE that it was invalid, the matter was discussed and the situation was not clear, ABLE asked for a letter clearly stating the situation and the reasons for the EA change of view. ABLE still have not received such a letter].*

Mr McGarvey: Bear in mind prior to 30 October we had been saying to MARAD through September and early October "You need to be aware that the company has not got all the permissions it needs, notwithstanding ours".

Q86 Mr Mitchell: You got a reply from them saying the ships are still going to come.

Mr McGarvey: This is contextual to the decision we informed them of on 30 October. We were keeping all players informed that we thought there were some issues. In particular we were saying to them "One of the contractual obligations that Able UK has with MARAD is that all of its permits and permissions to enable this to take place will be in place within a very short timescale of the contract being let". Whilst actually potentially it



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is not our responsibility to start raising those issues to MARAD we felt an obligation as a regulator to start saying to MARAD "We need to be talking to you because you have a regulatory relationship with us and there are some other permissions which the company seem to be unearthing, coming across, or you are just making applications for, all of which start to create this feeling that the dry dock option might not be completed", and particularly bearing in mind one of the regulatory requirements of the transfrontier shipment notification is that once the waste is received in this country it has to be disposed of within 180 days, so we were getting increasingly concerned that if the company had other issues to resolve, FEPA licences, planning and other matters, that they were not going to be able to comply with the TFS approval because once they arrived the clock would start ticking. We made them aware of all those factors. In the context of saying to them on 30 October "We have scrutinised all our legal situations on this" and in particular given that the planning permission is now in serious dispute and we did our environmental risk assessment on the basis of this being done in a dry dock, because that was what the company told us we were doing, if that now does not look possible it undermines our waste management licence modification.

Q87 Mr Lazarowicz: On that point, when did you first make it clear to the company that they would be required to carry out operations under dry dock conditions?

Mr McGarvey: The company made that clear to us and it appears to us clear from the contractual arrangement with MARAD that was the arrangement and also from talking to the United States EPA. *[ABLE COMMENT:- the MARAD contract does not state that ABLE have to carry out the works in a dry dock]*. The United States EPA have given an enforcement discretion which appears to be based on a number of factors, one of which is the company having a dry dock facility. In talking to the US EPA they advised us that all the representations they had received from the company when they came and inspected the site were on the basis of this being done to the highest environmental standards of a dry dock.

Q88 Mr Lazarowicz: The timings are of importance here. When was it the company told you they would be doing it under dry dock conditions?

Mr McGarvey: They had always made it clear to us that was



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their intention.

Q89 Mr Lazarowicz: From when?

Mr McGarvey: From 1997. I think we became concerned when Hartlepool on 7 October said the planning permission in their view was no longer valid. The company then said in a press statement "Well, we think we can do it another way" *[ABLE COMMENT:- ABLE during the tender process undertook a feasibility study and defined two alternative methods of decommission the ships, both methods are feasible one method is already used in Europe but ABLE's dry dock method is safer for workers and produces more benefit to the environment therefore The dry dock method is ABLE's preferred method .* Of course they could think up numerous different ways of doing it, none of which they needed to share with us, but they started to share another way of doing it and of course our environmental risk assessment had been done on the basis of doing it one way. *[ABLE COMMENT:- at all times ABLE have discussed openly their feasibility process and intentions and we checked at with HBC if planning permission was required for one of the methods].* Of course at that point as environmental regulator we had to start saying, "This now looks as though it could pose risks which have not been fully evaluated".

Q90 Mr Lazarowicz: Was that the first time at which it was suggested it would not be done under dry dock conditions?

Mr McGarvey: Yes, it was the first time that they had publicly stated that they could have an alternative plan. *[ABLE COMMENT:- ABLE answered a question but at all times ABLE have confirmed that it is their intention to do the dismantling in TERRC dry dock].* Just to add some more to that. The marine administration had a technical compliance plan as part of the contract and that technical compliance plan is only for dry dock working. *[ABLE COMMENT:- This is not correct. ABLE's 'Technical Compliance Plan' and 'Working Plan' as submitted to the EA together with the 'Regulation 48 Assessment' undertaken in 1997, covers wet dock working].*

Chairman: Fine. For the benefit of the Committee we are going to be subjected to a series of votes at 10 minutes to 5. I am going to bring this session with the Environment Agency to a close in just a second because I would like us to start with the Minister. I know Diana Organ wants to ask a question about costs and that will be



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the only question and then we will go to the Minister.

Q91 Diana Organ: I just want to know, we have the President here at the moment, are we going to send him home with a bill for this because who is going to pay for the safe storage of these ships through the winter?

Sir John Harman: The matter of storage is a matter for Able UK and MARAD between them, they are the contracting parties. Our costs will be recovered. The costs now of inspecting and monitoring the arrangement will be recovered through the subsistence in the ordinary way.

Q92 Diana Organ: It is not going to fall on the British taxpayer?

Sir John Harman: As far as I am concerned not, no.

Chairman: Thank you very much indeed. We have had a fairly fluid exchange. As I said I wanted to let lines of thought run. I would like you to reflect upon some of the lines of questioning that the Committee has put forward, merely to say to you if in the light of that there are any further comments you want to put in writing to us by way of additional response to the questions that colleague Members of the Committee have put forward, I am sure we would be interested in reading those before determining our views on this matter. Thank you very much for coming. We will now take the Minister.

Witnesses: MR ELLIOT MORLEY, a Member of the House, Minister for Environment and Agri-Environment, MS SUE ELLIS, Head of Waste Management, Department for Environment, Food and Rural Affairs, and MR BRIAN WADSWORTH, Director of Logistics and Maritime Transport, Department for Transport, examined.

Q93 Chairman: Ladies and gentlemen, can I thank the Minister, Elliot Morley, Minister for the Environment and Agri-Environment, for coming to be with us. I gather, Minister, you very kindly said that after our series of votes you would be willing to come back.



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Mr Morley: Yes, that is no problem, Chairman, I understand the situation.

Q94 Chairman: I hope my colleagues will have taken due note of your generosity of your time and will themselves rush back after what may be a series of up to four votes so that we can engage you in dialogue on anything we have not covered up to approximately ten to five. I gather you have been joined by Sue Ellis, the Head of Waste Management.

Mr Morley: That is right, Chairman.

Q95 Chairman: Sadly your colleague, Mr Wadsworth, is not able to be with us.

Mr Morley: Yes, he is here.

Q96 Chairman: You are sitting in a supportive capacity, are you?

Mr Morley: We can have him on the front if you like, Chairman.

Q97 Chairman: It is up to Mr Wadsworth, we do not mind giving him the expensive seats.

Mr Morley: I normally minimise the officials' exposure to your probing questions.

Q98 Chairman: Minister, we are aware that you have already answered an urgent question in the House and we have had a chance to see what you had to say and you may have got a flavour of some of the questions that we have been asking of the Environment Agency. I think it would be helpful for me to ask two questions. Firstly, what precisely is Defra's role in this matter because clearly the decisions to allow these vessels in the first instance to be seen to be able to cross the Atlantic, going back to the July situation, were decisions of your department's agency, the Environment Agency? I would be interested to know when your department first became involved, either



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informally or formally, in the decision making process given, as the Environment Agency have just told us, effectively the novelty of the movement of waste as a single item rather than an item that comes in a container or some other facility to be disposed on in the way that they described to us. This clearly has a sensitivity and it may well be that your department was aware of it in parallel with the Environment Agency's activity. I wonder if you could respond to those two lines of questioning?

Mr Morley: Certainly, Chairman. We are the sponsoring department of the Environment Agency and our role is a line of accountability to Parliament through ministers for the Agency as part of the many regulators which are part of Defra. It is not just the Environment Agency, of course, there is the Drinking Water Inspectorate, there is a whole range of different bodies who are independent regulators, who we have every confidence in, who carry out this kind of work. Of course, we do keep in touch with what is going on. I was informed, as the Minister, in July about the application in relation to these ships and I did follow the progress of it, not in any kind of direct way, until the Agency alerted Defra I think on 24 October that there were some serious problems.

Q99 Chairman: Just to hold you at that point. You would have had a piece of paper advising you that this occurred. Did you sit down with officials and have a briefing on the issues that were involved in this or did you just accept it as "thank you very much, that is a very interesting piece of information, next business"?

Mr Morley: I did accept it as just a notice of what the Agency was doing. As I was saying to you, Chairman, the Agency is one of our biggest regulatory bodies. It is not the only one, we have many. What I would not expect to do is have briefings from officials on every aspect of what our regulatory agencies are doing.

Q100 Chairman: So the novelty that was described to us by the Environment Agency of this particular movement rang no bell either with you or any official in Defra to say, "I think we had better just have a little closer look at the way this is being handled"?

Mr Morley: Not at that stage.

Ms Ellis: As Mr Morley has already described, we became aware of the problem with the licence modification late on



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24 October. Unfortunately I cannot tell you exactly what happened the following week because I was on leave, so my director looked at the situation with my team leaders. I cannot tell you precisely the ins and outs of what happened after that. Certainly on the 24th, when we were notified by the Agency that there were problems, legal problems, with the modification to the licence, ministers' offices and senior officials were alerted to that fact.

Q101 Chairman: Looking at the question of the company, Able UK, has your department or you, Ms Ellis, had any dealings with this company? Do you have any views as to their technical ability to carry out the tasks which they contracted to do?

Ms Ellis: We have had no direct dealings with Able UK. As the Environment Agency and the Minister have already explained, the Environment Agency act as the English and Welsh competent authority in these circumstances, so they are our technical and professional advisors and we are certainly not in the business of double-guessing them or trying to do their job for them.

Q102 Chairman: Looking at it as an environmental issue, are you content that the proposal to bring these ships from the James River to the United Kingdom for final disposal is the best environmental option open given the capacity constraints that I understand there are in the United States' dismantling business? Is this the best way to deal with these ships?

Ms Ellis: You are asking me?

Q103 Chairman: You can answer if you like.

Mr Morley: I think that is more for me, Chairman. You are quite right to say that there is a worldwide capacity problem in relation to these ships. I understand that MARAD have actually contracted with four yards in the United States to deal with ships from this particular James River fleet. However, Able were on the approved list to tender. They were on the approved list because they were actually inspected by the American Environmental Protection Agency and they thought their standards were such that they should be included within the tender. They did win the tender for some of the vessels. As you will appreciate there is quite a large number of vessels. There



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is a problem globally in relation to these facilities. Able has been involved in scrapping offshore structures for many years, they have a very high reputation. They have a very good site in Hartlepool which, unusually, has licensed landfill within the curtilage of their site. They also, I think unusually, have IMO certification in relation to the dismantling of ships. They are a high quality facility. Throughout this debate in relation to the export of these ships, I have not heard anyone dispute the competence or the ability of Able in relation to handling these ships in a proper environmentally sound way taking into account the need to ensure that the ships are disposed of and recycled properly and also consideration of health and safety in the workforce.

Q104 Chairman: Given that other UK Government departments, perhaps principally the Foreign Office, might have had some contact in the United States about this, did they make any approaches to your department just to check up that everything was in order before contracts were signed and vessels set off?

Mr Morley: No, but I really would not expect them to do so because this is a commercial arrangement between Able and MARAD. Of course, the regulator is the Environment Agency who would deal with the trans-shipment permits. I have every confidence in the Environment Agency and we would expect them to get on with the job.

Q105 Chairman: Looking at this trade in dismantling vessels, is there a big trade in it or is this the first one of its kind?

Mr Morley: In terms of the UK I think this is a new development in relation to the importation of ships for recycling. There is certainly a big global trade, Chairman, and part of that is the fact that the facilities are few and far between and that is why the trade exists. It is also likely, Chairman, that there is going to be an increased amount in the UK through the EU. For example, we have been pressing for the early phase-out of single hull tankers on environmental grounds and I think it is right to do that. We are confident that we will be successful in that, we have to get agreement with IMO. That will mean between now and 2015 something like 2,000 redundant single hull tankers will be on the market for recycling. We do have a pressing need for top quality facilities for recycling ships.



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Q106 Mr Mitchell: Do you want to encourage the trade?

Mr Morley: I see nothing wrong with a business in relation to environmental management, which is what this is, as long as it meets the environmental standards that we would expect. In that respect it is fulfilling a need, and we have the need within the UK for such a facility, it is a global need, and it has the potential to create a lot of jobs.

Q107 Mr Mitchell: In that case we are going a funny way about it, are we not?

Mr Morley: I do not think that we are going a funny way about it. I think that we are doing everything we can in relation to facilitating those ----

Q108 Mr Mitchell: So stop it if you do not want the ships to come. You asked them to go back.

Mr Morley: That was on the basis that once the problems in particular with the planning permission came to light then the trans-shipment licence was invalid. In that respect we are obliged to follow the EU regulations and the EU regulations are very clear on this: if the trans-shipment licence is invalid then the country of origin must take back the ships. That was the legal advice that the Environment Agency had and it is our legal advice as well.

Q109 Patrick Hall: Minister, what permissions were necessary for this particular waste recovery project to proceed and when did you learn that not all of those permissions were in place? When you learnt that, what actions did you take?

Mr Morley: There are a range of permissions which are needed. Obviously there was a planning permission in relation to the dock. The company was convinced and remains convinced that it does have the planning permissions. There are a number of consents such as FEPA consents which go along with that. The company did have planning permission, no question about that. The company did obtain the necessary FEPA consents from what was MAFF then, it is now Defra. The consents are actually time expired and the company has made the necessary



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applications for the consents. They are to do with the building of the bund and disposal of the dredging of the material. There is also the transshipments licence that it has to have and of course there is also the waste management licence which the company did have but it had to be varied because of the fact it was taking a large number of ships through the facility and also it was going to do them under dry dock conditions rather than wet dock conditions. Those are the range of consents. Now the Agency - up until 24 October when they notified us there was a problem - were convinced that all those issues either could be met or were met. The licences they thought could be varied. The planning permission they thought was in place. On 24 October they notified us there was this dispute on the planning permission and also there were some technical issues in relation to the detail of the licence as well. *[ABLE COMMENT:- ABLE have not notified anyone the EA that there was a dispute on the planning permission or that there were some technical issues].*

Q110 Patrick Hall: What actions did you take? You have been trying to pull people together.

Mr Morley: From that point Defra has been in discussions with the company, with the planning authorities, with MARAD, with the Coastguard Agency, Department of Transport, with the American Environmental Protection Agency. We have been in touch basically with all the key players since that date. *[ABLE COMMENT: for the avoidance of doubt DEFRA have been helpful and professional throughout all dealings that ABLE have had with them].*

Q111 Patrick Hall: Earlier on I asked the Environment Agency here in dealing with these matters, and before making a decision on granting a licence, why it could not ensure that all the permissions and the technical requirements are actually in place? For example if a dry dock is required that the dry dock is there, actually in existence.

Mr Morley: Yes.

Q112 Patrick Hall: Sir John Harman said that would be too rigid a test in order to ensure that all the conditions are in place, before issuing a licence he thought that was not common sense. I wonder whether or not indeed it would be common sense to have the technical requirements in



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place first and that it is not possible to achieve that under the current system because the 28 day period for the Environment Agency to consider an application otherwise it is deemed to be granted puts that Agency under too much time pressure to do anything other than just agree it. Would you be prepared to at least consider that there may be a case now in the light of what we are learning in this case to review the regulatory and legislative framework?

Mr Morley: Of course hindsight is always a wonderful thing and you do pick up the kind of problems which have been experienced in this case. We have asked the Agency to review internally their procedures and to look at what lessons can be learnt in relation to this incident. Also in Defra we are very willing to look at our own experience and indeed that is one aspect which certainly I think is worthy of consideration because the timescale is quite narrow in relation to what is a very complicated process and I think it is not unreasonable that we talk to that. Some of these issues are of course EU regulations and in that case we have to talk to the Commission. We are very happy to do that. On the other point, the Agency is often portrayed as a body which is a bureaucratic body which is there to tie up various businesses in red tape and stand in their way. It is a caricature and I think to be fair to the Agency this was a legitimate trade, a legal trade, they were trying to be helpful to the company. Of course they have no reason not to believe the various permissions and consents would not be in place when the ships arrived. Now as it turns out they are not but of course we are in a hindsight situation there.

Q113 Chairman: Can I ask, you said you were in discussion with a whole list of people which you very kindly enunciated.

Mr Morley: Yes.

Q114 Chairman: If this matter is to be resolved through your Agency why is your Department now discussing the matter with all interested parties? Are you now in charge?

Mr Morley: No the Agency is the competent Authority but you will know, Chairman, when something as complicated as this happens with international ramifications, it would be irresponsible of us as a Department not to be involved and to talk to all the various players about what we can do to try and resolve it, how we can comply with the necessary regulations, what we can do, particularly to make sure the ships are stored in safe environmental conditions because



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that requires an involvement from the Department. *[ABLE COMMENT:- Why does this require an involvement from the Department? If ABLE were not capable of managing the ships in safe environmental conditions they should not have been given a licence in the first place.]* We would not have been in the ludicrous situation, which I am not saying we would have been in, where the ships might have been going around in circles with no-one refusing to take them but having said that, that did happen to the Prestige and there was a big row about whether it would go in to port when it was leaking oil with the consequences it broke up and sank. Now we were not going to have that kind of situation. We wanted this sorted out immediately in terms of safe storage for the ships while this matter is resolved. The most pressing issue is the court case which is under way currently.

Chairman: I understand the votes are scheduled for two minutes time. So I do not end up by being trampled to death and not being able to make a closing announcement I am going to anticipate that by saying we hope we will be able to resume as soon as the series of votes are completed. I would ask as many colleagues as possible to come back. Mr Simpson though may wish to just have a little postscript of a question before we depart to vote.

Q115 Alan Simpson: Two quick questions, Minister. The first is that on 3 October the Environment Agency wrote to Able UK and MARAD to say that the permissions were not in place.

Mr Morley: That is right. *[ABLE COMMENT:- That is not right. ABLE did not receive any letter on 3rd October saying that the permissions were not in place].*

Q116 Alan Simpson: And to advise against the ships setting sail.

Mr Morley: Correct.

Q117 Alan Simpson: That was four days before they did set sail. Yet it took Defra a further month before it was able to say "Oh, well, since you are here you may as well stay for Christmas, have a nice time". Does that reflect a degree of competence within the Department?

Mr Morley: You have to look at the situation that the



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Agency found itself in. By 3 October there were doubts, shall we say, about some of the consents, bearing in mind that the company is still to this day adamant that it does have planning permission. It will be for the courts to decide. The company has not conceded any of this. There were doubts about it but it was not certain at that time, it was not clear as it became on 24 October, that some of those conditions could not be met. At that date it was still debatable whether or not there was a problem so the Agency on 3 October could not say for sure that the licence was invalid. The licence was valid on 3 October, the transshipment licence was valid on 6 October when the ship set sail.

Q118 Alan Simpson: If you project this forward. You said the vessels will have to return in the spring.

Mr Morley: If an alternative cannot be found.

Q119 Alan Simpson: If permissions are not granted.

Mr Morley: That is right.

Q120 Alan Simpson: Have you given a date to MARAD when the ships would have to leave?

Mr Morley: Not at this stage, Chairman, because two of them have not even arrived yet.

Alan Simpson: Can I just make it clear to the Minister because the Environment Agency just said to us if they are here for 180 days we then acquire a legal responsibility to take responsibility for those and that means after 12 April, Minister, you are stuck with it and so are we.

Chairman: Minister, you can pick up on that point when you come back.

*The Committee suspended from 4.55 pm to 6.03 pm for
divisions in the House*

Q121 Chairman: I gather we may only have ten minutes, in which case in fairness to the Minister we may have to draw stumps. Minister, if you can remember Mr Simpson's pithy



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point which we concluded on, would you be kind enough to respond to it and then we will have Diana Organ.

Mr Morley: I can indeed. The answer to this in normal circumstances is 180 days is quite right. It is a condition of the waste shipment licence, however the waste shipment licence is a transposition of the OECD agreement and I understand that is to be amended to 365 days. I think at this point I will ask Sue Ellis to explain the rather technical detail in a bit more detail.

Ms Ellis: Indeed, Minister. The 2001 OECD decision reflects the fact the 180 days for recovery was regarded as too short, so it has been extended to 365 days. The waste shipment regulation transposes that into European law. The revision to the waste shipment regulation which will incorporate the change to 365 days is currently being negotiated, being worked on, at European level and the revised waste shipment regulations should reflect the change to 365 days.

Mr Morley: I think you can see, Chairman, these issues are not simple.

Chairman: Indeed, as I think we have discovered in this whole issue. It is not quite what it seems.

Q122 Alan Simpson: Can I say on that, if we were playing darts we would all be quite happy with 180, but since we are not, to have this hanging in the air, in the process of negotiation and renegotiation, may leave us all in an almighty mess. I would ask that the Minister agree to come back to the Committee with legal clarification about whether the clock is ticking under the current rules and at what point this 180 days would be put in. It would be helpful if a written legal opinion can be given.

Mr Morley: I think perhaps a written legal opinion may be helpful to the Committee. I can tell you at the moment the clock is ticking under the current rules of 180, but they are to be superseded and of course we do have the agreement with MARAD that if there is not a proper environmental and legal solution to these ships found by the time we get into the better weather in the summer, they will take them back.

Q123 Diana Organ: This afternoon's session has brought up a lot more interesting questions which we may need to revisit at a future time, but obviously you will agree, I



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am sure, Minister, we should not be exporting our waste. You have said this issue is something where there is going to be a huge, growing demand both globally and nationally. Could I ask you two questions. What happens to the UK ships? We know where the American ships are going. What is Defra doing to build capacity in facilities like the one proposed in Hartlepool so we can meet this growing global demand?

Mr Morley: That is a very fair question. First of all, we are back to this issue there is a need for capacity. In an ideal world, the ideal solution of course would be that the US would have enough facilities which would mean none of these ships would have to be exported. But we do not live in the ideal world on these issues and it is true our ships are exported for the same reason we do not have enough capacity. UK ships are scrapped in the UK, we do have some capacity but we do not have anything on the scale of the proposed facility at Hartlepool. You may be interested, Chairman, that I actually saw today the trade newspaper for the shipping industry which has the headline, "Great green scrap dream", and this is a proposal by the Dutch to actually build a facility very much like Hartlepool. I quote, "Targets include single hull tankers and others like the US naval reserve vessels currently raising a scrapping row in the UK." So it appears that the Dutch are actually planning facilities to take these US ships because of the demand. Of course the Dutch being Dutch, they want to do it by applying very high standards, which Hartlepool has. The editorial of this paper does make it very clear that they feel Able has been disgracefully treated.

Q124 Mr Mitchell: If their Government handles it with the same competence as our Government, they will never get the business, will they?

Mr Morley: It will be very interesting to hear what the NGOs have to say about a facility like that built to that standard in Holland.

Q125 Diana Organ: Minister, you did not really answer my question. What is your Department, what is Defra doing to build capacity and the facilities which are needed?

Mr Morley: This is an issue, of course, for the private sector. Defra is not in the business of nationalised ship dismantling. But I think there is a very strong argument for a facility of this kind. We want to see it succeed, we want it to be legal and to comply with the very best



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environmental standards, that is part of our role as Defra, but we do recognise there is a need for this. It is very interesting there was a letter today from Greenpeace, which was critical of UK ships going abroad, and the inference was we should have a facility like this and yet there are other groups who seem hellbent on stopping a facility like this.

Q126 Mr Mitchell: Peter Mandelson, in his evidence, suggested to us that the Government should take the lead and deal with the issue, and that means Defra. Why don't you?

Mr Morley: We certainly are very keen to play our part. We recognise this incident has thrown up all sorts of issues in relation to the regulations, how they apply, the complexity of the regulations. We accept there are legitimate concerns about environmental standards.

Q127 Mr Mitchell: Are you going to sit there and wring your hands for several months while the business is lost or are you actually going to do something?

Mr Morley: Absolutely not. But we do not have the role, the powers or the facilities to be in the business of setting up shipyards for scrapping ships. In terms of what we can do, we are very willing to play our part, but the lead for this should be the planning authority, the local council, the regional development association, the company itself, they are the ones who should play the lead. Our role is in relation to ensuring that there are high environmental standards and helping people facilitate the standards and meeting those standards, and we are very happy to do that.

Q128 Mr Mitchell: This has been created by a storm of ill-founded fear which has been whipped up which has terrified the rudderless Hartlepool Council. It has created this legal mess which will take months to resolve of whether planning permission was given, where is it, what it was given for, who is responsible, who is not, meanwhile the business presumably goes elsewhere and everybody sits there covering their own backsides and doing nothing.

Mr Morley: It is now a matter for the courts principally to decide those issues. **[ABLE COMMENT:- For the avoidance**



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of doubt, the Judicial Reviews will not determine the planning situation regarding the bund].

Q129 Mr Mitchell: That is just what I mean.

Mr Morley: We cannot interfere with that, we cannot interfere with the process of the courts, and neither can I comment on it while it is going through the courts.

Q130 Mr Mitchell: Can you send the ships back then?

Mr Morley: The ships can be sent back if there is not a legal and environmental solution found to it. I do agree that there has been some quite gross exaggeration about the risks proposed by these ships.

Q131 Mr Drew: I only caught the end of what Alan was asking about but I think this is a different point. Is there not a need for some much clearer international guidance in this whole area? From what we have heard today, there is a commercial case for who is going to do it but what is the mechanism for how that happens? Every other nation will be looking at us with some alarm because they would not want to be in similar circumstances. Is there not a need for some international conference to identify how we are going to take this further forward, because we cannot go through this again, no other nation wants to go through what we have been through. I would welcome your comments on that. *[ABLE COMMENT:- Never mind a nation - what about what the company (ABLE) and staff have, and are, being put through!].*

Mr Morley: I agree with that. This has been a complex case and it is particularly complicated by the dispute between Able and the planning authorities in Hartlepool, because Able are still adamant that they have those permissions; they are adamant. In the end, the court will decide that. That is an unusual dimension to this situation but it has demonstrated how complex it all is. It has demonstrated how there is an interlinkage between all the different consents and permissions and how, if one falls down, everything falls down. I think there is a role to examine the detail of that and I certainly have no objection to looking at that in relation to what we have to do, which is to go through this experience and see what we can learn from it and how we can improve the situation in the future. There may indeed be lessons from this which other



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people internationally may want to look at.

Q132 Mr Drew: Is there any country in the world which has a system in place yet where they are dealing with this particular level of sophistication? We know who deals with the unsophisticated aspect of breaking up ships - India, Pakistan, Bangladesh. Which developed nation is doing this properly, or are we all in a learning experience?

Mr Morley: I think we are all on a learning curve in relation to this. Amongst the OECD countries - and bearing in mind we are signed up to the OECD agreement and therefore we would want ships to be recycled in OECD countries which meet the standards - a lot of ships go to Turkey, but Turkey does not have facilities for dealing with hazardous waste such as asbestos. So while Turkey is familiar with such things as transshipment licences and the various consents, Turkey insists hazardous materials are removed from ships before they get to their shipyards because they do not have the facilities.

Q133 Mr Lazarowicz: Are you in a position to make any assessment of the performance of Hartlepool Council in this matter?

Mr Morley: No, I am not really in a position to make any comment whatever.

Q134 Mr Lazarowicz: On the question of the actual state of the ships themselves, what is the Department's view as to the state of the ships now they are in Hartlepool? What is your assessment of the extent to which they contain toxic materials?

Mr Morley: I will ask Mr Wadsworth to say a word on this. My understanding is that the ships were inspected by the Marine and Coastguard Agency before they set off and they were found to be in a satisfactory condition to make the journey. They were also inspected by the American authorities as well. They have subsequently been re-inspected on their arrival in Hartlepool. They have also been inspected by the Environment Agency and a range of measures have been put in place, and as far as I understand it in relation to the general condition of the ships they are regarded as generally in reasonable condition. I wonder if you want to expand on that?



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Mr Wadsworth: Thank you, Minister. Yes, that is correct, Chairman. The vessels were subject to a number of surveys before departure from the United States. The US administration arranged their own surveys, the US Coastguard carried out surveys with a view to issuing the loadline exemption certificates which were necessary to enable the vessels to make their voyage across the Atlantic. Our own Maritime and Coastguard Agency appointed two surveyors to check they were satisfied the recommendations of the Marine and Coastguard surveys were in fact being implemented before the ships departed, and to check whether there were any other issues which needed to be dealt with which were drawn to the attention of the US authorities and dealt with before the ships departed. We also appointed an independent towage expert to advise us on the passage plan for the vessels and the operational issues relating to the tow across the Atlantic.

Mr Morley: It is fair to say these ships in relation to the risk they pose are no better or worse than any other ships of their age.

Mr Wadsworth: That is correct. Many ships of this generation contain asbestos as a fire prevention or fire containment material, and also have wiring insulation et cetera which has PCBs within it. So there is nothing odd really about these ships for their generation.

Q135 David Lepper: Chairman, I do apologise for having missed much of this session and this question may well have been answered in the afternoon. Do the ships contain cargoes of oil or chemicals or toxic substances of any kind?

Mr Morley: They do contain a range of toxic substances which are mainly in the engine room and wiring which you would find in any ship of this age range. **[ABLE COMMENT:- hazardous is a more correct definition]**. As far as oil is concerned, I suspect the tugs which towed them had more oil on board than these ships. There are probably ships going into Tees Port everyday which have far more hazardous cargoes than these ships contain.

Q136 Joan Ruddock: I wanted to come in when we were having this discussion about the overall strategy of Defra and the approach in the future, given everyone agrees this is a continuing and somewhat new problem. Does the Minister believe it would be preferable if developed nations which can develop that capacity were to develop



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that capacity at home?

Mr Morley: Yes.

Q137 Joan Ruddock: That we were to deal with our own vessels and perhaps that would give greater public acceptability if people thought it was a problem we had a responsibility to deal with here?

Mr Morley: I do agree with that. As Environment Minister what I want to see come out of this, Chairman, is the best environmental outcome. The best environmental outcome is that we have facilities within the UK which are high standard, meet the very best environmental standards both nationally and internationally, and that we have a facility here within the UK. We have to accept that in relation to all these tankers, for example, a lot of these tankers are flagged out to countries which do not have these facilities and are not likely to have these facilities, so therefore there is going to be an international trade. Again, looking for the best environmental outcome, as developed nations, we should be developing facilities to deal with the ships we have ourselves but we should also play our part in dealing with proper recycling and reuse in top quality environmental conditions for the many ships which are going to be on the market from countries which do not have these facilities. I do not think it unreasonable for those countries who have an established trade and a lot of jobs in this, which have poor standards, to see whether there are measures we can take to ensure they have proper standards of health and safety on environmental management and waste disposal. That might be an issue we should look at in relation to our development programmes. But, whether we like it or not, there is demand for proper facilities. There is an industry which is involved in this which is perfectly legitimate and I think the outcome we should be aiming for, and the outcome I want to see as Environment Minister, is to see those facilities in our own country.
[ABLE COMMENT:- Then why try and put ABLE out of business?]

Q138 Chairman: Can I raise a question with you arising out of a considerable amount of evidence which has been sent to the Committee by Friends of the Earth on the question of PCBs? We have learnt on the evidence this afternoon they are an integral part of the materials that make the ship. I do not know anything about how you do safely deal with these materials but what I am aware of from the Friends of the Earth's evidence is that a lot of



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people have talked about the carcinogenic properties of these particular chemicals. Can you, for the benefit of the Committee, explain to us how you undertake the safe disposal of these particular materials in the context of dismantling a ship in a way which would address the kind of line of inquiry which has been put to us by Friends of the Earth?

Mr Morley: Certainly. The bulk of these PCBs if not all of them are found in the insulation of wiring in the ships and, as such, they are not a risk to people unless you start chewing them. *[ABLE COMMENT:- Fixed PCBs chemically bound in a product would not pass into a person if they did chew the insulation]*. They are normally dealt with by high temperature incineration in a licensed incinerator for the disposal of toxic waste. Such facilities do exist within the UK and Able does have access to them. Such cabling is found again in all ships of this age. It was up to about the 1970s I think that it was common to have cabling of this kind. *[ABLE COMMENT:- There was a ban against the use of materials with a PCB content in the USA in 1977, in the UK there was a ban against the sale of materials with a PCB content in 1986]*. I guess there is quite a lot of this cabling found in buildings in this country as well because it was a common use of PCBs in insulation. A Member of this House came up to me and asked why it was the UK was importing ships full of PCBs because that was the impression given by some newspaper reports, and this is part of the distortion which has occurred. In this case it may have been the way it was reported but nevertheless it is one of the things which has led to a misunderstanding and an overstatement of the risk these ships pose. Do you want to make a comment on that?

Mr Wadsworth: My information is that the non-liquid PCBs *[ABLE COMMENT:- materials potentially contaminated with PCBs]* amount to just under 700 tonnes, which is 0.5 per cent ----

Mr Morley: In the 13 ships?

Mr Wadsworth: That is in all 13 ships taken together, which is something like half of 1 per cent of the weight of the vessels, taking the whole set of materials.

Q139 Chairman: In the Friends of the Earth evidence there is a question about how this material would be disposed, whether there would be any going to landfill ---

Mr Morley: No, incineration.



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Q140 Chairman: All would be incinerated?

Mr Morley: That is my understanding. Is that right? If I am wrong on that, I will inform the Committee.

Q141 Chairman: Do you want to listen to the helpful advice stage right?

Mr Morley: (After taking instructions) It may be the case some may go to landfill. There is a licensed landfill on the site to deal with that kind of material.

Q142 Chairman: Friends of the Earth say that no estimate has been carried out into how much of the 700 tonnes of PCBs will be released from the landfill and over what period. This is a central part of the expression of concern they put in their evidence to the Committee. Can you satisfy them that this material, and any others they would deem hazardous in the ships, are going to be properly and safely dealt with so they are not released to atmosphere or potential harm to human beings in Hartlepool? [**ABLE COMMENT:- ABLE's landfill site 'Seaton Meadows' like most other landfills in the country have been landfilling materials with potential fixed PCBs since the mid 1970's. ABLE test for PCBs in leachate from the landfill and have never had any sign of PCBs. This therefore confirms that the fixed PCBs are not and will not be released to atmosphere or cause harm to the population of Hartlepool**].

Mr Morley: I can certainly assure you and the Committee it will be dealt with properly and safely because that is part of the waste licence conditions which Able operate under and have been operating for over 30 years in relation to the dismantling of offshore rigs, and I would be very surprised to know if they did not have cabling of this type. They do have a licensed landfill for hazardous material, it is covered by regulation which they will have to abide by and is regulated by the Environment Agency. I cannot give you an exact split of what would be incinerated and what would not, but I am sure I can try and find that information out for you, Chairman. [**ABLE COMMENT:- None will be incinerated because there are no liquid PCBs on the ships**].



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Q143 Chairman: Just to conclude on this section on PCBs, I note from the Friends of the Earth that one of the four vessels which was going to be in the initial batch of four, one called Canopus [**ABLE COMMENT:- Canopus is the second largest out of the 13 No. ships and it is different form the other ships, it was a sub marine tender ship**], a smaller vessel than the other three in the initial batch, has it is stated by Friends of the Earth 286 tonnes of this material on it which, compared with the other ships which range from 34.1 to 47.3, does suggest there is something different about this ship. It may well be it has more wires in it.

Mr Morley: That is precisely right, Chairman. This ship was used in various forms of electronic surveillance and contains a great deal of wiring. That is the simple explanation, Chairman.

Q144 Chairman: That is the simple explanation and, again, all of that is going to be incinerated.

Mr Morley: My understanding is that the bulk of it will be incinerated but we can give you an idea of the split on that.

Q145 Chairman: So, given the concern on this, would you say that the stance that they have taken on this particular issue about the disposal of the so-called dangerous substances in the ship has been exaggerated, is realistic, or what?

Mr Morley: My belief is certainly the way it has been reported, and of course I cannot comment as to who is responsible for that, has been grossly exaggerated in terms of the potential risk certainly to the people of Hartlepool. It is perfectly legitimate to raise questions about the disposal of waste, how it is done, the potential risk. Those are legitimate questions for any organisation to raise, but if you present it in a way which does not stand up to examination by experts, and there are many environmental experts in this country, environmental journalists, environmental organisations who would question some of the claims that have been made, then of course there is a danger to the credibility of any organisation that makes them.

Q146 Diana Organ: Lastly from me, because I had asked



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both the Environment Agency and Peter Mandelson about this question about the additional costs and cost of having the ships here. What would you expect to be the costs that might accrue to you, the Environment Agency and to Able UK, in storing the vessels in the Tees over the winter? Have you had any discussions or representations with the US administration about who is going to pick up the bill?

Mr Morley: The matter in relation to storage of the ships is between MARAD, who I understand currently retain ownership of the ships, and Able. There will be no costs that will fall on Defra, the Environment Agency or, indeed, anyone else as far as I am aware. Of course there are costs to Defra in relation to the time that we spend in dealing with some of these issues but that is a marginal cost. I think there are some costs to the Environment Agency but they can recover them, can they not?

Ms Ellis: Yes. The Environment Agency explained earlier that any costs in relation to inspection would be covered by the normal subsistence charges.

Q147 Alan Simpson: Minister, I thought I was with you getting to a point of clarity until you then went on to add that some of the waste may be consigned to landfill. The reason I thought I was with you was because distinctions have been made during this session between waste that is being shipped to the north-east for recovery and the recovery of waste as opposed to waste disposal.

Mr Morley: Yes.

Q148 Alan Simpson: It took me into complete confusion when you talked about the use of landfill in the same context as recovery because I then ceased to understand how it differs from disposal. If you are trying to make that case to the Committee, I think it is incumbent on Defra to set out the scientific evidence that places incineration, first of all, as recovery and landfill as recovery, because intellectually I am out of my depth on this.

Mr Morley: I will bring Sue in on this. The ships are coming to this country and are going to this yard for recovery. 98 per cent of these ships will be reusable metal, 98 per cent. It is inevitable as part of the recovery process in any ship, not just these but in any ship, that there will be some hazardous materials that



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will have to be safely handled and safely disposed of as part of the recovery process.

Ms Ellis: As the Minister has just explained, although this is a recovery process, and deemed as such because 98 per cent of the materials will be recovered and recycled, there are inevitably residues that have to be disposed of. There is a hazardous waste landfill site already owned by Able UK on part of the site and that is the destination of the asbestos. I have just been advised that on the PCBs, PCBs are permitted to be landfilled if they are below a certain threshold level, so materials containing PCBs may have very light contamination by PCBs. That is below 50 PPM, if that means anything to any scientists.

Q149 Chairman: Parts per million.

Ms Ellis: They are permitted to go to landfill and, indeed, that is what will happen to the low level PCB waste. PCB waste that is above that level, which is the minority of the PCBs that will be coming out of the ships, will have to be incinerated as hazardous waste.

Q150 Joan Ruddock: I am just trying to get some clarity, as Alan Simpson was doing. Are we now agreed that the quantity is 700 tonnes and that that is in the whole fleet and, therefore, it is consistent with what Friends of the Earth have been saying? [**ABLE COMMENT:-** *FOE have lately stated that there is 700 tonnes, previous reports have suggested much larger numbers. The actual quantity of material that is potentially contaminated with fixed PCBs is 701 tonnes on all 13 ships (this information is available on our web site). In realistic terms, it will be a lot less, and possibly circa 140tonne, the only materials that may be potentially contaminated with fixed PCBs are those that were put on the ships before 1977 and that have not already been removed*]. We would all agree, I am sure the Minister would agree, that PCBs are hazardous and the difference of opinion is about the extent to which those hazards would impact or not on the people of Hartlepool. I think it is important that we understand where criticisms are made about press treatment and where there is fact. The facts seem to concur that these are hazardous materials and we need to acknowledge that.

Mr Morley: The fact is it is actually 698 but I do not want to quibble about 700. Indeed, these materials are classed as hazardous waste but I come back to the point that these are cables and wiring found in all ships up to the 1970s. Like a lot of waste, including asbestos, if it is not disturbed then the risks from it are very low. I do not know whether the Committee has seen a map of the



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actual site but it is worth looking at because it is very well placed and it is unusual in having a licensed landfill site on site, so there is no need to move waste around the area, which is an advantage, and also an advantage to the people of Hartlepool of course, that it is all contained on the actual site. In the dismantling of any ship or recovery from cars or electrical materials there is always some hazardous waste, whatever it is. It is a question of making sure that the dismantling is done in proper conditions, with proper standards to minimise risk. Certainly I believe that is the case on this particular site.

Q151 Mr Mitchell: We have had a letter from Caroline Lucas, who is a Green Euro MP, and the letter is here. She says she warned your department on 9 October in a letter marked "Urgent. Complaint against the UK for breach of EC environment legislation". That is a very dire problem. She warns that you are in defiance of Article 19.3 of Council Regulation EC 259/93, which of course you will be familiar with. Why did you not act immediately?

Mr Morley: First of all, you will note from the date that that letter arrived after the ships had set sail. That is point one. Point two, there were a number of aspects in that letter that I think the Agency would have disputed at that time. Point three, we do take correspondence seriously in relation to points that have been raised. It raises some technical issues on some quite complex European Directives and we would naturally want to examine those and look at them. We will of course ensure that there is a full and proper response to the points that were raised by Caroline Lucas.

Q152 Mr Mitchell: I am sure she will be glad to hear that. What dialogue have you had, has your department had, with the American authorities, either governmental or institutional?

Mr Morley: My department has talked to MARAD and we have also talked to American Secretaries of State who have responsibility in this area.

Q153 Mr Mitchell: Have you asked why they did not take the Environment Agency's warnings seriously at that time?

Mr Morley: Yes, we did. If I can just remind the Committee



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of the exact wording, it says in the letter that was sent by the Environment Agency to MARAD on 3 October, "You will be aware of your contractual obligation to take the waste back if the shipment is not completed as planned. In the light of these developments", these were some of the doubts that were arising, "and the absence of an appraisal of alternative approaches you may wish to consider the timing of the departure of the vessels to the UK". I think part of the problem is that is very polite, politely worded, to me there is a real problem here and I think you should just hold up sending in ships until we can look at it. Now that is not the way it was interpreted by MARAD, and I think part of that is two countries divided by a common language.

Q154 Mr Mitchell: Or rather they do not know how our Civil Service operates or the language it speaks.

Mr Morley: All I can say to you is that there was a difference of interpretation between MARAD and how I would have interpreted that if it had landed on my desk.

Q155 Mr Mitchell: Have you been in touch with the American authorities in any way to ask about whether they will take them back?

Mr Morley: Yes, we have and there is no argument about this, the obligation under international law rests on MARAD to take them back unless there is a legal and environmentally sound alternative.

Q156 Mr Mitchell: Do they accept that? If I was them, I would be laughing saying, "You're stuck with them."

Mr Morley: No, no. They comply with the OECD regulations and there is no argument about that and they do accept it.

Q157 Mr Mitchell: It would be a great step forward for British business if you did send them back, would it not? It is a great incentive to send other vessels back.

Mr Morley: I would want to see the best environmental solution to this situation and I think that part of that rests on the outcome of the court case. ***[ABLE COMMENT:-
The court case will have absolutely no effect on achieving***



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the best environmental solution. ABLE's methods, combined with the TERRC facility, provide without any doubt whatsoever the BPEO (Best Practicable Environmental Option) for the recycling of the 13 MARAD ships].

Q158 Mr Mitchell: Have you thought of the German solution - take them to Scapa Flow and scuttle them?

Mr Morley: I do not think I can comment on that, Chairman. I think that would break all sorts of EU regulations and a few of our own!

Q159 Mr Lepper: Will the Minister ensure a copy of the response from the Department to Dr Lucas is circulated to members of this Committee?

Mr Morley: In principle, I do not see why not.

Q160 Mr Lepper: Obviously there may be legal issues.

Mr Morley: It is a letter to a third party. In principle, I do not see why not but you will appreciate I will have to take some advice.

Mr Lepper: Dr Lucas has copied her letter to us.

Q161 Mr Lazarowicz: You described the polite terms of a letter from the Environment Agency to MARAD on 3 October, and we are told the Environment Agency also were in touch with MARAD on 8 and 10 October. Were those letters increasingly strident in their tone, to get their message over?

Mr Morley: I do not think I have copies of those letters, Chairman. I think that is one for the Environment Agency to deal with.

Ms Ellis: They are letters from the Environment Agency.

Q162 Chairman: There is one thing which you put before the Committee which we would appreciate further guidance on, and that is what happens next. You said earlier you



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were talking to lots of different parties. *[ABLE COMMENT:-
ABLE are not involved in these discussions despite trying
to arrange talks to resolve the issues].*

Mr Morley: Yes.

Q163 Chairman: We have not time now to go into a forensic examination of what comes out of that, but it would be helpful if you could write to the Committee and spell out in clear terms where those discussions are going and if there is any emerging timetable as to when decisions are going to be taken in the light of what comes out of those discussions?

Mr Morley: I am very happy to do that, Chairman, but I can tell you that the legal situation is clear. Under the EU Directives, the transshipment licence is void, therefore the ships are here classified as illegal waste, and it is part of the wording of the Directive that the ships must be returned unless there is a legal and environmental solution. I think that is part of the wording of the Directive. So the legal situation is quite clear, unless a better solution is found, the ships will have to go back.

Q164 Mr Drew: I received my first letter on this issue about three months ago. You can imagine in Stroud this is something you would get letters on. I wonder what was the press strategy which you adopted with the Environment Agency. Obviously you were very much on the back foot. In a sense, what would you now do differently to try and catch up with this issue? There seems to be a consensual view around this table there may be a good reason for doing what the company is doing but it was absolutely turned over very quickly in terms of not just a national NGO but international media coverage.

Mr Morley: Of course this has a great deal of attraction as a press story with phrases like "Ghost Ships", "Toxic Time Bomb" "Toxic Ships", it is a wonderful story for newspapers. They may not be precisely accurate but they are wonderful stories, and once they start running it is difficult to counter them. At that stage the Environment Agency was dealing with it as the regulator. I have already explained to the Committee we have confidence in the Environment Agency, we cannot secondguess all our various regulatory authorities, we leave it to them to deal with it. It was only when the real problem started arising, it became a big national story, and, as I said to you, Chairman, of course it would be irresponsible for us as a department not to get involved at that stage, and we



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were. But when people approached us, as they did, about the issue of course the main point of contact was the Environment Agency and they deal with press inquiries because they are the competent authority, but if people asked us for the details then we gave them the details to put the issue in perspective, as I have outlined to the Committee, about what is the real situation and the real level of risk for these ships which is not as great as it was being portrayed.

Chairman: Minister, thank you very much indeed. Your patience is much appreciated by the Committee. I am most grateful for you coming at relatively short notice to give evidence. Thank you very much, we look forward to your further written contributions.

**November 19, 2003
FROM FRANK COOK, MP FOR STOCKTON NORTH
"GHOST SHIPS" RECYCLING AT GRAYTHORP**

Chairman,

It is rare that I seek to quote journalists in support of my case, but on this occasion I believe that the words of Geoffrey Lean, the Environment Editor for the Independent on Sunday, accurately sum up the reality of what I regard as a quite scandalous attempt to mislead both my constituents and the rest of the British public, whilst at the same time cause serious damage to a reputable company which has its headquarters in my constituency.

Geoffrey Lean wrote:

'The campaign to stop the first of the US 'ghost ships' being dismantled in Hartlepool is one of the more outrageous pieces of spin recently to be inflicted on the British public. It risks resulting in much more damage to people and the environment worldwide than it claims to try to prevent.'

As well as my direct constituency interest in this matter, I am able to offer my professional experience gained over many years in working in the industrial plants of Teesside, including the execution and supervision of activities directly related to the removal of hazardous materials such as asbestos.

I am fully acquainted with the measures which need to be taken in dealing with such substances and I believe that Members of the Committee should be aware that, not only has Able UK a long experience in this field, but also regularly



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undertakes contracts involving the demolition of very large plants and buildings, such as, power stations, which contain vast amounts of hazardous materials far in excess of those found on board the vessels which it is seeking to recycle under its contract with the United States Maritime Administration.

I would also point out that throughout my political career I have always sought to promote the protection of the environment, both within my own patch and indeed on a global basis. I take pride in claiming that on many occasions I have worked actively and effectively alongside numerous environmental organisations - Friends of the Earth being but one of them.

However, I fear that the genuine respect I had for that particular organisation has been somewhat dissipated as a result of what I am on record already, as describing as misleading their actions over the so-called 'ghost ship' issue..

I invite the Committee to scrutinise some of the claims which have been made by the FoE representatives particularly and contrast their fiction with the facts. For example, the vessels have been described as 'floating time bombs' which pose the risk of a 'cataclysmic' oil spill, from hulls which can be pierced with a hammer.

In truth these are redundant auxiliary naval vessels, carrying no cargo, toxic or otherwise; with infinitesimal amounts of oil in the bottom of their tanks. Compare that to the huge quantities carried on board the tankers which sail in and out of the River Tees on a regular daily basis --- and frankly, if their hulls were as thin as they claimed they would never have been awarded a certificate of sea worthiness or been granted insurance cover by the underwriters.

The ferocity of the campaign mounted by Friends of the Earth and others has been as remarkable as it has been dishonest. However, no-one can deny that it has been effective, at least in the short term.

It has caused enormous alarm amongst my constituents and the rest of the Teesside community. I regret to say, it has led some elected representatives and Government agencies into taking irrational and indeed irresponsible positions in regard to the contract --- a contract won by a company with a proven track record in the field of marine decommissioning and with facilities which are recognised as being amongst the best in the world.

The result of the failure of those representatives and agencies to withstand the blatant scaremongering tactics of Friends of the Earth and their allies is that we find ourselves in the legal and political morass facing the Committee today.

If one cuts through the verbiage, there can be only one conclusion—after lengthy discussions between numerous agencies on both sides of the Atlantic



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the appropriate permissions were granted by the Environment Agency in regard to the transfrontier shipment of waste and in regard to the licence at Able's Graythorp facility.

It is a matter of fact that Hartlepool Borough Council only issued a statement claiming that a key planning permission for the construction of the dry dock at the Able facility was no longer valid after the first ships had begun their journey from the United States. It should be emphasised here that the company strongly contest the Council's viewpoint on the matter of the planning permission which was granted originally in 1997 as a means of attracting for demolition the Brent Spar platform a structure containing infinitely more toxins and contaminants than all 13 US vessels put together.

It is also a matter of fact that it was only after Friends of the Earth's sustained campaign of distortion and disinformation—and only hours after the organisation began the process of seeking judicial review—that the Environment Agency apparently discovered that the permissions it had granted already to the United States Maritime Administration and to Able were no longer valid. Again I must emphasise that Able UK challenged the validity of the Environment Agency judgment in this regard.

I take no pleasure in criticising elected representatives and agencies, but on this occasion I am driven to the conclusion that the responsibility for the present situation must fall largely on their shoulders.

There is a further aspect of this matter which I believe should be of serious concern to your Committee. Great play has been made by the environmental lobby of the fact that countries should be responsible for handling their own waste—including redundant shipping—with the allegation that this is an example of the United States failing to accept proper responsibility.

The reality is, in my view, somewhat different. Indeed I would argue that the United States, on this occasion, should be given credit for the very responsible position it has adopted in regard to the recycling of its redundant vessels—ensuring that the work is carried out to the best possible environmental standards in the best possible facilities.

There is increasing evidence that this stance contrasts starkly with the realities of the situation in other developed countries—including, it would appear, here and in the rest of Europe. In recent days we have seen clear evidence delivered by Greenpeace that merchant vessels owned and managed by UK firms are ending their days in the horrendous breakers yards at Alang in India where they are broken apart in the open air with no safety consideration or environmental protection whatsoever and where literally thousands of workers meet their deaths as a result of handling toxic substances.



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What is even more alarming is that evidence is now coming to light that Royal Naval vessels have undergone similar irresponsible treatment, with the Teesside media reporting the direct—and alarming—experiences of a retired mariner who was involved in the transport of vessels from the UK to India.

Yet at the same time we see bodies such as the Environment Agency effectively taking measures to frustrate activities of a company, which has many years of experience in the recycling of marine structures and which has developed a facility specifically designed to undertake the work in safe and environmentally sound conditions.

Clearly the legal hearings scheduled to take place may assist in resolving the immediate problem, but I hope that Committee members will recognise the importance of ensuring that decisions in relation to the recycling of redundant vessels are taken on the basis of fact rather than fiction—and that we are in no position to criticise other nations if we turn a blind eye to the treatment of our own hulks.

Submission by Friends of the Earth to the House of Commons EFRA committee

for their hearing on Wednesday 19 November concerning the US "ghost fleet" ships

Preamble

Friends of the Earth is one of the UK's largest and most effective environmental groups. It has worked on waste issues for over thirty years and on chemicals issues for more than fifteen years. It has been a key player in the development of UK legislation to protect biodiversity and has run numerous campaigns to ensure that EU and UK wildlife legislation is adhered to. It has over 200 local groups across the country and is a member of Friends of the Earth International which has 70 member groups, most within the developing world.

More recently Friends of the Earth has been working on the issue of environmental justice (the poorer in society suffering from the worst effects of environmental abuses). For the last two years it has employed a Community Development Worker in Teesside to work with socially disadvantaged communities concerned about the effects of pollution from the chemical and nuclear industry, the lack of the environmental monitoring and the regeneration of the area to attract cleaner industries and cleaner jobs. Friends of the Earth



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responded to requests by the community to investigate the threats posed by the import of the ghost fleet ships and to help identify their opportunities to engage with the decision-making processes.

Friends of the Earth has been deeply involved in this issue on a considerable number of levels for several months. The issues raised are both factually and legally extremely complex. This note cannot do justice to those issues in the short time available to us. If the Committee would like further information on any aspect of this matter we should be pleased to provide it either by way of written or oral evidence, or to answer questions in writing or by telephone in advance of the Hearing on Wednesday.

Environmental threats posed by the ghost fleet ships

A comprehensive report into the fragile state of the ships and the hazardous chemicals within them has been produced by US environmental group the Basel Action Network (BAN). The report was not written by Friends of the Earth although we would endorse many of its findings and share many of the concerns of its authors. **[ABLE COMMENT:- This statement is misleading as it refers to an article that refers to all of the ships and **not the 13 No. ships that are in ABLE's Contract with Marad**].**

The report is available on-line at:

<http://www.ban.org/Library/Needless%20Risk%20FinalA4.pdf>

The Committee should note that the BAN report is based in considerable part on statements by the relevant US authorities and on official and accepted statistics.

Recent statements by US Congresswoman Jo Ann Davis that she would fight to prevent the return of the four ghost fleet ships current moored in the UK or on their way to the UK because the ships "are a disaster waiting to happen" has provoked protest within the North East, for example see Northern Echo front-page article at:

http://www.thisisthenortheast.co.uk/the_north_east/news/ghost_ships/archive/141103.html

and Congresswoman Davis' own news release at:

http://www.house.gov/joanndavis/pr_031006_ghostfleet.htm

Friends of the Earth's involvement

Evidence concerning the environmental risk posed by the ships and the regulatory and legal position in the UK (i.e., the absence of appropriate



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permissions) has emerged over several months. Much of it has arisen as a result of persistent questioning by Friends of the Earth and others. During that time Friends of the Earth has worked consistently to gain a detailed understanding of the regulatory and legal position so as to ensure that international, European and domestic environmental law was being upheld. As a result of our investigations it became clear to us that decision making by UK regulatory authorities (in particular, though not exclusively, the Environment Agency) was being rushed through without due consideration for the complexity of the legal and factual position and without taking sufficient, or any, account of the concerns of members of the public concerning the imports of these ships. It was as a result of that rush that a number of regulatory decisions were made that on further analysis turned out to have been made wrongly. **[ABLE COMMENT:- The beginning of this statement refers to environmental risk then refers only to regulatory and legal positions. If FOE are genuinely concerned with environmental risk then why do they avoid the subject and spend so much effort trying to muddy the water regarding regulatory and legal positions. Answer:- because there is no significant environmental risk].**

From the outset Friends of the Earth have had a number of concerns including:

- The US has the facilities and expertise to deal with its own waste (including hazardous waste and ships). In accordance with the proximity principle (i.e., the principle that waste should be dealt with proximate to the place at which it arises) the Ships should be scrapped in the US (as indeed some are). ;
- The ships pose a serious environmental risk (by virtue of the combination of their 'dangerously deteriorating'[1] condition and their contents) especially to sensitive marine habitats; **[ABLE COMMENT:- Please see ABLE's web site's for the FACTS - www.ableuk.com and www.ableshiprecycling.com**
- Disposal of the constituent hazardous parts of the ships in the UK creates environmental hazards for the UK; **[ABLE COMMENT:- All Environmental Assessments undertaken state that the decommissioning of marine structures at TERRC will **not cause a significant detrimental effect** on the environment. ABLE has decommissioned marine structures at TERRC every year since 1996 and there has been no detrimental effect to the environment recorded. Please see ABLE's web site for the FACTS - www.ableuk.com and www.ableshiprecycling.com**

The MARAD contract will provide a positive benefit to the environment and the economy].

- There has been no consultation with local people in Teesside concerning the question of whether they want to receive this type of waste; **[ABLE COMMENT:- Another misrepresentation. ABLE gave a public presentation to Hartlepool on 6th May 1997. This covered the development of the TERRC site and particularly the**



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potential receipt of the Brent Spar. ABLE received local support. Please see ABLE's web site for Press Articles at that time - www.ableshiprecycling.com

There have been no adequate assessments of the environmental risks posed in the UK (particularly the potential threat to the internationally protected wildlife environment on Teesside both by construction of the facilities to receive the Ships and the scrapping process itself); **[ABLE COMMENT:- ABLE have undertaken all Environmental Assessments that have been required by the Environment Agency and by Hartlepool Borough Council. ABLE have also undertaken additional Environmental Assessments on their own accord. A summary of these Environmental Assessments can be found on ABLE's web site see - www.ableshiprecycling.com**

The deal has involved environmental and health laws being waived on both sides of the Atlantic - in the USA the prohibition on export of PCBs (Toxic Substances Control Act) was waived in respect of this deal by the USEPA, in the UK the prohibition on the import of Asbestos (Asbestos (Prohibitions) Regulations 1992) was waived in respect of this deal by the HSE;

· The deal will set a precedent which may lead to ghost fleet vessels being sent to developing countries for disposal where there will fewer environmental and health safeguards **[ABLE COMMENT:- Still more speculation!]**.

Friends of the Earth has sought to keep the public informed of developments by way of regular press briefings - for that reason we set out the chronology by reference to many of those briefings and releases. We also set out some limited details of our involvement in the regulatory / legal issues surrounding the Ghost Fleet. The chronology below should, for obvious reasons, not be treated as a full chronology but includes key moments only. **[ABLE COMMENT:- FOE were invited by ABLE on numerous occasions to attend a presentation and meeting so that the true facts could be discussed. On two occasions they said they would attend but then cancelled.**

**Chronology of key moments
July - November 2003**

On 22 July the Environment Agency granted the Transfrontier Shipment of Waste Notification thereby permitting the import of the 13 Ships (classified as waste) for recovery at Able's TERRC site in Hartlepool (*That licence has now been declared invalid by the Agency - see below*). **[ABLE COMMENT:- Able do not accept this declaration]**. At that time, the company in question did not have a waste management licence adequate to the task of scrapping the ships. **[ABLE COMMENT:- ABLE only needed an increase in tonnage due to that fact that all**



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*of the ship is classed as waste although over 98% will be reused or recycled]. Nor, it transpired, did it have other permissions necessary to construct a dry dock environment necessary to do so. **[ABLE COMMENT:- False. ABLE had, and still have, all permissions and licences in place that are required to receive, remediate and recycle the MARAD ships].***

The first national newspaper article on the issue was written by Mark Townsend in the Observer on 27 July, on-line at:

<http://observer.guardian.co.uk/politics/story/0,6903,1006677,00.html>

On 31 July Able applied to the Environment Agency for modification of waste management licence to allow them to complete the project. **[ABLE COMMENT:- The application was to increase the tonnage]**. This modification was needed in order (a) to permit ships to be scrapped at the site (previously not permitted) **[ABLE COMMENT:- false]**; and (b) to increase the amount of tonnage permitted to be scrapped at the site from 24,500 tonnes p/a to 200,000 tonnes p/a. **[ABLE COMMENT:- correct to cover the reusable and scrap steel. The quantity of waste to be disposed of from all of the 13 No. ships is only 2,465 tonnes or an average of 190 tonnes per ship or 1.9%]**.

On 18 August Able UK applied for planning permission to build a coffer dam/bund. Construction of a dam/bund was required if the ships (or any other structure) were to be dismantled in dry dock conditions as envisaged. Throughout the remainder of August and early September Friends of the Earth's legal team corresponded with Hartlepool BC (the planning authority) seeking to persuade them of the legal necessity for an environmental impact assessment (EIA) to be carried out for the project. English Nature and RSPB also called on Hartlepool to require an EIA. **[ABLE COMMENT:- The application was for a different type of bund than permission had already been granted. An Environmental Assessment was provided prior to planning approval for the bund in 1997 and an additional Environmental Assessment was completed in 2003. This concluded that the various elements would have "from no impact to a short term minor impact"]**.

At the end of August, Friends of the Earth produced a press briefing outlining some concerns with the importation of the ships. The issues raised in the briefing included the lack of local consultation, potential threats to internationally protected wildlife sites in Teesside **[ABLE COMMENT:- scaremongering]**, the condition of the ships **[ABLE COMMENT:- scaremongering]** and the international trade in ships for scrapping. This prompted a front page article in the Guardian by John Vidal, on-line at:

http://www.guardian.co.uk/uk_news/story/0,3604,1034542,00.html



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On 3rd September, the deal was branded "an environmental disaster in the making" by Liberal Democrat environment spokesman Norman Baker. **[ABLE COMMENT:-more scaremongering]**. Coincidentally, Congresswoman Jo Ann Davis (Virginia) has used very similar language in demanding that the deal go ahead precisely to avoid a 'potential environmental disaster' in Virginia.

Also on 3rd September, the Environment Agency completed the first of its assessments under the Habitats Regulations concluding (in relation to the modification to the waste management licence - see 31 July above) that there would be no likely significant effects on the specially protected European site by virtue of the modification. That decision was subsequently shown by Friends of the Earth to have been unlawfully made (see 22nd September below).

On September 10th, Friends of the Earth released a press release stating that the ships may set sail shortly but the necessary permissions were not yet in place to construct a dry-dock - this related to Able UK's application for planning permission to construct a dry dock. We reiterated our call for an environmental impact assessment into the potential risks posed to the protected wildlife sites. The release is available on-line at:

http://www.foe.co.uk/resource/press_releases/toxic_ghost_ships_to_set_s.html

On the same day we issued a press release regarding legal letters sent to Hartlepool Borough Council (by which we insisted on a full EIA being carried out) and other legal actions underway (by other organisations), available on-line at:

http://www.foe.co.uk/resource/press_releases/d_day_for_ghost_ships.html

On 12th September we issued a press release based on a document obtained from a US journalist which showed that a US Marine Administration report showed that a number of the ships intended for the UK had a high risk of leaking and contained large amounts of oil. We subsequently obtained information demonstrating that eleven of the thirteen ships coming to the UK were rated by the US authorities as being amongst the "40 worst condition vessels". We reiterated our concerns about the risk any oil leak could have on the wildlife sites, as well as the potential damage that could be caused to beaches and tourism. The press release is at:

http://www.foe.co.uk/resource/press_releases/high_risk_of_toxic_ghost_s.html

On 17th September Hartlepool BC inform Able that an environmental impact assessment would be required for construction of the cofferdam/bund **[ABLE COMMENT:- this was not connected with the MARAD contract and is another example of FOE misleading the public]**. Able UK withdraw their application for planning permission the same day and state that they propose to rely upon their



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previous planning permission (*now declared lapsed*) granted in 1997 which had lapsed (as a result of non-implementation) in October 2002. The Environment Agency had been aware of the fact that the permission was thought to have lapsed since as early as 1 July 2003.

On 18th September we reported on the decision by Able UK to withdraw its application for planning permission to build a dry dock. Hartlepool BC subsequently confirmed that Able had been officially informed that such a planning application would require a full environmental impact assessment including into any potential impacts on the wildlife site. The press release is at:

http://www.foe.co.uk/resource/press_releases/ghost_ships_firm_ducks_env.html

Hartlepool's press release is at:

http://www.hartlepool.gov.uk/Press_Release/PRO39326%20-%20Council%20statement%20re.%20Able%20UK.htm

On 22nd September (having very recently obtained a copy of the Environment Agency's decision document) Friends of the Earth wrote to the Environment Agency informing them that they had incorrectly carried out the assessment under the Habitats Regulations by failing correctly to apply the law^[2]. Our view was that the result of their having done so was that MARAD could release the ships under a misapprehension that all regulatory permissions etc were in place when in fact it was clear that (a) not all of them were in place - e.g., planning; and (b) that some that were about to be put in place as a result of the Agency's misinterpretation of the law would be granted unlawfully and therefore could not stand. Friends of the Earth requested the Agency urgently to contact MARAD to inform them of the position and to request them not to permit the ships to leave in the absence of which we proposed to take legal steps to clarify the position.

On 29th September the Environment Agency sent an email to MARAD stating that they had not yet completed the environmental assessment that they needed to carry out and advising MARAD that the consequences of the ships being released before permissions are in place is that the ships might be repatriated. The Agency accepted Friends of the Earth's argument that an assessment needed to be carried out in the manner indicated by us in our letter of 22 September.

On 30th September the Environment Agency did grant a modification to the Waste Management Licence increasing the tonnage of waste from 24,500 to 200,000 tonnes. The Agency inform Friends of the Earth that they have now carried out a new assessment (Habitats Regulations) in accordance with the law and that having done so have determined no likely significant effect and have



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therefore proceeded to grant the modification. 30th September was the regulatory deadline for the Agency to grant the modification. (*The modified licence has now been declared invalid (see below)*).

Also on 30 September, Judge Collyer (Washington) hears a case brought by US environmental groups seeking to quash the decision of the USEPA permitting the usually prohibited export of PCBs. Both Able UK and Friends of the Earth file evidence with the US Court concerning the state of permissions in the UK. That evidence is publicly available and can be provided to the Committee on request.

On 2nd October 2 Judge Collyer in Washington allowed four of the 13 vessels to set off from Virginia although she declared the first two (now in Hartlepool) to be in a 'dangerously deteriorating condition'. She granted a Temporary Restraining Order preventing the remaining nine from leaving pending further investigation and legal process.

On 3rd October Friends of the Earth send a legal letter before claim to the Environment Agency informing the Agency that we would start proceedings against the Agency because the modification (30 September) was (again) unlawful and invalid because of the Agency's failure properly to carry out an environmental assessment (under the Habitats Regulations).

Also on 3rd October concerned Hartlepool residents held a public meeting and voiced fears about the amount of asbestos on board the vessels, which the company planned to put in a landfill site. **[ABLE COMMENT:- ABLE were asked by HBC not to attend the meeting and therefore did not attend.**

On 6th October we issued a press release concerning the legal challenge to the Environment Agency. The press release is here:

http://www.foe.co.uk/resource/press_releases/environment_agency_faces_l.html

By way of response the Agency issued a press release stating-"*we are absolutely satisfied that we have complied with all the necessary legislation and after working with all the relevant bodies, have made the right decision that ensures the environment is protected. We are an experienced and competent regulator...*"

Also on 6th October Hartlepool BC inform Able and Able's legal advisers that it is their view that Able does not have a planning permission to build the bund/dam. Simultaneously, the first two ships (Canisteo and Caloosahatchee) leave Virginia starting their journey to Teesside.



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On 7th October Hartlepool BC inform the public that Able do not have planning permission to construct a dry dock. The press release is at:

http://www.foe.co.uk/resource/press_releases/ghost_ships_do_not_have_pl.html

Hartlepool's press release is at:

http://www.hartlepool.gov.uk/Press_Release/PRO39316%20-%20Statement%20re.%20Able%20UK%20-%207%20Oct.%202003.htm

On 13th October, EU Environment Commissioner Margot Wallstrom calls on the UK not to accept the ships, describing the project as posing too great a risk. **[ABLE COMMENT:- And presented inaccurate misleading facts]**

On 17th October the second two ships, Compass Island and Canopus, leave Virginia.

On October 30th, having given the Environment Agency numerous opportunities to respond to our letter before claim of 3 October Friends of the Earth issued legal proceedings, filing papers in the High Court and serving on the Agency and Able UK. Those proceedings concerned the lawfulness of the grant by the Agency of the modification to Able's waste management licence due to improper application of the Habitats Regulations (concerning environmental assessment).

We issued a press release the same day announcing the commencement of legal actions.

http://www.foe.co.uk/resource/press_releases/ghost_ships_do_not_have_pl.html

The following morning, 31st October, the Environment Agency wrote to Friends of the Earth confirming that the modification to the waste management licence was indeed invalid. The Agency agreed to pay Friends of the Earth's legal costs. Friends of the Earth's press releases are at:

http://www.foe.co.uk/resource/press_releases/environment_agency_backs_d0.html

The Agency's press release is at:

http://www.environment-agency.gov.uk/news/585469?lang=_e®ion=&projectstatus=&theme=&subject=&searchfor=able+hartlepool&topic=&area=&month

In that press release the Agency stated that:



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"The authorisations relate to transfrontier shipment (TFS) of waste for recovery and a modification of Able's waste management licence to increase the amount of waste materials permitted on the Hartlepool site.

The TFS approval was issued on an assumption that all relevant permissions could be in place for dry dock dismantling. The waste management licence modification was also granted to Able on the same assumption, the Agency's assessment of environmental risk having concluded that dry dock working would not give rise to any significant effect.

*It has become clear that several permissions and plans, including planning permission, **[ABLE COMMENT:- This statement was not correct and was issued by the EA knowing that ABLE contested it]** are not in place and that dry dock working cannot be enforced.*

*In addition, legal advice has confirmed that a licence modification cannot be used to increase the amount of waste permitted on site. A new licence would be required with new quantity limits in place. **[ABLE COMMENT:- ABLE's legal opinion is that these statements are not correct]**.*

Therefore the Agency's legal advice has confirmed that the company's approvals are invalid.

Given the change to the waste management licence, the other outstanding permissions required and the planning permission situation, the Agency has advised Able that it should consider its position regarding the handling of the US ships."

Also on 31 October, Hartlepool hold a full day public meeting with presentations by concerned parties. Able UK issue statement that "Able have all necessary licences and planning permissions for the receiving, remediation and recycling of the MARAD ships."

On 2nd November, the Agency wrote to Able UK informing them that the waste management licence did not (contrary to the Agency's previous thinking) permit scrapping of ships and reiterating that the transfrontier shipment of waste notification was also invalid. Environment Agency also inform Able UK that it is their understanding that the use of the modification process to vary permitted tonnage to be received at the site (a term of the licence and not a condition) would be unlawful and that Able would therefore need to make a fresh application for an entirely new licence if it wished to obtain a licence to receive sufficient tonnage to carry out the work.

On 3 November, Environment minister Elliott Morley urged the US to take back the vessels, which are by now mid-Atlantic.



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On 4th November Councillors in Hartlepool called on transport minister Alistair Darling to prevent the ships from entering British waters.

On 5th November the High Court in London blocked any work on the ships when they arrive after Friends of the Earth and three individuals brought an action against Able UK. Mr Justice Maurice Kay granted an injunction (obtained by three Hartlepool residents) preventing work from starting until at least 8 December when preliminary legal hearing will take place. FOE press release at:

http://www.foe.co.uk/resource/press_releases/ghost_fleet_injuncted.html

On 6th November the Mayor of Hartlepool calls on Tony Blair to turn the ships back.

Later in the week commencing 17th November we will issue a press briefing detailing international moves to destroy remaining stocks of PCBs and to restrict the import and export of PCBs. We will also provide further evidence concerning the acknowledged toxicity of PCBs and putting in perspective the quantity of PCBs contained in the 13 ghost fleet vessels. A draft of this briefing will be forwarded to the Committee in advance of Wednesday's hearing if it is ready.

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1 Judge Collyer described the first two ships (Canisteo and Caloosahatchee) as being in a 'dangerously deteriorating' condition in her judgment in October 2003 following the injunction application by US environmental groups. [Back](#)

2 In summary, the Agency had failed to consider the 'in combination' effects on the site. Specifically, they had considered only the waste issues whilst the law required them to consider also the environmental impacts of e.g., constructing a cofferdam/bund

*[ABLE COMMENT:- For the record, FOE, who state they are concerned regarding the environment, have never attended any meeting with ABLE despite being invited on numerous occasions. **WHAT IS THE OBJECTIVE OF FOE?** This is a question that they refuse to answer].*

G3

RSPB Parliamentary Briefing



**17 November 2003
Evidence session on Ghost Ships
Briefing on possible questions for the Environment Agency**

RSPB concerns

The RSPB has been concerned about the impacts of the construction and subsequent deconstruction of a dry dock at Graythorp on Teesside since the late 1990s. Our main priority has been to ensure the internationally important populations of wildfowl and wading birds feeding on the mudflats at Seal Sands, immediately opposite the proposed dock, are not subject to disturbance or pollution events that could affect their survival.

The importance of Seal Sands to birds

If constructed, the dry dock would be partly within and adjacent to an area of intertidal mudflat known as Seal Sands, the largest such area within the Teesmouth and Cleveland Coast Special Protection Area (SPA). The SPA is internationally important because it supports over 20,000 wildfowl and wading birds throughout the year, some species of which are present in internationally important numbers in their own right. The SPA is afforded strict protection under the EU Directive on the Conservation of Wild Birds.

Within the SPA, the Seal Sands mudflats are especially important, being home to thousands of wildfowl and wading birds through their autumn and spring migrations and over winter, including redshank, knot and ringed plover. Therefore, the September to May period is the most sensitive for the birds that rely on Seal Sands (and not just the November to February period identified by the Agency (see below)), for example ringed plovers peak in April and May.

These birds rely on the mudflats to ensure they survive the winter and are in a fit condition to make the long migration to and from their Arctic breeding grounds. Any significant disturbance from noise or human activity - which prevents birds feeding, especially if repeated - can reduce their ability to take in enough food to ensure they are in good condition to migrate and breed, and could increase their mortality rate. *[ABLE COMMENT:- Records prove that the works at TERRC have not effected the birds over seven years].*

Able UK's proposal

The proposal by Able UK to dispose of the so-called "Ghost Ships" at



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Graythorp Dock, Teesside, requires planning and other consents to construct a rock-filled coffer dam and dry dock, as well as a waste management licence to dispose of the waste materials. **[ABLE COMMENT:- This statement is correct but should go on to confirm that ABLE have had these permissions and licences since 1997].**

Information from Able UK about its 1997 coffer dam proposal suggests it would take about 2 months **[ABLE COMMENT:- incorrect, 3 months]** to construct and require a 150 metre bund **[ABLE COMMENT:- incorrect, bund is 122 metres]** comprising 'piling gates' **[ABLE COMMENT:- incorrect]** within which rock will be tipped. The rock fill would be tipped from road wagons, placed by dozer and hydraulic excavator, and placements would peak at 170 wagon movements per day (5,000 tonnes). Unless carefully managed, such intensive construction could result in significant disturbance to the wildfowl and wading birds of Seal Sands. **[ABLE COMMENT:-There is no change to the design or method of work that was considered when the planning permission was approved in 1997. Also there is a condition in the permission that stops work being carried out 2 hours either side of low water, outside this time the Seal Sands mudflats are covered in water so there are no birds there to disturb. In addition ABLE commissioned an additional Environmental Impact Assessment in 2003 and this clearly confirms that the construction of the bund will not have a significant detrimental effect of the local ecology].**

The Environment Agency's assessment of environmental effects on birds

In deciding whether to grant the waste modification licence in September this year, the Agency had a legal requirement to consider the wider effects of the scheme on the SPA, including construction/deconstruction of the coffer dam and the dry dock. Such construction/deconstruction could occur more than once depending on how many times new 'ghost ships' have to be brought in and the dry dock "re-created". **[ABLE COMMENT:- This was already considered when planning permission was granted in 1997].**

This gave the Agency the opportunity to carry out a full 'appropriate assessment' of the effects on the birds of Seal Sands, but it did not do so. Instead, it decided that a condition, placed on the contested 1997 planning consent, to reduce disturbance to wintering birds during the November to February period was enough to safeguard the interests of the SPA's birds. In reaching this decision the Agency failed to address the fact that the sensitive period for the SPA's birds extends from September to May.



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By failing to address fully the potential effects of the scheme on the birds using Seal Sands, the Environment Agency denied itself the opportunity to require more stringent conditions to protect from disturbance all of the internationally important populations of wildfowl and wading birds using the Seal Sands part of the SPA. This could breach British and European wildlife legislation designed to protect the birds of the SPA

[ABLE COMMENT:- For the record, the RSPB, who state they are concerned regarding the birds, are the only Member of TEAG that has never attended a TEAG meeting (see www.ableuk.com - TERRC). Also, RSPB have never contacted ABLE to ask any questions or to meet with reference to the MARAD contract].

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Letter to the Committee Clerk from Mr Peter Stephenson, Chief Executive of Able UK Ltd

United States 'Ghost' Ships

Select Committee Meeting 19th November 2003

Thank you for your letter dated 13th November 2003. I note you requested a reply by lunchtime on 17th November 2003, however, unfortunately, I have only just received your letter this morning.

May I firstly, thank the Committee for the opportunity given to us on this occasion to provide the information to you.

Please note below headings of the points you raised together with some additional points, which may be of assistance.

1. Why Able UK Ltd sought a Modification to their Waste Management Licence for the TERRC Facility (No. CLE411)

Able UK sought to modify the TERRC Waste Management Licence to increase the level of waste material it could accept into the site. This was so that we could receive the ships from the MARAD Contract.

The majority of offshore structures that we receive are brought in with the initial objective to be able to refurbish and resell them, therefore, they are not imported as waste. However, these ships were classed by



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the owner as no longer having use for them and they insisted that we had to recycle them and could not reuse them. We therefore had to import the full, complete ships as waste, even though less than 2% of the material on the ships was actual waste. The remaining material (+98%) being reused or recycled. We have achieved over 98% of reuse/recycling on all of the marine structures we have received from the oil and gas fields in the North Sea to-date (being circa 70 No. structures in total).

Cont/d...2

The increase was for the site to accept 200,000 tonnes per year as per Condition 2.4 of TERRC Waste Management Licence. An increase of this kind is standard practice within the UK waste industry. As the UK Environment Agency charge a subsistence fee depending on the amount of waste a licence can accept it is the norm for waste operators to only increase the tonnage allowance through a modification of the licence when they have enough business to justify the additional cost.

Able UK also sought to clarify that the TERRC Waste Management Licence could accept ships. It has always been the understanding by Able UK that scrap metal ships, such as the MARAD ships, could be classed as scrap metal or machinery such as offshore structures (example: when wagons or cars are taken to scrap yards, the licence for the scrap yard does not state they can receive a lorry for scrap). It was the intention of Able UK to clarify by way of description that ships were included in the text of the TERRC Waste Management Licence for the avoidance of doubt because of the problems that arose by third parties questioning whether a ship was a marine structure or not, as per the planning permission.

ABLE have on numerous occasions asked the Environment Agency for details on the legal reasons as to why they are of the opinion that ABLE's Licence was invalid, however, to date, ABLE have not received this information.

2. Date of Application for the Modification - 30th July 2003
3. Date Modification Received

The UK Environment Agency issued the modified licence on 30th September 2003.

Able UK were verbally informed on 30th October 2003 by the UK



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Environment Agency that their decision to modify the TERRC Licence was invalid on two counts.

On the evening of 30th September 2003, Able UK asked - and since then both Able UK and their Solicitors (Ward Hadaway) have asked on numerous occasions - for the legal details that supported the statement from the Environment Agency so that Able UK's solicitors could understand their view. To date, this information has not been received. Able UK has therefore prepared their Defence for the Judicial Hearing based on the statements made by the Environment Agency.

4. Basis that Able UK had been informed by the Environment Agency that their Modification was invalidated

The first reason was that the Environment Agency say they failed to consider that during their assessment of risk to the environment, they did not consider the possibility of dismantling ships in the wet dock. It must be noted however that Able UK have always been able to dismantle in the wet dock under its existing licence and inline with its Working Plan. It is therefore somewhat of a surprise that the UK Environment Agency did not take this operation into consideration.

Cont/d...3

The second reason that the Environment Agency gave for invalidating the modification is that they were unable to modify the tonnage allowed into the TERRC site because it was printed on the front page of the licence. We understand that it is the Environment Agency's argument that they can only modify licence conditions and not the licence itself. This is in total contradiction of the Environment Agency's current practice of modifying Waste Management Licences in the UK. In the area of Teesside alone, Able UK are aware of many Waste Management Licences that are exactly the same as the TERRC Waste Management Licence that the UK Environment Agency have modified to increase the tonnages allowed on that Licence.

5. Able UK's understanding of the Modification Issued 30th September 2003

It allows the TERRC facility to receive waste as defined in our Licence of quantities up to 200,000 tonnes per fiscal year.

Clarifies, for the avoidance of doubt, that ships are allowed to be received under that description, as referred to in the Licence.



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For the avoidance of doubt, at no time did the Environment Agency suggest that the modification would only allow Able UK to undertake the work of recycling the MARAD ships in a dry dock facility. However, we confirm that was, and still is, our intention.

6. Condition of MARAD Ships

In my attached Witness Statement, Sections 57-64 describe the full details of the surveys etc that were undertaken prior to the ships leaving the US. The first two ships have made the journey with no incidents whatsoever and are currently berthed in the TERRC facility (see attached 'Powerpoint' document which contains photographs of the ships arriving at the TERRC facility and an aerial photographs showing the first ship in the TERRC facility).

As we have continually stated in our press releases, the hulls of these ships are very sound and we undertook surveys of the thickness at the waterline of the ships which was between 17mm-25mm thick. Some of the ships also have on backing plates of up to 35mm thick. This compares admirably with new ship hulls today which are constructed circa 6mm-10mm thick.

7. Lack of Openness

Able UK are particularly concerned at the lack of openness from the Environment Agency and it is obvious that the Environment Agency had been considering asking Able UK to return the ships some two weeks before the meeting on 30th October 2003. It would have been in the interest of all parties if the Environment Agency, as soon as they thought they had a problem with their procedures or whatever, had informed Able UK and brought us on board. We could have then jointly considered the problem and obtained legal opinion. If this had been done, we are confident that the current situation could have been avoided.

The Environment Agency held a meeting with regard to the bund etc at their offices where they invited persons from various governmental department to discuss the situation however Able UK were refused permission to attend. We now understand another meeting has been arranged on a similar basis, without Able UK being invited to attend.

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The situation that has evolved is not acceptable and Able UK has lost total confidence in the Environment Agency and Hartlepool Borough



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Council which we are sure will not only have a detrimental effect on Able UK's speculative investment in the future but also on a significant number of other businesses who have contacted us from all over the UK with regard to their concern and disbelief at the current situation.

One can imagine the damage that this has done to our credibility and business, which we strive so hard to achieve. It is very difficult for us to convince potential clients that we have all permissions and licences in place to be able to undertake various contract works when government officials are making public statements saying that we do not.

8. Other Relevant Information

For your appraisal, we have attached the following [not printed]:-

(a) Summary of Able UK's concerns regarding the situation surrounding the MARAD Contract/HBC/EA.

(b) 4th Oct 03 ABLE's response to the Environment Agency.

(c) 4th Oct 03 ABLE's response to questions from the Environment Agency.

(d) 30th Oct 03 Email (18:39 hrs) from Able UK to the Environment Agency .

(e) 3rd Nov 03 Letter from Able UK to the Environment Agency.

(f) 4th Nov 03 Email (05:10 hrs) from Able UK to the Environment Agency enclosing copy letter sent to the Chief Executive of Hartlepool Borough Council.

(g) 4th Nov 03 Email (06:01 hrs) Able UK to the Environment Agency - recording concerns.

(h) 7th Nov 03 Letter (Ref: 03\0858) from Able UK to the Environment Agency.

(i) 12th Nov 03 Letter from Ward Hadaway (Able UK's solicitors) to the Environment Agency - regarding the TFS.

(j) 12th Nov 03 Letter from Ward Hadaway (Able UK's solicitors) to the Environment Agency - regarding court details and information



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requested from the Environment Agency.

(k) 13th Nov 03 Letter from Ward Hadaway (Able UK's solicitors) to the Environment Agency - regarding emergency modification implemented by the Environment Agency.

(l) Nov 03 Draft Witness Statement of Peter Stephenson for the Courts regarding Friends of the Earth -v- Environment Agency Judicial Review, to be heard 8th December 2003.

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We hope the above information is of assistance and helps with your understanding of the situation. If we can be of further assistance then please do not hesitate to contact us.

PETER M STEPHENSON

Chief Executive

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1. BRIEF HISTORY RELATING TO ABLE UK AND AWARD OF MARAD 13 NO. SHIP DIPSOSAL CONTRACT

1.1. Able UK Ltd (ABLE) were approached by Post-Service Remediation Partners LLC (PRP) on 14th January 2003. They enquired as to ABLE's capabilities and if ABLE would be interested in receiving and recycling redundant ships from the US Auxiliary Fleet.

1.2. ABLE provided information and were visited by PRP on 24th January 2003 and made a presentation. Following this, a significant amount of information was provided to PRP to demonstrate ABLE's experience and capabilities.

1.3. ABLE were requested by MARAD to provide a TCP (Technical Compliance Plan) which consisted of the following documents:

- Environmental Compliance Plan,
- Business Plan,
- Health & Safety Plan.

1.4. This was to demonstrate ABLE's knowledge and ability to apply all



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applicable health, safety and environmental regulations with regard to receiving, remediating and recycling redundant ships.

1.5. Following receipt of this information a visit was arranged to ABLE.

1.6. A team from MARAD and the US Environmental Protection Agency visited ABLE on 24th February 2003.

- Michael Carter (Director - Office of Environmental Activities) - MARAD
- Curt Michanczyk (Ship Disposal Program Manager) - MARAD
- Laura Casey (Office of Pollution Prevention & Toxics) - US EPA

1.7. Detailed audits were undertaken relating to health, safety and environmental matters in relation to ABLE, the TERRC Facility, Seaton Meadows Landfill Site and Shanks Waste Solution (liquid waste treatment facility) in Hartlepool.

1.8. At this visit there were also discussions relating to ABLE's technical and business capabilities.

1.9. Information, questions and answers provided to MARAD included MARAD enquiring to ABLE with regard to the situation for permissions, licences, permits etc required. ABLE had commenced contact with the Environment Agency (EA) and Hartlepool Borough Council (HBC) in February 2003 to determine these items.

1.10. During April, May and June 2003, ABLE looked at various feasibility studies and different methods of how to carry out the works to provide the safest working environment for workers and the least possible risk to the environment, but at the same time providing the best benefit to the environment. A significant amount of resources was utilised into the alternatives, which included designing and constructing large ramp and facilities that would pull the ships up the ramp onto dry land to carry out the works. The conclusion was that the method that would provide the best practicable environmental option (BPEO) was to refurbish the dry dock, construct the bund and carry out the recycling works in the dry dock. This provided a major benefit of having the dry dock refurbished so that it will be available for other uses, particularly construction activities.

1.11. On 23rd May 2003 MARAD received permission from the US Environmental Protection Agency to be able to export the ships to



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ABLE's TERRC facility.

1.12. On 25th July 2003, the main contract was signed between MARAD and PRP.

2. Environment Agency

2.1. When ABLE received their first Waste Management Licence for the TERRC facility it was based on background knowledge of the Brent Spar being received, remediated and dismantled in the facility.

2.2. An Environmental Impact Assessment had been provided and a Regulation 48 in accordance with the Habitats Directive. This Assessment showed that the TERRC operations would not cause any significant effect on the local environment.

2.3. This Waste Management Licence was issued to ABLE on 1st October 1997.

2.4. When the Licence was issued to reduce operating costs, ABLE agreed a limit on their Waste Management Licence of 25,000 tonnes per annum. On the understanding that this would not be a problem to increase if and when required as the quantities in the Environmental Assessment when the Licence was considered, was based on 720,000 tonnes per annum.

2.5. Since the issue of the TERRC Waste Management Licence in 1997, ABLE have operated the facility without causing any significant detrimental effect to the environment.

2.6. ABLE have been part of numerous environmental assessment during its operation and in all cases have shown that the operations have not caused any environmental problems.

2.7. The EA have modified the TERRC Licence twice since 1997-2002. On both occasions the EA modified the licence without any problems, even though modifications were to change the type of materials the site could accept. This type of modification would require a more in-depth assessment than simply increasing the amount of waste the site could take.

2.8. When ABLE applied for its most recent modification, ABLE expected that the modification would have been issued in the normal manor and time frame however this was not the case.



3. Hartlepool Borough Council

3.1. The site was operational as a shipyard from 1913 - 1963

3.2. The site was operational as a dry dock from 1970 until Able purchased the site.

3.3. ABLE submitted a planning application on 29th August 1996 to the Teesside Development Corporation. With this application, ABLE provided an Environmental Assessment to cover the development and the operations together with a Regulation 48 Assessment in accordance with the Habitats Regulations.

3.4. Due to the high profile of the Brent Spar of which ABLE envisaged as being one of the first major projects in the facility, there were significant delays in the planning process and ABLE finally received approval on 1st October 1997 (No: TDC/96/091). Included in the process, ABLE provided a presentation to Hartlepool Council, Statutory Consultees and the General Public on 6th May 1997 in the Hartlepool Town Hall. Here, ABLE explained their intentions with the former Laings Facility (TERRC site) and, in particular, recycling the Brent Spar including details of significant quantities of wastes that would have to be removed, processed and disposed.

3.5. On 7th September 2000, ABLE applied for permission to erect a Gantry Crane and Buildings and approval was received on 7th February 2002 (Permission No: H/FUL/0462/00).

3.6. On 18th December 1996, ABLE applied for permission to construct a pipeline spool base and on 30th January 1997 the TDC were minded to approve the spool base, however, this was finally refused and the contract was lost with circa 200 jobs being lost. This was due to representations from the RSPB (Royal Society for the Protection of Birds). The Client built their new facilities in Scotland and Norway.

3.7. On 13th June 2002, ABLE received planning approval based on existing permissions but without Conditions 9 & 10 applying, which related to human activity and noise. These conditions were removed as during the previous 5 years of continuous monitoring and simulations, ABLE proved to the satisfaction of all concerned that the works were not causing any detrimental effect to the local ecology.

3.8. In February 2003, ABLE approached the planning department of HBC and asked for confirmation that ships could be recycled on the site



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under the term 'marine structures' and this was confirmed by HBC.

4. Problems

4.1. Problems appear to have arisen when Friends of the Earth (FoE) started to question the decision making process of HBC and threatened to take HBC to a Judicial Review.

4.2. In ABLE's opinion, HBC appear to have panicked at this threat and this then became all-important to them to the detriment of the Contract and obvious benefits to the area. Since then, ABLE have had to put in a tremendous amount of resources in trying to find copies of correspondence going back some 8 years. This has culminated with ABLE having to prepare a defence for the Judicial Hearing from Public Interest Lawyers to HBC as ABLE are concerned that HBC would not defend the action in the best manner and the TERRC facility would suffer significantly from the potential consequences. This has cost ABLE a great deal with regard to resources, finance and loss of work.

4.3. Up until this time, HBC had been fully supportive of ABLE and their TERRC facility and with the benefit of this support, ABLE have invested some £10m in the site and were prepared to invest a further £14.6m for Phase 2 Development which included enlargement and refurbishment of the dock. However, certain persons (in particular the Mayor of Hartlepool together with certain Councillors) have jumped on the 'high profile bandwagon' and started to denounce the Contract, ABLE and the TERRC facility without even having the decency to contact ABLE to obtain the facts. These people appear to prefer to believe the lies, exaggerated and misleading information stated in the press, particularly bantered about by FoE as opposed to finding out the facts.

4.4. During this period, ABLE made verbal offers to HBC to give a presentation to Officers, Politicians, Councillors, the General Public etc - whoever the Council preferred - so that ABLE could provide full detailed information to provide confidence and allay any fears. ABLE emailed HBC on two occasions making this offer, which was not accepted by HBC.

4.5. ABLE also made three direct offers to FoE to meet. On two occasions FoE said they would come for a meeting but then didn't turn up. FoE have made all the misleading statements without obtaining any facts from ABLE.

4.6. Also, as soon as ABLE were aware of FoE's concern, Peter Stephenson (Chief Executive of ABLE) contacted FoE's solicitors (Phil



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Michaels) in London and extended an invitation to meet to discuss the Contract. ABLE then sent a copy of the Contract and a copy of the Transfrontier Waste Shipment Notification Form which had a list of all the actual wastes on the ships. Despite this, FoE have continued mislead the public.

4.7. A statement by FoE regarding lack of Environmental Assessments is totally false and ABLE have undertaken Environmental Assessments (in conjunction with all the relevant Local Authorities) as and when required and all assessments have stated that the activities will not cause significant detrimental effect to the local ecology. This has also been proven by monitoring etc since and in the 8 years that ABLE has been in occupation of the TERRC facility, there has been no record whatsoever of any detrimental effect on the local ecology.

4.8. The information that FoE have stated and that has been reflected in the Press on numerous occasions that the ships have cargoes and large quantities of hazardous wastes is totally misleading and incorrect. Less than 2% of the total tonnage of the ships arriving is waste, everything else will be reused or recycled. What FoE have done to mislead people is quite often they have referred to document from the US that have referred to ships in the MARAD fleet and people have assumed they are referring to the ships ABLE are receiving - this is not correct.

4.9. ABLE never expected the furore and high profile surrounding this contract because it is no different to the receipt of the Brent Spar that was proposed and no different from receipt, remediation and recycling works that have been undertaken each year since 1996 with no complaints from any person whatsoever including general public, neighbours and environmental organisations.

4.10. What is interesting to note regarding this episode, is that the public figures that have bothered to take the time to investigate the facts with us have then publicly given their support. This has been very much appreciated by ABLE and we are confident that the contract and development will be a major benefit to the area. These include but are not limited to the following:-

- Alistair Arkley, Tees Valley Regeneration
- David Bowe, MEP
- Frank Cook MP



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- Brian Dinsdale, Middlesbrough Council
- Steve Dyson, Editor - Evening Gazette Newspaper
- Neil Etherington, Tees Valley Regeneration
- Ray Mallon, Mayor of Middlesbrough
- Peter Mandelson, MP
- Also, of late: Media who are now presenting more of the true facts to the public.