

## **Pollution Prevention Permit decision will have massive implications for industry**

**October 2009**



Mr Justice Weatherup delivered judgment in respect of an application for judicial review by Thompson Oil.

This decision will have very important implications for industry and in particular the waste and recycling industry and farming operations.

The case concerns an application for Judicial Review by Alan Thompson trading as Thompson Recycled Oil against a decision by the Planning Appeals Commission to refuse the grant of a Pollution Prevention Control permit.

Pollution prevention control permits are required for a wide variety of activities ranging from recycling facilities, oil storage facilities, many manufacturing processes and various livestock operations. The requirement to have a permit was introduced by the Pollution Prevention and Control Regulations (Northern Ireland) 2003.

It is a pre-condition to the grant of a permit that where planning permission is required, it is in force. Businesses who have operated for many years, and in some instances before the requirement to have planning permission or with the benefit of a certificate of lawfulness of existing use because they had operated for more than 10 years, have applied for and obtained pollution prevention control permits.

In this case, Mr Thompson had operated his business since 1993 and therefore would have been entitled to a certificate of lawfulness of existing use or development.

The Planning Appeals Commission refused to grant the pollution prevention control permit on the grounds that the applicant required full planning permission before a permit could be issued and determined that a certificate of lawfulness was insufficient to obtain a permit. The high court upheld this decision.

The decision will have a massive impact on industry. Many businesses that have operated without complaint or incident for many years under either permitted development rights or a certificate of lawfulness will be unable to obtain a pollution prevention control permit without first obtaining full planning permission. Given the cost of preparing a planning application and the delay of up to two years in obtaining planning permission, this decision may mean that many businesses, who are unable to obtain a pollution prevention control permit will simply have to close. Furthermore, given changing planning policy, some business may be unable to obtain planning permission at all, despite having operated for over ten years.

The decision also calls into question the validity of pollution prevention control permits already granted by the Department to those businesses operating under a certificate of lawfulness. The Department may revoke existing permits or it may refuse to renew them in the future.

*Please note: The content of this newsletter is for information purposes only. Further advice should be sought from a professional advisor before any action is taken.*

It is not clear whether this decision will be appealed, but if it remains unchallenged, it is possible that many businesses will have their pollution prevention control permits revoked or may be unable to obtain such permits in the future.

For further information please contact Maria O'Loan on 028 9027 1350 or [m.o'loan@cfrlaw.co.uk](mailto:m.o'loan@cfrlaw.co.uk).

## The Environment & Planning Team

Please do not hesitate to contact any member of our Environment & Planning Team to discuss the Environment & Planning Update or any other Environmental/Planning matter.



### **Karen Blair** **Environment & Planning Partner**

T 028 9027 1320  
E [k.blair@cfrlaw.co.uk](mailto:k.blair@cfrlaw.co.uk)

Karen is known for her enthusiasm for planning. She has been a Legal Associate of the Royal Town Planning Institute since 1999 and a Partner since 2001. Specialising in planning and environmental law, energy, licensing and public law, her vast experience in these fields allows clients to obtain proactive, practical advice quickly and easily on even the most complex legal situations.



### **Maria O'Loan** **Associate Solicitor**

T 028 9027 1350  
E [m.o'loan@cfrlaw.co.uk](mailto:m.o'loan@cfrlaw.co.uk)

Maria specialises in planning and environmental law, public law and energy and regulatory matters. She regularly defends planning enforcement actions and environmental prosecutions and is very experienced in drafting and negotiating statutory agreements such as Article 40 Agreements, highways and sewer agreements. Maria has also successfully represented both applicants and respondents in judicial review proceedings and also advises the private and public sector on data protection and freedom of information matters.



### **Claire McNally** **Solicitor**

T 028 9027 1353  
E [c.mcnally@cfrlaw.co.uk](mailto:c.mcnally@cfrlaw.co.uk)

Claire is experienced in advising on all aspects of planning and environmental law. She regularly provides environmental and planning due diligence in property and corporate transactions and represents clients in respect of both civil and criminal environmental and planning proceedings.

For further details on our Environment & Planning practice please see our website [www.cfrlaw.co.uk](http://www.cfrlaw.co.uk)