

Recent trends and developments in Danish Environmental Law

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1. Politically: From a legislative point of view, year 2001 is characterized by consolidation: only minor changes and modification. The new liberal/conservative government elected in the end of the year has announced substantial changes regarding physical planning, public funding, green taxes, the use of public committees. The content of these changes are not yet known.
2. Citizens access to justice: Officially Denmark has implemented the Aarhus-Convention by expanding the access of the public to environmental information and participation. However, the third pillar of the Convention: access to justice - or more precise access to court - has not been implemented regarding enforcement and legal remedies. However, the Western Higher Court in a ruling from April recognized that the Anglers Association has standing to challenge whether the re-introduction of the beaver is violating the habitat-directive (92/43) and the fishwater-directive (78/659).
3. Waste law: Danish waste law is based on what is named as the Danish model, meaning that legislative, practical and economic tasks regarding waste in principle is left to the 275 local councils (municipalities) and based on the principle of selfsufficiency - even for waste for recovery. According to the Danish EPA export of waste for recovery in other Member States can only be permitted when the local Danish authorities have verified that the recovery process in the other Member State complies with the Danish requirements. During the last years this legislation has been challenged by industry in an increasing number of cases, claiming that Danish waste law is in conflict with EC-law. In February 2001 the Commission issued an opening letter supporting the position of private industry. The Danish Government rejected any conflict with EC-law, and it is yet unknown, how the Commission will respond.
4. Climate Change: While the previous and the recent Danish Government claim that Denmark is among the front runners regarding cut-down of CO₂-emission - the former Government claim Denmark as the front runner - Denmark has never accepted 1990 as the basic year for the target under the Koyoto-protocol. The official Danish position is, that using 1990 as a basic year is unfair to Denmark, because Denmark has a high import of electricity in 1990. The Danish position is rejected by the parties under the Koyoto protocol - as well as by the other EC Member States. Its yet unknown has the conflict can be solved, because Denmark will not able to comply with the agreed ceiling, if 1990 is the basic year.
5. Case-law: In a ruling of the Danish Supreme Court from June 2001, the owner of a corporation with limit liability (ApS) was found criminal liable for not removing the former operator's illegal deposit of hazardous waste (Proms

Chemical case). The Supreme Court reasoned the liability by the new owners knowledge of the illegal deposit before the transfer - but the conclusion might be effected by the fact, that the owner of the corporation was director in the previous company which caused the illegal deposit. It has for a decade been disputed, whether administrative order to monitor and clean-up contaminated sites require negligence and whether the provision on monitoring contaminated land has retroactive effect. After the Supreme Court ruling from May 2001 in the Herlev-case, at least some of these questions are solved. The case concern contamination caused by the use of trichlorethylen mainly before 1988. The local council ordered the operator to investigate the pollution - and later to clean it up. After the operator refused to comply with the administrative orders, the local authorities carried out the investigation and the clean-up and claim that the operator should pay. The Supreme Court found unanimously that the administrative orders were invalid, which normally will imply, that the authority could not claim compensation for the costs. However, the Supreme Court also conclude unanimously that the operator has caused the contamination by negligence. While the Supreme Court judges agreed that both authorities and operator have acted negligence, the court was divided regarding the consequences. The majority found the operator should pay, while the minority found the authority should pay.