The Control of Pollution Act 1974 and Tidal Waters: Problems of the Implementation of Part II

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In July 1984 the Minister of the Environment announced the phased introduction of the main body of Part II of the 1974 Control of Pollution Act (COPA II). When fully implemented, COPA II will give Water Authorities control over all emissions into estuaries and coastal waters in Britain making possible for the first time a "coherent management strategy" for these waters. Prior to the passing of the 1974 Act the control of water pollution in England and Wales was haphazard and complex. It had developed pragmatically from a number of statutes, known collectively as the Rivers (Prevention of Pollution) Acts, 1951–61, which were subject to a number of limitations and arbitrary distinctions. Following the recommendations of the Royal Commission on Environmental Pollution, COPA aimed to bring all existing controls under one legislative umbrella and in Part II to extend the powers of the new Water Authorities (WAs) to cover all potential sites and situations of water pollution. However the implementation of the new Act was delayed and deferred by successive governments, principally through fears of the cost involved.
both to industry and to the WAs themselves, which after having been given responsibility for sewage disposal by the 1973 Water Act, had become the biggest single source of potential pollutants.

In the decade since the Act was passed a number of new factors have complicated the picture further. The EEC Action Programme on the Environment has reached its third Phase, with the result that important legislative initiatives have been taken by the EC in a number of areas within the ambit of COPA II. In addition the industrial decline of the past decade and restrictions on public expenditure, have had a significant impact both on industry and the actions of the WAs. Furthermore, the WAs, which are required to play a crucial role in the establishment and implementation of water quality policy under COPA II, have themselves been designated for "privatization".

Despite continual calls by environmentalists for the full implementation of COPA II, supported in 1984 by the Royal Commission on Environmental Pollution itself, it appears that the foremost reason for the present phased introduction of the Act is a response to external pressure. COPA II appears to provide the only way that the UK will be able to meet its water quality obligations under European Community (EC) Law. The purpose of the present paper, which is the result of the work of a pilot study of three English WAs conducted at the Institute of Estuarine and Coastal Studies at the University of Hull, is to outline the general scheme of COPA II and then to examine some of the problems associated with its current implementation, particularly in relation to estuarine and coastal waters.

The scheme of the Act

The major importance of COPA II is in the two main changes that it makes to the existing regime of water pollution legislation. First, it brings to an end the distinction which previous legislation had drawn between the pollution control regimes of tidal and non-tidal waters, and includes territorial waters within the jurisdiction of WAs. Secondly, it introduces a broad new system of public information and participation.

Prior to COPA, control was based on three Acts, known collectively as the Rivers (Prevention of Pollution) Acts 1951–61. Each of these Acts increased the potential power to control pollution, but failed to provide a comprehensive code for the control of all waters. As Sayers comments they were more realistically a means of preventing the deterioration of water quality, rather than of improving

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3 See further Stanley P. Johnson, The Pollution Control Policy of the European Communities (Graham and Trotman, London: 1983).
6 See further below, p. 262.