

# *Review of ENVIRONMENTAL CODE Continues*

## **Background**

On 1 January 1999 the Swedish Environmental Code entered into force. A key purpose of the code is to simplify and unify Swedish environmental legislation by collecting it in one statute. Previously, the environmental legislation was scattered among many different laws regulating different types of activity with varying environmental impact. The drafting of this new legislation proved to be a politically and technically difficult exercise.

The first parliamentary committee assigned to coordinate Swedish environmental legislation was established in 1989. In 1993 the committee proposed an Environmental Code. In 1994 a government bill based on this report was drafted and submitted to Parliament. However, 1994 was an election year, and the government that had submitted the bill was no longer governing the country when Parliament came to decide on it. The new government repealed the bill and established a new committee to draft a new Environmental Code. The committee reported in 1996, and the government submitted a bill on an Environmental Code in December 1997.

Ten years of preparations in two different committees should create a nearly impeccable piece of legislation. Practitioners soon found that this was not the case. Further, the government had its own doubts. In December 1999 it established another committee, the Environmental Code Committee (ECC), to review issues including:

- the application of the general rules of consideration;
- the provisions on land use;
- the system of environmental quality standards;
- the experiences of environmental impact assessments;
- the permit procedure;
- the economic consequences for permit applicants;
- the relationship between control and standardized environmental management systems;
- the system of fees for control and permitting;
- the penalty system; and
- certain issues relating to the implementation of the EU Water Framework Directive.

The ECC will have reported four times by the end of 2003. The first report was submitted to the government in 2001 and concerned mostly corrections of simple errors made in the legislative process. However, it did contain some important clarifications (for more information please see “Amendments to the Environmental Code”). The latest report was submitted during the summer of 2002, and is entitled “The Environmental Code in Development”.

## **General Rules of Consideration**

The general rules of consideration are provisions of the code that have general application to all types of activity. These provisions include the following:

- a requirement of knowledge of activities conducted and their environmental impact;
- the precautionary principle;
- the principle of best available techniques;
- the principle of choice of location with a minimum of damage or detriment to the environment;
- the principle of reuse and recycling and conservation of energy and raw materials;
- the product choice principle; and
- the polluter pays principle.

The ECC reviewed almost 2,000 decisions made by local and regional authorities under the Environmental Code (it also reviewed rulings of the Environmental Court of Appeal and the Supreme Court, but made no relevant conclusions).

The ECC concluded that the introduction of the general rules of consideration has not changed local authorities' views on the regulation of environmentally hazardous activities. It has also not changed the environmental assessments made by local authorities. Local authorities only issue new types of orders with regard to the use of chemicals and health and safety matters. The ECC concludes that the differences in the application of the general rules of consideration between different local authorities are greater than the differences in application between old and new legislation.

On the other hand, the ECC found that regional authorities show a great awareness of the new legislation. However, they also show uncertainty as to the specific application of the general rules of consideration. Therefore, the ECC concludes that regional authorities need guidance such as case law and guidelines from central authorities.

The ECC will continue to review authority and court decisions.

### **Land and Water Use Provisions**

The Environmental Code contains provisions on land and water use that are connected to the laws on spatial planning. In fact, these provisions are applied directly in spatial planning decisions, although under the Planning and Building Act. The ECC believes that the provisions on land and water use must be applied both in permitting (and other types of decisions) under the Environmental Code, and under the laws on spatial planning. The reason for this is that the two types of decision have different purposes. Thus, in this respect the ECC proposes no change.

However, the ECC proposes a clarification of the general rules of consideration, giving the provisions on choice of location a special status. It proposes that the provisions regarding land and water use be applied in most decisions on permits and notifications under the Environmental Code that involve a change in the use of land or water. Further, the ECC proposes that the provisions on land and water use become applicable to activities that are subject to a mere notification requirement, as opposed to the current situation where only activities that require a permit are subject to the provisions on land and water use.

### **Permit Procedure**

The ECC presents two proposals regarding permits: one visionary, long-term proposal and one interim proposal (to operate while awaiting the right circumstances to make the transition to the long-term proposal).

#### *Long-term vision*

The permit procedure concerns environmentally hazardous activities and water operations. Two different sets of rules apply to the respective type of activities and one important purpose of the ECC's proposal is to bring the two procedures closer together. Permits for all types of water operations are currently issued by the five environmental courts, whereas permits for environmentally hazardous activities are issued by these courts only where the activity has a great environmental impact. For activities with a lesser environmental impact, permits are issued by the regional county administrative boards.

In the ECC's view the implementation of the EU Water Framework Directive will create four or five administrative authorities responsible for one drainage basin each. According to the ECC, these administrative authorities will be more suited than the environmental courts to handle environmentally hazardous activities and water operations with great environmental impact. Thus, the environmental courts will cease to be permit authorities.

## *Interim options*

The ECC does not believe that this can be achieved within the near future. Hence, the ECC proposes two interim options (that will be consistent with future efforts). Under the first option, all permits for environmentally hazardous activities and water operations will be issued by administrative authorities rather than the environmental courts. Water operations may require the handling of compensation claims and other disputes made by those affected, and it is questionable whether or not administrative authorities are competent to deal with all aspects of water operations. Hence, the environmental impact of water operations would be transferred to administrative authorities and questions of compensation would be dealt with by the environmental court.

Under the second option, only the issue of permits of water operations where there are no questions of compensation or other disputes would be transferred to administrative authorities (ie, the county administrative boards). Other water operations would be considered in their entirety by the environmental courts. The ECC prefers this option.

Regardless of which alternative is chosen, the ECC believes that a number of the less harmful water operations can be conducted after notifying an administrative authority, and thus do not require a permit.

Permits for infrastructure projects are currently issued by the government and the authorities of the relevant sector. The ECC recommends in the future these are issued by the authorities that consider permit applications for environmentally hazardous activities and water operations. However, as yet the ECC has proposed no change to the existing system.

## **Control Fees**

Under the Environmental Code, those who conduct environmentally hazardous activities and water operations pay an annual fee for authority supervision of their activities. The ECC investigated whether it would be appropriate to propose a fee reduction for companies that are certified under the eco-management and audit scheme or ISO (industry standard organization) 14001. The ECC found that the authorities do not spend less time and effort on controlling certified activities than other activities. Thus, the ECC proposes no reduction of supervision fees for companies with standardized environmental management systems.

## **Penalties**

With the exception of orders and injunctions there are two types of penalty for non-compliance under the Environmental Code – criminal law penalties and environmental penalty charges.

A great number of acts and omissions are criminalized under the code, and a smaller number may incur environmental sanction charges. Sometimes operators are both prosecuted and subject to environmental penalty charges for the same offence.

The ECC proposes a review of the penalty system of the Environmental Code to make it more predictable and proportional. This implies that it does not believe that the existing system fulfils those requirements. The ECC states that certain types of offences that are less harmful to the environment (eg, non-compliance with certain notification requirements) and should be decriminalized. Further, the penalties for more serious offences should be stricter. However, the ECC makes no complete proposal on this issue, merely suggesting that unless there is some public interest involved, no prosecution should be pursued for certain offences unless:

- the offence may incur an environmental penalty charge;
- the offence was committed negligently; and
- the offence is punishable by no more than a fine.

## **Future Reports**

The report summarized is the second to be issued by the ECC. The third report will be submitted on 30 November 2002 and will contain the ECC's final proposals regarding the implementation of the Water Framework Directive. The fourth and final report will be submitted by the end of 2003.

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