THE *new* SWEDISH ENVIRONMENTAL CODE

General observations

On 1 January 1999, a Swedish environmental law was enriched by a new Environmental Code. Its name implies coverage of all environmentally relevant issues. However, this is not the case. Planning and land use laws such as the Planning and Building Act, the Ancient Monuments Act, the Forestry Act and the Road Act are not included. Moreover, protective legislation such as the Nuclear Operations Act and laws on the exploitation of natural resources such as the Minerals Act, the Hunting and the Fishing Acts are left out from the scope of the Environmental Code.

Notwithstanding these omissions, the Code has substantially changed Swedish environmental law. Not only does it collect the bulk of environmental legislation under one umbrella, it also implements new principles derived from national considerations, EC-directives, and international environmental law.

The changes comprise the shift of focus from the nature to the effects of an activity in the assessment of necessary protective measures. Further, general rules applicable to all operations falling under the Code are introduced, the most important of which are general rules of consideration, fundamental provisions on management of land and water, environmental quality standards, site remediation provisions, penal provisions, and rules relating to 'environmental penalties'. In addition to these general rules, there are more specific provisions governing e.g. environmentally hazardous activities, activities in water areas, agriculture and quarries, and the handling of waste. There is also a chapter dealing with environmental impact assessments as required under the Code and other legislation.

Also on the procedural side, the Code features innovation. The previously purely administrative procedure is in many cases moved to the auspices of regional environmental courts with a possibility of appeal to the environmental Court of Appeal and ultimately to the Supreme Court. However, the administrative authorities retain some decision making power and are also responsible for control and monitoring. Moreover, a right to appeal for environmental organisations of a certain size and age is introduced in the Code.

Examples of important principles

The precautionary principle, known from EC environmental law, is the fundamental rule of consideration in the Code. As soon as a risk of harm to the environment has been identified, the responsible operator must take all necessary precautions and curtail damage or nuisance to people and the environment. In order to do so, the operator is required by law to have a certain level of environmental knowledge, use the best available technology, choose an environmentally suitable location for his activities, conduct his activities in accordance with the resource management and eco-cycle principles, substitute chemical products with less harmful products, and remedy harm caused to the environment. However, these requirements are limited by a principle of reasonableness. Environmental benefits are to be balanced against the costs for undertaking the precautionary measure in question. Particularly harmful activities may be prohibited altogether.

A possibility to define the fundamental principles of the Code by way of environmental quality standards is delegated to the Government and the Environmental Protection Agency. Such a standard may put a ceiling on the permissible concentration of a given pollutant within a fixed geographic area. The standard is absolute, meaning that permits leading to a violation of it will not be granted, and that existing permits may be reviewed for the same reason.

As regards responsibility, it is noteworthy that criminalisation of certain behaviour is supplemented with environmental penalties for violations as defined by the Government. Moreover, an operator is generally strictly liable for damages caused by disturbances derived from his activities.

One of the more important novelties of the Environmental Code is the rules on site remediation. In this respect, both current and historic activities (dating back to 1 July 1969) leading to environmental harm may make their principals responsible for "reasonable" remediation. Measures necessary to stop the nuisance, clean-up, or prevention of further detriment may be ordered, either directly or indirectly (i.e. in the form of a monetary claim). Apart from the conductor of the polluting activity, the landowner may be held responsible if the former is either impossible to locate or unable to pay, and the latter knew or should have understood that the property was contaminated at the time of the purchase. The Code also prescribes joint liability in cases where two or more polluters or landowners can be held responsible.

Finally, a duty for landowners to report to the authorities any discovery of contamination may be noted, since it may have an impact on environmental due diligence work.

Published In Brief Magazine, England, November 1999

Per Molander, partner Mannheimer Swartling