

# **Waste Management Law**

*An Outline of Planning,  
Environmental and Health  
and Safety Law*

John Garbutt  
*Partner, Nicholson Graham & Jones, London*

John Wiley & Sons  
Chichester · New York · Brisbane · Toronto · Singapore

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# **Waste Management Law**

## *An Outline of Planning, Environmental and Health and Safety Law*

JOHN GARBUTT has been a solicitor for 30 years. He is a partner and head of the Planning and Environment Unit at City solicitors Nicholson Graham & Jones. He has been employed in local government and, subsequently, was chief executive of both the waste management and industrial minerals divisions at Blue Circle Industries. He also set up and ran their environmental affairs office. He is a member of the CBI Environmental Legislation Panel and the Minerals Committee and has served on the Health and Safety Executive Advisory Committee on Major Hazards. He is a member of the UK Environmental Law Association and the Law Society's Planning Panel. He speaks and writes extensively on waste management matters from a legal and managerial perspective. He is an adviser to a wide range of public and private sector organisations concerned with waste management. He is the author of *Environmental Law: a Practical Handbook*, 2nd ed (Wiley Chancery Law, 1995).

# Preface to the Second Edition

Nicholson Graham & Jones is a leading City of London law firm, founded in 1858. Its strengths are in company law, litigation, tax, pensions and property, but in recent years it has developed a number of specialisms, including a planning and environment law unit.

The pace of environmental law has been fast, but that related to the control of waste management has, if anything, been faster. To the extent that it is frequently difficult to keep up with change and counterchange, the reaction of the waste management industry has been remarkable. In the main it has transformed itself from a somewhat resistible collection of businesses, some forward-looking, with high standards and others with extremely low standards, into a coherent and cohesive industry. Some of its members are household names, or divisions of them, and demonstrate the highest sense of responsibility in the operation of their businesses and in the protection of the public environment. In so far as there are stragglers, increasingly the trade associations are insisting on significant improvements in performance, otherwise ex-communication will follow. In the public sector both Central and Local Government agencies have greatly advanced their knowledge and expertise, often in the face of much difficulty, associated with ongoing reorganisation and under-resourced struggles to meet demands for increasing regulatory action. The European Commission and other international agencies, such as OECD and the United Nations, are themselves taking important initiatives not only in the international trade in waste (or the stopping of it) but also in regard to environmental protection standards, particularly in relation to water.

To the waste manager and his various professional advisers all this government activity manifests itself in an unprecedented range of new legislation, imposing itself on almost every individual, but mostly on the waste manager and his advisers. This book is aimed at them but also at regulators and those that have to operate this important legal regime. For a long time I have felt that there is a need for a short guide to the range of new and existing legal provisions affecting waste management and I have concentrated on town and country planning, environmental control and health and safety. The intention is to assist readers with an overview of the present state of the law and to equip them to deal with questions and problems which will arise frequently. The aim is to help to reduce the time which is taken up for research.

## Waste Management Law

This second edition is required because the pace of change has continued. Most importantly the waste on land provisions of Part II of the Environmental Protection Act 1990 have come almost fully into force. In achieving the implementation of Part II, the Department of the Environment has had to grapple with the need to ensure that the legislation complies with Directives and other requirements of the European Community, in particular the Framework Directive on Waste (Dir 75/442/EEC), as amended. That this has been a complex exercise is borne out by the Waste Management Licensing Regulations 1994 (SI 1994/1056) and the accompanying DoE Circular 11/94, one of the longest and most complicated yet encountered. It is apparent that the definition of "waste" in the 1990 Act and in the Framework Directive on Waste do not coincide. Thus, the 1994 Regulations have made some important changes. The opportunity has been taken to update the information about pollution control under the Water Resources Act 1991, particularly incorporating new judicial interpretations. The Department of the Environment have taken a number of initiatives in regard to planning policy and a range of new guidance notes is now dealt with. Finally, a number of new Regulations have appeared (largely European inspired) and are dealt with in Chapter 7 on health and safety at work.

I wish to enter two main caveats. In the first place this handbook is no more than a short guide. The limits on its size and length prevent it being an exhaustive treatise on all the law which affects waste management. For example, I have not dealt (except briefly concerning planning issues) with road traffic or public highway law, mainly because these are more general topics. I have identified where further investigation and study is required.

The second caveat makes the obvious point that the law relating to the environment is the subject of considerable change at the moment. Most of the Environmental Protection Act 1990 is now in force but, at time of writing, not wholly. Part I of the Act is not entirely in force for all industries and processes. In the main I have set 31 October 1994 as the appropriate date for the purposes of this work but it will be noted that in some cases new initiatives have been incorporated.

No author is an island and I must acknowledge a lot of assistance. My partners are to be thanked for their considerable help and support in promoting the idea of the handbook. I am particularly grateful to Lisa Dinsley who has been responsible for word processing the complications of a second edition and has done so without complaint.

*John Garbutt  
November 1994*

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