"Public Participation: Principles and Practice

- The Legal Regulation of Water Pollution"

being a Thesis submitted for the Degree of Ph D

in the University of Hull

by

Timothy Paul Burton LLB (CNAA)

October 1990
"Power may justly be compared to a great river; while kept within its bounds it is both beautiful and useful, but when it overflows its banks, it is then too impetuous to be stemmed; it bears down on all before it, and brings destruction and desolation wherever it comes" (Andrew Hamilton, from *Quotations for our Time*, 1977, p. 397).
For Lorraine
CONTENTS

Detailed Table of Contents iii

Table of European Community Directives xv
Table of Statutes xvii
Table of Statutory Instruments xxiv
Table of Cases xxvii

Table of Abbreviations xxix
Acknowledgments xxxii

Introduction 1

Part I 16

Chapter One - Public Participation: The Principles 17

Two - The Water Authorities And Pollution Control:
"Political Will" and the Executive 60

Part II - The Water Authorities: A Study of Yorkshire Water 106

Three - The Authority and the Public I - The Board 108

Four - The Authority and the Public II - The Committees 153
Part III - The Pollution Control Function

Five - Imposing Control I - Water Quality Objectives and Standards

Six - Imposing Control II - The Discharge Consent Process

Seven - Retaining Control - The Enforcement Process

Part IV


Appendix A

Appendix B

Bibliography
DETAILED TABLE OF CONTENTS

INTRODUCTION

I. The Approach of the Thesis 4
II. Why Study the WAs? 8
III. The Significance of the Thesis 10
IV. Methodology 10
V. Theoretical Approach 13
  Notes 14
PART I

CHAPTER ONE

I. JUSTIFICATIONS FOR THE CLAIM FOR "MEANINGFUL PARTICIPATION"

A. The Acceptance of the Principle
B. Public Participation in Practice
C. The Rationale for a Principled Approach
D. Arguments for the Practical Application of the Principled Approach
   1. Substantive Benefits
   2. "Constitutional" Claims

II. "MEANINGFUL PARTICIPATION"

A. Defining Participation
B. Elements of Meaningful Participation
   1. A "Competent" Public - The Need for Education
   2. Opportunities to Participate - the "Channels for Communication"
   3. "Political Will"
C. Evaluation of the Concept of Meaningful Participation
   1. The Role of the Decision-Making Body
   2. Meaningful Participation - A Flexible Concept

III. ANALYTICAL FRAMEWORK

NOTES
CHAPTER TWO

I. REASONS FOR THE CREATION OF THE WAs
   A. The Need For The WAs
      1. The Position Before 1963
      2. 1963-73
      3. Proposed Remedies
      4. The Government's Response
   B. The Need For Extended Pollution Control Powers
      1. The History of Pollution Control Administration
      2. Identifying the Need for Action

II. THE CONSTITUTION OF THE WAs
   A. Under The Water Act 1973
      1. The Decision-Making Process Leading to the Act
      2. The Enactment of the Bill
   B. Under The Water Act 1983
      1. The Background to the Act
      2. The Government Response
      3. Enactment of the Bill

III. POLLUTION CONTROL: THE NECESSARY "POLITICAL WILL"?
   A. The Rationale of the Provisions for Public Participation
      1. Reasons Given in Parliament
      2. The Provisions for Public Participation as a Concession
B. Reasons for the Initial Non-Implementation of COPA II

1. Public Expenditure

2. The Administrative Workload

3. The Industry "Lobby"

4. The "Fear" of Private Prosecutions

C. Reasons for the Implementation of COPA II

NOTES

PART II

CHAPTER THREE

I. THE DECISION-MAKING STRUCTURE - THE CONSTITUTION OF THE AUTHORITY

A. The Board

B. The Authority Committee Structure

1. Arrangements Between 1974 and 1983

2. "Standing" Committees from October 1983

3. Senior Management and Divisional Organisation

II. THE DECISION-MAKING ENVIRONMENT - EXTERNAL CONTROLS AND INFLUENCES

A. Statutory Duties

B. Central Government Controls Over the WAs

1. Financial Controls

2. Other Controls

3. DoE Objectives
III. THE OBJECTIVES AND PRIORITIES OF THE BOARD 122

IV. FORMAL OPPORTUNITIES FOR PARTICIPATION WITH THE BOARD 125

A. Meaningful Participation in the Appointment of WA Board Members 126

B. Press Conferences After Board Meetings 129

1. The Rationale of the Change 129

2. The Response of Yorkshire Water 131

3. The Practice of Yorkshire Water Press Conferences 132

4. Press Conferences and Access to Board Meetings: A Comparison 136

C. The Annual Report and Accounts 137

V. INFORMAL OPPORTUNITIES FOR PARTICIPATION WITH THE BOARD 139

A. Direct Participation with the Board and WA Officers 140

B. Public Relations 141

VI. CONCLUSIONS 143

NOTES 144
CHAPTER FOUR

I. THE CONSUMER CONSULTATIVE COMMITTEES
   A. The Structure of the Committees
      1. Creating The Yorkshire Water Committees
      2. Arrangements for Consumer Representation
         Before 1983
      3. The Independence and Constraints of the
         Yorkshire Water Committees
      4. Public Participation Through the Committees
         - The Indirect Relationship
   B. The Practice of the Yorkshire Water Committees
      1. Standing Reports
      2. Capital Expenditure and Water Charges
      3. The "Public Awareness Campaign"
      4. Access to Yorkshire Water Board Meetings
      5. Informal Participation

II. THE REGIONAL RECREATION AND CONSERVATION COMMITTEE
   A. The Structure of the Committee
   B. The Practice of the Yorkshire Water Committee

III. THE REGIONAL FISHERIES ADVISORY COMMITTEE
   A. The Structure of the Committee
      1. Terms of Reference
      2. The Objectives of the Committee
      3. Interests Represented
   B. The Practice of the Yorkshire Water Committee
IV. THE WATER QUALITY ADVISORY GROUP

A. The Structure of the WQAG
B. The Practice of the WQAG

V. CONCLUSIONS

NOTES

PART III

CHAPTER FIVE

I. THE "FORMALISATION" OF THE WATER QUALITY OBJECTIVE APPROACH

A. Origins of the Approach
B. Reasons for "Formalisation"
C. The Process of "Formalisation" - The Role of
   the National Water Council
   1. The Review of Discharge Consents
   2. National "Consultation" with the National
      Water Council
   3. Regional "Consultation" with Yorkshire Water

II. THE SETTING OF WQOS BY YORKSHIRE WATER

A. WQOs for Non-Tidal Waters
   1. Constraints - The Technical Process
   2. Yorkshire Water's Proposals
   3. The Decision-Making Process
B. WQOs for Tidal Waters

1. The Technical Process
2. The Development of the WQOs
3. WQOs for the Humber Estuary

III. THE SETTING OF WQSs

A. EC Requirements and Decision-Making
B. Decision-Making Nationally
C. Public Participation in the Setting of WQSs
   1. At European Community Level
   2. At National Level

IV. THE REVIEWING OF WQOs AND WQSs

A. The Reviewing of WQOs
B. The Reviewing of WQSs

V. CONCLUSIONS

NOTES
CHAPTER SIX

I. THE CONTROL OF TRADE AND SEWAGE EFFLUENT DISCHARGES 257
   A. The Background to the Control Regime 257
      1. The Regional Perspective - Reviews by 259
         Yorkshire Water
      2. The 1985 Review 260
   B. The Process of Setting Consents for Discharges 261
      Commenced After 4 July 1984 261
      1. Responsibility for Consent Setting 261
      2. Technical Constraints 262
      3. The Decision-Making Process 263
      4. Public Participation in Consent Setting 264
   C. Decision-Making Procedures in Respect of 278
      Other Discharges

II. THE CONTROL OF "IRREGULAR" POLLUTIONS 281
   A. Voluntary Control 282
   B. The Imposition of Legal Controls 282
      1. Regulations to Control Activities Likely 283
         to Cause Pollution
      2. "Anti-Pollution Operations" 284
      3. Notices to Abstain from "Good Agricultural 284
         Practice"
      4. Opportunities for Meaningful Participation 285
         in Relation to Pollution Prevention

III. CONCLUSIONS

NOTES 287
CHAPTER SEVEN

I. MONITORING COMPLIANCE
   A. Discharges of Trade and Sewage Effluent
      1. The Process of Monitoring
      2. Obtaining the Results of Sampling - The Public Registers
   B. Irregular Discharges

II. SECURING COMPLIANCE
   A. Discharges of Trade and Sewage Effluent
      1. WA Enforcement Strategy
      2. Prosecution by the WA for Breach of Consent
      3. Enforcement of WA Discharges - the Role of HMIP
      4. Enforcement by the Public
   B. Irregular Discharges

III. MODIFYING THE CONTROLS
   A. Remedying "Damage" to the River
   B. Re-Determining the Consent
      1. Revocations of Consent
      2. Variations of Consent

IV. CONCLUSIONS

NOTES
PART IV

CHAPTER EIGHT


A. Overall Comparisons with the Requirements of Meaningful Participation

B. A Summary of Individual Chapter Conclusions

II. RE-EVALUATING THE CONCEPT

III. THE FUTURE: MEANINGFUL PARTICIPATION AFTER THE WATER ACT 1989

A. Background to the Changes

B. The New Structure of the Industry

C. Prospects for Meaningful Participation

1. The Structure of the NRA

2. Relations with Central Government

3. The "Open" Committee Structure - The Regional Rivers Advisory Committees

4. The Pollution Control Regime

5. Conclusions

NOTES
APPENDIX A

A. Informal Interviews
B. Attendance at Yorkshire Water Committee Meetings
C. Attendance at NRA - Yorkshire Region Committee Meetings
D. Inquiries of the Control of Pollution Act Public Register
E. Attendance at COPA Public Local Inquiries
F. Letters Received
G. Publications and Papers Produced During the Course of the Research

APPENDIX B

Figure 1.1
Figure 4.1
Figure 4.2
Figure 4.3
Figure 8.1

BIBLIOGRAPHY

General Bibliography
Official Bibliography
## TABLE OF EUROPEN COMMUNITY DIRECTIVES

**Directive 75/440/EC Concerning the Quality Required of Surface Water Intended for the Abstraction of Drinking Water in the Member States**

(OJ L194, 25 July 1975)  
96, 223-4, 392

**Directive 76/160/EC Concerning the Quality of Bathing Water**

(OJ L31, 5 February 1976)  
235, 253, 336

**Directive 76/464/EC on Pollution Caused by Certain Dangerous Substances Discharged into the Aquatic Environment of the Community**

(OJ L129, 18 May 1976)  
214-5, 234-5, 242, 250, 392

- Article 5(3)  
  289

- Article 6(3)  
  247

**Directive 78/176/EC on Waste from the Titanium Dioxide Industry**

(OJ L54, 25 February 1978)  
96, 250, 252, 272-3

- Article 1(1)  
  272

- Article 9  
  273

- Article 15  
  272

**Directive 78/659/EC on the Quality of Fresh Waters Needing Protection or Improvement in Order to Support Fish Life**

(OJ L222, 14 August 1978)  
235
Directive 79/923/EC on the Quality Required for Shellfish Waters (OJ L281, 10 November 1979) 235


## TABLE OF STATUTES

### ENGLISH STATUTES

<table>
<thead>
<tr>
<th>Statute</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rivers Pollution Prevention Act 1876</td>
<td>69, 213</td>
</tr>
<tr>
<td>Public Health (Drainage of Trade Premises) Act 1937</td>
<td>389</td>
</tr>
<tr>
<td>Water Act 1945</td>
<td>64</td>
</tr>
<tr>
<td>Statutory Instruments Act 1946</td>
<td>30-31</td>
</tr>
<tr>
<td>River Boards Act 1948</td>
<td>69</td>
</tr>
<tr>
<td>Rivers (Prevention of Pollution) Act 1951</td>
<td>69, 117, 279</td>
</tr>
<tr>
<td>s. 7</td>
<td>337</td>
</tr>
<tr>
<td>Clean Rivers (Estuaries and Tidal Waters) Act 1960</td>
<td>69, 117, 279</td>
</tr>
<tr>
<td>Public Bodies (Admission to Meetings) Act 1960</td>
<td>129, 151, 381, 390</td>
</tr>
<tr>
<td>Rivers (Prevention of Pollution) Act 1961</td>
<td>69, 117, 279</td>
</tr>
<tr>
<td>s. 11</td>
<td>320</td>
</tr>
<tr>
<td>s. 12</td>
<td>338</td>
</tr>
<tr>
<td>Act</td>
<td>Sections Referenced</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td><strong>Water Resources Act 1963</strong></td>
<td></td>
</tr>
<tr>
<td>s. 28</td>
<td></td>
</tr>
<tr>
<td>s. 53</td>
<td></td>
</tr>
<tr>
<td>s. 113</td>
<td></td>
</tr>
<tr>
<td><strong>Local Government Act 1972</strong></td>
<td></td>
</tr>
<tr>
<td>s. 250</td>
<td></td>
</tr>
<tr>
<td><strong>Powers of the Criminal Courts Act 1973</strong></td>
<td></td>
</tr>
<tr>
<td>s. 35(1)</td>
<td></td>
</tr>
<tr>
<td><strong>Water Act 1973</strong></td>
<td></td>
</tr>
<tr>
<td>s. 1</td>
<td></td>
</tr>
<tr>
<td>s. 1(2)(3)</td>
<td></td>
</tr>
<tr>
<td>s. 3</td>
<td></td>
</tr>
<tr>
<td>s. 3(4)</td>
<td></td>
</tr>
<tr>
<td>s. 3(5)</td>
<td></td>
</tr>
<tr>
<td>s. 3(7)</td>
<td></td>
</tr>
<tr>
<td>s. 5</td>
<td></td>
</tr>
<tr>
<td>s. 6(1)</td>
<td></td>
</tr>
<tr>
<td>s. 11</td>
<td></td>
</tr>
<tr>
<td>s. 14(1)</td>
<td></td>
</tr>
<tr>
<td>s. 18</td>
<td></td>
</tr>
<tr>
<td>s. 19</td>
<td></td>
</tr>
<tr>
<td>s. 20</td>
<td></td>
</tr>
<tr>
<td>s. 20(1)</td>
<td></td>
</tr>
<tr>
<td>s. 22</td>
<td></td>
</tr>
<tr>
<td>s. 24</td>
<td></td>
</tr>
<tr>
<td>s. 24(6)(7)</td>
<td></td>
</tr>
</tbody>
</table>
sch. 3 121
sch. 3, para. 38 151
sch. 3, para. 40 151
sch. 3, para. 40(2) 137
sch. 3, para. 40(3) 139
sch. 3, para. 40(8) 139

Control of Pollution Act 1974 19, 62, 70-1, 98, 287
Part II 4, 9, 11, 12, 14, 19, 62, 69, 85-97, 214, 217
228, 247, 257, 260-1, 264-5, 279, 288-9
299, 305, 325, 353-5, 372, 382, 384

s. 31 282, 326-8, 348, 385
s. 31(1) 284
s. 31(2)(c) 284, 327
s. 31(4) 283, 298
s. 31(5) 283
s. 31(6) 298
s. 32 296, 317-8, 326-7, 348
s. 34 262, 273, 280, 289, 296-7, 321, 331-2, 350
s. 34(1) 263
s. 34(2) 270
s. 35 270-1, 332
s. 35(1) 271, 273
s. 35(2) 272
s. 35(3) 272
s. 35(4) 275
s. 36 267, 290, 350
s. 36(1) 265-6, 350
s. 36(1)(c) 267-9
s. 36(3) 291
s. 36(4) 265-6, 268, 273, 278, 280, 333
s. 36(6) 277, 293
s. 36(6)(a) 270
s. 36(6)(b)(c) 271
s. 37 273, 332-3
s. 37(1) 331-2
s. 37(2) 332
s. 38 332
s. 38(1) 331
s. 38(3)(4)(5) 331
s. 39 263
s. 39(1) 276, 332
s. 39(5) 276
s. 39(7) 295
s. 40 296
s. 40(4) 280
s. 41 266-7, 303-9, 337
s. 42 266, 290, 304-5
s. 46 297
s. 46(1)(2)(3) 284, 349
s. 46(4) 284, 329, 350
s. 46(5) 285
s. 46(5)(6)(7) 329
s. 51 284, 304
s. 51(2)(3) 284
s. 52 375
s. 55 289
<table>
<thead>
<tr>
<th>Act</th>
<th>Sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salmon and Freshwater Fisheries Act 1975</td>
<td>s. 94, s. 95, s. 96, s. 105</td>
</tr>
<tr>
<td></td>
<td>Salmon and Freshwater Fisheries Act 1975</td>
</tr>
<tr>
<td></td>
<td>s. 28(1)(b)</td>
</tr>
<tr>
<td>Magistrates' Courts Act 1980</td>
<td>s. 101</td>
</tr>
<tr>
<td>Wildlife and Countryside Act 1981</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>s. 1</td>
</tr>
<tr>
<td></td>
<td>s. 7</td>
</tr>
<tr>
<td></td>
<td>s. 24A</td>
</tr>
<tr>
<td>Police and Criminal Evidence Act 1984</td>
<td>ss. 68, 69</td>
</tr>
<tr>
<td>Criminal Justice Act 1988</td>
<td>ss. 23, 24</td>
</tr>
<tr>
<td>Public Utility and Water Transfer Charges Act 1988</td>
<td></td>
</tr>
<tr>
<td>Security Services Act 1989</td>
<td></td>
</tr>
</tbody>
</table>
Water Act 1989

<table>
<thead>
<tr>
<th>Section</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part III, Chapter 1</td>
<td>392</td>
</tr>
<tr>
<td>s. 1(2)</td>
<td>374</td>
</tr>
<tr>
<td>s. 2</td>
<td>379</td>
</tr>
<tr>
<td>s. 3</td>
<td>392</td>
</tr>
<tr>
<td>s. 6</td>
<td>392</td>
</tr>
<tr>
<td>ss. 8, 9, 10</td>
<td>373</td>
</tr>
<tr>
<td>s. 20</td>
<td>373</td>
</tr>
<tr>
<td>s. 27</td>
<td>392</td>
</tr>
<tr>
<td>s. 31</td>
<td>393</td>
</tr>
<tr>
<td>s. 105</td>
<td>382, 392</td>
</tr>
<tr>
<td>s. 105(4)</td>
<td>383</td>
</tr>
<tr>
<td>s. 106</td>
<td>392</td>
</tr>
<tr>
<td>s. 107</td>
<td>384</td>
</tr>
<tr>
<td>s. 110</td>
<td>385</td>
</tr>
<tr>
<td>s. 111</td>
<td>385</td>
</tr>
<tr>
<td>s. 112</td>
<td>386</td>
</tr>
<tr>
<td>s. 117</td>
<td>384</td>
</tr>
<tr>
<td>s. 120</td>
<td>373, 393</td>
</tr>
<tr>
<td>s. 141</td>
<td>392</td>
</tr>
<tr>
<td>s. 146</td>
<td>375</td>
</tr>
<tr>
<td>s. 146(1)(c)</td>
<td>390</td>
</tr>
<tr>
<td>s. 148</td>
<td>385</td>
</tr>
<tr>
<td>s. 150</td>
<td>375</td>
</tr>
<tr>
<td>sch. 1</td>
<td>375</td>
</tr>
<tr>
<td>sch. 1, para. 4</td>
<td>390</td>
</tr>
<tr>
<td>sch. 7</td>
<td>386</td>
</tr>
<tr>
<td>sch. 8</td>
<td>389</td>
</tr>
</tbody>
</table>
US STATUTES

Administrative Procedure Act 1946

s. 4

(NB: bold indicates detailed consideration of the legislation).
TABLE OF

STATUTORY INSTRUMENTS

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Order/Regulation</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welsh Water Authority (Constitution) (Variation) Order 1981 (SI 1981/1883)</td>
<td>81</td>
<td></td>
</tr>
<tr>
<td>The Control of Pollution (Exemption of Certain Discharges From Control) Order 1983 (SI 1983/1182)</td>
<td>97, 279-80, 297</td>
<td></td>
</tr>
<tr>
<td>The Water Act 1983 (Representation of Consumers' Interests) (Appointed Date) Order 1984 (SI 1984/71)</td>
<td>157</td>
<td></td>
</tr>
<tr>
<td>The Control of Pollution (Consents for Discharges) (Notices) Regulations 1984 (SI 1984/864)</td>
<td>265, 292</td>
<td></td>
</tr>
<tr>
<td>Schedule</td>
<td>291</td>
<td></td>
</tr>
<tr>
<td>The Control of Pollution (Consents for Discharges) (Secretary of State's Functions) Regulations 1984 (SI 1984/865)</td>
<td>293</td>
<td></td>
</tr>
<tr>
<td>Regulation 4</td>
<td>293</td>
<td></td>
</tr>
<tr>
<td>Regulation 7</td>
<td>276, 295</td>
<td></td>
</tr>
<tr>
<td>The Control of Pollution (Discharges by Authorities) Regulations 1984 (SI 1984/1200)</td>
<td>289</td>
<td></td>
</tr>
</tbody>
</table>
The Control of Pollution (Registers) Regulations 1985
(SI 1985/813)

Regulation 4(2)

Regulation 7(2)(d)

The Control of Pollution (Exemption of Certain Discharges From Control) (Variation) Order 1986 (SI 1986/1623)

Regulation 3(c)

The Control of Pollution (Exemption of Certain Discharges From Control) Order 1987 (SI 1987/1782)

The Surface Waters (Classification) Regulations 1989
(SI 1989/1148)

The Trade Effluents (Prescribed Processes and Substances) Regulations 1989 (SI 1989/1156)

The Water Authorities (Successor Companies) Order (SI 1989/1465)

The Water Reorganisation (Holding Companies of Successor Companies) Order 1989 (SI 1989/1531)

The Surface Waters (Dangerous Substances) (Classification) Regulations 1989 (SI 1989/2286)
COMMENCEMENT ORDERS

Control of Pollution Act 1974 (Commencement No 17) Order 1984 (SI 1984/853)
**TABLE OF CASES**

**ENGLISH CASES:**

Agricultural, Horticultural and Forestry Industrial Training Board v Aylesbury Mushrooms Limited [1972] 1 ALL ER 280 56-7

Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1 KB 223 54

A-G (ex rel Yorkshire Derwent Trust Limited and others) v Brotherton and others [1989] 2 ALL ER 423 252

Bates v Lord Hailsham [1972] 1 WLR 1373 18

Bushell v Secretary of State for the Environment [1981] AC 75 52

Congreve v Home Office [1976] QB 629 54

Council for Civil Service Unions v Minister for the Civil Service [1985] AC 374 54

Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997 54

R v Edwards [1975] QB 27 346
R v Hunt [1987] 1 ALL ER 1

Ridge v Baldwin [1964] AC 40

Rollo v Minister of Town and Country Planning [1948] 1 ALL ER 13

US CASES:

Vermont Yankee Nuclear Power Corporation v Natural Resources Defense Council 435 US 519, 55 L.Ed.2d. 460
## Table of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACA</td>
<td>Anglers' Co-operative Association</td>
</tr>
<tr>
<td>AFF</td>
<td>Agriculture, Fisheries and Food</td>
</tr>
<tr>
<td>AFR</td>
<td>Amenities, Fisheries and Recreation</td>
</tr>
<tr>
<td>APA</td>
<td>Administrative Procedure Act</td>
</tr>
<tr>
<td>AV</td>
<td>Anglian Water</td>
</tr>
<tr>
<td>BOD</td>
<td>Biochemical Oxygen Demand</td>
</tr>
<tr>
<td>CAG</td>
<td>Comptroller and Auditor-General</td>
</tr>
<tr>
<td>CAWC</td>
<td>Central Advisory Water Committee</td>
</tr>
<tr>
<td>CBI</td>
<td>Confederation of British Industry</td>
</tr>
<tr>
<td>CC</td>
<td>County Council</td>
</tr>
<tr>
<td>CCC</td>
<td>Consumer Consultative Committee</td>
</tr>
<tr>
<td>CEGB</td>
<td>Central Electricity Generating Board</td>
</tr>
<tr>
<td>CLA</td>
<td>Country Landowners Association</td>
</tr>
<tr>
<td>COPA</td>
<td>Control of Pollution Act (1974)</td>
</tr>
<tr>
<td>COPA II</td>
<td>Control of Pollution Act (1974), Part II</td>
</tr>
<tr>
<td>CPP</td>
<td>Corporate Planning Panel</td>
</tr>
<tr>
<td>CPRE</td>
<td>Council for the Protection of Rural England</td>
</tr>
<tr>
<td>CSO</td>
<td>Chief Scientific Officer</td>
</tr>
<tr>
<td>DGM</td>
<td>Division General Manager</td>
</tr>
<tr>
<td>DGWS</td>
<td>Director-General of Water Services</td>
</tr>
<tr>
<td>DO</td>
<td>Dissolved Oxygen</td>
</tr>
<tr>
<td>DoE</td>
<td>Department of the Environment</td>
</tr>
<tr>
<td>DoT</td>
<td>Department of Trade</td>
</tr>
<tr>
<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>EFL</td>
<td>External Financing Limit</td>
</tr>
<tr>
<td>EMT</td>
<td>Executive Management Team</td>
</tr>
<tr>
<td>PCA</td>
<td>Fisheries Consultative Association</td>
</tr>
<tr>
<td>FMG</td>
<td>Freshwater Monitoring Group</td>
</tr>
<tr>
<td>FOIA</td>
<td>Freedom of Information Act</td>
</tr>
<tr>
<td>HEC</td>
<td>Humber Estuary Committee</td>
</tr>
<tr>
<td>HMIP</td>
<td>Her Majesty's Inspectorate of Pollution</td>
</tr>
<tr>
<td>IPC</td>
<td>Integrated Pollution Control</td>
</tr>
<tr>
<td>MAFF</td>
<td>Ministry of Agriculture, Fisheries and Food</td>
</tr>
<tr>
<td>MHLG</td>
<td>Ministry of Housing and Local Government</td>
</tr>
<tr>
<td>MMC</td>
<td>Monopolies and Mergers Commission</td>
</tr>
<tr>
<td>MPMKG</td>
<td>Marine Pollution Monitoring Management Group</td>
</tr>
<tr>
<td>NAC</td>
<td>National Anglers' Council</td>
</tr>
<tr>
<td>NFA</td>
<td>National Federation of Anglers</td>
</tr>
<tr>
<td>NFU</td>
<td>National Farmers Union</td>
</tr>
<tr>
<td>NRA</td>
<td>National Rivers Authority</td>
</tr>
<tr>
<td>NRAAC</td>
<td>National Rivers Authority Advisory Committee</td>
</tr>
<tr>
<td>NWC</td>
<td>National Water Council</td>
</tr>
<tr>
<td>NWW</td>
<td>North West Water</td>
</tr>
<tr>
<td>OPWS</td>
<td>Office of Water Services</td>
</tr>
<tr>
<td>PRC</td>
<td>Policy and Resources Committee</td>
</tr>
<tr>
<td>RAB</td>
<td>Regional Advisory Board</td>
</tr>
<tr>
<td>RFAC</td>
<td>Regional Fisheries Advisory Committee</td>
</tr>
<tr>
<td>RLDC</td>
<td>Regional Land Drainage Committee</td>
</tr>
<tr>
<td>RQO</td>
<td>River Quality Objective</td>
</tr>
<tr>
<td>RRAC</td>
<td>Regional Rivers Advisory Committee</td>
</tr>
<tr>
<td>RRCC</td>
<td>Regional Recreation and Conservation Committee</td>
</tr>
<tr>
<td>SI</td>
<td>Statutory Instrument</td>
</tr>
<tr>
<td>SoS</td>
<td>Secretary of State</td>
</tr>
<tr>
<td>STA</td>
<td>Salmon and Trout Association</td>
</tr>
<tr>
<td>TUKL</td>
<td>Tioxide UK Limited</td>
</tr>
<tr>
<td>UES</td>
<td>Uniform Emission Standard</td>
</tr>
<tr>
<td>WA</td>
<td>Water Authority</td>
</tr>
<tr>
<td>WAA</td>
<td>Water Authorities Association</td>
</tr>
<tr>
<td>WASAC</td>
<td>Water Space Amenity Commission</td>
</tr>
<tr>
<td>WQAG</td>
<td>Water Quality Advisory Group</td>
</tr>
<tr>
<td>WQAP</td>
<td>Water Quality Advisory Panel</td>
</tr>
<tr>
<td>WQO</td>
<td>Water Quality Objective</td>
</tr>
<tr>
<td>WQS</td>
<td>Water Quality Standard</td>
</tr>
<tr>
<td>WRB</td>
<td>Water Resources Board</td>
</tr>
<tr>
<td>WRC</td>
<td>Water Research Centre</td>
</tr>
<tr>
<td>WSPLC</td>
<td>Water Services Public Limited Company</td>
</tr>
<tr>
<td>WC</td>
<td>Waterworks Company</td>
</tr>
<tr>
<td>YW</td>
<td>Yorkshire Water</td>
</tr>
</tbody>
</table>
ACKNOWLEDGMENTS

An extensive range of individuals and organisations assisted in a variety ways, during the course of the research; they cannot all be named, but my full gratitude is due to them all. It is appropriate, however, to name a number of people to whom a particular debt is owed.

First, the University of Hull for the funding of the PhD, in the form of a University of Hull Postgraduate Award (1986-9).

Second, to David Freestone for dedicated supervision, at times conducted between Hull and Antigua, and for providing the encouragement to persist when the task appeared daunting; thanks are also due to David Dixon and Scott Davidson for stepping in during the two years David Freestone was in Antigua.

Third, to Sir Gordon Jones, Chairman of Yorkshire Water during the period of the research (now Chairman of Yorkshire Water plc), and through him, to all the officers of the former water authority and its successors, for their endless goodwill in the provision of information and documents, and without whom the degree of detail contained in the thesis would not have been possible. Two officers - Tony Edwards and Keith Nunns - must be mentioned for their patience and the sacrifice of many hours of their time for my benefit.
Finally, a number of amenity organisations were kind enough to allow a stranger to attend their meetings, make copious notes, and then ask detailed questions; while a number of officers from WAs around the country, and from industry, gave up valuable time from their busy schedules. The generosity of these people, as indicated in Appendix A, is gratefully acknowledged.

Responsibility for the final text, and all views (not attributed) expressed therein, rests with the author.
INTRODUCTION

In Britain opportunities to participate in policy-making are provided but this is in relation to many different types of decisions and decision-makers, and to very different degrees. It can, therefore, plausibly be argued that participation as a principle has been accepted by successive administrations at all levels of government. The central problem, it will be argued, relates to the way in which this principle has been translated into practice. In particular, that the decision of when and how to provide participation has never been subjected to rational analysis across the whole spectrum of administration. Two consequences have flowed from this. First, that opportunities have been provided in relation to some but not all decision-makers and decisions. Second, when opportunities have been provided, they have not been provided to the public per se sufficiently often - either particular groupings have been provided with "privileged" and hence "unequal" access to the decision-maker, or opportunities have been provided in such a way that they cannot easily be utilised without significant constraints being imposed on the participation process. The effect of the latter has been that the opportunities are either very difficult to utilise or they do not provide a real possibility of influencing the outcome of the decision and actions of the decision-makers. Hence, it is suspected that opportunities for participation are often provided without real commitment on the part of the administration, so that the principle is partly disregarded as the result of bargaining, and thus as
a concession to "powerful" interest groupings. Participation is then little more than "legitimation" or "tokenism" - the appearance but not the reality.

It is the intention of this thesis to contend that a "principled approach" to public participation in the practice of British government is needed. In particular it is submitted that both the decision of when to provide opportunities, and the extent and nature of such opportunities, should be subjected to the kind of rational analysis which it has been suggested is presently absent. There are two aspects to this "principled approach" which will be put forward here. First, the comprehensive provision of opportunities, in relation to all types of decision and decision-maker, with equal access for all who wish to participate. In particular participation must be directed to the actual locus of decision-making - in other words, there is no value in seeking to influence a local councillor where the decision is to be made by central government. Second, the provision of opportunities which can actually be utilised in practice to the benefit both of those wishing to take part and of the decision-maker in question. Thus, public participation should not bring the administration to a standstill, but neither should the opportunities be such that they are merely "paper rights" which cannot be translated into practice.

The basis of the thesis will, therefore, be to propose, tentatively, a way in which this "principled approach" can be achieved in practice, by introducing the concept of "meaningful participation". It will be suggested that there are three elements which must be present to make participation "meaningful" - the "ability" to participate, the actual opportunity, in the form of "channels for communication", and the willingness on the part of the decision-maker to treat the process as a "genuine" exercise, and not impose constraints preventing the practical
utilisation of the opportunities. In seeking to develop an approach concerned with public participation it is necessary to analyse the concept to reveal what it denotes at both the theoretical and practical levels, including recognising the interrelationship between the familiar public law concepts of "access to information", "consultation", "representation", "reason giving", and so on. In particular, it is essential to realise that participation does not just relate to involvement before a decision is made, but also applies after a decision has been made, including during its subsequent implementation and review. Meaningful participation, therefore, provides a "standard" through which it can be sought to test whether any decision process does enable "genuine" public participation, and also a set of principles which can be considered in the process of creating new decision structures.

The contention for a principled approach, being a normative claim, requires a justification and a context. Both will be explained more fully in chapter one, the former based on both the constitutional "expectations" created by concepts of the "rule of law" and democracy, and the "substantive" benefits that participation can yield to individuals, the policy-maker, and society as a whole, in the form of more "accurate" and "acceptable" decisions. In terms of a context, an argument for public participation indicates a preference for a move towards a more participatory form of democracy. It will be contended that the present model of British democracy is too heavily reliant on a representative approach which is unsuited to the decision-making needs of a complex society. In particular, an approach which places Parliament at the heart of the process, in accordance with Diceyean thinking, cannot provide adequate public law control over government, nor the requisite degree of informed public consent and legitimacy. The views of many present-day writers, that British public law is "impoverished", and
that there is a need for a "new approach" (witness Prosser [1982]) will, therefore, be supported, and the principled approach, based on "meaningful participation", put forward as a move towards this.

I. THE APPROACH OF THE THESIS

An interesting example of an area in which extensive opportunities for public participation have apparently been provided, is in relation to the regulation of water pollution under the Control of Pollution Act 1974, Part II (COPA II), re-enacted in the Water Act 1989. The former was heralded as an important development for openness in decision-making, at least in relation to the environment, such that COPA II was propounded by the Royal Commission on Environmental Pollution (Tenth Report, Cmnd. 9149, 1984) as a model for provisions to be applied elsewhere, and may form the basis for the British response to the proposed European Community Directive on Freedom of Access to Environmental Information. Such a "model" provides an ideal basis for a study of the realities of "public participation", and hence, to illustrate the way that the concept of meaningful participation can be applied to practical examples of decision-making to test whether the reality of the opportunities accords with the standard being propounded. In turn this provides a basis for practical suggestions as to reforms that are required. The main body of the thesis is thus a detailed study of the practice of the legal regulation of water pollution, primarily between the period of 1 October 1983 and 31 August 1989, although reference is made to events preceding that period where necessary to provide a full assessment. It is appropriate, here, to explain the approach of the thesis in relation to this example of decision-making.
In chapter one a more detailed explanation of the concept of meaningful participation will be provided, along with the justifications for the claim, and the analytical framework used to carry out the comparison between the principles of meaningful participation and the practice of water pollution control. Given the embryonic nature of the approach being put forward, an evaluation of meaningful participation will also be included, taking account of potential problems that have been identified in relation to applying it to all types of decision-making and decision-maker, and the criticisms that have often been levelled against public participation. The remainder of the thesis concentrates on the chosen example of water pollution control as carried out by the former water authorities in England and Wales.

The chosen example is also significant in relation to the above argument that when opportunities are granted it is not always as the result of a genuine desire to give wider public involvement and scope for influence in policy-making. It has been contended, and this argument will be supported as far as it can be tested, that the opportunities that were provided in relation to the WAs as a whole, were provided by like-minded Governments as concessions to powerful interest groups, rather than being designed to provide for the involvement of the public in policy-making. Further, that this was even more the case in relation to the provisions regarding pollution control (already mentioned). Because the legislation providing for the WAs and their operative powers, provided the framework within which they would operate in practice, the intentions of the Executive, at each appropriate point in time, are important indicators of the real reasons behind the provisions and the way in which they were intended to be used in practice. Thus, in chapter two the background and development of the water industry leading to the creation of the water authorities in 1974, and their re-constitution in 1983, will be analysed, along with their arming with extended pollution
control powers in 1974. The chapter will then concentrate on the opportunities for public participation in relation to, first, the WAs as what can be termed "corporate entities", and, second, the pollution control function.

Having set out the contention that it was not intended that meaningful participation should be created in WA decision-making, Parts II and III are concerned with comparing this expectation with practice. First, the operation of the water authorities as corporate entities will be considered. This will be achieved by a detailed study of one WA - Yorkshire Water - (chosen for its locality). Chapter three will concentrate on outlining the internal structure of Yorkshire Water, its relationships with central government, its "closed" committee system, and its relations with the Press. Chapter four will concentrate on what will be termed the "open" committees, viz. those through which public participation of some kind, was intended to be achieved. Although the thesis is primarily concerned with the legal regulation of water pollution, it is believed that it is vital to be aware of the environment within which that regulation took place, and to understand the totality of mechanisms which were available for public involvement.

Part III of the thesis will concentrate, specifically, on the pollution control function by outlining the regime through which water pollution was regulated, including reference to its historical development, and analysis of the provisions for public involvement under COPA II. Chapter five will, therefore, look at the British concept of "Water Quality Objectives" (WQOs) and "Water Quality Standards" (WQSs) which was developed in the mid to late 1970s in response to pressures from the European Community (mainly in the form of a series of Directives relating to water). Chapter six will be concerned with the process of regulating individual discharges to rivers, whether "systematic" (as
from a sewage treatment works or industrial plant via an outfall) or "irregular" (such as a spillage or leak from a storage tanker). In the former category the scope for public involvement was far greater and hence, forms the basis of the chapter, but account will be taken of the latter because of its potential importance in water pollution control terms. The "consents" (licences) which were required for each discharge to river were set with reference to the quality objectives and standards laid down for the river in question. Chapter seven is then concerned with the process through which the conditions of such consents were monitored for compliance and enforced where compliance was not achieved. In each case it will be sought to identify the opportunities which were provided for participation and to compare them with the requirements of meaningful participation. Part III includes reference to the practice of WAs other than Yorkshire Water, although the main emphasis will continue to be on the latter.

The final section of the thesis (Part IV - chapter eight) will be concerned to draw together the conclusions from the case study, and to re-evaluate the concept of meaningful participation and the analytical approach. However, given the major changes that took place on 1 September 1989, under the Water Act, it is necessary to identify whether the changes are likely to lead to more meaningful participation in the legal regulation of water pollution. As far as can be assessed at this early stage, therefore, the implications of the changes in the industry, in respect of the issues raised in Parts II and III of the thesis, will be outlined.
Although the work is primarily concerned with water pollution control (within the context of the WAs as a whole) as an example of decision-making, there are a number of factors, including constitutional implications, which make the WAs (as constituted before September 1989) of particular interest to public lawyers.

First, the actual status of the WAs has been a matter of some confusion. They were located within the area of government often referred to as "quasi-government" (Birkinshaw, 1985b) or the "extended state", while Saunders (1983, p. 71) has suggested that they formed part of a "third ... level of the state apparatus" which he called the "Regional State", their history having been very clearly rooted in local government. While they have also been described as "independent public corporations" (Purdue, 1979, p. 121) they were treated by government as akin to nationalised industries, both in their internal constitution (especially from 1983) and their subjecting to the same financial controls as other nationalised industries. Paradoxically, the first step towards the privatisation of the utility functions in 1989, was their nationalisation (termed "vesting") under the Water Act 1989, which marked the completion of the enforced move away from local government control towards the centre. It may also be argued that the process of privatisation led to a major "politicisation" of the WAs and water services, in a way un-precedented in this country. The 1980s also saw another external "actor" have a major effect on the work of the WAs. By then a number of EC Directives on the aquatic environment were reaching the end of their periods for implementation, with the WAs designated as the "competent authorities" charged with securing that implementation.
Second, the very nature of the functions of the WAs makes them interesting. They were specifically created as multi-functional bodies to provide for more "co-ordinated" management of the water cycle, with attendant benefits in economies of scale. One feature of this was that they were responsible for the essential functions of water supply and sewage disposal while simultaneously being charged with regulating inputs to the water environment - commonly termed the "poacher-gamekeeper" conflict. To compound this conflict, the function of regulation was significant by itself, in giving the WAs extensive policy discretion, not only in enforcing the law (common to many regulators) but also to define the limits of the law through the setting of standards in individual discharge consents - or what is usually known as "rule-making". Furthermore, until the implementation of the provisions for public involvement in COPA II (in the mid-1980s), the WAs were used to close relationships with those they regulated, with limited external scrutiny of decision-making; the introduction of the public presented the possibility of cutting across this relationship and providing an extra "dimension". The late 1980s have thus been an ideal time to consider issues of law, government, the environment and the public.

1989 Onwards. While the thesis is an historical study of the WAs, it may be suggested that the water industry after 1989 is equally worthy of analysis, because of the complex nature of the institutions and the mechanisms for regulation - both economic, of the privatised companies by a non-ministerial government department - and of the environment, by the National Rivers Authority, retained in the public sector. With the publication of the Environmental Protection Bill in December 1989, it is expected that HMIP will take on an increasing role in relation to water pollution, especially with regard to the most dangerous substances. A US-style Environmental Protection Agency is now nearer than it has ever
been, in stark contrast to the fragmented structure of pollution control before 1974. The post 1989 water industry also highlights the increasing importance of the public/private divide and the way this is becoming increasingly obscured.

III. THE SIGNIFICANCE OF THE THESIS

It is suggested that the significance of the thesis lies, first, in putting forward a concept of participation which can be applied to the practice of decision-makers and decision-making, and which will help to promote thinking about the notion of “participation” — both what it involves, and the problems of making it “effective” in practice. Second, an assessment of the water pollution control regime is timely (given the issues noted above). It will be contended that it is vital that the regime operates in the way intended so that, where agreement, based on informed public consent, is reached as to the way in which the aquatic environment is to be protected, this is not negated by a failure to achieve what has been agreed. It will be one of the themes of the work that, while on paper the pollution control system had a great deal of merit, it was never given the opportunity to work in practice, with the effect that any public agreement had limited meaning and impact.

IV. METHODOLOGY

Reference can be made to the scope of the work and the way in which data was obtained and applied. The initial interest in public participation in the regulation of water pollution control was inspired by a pilot study, carried out with DAC Freestone, funded by a University of Hull “seedcorn” grant, which sought to identify possible implications of COPA
II at the time when implementation had just commenced. Having then decided to focus on the provisions concerned with the involvement of the public, it became clear that a more holistic approach was needed, with account being taken of all available opportunities for public participation in relation to the WAs, not just those provided under COPA II. Account also needed to be taken of the environment within which pollution control decision-making took place, both the interrelationship with other WA functions - and hence the priorities of the WAs - and also the external influences and controls to which the WAs were subject - notably central government and the EC.

Awareness of these needs suggested a preference for studying one example WA in greater depth. Yorkshire Water was chosen for its locality, given resource limitations, rather than any notion of typicality, and only limited comparison with other WAs was possible. Such comparison has, however, been made where practical, and two particular events shaped the nature of the examples considered, viz. two public local inquiries in the Anglian Water region and a number of private prosecutions of WAs. These were studied because of their significance, albeit they did not involve Yorkshire Water. Two exclusions, in the case of Yorkshire Water, must also be noted. First, in and around the city of York, water was supplied by the York Waterworks Company (a privately owned "statutory" water company) acting as the agent of Yorkshire Water. Issues relating to the company were only considered to the extent that there was participation by the public through facilities provided by Yorkshire Water, namely in the form of the Yorkshire Water Consumer Consultative Committee for the North and East Division, of which the York WCC was a statutory member. Second, land drainage has historically been subject to unique arrangements which largely survived the 1974 re-organisation, with the effect that the WAs were granted no more than supervisory roles over the function, executive decisions being made by a combination of a
committee of the WAs - the Regional Land Drainage Committee - and the Internal Drainage Boards (under the Land Drainage Acts). It was perceived that, despite the need for an holistic approach, this function could be excluded from detailed consideration because of these arrangements.

In relation to the pollution control function, the emphasis of the work is on those discharges which were made direct to waterways (hence termed "direct" discharges), as opposed to those made to sewers first (commonly known as "trade effluent" or "indirect" discharges). This was because there were virtually no opportunities for public participation in respect of the latter; almost all of COPA II dealt with direct discharges. As already indicated, most of the work is concerned with the period 1 October 1983 to 31 August 1989. This provided a convenient time period for a number of reasons. From 1 October 1983 the newly constituted WAs began operation with significant changes to their internal structures, but coupled with very different arrangements for public participation. The end of the period marks the date (at midnight) at which the WAs ceased to exist and were formally split into (wholly government owned) utility companies (ready for privatisation three months later) and the National Rivers Authority. This time period, therefore, provided an opportunity to study the (then) existing structure, and to make comparisons with pre-existing arrangements.

Data was collected in a variety of ways (as far as permitted by resource constraints) including written requests to "environmental" groups and the WAs, and informal interviews with WA staff and Board members, and members of "environmental" groups (including attendance at some of their meetings). In relation to the various facilities for participation, the opportunity was taken to attend these wherever possible, including the Yorkshire Water committees, the local inquiries, and use of the public
registers (relating to discharge consents). Full details of this process of data collection are provided in Appendix A. Information and developments are included up to, and including, 1 January 1990.

V. THEORETICAL APPROACH

The theoretical basis for the thesis was developed half-way through the period of research, adopting the "inductive" method.9 The concept of meaningful participation, and the analytical framework coupled with this, were then subjected to external assessment, and modification as deemed appropriate.10 The opportunity was also taken to publish as much of the findings as possible, appropriate reference to which will be made throughout the course of the thesis.

Having developed the concept of meaningful participation, its limitations (given its embryonic nature) must be recorded. It will be suggested that the key to public participation (although not its sole raison d'être) is the opportunity to influence the outcome of the decision. It has not been attempted to test whether in practice the WAs, and in particular Yorkshire Water, were influenced in their decision-making (although there were exceptional cases where they clearly had, or had not, been) because of the difficulties of reliably identifying this. The approach, therefore, has been to highlight the importance of this factor as a pre-requisite for participation, and thus included as part of the definition of "meaningful participation" in the form of the need for the decision-maker to be "open to influence" and deal equally with all members of the public (thereby denying "privileged" access). Such an approach could, however, be used as the basis for future research which could seek to test whether a decision-maker was "open to influence" in any given decision process.
NOTES:

1 Based on the term used by Fagence (1977).

2 But see the Eighteenth Report of the Public Accounts Committee, Cmnd. 249, 1984/5, para. 32. Purdue (1979, p. 124) has also pointed out the way that, before 1979, they were subject to the Select Committee on the Nationalised Industries as well as the jurisdiction of the Commissioners for Local Administration.

3 For a critique of this trend, see McAuslan and McEldowney (1985).

4 Ironically it was feared that they would not be adequate regulators, both before 1983, because they were dominated by local authority interests (where it was argued local authorities had failed in the past to minimise pollution), and after 1983, when they were then dominated by members with business backgrounds and interests. (See for instance the Parliamentary Debates during the enactment of COPA II).


6 In practical terms, the only consequence of this exclusion was that the Regional Land Drainage Committee was not included as one of the Authority committees to which the Press and public were admitted.

7 Care should be taken with the period from 1 April 1989, as, from this date, the WAs began operating in their "shadow units", separate in practical terms, but still under the control of the WA as a whole.

8 This process was established, during the course of the pilot study, referred to above, to be very informative, and helped to establish a range of "contacts".

9 For instance, used by Milbrath (1965).

10 Different stages of the development of the theoretical approach were presented to a University of Hull Law School Seminar (January
1989) and to a session at the Socio-Legal Studies Conference (April 1989). In the light of the latter, the term "The Exchange of Information" was replaced by the broader concept of "Meaningful Participation".
PART I
In this chapter it is intended to develop the justifications for, and rationale of, the concept of meaningful participation, and then to explain and evaluate the concept. Finally, the analytical approach, which will be applied to the case study in the main body of the thesis, will be outlined.

I. JUSTIFICATIONS FOR THE CLAIM FOR "MEANINGFUL PARTICIPATION"

The essence of the argument, to support the claim for an approach based on meaningful participation, is that the "principle" of public participation in the policy-making of government has been accepted by successive administrations, especially in central government, and that this acceptance cannot, therefore, be retracted. The key problem is, however, that the principle has not been translated into practice on a systematic and comprehensive basis - for all decisions and all decision-makers - offering equal access for all who wish to participate. The effect of this has been to deny real opportunities to influence policy-making and policy-makers.
In developing such an argument an important distinction needs to be drawn between acceptance in principle and acceptance in practice. In particular, it is suggested that there is a difference between what may be stated "officially" and what a person/body really means or does. This is in part a reflection of the difference between the "law in the books" and the "law in action". In making this distinction reference can be made to the notion of "legitimation" which involves "an ideological dimension in which the exercise of power is mediated and given justification" (Prosser, 1986, p. 6). In other words, that it presents law as a neutral process which can achieve the aimed for goals, but this is no more than a facade behind which lies the real rationale for the actions in question. Thus, it may be suggested that the reality of many of the opportunities for public participation are a process of "legitimation".

A. The Acceptance of the Principle

Although there is no general common law duty to consult (Bates v Lord Hailsham [1972] 1 WLR 1373), and an absence of the kind of statutory procedures for participation in rule-making provided by the Administrative Procedure Act 1946 in the USA, it is submitted that the principle of public participation is clearly established in the British state. Two significant examples can be used to illustrate this. First the use of Green and White papers, and other consultation/policy documents prior to the enacting of legislation. Second, the procedures for participation in relation to town and country planning (whether in relation to planning permission for a home extension or for the siting of a nuclear reactor) and the process of structure and local plans.
More recently, in relation to the environment, opportunities for public participation have become more widespread, although it was as early as 1970 that the then Conservative Administration appeared to accept that the public had an important role to play in decision-making about the environment, especially in the "value judgment" of how much the public would be prepared to pay to protect the environment. The Control of Pollution Act 1974 introduced important rights in relation to a number of areas of the environment, most notably water (under Part II), which was further strengthened by the Water Act 1983. In a wider context, an example - albeit less immediately obvious - is that of the involvement of the public in the service of juries, a process seen as a fundamental feature of the administration of justice.

B. Public Participation in Practice

The crux of the argument being presented here is that this acceptance in principle has not been translated into acceptance in practice; the commitment to achieve the kind of "principled" approach argued for here, has thus been absent. Although few areas of decision-making are now closed to public participation (and indeed some - such as national security - must necessarily remain closed), it can be argued that in many cases where opportunities are apparently provided they do not genuinely offer a means through which the public can influence the outcome of the decision, either because the key issues are not open to the public participation process, or because the outcome has been predetermined.

The most significant problem, it is contended, is that of the "privileged access" to information and the decision-maker which is offered to certain "favoured" groups. While the actual extent of this is
difficult to establish (primarily because so much remains hidden), reference to it, in analyses of decision-making, are plentiful. For instance, Gunningham (1974), in his case-study of law-making and implementation in air pollution control, argues that his study verifies the "conflict theory" (that law-making is not a neutral process but the result of bargaining with powerful groups). McAuslan (1980) has contended that ideologies of "private property" and "public interest" operate to exclude "public participation" in planning. This notion of "privileged access" reached its peak in the development of "corporatism" during the 1970s. A related problem, it is suggested, is that of the lack of "competence" of the public to participate, either because of a lack of knowledge of the decision process, or of how to participate. It can be argued that there has been no concerted attempt to assist the public to overcome these limitations, with the effect that the majority of the public do not enter the decision-making process on an equal footing with the small number of organised groups with the necessary "expertise", or they do not enter it at all.

C. The Rationale for a Principled Approach

Given the above claims, it is contended that there is a clear need to eliminate the dissonance between the acceptance of public participation as a principle and the position in practice. The concept of meaningful participation is put forward as a means through which this can be achieved - provided that the three elements of the concept are adhered to. The kind of approach being propounded here, deriving from "participation", and its counter-part "accountability", has previously been put forward by a number of theorists who have variously described their perceptions of the inadequacy of existing public law arrangements in Britain. Prosser, who, in 1982 (pp. 1-2), noted the absence of any
"new governing theory" towards the study of public law, and the need for such a theory, can be cited as a leading example. Following Prosser's approach, an account can be taken of the two prime roles for public law: (1) to enable government to achieve its policy ends - a "facilitative" role, and (2) a "controlling" role - limiting and checking the actions of government. If the latter role is adopted, mechanisms are needed to achieve such control. If the former, it can be argued that there is a need for agreement as to the manner in which government will seek to achieve its ends. In this case the concept of legitimacy (noted above) can be called upon as a way to indicate such agreement. Once more mechanisms are required to give this legitimacy "concrete" form. In both cases, it is suggested that a concept based on participation and accountability can enable both roles to be effected.

A preference will be indicated for a model somewhere between the two extremes, which allows government to achieve its policy goals, thereby recognising the need for a positive and extensive role for government (c/f Dicey), but seeks, through both political and legal mechanisms, the control of the exercise of power - in particular, the idea that decision-making should be responsive, and rational, as well as lawful.

Reference can also be made to the work of Jurgen Habermas (primarily Communication and the Evolution of Society, (1979)), and his now celebrated theory of communication, as a means for support for such an approach, following the precedents of (in particular) Birkinshaw (albeit in relation to freedom of information), and Prosser. Habermas put forward the idea of the "ideal speech situation", whereby all parties seeking communication would achieve what he termed "communicative competence"; in effect that they would be able to assert and substantiate their claims or views by reasoning, and because no external pressures would operate to benefit specific parties at the expense of...
others, only the "better argument", irrespective of its source, would be accepted. While in reality such an "ideal speech situation" cannot be achieved the similarities of this theory with the kind of argument being presented here are clear. In particular the idea that there should be opportunities for those who wish to participate to do so on an equal basis, and that the validity of their opinion or information - "communication" to use the Habermasian term - which they would have to justify, would be weighed against all other views, irrespective of from whom the information came.

The ideas of Habermas can be further extended to apply to the design of mechanisms to achieve legitimacy (as demonstrated by Birkinshaw (1988)), based on the idea that, at the level of the state and its institutions, legitimacy can only be developed if the processes for decision-making are designed as the result of the "unforced consensus"; in other words by the sanction of all members of society "if they had been allowed to participate as free and equal in policy-making" (1988, p. 18; original emphasis). This recognizes that not everyone can literally participate in every decision, but that, on everyone's behalf, decision-taking should be such that it is a neutral process not, to quote Birkinshaw (ibid., p. 19), "perverted by ideology, or distorted by influence and domination". Hence, an idea of "rational, reasoned and value free" decision-making of the kind sought through the concept of meaningful participation.

The overriding purpose of the concept of meaningful participation is, therefore, a process of participation fully implemented in practice, through which all who wish to participate can do so on an equal footing, with adequate information about the proposed decision and knowing how to participate - thus the central problem of privileged access can be addressed, if not eliminated. Such participation will,
therefore, not only (1) legitimate governmental power, but (2) ensure that it is restrained within "agreed bounds" - that it is rational (being founded on full and accurate information) - and (3) responsive to the wishes of the public. A similar idea has been put forward by Sainsbury (1988) in his critique of Mashaw's "Administrative Justice". Sainsbury states:

"Administrative justice is achieved if an accurate decision is produced promptly by a process in which the client has participated to ensure that all relevant information has been collected, and the decision-maker has applied the relevant decision criteria in an impartial manner, and that, at the end of the process, the decision-maker demonstrates his or her accountability by issuing a full explanation of the relation between the evidence, the decision criteria and the decision" (p. 74, original emphasis).

A Preference for "Pluralism". As Craig (1989, chapter 1) has pointed out, any claim for the use and development of a particular mechanism of control and operation of the state, must have a basis in a particular conception of the way in which the state should operate, and the purposes of any system of public law within the state. Craig's review of the "unitary state" (which he terms the "traditional model") and the "pluralist model", illustrates the way that the pluralist model, in its "descriptive" sense, provides support for the above arguments, viz. that participation does exist, but not always on an equal basis. Thus pluralism, in its "prescriptive" sense, demands more participation to overcome these inequalities (and the threat of "corporatism"). The thesis can, therefore, be placed in the wider context of the inadequacies of both the "traditional" model of representative
government, and existing public law arrangements based on this, and a preference for pluralism (participatory democracy) as the favoured conception of democracy.

The crux of the failings of the traditional model lies in the "extreme centrality accorded to Parliament" (Prosser, 1985, p. 176), whereby Parliament alone provides for the legitimation and oversight of governmental power, being the embodiment of the "public's will". This, by definition, precludes mechanisms for participation outside Parliament (Craig, 1989, p. 4). A range of deficiencies of the traditional model have been identified, primarily concerned with the development of the state, and especially the "extended state", whereby Parliament can no longer provide the necessary scrutiny of rule-making and hence the transmission of the public's will. Furthermore, the Executive controls the Legislature, and not vice versa (reviewed by Craig, 1989, pp. 12-17).

An indication of the extent of the criticism of representative democracy is demonstrated by a snapshot of recent sources. For instance, according to Ranson and Stewart (1989, p. 16):

"The election and direct involvement of a small number of representatives does not give adequate opportunity for the participation and expression of public views which can strengthen democracy during a period of social change. If citizenship is to be taken seriously then more appropriate constitutive conditions will have to be developed to ensure it can be achieved."

In similar vein, Hirst states that representative democracy "serves to legitimate modern big government and to restrain it hardly at all". He therefore offers his work as a
"... criticism of [representative democracy's] capacity to do the job it is supposed to do: supervise, restrain and control government" (1988, p. 190).

Finally, as pointed out by Sir Douglas Wass, "the choice of representative is no substitute for the choice of policy" (quoted by Harlow, 1985, p. 79). Pluralism is thus concerned with the construction of mechanisms outside Parliament to achieve the legitimation and control of rule making and public power.

It follows that a rejection of representative democracy will lead to a perception that existing public law arrangements are equally inadequate. There is a wealth of material to support such a view. Apart from the arrangements for participation already considered, two themes have been prevalent - the "frail barque" (Harlow and Rawlings, 1984, p. 42) of ministerial responsibility, and the overbearing secrecy of the British state. These are linked by fears that the present Administration has increasingly used its power to achieve "partisan ends", leading McAuslan and McEldowney (1985, p. 2) to argue there exists an "incipient crisis" regarding the legitimacy of governmental power.

D. Arguments for the Practical Application of the Principled Approach

Having indicated the purposes of the concept, and its similarity with existing approaches, the arguments for putting the principled approach into practice can be developed by reference to the "substantive benefits" it is suggested participation can provide, and the "expectations" raised by present constitutional arrangements in Britain.
1. Substantive Benefits

It is contended that participation can yield benefits to the decision-maker, the participant and society as a whole.

a. The Quality of the Decision

It can be argued that the true purpose of any decision-making process is to produce the "best possible" decision, an approach which the courts have sought to infuse through Substantive and Procedural Review. Hence there are two basic ideas that have been put forward. First, that government does not possess all the information necessary to meet such decision criteria and second, that it will be more likely to produce such a decision if it is forced to account and explain the basis of the decision.

The first point assumes that the public have information, especially resulting from localised expertise/knowledge, which should be made available to the decision-maker to avoid the making of "erroneous decisions and ... unwise policies" (Austin, 1985, p. 340). This view was supported by the two leading reports on planning. According to the Dobry report:

"The public has more detailed, first-hand knowledge and can be of vital importance in reaching sound decisions ... the public can now offer information and points of view not otherwise available" (DoE, 1975, para. 10.3, original emphasis; a view re-iterated by the Skeffington report, MHLG, 1969, para. 2).
The second idea encompasses the potential relationship between "process and outcomes"—in other words, that the kind of decision procedures adopted can shape the final decision. This is accepted, to some extent, for instance, in the rights of the defendant at (criminal) trial, while common law has developed a "right to be heard" as a matter of "natural justice".20 The Franks Report (Cmnd. 218, 1957) (cited as a "landmark[...] in accountable and responsible decision-making" (Birkinshaw, 1985a, p. 156)) propounded the principles of "openness, fairness and impartiality" and the belief that decision-makers would be more diligent knowing that they would have to account through written reasons for their decisions.21 The idea is summarised in the forthright views of James Michael:

"No one who exercises authority is particularly keen to explain the true reasons for his decisions, or to submit to critical questioning about them. Such an inquiry is all too likely to expose the extent to which guesswork, prejudice, and the simple imitation of precedents can influence important decisions. And an informed observer might conclude that mistakes are being made by those in charge of things" (quoted by Delbridge, 1982, p. 2).

b. Acceptability

Following on from the above argument, it has been suggested that where a party has been given the opportunity to participate, it is more likely that he (she) will accept the outcome even where it is not the one which was sought. In other words, that participation may lead to an increase in the acceptance of decisions that people disagree with. If true, this would appear to provide a benefit for the administration, notably, that
the decision is less likely to be subject to *ex post facto* challenge, whether through the courts, or in the form of protest or non-cooperation.\textsuperscript{22}

c. A Stronger Mandate

There have been a number of contexts in which regulatory agencies have been reluctant to enforce strict liability criminal laws. One of the key reasons for this has been the absence of a clear "mandate" from the public for stricter enforcement (see chapter seven). Public involvement can provide a clear indication to the agency of the wishes and concerns of the public. To quote Frankel:

"To some authorities, an informed and involved public is a valuable asset. They show industry that pollution control policies have public support: not only the authority, but the press and the public can be seen to be expecting improvements. Such involvement also helps the authority demand the political backing and financial resources it needs for its work" (1982, p. 98).

d. Social and Personal "Utility"

Finally, it is also submitted that a significant benefit arising from public participation falls to both individuals *per se* and society as a whole. Crudely, those allowed to participate are more likely to be the kind of "active citizen" envisaged by Douglas Hurd (infra.) However, an equally important, and related, point is the need for individuals to be educated in the process of participation and decision-making. It is as
necessary for a representative, as a participatory, democracy, to be able to participate "effectively". Initially, those unsure how to participate can be a "drawback" - delay and cost being two of the common criticisms of participation - but education can be gained through participating; in effect a form of "self-learning process". According to Skeffington (in the context of development plans), the process of educating people is:

"... part of the wider problem of educating them to participate in local government affairs as a whole. It is a point of entry to civic matters as a whole" (MH LG, 1969, para. 54).

It is suggested that this demonstrates that participation can also be seen as a means in itself - to educate - thereby enabling individuals to make "more useful" contributions, making more likely the informational benefits argued for above.

2. "Constitutional" Claims

Apart from the substantive benefits, it is also argued that our present constitutional arrangements raise certain "expectations" (to use the discourse of Harden and Lewis) about the way in which public power will be exercised. Reference has already been made to the different models of democracy, and a preference expressed for the participatory version, but of equal, if not greater, importance is the "Rule of Law", which, it is submitted, can be called in aid of a claim for public participation. It can be argued that there is a need for a modern formulation of the Rule of Law - the "guiding principles", which Dicey developed for the benefit of his students, no longer carry the meaning they may once have done.
The "Noble Lie" (Harden and Lewis) cannot be solely about government according to law (Wade and Bradley, 1987, p. 99), and if it is more than a "principle of institutional morality" (Jowell, p. 1985, p. 3) it needs to be given "concrete form". Thus the mechanisms for the control of discretionary power through rules, adjudicatory techniques and due process, suggested by Jowell as such a means, can be extended to include the notion of interest group participation. To quote Jowell, although this

"speaks more to democratic theory than legal or constitutional theory ... [t]he issue is, however, not unrelated to the arguments behind the Rule of Law and shares the common objective of responsive decisions. If the Rule of Law is concerned to protect an individual from being deprived of his rights without an opportunity to defend himself, the concern is only narrowly stretched to protect group-interests from being overridden without the opportunity to express their views on the matter to be decided (1985, p. 17).

To reinforce these arguments, it is submitted that there are precedents from other jurisdictions, as well as in the "rhetoric" of the present Administration, which provide additional support.

a. Precedents

Possibly the most significant precedent is the system of rule-making promised by s. 4 of the US Federal Administrative Procedure Act (APA), ironically adopted in the very year that the Statutory Instruments Act
1946 repealed similar provisions, relating to secondary legislation, which had existed in England since 1893. Section 4 enshrines the process of "notice and comment" (as it is commonly known) whereby proposed rules must be published in the Federal Register, and the general public given an opportunity to send written representations to the decision-maker. Equally, it may be suggested that the US Constitution encompasses a more detailed notion of "due process" than that available on this side of the Atlantic. It is accepted that the APA system is itself subject to important exceptions, and may not actually yield the kind of meaningful participation being sought through this thesis, but it is a model that cannot be ignored. Developments within the EC are also worthy of note. Again taking the example of the environment, the EC has been at the forefront of the promotion of participation.

The issue of "consumerism" must also be addressed as an important precedent founded, in part, on the ideology of the present Government, especially in the notions of consumer choice. It is argued that the same kind of opportunities must be available to the public (free) in relation to government, as through the "free market" (when coupled with the ability to pay). This is supported by Delbridge (1982, p. 1) who states that the "basic tenets of the consumer movement" apply equally to the public sector as the private - viz. choice, representation, means of redress and information.

b. Government Rhetoric

The rhetoric of the Thatcher Government is also worthy of note, especially in relation to a little publicised idea of the former Home Secretary, Douglas Hurd, of the "active citizen". It would seem that the original idea was concerned to encourage "neighbourliness" for instance,
in the form of neighbourhood watch and victim support groups, rather than promoting active participation in policy-making. However, it is contended that this is the necessary corollary of such a proposal, a point which may have been recognised by the all-party "Commission on Citizenship" set up (under the patronage of the Speaker) by Hurd in 1989. It has been indicated that the Commission has sought to include in its definition of "citizenship" the ideas of "constructive criticism" - that citizenship also confers "rights" (The Independent, 1 August 1989). Mr Hurd's statement seems to reinforce this idea:

"Across the broad range of social policy, the Government is now energetically seeking to thrust power outwards - away from the corporatist battalions to the little platoons. Greater opportunities for active citizenship are being offered and taken up" (quoted in The Independent, 13 September 1989).29

II. "MEANINGFUL PARTICIPATION"

Having set out the justifications for the claim for a more participatory form of democracy, the next stage is to provide the detail behind the concept of meaningful participation. There are two aspects to this. First, explanation of the basic term "participation", given that it is hoped to provide an impetus to analysis of what this term actually means and its interrelationship with other "established" public law concepts. Second, it has already been stated that the key to the principled approach to participation relies on a clear concept which will enable a comparison between the set of principles and practice. Therefore, the idea of participation being "meaningful" will be explained. It is one of the main aims of the work, that meaningful participation should be put
forward as a concept which can be developed, refined and applied across the broad spectrum of decision-making, but with water pollution control used here for illustrative purposes.

A. Defining Participation

The definition of participation being used in this thesis is intended as an "umbrella" term, indicating that it involves, and incorporates, the well known notions of "access to information", "consultation", "representation", "reason giving/accountability" and so on. The key point, however, is to recognise that each is dependant on the others - that there is no point in being consulted prior to a decision being made, for reasons for the decision, once made, to be kept secret. It is submitted that the goals of control, and ultimately legitimacy based on equal access, cannot be achieved without all these notions operating together. As will be explained below, it has been sought to develop an all embracing concept which seeks to break down any theoretical barriers between these notions, and to emphasise that elements of all of them are vital to enable the involvement of the public at each stage (ex ante and ex post facto) of the decision-making process.

In seeking to develop such a concept, there is also a need to actually define a standard of what participation is - to map the outer limits of the activities which can be said to be participatory. In addressing this issue, the work of Fagence has been inspirational. He contends that

"Of crucial significance is the determination of whether any act or series of actions has been participatory" (1977, p. 127).

- 33 -
In other words, the need to identify the "lowest common denominator" below which an activity cannot be deemed "meaningful". Fagence adopts as his "lowest common denominator" that the activity can, at least potentially, influence the decision-maker. This is an approach which has seen support, albeit sometimes through a different discourse, from a variety of practical and theoretical works. This includes, once again the Skeffington (MHLG, 1969) and Dobry (DoE, 1975) reports, but more significantly the works of Arnstein (1969) and Milbrath (1965), both of whom adopted "hierarchical" approaches in seeking to identify whether activities had been "worthwhile" in participation terms. However, a subtle difference of approach will be adopted here, in that, rather than seeking to identify whether or not an act or event has been participatory, the aim will be to seek to identify the factors which must be present to enable meaningful participation to take place - such that it is possible, ultimately, to influence the outcome of the decision. Three pre-conditions (or "elements") will be identified, and hence, where they are present the participation can be termed "meaningful".

B. Elements of Meaningful Participation

These are outlined in Appendix B, Figure 1.1, but will be detailed below.

1. A "Competent" Public - The Need for Education

The first step towards participation, is the ability to participate - having the awareness of the decisions being made (and by whom), of the opportunities to participate, and sufficient understanding of the issues
involved. It is contended that existing opportunities are often under utilised for the simple reason that the public are unaware of them or how to use them. Support for this pre-condition can be found in a number of sources. First, it has been argued that even in the context of a representative democracy, such education - and hence an "informed public" - is necessary. In the context of planning, Godschalk has stated:

"Participation is a two-edged sword; planners must be open to working with citizens, and citizens must be active and competent in planning" (quoted in Fagence (1977, p. 4; emphasis added).

A key criticism of participation has been the delay and cost it involves. One of the root causes of this, it is suggested, is that the public do not understand the issues, and especially, are not aware of the practical constraints underlying the decision, or which are imposed on the decision-maker. Arguably education can reduce the number of "frivolous" exchanges with the public and thereby increase the value of the information received. According to Wurster:

"Conscious consumer wants are limited by experience and knowledge ... by and large you can only want what you know ... what we... really want to know, therefore, is what people would want if they understood the full range of possibilities on the one hand, and all the practical limitations on the other" (in Fagence, 1977, p. 51).

Equally, it is argued that such education can also help to answer the problem of the "inarticulate" and the domination by the "middle classes" (see Harlow and Rawlings, 1984, chapter 14). Thus, to seek to develop
a public "able" to participate, three main kinds of education are suggested (as indicated in Figure 1.1 [Appendix B]).

2. Opportunities to Participate - the "Channels for Communication"

The second key element for meaningful participation in practice is the actual opportunity to participate, and, as indicated above, it is intended that the approach taken here should break down the barriers presented by existing notions of "access to information" and "consultation" and so on, by replacing them with the different stages of the decision-process as, indicated in Figure 1.1. Hence, the second aspect of the principled approach is that comprehensive opportunities (whether "formal" or "informal") should be made available in respect of all decisions and decision-makers, and that all the stages described under this heading should be made available.

The main aim of this element of the concept is to demonstrate the need for a fluid process of "two-way communication" between the decision-maker and the public (an idea influenced by the Skeffington Report [MHLG, 1969]). In other words, it is intended to demonstrate that meaningful participation should not just be about responding to proposals developed by the decision-maker, it should also be possible for the public to put their own suggestions for policies and action on their own initiative, and at any time. Equally, it is not just about ex ante activity, but also ex post facto. Finally, decisions should always be subject to review through a continuing process of meaningful participation, including, at the implementation stage.

Following the discussion of Fagence, above, the "lowest common denominator" needs to be identified. The idea that this should equate
with the opportunity to influence the outcome would seem to exclude access to information (stage I). However, because of the argument presented here, that every stage is vital and interconnected, it will be argued that the bottom line includes all the different stages. This is also on the basis that obtaining information from a decision-maker can, potentially, have an indirect influence on the decision-maker, similar to the idea that having to provide reasoned accounts of decisions is argued to - in effect the idea of always being open to scrutiny from an "active" public.

The key to making opportunities to participate available is by the provision of (what will be termed) "channels for communication" between decision-maker and the public. In other words, a mechanism through which each of the different stages indicated in Figure 1.1, can be achieved. The similarities with the US APA 1946 (ibid.) (and dissimilarities with British practice) are clear, although it has been sought to extend beyond this. Before explaining the different stages, the idea of "information" needs amplification. This is intended to cover anything that parties may wish to communicate - including facts, ideas and opinions. Stage I will be concerned with information relating to decisions and policies, as opposed to that covered by education.

**Stage II.** The aim of stage I is for information to be available on a continuing basis - it may be that the requirement is best fulfilled through the actual provision of the information, but it may also be satisfied by informing the public that such information is available on request. The crux of this stage is that people will need to know, not just that a policy decision is being considered (see under education), but on what basis and with what implications. This will also include
knowledge of the available options, the facts supporting those options, and which options are favoured by the decision-maker, and why.\textsuperscript{38}

\textit{Stage IB.} This aspect is important to establish the freedom of the public to show an interest in subjects other than those on which the decision-maker is specifically seeking to provide information as the basis for beginning the decision process. Thus it must be possible to obtain information other than that which the decision-maker is prepared to offer, otherwise the prerogative rests, as at present, with the "state".

Both aspects of \textit{stage I} would fall under the traditional concept of "access to information", the need for which, it is argued, is irresistible.\textsuperscript{39}

\textit{Stage II.} This is intended to complete the initial two-way process of communication prior to decisions being made, by making available channels through which information can be given to the decision-maker either in response to information obtained under \textit{IA}, requested under \textit{IB}, or irrespective of \textit{stage I}. Thus, the public are free to give information, including ideas, at any time - to have matters put on the agenda, rather than being restricted to the "agenda" of the decision-maker. This is clearly important, but is not, it is suggested, made explicit, and may not even be implicit, in the existing notion of "consultation".\textsuperscript{40}
Stage III. This covers the key idea that whenever information is given to the decision-maker under stage II it should be fully considered and its merit determined.41

Stage IV. This involves the right to receive a response from the decision-maker of the value of the communication and the use to which it has been put, or is likely to be put, preceded initially by notification that it has been received, and how soon it will be considered. This stage is particularly important in respect of the educative aspect of participation, as argued earlier in the chapter. Where the "merit" of a contribution is explained to the contributor, this will enable the kind of "self-learning process" suggested earlier. It can also be argued that greater benefits, in terms of acceptability rather than frustration, will accrue through this process.42

Stage V. To show the need for a fluid two-way process, the option has been included of the above stages being repeated before a decision is finally reached; this may be required especially where a decision is "complex" and needs to be "right" first time. It is quite common for more than one round of "consultation" to take place, notably in the case of legislation through the issuing of White and then Green papers. Alternatively, it may be considered that the channels for the above stages may be best achieved by a very formalised process such as a public inquiry, following on from the above stages.

Stage VI. Once the decision has been made, it is crucial that a reasoned decision (in writing) is provided to achieve "accountability".43 This involves both the actual decision and the
reasons behind it, including why the particular options were chosen and others rejected. The provision of such information may thus enable the public to participate in a form of "hard look" or detailed scrutiny of the decision. It can also be noted that accountability does have a forward-looking aspect, which Turpin has termed "amendatory" accountability (1985, p. 52), in the sense that there is an expectation that changes will be made to the original decision.

Stage VII. The final stage is the opportunity to keep decisions that have been made under review through a renewed process of the above stages. It is important to recognise that decisions may later be shown to be "wrong", "inappropriate", or in need of amendment because of subsequent developments. It can also be suggested that the idea of a (single) decision is perhaps artificial; decisions are rarely taken in isolation, but are generally part of a process or series of decisions on related matters – one overall decision involving a series of smaller decisions within it. It is also for this reason that it has been sought to reduce the emphasis on the difference between ex ante and ex post facto control.

3. "Political Will"

The third aspect of the concept of meaningful participation is the requirement of "political will". Because the central purpose of participation is to influence the outcome of the decision, it is a sine qua non that the decision-maker must, at the outset, and throughout the decision process, have an open mind and be amenable to influence. Second, he must be willing to assess any information received, based on its merit and unaffected by any prejudice because of from whom it was
received - hence a move towards a kind of Habermasian "ideal speech situation" is sought. It is important that this equality of treatment, and absence of bias, applies in all dealings with the public at all the different decision stages so that, literally, the sought after aim of equal access to policy-making can be achieved.

This willingness to be open to the idea of participation also deals with the problem relating to the sense of priorities that a decision-maker often possesses, or is subject to. Reference can be made to the problems posed by concepts of "expertise" ("technocracy") or "we know best"46 whereby the view of the public is disregarded. The approach is to emphasise the value of the "information" irrespective of its source. Thus decision processes where, from the outset, there is only one possible outcome, must be rejected.

Again support for the importance of this element can be found in a range of sources, but it may be perceived that the main barrier is that of attitudes and hence a need for their change. Birkinshaw, arguing for a British Freedom of Information Act (FOIA), concludes thus:

"No one should expect that an FOIA will change the nature of government or the behaviour of the governed overnight. Progress and democratic development will take time... Unless, however, there is a change in attitude and ethos in our public administration, FOIA by itself will be something of a confidence trick... [A]n FOIA must be accompanied by more widespread changes in attitude if we are to be better informed and more open. Those are the necessary conditions to help reduce the abuse of power."46
The term "political" warrants definition. This is intended to refer to the decision-maker - "political" with a small "p".

"Public Will". Given the latter point, it is equally important that the public possess a sense of willingness to "co-operate" - a form of political or "public will". However, clearly the extent to which the public should not be seeking to obstruct and prevent the system "working" is a vexed issue. The argument clearly hinges on the idea that if meaningful participation is available then, theoretically at least, the public should have confidence in the decision processes, decision-makers and, ultimately, the decisions resulting therefrom.

C. Evaluation of the Concept of Meaningful Participation

As stated earlier, the concept of meaningful participation is being presented, tentatively, to seek to stimulate thought about participation and the problems of making it "effective" in practice. Thus an initial evaluation is appropriate, including an identification of some of the likely problems and possible solutions.

1. The Role of the Decision-Making Body

Two issues need to be considered here, relating to the "prerogative" of the decision-maker to make the final decision, and the extent to which participation should occur. The wider implications of the concept for representative democracy must also be noted.
As a general principle it is not intended to argue that participation should challenge the role of the decision-maker; thus the appointed decision-making body should make the final decision. 48 Equally, to ensure the process of communication, the role of the decision-maker can be seen as the "pivot" or "centre for communications". However, a second option is that there may be occasions when it is appropriate to break down the barrier between the public and the decision-maker, to introduce co-option or actual power sharing. 49 Neither option, however, should be seen as a threat to the role of representatives, but as a wider, and it is submitted, improved version of democracy.

Heap, it is contended, misses the point, in arguing that

"citizen participation ... seems to me to strike at the very roots of elective democracy... elected representatives ... should, in my view, be allowed to get on with the job. Citizen participation substitutes, or tends to substitute, for the decision of the elected representative the decision of the man in the street - the woman on the Clapham omnibus - and all this leads not to government by elected representatives but to government by plebiscite ... too much citizen participation will strike fatally at the whole concept of government by elected representatives ...." (1973, p. 210; original emphasis).

In particular Heap seemed to assume that decision-making by elected representatives actually did take place in an idealised world of "Habermasian" impartiality. 50 Furthermore, it must be noted that most decision-making, especially in the "extended state", is not carried out by elected representatives.
The approach being propounded here does not seek to negate the role of elected representatives, but seeks to argue that such a process is inadequate by itself, and needs to be developed so that decisions are taken only after a process of meaningful participation. Indeed it will be vital that the appointed decision-maker does take the final decision because, after a full process of meaningful participation, it is likely that he will have received conflicting viewpoints and information which will need to be balanced. It can be further argued that the biggest threat to any form of democracy lies in providing privileged access/corporatism and the domination of party political dogma.

2. Meaningful Participation - A Flexible Concept

A number of practicalities also need to be addressed. The prime answer at this stage to all the problems which are indicated below is that meaningful participation is intended to be a "flexible concept" tailored to the individual nature of the decision and decision-maker in question. Thus the same degree of participation is not going to be appropriate for the granting of planning permission for a house extension compared to the Channel Tunnel. However, the essential principle remains that the three elements, including the different channels for communication, must be present to some degree. In the case of education, it may even be argued that it should be a continuing process irrespective of the making of individual decisions.

Thus, in respect of the most common criticism of participation - delay and cost - it is not intended that meaningful participation should bring the administration to a halt, but that only through the necessary commitment to the process can the argued for benefits of participation be achieved. It is thus a question of balance, and the decision as to
the appropriate extent of meaningful participation should itself be subjected to processes of meaningful participation.

a. Who Should Participate?

This is a particularly difficult question which can only be noted here, being a matter worthy of a thesis itself. The danger of "too many participants" must be addressed, although it might be argued that if a significant number of people are interested/concerned this shows that extensive participation is appropriate. The issue is thus one of determining the kind of channels for communication which will enable a balance to be struck.\textsuperscript{61} It is submitted that any approach to this issue must be guided both by the above point regarding balance, and the overriding principle that any access granted to policy-making must be on an "equal basis".

b. Public Commitment

A further answer to the above problem may lie in the extent of public commitment expected by the decision-maker. In other words, that it may be appropriate to expect a higher degree of action or inconvenience on the part of those members of the public who want to participate where this would otherwise significantly increase the burden facing the administration.\textsuperscript{62} As a general principle, it is submitted that information to be classed as part of the education process should involve the minimum commitment on the part of the public.
c. Public Apathy

The opposite problem of the scenario above, is the more common experience of public apathy - the widespread lack of interest in participating. It is submitted that this is partly the result of years of a secretive and non-participatory State, and the lack of education related to participation in decision-making; hence, the problem is a long-term one of getting people used to participating, and, just as it has been argued that attitudes on the side of the administration are important, so too are those of the public.\(^\text{43}\)

d. Limits of the Application of the Concept

Two related issues pose further important problems for the development of such a concept, viz. the situations when it is appropriate that meaningful participation should be excluded or minimised, and the range of decision-makers to which it should apply.

Regarding the first issue, there will always be areas (national security being the most common) where the public cannot be involved, but arrangements for the accountability of the decision-makers are still required in some form.\(^\text{44}\) Further, it can be argued that if a decision is not to be subject to meaningful participation, that decision itself must be so subject. The second issue is concerned, in particular, with whether bodies in the private sector should be subject to the concept. Given the obfuscation of the public/private divide,\(^\text{45}\) and the increase in public regulation of private organisations (especially following privatisation) there is a strong argument for any organisation which exercises power affecting people fundamentally to be subject to such principles.
e. Putting the Concept into Practice

The manner in which the principled approach can be put into practice also needs to be considered. This involves the issues of who should provide education, by what means, and the kind of mechanisms that should be provided for the channels of communication. Again, given the need for a flexible approach, it is suggested that these are matters which can only be determined in the context of the individual decision processes, balancing the above issues.

A particularly difficult issue facing proposals, which in Britain in 1990 might be deemed "radical", is the question of their likely acceptance. Given the fate that befell the Skeffington proposals in respect of town and country planning, it might be suggested that participation is a ready victim, especially when budgets are tight. Thus, it must be argued that the Administration must recognise the potential benefits, but equality of access must be the key criteria. The extent of the problem of acceptability is indicated, in particular, by the works of McAuslan and Gunningham, already noted. The former's "revelations" that planning is not the "golden metwand" it has often been perceived to be - participation being seen as "anti-establishment", and is thus "squeezed out" by the combined ideologies of "private property" and "public interest". The crucial statement of McAuslan is thus:

"public participation eo nomine will continue to feature in both the administration of and official descriptions and discussions about planning and other governmental programmes but it will exist only on the terms acceptable to the governing elite, ie that its function is to aid and assist
the operation and management of government and not to challenge or disrupt it" (1980, p. 269).

Finally, Craig's warning suggests a significant barrier:

"What is not possible is the suggestion that participatory democracy can somehow exist and legitimate public power, within a society which adopts a differing vision of democracy. It is clear that the Conservative philosophy is not based upon anything like participatory democracy in its 'technical' sense" (1989, p. 33; original emphasis).

A clear change in outlook is therefore required within central government.

The above review suggests that seeking acceptance of the proposed concept is an uphill task, but, it is submitted that this is not a reason for not trying. In particular, while the real changes can only come from a "top-down" approach, they must also be clearly demanded "bottom-up" - essentially such a concept must be seen as a "constitutional right".

f. Enforcement

The final problem to address is the related question of enforcement in practice. Again this is difficult, given the importance of "political will", and attitudes, and hence, is clearly going to take time. A theme of the thesis is that statutory rights to participation do not guarantee that they will be translated into meaningful participation, but at least
they represent a step forward compared with discretionary processes of participation.

III. ANALYTICAL FRAMEWORK

To complete the chapter, it is intended to outline the analytical framework to show the way in which it will be applied to the empirical study to effect a comparison between the principles of meaningful participation and the practice of the legal regulation of water pollution. The basis of the approach will be to seek to identify the opportunities which were made available for public participation and to assess the way in which they were used in practice. Thus, in each case it will be attempted to identify whether the different channels for communication were provided for, and whether this was coupled with education. As indicated in the Introduction, the question of political will is far more difficult to test for, and especially, in respect of whether the decision-maker was "open to influence". However, it will be sought to identify any factors which would appear to suggest its presence or absence.

To aid this process two particular factors will be taken into account. First, whether the channels were "formal" or "informal" - in other words whether a specific "facility" was made available as a channel for communication. Thus the provision of such "formal" facilities, and the rationale behind their provision, will be identified - in particular this may provide an indication of the presence of political will, especially where offered voluntarily. Second, whether the opportunity provided was for, what will be termed, "direct" or "indirect" participation - in other words, whether any person was allowed to participate with the decision-maker, or only through another party such
as a chosen, or imposed, representative. The indirect aspect is particularly important in terms of the comparison with the concept of "representation", and should highlight the potential problems of the role that the representor is expected to play, and the need for his relationship, and channels for communication with both the decision-maker and the wider public, to be "effective". However, the provision of a "representor" may be vital in assisting those who are otherwise unable to participate.

This approach of identifying the opportunities and their nature, will be further buttressed by taking account of any constraints which may appear to have been imposed, either "externally" (by statute or a superior body) or "internally" (by the decision-maker), which may thus prevent participation from being meaningful (for instance by making it impossible in practice to influence the decision-maker). This emphasises the need for there to be no gap between rights provided by statute and the ability to benefit from such rights in practice. The decision-making and operational "environment" of the decision-maker will, therefore, be mapped out, including any relationships with other bodies. The identification of any "external" constraints also helps in the analysis of the locus of the decision-making. Participation will always need to be directed at the "real" decision-maker.

Two approaches will be taken in applying the above framework to the practice of water pollution control. First, an "institutional" approach, looking at one sample water authority - Yorkshire Water - as a "corporate entity", the opportunities for meaningful participation in relation to it and its decision-making environment, and the influences and controls to which it was subject. Second, a "decisional" approach in the context of the regulation of water pollution - in other words, of looking at particular decisions about the control of water pollution and
the opportunities for participation in respect thereof. As earlier indicated, this must be read in conjunction with the first section, not just because the influences to which the WAs were subject to were likely to affect their performance of the pollution function, but also because most of the opportunities for participation at corporate level, were also applicable to the pollution aspect. Thus, it is hoped that through such an approach it will be possible to assess (to some extent) whether meaningful participation did occur in practice, and highlight the major restrictions to it, if any, and the causes. This will further allow a re-evaluation of the concept, but also provide an illustration of the way in which it can be applied to a sample decision-maker.
They can alternatively be termed "tokenistic". Prosser (ibid.) contrasts this with the idea of "legitimacy", which has been stated succinctly by Birkinshaw (1988, p. 18) as "justification for the exercise or non-exercise of power on the public behalf". The "unifying concept of legitimacy" (McAuslan, 1975, p. 7) can, according to Lipset, be taken to mean "... the capacity of a political system to engender and maintain the belief that existing political institutions are the most appropriate or proper ones for society" (quoted ibid.).

2 Cmnd. 4373, 1970, especially para. 5. The Royal Commission on Environmental Pollution (First Report, Cmnd. 4585, 1971, paras. 26 et seq.) indicated the "responsibilities" of the public, as well as of elected representatives, in protecting the environment.

3 Government claims of the importance of public participation in environmental decision-making are further indicated by the statement in 1986 that "[public participation, backed by adequate access to information, provides a major stimulus to effective environmental protection" (DoE, 1986b, para. 3.9).

4 Public inquiries are often quoted as an example, in particular because the main policy decision, for instance whether to build the nuclear plant, is reserved for the Minister only – witness Bushell v Secretary of State for the Environment [1981] AC 75.

5 See Birkinshaw (1988, p. 235, and n. 68) regarding the Sizewell inquiry.

6 The contentions of Saunders and Jordan et al, in the context of water pollution control, will be considered in the main body of the thesis.

7 The process through which government specifically sought to achieve policy goals through bargaining with specific interest groups. See

This time in relation to the Nationalised Industries and public law (1986).

For a comparative approach, see the "red" and "green light" theories analysed by Harlow and Rawlings (1984).


Such an approach accords with the "amber light" theory (Harlow and Rawlings 1984).

See for instance, Prosser (1986, p. 11) re the effects of "power".


A similar theme can also be seen in the comments of Hirst (1988, p. 196): "So what is democracy for? It can only be, once we have cleared away the myths of rule by the people, a set of political mechanisms for ensuring the benefits of competition, scrutiny and influence. These benefits are that governmental decisions be responsive to the needs of citizens, efficient because based on adequate information and subject to criticism, and not systematically oppressive of individuals". See further the approach of Harden and Lewis (1986) who propounded a re-working of the "Rule of Law" - the "Noble Lie".

Subject to the limits discussed post.

It should be noted that Craig suggests there are two distinct models, the second (excluded here, but referred to below) relates to participation through the "free market".

The nature of the distinction between pluralism and representative democracy has been stated succinctly thus: "Whereas under the theory of representative democracy the consent of the electorate confers general authority to govern upon those elected, participatory democracy requires the consent, agreement, or reconciliation of those affected by specific decisions" (Austin, 1985, p. 339; emphasis
added). Austin further states that the "main goal and raison d'etre" of pluralism is "self-government by the people" (p. 340).


Notably the consideration of "relevant factors", the exclusion of "irrelevant factors", rationality, the absence of bias and bad faith and so on, developed in cases such as Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1 KB 223, Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997, Congreve v Home Office [1976] QB 629, Council for Civil Service Unions v Minister for the Civil Service [1985] AC 374 et al.


The limited application of the report is noted (see ibid. p. 157 et seq.). Consideration is also warranted of the doctrine of the "hard look" well developed in the US courts, and strongly favoured by Harden and Lewis (1986) in particular.

Indeed in cases where the implementation of a decision depends on those people affected by it, then participation becomes an imperative.

See the 5th and 14th Amendments.

Although its own arrangements for legislating are not beyond question - the so-called "democratic deficit".

Most recently in the form of the proposed Access to Environmental Information Directive.


Craig's warning (noted post) of different concepts of democracy, is, however, respected.

A "we know best attitude" is equally difficult to reconcile with those occasions where government invites the public to co-operate in achieving policy ends - most notably the saving of resources, such as water during a drought.

Although the latter two approaches have been subject to criticism by Fagence for failing to be "explicit" (p. 127). The approaches of Ranson and Stewart (1989), Hill, and Geddes (both discussed by Fagence, ibid.), would seem to be closer to the approach being proposed here. Each of these ideas had some influence on the present work.

However, as was noted in the Introduction, the ambitious task of seeking to identify whether or not influence did actually occur has not been attempted.

For an illustration of this view, previously argued, see Burton, 1989a.

Harden and Lewis (1986), including the importance of knowing a candidate's past record.
34 Both the above ideas have been endorsed by one of the sharpest critics of participation, Sir Desmond Heap (1973, p. 212) in his reference to "Prejudiced Pressure Groups and Cranky Conservationists".

35 An idea explained post.

36 The limits of this claim will be discussed in more detail below.

37 The latter being particularly important in respect of the democratic ethic.

38 Skeffington's central theme also needs to be taken on board, that such "consultation" must take place early enough in the decision process.

39 Indeed Prosser (1982, p. 14) states that any concept linked to the Habermasian idea of "communication" is dependant on as "free a flow of information as possible", and that participation and accountability both depend on it. Further, according to Austin (1985, p. 339): "[a]t all levels of participation ... the value of the participant's role as measured by his ability to affect the outcome of the decision-making process is dependant upon his degree of access to official information. Rarely do participants have the resources to produce the information-base necessary for decision-making in public administration". See further p. 366 and Birkinshaw (1988).

40 Clearly certain decisions will not be amenable to this approach; for instance, it is only possible to respond to a planning application, but for more general policy decisions it is possible - for example to suggest that no planning permissions should be granted for satellite dishes.

41 Reference can be made to the English cases where the term "consultation", and the requirements involved therein, have been enunciated - Rollo v Minister of Town and Country Planning [1948] 1 ALL ER 13; Agricultural, Horticultural and Forestry Industrial
Importantly Dobry (DoE, 1975, para. 10.5(3)) identified the absence of such explanations as a major complaint of representors in the planning process.

According to Ranson and Stewart (1989, p. 18) "to be accountable is to be asked to say why something has been accomplished or not and thus to make intelligible the reasons for conduct and the values which informed them". Further see Coyle, C, "Public Administration and the Theory of Accountability", 35 Administration 107.

See Harden and Lewis (1986, chapter 9), and note that they have suggested that the "testing and debate" of Government policies and decisions is one of the central roles of Parliament today (p. 89).


Both the Skeffington and Dobry Reports were keen that the public should be positive and not sectional, although the criticisms of Damer and Hague, and Long (cited by Harlow and Rawlings (1984, p. 445 et seq.)) are noted. Further, see the interesting comment of Eden (in Eastwood and Ord, 1986, p. 246) regarding the meaning of "public".

Again a strong theme of the Skeffington and Dobry reports.

I am grateful to those members of the Socio-Legal Group (now the Socio-Legal Studies Association) who attended the discussion at the conference in Edinburgh (April 1989), for drawing my attention to this possibility. This idea can be compared with the top two "rungs" of the Arnstein "ladder"; Arnstein arguing that only through such "power-sharing" can participants succeed in influencing the outcome of decisions (1969, p. 216).

And note the apparent contradictions between this and his later statement at p. 211.
The issue is perhaps more vexed in the case of "local" decisions - Craig (1989, p. 22) uses the example of licensing taxis in Liverpool, and the question of whether drivers outside Liverpool should be allowed to participate. The potential implications of Burnheim's approach can also be noted. "It is desirable that each person or group should have an opportunity for influencing decisions of any matter in direct proportion to their legitimate material interest in the outcome. It is not often noticed that this principle is ineffectual unless its converse is also satisfied. Nobody should have any input into decision-making where they have no legitimate material interest" (1989, p. 5; original emphasis). An alternative solution has been suggested by Birkinshaw, viz. "If individual access to information is too costly, or too sensitive, or not worth the effort because of public apathy, or because there is little public feedback of views or ideas to inform specialists or decision-makers, is this an argument against freedom of information? Or is it an argument in favour of the provision of essential and unadulterated information to bodies whom we trust, so that they may check the policy-making process, render that process accountable, and report on the findings?" (1988, p. 1).

Again reference can be made to Milbrath (1965), who was particularly concerned with the notion of public commitment, a point excluded by Arnstein. For example, the sending of information to people involves less commitment on the part of the public, than placing it on a register which the public may have to travel 50 miles to view.

It has never been suggested that, because there is significant public apathy at elections, these should not be held. Milbrath (1965, pp. 17, 22) has noted the way that participation is often "cumulative", and that the degree of "political stimuli" people receive, will influence the extent to which they participate.
The criticisms of the oversight of the security services under the Security Services Act 1989 can be noted as an example, and Birkinshaw's comment (noted supra.) is again apposite.


1980, pp. 1-5; and note further his explanation of the "socialisation" of new recruits into the profession.

It should also be noted that the term "ideology" was deliberately chosen by McAuslan, which he defined to include - "values, attitudes and assumptions, 'hidden articulate premises', that may not be well thought out and are usually disguised rather than spoken out loud." (1980, p. xii). Further Gunningham (1974). It may also be suggested that the position has deteriorated since 1979; see for example, Lustgarten, L, Book Review, (1989), Public Law, 363, at 364.

Charter 88 is noted.

It has been further suggested (by members of the Socio-Legal Group, ibid.) that the real danger lies in a "bureaucratic nightmare" regarding any arrangements for enforcement. However, it may also be argued that a review of constitutional arrangements for ensuring "better" administration is apposite, and that a form of all embracing "ombudsman", freed from the present constraints of the Parliamentary Commissioner, might be appropriate. See further the proposals of Sir Douglas Wass for a permanent Royal Commission (noted in Birkinshaw, 1985a, p. 168) and the use of an agency for the enforcement of the US FOIA.
CHAPTER TWO

The Water Authorities and Pollution Control:

"Political Will" and the Executive

Having argued in chapter one that public participation as a principle has been accepted by government in this country, but a "principled approach" based on meaningful participation, has not been put into practice, reference can now be made to one specific area of public administration to further develop this thesis. As earlier indicated, the practice of the WAs (between 1983 and 1989) provides an ideal subject for study because more comprehensive opportunities for the public to participate were made available than has been the case in many areas of decision-making. Furthermore, in chapter one it was argued that a key problem was that, often, where opportunities were actually provided on a comprehensive basis, the intentions behind them were not to create "meaningful participation"; in other words that they were provided for legitimation purposes, or as the result of bargaining with powerful interest groups as concessions, or that once in operation a dominant ideology would render obsolete the necessary political will.

At this stage an important distinction needs to be drawn between what can be termed the "political will" of the legislator (in practice the
Executive, given its practical domination over Parliament) in making the provisions available (where this is achieved by statute), and the intentions or "political will" of the decision-maker in operating those provisions. The former is the concern of this chapter, because the type of provisions enacted provide the whole framework within which the decision-maker and the process of meaningful participation must operate. The former is, therefore, fundamental. Account must also be taken of the relationship between government and the decision-maker where the latter is a state agency (an emanation of the state), and a fortiori where the former has the ability to influence, if not actually control, such an agency. It may be argued, therefore, that the views and desires of government could shape agency thinking, including, in respect of the way in which the agency operates the public participation provisions - such an idea being encompassed in the concept of the "mandate" of the agency. For instance, government could indicate, or actually impose, priorities which inevitably force, or suggest, that less attention needs to be paid to public participation than to matters such as finance. For these two reasons account of the perceived intention of the Executive, in relation to the WAs and pollution control, is vital.

In this chapter emphasis will be placed on the opportunities which were provided by statute (which will be discussed in more detail in later chapters) and the reasons underlying their provision - did the Executive intend that meaningful participation, or something similar to it, should be established in practice? It will be argued, by reference to a number of theoretical assessments, that in creating the WAs, providing them with extended pollution control powers, and making available in both cases apparently extensive opportunities for public participation, successive Governments did not have such an intention. Furthermore, it will be argued that the rationale for the creation of the WAs was to deal with a predicted crisis in the supply of water (both in terms of
quantity and then quality) and, thus, specialist agencies were created for their "expertise" - an idea, which it will be argued does not readily embrace meaningful participation. It will be suggested that there was also an "ideology" within the WAs themselves, that public participation was not to be regarded as anything more than legitimation - a process of public relations - "informing" but not "involving". This idea can be reinforced first, by suggesting that the opportunities for public participation were provided as concessions to specific interest groups, rather than for the benefit of the public, and that after 1974 the key issue for the WAs, in the context of the emerging national economic crisis, was that of finance. Government thus imposed a priority which was to override any ideas of meaningful participation. Second, that COPA II was not implemented until this became necessary to meet BC obligations.

Two further points, by way of introduction, also need to be made. First, this chapter will further illustrate the importance of assessing the pollution control function in the context of the WAs as a whole - as "corporate entities" - including their external relationships (notably central government and the BC). Second, the difficulties of actually trying to establish a "mandate" for an agency, and Executive (or Legislative) intention in that respect. In particular, it should be noted that the Executive may not actually seek to provide a clear mandate for the agency or it may allow the agency to develop its own mandate. Because of Executive dominance over Parliament, this chapter concentrates on the perceived intentions of the former, although reference will be made to statements in Parliament. In the case of the enactment of COPA, the debates are particularly interesting because both major Parties were involved in promoting very similar Bills - according to the present Prime Minister, COPA had "two parents" (Hansard, HC, vol. 875, col. 106; 17 June 1974).
I. REASONS FOR THE CREATION OF THE WAs

In this section it is intended to review the reasons for the creation of the WAs (under the Water Act 1973) and their empowering with wider pollution control provisions (under COPA II). It should, however, be noted that while the following may suggest that this was a smooth evolution, it has been stated that

"In fact, the 1973 Act implied a sudden rejection of two of the principal characteristics of the previous system. It removed water from the control (in the main) of local government and it also meant that all functions were administered within integrated organisations rather than through separate authorities. Whereas previously water had been handled by a variety of bodies, after 1974 the various functions were administered by different operating arms of the regional water authorities" (Jordan, Richardson and Kimber [hereafter Jordan et al], 1977, p. 318; original emphasis).

A. The Need For The WAs

It will be explained below that the central reason underlying the identification of the need for a new structure, which culminated in the creation of the WAs in 1973/4, was a perceived "crisis" in the management of water services. Two types of problem producing this crisis can be suggested, the first relating to the quantity of water for supply and the quality of river water, and the second, the administrative agencies responsible for water services. This will be considered in respect of the situation both before, and then after, 1963.
1. The Position Before 1963

The central problem facing water management before 1963 was that of the increasing demand for water, initially recognised during the Second World War. As a result of this, the first attempt to deal with the problem was the Water Act 1945, which had adopted the recommendations of the Central Advisory Water Committee (CAWC) in 1943. A further report of the same committee in 1958/9 coincided with the severe drought of 1959, but the most significant report was that of the Sub-Committee of CAWC (chaired by Proudman), published in 1962, and based (inter alia) on the following terms of reference:

"a. to consider the extent to which the demand for water for domestic, industrial, agricultural and other purposes is increasing and is likely to increase; to consider the problems in meeting these demands ..." (CAWC, 1962, para. 1).

The mainstay of the report was the need for short-term action, in particular, a "comprehensive system for controlling surface water abstractions". The report also recognised that a major obstacle to meeting the increased demand for water was the "multiplicity of agencies" responsible for the various aspects of the water cycle (especially water supply) which were seen as inadequate to overcome the problem. In consequence, the report identified the absence of a single authority responsible
"locally for co-ordinating the use and development of the water resources of a river basin as a whole ..." (para. 11; emphasis added)

as the key omission, and recommended the creation of "comprehensive new authorities ... charged with a positive duty of water conservation" (para. 8). As a result, the Water Resources Act 1963 followed the publication of a White Paper the preceding year, and created 32 River Authorities, based on river basins, responsible (inter alia) for pollution control, and water abstraction licensing.

2. 1963-73

The Act was initially perceived as having dealt with the water supply problem, but in 1968 the revelation by the Water Resources Board that demand for water was expected to double by the end of the century, at a time when cheap sources of supply were running out, led to an awareness that further action would be needed (Jordan et al, 1977, pp. 319-20). The problem relating to the quantity of water available for supply was amplified by a growing awareness of the importance of river water quality (and effluent disposal as affecting that quality) for water supply, in particular in terms of the ability to re-use such water. The CAWC report in 1970 (see below) identified, as a key failing of the 1963 Act, the lack of emphasis on river quality. Demand on the sewage disposal system was also rising, as the Jeger Committee made clear. Referring to sewage disposal as the "Cinderella of the public services", the Committee stated that it was a "matter of urgent concern whose solution could not be taken for granted." The committee feared the "destruction" of rivers and coastal waters (MHLG, 1970, para. 2).
In relation to the administration of water services, two other factors were instrumental in identifying the need for further change. First, the replacement of J H Street, by Jack Beddoe, as Under-Secretary of State at the Ministry of Housing and Local Government (at the time the sponsoring department for water services), was seen as bringing about a change in emphasis within the Ministry. Second, following the report of the (Redcliff-Maud) Royal Commission on Local Government, the CAVC was reconvened (in 1970) to consider the implications of Redcliff-Maud for water services. CAVC identified three obstacles to comprehensive water management, notably the inadequacy of the “operating units” (DoE, 1971, paras. 125-30) and the structural defects in the way that water functions were organised and co-ordinated.

However, assessments of the 1963 Act have not been wholly negative:

"Perhaps the most significant contribution of the short-lived river authorities was their operating experience as true multifunctional agencies... in a country where sharp distinctions had always been made between the 'clean' and 'dirty' water fields, the river authorities developed leadership with an understanding of both, a resource sorely needed in the reorganised water industry" (Okun, 1977, p. 31).

3. Proposed Remedies

All of the reports cited above were in broad agreement regarding the changes that were needed to meet the defects they had identified.
"The necessity for the reuse of large quantities of water demands that there must be a single, comprehensive water management plan for every river basin, which includes water reclamation" (DoE, 1971, para. 119).

which could only be achieved through "strong bodies" (ibid., para. 300). However, these bodies were more divided on how to implement this approach. Members of the CAWC, for example, could not agree between the choice of multi-purpose, or single purpose authorities, and the distribution of functions between central and local government (DoE, 1971, paras. 171, 268, 276 and 292).

4. The Government's Response

The next step towards the implementation of change was in the form of a series of 17 consultation papers detailing various aspects of water management,' a major circular (in 1971), and finally, the publication of the Bill in 1973, with an accompanying explanatory document which incorporated the responses to the consultation papers.

The crux of the proposals was the creation of 10 multi-purpose (regional) water authorities to commence operations on 1 April 1974 (to coincide with the changes in the local government and health services), which would be based "on natural watersheds and in most instances on boundaries of the existing river authorities" (DoE, Circular 92/71, paras. 4-5). The Government clearly shared the views of CAWC:
"The Government are convinced ... that the change now proposed is essential if water supplies are to be safeguarded and if the quality of water in rivers and estuaries is to be improved, or even maintained." 12

To deal with the conflict between abstractions and discharges the Government concluded that the time had come to:

"... bring together, under all-purpose management structures, all aspects of the hydrological cycle, literally from the source to the tap" (DoE, Circular 92/71, Memorandum, para. 18).

The proposals would thus be seen as developing the principles of the 1963 Act and applying them to the whole of the water cycle, replacing the existing wide range of authorities (ibid., paras. 18-19). 13 The main role of the new bodies was to be the supply of water and the reclamation or disposal of waste water, so that statutory obligations to provide water to meet "legitimate needs" would be "preserved and consolidated" (ibid., para. 25).

B. The Need For Extended Pollution Control Powers

The above has given a brief impression of the developments that led first, to an understanding of the problems facing water management after the Second World War, and second, the proposals for the WAs as multi-purpose agencies based on geographical, rather than political, boundaries. The awareness of the importance of water quality, and hence the control of pollution, is significant, and is reflected in the original intention that the new WAs would be equipped with wider powers
to control pollution. However, because of the desire to ensure that the
WAs began operations on the same day as the new arrangements for health
and local government (1 April 1974), the pollution control proposals
were deferred with the intention of enacting them in subsequent
legislation (DoE, Circular 92/71, para. 56).

1. The History of Pollution Control Administration

By way of introduction to pollution control administration, it is useful
to be aware of the background to it prior to the 1970s. Although
legislation on water pollution actually dates back to 1876 (Rivers
Pollution Prevention Act), the 1948 River Boards Act has been described
as a "landmark" for providing, for the first time, unified control
throughout England and Wales for the functions of land drainage,
fisheries and river pollution control (Sayers, 1982, p. 65), and by
introducing boundaries based on river "catchments" (but not "basins").

The introduction of powers to control pollution was achieved on a phased
basis, with the Rivers (Prevention of Pollution) Act 1951 (which largely
repealed the 1876 Act) giving the river boards their main powers
(Sayers, 1982, pp. 65-6). This was followed by the Clean Rivers
(Estuaries and Tidal Waters) Act 1960, and the Rivers (Prevention of
Pollution) Act 1961. The combined effect of these three Acts (which,
collectively, were known as the Rivers (Prevention of Pollution) Acts
1951-61) was that virtually all discharges to inland waters required a
"consent" from the river boards, but only those to tidal waters begun
after 1961 (unless there had been a Ministerial "Tidal Waters Order").
These acts provided the basis for water pollution regulation until the
implementation of COPA II in the mid 1980s.
2. Identifying the Need for Action

In a similar way to the 1973 Act, a number of independent reports, including again Jeger (MHLG, 1970), were influential. The crucial issue was indicated to be the need for control over all discharges to all types of water, especially tidal waters (MHLG, 1970, paras. 202, 264). The main responses of the Heath Government to these reports were provided in (DoE) circulars 118/72 (containing the response to the Royal Commission Third Report) and 10/72, where the Government stated that it "agree[d] widely" with the Jeger Working Party on its specific proposals and had the same objectives (Appendix to 10/72). In particular, the relevant Ministers recognised that the maintenance of water quality "should be an essential component in the national strategy for the management of water resources", and they further agreed with the need for the extension of control to tidal waters and for greater protection of the seas (ibid.).

Parliamentary Progress. Following the above circulars, in Session 1973/4, the Conservative Government presented to Parliament the Protection of the Environment Bill which contained a series of detailed provisions to extend water pollution control powers for the WAs (which by then were already operating in "shadow" form). Having completed Committee Stage in the Lords, the Bill was lost with the defeat of the Heath Government, but a substantially similar Bill, under the title "Control of Pollution", was introduced by the new Administration, and because of the detailed scrutiny which the original Bill had received, its successor was enacted in less than six months, achieving Royal Assent in July 1974.

There are two aspects of the final legislation which can be noted.
First, unlike the Environmental Protection Bill presented to Parliament in December 1989, the Act did not provide for an "integrated" approach to pollution control - each of the four parts provided very different regimes relating to the different environmental media. Second, one of the most contentious issues in Parliament proved to be the actual scope of the legislation - with Labour, when in Opposition, arguing that the Bill did not seek to protect the whole environment, merely limited parts of it. This was the rationale behind the change of name of the Bill (for instance, Lord Shepherd, Hansard, vol. 351, col. 373; 7 May 1974). The two Parties were, however, largely in agreement over the substance of the would-be Act, which was described (for example) by Denis Howell as a

"... Bill of absolute necessity if we are to demonstrate to the country that the whole House takes as seriously as the country increasingly wishes the control and protection of the environment" (Hansard, HC, vol. 875, col. 167; 17 June 1974).

Members were also clear on the importance of the provisions in relation to water. While the details of the legislation will be analysed in Part III of the thesis, as will be seen below the key issue, following Royal Assent, became the implementation of the provisions relating to water, a process subject to Ministerial edict despite the warnings of the Royal Commission (Cmd. 5054, 1972, para. 27).
II. THE CONSTITUTION OF THE WAs

Having established the events which influenced the developments in water management from 1945, the next stage is to consider the opportunities for public participation which were provided in relation to the WAs as "corporate entities", and the reasons behind the provision of such opportunities. Discussion of this revolves around the central issue of the constitution of the WAs, and in particular, the extent to which they were to reflect or include local government interests, given the historical role of local government, indicated above. It will be suggested that the real reason behind the provisions is that they were concessions to local government, and that the choice of structure of the WAs was to satisfy operational criteria - primacy was given to the "water professionals" (the engineers), and thus, the WAs were instilled, by the Government, with an ideology of "expertise", potentially the converse of meaningful public participation. Account must also be taken of developments since 1974, in particular in the form of changes to the WAs' constitution in 1983, which, it will be suggested, transformed the ideology towards one which has been termed that of "business principles" or the ethos of the "balance sheet" (Saunders, 1984, p. 719).

Support for this analysis has been provided, notably by Jordan et al, and to some extent by Saunders (the modified version of his theory will be discussed further below). They have argued that the WAs, as created under the 1973 Act, were a clear example of "managerialist" or "technocratic" organisations. The strength of their argument is illustrated by the view that

"The 1973 Act implies a belief in planning, a preference for efficiency rather than participation: it presents a system designed to meet technical rather than political criteria"
and which attempts to solve conflict by intra-organisational methods" (Jordan et al, p. 318, and see Saunders, 1983, p. 33).

The implications for public participation of this argument, if the WAs were truly managerialist, are made clear by Saunders, who has identified the "conflict" that thereby arises between the "experts" and those who wish to participate, most notably the local government members of the WAs. Such an ideology is

"... antithetical to participation in policy-making by outsiders ... The professionals, in short, know best and they view with distaste any attempt to cloud purely technical issues with unwarranted political opinions" (Saunders, 1983, pp. 34-5).

Further, Parker and Penning-Roswell have stated that "management by experts necessarily implies limited scope for local participation and democracy" (in Saunders, 1983, p. 35).

However, it can be noted that the adoption of the managerialist approach for the WAs had not been inevitable - the choice had been between that and a system of (solely) local government representation, but two key influences shaped the final choice. First, Jack Beddoe, referred to earlier, whose acceptance of the managerialist approach was "as sudden as it was total" (Jordan et al, p. 319). According to Saunders (1983, p. 29) this acceptance was merely part of the managerialist "fashion" of the time. The second influence was the model adopted for the river authorities under the 1963 Act, because they demonstrated the preference
for some degree of multi-functionalism and managerialism, rather than local government control.21

Saunders (1983), in his initial working paper relating to the "regional state", supported the above analysis. However, in a later work, relating specifically to the WAs post 1983, for which he carried out detailed empirical research, he modified his arguments to suggest that it was not so much the "water professionals" who were the key players in providing the managerialist ethos, but the chairmen of the authorities, because there was a new emphasis on financial control of the WAs, and the idea of "economic and efficient businesses". This was again to the potential, if not actual, detriment of public participation (1984, pp. 6-7). Given these important ideas, it is intended to review the arrangements for the constitution of the WAs, initially under the Water Act 1973, and then under the Water Act 1983.

A. Under The Water Act 1973

1. The Decision-Making Process Leading to the Act

Following Beddoe's symposium paper (in 1969, supra.), the review by the Ministry was undertaken by a working party, which concluded in favour of unified, rather than single purpose, bodies, and more significantly, preferred a "strong technological" element instead of local government, on the basis that water treatment and supply were matters for technology, with little room for "local democracy" (Jordan et al, p. 325). Following presentation of this report to the Minister, Lord Greenwood, in June 1969, the CAWC was re-called, but Jordan et al have argued (pp. 326-7) that this was no more than a process of legitimation, and that the Ministry sought to ensure the "right result". The latter
was assisted by Ministry officials offering a detailed report, which favoured the technological approach, as the basis for the Committee's deliberations. While the Committee split 14-13 in favour of this approach, ultimately it did no more than to present the options to the (by then) new Minister, Peter Walker, who, according to Jordan et al (pp. 328-9), had by that time already gained Cabinet approval for the managerial approach.

a. The Granting of Concessions to Local Government Interests

The above discussion would appear to suggest that progress towards publication, and then enactment of a Bill designed to reduce local government involvement in water management almost to nil, had been an easy process. This was not, however, the case. During the three years prior to the Parliamentary stages, there had been considerable bargaining with local government interests - the result of which was a number of concessions relating to the extent of local government representation on the WAs' Boards, and the role of the local authorities in the provision of sewerage services.

Okun (1977) has detailed the way this process of bargaining developed, including a "boycott", and a deputation to the Minister (in May 1972). It is important here to note the type of proposals being offered by the Government and sought by the local authorities. The consultation paper relating to WA membership proposed the idea of "consultative committees", which would seem to suggest something more akin to direct public participation (albeit on a limited scale) than a system based purely on the role of local authority representatives on the WAs' Boards - participatory rather than representative democracy. However, the local authority groupings made it clear that they did not want such committees
(Okun, p. 76), demanding their own representation. Ultimately, the Government conceded, granting the local authorities the majority of seats on the WA Boards, and allowing them to continue their responsibilities for sewerage services, at least as agents of the WAs (Saunders, 1983, p. 31). It can be argued, therefore, that for their own benefit, both sides were willing to sacrifice a system offering, potentially, a more participatory approach, for one based solely on an (in)directly elected base of local government representation. Support for this view can also be found from the comments of Jordan et al, noting the reluctance of the local authority members to lose their previously key roles in water management - a reluctance sharpened by the earlier losses of the gas, electricity, and health functions - water was effectively the "final straw" (Jordan et al, p. 324).

The reasons for the Government's willingness to concede are also worthy of note. Significant among these were the pressures of Parliamentary time if water was to be re-organised simultaneously with health and local government, and it would seem that the Government also feared a backbench "revolt" (Saunders, 1983, p. 31). The protection of the whole set of proposals was, therefore, at the heart of the Government's "generosity". A further reason may simply be that the concessions did little to dent the managerial ethos - to cite Jordan et al, after the concessions the structure "... remained essentially managerial and a dramatic re-organisation of the water industry" (p. 332).

Further the concessions had
"... all weakened the overall strategic control enjoyed by the RWAs and the water professionals within them. Yet despite these concessions, the new water authorities still had extensive powers and responsibility, most of which had been won at the expense of local government" (Saunders, 1983, p. 32; emphasis added).

b. The Government's Intended Role for Local Authority Members

Given that the concessions were granted, it would seem important to consider the actual role that the Government intended the local authority members to play on the VA Boards. It is submitted that they were seen primarily as being able to generate a "smooth" working relationship between the two sets of bodies (especially in respect of the sewerage function), rather than as a genuine mechanism for providing any public input into policy-making.23

c. Public Consultation

Given the extensive interest group dealing which preceded the Act, which seems to bear out Gunningham's thesis (1974), it is important to seek to identify to what extent the public were able to contribute to the shaping of these new and significant organisations. As part of the "principled approach", it is argued that meaningful participation is as necessary at the stage of creating organisations, such as the WAs, as at any other. However, despite the 17 consultation papers already referred to, it would seem that they too offered little more than legitimation. Saunders has alleged that even before they were published, the choice of managerialist WAs had virtually been decided, and the importance of the
views of the public, especially in relation to the local government issue, were insignificant (1983, p. 30). According to Okun (1977, p. 75), the outlook of the Government, following the consultation papers, "seemed to have hardened".

2. The Enactment of the Bill

Interestingly, Jordan et al excluded consideration of the Parliamentary stages of the 1973 Bill on the basis that the

"important discussion, negotiations, concessions were made directly between groups and the DoE. Indeed in the case of the local government aspects, the Members of Parliament presenting the local government case were kept out of the negotiations between the Government and the associations - and were left in ignorance to put down amendments which were completely undermined by agreements already privately arranged between the associations and the Government." (Jordan et al, p. 332).

However, notice will be taken here, if only because of the argument that the feared backbench "revolt" was a factor in the process. Inevitably, in Parliament the key issues were the WAs' constitution, and the consultative committees. In the case of the former, the local authorities sought the right (rather than the SoS) to appoint the chairman. Interestingly, having agreed to delete the provision for the consultative committees, the Government then agreed to give the WAs the power to create advisory committees consisting of anyone that the WA deemed appropriate, but it was anticipated that elected members would, again, play a significant role (DoE, Circular 100/73, para. 50).
Importantly, it was also agreed that the Press and the public would have access to the meetings of the WAs.

To conclude with regard to the Bill, the assessment of Okun, from a US standpoint, is interesting. Okun is particularly critical of the lack of scrutiny which the Bill, in fact, received, especially the way that the Government treated its promise, in relation to local authority representatives, as a "blanket defence" to any other more significant changes (pp. 80-2, 99). It could, therefore, be argued that there was a "conspiracy" to allow such an approach without the realisation that, if the arguments of Jordan, Saunders and others are valid, the WAs would still be managerialist-based, and hence, a true role for the public, leading to responsive decision-making, would not be ensured.

B. Under The Water Act 1983

The change of Government in February 1974 from Conservative to Labour, was potentially significant for the WAs, as it provided an early opportunity to make drastic changes to a structure only in its infancy. However, Labour did not fundamentally oppose the objectives of the re-organisation, and so proposed a review, only after allowing the WAs two years to settle in. The review resulted in a "Green" Paper in 1976, and a White Paper a year later, but the only change which was actually introduced (by statutory order) was a minor increase in local government representation. Notably, there was a change of heart on the appointment of the WAs' chairmen - Labour now decided that this should remain the prerogative of the SoS. More wide reaching proposals, including the creation of a "national water authority", were lost on the fall of the Labour Government in May 1979.
As is well known, the period of the Wilson/Callaghan Government from 1974-79, was dogged by a severe financial crisis, and hence, the new WAs were subjected to major expenditure cuts virtually from day one. This crisis overshadowed, if not replaced, the one which the WAs had been created to deal with (supra), especially as it was soon realised that pre 1973 predictions for water demand had been pessimistic.\textsuperscript{29} With the Thatcher Administration came a sharper emphasis on the control of public expenditure - "economy and efficiency" became the key words - and this was to be reflected in the case of the WAs through a series of measures imposing tight financial control (discussed in the next chapter), and more significantly, a re-structuring of the constitution of the WAs to replace the local government representatives with (solely) ministerial appointees. The latter was achieved through the Water Act 1983. The rationale behind it will be briefly reviewed here, and it will be suggested, supporting Saunders, that the Act introduced a more "explicit" version of the managerial ethos - one which put finance first - what will be termed the "business principles ethos" - with the chairmen becoming the most important people in the organisations.

The main changes that the Act effected were to remove the right of the local authorities to appoint members to the WAs, and the Press and public were no longer to be admitted to the Board meetings as of right. But "compensation" for these changes was provided in the requirements for the WAs to create committees for the representation of consumers interests (see chapter four). It will be seen from the following, that in the build-up to the Act, there were two key issues - the role of the local authority representatives on the WA Boards, and the need for the WAs to become more "efficient".
1. The Background to the Act

There were essentially three events which influenced the new Government in its decision to re-constitute the WAs. On taking Office it had already indicated that it would adopt the same approach to the WAs' finances as for the nationalised industries - an approach espoused by the predecessor Government in a White Paper in 1978. The three events were - a report by the KMC into Severn Trent WA (and its two associated water supply companies), the changes in the structure of the Welsh Authority made by the SoS for Wales in 1982, and the Department of Trade consultation paper relating to consumer representation in the nationalised industries. Combined, these three events led to the

"... more general but quite fundamental question of the extent to which, seven years after reorganisation, local authorities need to have a continuing and close involvement in the management of water services... [t]aken together the Government believe that these factors produce a momentum for change in the membership arrangements of RWAs" (DoE, 1982a, para. 2).

As a result of this belief a number of options for restructuring were outlined (DoE, 1982a).

Changes to the structure of the Welsh Authority were implemented by secondary legislation on 1 April 1982 (SI 1981/1883), following a process of consultation inspired by public concern over the "accountability" of the Authority, given "dramatic" rises in water charges. The importance of the changes was in providing a model which included a Board of 13 members (all ministerial appointees), and five
"local consumer advisory committees", membership of which included members of the general public (DoE, 1982a, para. 17).

The importance of the MMC report, published in June 1981, was that it supported a reduction in the size of the Severn Trent WA Board, and indicated that "widespread dissatisfaction" had been expressed as to the effectiveness of the role of local authority representatives. The Report concluded that membership of 48:

"... impose[s] considerable costs on the Authority - both directly, because of the expenditure arising from the provision of staff to support the committee structure, and more important, indirectly because of the diversion of senior management effort required to operate the system" (HC 339, 1980/1, paras. 11.154-5).

The Commission therefore recommended a nationalised industry-style Board of about 12 members, not based on local authority representation (DoE 82, paras. 15-6).

The Department of Trade paper followed a six year debate on consumer representation in the nationalised industries, which had also included the National Consumer Council pointing out that, unlike the nationalised industries, the WAs had no provision for consumer councils. The Department of Trade, in response, proposed to strengthen the role of the consultative committees, including the right to discuss proposals and policies, and greater rights of access to information.
2. The Government Response

By 1982 the level of water charges was once more a central public issue. The response of the Government was to emphasise the importance of "efficiency", for which it considered the local authority members of the WAs to be anachronistic. This is illustrated by the following comment:

"It was in the public interest that the knowledge and experience of their predecessors should be available to the RWAs by providing that there should be a dual system for appointing members... Arguably the RWAs' transitional period is now at an end and the present arrangements governing the size and composition of their membership are no longer suitable for the effective, efficient and economic management of these major public utilities" (DoE, 1982a, para. 11; emphasis added).

At the same time, questions were being raised about the actual "success" of the local authority members in representing the interests of the public on the WAs (see para. 13) - a role, it has already been argued, they were never genuinely intended to have had.34

Finally, the Government concluded that the pre 1983 WAs were

"... much bigger than is needed for the management of essentially executive organisations" (DoE, 1982a, para. 14; emphasis added).

Of the five options set out in the consultation paper,35 the Government preferred a structure of Boards of 9-15 "executive" members, but coupled
3. Enactment of the Bill

In arguing that the Bill was designed to make explicit the "business principles ethos", the parliamentary deliberations of the Bill are illuminating; there was no attempt to hide the fact that "business principles" were to be the ruling criteria of the new WAs. For instance, according to Lord Bellwin

"The overall purpose of this Bill is to improve efficiency and cost-effectiveness. That is the hallmark of the present Administration. We believe this is the area which can bring the most benefit to the public" (Hansard, HL, vol. 438, col. 998; 7 February 1983).

While Tom King stated that improved accountability would be achieved through

"... better management of resources and better performance by authorities ..." (Hansard, HC, vol. 32, col 153; 16 November 1982).

Support for the argument that local authority members had not originally been intended to provide a participatory role, but had been appointed as a concession, can also be found in the Debates. For instance, Eldon Griffiths indicated that it had been felt "inappropriate" to sever the local authority link in one go, but now local authority members had "worn out their welcome" (Hansard, HC, vol. 32, col. 173; 16 November 1982).
1982). It should be noted that a potentially key aspect of the Act was to be in the form of the divisional CCCs (which would include moving the local authority members "downwards" from the WA Boards). It will be contended that, while these appear to offer a more participatory approach, albeit in an advisory capacity, they were clearly to be required to operate within the business principles ethos - WAs' first priorities were clearly to be finance and not public participation (further Saunders, 1983, p. 36).

III. POLLUTIOI COITROL: THE NECESSARY "POLITICAL WILL"?

In considering the pollution control function of the WAs, it is clearly vital to do so in the context of the WAs as a whole. Thus, it has been argued that the WAs, when created in 1973, were primarily structured on the basis of the "managerialist ethos", and that in 1983 this was modified so that the business principles of "economy and efficiency" became the overriding directive. Thus, it could be argued that public participation would not be allowed to be a key priority for the WAs, and hence, they would not be able to possess the necessary political will for meaningful participation. In the case of pollution control, as has already been noted, important provisions laying down opportunities for public participation were provided in COPA II, enacted in July 1974. However, support for the above argument can be found in the way that the WAs sought, and Government (both Labour and then Conservative) willingly acceded to, a delaying of the implementation of the provisions, primarily because of the cost implications for the WAs. Neither government nor the WAs were, therefore, concerned that participation was being placed, at least, a clear second to financial requirements.
In this section it is intended to review these arguments, setting out the perceived reasons why the implementation of COPA II was delayed for, effectively, 11 years, and why it was finally implemented. Before this, however, it is important to take account of the original reasons for including the rights within the legislation, especially as it has been argued that the legislation was primarily designed to meet the expected crisis relating to the demand for water, whereby river water quality would be a key factor in overcoming that crisis.

Throughout the following section it is also crucial to note the time factors which were involved, and the nature of the WAs in relation to the provisions. When enacted, it was expected that the new provisions would be available at a time when the WAs were, at least symbolically, dominated by local authority appointees, and meeting in public. However, by the time that the provisions were brought into force, the restructuring, under the 1983 Act, had taken place, and the WAs were comprised of ministerial appointees, and meeting behind closed doors (with the exception of the Welsh Authority). This is an incongruity which does not seem to have perplexed successive Governments.

A final point with regard to the pollution control function, and the likely presence of political will, is that the idea of "expertise" or "technocracy" could be expected to be more clearly present in an arm of the organisation where "expertise" was an important factor.

A. The Rationale of the Provisions for Public Participation

In discussing the background to the extended pollution control provisions (supra.), a number of reports were referred to as the key sources for inspiring the changes. These reports were also influential
in persuading government to legislate in respect of public participation. The most significant influences would appear to have been the Royal Commission on Environmental Pollution and the Jeger report on sewage disposal.

Bearing in mind that the Royal Commission had been appointed by the Conservative (Heath) Government, it can be expected that the latter would give due regard to the conclusions of the former. One of the notable themes of the early reports was the need for "open government" in pollution control, however, the latter was perceived to be dominated by "commercial confidentiality". This issue was identified in the First Report (Cmnd. 4585, 1971), and then formed the basis of the Second Report, which was termed, by the Commission, a "consultative document" (Cmnd. 4894, 1972, para. 2), and addressed the question of whether:

"information about industrial effluents and wastes (should) remain (as it is at present) secret?" (ibid.)

The Second Report noted the extent of secrecy, and "doubted", following significant evidence from many industries, that the reasons for it were justified in the majority of cases (paras. 3-6). The Commission also rejected the existing position on the basis that

"The waters into which the pollutants are discharged are public property: interest in the nature and quantity of these pollutants is entirely justified. Moreover, since many industries are going to great trouble and expense to abate pollution, they do themselves a disservice by needless secrecy. We believe that public confidence in the concern these industries have for the environment would be
strengthened if this needless cloak of secrecy were withdrawn" (para. 7).

The Commission, therefore, recommended legislation to bring about greater "openness" (para. 8). The main theme of the Jeger report was the need for all applications for discharge consents to be advertised, reversing the position at that time, so that all users of rivers would be informed. (MHLG, 1970, para. 164, and see the Government's response in (DoE) Circular 10/72).

The main consultation process for COPA was carried out as part of the process for the provisions that became the Water Act 1973, when the COPA provisions were severed because of time pressures (supra.). The last of the 17 consultation papers took the form of a series of six papers dealing with pollution control, one of which set out the proposals in relation to public participation, largely taking on board the above recommendations.40

1. Reasons Given in Parliament

Given that COPA had "two parents" (ibid.), the statements in Parliament, regarding the intentions behind the provisions, can be expected to be informative. A sample of these will be noted. It would seem that despite the "managerialist ethos" and the comments set out below, the general theme throughout was the desire for an informed and involved public. To quote Anthony Crossland, SoS for the Environment, introducing the (second) Bill for Second Reading in the Commons in June 1974
"the public has the right to know and be made fully aware of
the state of the environment and the sources of pollution.
Obviously we must live with some degree of pollution. A
perfectly clean world would be a dead world. But the public
must participate fully and actively in decisions about how
much pollution should or should not be tolerated. These are
not matters to be settled behind closed doors" (Hansard, HC,
vol. 875, cols. 95-6; 17 June 1974; emphasis added).

and with reference to the views of the Royal Commission, he stated:

"Our overriding objective surely must be a freer and fuller
flow of information to the public, and the requirements of
the Bill will go a long way to achieve this" (ibid., col.
96).

While the above statements appear to portray an image of dedication to
public participation, this must be tempered by the conflicting
impressions given at different stages of the enactment of COPA. In
particular, both Governments sought to suggest that the WAs could be
"trusted" by the public, and, therefore, only limited safeguards on
decision-making were required; an approach, it is suggested, which
conflicts with the above rhetoric. Two themes which clearly indicate
this conflict are that the SoS would be a major "ally" for the public,
and that the WAs themselves would both act "reasonably" and had the
"expertise" to protect river quality. It was pointed out that the SoS
was under a duty (under the Water Act 1973, s. 1) to "maintain and
improve" river quality, and this was used to reject calls for the public
to have a right of appeal against the granting of a consent (given that
dischargers would have an appeal against refusal). According to Lord
Aberdare, the granting of a consent was automatically in conflict with
the above duty, and hence, the public had "... an assured ally and a minimum safeguard" (Hansard, HL, vol. 348, col. 1687; 24 January 1974).

In relation to the payment of expenses to the public at local inquiries, such expenses would not be granted because the:

"water authority are there to consider and put the case for maintaining and restoring the wholesomeness of the water for which they are responsible. That is their statutory duty, and they have the technical expertise necessary to help in such cases" (Lord Aberdare, Hansard, HL, vol. 349, col. 121; 28 January 1974).

A common theme of the speeches of Viscount Dilhorne was that the (Conservative) Government was asking the Opposition to accept that

"[The] WA will always know best, far better than anyone else concerned with the river" (Hansard, HL, vol. 349, col. 142; 28 January 1974).

Finally, the role of the local authority members, who by then formed the majority of each WA's membership, raised an interesting issue. All Parties seemed to regard the members' role as negative, again suggesting that they had been granted their place as a "concession", and not to provide a means for public involvement in WA decision-making. In particular, members of both Houses were concerned that local authorities' past records in relation to both sewage disposal, and through the river authorities, pollution control, suggested that little would change now. The Conservative Government (for instance) was keen to dispel these fears by drawing distinctions between the past arrangements and the new WAs, notably suggesting that the local
authority members of the WAs would only make a limited impact, and hence, there was no reason to believe that the WAs would not act "responsibly".43

Thus, it is contended that, despite the superficial rhetoric about the importance of public participation, there was enough in the Parliamentary Debates to suggest that both Governments did not believe that the public needed a significantly active role, because the WAs could be "trusted", and hence, this presented little challenge to the managerialist claims.

2. The Provisions for Public Participation as a Concession

On top of the influences noted above, it can be suggested that the provisions were also given by government as a concession to industry, because of the latter's concern that the WAs would be both polluters and regulators, a position unacceptable if it was to be carried out in private. Frankel has stated that this dual role "presented a serious problem of accountability" which was

"... unacceptable, not only to the public, but also to industry which suspected that industrial dischargers might be unfairly subjected to much stricter enforcement than the authorities' own, possibly more polluting, sewage works. The dilemma was solved by introducing two safeguards" (Frankel, 1982, pp. 110-1).44

Such an argument again indicates support for the "conflict theory" (Gunningham, 1974), in a similar way to the power of appointment of local authority members to the WA Boards before 1983, discussed above.
B. Reasons for the Initial Non-Implementation of COPA II

Having argued that the provisions for public participation were provided to the already managerialist WAs, as much as a concession to industry as in a belief of the importance of anything akin to meaningful participation, it will be further argued that events following Royal Assent in July 1974, give the clearest indication that public participation was not the highest priority on the government agenda, nor did government intend that it should be such for the WAs. Again this issue must be seen in the context of the wider circumstances of 1974 onwards, when the original fears over a crisis relating to the demand for water were overshadowed, if not replaced, by the "oil crisis" and the consequences of that for the national economy. The control of public expenditure became the one significant guide for all government policy.

In this final section, it is intended to explain the way in which both Labour and then the Conservative Governments, refused to implement all but two sections of COPA II,45 and the articulated and hidden reasons for this. Finally, account will be taken of the reasons why implementation finally did take place.46 Only one reason was actually articulated by government, however, a number of others are discernible.47

1. Public Expenditure

Following enactment, there seemed to be a sudden realisation that the new provisions would involve expenditure for the WAs, both in administering the new provisions49 and in bringing their sewage works into compliance, given the fear of private prosecutions under the Act (further, post). Perhaps the clearest indicator of this reason is
provided by the National Water Council (which, significantly, included the ten WA chairmen).

"... formal implementation would (and has already in prospect) involve additional cost and staff to meet the requirements and would create a climate of expectation of increased capital expenditure in pollution control. It was on the grounds of these extra commitments that implementation was originally deferred by the Government. The policies of the present Government on public spending have led the Council to suggest to Ministers that implementation could with advantage be further postponed" (NWC, 1979, p. 20; emphasis added).

In 1979 the "serious" attempts then being made to implement COPA II (discussed in chapters five and six) were lost with the fall of the Callaghan Government, and the change in Administration put the process back further, although the new Government announced that it was "examining the issues involved" (Mr Fox, Parliamentary Under-Secretary of State (Environment), Hansard, HC, vol. 975, col. 683, 12 December 1979). The arguments about public expenditure can, however, be put into context by the later comments of former senior DoE officers, who have argued that because COPA II was no more than a "framework Act", implementation per se did not involve public expenditure; only the setting of standards by the WAs could do that.49

2. The Administrative Workload

A partially articulated reason seems to have been based on three elements. First, those involved were not adequately prepared for
legislation claimed to have been the most researched; a problem which did not ease over time.

"we have explained ... that no timetable can be decided until we have better information about the expenditure implications. These are being examined .... " (Written Answer, Hansard, HC, vol. 981, col. 209; 19 March 1980).

Related to this is the suggestion that "too many" DoE staff were devoted to housing, rather than water functions (Cmnd. 9149, 1984, pp. 61-2), and that implementation was expected to lead to a significant increase in "paper-work" for the WAs, relating both to the new controls and the participation provisions. In the mid 1970s, WA staff had actually been increased in readiness for COPA, but this position was reversed because of public expenditure cuts. Thus David Walker of the NWC, is quoted as saying that "we have to proceed so as not to create 10 years work for staff that doesn't exist" (cited by Caulfield, 1982, p. 211).51

3. The Industry "Lobby"

Industry clearly recognised that the new pollution controls could involve extra expenditure and, therefore, sought to resist the new provisions (as a complete package), as did the WAs. According to Pearce

"... thanks to pressure from industrialists, [COPA] has still not come into force. And, when it does, its teeth will have been drawn entirely. Firms such as Unilever, ICI and Rio Tinto Zinc all have cause to cheer Whitehall's generosity in setting aside the will of Parliament" (Pearce, 1984, p. 10).52
4. The "Fear" of Private Prosecutions

One case where the public participation provisions (specifically) were blatantly resisted was the power which COPA II would provide for any member of the public to bring a prosecution for breach of a discharge consent. The significance of this can be seen in the context of the number of sewage works which failed their discharge consents in 1970—3000 out of 5000 (MHLG, 1970, para. 50) — and this was a key concern, both to the WAs and industry. For instance, John Buckenham, when Secretary of the NWC, is quoted as saying that the water industry had requested an initial three year delay to "put its house in order" (Anon., 1975, p. 1315). Concerns regarding the effects of prosecutions on the WAs' planning were also expressed (Oldfield, 1984, p. 11), but it seems to have been assumed that the public were anxiously waiting, with "bottomless purses", to prosecute every infringement, however minor (c/f Price, 1981, p. 13).

In conclusion, therefore, it is submitted that a combination of the above reasons conspired to achieve the initial non-implementation of COPA II, both in respect of the new control provisions, and those relating to public involvement. It can be argued that the Executive did not possess the requisite political will, and clearly required the WAs to put financial considerations first. What is equally disconcerting is the complicity of the WAs (despite, between 1974–83, being comprised of a majority of (in)-directly elected members), suggesting the presence of the "business principles ethos" and thereby threatening meaningful participation. Whether this was borne out in practice will be one of the issues for the remainder of the thesis.
C. Reasons for the Implementation of COPA II

When implementation finally took place, commencing in 1982, significantly, it was achieved in phases thus suggesting, first, a desire to "soften the blow", and, second, that there was no sudden change in the governing ethos. This is further reinforced by the reasons for implementation which, it will be argued, were based on the force of "external pressures", rather than the free choice of government and industry.

The pervading reason for implementation was the need for Britain to meet its legal obligations under a series of EC directives, the combined effects of which were that discharges, and especially those to estuarine and coastal waters, needed to be consented by the "competent authority" (the WAs). In many cases, however, the WAs did not have the power to require consent under pre-COPA legislation. Two directives were of particular concern, viz. Directive 76/160/EC Concerning the Quality of Bathing Water (OJ L31, 5 February 1976) and Directive 78/176/EC on Waste from the Titanium Dioxide Industry (OJ L54, 25 February 1978). The clearest statement of the effects of EC requirements, was expressed by the Royal Commission in its Tenth report:

"[this] is only one example of 'optional' legislation where ministers' unfettered discretion over commencement dates can effectively frustrate Parliament's intentions. ... the handling of this Act reflects little credit on successive administrations, and ... it is only pressure from the European Community that has finally led to a partial implementation of Part II of the Act" (Cmnd. 9149, 1984, p. 61; emphasis added).
This argument is reinforced by the way in which implementation was achieved (see Burton, 1987a) in particular, that control was only immediately introduced (on 31 January 1985) for those discharges which required consent to meet EC requirements (with the special exception of the Mersey, explained ibid.). Those discharges exempted (by the Control of Pollution (Exemption of Certain Discharges from Control) Order 1983, SI 1983/1182) were only being brought into (actual) control over a period of five years starting from 15 October 1987 (Control of Pollution (Exemption of Certain Discharges from Control) (Variation) Order 1986, SI 1986/1623).  

While it can be argued that the above only explains the implementation of the control provisions, given the earlier arguments about the concessions to industry in respect of control not being tolerated in secret, it was inevitable that all the provisions would be implemented together. However, as previously detailed (Burton, 1987a), the process of implementation was such that the public involvement provisions were further by-passed, increasing support for the argument that there was no commitment on the part of the Executive to public participation, an argument developed further in chapter six.
NOTES:

1 This is also necessary because the provisions under COPA were originally intended to form part of the legislation through which the WAs were created (post).

2 See Lewis (1985, p. 217), and Baldwin and McCrudden (1987, p. 327 et seq.).

3 Especially in relation to water for fire-fighting (Okun, 1977, p. 18).

4 Para. 60. Irrigation was a particular problem because the water was not returned to the river after use (para. 21).

5 (Para. 10). According to Okun (p. 19), in 1945 there had been 1166 water undertakers. For a clear indication of the deficiencies, see the comments of the XHLG, cited at para. 13 of the (1962) CAVC report.

6 Para. 123, and see further paras. 115-6. This was further recognised by the Water Resources Board (set up under the 1963 Act) which described water supply and sewage disposal as "interrelated and inseparable" (7th Annual Report, 1970, in Okun, p. 25).

7 According to Jordan et al (p. 322) this was indicated by the paper presented by Beddoe at the IPHE/IVES/IWPC joint-symposium in March 1969, just one month after the Ministry had announced a review of the 1963 Act. It will be seen below that, in fact, the question of personalities had a far greater effect on the type of structures introduced, than the need for change itself.


9 While there were still some 1300 bodies responsible for sewage disposal, which the report termed "excessive fragmentation" (para. 130), the main conflict of interest was deemed to be abstractions...
from, and discharges to, rivers (para. 145). Further problems were also apparent; for instance, Jordan et al (p. 318) noted the absence of any specific responsibility for water reclamation, and hence, the absence of co-ordination between water supply and sewage disposal bodies. Similarly, there was an absence of a national authority "charged with planning and co-ordinating the work of 1400 sewage treatment authorities" (WRB, 7th Annual Report, 1970, in Okun p. 25). For the MHLG's acceptance of these problems, see Jordan et al, p. 322.

Further MHLG, 1970, paras. 415, 417. This was also an approach supported by the Royal Commission on Environmental Pollution, in its First Report (Cmnd. 4585, 1971, para. 94).

These are summarised in Okun (p. 51), an important work on the Water Act 1973.

DoE, Circular 92/71, para. 10, and see the comments of Beddoe in an interview with Okun, 1977, p. 41.

Subject to the comment of Jordan, supra.

The Conservative Government also published a general White Paper on the Environment in 1970 (Cmnd. 4373), which identified perceived weaknesses of the pollution control framework.

Following a special investigation by the Royal Commission (1971, First Report, Cmnd. 4585, paras. 86, 93-4, and then the Third Report, Cmnd. 4894, 1972) regarding the pollution of industrialised estuaries, the Commission concluded (inter alia) "Because of the general but unjustified belief that estuaries disperse all that is put into them, they have received too little protection by Parliament against the wastes from industries attracted to estuaries by the double lure of a cheap sink and easy access to and from the sea" (Cmnd. 4894, 1972, para. 11; emphasis added). Note that the report explained that the main reason for control historically being concentrated on non-tidal waters was because of the ability to (re)-
use such waters for water supply (para. 103). The Commission also identified the inadequacy of pollution law enforcement (Cmnd. 4585, 1971, para. 4, supported by CAWC (DoE, 1971, paras. 123-4), and MHLG, 1970, para. 147 et seq.).

The Bill also contained proposals in relation to waste on land and the control of air and noise pollution.

See for instance the comments of Baroness White in relation to a general duty to avoid pollution (Hansard, HL, vol. 347, col. 21; 27 November 1973) and the "charges" of Lord Chorley (ibid. col. 77).

See for instance Lord Chorley who thought that the provisions in relation to tidal waters were the most significant (Hansard, HL, vol. 347, col. 79; 27 November 1973).

With regard to such ideologies, the importance of the perceptions of agencies to the existence of procedural requirements has been noted. For instance, that agencies will see them as "a waste of time, inefficient and irrelevant" (Hawkins and Thomas, 1984, p. 11). Note can also be taken of a range of theories which have been developed to explain why public agencies are created outside the government department structure. As Baldwin and McCrudden (1987, p. 7) have indicated, there has rarely been only one reason, but in the case of the WAs, of central importance is the idea of the "expertise" of the staff who were to be recruited to the new bodies. Apart from this, the main reasons, it is suggested, relate to the perceived efficiency gains through "rationalisation", coupled with the ability for long-term planning in a (potentially) politically stable structure. For a more detailed account of the theories, see Lewis (1985, p. 205 et seq.), Baldwin and McCrudden (1987), Birkinshaw (1985, chapter 4), including as to "regulation", Richardson et al (1982, chapter 1) and Hawkins and Thomas (1984, chapter 1).

Further, p. 322 et seq., including the failings of local government management of water in the past. Beddoe was seen by many as the
architect of the final WA structure - in relation to the "House that Jack Built", see Kinnersley, 1988, p. 94 et seq.

21 In fact, similar issues had already been rehearsed by the Proudman Committee (CAWC, 1962) prior to the 1963 Act, when, significantly, the majority had favoured the "nationalised industry model" of small authorities of no more than 15 members, thus attaching "less importance to representation as such than to efficient and expeditious discharge of the wide range of functions involved" (paras. 107-8, emphasis added). For the (then) rejection of this, see the White Paper (Cmd. 1693, 1962, para. 16). A third influence was the existing models of gas and electricity (Jordan et al, p. 324).

22 DoE, Circular 92/71 (para. 43) indicates that the committees would have included membership from amenity and recreation groups, although this would have been purely in an advisory capacity, whereas the local authority representatives were to have (notional) control of the WA Boards. The local authority groups, however, considered that their presence on the Boards would obviate the need for such committees - they did not seem to want them as well (Okun, pp. 61-2).

23 See DoE Circular 100/73, and further, Baroness White, who saw the position of the local authority members as a "gimmick" or a piece of "bogus democracy", for the reasons already given (in Okun p. 97). Ironically, it was in relation to the representative role, that the Conservative Government of 1983 implied that the local authority members had "failed" - see post.

24 On the role of the first Chairman of the Royal Commission, in ensuring that the Bill was actually presented to Parliament, see Okun, pp. 77-8.

25 Regarding the dissatisfaction of the Opposition, and the fact there was only 13 days between publication of the Bill and the Commons Second Reading, see Okun p. 84.
Regarding the "blue orphans left on a red door-step", see Kinnersley, 1988, p. 106 et seq.


See Kinnersley, 1988, p. 109, including re the effects of the 1976 drought.

The Nationalised Industries, Cmnd. 7131, and DoE, 1982a, para. 9.

Severn Trent Water Authority, East Worcestershire Waterworks Company and South Staffordshire Waterworks Company - a Report on Water Services Supplied by the Authority and the Companies, HC 339, 1981.

Consumers' Interests and the Nationalised Industries - A Consultative Document, 1981; (followed by The Nationalised Industry Consumer Councils: A Strategy for Reform, 1982); these were in response to papers by Justice (The Citizen and the Public Agencies; Remedy Grievances, 1976) and the National Consumer Council (Consumers and the Nationalised Industries, 1976). For discussion of these papers see Lewis (1985), and Birkinshaw (1985b).


Interestingly, Saunders and others, have indicated that the local authority members had little chance of being successful. To quote Saunders: "In practice, the authorities operated ... as laws unto themselves, and in this, the water professionals in general, and the engineers in particular, ... achieved considerable control" (1983, p. 34); further pp. 34-6, Purdue, 1979, pp. 124-5, and see the debate during the Water Authorities (Public Accountability) Bill 1982,
(Session 1981/2, vol. 25, cols. 922-30; 15 June 1982). It should be noted that no attempt is being made to evaluate the Government's arguments.

For details of the responses to this paper, see the Oral Answer given by Tom King, Minister for Local Government and Environmental Services (Session 1981/2, vol. 22, cols. 260-1, 21 April 1982).

The key distinction between this and the similar option (no. 4) is crucial. The latter would have continued the local authorities' right to appoint members to the Boards, rather than merely to nominate (DoE, 1982a, para. 27).

Rather than through any concept of meaningful participation.

Given earlier arguments.

But by that time the CCCs were operational.

For the main responses, including the CBI, see Okun, 1977, pp. 73-4.

Lord Ashby pointed out the incongruities of the law, at that time, whereby the penalties for disclosing what was put into rivers were greater than for actually polluting (Hansard, HL, vol. 347, col. 36; 27 November 1973).

For instance, see Lord Molson, Hansard, HL, vol. 348, cols. 1688-9; 24 January 1974, and vol. 349, col. 139.

See Lord Aberdare, Hansard, HL, vol. 349, col. 142; 28 January 1974. Again note that by the time COPA was implemented the WAs were based only on ministerial appointees. In respect of the WAs and public participation, note also the cases where the respective Governments asserted that the WAs could be relied upon, and, therefore, did not require duties written into the Act; for instance, Hansard, HL, vol. 349, col. 136 et seq.

Which were the right of private prosecution and the public registers. Further Purdue, 1979, p. 132.

Ss. 43-4 relating to discharges to sewer were implemented in 1976. SI 1976/958.
In discussing the non-implementation, the wider implications of the role of Parliament should be noted - the ability of Ministers to override the "will of Parliament" at their own discretion (see further Pearce, 1984, p. 10 et seq.). Further, in terms of a "principled approach" to public participation, it can be noted that the general public had even less say in this decision.

It should be noted that there were some early indications of delay, but not of the kind that actually took place. See for instance, clause 24 (which became s. 32) which allowed for "transitional" control, and the comments of Lord Aberdare, Hansard, HL, vol. 348, cols. 1651-2; 24 January 1974; but c/f col. 1654.

Care needs to be taken in identifying whether the reasons related to the "control" of pollution provisions, or the public participation provisions, or both. In some cases the two were clearly interconnected, and it is noticeable that there was no consideration of bringing in the public participation without the control provisions.


According to Mrs Thatcher: "I cannot think of any Bill which I have seen introduced in the House which has been preceded by more investigation, research, discussion and consultation, than this Bill" (Hansard, HC, vol. 875, col. 106; 17 June 1974).

Further, see Tetlow, 1979, p. 183, Garnett, 1981, p. 175; Oldfield, 1984, p. 11, Matthews, 1985, p. 82, and Burton and Freestone, 1986, p. 253. A further problem, which came to light once implementation did take place, was that the WAs lacked full information about all the discharges in their area, and therefore needed to undertake potentially lengthy field work (Burton, 1987a, pp. 12-13 and Sayers, 1980, p. 151)

53 The process of affording dischargers "protection", by reviewing consents prior to implementation, will be discussed in chapter five.

54 Garnett has explained that these were negotiated by the British Government on the basis that COPA would be in force (1981, p. 175).

55 Further pp. 29-30.

56 See further, chapter six.
In chapter two it was suggested that the WAs were created, and then re-structured, in accordance with an ethos where managerialism, and ultimately "business principles" were the overriding priority, so that, apparently, the Government did not possess, nor did it intend the WAs to possess, the necessary *political will* for meaningful participation. The next stage is to begin to assess to what extent meaningful participation could be seen to occur in practice, based on the expectations that, at the very least, the necessary *political will* may not have been present. This will be attempted by reference, first, to the practice of the WAs as a whole, by concentrating on one particular water authority - Yorkshire Water - and then by looking at the pollution control function as carried out by the WAs more generally. Part II of the thesis thus presents a detailed study of the practice of Yorkshire Water between 1 October 1983 and 31 August 1989.²

The importance of looking at the WA as a corporate entity, is that it provides the context or framework within which pollution control was exercised. The function would thus be shaped by the way in which the WA operated, its priorities, and the influences and controls to which it was subject - thus its relationships with bodies such as central
government will be seen to be a key factor. Because of this, it is equally important to analyse the extent to which meaningful participation was possible in relation to the WA as a whole, on the basis that if the framework for pollution control was to be determined by policy-making at Board level, then the public needed to be able to influence this level of decision-making - the "principled approach" demands this. Furthermore, it will be seen that, while there were comprehensive provisions for participation specifically in relation to the pollution function, there were a number of opportunities at Board level through which the public could seek to influence pollution control decision-making. An overall picture is, therefore, required.
The first stage in assessing the practice of Yorkshire Water will be to briefly outline the decision-making structure of the Authority, including its internal structure of executive and non-executive committees, and arrangements at senior management and divisional level. It will be noted that the key processes for decision-making actually remained hidden from public view. Second, the "environment" within which the Authority was required to operate, taking account of its statutory duties and any controls imposed on it by government in particular, will be explained. Akin to Dworkin's "doughnut", this enables the area of discretion, within which the Authority was free to determine its priorities and exercise its functions, to be identified. The crucial point is that the public would have been able to influence this area of discretion, but not those matters which were outside the remit of the WA. Third, the aims and objectives, as determined by the Board of the Authority, will be noted because of their potential influence on the way in which decision-making, thereafter, would be determined - thus a distinction can be drawn here between external influences and controls (those imposed by bodies above the WA in the hierarchy) and internal ones (those determined by the Authority itself).
Finally, the opportunities for participation will be identified and analysed to compare them with the requirements of meaningful participation. In chapter four, the system of committees which were open to the public, and which were non-executive committees of the Authority, will be considered, while in this chapter, all opportunities for participation with the Board, with the exclusion of those committees, will be considered.

I. THE DECISION-MAKING STRUCTURE – THE CONSTITUTION OF THE AUTHORITY

Having argued that a principled approach to public participation requires that participation be located at the point where the decision is actually to made (ie the body with the jurisdiction), it is important to identify the decision-making structures and procedures of the organisation under consideration. In this section it is intended to outline the structure of Yorkshire Water, both to place subsequent discussions in context, but also, so that it is clear by whom, within the Authority, decisions were made; thus enabling a check between the decision-making and the locus of public participation. The importance of the discussion is in showing that the key structures were hidden from public view with the effect that there was a danger that information was less likely to be fully transmitted to the decision-maker, and back, with the same degree of influence as may be the case in a closer relationship.
A. The Board

The effect of the Water Act 1983 was (*inter alia*) to amend s. 3 of the 1973 Act, to provide that the 9 English WAs would consist of between six and twelve members appointed by the SoS for the Environment (plus the Chairman, *post*) and two members appointed by the Minister of AFF. In the case of the former, such members were to be people:

"... appearing to [the SoS] to have had experience of, and shown capacity in, some matter relevant to the functions of the water authorities" (s. 3(5), as substituted by s. 1, Water Act 1983).

The experience and capacity of those appointed by the Minister was required to relate to agriculture, land drainage or fisheries (s. 3(4)).

In the case of Yorkshire Water, a Board of 13 (reduced to 12 on the retirement of the chief executive, a year later) was appointed in place of the previous 28 members. This included three members appointed in accordance with the Government undertaking, during the enactment of the Water Act 1983, that between 2 and 4 members would be appointed from nominations made by local authorities (see DoE, Circular 16/83, para. 6). The advent of the privatisation proposals was to lead to further major changes to the Board structure before the final abolition of the WA in its post 1983 guise; changes which, it will be argued, further demonstrate the stranglehold of the business principles ethos. First, despite shelving its initial proposals (see chapter eight), the Government announced in its White Paper (Cmnd. 9734, 1986, para. 102) that it no longer considered itself bound by the above undertaking, and began a process of removing the local government element. Thus the three
Yorkshire Water local council members were replaced by two new members with industrial/business experience. Such an approach is interesting, given that members, whether of local government persuasion or not, still had to satisfy the criteria of the Water Act, as indicated above. The changes, however, clearly illustrate the continuation of central government fashioning of the WAs in its desired image. Again the undertaking would seem to have been no more than a device to placate opposition during the enactment of the 1983 Act. The process was completed in October 1988 with a further three members "retiring" to be replaced by the Executive Directors of (Water Services, Finance and Business Services).

B. The Authority Committee Structure

Following on from changes to the Board to meet the requirements of the pre-privatisation period, the committee structure was modified to complement this. The committees of the Authority can essentially be classified as follows: (1) the "standing committees" - those set up at the discretion of the WA, which, in all but one case (the Water Quality Advisory Group) were closed to the public; (2) the "statutory committees" - which, in all but one case (the Regional Land Drainage Committee) were advisory. The emphasis here will be on the former; the latter will be considered in the next chapter.'" Before explaining this structure, a comparison will be drawn with the arrangements that the Authority made before 1983.
1. Arrangements Between 1974 and 1983

The key influence on the arrangements made by all the WAs was the report of the Ogden committee - *The New Water Industry Management and Structure* (DoE, 1973) - set up by the DoE in 1972 to provide assistance to the WAs. The DoE believed that the WAs, being completely new organisations, should not be required to adopt any existing organisational structures (DoE, Circular 3/73). However, Okun (1977, p. 137) has noted the way that the WAs varied in the extent to which they adhered to the proposals of the Committee, and in particular Yorkshire Water's response attracted public interest for two reasons. First, while Ogden had recommended adoption of the existing water supply, and sewerage disposal and other units in the immediate term, with a longer-term move towards multifunctional divisions, Yorkshire Water adopted the latter at the outset. Second, the Authority adopted the structure Ogden suggested for smaller authorities, while being considered as one of the larger ones (*ibid.*, pp. 167-9).

Ogden further favoured the maximum delegation of decision-making to committees and sub-committees. Yorkshire Water, in accordance with its powers under s. 6(1) of the 1973 Act, created the following: Policy and Resources Committee (PRC), Finances and Manpower Sub-committee, Chairman's Advisory Committee, Amenities, Fisheries and Recreation Committee, the Water Quality Advisory Panel, and the Resources Planning Advisory Panel. In practice the PRC was the most important committee for management purposes (as suggested by the Ogden committee), which was chaired by the chairman of the Authority (hence a ministerial rather than local government appointee); the Board appeared merely to "rubber-stamp" decisions of the PRC.
2. "Standing" Committees from October 1983

Significant changes to the above structure were made following the appointment of the new Board, with its clear remit from the Government to put "economy and efficiency" first.  

Executive Management Team. This was one of the key committees, created in July 1984, consisting of the Chairman (who by then was also the Chief Executive), the Deputy Chairman and the Directors of Water Services and Finance. According to the Yorkshire Water Scheme of Organisation, the Team was "... regarded as an essential and integral part of the strategic management of the organisation." It met on an "informal" basis, including having no formal agenda, and no minutes were recorded (YW, 1984a, [amended 1986] section F). The terms of reference indicate the main functions, including reviewing policy matters before they were put to the Board, taking appropriate action to implement Board policy, and keeping under review the management, organisation, senior appointments and administration of the Authority, as well as the approval of certain capital schemes.  

Corporate Planning Panel. Second in the hierarchy, initially as a sub-committee of the Authority, and later as a sub-committee of the EMT, the main role of the CPP was to take capital expenditure decisions of a "high order" (according to the Chairman), and membership included the Chief Executive, the Director of Operations, and the Director of Finance and Support Services.
Operations Management Team. This consisted of the Head Office Directors, the Division General Managers, and others invited by the Director of Water Services, such as the Chief Technical Manager and the Regional Personnel Manager.

The above three units provided the base of the Executive side of the Authority, in conjunction with the Board itself. Of note is the way in which senior management, especially the Head Office Directors, were closely involved with the Executive Board members, which is reflected in the promotion of the former to the Board in 1988 (supra.). Importantly, there was no public access either to the meetings or the papers of these bodies; indeed it is doubtful that many knew of their existence.

Audit Group. This Group was designed to provide for "internal audits" both in relation to the Authority accounts, and as to whether capital expenditure was used "wisely" (in the sense of projects being completed within budget and achieving what had been intended) (Chairman, pers. comm.). Only non-executive Board members were included in the Group, which was created, in part, as a response to criticism by the MMC (Cmd. 9392, 1984, pp. 33-4; and for the response of the Authority - YW, 1985a, para. 2).

Water Quality Advisory Group. Although this will be considered in more detail in chapter four, because, unlike any of the above committees, it was open to the public, it is mentioned here because it was a standing committee of the Authority, although non-executive. One of the key issues of the 1973 re-organisation had been that the WAs would be both "poacher" and "gamekeeper" in respect of sewage disposal and the regulation of pollution. To promote the accountability of the WAs in
this respect, the Ogden committee had recommended an advisory committee
deriving its powers direct from the Authority, which would be
responsible for providing water quality reports on the performance of,
both the Authority, and other organisations. It was, thus, to be "an
internal check" on the Authority (Okun, 1977, p. 115, and further
Dangerfield, 1979, p. 23 et seq.). Members were, therefore, chosen from
the non-executive members of the Board to provide "independent"
monitoring of the executive members and WA officers, in relation to
pollution control - a "watchdog" role according to the Chairman.19

Humber Estuary Committee. Following the re-organisation, Yorkshire
Water, Anglian Water and Severn Trent had shared responsibility for the
regulation of the Humber. Before then a similar position had existed
with the three river authorities, who had thus formed a joint committee,
known as the "Humber Consultative Committee", in 1973. This was replaced
by a modified committee - the HRC - which included one Board member from
each of the three WAs, and provided a forum for the co-ordination of
policies in relation to the estuary.20

3. Senior Management and Divisional Organisation

The basis of the senior management arrangements are indicated above.
Initially, there had been three key posts - the Director of Operations,
the Director of Finance and Support Services, and the Director of
Strategic Services (Annual Report, 1983/4, p. 41) to which was added the
Director of Water Services in July 1984, who was to be responsible for
operational matters and to whom the Division General Managers would
report. Responsibility for service of the committees was transferred to
the Solicitor.21 By 1987, this had been reduced to three posts, viz. the

- 115 -
Director of Water Services, the Director of Finance and the Secretary and Solicitor.

Interestingly, in the case of the divisional structure, the main changes were introduced by the pre 1983 Board, just prior to the implementation of the 1983 Act, and were not influenced by the latter. Yorkshire Water had initially operated with seven multifunctional divisions and one rivers division (solely for land drainage). Having considered this, the appropriate structure since 1974, it was only in 1981 that a full review, including a financial consultant's report, led to the adoption of four multifunctional divisions (north and east, southern, western and central) and a rivers division (to include fisheries and pollution control as well as land drainage). Within each division "area" offices were also created, although any services deemed not to affect the public directly were centralised (Annual Report 1982, Foreword and p. 5; and see the approval of the MNC, Cmnd. 9392, 1984, at paras. 2.13, 5.43, 5.48).22

II. THE DECISION-MAKING ENVIRONMENT - EXTERNAL CONTROLS AND INFLUENCES

Having explained the structures of the Authority, the next stage is to outline the decision-making environment within which the Authority was required to operate. This is crucial, given the arguments that the Government sought to impose, through the Water Act 1983, an "explicit" version of the managerialist ethos whereby "business principles" were to be the overriding priority. Two main controls need to be considered - the statutory duties of the WAs (hence the need for meaningful participation at the stage of enacting such legislation), and the
relationship of the WAs with central government – notably financial control.

A. Statutory Duties

It is not intended to provide a comprehensive statement of all the duties to which the WAs, and hence Yorkshire Water, were subject, but to indicate their significance in terms of creating a framework for decision-making. In particular, it will be clear that the WAs could not consider pollution control in isolation. Equally, public participation which sought to persuade the WA to act in contravention of such duties would be otiose, but the opposite problem can be noted, of seeking to enforce such duties. The view has been expressed that it is doubtful that such duties would have been amenable to court enforcement at the behest of individuals.

The key duties of the WAs related to their main functions, as defined by the Water Act 1973 (as amended), including the supply of water (s. 11), the provision of sewers and sewage disposal works (s. 14(1)), duties in relation to salmon, trout and eel fisheries (s. 18), recreation (s. 20(1)), and conservation (s. 22), pollution control (in accordance with the Rivers (Prevention of Pollution) Acts 1951-61), and the supervisory role over land drainage (s. 19). Two important "planning" duties were provided under s. 24. First, relating to the preparation and regular review of a "water development plan" regarding the water resources in the WA area, expected future water demand, and an action plan to achieve this. Second, capital plans of a general nature for the carrying out of the WAs' functions (s. 24(6)(7)). Finally, it can be noted that the WAs were designated as "competent authorities" for purposes of compliance with EC Directives relating to the environment, although the
question of such compliance (and attempts by the public to force it) has been one of the vexed questions of the 1980s.

B. Central Government Controls Over the WAs

The Water Act 1973 also placed statutory duties on Ministers - namely the SoS for the Environment (and SoS for Wales in respect of the province), and the Minister for Agriculture, Fisheries and Food. In particular, these Ministers were charged with a duty to jointly "promote a national policy for water", as defined in s. 1(2)(3), which included "(c) the restoration and maintenance of the wholesomeness of rivers and other inland water". The importance of the fact that such duties were placed on the Ministers, and not the WAs, especially as to pollution, can be noted in encouraging a very close liaison, if not control, from central government. The problem with such control is especially where it is informal and "hidden", ("discreet rather than overt" - Lewis, 1985, p. 218), a process which can be considered as indicative of a move away from "government by law" (Birkinshaw, 1985b, p. 96) and, thus, not subject to public scrutiny.

Under the 1973 Act, the SoS was given formal powers of "general" direction over the WAs, relating to the national policy for water or the "national interest" (s. 5), and also a power to act in "default". However, significantly, the power of direction was never used, but it has been publicly admitted that ministerial "interference" was extensive - indeed this was used by the present Government as a justification for privatisation - the freeing of "managers to manage". According to the Secretary of the (then) Water Authorities Association (which promoted the interests of the would-be plcs in the privatisation), in declaring the "nationalised industry model bankrupt"
"... for 15 years Governments have interfered in day to day operational matters, and for 15 years decisions vital to the industry have been determined by political considerations" (Water Bulletin, 23 March 1989, p. 3).

Such an analysis is a cause for great concern in that it suggests a great danger that unless meaningful participation could be directed to the Ministers, it was possible that the WAs would have been acting under the dictation of the Government, thereby obviating much meaningful participation directed at the WAs. It clearly indicates that there was scope for the government to reinforce its priorities.

A further problem, which probably caused further "interference" in the running of the WAs, was the effect of EC requirements, especially because of the two-tier structure by which the WAs were the "competent authorities" for EC Directives and, therefore, responsible for the practical implementation, but with the SoS being directly answerable to Brussels. Haigh has argued that the DoE had to become involved in "matters not previously its business", despite questions regarding successful compliance with Community Directives (1986, pp. 201, 204). The DoE was also the "gatekeeper" (Earnshaw, 1988) of communications between the EC and the water industry (illustrated by DoE, Circular 7/89).

1. Financial Controls

It will also be suggested that the combination of financial controls imposed by the Government, was such that the WAs had no choice but to put economics first, thereby again reflecting the suggested ethos to the potential detriment of meaningful participation. This is supported by
the following statement of the Government in its consultation paper which preceded the 1983 Act.

"The accountability of RWAs lies primarily to Ministers, to whom they must report annually, and through Ministers to Parliament ... The Government, as part of their strategy towards the public sector as a whole, have been particularly concerned to ensure that RWAs carry out their functions effectively, efficiently and economically. The nationalised industries white paper of 1978, forms the basis of the Government's policy for the nationalised industries, is generally applicable to the RWAs, which are subject to financial and performance disciplines similar to those laid down for the nationalised industries. These are the most important controls on the main parts of the RWAs activities... improvement in the industry's efficiency will continue to be a major objective" (DoE, 1982a, Para. 9; emphasis added).

In considering the controls that the WAs were subjected to, it should be noted that the basis of WA financing was slightly different from the nationalised industries, as the WAs were less dependant on government for subsidies, being required, by the 1973 Act, to levy charges sufficient to meet their expected revenue expenditure. Theoretically, within this they were free to determine their own level of charges (Telling, 1974, p. 18), but as the following makes clear the realities of the 1980s were very different. 30 Each of the controls noted were set on an annual basis by the SoS Environment following negotiations with each WA.
Financial Targets. These were defined as a "profit calculated as a percentage rate of return", in other words that the WA was expected to achieve a sufficient income from charges to achieve a rate of return on the current cost value of assets.

External Financing Limits. EFLs provided a limit on the amount that the WAs were allowed to raise externally - primarily through borrowing (but also leasing and government grants). The effect of this was to limit the annual level of capital expenditure to this level, plus whatever the WA chose to raise through charges.

Performance Aims. These were designed to ensure that "operating costs" were reduced in real terms, and were introduced in 1981 after the DoE had admitted to the Public Accounts Committee that financial targets by themselves would not provide an incentive to greater efficiency (Cmd. 249, 1984/5, para. 17). 31

Capital Ceilings. In 1989/90 a new control was introduced, as a maximum limit on the capital expenditure of each WA, thereby reducing the discretion of the WA to the internal allocation of resources only. 32

2. Other Controls

The WAs were also required to produce annual reports and accounts (Water Act 1973, Schedule 3) and annual corporate plans. 33 A further development in the 1980s, was in the form of "levels of service"
indicators which provided a means for assessing standards of service other than in monetary terms.3

3. DoR Objectives

Finally, reference can also be made to the stated objectives of the DoR as influencing their likely approach to the WAs. For instance, according to the objectives published at the time of the reconstitution of the WA Boards, it is clear that public expenditure controls and the promoting of the efficiency of the WAs were to be the key aspects (reproduced in the Royal Commission Tenth Report, Cmnd. 9149, 1984, p. 62).3

III. THE OBJECTIVES AND PRIORITIES OF THE BOARD

Having outlined the framework within which the WAs, and Yorkshire Water specifically, were required to operate, the next stage is to begin to consider the area of discretion available to the Authority and the kind of framework it adopted as a guide to future decision-making. Thus, any objectives and priorities that it specified must be considered. The key question here is the extent to which these objectives were for "guidance", and hence could be departed from as appropriate - if they were more definite (nearer to rules) then this would make later meaningful participation more difficult as some decisions would have been pre-determined. Hence, it will be argued that meaningful participation is vital at the stage of setting such objectives. Following the business principles ethos, and the dictates provided by central government, it can be expected that the WA would give clear priority to finance - economy and efficiency - and hence, this would threaten to override meaningful participation in practice.
In reviewing the objectives set by the Board, it is worth noting that, potentially, other influences, apart from central government, were likely to affect the decision-making processes of the WA, apart from the public per se through participation. In particular, Saunders (1983, p. 37 et seq.) has argued that two key influences, in the case of the WAs, were the local authorities and private sector interests. Importantly, as the result of both pieces of work, Saunders concluded that the most significant influence on WA policy formulation and implementation was, what he termed "producer interests" - in other words those, such as agriculture and industry, who used water as part of their production process. Thus, he suggests there was a strong scent of "corporatism" involved - almost a "partnership" with some groups (1984, p. 28) - but that the WA dealt with different groups in different ways (which he termed a "bifurcation of politics" [1984, p. 26]). While there may have been something of a partnership with organisations such as the CBI, participation with the public was actually seen as no more than a process for explaining to the public the WAs' policies and plans (1984, p. 26), and that "expertise" was seen as a qualification for participation (1984, p. 49). Such an approach suggests that the WAs were prepared to attach more weight to the responses and views of certain groups in preference to the public per se - a process which, by definition, denies the necessary political will for meaningful participation.

While two sets of objectives need to be considered (published in 1984 and 1988) this can be prefaced by statements of the new Chairman in the 1984 Annual Report, which included that the Board had been charged with "conducting its affairs in as business-like a way as possible", but this would be sought without lowering standards of service (YV, 1983/4, p. 4). It is also clear from this report, that the Board moved very quickly to develop its strategies and priorities, including for capital
investment. It can, therefore, be questioned to what extent the public were able to be involved in this process, in particular because the consumer consultative committees (discussed in the next chapter) had not, by this stage, met - these decisions were thus being made by the wholly Government appointed Board. This view is further reinforced by the main document setting out the Authority's objectives, produced in October 1984 - *Water Services in Yorkshire: Objectives, Aims and Standards of Service* (YV, 1984b). This detailed, first, the objectives which had been laid down for the Authority by the Government, the WA's own objectives, and then a series of supporting objectives. Finally, the document detailed the "priorities" which would enable the achievement of the objectives.

It can be argued that the detailed nature of this document suggests that the objectives and priorities were likely to have an important influence on subsequent decision-making, especially in the allocation of resources, but again there appears to have been no public involvement possible in their development. The document was presented to the CCCs at their first meetings in June/July 1984 as an explanatory exercise, and, therefore, an equally important question is the extent to which the WA was willing to keep the process under review (stage VII of meaningful participation, and see post).³⁴³

Apart from specifying its objectives in terms of the functions of the WA, the document can also be seen as an important indicator of the WA's attitudes towards public involvement generally. In this context it can be noted that one of the supporting objectives was listed as follows:
"(c) to achieve effective consultation with users and others affected by [Yorkshire Water's] activities about their needs and to deal with any problems as promptly, effectively and sympathetically as possible" (p. 4).42

In 1988 the Authority produced Our Plans for the Future - Serving Our Customers (YW, 1988a), which effectively re-iterated the above objectives.43 This is important, as it would appear that there was at least a limited process of review, involving the public,44 although the extent of any influence cannot be analysed here.45 In modifying the initial objectives, the extent to which another factor was a key influence, may be questioned. This was the report of the Monopolies and Mergers Commission (Cmd. 9392, 1984) into the services provided by the Authority. The Commission concluded that the Authority was not acting against the public interest, but one of its main criticisms was the inadequacy of the Authority's "management information systems" (para. 2.29), and the limitations of some of its objectives, notably that they did not indicate the costs of providing particular levels of service (para. 10.5, and further chapters 10 and 12 of the Report). It can be expected, therefore, that the Authority would have been particularly keen to be seen to be responding positively to the report,46 a view suggested by the Authority's response (YW, 1985a, especially p. 17).47

IV. FORMAL OPPORTUNITIES FOR PARTICIPATION WITH THE BOARD

Having outlined Yorkshire Water's decision-making structure and environment, in this section it is intended to explain the formal48 opportunities that were made available for the public to participate with the Board (other than through the committees being considered in the next chapter). The main emphasis will be placed on the arrangements
for the holding of Press conferences following Board meetings, which replaced the previous system of allowing the Press - and public - to attend the meetings of the Board. It will be suggested that this was a very limited facility by itself, but is important to consider, first, because it caused such controversy, both during, and after the enactment of the Water Act 1983, and second, because a holistic approach to the opportunities for participation must be taken. In other words such Press conferences must be seen as one of a number of facilities, all of which were capable of contributing towards the provision of meaningful participation. Hence, a complete comparison cannot be achieved until the end of the following chapter, but the issues relating to Press conferences, and in particular, a comparison with the pre 1983 arrangements, can be made.

A. Meaningful Participation in the Appointment of WA Board Members

Prior to consideration of Press conferences, however, it is important to outline one area where there appears to have been limited scope for meaningful participation, despite the importance of the decision, viz. the appointment of the members of the Board of the WAs, including Yorkshire Water. As earlier indicated, this was a matter for the SoS Environment (with the exception of two members to be appointed by the Minister of AFF) under the Water Act 1983. A "principled approach" requires meaningful participation in this fundamental decision, which could include giving the general public the right to both nominate, and comment on other nominations - this does not challenge the right of the SoS to make the final decision. There is, however, little evidence that such arrangements were offered. A related question is the extent to which, once appointed, Board members, and especially the chairmen, could
be called to "account" by the public through meaningful participation with the SoS.

The issue of appointments, and nominations thereto, was raised during the enactment of the 1983 Act, where the Government staunchly refused to impose any duties on the SoS to consult named organisations prior to making appointments (for instance, Giles Shaw, Hansard, Standing Committee B, cols. 43-4; 25 November 1982), but promised that wide consultation would take place. Further, it defended its record, including asserting that it had been the first Administration to widely advertise appointments rather than relying on the "Whitehall List" (Tom King, Hansard, HC, vol. 32, col. 208; 16 November 1982). Nominations were sought from the local authorities (DoE, Circular 16/83, para. 6), but clearly there was never any possibility of a local authority member being appointed as chairman. Further, it might be expected that the CCCs would have been utilised (once they had come into operation in 1984) for participation in subsequent appointments, but this was never the case.

The related issue is whether there are any circumstances under which a member of the Board, or the whole Board, and particularly the chairman, could have been expected to resign, or be dismissed, for failings on the part of the Authority (other than in relation to failing to achieve government objectives). One recent incident which highlights this issue is the poisoning of water supplies and rivers around Camelford, as a result of the discharge of aluminium sulphate into the wrong storage tank at the (un-manned) Lowermoor water treatment works on 6 July 1988. As is well known, the incident has led to a plethora of legal actions both against, and by, South West Water (the organisation which existed before 1 September 1989), but a major issue for the local residents at the time was both the confused, and apparently secretive, response of the WA during the first few days following the incident. Although the
error at the plant had been discovered two days after it had happened, it was 14 days later that full details were made public, and then through a newspaper advertisement - the Authority having apparently abandoned the idea of a Press release (Observer, 2 October 1988). It was not until 12 August that the Authority admitted the full seriousness of the events. The Authority was subjected to intense criticism for this from local residents, as well as an internal Board inquiry (carried out by John Lawrence), and a Department of Health panel. Significantly, the latter suggested that both the WA and the relevant health authority had provided

"conflicting, inadequate, inappropriate and delayed advice"

(quoted in the The Independent, 21 July 1989)

...and that this, rather than the aluminium sulphate, had been a major cause of illness.50

The consequence was the call for the resignation of the Chairman of South West Water (who was also the Chief Executive).51 The incident brings in to question whether this was appropriate, and whether, either the Chairman himself, or the SoS, possessed the political will (in particular, in the sense of being "open to influence") to make such a decision.52 Although the example cited did not relate to Yorkshire Water, it raises the issue of the extent to which a "ministerial responsibility"-type concept should have applied to Board members, and the provision of mechanisms for the public to question performance.
B. Press Conferences After Board Meetings

The first formal mechanism for meaningful participation which will be analysed, is that of the Press conferences which were held following Board meetings. This was offered by the WAs in place of the pre 1983 position whereby the public and Press were permitted to attend the meetings of the WA Boards and their committees (by virtue of Public Bodies (Admission to Meetings) Act 1960,\textsuperscript{62} (repealed, in respect of the WAs, by the Water Act 1983). This again was a key issue during the enactment of the 1983 Act, and it is submitted that this further supports the business principles ethos which the Government sought to impose on the WAs - for this reason the rationale for the change will be reviewed. Following this, the practice of Press conferences will be analysed, including by comparison with the practice of access to meetings before 1983.

1. The Rationale of the Change

This was clearly indicated by the Government and rested on two key points. First, that the nature of the WAs, and hence their Board meetings, was to be significantly different following the 1983 Act, and second, that the presence of the Press and public would have an "oppressive" effect on the members. In the case of the former, emphasis was placed on the severing of the local authority link, and the transition to small "executive" bodies, thus a model more akin to private companies or the nationalised industries, rather than local authorities. This was put most clearly by Giles Shaw.
"The character of the new authorities is fundamentally different from the local authority majority structure that it will replace. That above all else, is the most important reason why the review of press access resulted in the decision that it was not appropriate. We must bear in mind that the Bill will move the character of the authorities away from the local authority, open forum type meeting to an executive style" (Hansard, HC, vol. 35, col. 236; 18 January 1983).

In respect of the "oppressive effect", it is submitted that, at times, the arguments reached extreme proportions; they are summed-up by Lord Bellwin.

"It is impossible to function effectively as a member of ... a board if at every stage one is concerned that the odd word here, the odd outspoken comment there, will hit the headlines the next day (Hansard, HL, vol. 438, col. 995).... People will not speak up as freely as they would in private (Hansard, HL, vol. 439, col. 911; 28 January 1983).

He went on to explain that "in a debating chamber ... such as the meetings of the WAs at present" the interest of the Press was "reasonable and proper" (Hansard, HL, vol. 438, col. 995; 7 February 1983; emphasis added) but not for the new WAs.

A third important argument was that the new arrangements, being offered by the Government, were "better" (see Giles Shaw, Hansard, Standing Committee B, col. 307; 16 December 1982, and HC, vol. 35, col. 239; 18 January 1983); this will be considered further below."
The Act actually gave each WA the discretion whether to permit public access, and all the WAs, with the exception of the Welsh, refused access. In considering the question of political will, it is suggested that it is important to consider the reasons why Yorkshire Water decided not to allow access, and why it continued, throughout the period under study, to refuse it. If the reasons were based on "dogma", this would suggest a lack of commitment to public participation; however, if it was because of a genuine belief that alternatives were better, and the WA was committed to these, then clearly the charge cannot be levelled. Similarly, if the Authority took the view that it could not operate "efficiently" without closed meetings, this would suggest support for the business principles ethos, which would thus need to be fully compensated by alternative arrangements.

As will be discussed in the next chapter, the CCCs raised the issue repeatedly during the years following the change, but did not succeed in persuading Yorkshire Water to change its policy. Initially, the Authority stated that it would await the outcome of the MMC report before reviewing the policy. The MMC, noting the WA's approach, stated that the Authority should keep it under review, and also take account of the experience of the Welsh Authority in holding open meetings (Cmd. 9392, 1984, para. 5.46). The response of Yorkshire Water to the MMC gives the clearest indications of its reasons:

"... the Board is enjoined to run Yorkshire Water as much like a business as possible, and is inclined to see itself in much the same light as, say, the nationalised Gas and Electricity Board... The Board has taken the view that it should, like the Gas and Electricity Boards (and other
nationalised corporations) conduct its Board business privately and thus in the absence of the Press and Public.
In doing so, it is behaving in the same way as any private business, or public company (Yorkshire Water, 1985a, p. 4).

This would appear to be strong evidence of a willingness to act in the manner expected of it by the Government - a clear priority to "business principles". If meaningful participation was to be possible in practice, therefore, it is necessary that the alternative opportunities did provide for the channels for communication, and that the Authority showed the requisite political will in respect of them - this would include a willingness to review the alternatives and to make changes to them, if it was established that they were less "effective" than they could be. In this respect, as promised, the Authority undertook a review of the CCCs after they had been operating for one year, and concluded that the CCCs were "effective", and the Board would continue its policy of denying access to its meetings (Yorkshire Water, 1985b). The same justification was repeated whenever the Authority was challenged on the issue.

3. The Practice of Yorkshire Water Press Conferences

During the enactment of the 1983 Act, the Government stated that a code of practice would be drawn up between the 10 WAs and the British Guild of Newspaper Editors, to govern the process of Press conferences. The Code stated, inter alia,

"Generally it is intended that a Press Conference will be held ... to explain important policies and decisions taken and will provide a forum for questions and answers in
relation to such matters. A list identifying items for discussion at the Press Conference will be circulated in advance. In addition Press Releases will be issued as and when appropriate giving information about decisions of the Authority and its Committees" (para. 1.2, emphasis added).

Hence, it can be seen that there were to be three essential elements - the list of items, the conference itself, and the Press releases. The three need to be seen as a whole.

In the case of Yorkshire Water, Press conferences were held in the afternoon following the monthly Board meeting in the morning, at the headquarters of the Authority in Leeds, generally lasting a couple of hours (pers. comm.). WA staff suggested that the conferences were "well attended". Thus, as was argued in Parliament, meetings were more regular than had been the case under the old Authority.

In terms of the different stages for communication between the public and the Authority, it would seem that the Press conference enabled information to be obtained either before (stage I) or after (stage VI) the making of a decision. However, few of the remaining stages would have been possible, and importantly, the mechanism must be seen as indirect - in other words, that it was a process of communication via the Press. Although this would enable wider coverage to be given, there are clear problems in this relationship, as will be noted further, below. The extent to which members of the Press would have been prepared to engage in giving information to the WA (Press campaigns on specific issues not being unknown) is open to question. However, as the Government were keen to stress, journalists were able to question Board members, including on matters which had not been discussed at the meeting, thus giving the Press a more active role (L Boardman, Hansard,
HL, vol. 439, col. 908; 24 February 1983), adopting the reasoning of the Franks Committee (Cmd. 218, 1957), by being subjected to such scrutiny the Authority might have produced more "rational" decisions.

The presence of political will on the part of the Authority was clearly important, especially the willingness to answer questions, given the discretion of the Authority. Equally important, it is suggested, is who, on behalf of Yorkshire Water, attended. The practice was initially for the Chairman to attend, although this ceased in 1988 when the Chairman became "too busy" with the run-up to privatisation and his added role as Chairman of the Water Authorities Association. However, other members of the Board also attended, along with officers as appropriate for the issues likely to be considered. Furthermore, the Chairman was very keen that questions should be answered very fully, and from evidence received informally (although this must be treated with care from both sides) from representatives of the Press, it would seem that Yorkshire Water did show a commitment to the process.

In terms of education, two main aspects need to be considered. First, education about the facility, to enable members of the Press to be able to make use of it, and second, the wider issues relating to the public. In the case of the former, the "list of items" sent out to the Press in advance of the meetings, was the vital element in detailing when and where meetings would be held, and indicating the matters that the Board would be discussing. A related point which needs to be considered, if such Press conferences were to be "effective", concerns the actual "competence" of the Press in attendance, in relation to WA matters - their own knowledge/experience, and hence, an ability to "ask the right questions", and make their own informed judgments of the answers given.
In the case of the public, the need for education, in terms of knowing when the Board was to meet, and hence, to expect a report of the meeting in their local paper/on local radio, needs consideration - no equivalent information of this kind was provided. Further, it has been noted that the facility was indirect and, therefore, the relationship between the Press and the public needs to be considered. In particular, the public have no practical control over the Press, and the information actually provided to them - the communication is not "value free", as criteria such as "newsworthiness" will be involved with the danger that a conference might not have been reported if a "major event" had occurred on the same day. Similarly, points of interest to members of the public may be very different to those that the Press consider worthy of report.

The issue of "objective" reporting also needs to be noted. In summary, the question of the commitment (political will) of the Press needs to be considered, as well as whether sufficient channels for communication were enabled. It might be suggested that only limited forms of stages I and VI were possible.

However, it may be suggested that Press coverage could have wider benefits in being able to reach larger numbers of people and could thereby play, at least, an educational role as an introduction to WA affairs. Furthermore, coverage of WA Press conferences must not be seen in isolation, in the sense that the Press would have been covering WA issues on a regular basis, and, as noted earlier, this assessment must also be read in conjunction with the other facilities available for public participation.
4. Press Conferences and Access to Board Meetings: A Comparison

To complete the picture relating to Press conferences, it is worth noting what, in terms of meaningful participation, would have been possible through access to meetings and a comparison of the two, at least in terms of communication.

First, it should be noted that access did not just involve access to the meetings, but also included the agenda and supporting papers, which thus, provided more detailed information, and enabled the Press to determine whether they actually wished to attend. Further benefits to the Press in attending meetings were in being able to hear the full arguments, witness any presentations made by WA officers to the Board, and hence select the matters which they considered met their criteria for reporting (per a news agency representative). The key limitations were that the discussions would have been for the benefit of the Board (assuming no "playing to the gallery"), and that, potentially, there would have been no opportunity for the Press to question Board members (hence stage IA, but not IB). However, it is difficult to envisage that members would not have been prepared to answer questions following the meeting (assuming the necessary political will).

The second key point is that access included access for the public to Board meetings, and hence, there would be considerable benefits in attendance (or just receiving the papers) rather than having to rely on Press reporting. However, in terms of attendance, the considerable commitment on the part of the public, needs to be considered. Further, the point does need to be made that the "success" of the process would have been dependant on the presence of both political will, and, especially for the public, education.
A wider problem that also needs to be considered is the issue of whether the meetings of the Authority would have been the actual *locus* of "real" decision-making. It should be noted that access had included access to all WA committees - including, the Policy and Resources Committee (given earlier comments). It can also be argued that the "fear" of secretive decision-making, and the presentation of a *facade* at public meetings, proves the need for political will on the part of the decision-maker. 

At this stage, the key conclusion that can be drawn between the two approaches, is that neither, by themselves, would satisfy the requirements of all the aspects of the communication process, and, therefore, more effective mechanisms, assessed as a whole, need to be considered. In the case of the decision by Yorkshire Water, it is however, disappointing that the Authority did not appear willing to consider, or "experiment" with, alternatives to access to meetings, such as allowing the CCC chairmen to attend, or providing the public with at least edited agenda - the latter at least would seem not to conflict with the reasons given by the Authority for preferring closure. Finally, there appears to have been no evidence that the Authority did comply with the advice of the WMC (*supra.*) to monitor the Welsh experience of open meetings.

C. The Annual Report and Accounts

This is the second *formal* mechanism which will be briefly considered. While a statutory requirement,\textsuperscript{67} it is important to note that their content was in part governed by guidelines produced by the SoS (*empowered under sch. 3, para. 40(2)*), the practical significance of which, however, is not known. The main benefit of the reports is clearly that, in contrast to Press conferences, they were a *mechanism* for
information to be provided directly to the public, but they could only provide it in one direction - from the Authority; hence, they were of potential significance in respect of stages IA, and VI again. However, it will be argued that their main benefit was in the form of an educational role, relating, both to the functions of the Authority, and the facilities for public participation, and thus, they could provide a stimulus for further participation.

In the case of the reports of Yorkshire Water, it is suggested (although such an assessment is necessarily subjective) that the reports produced after 1983 involved far less detail, and were of potentially less value, than those of the pre 1983 Authority. For instance, taking the 1988 report as a sample, while the main areas relating to the work of the Authority, its performance over the year, and those relating to facilities for public participation, are included, the content is brief. A profile of the Board and the Executive Management Team is provided, but no information about the role of the latter, and there is no mention of the other executive committees, or of the "specialist" mechanisms for participation (discussed in the next chapter) such as the Regional Fisheries Advisory Committee or the Water Quality Advisory Group. Section 24A of the Water Act 1983 required the WAs to include a section reviewing the work of the CCCs - it is suggested that the 1988 Report barely fulfils the spirit of this in its two sentences, which do not show the potential importance of the committees as mechanisms for public participation. By comparison, the reports from 1977 onwards provide detail on the Authority committees, including attendance, as well as extensive accounts of the performance of individual functions.

In contrast to the above assessment, the Chairman of Yorkshire Water considered that it was the pre 1983 reports which contained little. He believed that the public wanted to know about the efficiency of the
Authority, how the money was being spent, and whether the drinking water was safe to drink - the post 1983 reports met this criteria (pers. comm.). The final aspect, in relation to the reports, is the extent to which they were made available, especially to the public. The WAAs were required (under sch. 3, para. 40(3) Water Act 1973) to send copies to all local authorities within the WA's area, and copies were also to be available on request, on payment of a "reasonable charge" (sub-para. (8)). The Yorkshire Water report for 1988 cost £10, but it was noticeable that the Authority seemed very willing to overlook this when copies were requested (including at the National Water Exhibition in 1988). Copies were also sent to libraries.

V. INFORMAL OPPORTUNITIES FOR PARTICIPATION WITH THE BOARD

The distinction between formal (in the sense of actual "facilities") and informal is, potentially, a difficult distinction to make in some cases, but account needs to be taken of those cases where communication between the public and the Authority was possible in practice, albeit there were no specific facilities provided for it. An assessment of such informal communication is, however, subject to severe limitations in terms of accurate research, and hence, it is intended to no more than point out the possibilities, and their potential significance. Again it is being argued that all potential channels for communication must be considered as a whole, in seeking to determine whether or not meaningful participation could occur. Two aspects can be considered. First, the range of direct communications with the Board and Yorkshire Water officers, and second, the plethora of "public relations" work of the Authority.
A. Direct Participation with the Board and VA Officers

The extent to which this took place, especially with the Board, is particularly difficult to measure, although it is clear that it did occur. (For instance, the Chairman indicated that it was regular practice to invite "major" customers and local authority representatives to lunch following Board meetings, [pers comm.]). The key points are that the extent of such contact would depend on (1) the public knowing how to make such contact, and (2) the willingness of the Board to be open to it, and especially to treat different groups, and types of people, equally. In the case of contact with WA staff, this was likely to be more extensive. For instance, Derbyshire County Council indicated the way that they had dealt with Yorkshire Water extensively from the mid 1970s onwards, in relation to river water quality in the north east of the county, and had always found the Authority helpful, including a willingness to respond to requests for action relating to sewage discharges (pers. comm.). Similarly, Friends of the Earth and Greenpeace regularly sought information from the Authority, although, as will be noted in the next chapter, they did not nominate members to the consumer committees.

B. Public Relations

The work, and variety, of the public relations department of the Authority was extensive, and can be seen as important, especially in the context of the need for education, including offering the public information about proposed decisions and those actually decided. Five main types of work can be reviewed.
First, the Authority undertook a number of exhibitions, including as part of the now well established process of sewage and water treatment works open days. The open day at the Elvington works (North Yorkshire) was the largest in the country (attended by 117,000 in 1988), while, to coincide with the building of the new long sea outfall at Scalby Mills, Scarborough, the Authority built a "visitors' centre" designed to explain the project to the public, and, in terms of numbers attending (20,000 in 1988), was deemed a great success. In each of these cases it can be suggested that the Authority was very effective in providing information about its functions, and how it sought to fulfil these, but the main criticism is in relation to a noticeable lack education about the facilities for participation. It is arguable, therefore, given the above discussion, that the Authority was very willing to welcome those who knew how to participate (at least within the ambit of the business principles ethos), but did not take a positive enough role in educating people how to participate.

Second, a range of publications were produced by Yorkshire Water, a process begun before 1983. One of the most significant publications was the Customer Information Guide, which provided for basic information about the Authority, which was intended as "a new initiative to improve communications with [Yorkshire Water's] customers" (YV, 1988b). The Authority intended that this would be sent to each of the 1.4 million households with the next round of water bills.

Public meetings appear to have been used less extensively since 1983, than before, and there appears to have been no clear policy behind their use. The clearest available example, is in relation to the water metering trials at Normanton, near Wakefield - interestingly, the Authority provided free buses to enable residents to attend (CCC minutes, Central Division, October 1988, minute 39).
A process which the post 1983 did, apparently, initiate was the use of Market Research Surveys, from 1986 (and repeatedly annually), and began to attach increasing importance to them (indicated by the Chairman, pers. comm.). Furthermore the Deputy Chairman (pers. comm.) suggested that they were one of the main factors identifying the need for the "public awareness campaign", discussed below. There is no doubt that they did have an important role to play; however, the key issue here is the weight attached to them in comparison to other, especially formal, mechanisms for participation. For instance, it could be argued that if the Authority had attached more weight to the Surveys than the CCCs - the designated facility for the transmission of the views of the public - this suggests that the Authority saw the latter merely as legitimation. It is not intended to argue that this was the case, but it is a matter of concern that the Surveys were stated as one reason justifying the Campaign, but the CCCs were not consulted prior to it.

Having referred to the Campaign, it is worth noting this as the final type of public relations work. This formed part of the national campaign mounted by the WAA on behalf of the "ten water and sewerage businesses of England and Wales" (rather than the ten WAs), which caused so much controversy in 1989. It is not intended to rehearse the issues relating to whether its purpose was to promote privatisation on behalf of the Government, and whether its cost was justified, but it does raise a number of important issues regarding the education of the public, and whether the campaign offered the right approach in these terms. The first point is that it is, at least unfortunate, that such a campaign should have been mounted at the very end of the 15 year life span of the WAs, having clearly been needed throughout that time, and that, only those aspects of the WAs functions that were to be privatised, were advertised. It is difficult to see how this gave the public an accurate and informed understanding of the provision of water services. In the
case of Yorkshire Water, it also undertook (simultaneously) a regional version of the Campaign.74

The conclusions about the Campaign are essentially that it may have been of great importance in heightening public interest in water services, and the issues involved, but achieved little in terms of increasing public understanding of their opportunities to participate, or in relation to the new structure of the water industry. It is noticeable that since the re-organisation in September 1989, and privatisation in November, there has been, nor do there appear to be, any plans for a new campaign.

VI. CONCLUSIONS

In conclusion, it can be argued that, in the case of Yorkshire Water, the Government successfully instilled in the post 1983 Authority, the requirement that business principles were to be the overriding priority, but that, within this framework, the WA appears to have shown a commitment towards public participation, both through formal mechanisms and informally. The main problem, however, seems to have been in respect of the lack of education provided for those not aware of how to participate. Again it must be stressed that conclusions at this stage must be tentative, because of the need to include consideration of the range of committees open, either to public membership or attendance. These will be assessed in the next chapter.
NOTES:

1 Although again the difficulties of actually making such an assessment must be recorded.

2 Comparisons with the arrangements before 1983 will also be made as appropriate.

3 As indicated in the Introduction, consideration of the land drainage function has, however, been excluded.


5 If these objectives are shown to have been "written in stone", and hence, not to be departed from, this would deny the necessary political will in subsequent decision-making.

6 Similarly, Saunders, 1984, p. 5.

7 Strictly speaking it was the members of the Authority who actually made up the WA itself, the officers being employees, but not "members". However, practice was to use the "shorthand" - the "Board" (see Yorkshire Water, 1984a, Scheme of Organisation). This approach will be adopted throughout.

8 This was interpreted by the DoE to mean that "... all members must be able to make an effective contribution to the all-round competence of the water authority in carrying out its functions and attaining with efficiency the agreed objectives" (DoE, Circular 16/83, para. 5; emphasis added). Clear support for the "business principles" ethos, it is suggested.

9 In both cases the Ministers were required "to have regard" to such members "being familiar with the requirements and circumstances of the authority's area." (s.3(7)).

10 By this time, the Board included just five of the original 1983 Board, and only two of the pre 1983, both of whom were MAFF appointees. The way in which Board changes were mainly in preparation
for the creation of the company which was to be privatised can also
be noted. All but the two MAFF appointees became members of the Board
of the plc.

With the already stated exceptions that the WQAG will be considered
in the next chapter, and the RLDC excluded. In identifying the two
committees the following labels, adopted in relation to the potential
of the committees for public participation, will be used, viz. "open"
committees, for those to which the public had access, and "closed"
for which they did not.

The significance of the report for the development of the WAs has
been suggested by Saunders, who has argued, in support of his
"unmodified" thesis, that the report was crucial in putting the
managerial ethos into effect. "The report placed its emphasis on
managerial efficiency at the expense of participation in policy-
making by outsiders." Further, the dual effect of the report and the
Water Act 1973 "... was to undermine both electoral and participatory
democracy within the reorganised water industry" (1983, p. 34). For a
fuller account of the report and WA responses to it, see Okun, 1977,
chapters 5 and 6, and Dangerfield, 1979, p. 22 et seq. The details of
the report are drawn from these two works.

In conjunction with the Anglian and Severn Trent Authorities, the
Humber Estuary Committee was also created, as explained post.

This is clear from the minutes of the respective meetings (viewed at
the Yorkshire Water library in Bradford) and from discussions with
officers who served under both the pre and post 1983 Authority. The
eyear meetings of the committee (first meeting, 22 November 1973) are
interesting for showing the decisions which were taken in developing
the Authority. The committee structure was also reviewed at the
meeting on 16 October 1974, where the committee decided to continue
the existing system, rejecting a proposal to disband the PRC.
I am grateful to the Chairman of the Authority for his lucid explanation of the standing committee structure.

Ibid., amended 1988, section F. The Team was also assisted in this process by a computer system, termed the “EXT information system”, developed by Yorkshire Water staff, but only available to the Board, which detailed everything about the Authority, and was described by the Chairman as an “essential tool” for running the business (pers. comm.). In 1988, in preparation for privatisation, the Secretary and Solicitor was added to the Team.

YV, 1984a [amended 1986], F. It would seem that when the Chief Executive was added, it would then be known as the Regional Management Team.

Yorkshire Water was believed to be the only Authority which granted the Press and public access to its WQAG.

One of the first tasks of the Panel (as it had been called before 1983) was the preparation (in 1974) of a report on the Authority's "inheritance", relating to the state of its pollution control and sewerage disposal assets (Annual Report, 1975).

For details of the HEC, see Sayers, 1982, pp. 67-8, and the YV Annual Reports from 1975. Its role in relation to the setting of Water Quality Objectives for the Humber will be discussed in chapter five.

Further, Cmnd. 9392, 1984, paras. 5.13 et seq., and Appendix 5.

Thereafter there were only two further changes. First, the strengthening of the "Area" approach, with area managers, reporting to the DGM, as the first point of contact for the public - an approach particularly favoured by the Chairman. Then, from 1 April 1989 the Authority began to operate in its plc and NRA units.

For a detailed account see Telling, 1974.

For instance, in relation to "conservation" see Macrory, 1984, p. 5.

In the case of Yorkshire Water, the former was included as part of the five year (rolling) Corporate Plan.
Attempts were made during enactment to place such a duty on the WAs (for instance, see Lord Craigton, *Hansard*, HL, vol. 348, col. 1370; 22 January 1974).

Extensive control was, in fact, predicted by Telling (1974, p. 8). For the comments of Gray, regarding the NWC as a "vital buffer" between the DoE and the WAs, see Saunders, 1983, p. 42.

Similar comments were made by the Chairman of the WAA, who was also Chairman of Yorkshire Water, at the opening of the National Water Conference in 1988.

This must be seen in the context of the review of the present state of public law in chapter one.

Further details of the controls applying to the WAs are provided in the MMC report, Cmnd. 9392, 1984, chapter 3; further Lewis, 1985. The figures for each year were provided in the WA Annual Reports.

Note that the CAG found that the combination of performance aims and financial targets would have the effect of setting the general level of charges for the WAs (HC 157, 1984/5, noted *ibid.*, para. 14).

It can be suggested that the achievement of the business principles ethos was further assured, and its importance to government further indicated, by the introduction of "bonus payments" for WA (executive) Board members, including the chairmen. These were paid for the first time in 1986/7, and were only to be paid when performance aims were achieved (see the statement of Colin Monyhan, Written Answer, *Hansard*, HC, vol. 124, cols. 274-5; 11 December 1987, and *The Independent*, 20 January 1988. Quaere Parliamentary and public scrutiny).

According to the Public Accounts Committee these were at the heart of the monitoring of the WAs and the nationalised industries (Cmnd. 249, 1984/5, para. 10).

For instance, the regularity of sewer failures. See Cmnd. 9734, 1986,
p. 18, and Cmd. 9392, 1984. The control through Ministerial appointments is considered below.

Note can also be taken of subsequent publications by the Government; for instance, DoE, Public Access to Information Held by Pollution Control Authorities - A Discussion Paper, August 1985; DoE, Public Access to Environmental Information, 1986, Pollution Paper No 23. It can be argued that these, at least superficially, suggest a commitment to public participation, but clearly any opportunities offered would have to operate within the stated objectives, and hence, the governing ethos.

He identifies the NFU, CBI, Housebuilders Association and Country Landowners Association (1984, p. 16).

In the sense of providing "privileged", and possibly hidden, access to decision-making.

Hence, the need for equality of access to overcome this state of affairs (1984, p. 57).

Reference can also be made to the objectives of the pre 1983 Board (which appear to have been stated only in the Annual Reports), indicating that the Board were concerned to maintain and then seek to improve "levels of service" provided to the community (Annual Report 1976, para. 1.5), although, by 1980, repeated public expenditure cuts had resulted in an emphasis on "essential rather than desirable levels of service" (Annual Report 1980, Foreword).

The danger is that they may have been subject to negotiation with particular interest groups, but there is no evidence to prove or disprove this.

On the positive side, it can be noted that the document was potentially very valuable in terms of education, in actually informing the public of the objectives, and also the framework which government had laid down for the WA (and hence the potential for influence by the public). This seems to have been recognised by the
Authority, who, not only made it available to the CCCs, but also sought to make it as widely available as possible.

Two further detailed sections were also headed "communication with the public (which did little but explain the mechanisms that were available for participation, and hence, of value again for education, but not suggesting a great commitment to meaningful participation (p. 26)), and "queries and complaints procedure".

One notable change was the introduction of target dates for the achievement of different objectives (p. 17).

For instance the document was submitted in draft to the CCCs at their June 1988 meetings.

A point which should be noted, is the complexity of much of the material, and hence, the particular need for education if the public were to be able to participate.

Although this does not mean that it could not have been open to other views as well.

For this response, and subsequent action, the Authority received a "pat on the back" from Environment Minister John Patten (Water Bulletin, 6 February 1987, p. 3).

In the sense of specific mechanisms or facilities.

In enabling government to reinforce the business principles ethos (hence the arguments of Saunders, already noted). On appointments by government generally, see Lewis, 1985.

Note that the Press were not free from criticism. Interestingly, the findings of the Lawrence inquiry would seem to lend support for the business principles ethos: "there seems to be a culture in which the public are told as little as possible, and are expected to trust the Authority to look after their interests" (quoted in the Observer, 2 July 1989).

For his reasons for refusal, see Water Bulletin, 26 August 1988, p. 3. He did, however, promise "amendatory" action.
In the case of Yorkshire Water, although no comparative incident ever occurred, there was one occasion where the office of the Chairman was called into question, through the mechanism of the CCCs. It was alleged, by a committee member, that the Chairman had "misled" the (North and East Division) committee, because the Board had always stated that it was "neutral" on the question of water privatisation, but that this had been contradicted by the Chairman, in his role as Chairman of the WAA, making clear his support for privatisation. A vote of no confidence in the Chairman was clearly defeated (notes of meeting, 6 February 1989).

The Act, in support of which, the present Prime Minister made her maiden speech.

The main Opposition arguments included that the WAs would still be dealing with the same issues, it was only the size of the Boards that was being changed (e.g. Alan Beith, Hansard, HC, vol. 35, col. 218-20; 18 January 1983).

Unfortunately, it has not been possible to carry out, or identify, any research in respect of the Welsh experience.

This does not prove that the Authority was not "open to influence", however.

This point also re-inforces the importance of government control through appointments - had more local authority members been appointed, it is possible that the Authority would have continued to meet in public.

The Chairman also expressed his personal view that he would have felt inhibited had meetings been open (pers. comm.). During the debates on the (defeated) Water Authorities (Access to Meetings) Bill 1984/5, the Minister for Housing and Construction stated that the Chairmen of the WAs "... have concluded that the advantages to business efficiency of meeting in private ... outweighs any disadvantage ... [they] have reassured me that they wish to be as open as is
consistent with the proper running of their businesses" (Hansard, HC, vol. 72, col. 584; 1 February, 1985; emphasis added). The assertion that "closed meetings means lower water charges" cannot of course be tested.

69 The Government did not, however, include this as a requirement of the Act - government by "administration"?

60 For those unable to attend, Press releases were also issued following the meeting.

61 Although it has already been argued that the Policy and Resources Committee, of the old Authority, was more significant.

62 In the case of Yorkshire Water, entitled "An Invitation to a Press Conference".

63 It should be noted that this list was in place of the agenda, which was also deemed confidential.

64 It was noticeable, for instance, that many of the Press who covered Yorkshire Water committee meetings were very "inexperienced" in WA matters. WA officers were always very willing to explain, however.


66 A similar point is the danger that the power to exclude the Press and public from meetings (by a "resolution" under the terms of the 1960 Act) could be "abused".

67 Under sch. 3, paras. 38 and 40 of the Water Act 1973. They were presented to Parliament, usually in July of each year.

68 Similarly there is no mention of the facilities for public participation in relation to pollution control.

69 The importance of this role was recognised by successive Yorkshire Water Chairmen (see the Annual Reports, 1976, p. 40, and 1979, pp. 36 et seq.).


72 The first Survey, undertaken by a research company on behalf of the Authority, involved questioning a "representative sample" of 365 householders across the Yorkshire Water region, about their "awareness" of services provided by the Authority, and their impressions regarding the "accountability" and "efficiency" of the Authority, including by comparison with the regional electricity and gas boards, and local authorities. See YV 1986a, pp. 2-3, and 1986b.

73 The main justifications for this were, according to the Secretary of the VAA, that these were the functions about which public attention had focused, especially in relation to EC water quality standards and compliance therewith, and that the proposed privatisation had "resulted in extraordinary and unprecedented levels of misinformation and confusion about the industry and its activities" (pers. comm., 23 May 1989). Note, that in Scotland, where privatisation has been ruled out, no such campaign was undertaken (The Independent (letters), 31 August 1989). It is difficult to imagine that the Scots are better informed than their English counterparts. For the other side of the arguments, see the letters from Sir Frederick Corfield, (The Independent, 10 March 1989 and 8 September 1989, and the response, 11 September 1989).

74 Costing £700 000 according to the Authority, or £4.3m, according to a Sheffield City Council audit (The Independent, 3 September 1989).
CHAPTER FOUR

The Authority and the Public II

- The Committees

To complete the study of Yorkshire Water and its relationships with the public, this chapter will concentrate on analysing the system of committees which offered public participation through a combination of their membership being open to the public; via the members on a "representative" basis, or by being open to public and Press attendance, in contrast to the standing committees and the Board (discussed in chapter three). Four committees will be considered, viz. the Consumer Consultative Committees (CCCs), the Regional Recreation and Conservation Committee (RRCC), the Regional Fisheries Advisory Committee (RFAC) and the Water Quality Advisory Group (WQAG). In each case it is intended to identify what was possible in terms of communication, and what was actually achieved in practice, including any constraints, imposed either externally or internally (by the WA itself), as well as considering the necessary elements of education and political will. The main emphasis of the chapter will be on the CCCs because they were, potentially, of the greatest significance in providing for meaningful participation, as they were concerned with the interests of the public per se. Comparisons will then be drawn with the other three committees. In the case of the RRCC
and the RFAC, consideration is relevant because they provided for the representation of, what can be termed "specialist interests", especially fisheries; it is critical, given the arguments relating to "privileged access", that these arrangements did not provide for "better" access for some groups in preference to others. Significantly, in each case the committees were able to consider policy issues in contrast to the nationalised industries consumer councils (see Birkinshaw, 1985b, p. 103 et seq.). In conclusion, the interrelationship between the four committees will be considered, along with an overall assessment, taking account of the opportunities for meaningful participation outlined in chapter three.

I. THE CONSUMER CONSULTATIVE COMMITTEES

A. The Structure of the Committees

As indicated in the previous chapter, the CCCs were one form of "compensation" for the changes made to the WAs under the Water Act 1983. Thus, s. 7 required that the WAs make arrangements "for the representation of the interests of consumers in their area", in accordance with guidelines, issued by the SoS, and with each scheme to be approved by the SoS.2 Government intentions were expressed as follows:

"As these committees will provide the main forum for representative and public comment on water authority policies and proposals, including charging policies, investment and other planning, local issues and individual customer complaints, this will provide significant access to
the water authorities’ plans, policies, proposals and actions (DoE, Circular 16/83, para. 13; emphasis added).

However, clearly this must be read subject to earlier arguments regarding the way in which the Government sought, through the 1983 Act, to impose on the WAs an explicit form of the “managerialist ethos”; it is, therefore, inevitable that any arrangements for public participation would have to operate within that context. The “tensions” behind the Government’s proposals must, therefore, be considered. First, the committees were to provide for a more participatory approach than the pre 1983 arrangements by allowing for the appointment of members of the public per se (termed “householders”) – an approach to be welcomed, albeit that the committees were only advisory. However, it can be argued that the basic premise of the committees was a “confused mixture” because members, including local councillors, acted not only on behalf of the public, but also on their own views, perceptions and experience. It will be suggested that the actual roles that the members were to play, and the problems this led to, were not thought out in advance. In particular, such an approach, by providing for indirect participation through the CCC members, posed the problem of how successful the link between the members and public per se would be. It will be suggested that “success” was limited. It did not, therefore, truly provide a participatory approach.

A related tension is the way in which the CCCs were to be primarily dependant on local authority members, despite the implication by the Thatcher Administration that the local authority members had “failed” in their consumer representation role on the Boards of the WAs (chapter two). It is argued that awarding them a significant number of places on the CCCs was a further process of appeasement, as central government continued to reduce the influence of local government over water.
services. This further suggests that the Government did not possess the necessary political will that meaningful participation should be possible through the CCCs, and hence, this would be reflected in the structure proposed by the Government. This argument, as a reflection of the business principles ethos, is further borne out by the assessments of Kinnersley and Saunders. The former has explained why he perceives that the structure, propounded by the Government in its guidelines, was "unsatisfactory", including that the committees were to be created to operate at divisional level, while most of the major policy matters were determined by the WAs at regional level. Second, that the "guidelines made sure that the [CCCs] could have, despite wider terms of reference, little independence" - an argument which will be supported and developed, below. Indeed he has stated:

"Far from compensating for the loss of local links through elected councillors, these committees had little scope to express well-informed and independent views, neutered as they were by the [water] authorities and the DoE" (ibid., p. 115).

Further, Saunders has noted the basic problem that, not only would the tendency of the WAs be against (meaningful) participation with the public, but the "established interests" would be unwilling. The danger being that the CCCs might provide a facade, while the "real" policy "negotiation" went on elsewhere, with groups such as the CBI. Saunders, writing just as the CCCs were beginning operations, stated

"... it does seem that the CCCs will be mainly symbolic or tokenistic... any idea that these committees will provide for effective consumer representation in water policy-making is surely naive. Those interests which already enjoy close
and relatively informal links with the WA regional officers will continue to do so; all that has happened is that a few other less substantial groups have been given a seat at a non-executive body operating at divisional level... It may be true that the chairman will be speaking to both groups but it is unlikely that the consequences will be the same for each" (1984, pp. 13, 15).

Again the issue of public participation, at the stage of determining the structure of the committees by the Executive, must be considered, given that this would provide the framework within which each WA was required to specify its arrangements. The extent to which public participation took place cannot be established, but it can be noted that the two preliminary sets of guidelines were issued for public consultation (22 November 1982, and 23 June 1983).

1. Creating The Yorkshire Water Committees

Each WA was required to produce its Scheme by 1 February 1984 (SI 1984/71). Yorkshire Water set up four divisional committees, one for each operating division (excluding rivers division) which, in the case of the North and East Division, also included the York Waterworks Company (the agent of the Authority for water supply in, and around, the city of York). Two points need to be noted about the timing of the arrangements. First, the Scheme was drawn up by the post 1983 Authority; in other words, the Board solely appointed by Ministers, without the previous local authority majority. It could, therefore, be expected that any arrangements made would largely meet the pervading ethos, especially as ministerial approval was required. Second, a key point of concern is the delay between the appointment of the new Board and the commencement
of the CCCs. The Yorkshire Water committees held their first meetings in June/July 1984, meaning that for the period from 1 October 1983 until then, there was very limited scope for public participation, despite the fundamental decisions adopted by the Board (chapter three).

Again, the extent of participation in the drawing up of the Scheme is important - especially in the determination of who would be allotted places on the committees. Both the decision of who to award places to, and their actual appointment, were for each WA (DoE, 1983c, para. 10) with the danger that a WA could potentially favour particular groups or persons. The DoE suggested that the WAs would want to consult "interested parties", and following determination of the scheme, make copies available for public response (DoE, 1983c, para. 25). No information is available of the precise extent to which this was fulfilled in the case of Yorkshire Water, but in making the appointments, nominations were sought through advertisement in local newspapers (Yorkshire Water, 1984c) and by direct invitation with specified bodies. Figure 4.1 (Appendix B) suggests that the Authority did seek to achieve a balance between different interests, and the Authority did not refuse to appoint any individuals nominated by specific groups. The only comment to be made, is the way that organisations, such as the CBI and NFU, were provided with places, despite (according to Saunders, 1984) already having well established links - if not "influence" - with the WA, while also being granted places on the other committees, a point which will be developed further.
Brief comparison can be made between the CCCs and the arrangements prior to the 1983 changes in WA structure. At the broader level, different WAs made their own arrangements (see Dangerfield, 1979, p. 26 et seq.), but those adopted by the Wessex and Thames WAs, were particularly influential as models for the CCCs. In the case of Yorkshire Water, its response to the major drought of 1976 was interesting, in that the Authority set up divisional "emergency water committees" to liaise with organisations such as the CBI, local authorities, fire, police and social services. They were deemed so "successful" that they were continued with "modified" membership after the drought. It should be noted that, common to all three WAs was the exclusion of the public from the meetings and membership of these committees.

Yorkshire Water also operated an extensive system of consultative arrangements, through, either committees, or meetings, with organisations such as local authorities, the CBI, NFU, the three national parks (Yorkshire Dales, North Yorkshire Moors and the Peak District), the Humberside Economic and Planning Council, and recreation and environmental interests (further details, ibid.). It should be noted that the DoE specified that the WAs were free to continue existing arrangements of the above kind, and Yorkshire Water indicated that it would do so.

3. The Independence and Constraints of the Yorkshire Water Committees

Given the nature of the principles of meaningful participation argued for, it is essential that, if the CCCs were to be effective mechanisms for enabling meaningful participation in practice, they had to be able
to operate independently of the WAs, without fundamental constraints imposed either *externally* (especially by central government) or *internally* (by the WA). Given the contentions of Kinnersley (*supra*.), it is intended to assess the structure of the Yorkshire Water committees, to seek to identify to what extent they could act free of such constraints. It will be shown that the main issue of concern was the actual provision that was made for the committees by Yorkshire Water, in terms of the regularity of meetings, their budgets, and their powers.

a. *External Constraints*

The terms of reference of the Yorkshire Water committees included:

"(a) To watch over the interests of the public in relation to the Authority's functions, and the ways in which the Authority endeavours to reconcile and serve those interests ... including the Authority's general charging and financial policies, scales of charges, planning for investment and standards of service.

(b) To foster mutual understanding between the public and the Authority.

(c) To consider any such matter which is raised with the CCC by a customer or other interest or by a member of the CCC.

..."

"(e) To make reports and recommendations on any such matters, to the Chairman of the Authority or of the [York Waterworks] Company, who will respond to the CCC" (*YW*, 1984a, para. 3).

It is contended that the most significant *external* constraint on meaningful participation through the committees was the extensive
control of WA policy-making by central government." The extent to which the WAs were subject to control, especially in relation to finance, was indicated in the previous chapter. Especially in the case of the setting of water charges (which was seen as one of the main roles the CCCs would play), the effect the CCCs could have was severely curtailed. The common response of the committees was "indignation", and the desire that Yorkshire Water be allowed to borrow more than the Government would permit. As a result, there was a constant flow of letters from the committees to the DoE, and on one occasion a threat of resignation by the Central Division Committee because of the belief that they were "wasting their time" due to the Government limitations (Central Division Annual Report, 1984/5, para. 5, and minutes, 15 January 1985). The following (paraphrased) response is typical of the view of the DoE, however,

"The Minister concludes that the committee has a wide remit to consider any matter affecting water authority consumers and they can influence water authority plans, but it is for the Government to decide such matters as the level of financial target and the external financing limit" (in North and East Division Annual Report, 1984/5, para. 5.8)."

b. Internal Constraints

Yorkshire Water provided secretarial and support services for the committees. Although this did not appear to constrain them, it will be suggested that some of the arrangements made for the committees through their Standing Orders did, and despite a willingness to keep them under review, the Authority never acceded to more than minor changes. Two examples will be considered.
The Regularity of CCC Meetings. An interesting example was a concern of all the divisional committees (and also the RRCC, discussed below), and it is suggested that this indicates, clearly, the way in which the Authority wished to retain tight control of the committees. Yorkshire Water stated that the number of meetings was for each committee to decide, but the committees would be required to keep within their annual budget, which would be fixed by the Authority, and, apparently, was non-negotiable.11 The Authority did, however, agree to increase the number of meetings from the original two, to three per year, but at no time was it prepared to allow four.12

The Constitution of the North and East Division Committee. Under the internal re-organisation of the Authority carried out in 1982-3 (chapter three) the North and East Division was created, covering approximately 60 per cent of the total region, although with a population about equal with the other three divisions. At the early meetings of the divisional committee, it was repeatedly argued that more than one committee was required,13 but the Authority was of the view that (1) there were major benefits in having a committee that coincided with the operating division, (2) there were no other natural divisions within the region, and (3) there would be considerable duplication of resources for running more than one committee (see Yorkshire Water, 1985a, p. 6).14

The National Forum. A further example appears to strengthen the view that Yorkshire Water was keen to constrain the independence of the committees. Because the committees were created on a divisional basis (leading to 49 committees nationally), there was no provision made by either the Government or the WAs, for national, or cross-regional, coordination. When attempts were made to create a "national forum",15
partly with an eye on privatisation (with assistance from the National Consumer Council), Yorkshire Water, while not seeking actively to prevent such a development, at no point indicated positive support for it. The view was expressed that there "were no issues that could not adequately be dealt with at a local level" (North and East Division, minutes, 6 October 1986). This suggests a desire for the Authority to remain the sole provider of information to the committees.  

\[16\]

c. The Independence of the Committees

To balance the above analysis, there were a number of factors which contributed to giving the committees some degree of independence.

\[17\]

The Choice of Committee Chairman. First, an important concession during the passage of the 1983 Act, was the agreement to allow the committees themselves, rather than the WAs, to elect their chairmen.  

In the case of Yorkshire Water's Western Division committee, the chairman selected was actually a Board member, but also a local councillor, and thus the deputy chairman was also selected by the committee.  

The importance of the chairman is indicated by his powers to call extra meetings in "special circumstances", writing the foreword to the committee annual report, and he alone had regular direct access to the Authority chairman (see below).

\[18\]

Education of Committee Members. While it has been argued that the Authority sought to exercise tight control over the committees, including being the sole provider of information, it can be suggested that within this framework it did all it could to assist the members of
the committees. In particular, it is contended that it is vital that the committee members were "competent" in the issues they were discussing. In this Yorkshire Water demonstrated a strong degree of political will by providing education for the members in a number of ways, including seminars on special subjects such as privatisation, visits to works (on an annual basis) and detailed presentations at meetings on particular topics, including, as requested by the members.

Powers of the Committees. It can also be noted that no formal powers were specified for the committees, (apart from the issuing of an annual report) but apart from actually discussing matters, and making "resolutions" (thus suggesting the expectation of a response from the Board), at different times the committees (and especially the Central Division Committee) sought to demonstrate their "independence" through repeatedly raising an issue, seemingly seeking to wear down the Authority's resolve. The approach was, however, rarely successful.

4. Public Participation Through the Committees - The Indirect Relationship

It has already been indicated that the committees were designed largely on a "representative" basis, interposing the members of the committee between the public and the WA. Such an approach is inevitable given the need for practicality, but equally, it means that account must be taken of this indirect relationship. It is argued that for such an approach to work meaningful participation must have been possible in both elements of the structure - in other words between the public and the committee members, and the committee members and the WA. It is intended to analyse...
whether, and the way in which, the structure of the committees enabled this.20

a. Communication Between the Board and the CCCs

The main mechanism for communication was the membership of the committees by Board members, as indicated above.21 It is suggested that such an approach was vital in providing for information to be passed between the Board and the committees, including, potentially, any of the communication stages. However, any assessment must be tempered by the distinction between the executive and non-executive Board members, and the importance of the chairman and chief executive. In the case of the Yorkshire Water committees, in all but one case (the North and East Division Committee, from 1988) the Board members appointed to the committees were non-executive, and the Chairman of the Authority never had any direct contact with the committees.22 It is, therefore, vital that there was effective communication from the committees through their Board members to the executive members of the Board and the Chairman, so that participation would ultimately be located with the actual decision-makers.23 Political will is again the central issue; there is no evidence to suggest that Yorkshire Water failed to ensure such communication.

There was, however, one specific problem which, it is suggested, did have an inhibiting effect on the process of communication, regarding the discussion of matters in committee and their determination by the Board. While the Board met monthly (excluding August), the CCCs met only three times a year (June/July, October and January/February)24 with the result that, unless decisions were to be taken over a fairly long time scale (especially with the need to give members time to consult their
nominating bodies, post), proposed policies could not be put to the committees unless special meetings were called. There were (limited) occasions where such meetings were arranged, despite the expectation that, given the business principles ethos, "efficient" decision-making might require speed. A further problem was the notification of members of decisions taken.26

b. Communication Between the Committee Members and the Public

While it can be argued that the link between the Board and the committees was basically effective, the link between the members of the committees and the general public is of greater concern, a problem which may be seen as a "typical" reflection of the limits of representative democracy (chapter one). The main problem lies in the types of role that the members were intended, and actually, played, and their relationships, both with those who nominated them, and the wider public. The key to the committees being successful as a mechanism for meaningful participation lay, it is contended, in the ability of the public to participate through the committee members - in other words for all the different stages of communication to have been possible. It will be argued that, while this appeared to work to some extent for specific organisations which nominated members to the committees, it was far less successful - as far as can be judged - for the public per se. Three types of member need to be distinguished, as the problems in each case are slightly different: (1) local authority members, (2) members of other specified organisations, (3) "householders".26 Furthermore, two different roles can be identified - (1) acting on the members' own beliefs/experiences, (2) acting as the communicator for either the nominating body, or members thereof, or for the public (ie people who are not members a specified nominating body).
Links with Nominating Organisations. In the case of the first two categories of member, it could be expected that the CCC members would have been involved in a combination of either, acting on their own behalf, or for members of the nominating body. In each case it might be expected that there would have been arrangements for the member to report-back on matters discussed at meetings (and/or provide copies of the minutes), and also provide for responses from the nominating body, so that they could then have been communicated to the next CCC meeting. This would be especially important where the body wished to express its views on a proposed WA decision (including water charges). It has not been easy to gauge the extent to which the latter did occur (for instance, it was rarely obvious from meetings that the member was speaking on behalf of his organisation, rather than expressing a "personal" view), and from informal discussions with committee members, it would seem that there were few specific arrangements for members to report-back.\textsuperscript{27} A key point in all these cases may be the extent to which organisations had alternative means for making inputs to WA policy-making, especially where they considered these "more effective" (again see Saunders, 1984).

Links with the Public per se. The question of the links with the wider public seems to pose a more difficult question, which, it is suggested, points to weaknesses in the CCC system. The central question to be addressed is to what extent members were intended to offer a role as communicators between the public and the WA, as well as providing their own experiences/beliefs as an input to WA policy-making. The answer to this has never been articulated - it was perhaps never addressed.\textsuperscript{28} However, it is argued that, for meaningful participation to be achieved through the CCCs, such a role needed to be successfully carried out. It
then becomes a question of which members, if not all, were to do this, and how.

The first category to consider are the "householder" members, given that they were members of the public *per se* - their introduction already argued as an important development compared to pre 1983 arrangements; such membership itself being an important form of participation (a higher level of commitment in Milbrath's terms). The question is then whether such members were deemed to provide sufficient "public" input by their own presence, or whether they were also expected to seek to act on behalf of other members of the public. While members of specific organisations could be expected to have been concerned only with the interests of their nominating bodies, and perhaps have only limited contact with the wider public, the local authority members are the group who could be expected to most easily have fulfilled the role as communicators, given that they would have been doing that (at least theoretically) as a matter of course, in relation to their respective local authorities. However, again this must be prefaced with concerns about the perceived weaknesses of representative democracy, and the fact that the Conservative Government appeared to consider that local authority members had "failed" in their role as representors of the consumer on the pre 1983 WAs (including because the public had not known that they had such representatives). It is difficult to assess the extent to which local authority members did act on behalf of members of the public in relation to policy-making, but a subjective (and again impressionistic view) is that such a practice was severely limited.

Three further points must be considered in relation to the potential "success" of this structure. First, the need for *education* for the public to know about the CCCs, what they were for, and how to make use of them. Yorkshire Water produced a series of leaflets, including lists
of the members names and addresses, and made these widely available at libraries and post offices, however, the Authority's own (Market Research) surveys have suggested that only a small percentage knew of the committees. Second, the need for political will on the part of the committee members to adopt, and be committed to, all necessary roles. Two situations arose, in the case of the Yorkshire Water committees, which posed a barrier to this, in the form of the failure of specified organisations to nominate members, having been reserved places (occurring twice), and the non-attendance of members at meetings (although provision was made for deputies to be sent). Third, is the question of resources for members to carry out work on behalf of members of the public - there was no indication that such resources were made available, for instance, for members to hold surgeries similar to those held by Members of Parliament.

Press and Public Attendance at CCC Meetings. A final aspect, in relation to the effectiveness of the committees and the wider public is the issue of Press and public attendance (bearing in mind the discussion regarding Board meetings in chapter three). Public attendance at Yorkshire Water CCC meetings was very limited (the most at any one meeting being eight). It was commonly suggested, by WA officers, that the public "were not interested". While partially true, it is suggested that public attendance was not actually important, primarily because, if a member of the public had information he wanted to give or receive, this could be achieved through the committee without the need to also attend the meeting - although attendance could be considered as an "optional extra". The limitations of actual attendance must also be noted, in that the public were only permitted to "observe" proceedings - which may have proved difficult to follow - but not to actually speak. A matter would, therefore, have had to be left to a member to deal with.
The attendance of the Press can be seen as far more important as a means for promoting, both public awareness of the committees, and of the matters considered thereby. This must be considered subject to the limitations outlined in the previous chapter. Press attendance at Yorkshire Water CCC meetings was consistent, although actual "coverage" has not been analysed. It can also be noted that there appeared to be no occasions where members of the committees did "play to the gallery".

In conclusion, doubts must be expressed about the extent to which the CCCs did provide in practice for the communication of information between the wider public and the WA, although such doubts are necessarily impressionistic. This must also be considered in the context of the limitations of participation, especially in the form of public apathy, and thus, it could be argued that the CCCs were important mechanisms in providing for, at least limited, outside input and potential influence over the WAs. It must be argued that the issues raised above must be more fully considered before similar arrangements for public involvement, in whatever context, are adopted in the future.

B. The Practice of the Yorkshire Water Committees

Having already addressed the issues of the education of, both the members, and the wider public, the remaining requirements of the channels for communication and political will will be considered, to complete the comparison with meaningful participation. It will be noted that the examples - all selected on an illustrative basis - are a combination of those relating to what may be termed "substantive" policy issues, as well as those again relating to the structure of the committees (which were matters of great concern to the members). The committees offered the potential to make available any, or all, of the
channels for communication (subject to the limitations regarding the link with the public and the regularity of meetings, supra.), thus making the committees an important mechanism to study. 37

1. Standing Reports

The first point that can be illustrated is the way in which it was possible to fulfil stage I, with information actually being offered to the committee members and equally, being provided on request. The former was achieved primarily through a series of "standing reports", either at each meeting, or on an annual basis. 38 The main examples of this are the report at each meeting by the Division General Manager on the work of the division since the last meeting (for instance water supply problems), and a report on "queries and complaints". 39 In terms of political will, account can be taken of the "quality" of the information provided, and respective opinions thereof. In particular, it is noticeable that Yorkshire Water identified, almost from day one, that the quality of information about queries and complaints was not as they wished it to be, and that it did not fully assist the committees in fulfilling their role of monitoring complaints. 40 The Authority sought to solve this problem, although, it was not until just before the abolition of the committees, that this was achieved, through the introduction of the Authority "Operations and Management System". 41 A further addition was the introduction of a new standing report on prosecutions, taken by the Authority, relating to river pollution. 42 To complement the process of standing reports, a series of ad hoc detailed presentations was made, either on the Authority's initiative, or at the request of members. 43 Finally, in terms of the provision of information, it should again be noted that VA officers were always present at meetings, thus enabling them to be questioned by members to obtain
fuller details than provided in the agenda reports, including the standing reports.

2. Capital Expenditure and Water Charges

It had been anticipated that one of the main roles for the CCCs would be in the consideration of water charges and the related capital expenditure levels of the WAs. This provides an important example, in particular, as a process of "consultation" by the Authority (stages I-III, especially) - which illustrates the way in which the committees could operate, but also a number of limitations. Any consideration of this decision-making process must be read in the context of the outline, in chapter three, of the extent of central government control over the WAs finances, and the possible effects of the business principles ethos, and hence the limits of potential influence for the committees. As far as the actual process of setting charges was concerned, government controls were set in October, and the WA's proposals put to the CCCs in January/February, in time for the new financial year.

One important example to be taken from this, is a case which suggests that the scope for influence was very limited, and raises the issue of political will. This was where members of the North and East Division Committee suggested that the Authority's proposed tariff structure be recalculated to reduce the difference in the proposed increases for the "measured" and "unmeasured" charges. The committee was told that such a change would not be practicable for the year in question, but could be reviewed for future years (notes of meeting, 1 June 1987). This brings into question the extent to which the process of involving the committees really was a genuine exercise in meaningful participation - a clear example of participation being "too late".
A further example can be given where the effect of the Government failing to agree its financial controls for the Authority until much later than October, had the effect of completely disrupting and delaying the process for the CCCs. As a result, the charges for 1989/90 had to be considered by all four committees over a period of two days, with the Board meeting to confirm the charges, on the third day. Quite clearly "radical" proposals would not be accepted in this situation. This problem is of particular concern where the issues of involving the nominating bodies, and the wider public (supra.), are concerned. It was generally the case that agenda were available a week or so before the meeting, thus leaving very little time for committee members to in turn "consult" others as to the actual WA proposals. It can be seen how difficult it is to envisage a successful link between the committees and the wider public relating to specific proposals.

In terms of the ability of the committees to assess the implications of the proposals, it is suggested that an important change introduced in 1988 was for the Authority budget and charges and capital programme (i.e. the proposed projects which would be financed from the Authority's revenue) to be considered together (as one item), rather than separately, as had previously been the case. This allowed members to clearly see the way that an extra 1 per cent increase in charges would allow an extra £x million to be spent on capital projects, and to actually see, in the context of the proposed programme, which projects this would involve.46
3. The "Public Awareness Campaign"

According to the SoS guidelines, the VAs were to be

"obliged so far as practicable to consult CCCs well in advance before deciding upon proposals with significant implications for their consumers" (DoE, 1983c, para. 9)

which Yorkshire Water translated to exclude "cases of urgency" (YW, 1984a, para. 5). There were three cases, however, where the Authority failed to raise a matter with the committees prior to reaching a decision. Of the three, the "public awareness campaign" (chapter three) will be outlined, because it also provides an example of information being refused by the Authority. First, in determining the need for the (regional) campaign, the annual Market Research surveys were cited as a key factor - the CCCs (appointed to represent the interests of the customers of Yorkshire Water) were not, however, asked their views. When the matter was later raised by committee members, the Authority appeared to place commercial interests first, in refusing to give the full cost of the Campaign. According to a Board member, the information could not be provided "... as to do so could jeopardise future negotiations with the sellers of advertising space".

4. Access to Yorkshire Water Board Meetings

This issue was considered fully in chapter three in terms of the requirements of meaningful participation, but it also provides an interesting illustration of the work of the committees, in particular in the way that the issue was repeatedly raised, communicated to the Board, reported-back, but with the Authority, on each occasion, refusing to
change its policy or adopt any of the alternatives proffered to it. It was explained in chapter one that political will required that the decision-maker be "open to influence". The extent to which Yorkshire Water was open to influence at all times, in relation to this matter, is inevitably impossible to assess, but the way the process of communication took place can be seen, and importantly, those who requested the change (to any of the alternatives) did not always have unanimous support - a number of motions were, in fact, defeated. Again it is unclear the extent to which members were speaking for "their own interests". There was only one occasion - the presentation of a petition on behalf of the York Campaign for Freedom of Information (2 June 1986), where members were clearly acting as communicators.

5. Informal Participation

To complete the analysis, it can also be noted that there were many occasions on which matters were dealt with between members of the committees and the Authority (Board or officers) outside the committee fora. These can be placed in two categories - first those relating to "policy" issues, which, for instance, were raised at a meeting, but a member was provided with more detailed information following the meeting; second, those where a committee member acted on behalf of a member of the public in dealing with an individual problem or grievance. The latter were not the intended role for the committees, but it was clear that many members did act in this way, and it can be seen as an important benefit, both because effective grievance remedying is important per se, and because it was likely to increase the public's awareness of the CCCs, and hence the likelihood that the public would use the committees for participation in policy-making as well.
II. THE REGIONAL RECREATION AND CONSERVATION COMMITTEE

Section 7 of the Water Act 1983 also required the WAs to make arrangements for receiving advice as to the functions of recreation and conservation. This was achieved by setting up regional recreation and conservation committees (one per authority) — again in accordance with guidelines drawn up by the SoS — on a very similar basis to the CCCs. For this reason the Yorkshire Water committee will be assessed only to the extent that it differed from the CCCs, either in structure or practice. All the differences considered, arise from the terms of reference of, and the interests represented on, the committee — both being a reflection of the specific functions with which the committee was concerned.

A. The Structure of the Committee

The terms of reference were (inter alia) as follows:

"(a) To consider any matter affecting the interests of the public, and the ways in which the Authority endeavours to reconcile and serve those interests, in relation to the functions of the Authority under sections 20 and 22 of the Water Act 1973, as amended by the Wildlife and Countryside Act 1981, viz.: Water and land based sports and other recreations ... Conservation and amenity ....

(b) To foster mutual understanding between the public and the Authority."
(c) To consider any such matter which is raised with the RRCC by an organisation or by a member of the committee, or of the public.

... 

(e) To consider and report to the Chairman of the Authority on any matter which may be referred to the RRCC by the Authority" (YW, 1984a).

thus indicating the narrower range that the committee was concerned with; again, as with the CCCs, it would seem that in practice this did not pose a problem for the RRCC.62

A more significant distinction was the interests, in the form of particular organisations, which were reserved the right to nominate members to the committee. This raises the issue of the provision of facilities for "specialist interests" rather than the general public. The SoS Guidelines for the committee stated that the interests of both "organised and ... casual users" would be taken into account (DoE, 1983c, para. 13), which was reflected in the case of the Yorkshire Water committee in the form of granting places to both the statutory and voluntary organisations as well as local authorities (see Figure 4.2, Appendix B). Places were not, however, reserved for members of the public per se. This highlights the question of whether it was possible for the general public to communicate with the Authority on matters relating to conservation and recreation, on an equal basis to those members of the public who were represented through being members of organisations which were represented on the RRCC - a condition, it is contended, necessary for meaningful public participation. It can be noted that the wider remit of the CCCs entitled them to consider recreation and conservation matters, but it was likely that such matters would be considered in more detail by the RRCC, and potentially, the
latter would have been seen as more authoritative by the WA. It can be argued, therefore, that there was a danger that such arrangements hinted at granting privileged access to those represented on the RRCC, at the expense of the wider public. The key to avoiding such privileged access, therefore, lay in the members of the RRCC being prepared to act as communicators on behalf of the public in the way suggested earlier for members of the CCCs. This again raises the question of the different roles of the members of the committees, and the effectiveness of the link with the public, as well as the nominating organisations. It will also be suggested that it was important that the different committees were kept informed of what each other was considering, so that there could be "interaction" - in other words, so that a decision was not reached by the Authority after involving the RRCC, where the CCCs might have legitimately made, or wanted to make, an input, had they known the matter was being discussed. This point is particularly important where specific organisations had representation on more than one committee.

Again, regarding specialist interests, the nature of existing relationships (in 1983/4) between the WAs and different organisations must be addressed. In other words, where an organisation considered that it already had "good relations" with the WA, and existing fora through which to communicate on policy matters, consideration of the effect of the new structures, and the introduction of other "interests" to the decision process must be considered. Hence, the political will of all parties is important, and, that the specified arrangements such as the RRCC should have been the main fora for communication, so that all organisations had an equal opportunity to communicate. The range of relations with specific groupings of the WA before 1983, has already been indicated, but equally, it is important to note that the WA, from 1983, continued to include (two) members appointed in respect of specific functions of the Authority, viz.: land drainage and fisheries
- the appointments being made by the Minister of AFF. This is interesting because it suggests a duplication of provision for special interests; in relation to both of these functions statutory committees were provided enabling further input to WA policy-making. In the case of fisheries, at least, this position seems difficult to justify, and it would seem that the reality behind the Government's justifications lay in the "battle" between MAFF and the DoE, and the ability of the former to achieve concessions during the enactment of the legislation (both in 1973, and again in 1983).

The background to the RRCC is worthy of note especially as, in the original version of the 1983 Bill, there was no such proposal. Under what became the Water Act 1973, the then Conservative Government acceded to Opposition proposals to create the WASAC, which was argued to be necessary to ensure that the WAs took sufficient account of the "third dimension" - the use of water for recreational purposes. The main function of the WASAC was to advise the Minister and the WAs in relation to such use, with regard to the formulation and implementation of the national policy for water under the 1973 Act. Membership included the chairmen of the ten WAs. Unsurprisingly, the Labour Opposition of 1983 were unwilling to see the abolition of the WASAC and made numerous attempts either to save it, or require the creation of special committees in relation to recreation and conservation. It was at the Report Stage in the Commons that the Government presented proposals for the creation of the RRCCs (at that stage termed "Regional Water Recreation Advisory Committees" - Hansard, HC, vol. 35, col. 188; 18 January 1983).
B. The Practice of the Yorkshire Water Committee

Having indicated the nature of the RRCC, and the way that it differed in structure to the CCCs, the next stage is to consider the practice of the Yorkshire Water committee to indicate what could be achieved in practice. First, given the similarities with the CCCs, potentially the RRCC could achieve all that was possible through the CCCs, including making available all the channels for communication, subject to the above noted limitations in respect of membership, the matters to be discussed, and the link with the public. An important point to note is the way that members of the committee were able to provide greater expertise on matters under consideration than members of the CCCs, thereby, possibly leading to greater benefits through participation, as well as requiring less in the way of education of the members of the committee.

Again the range of matters considered by the committee can be indicated including concern about the structure of the committee itself. The committee also received standing reports from the Authority, including from the Amenity, Fisheries and Recreation Manager, and its views were sought on a regular basis on such matters as the Authority consultative and corporate plans. Interestingly, however, the committee was never consulted on the Authority charges, and it was only in 1988 that the committee requested information about the Authority's capital works programmes (5 February 1988, minute 10). These points are surprising given the implications of these matters for the functions of conservation and recreation. One of the main functions of the committee, in practice, appeared to be to give its views as to the Authority's fishing permit charges; the minutes do not, however, suggest that the WA proposals were ever deemed "contraversial" by the committee (see February each year).
The main example considered here (chosen for illustrative purposes only) relates to a series of proposals by Yorkshire Water to build new water treatment works at Morehall, Inbirchworth, Bradfield and Rivelin. The "environmental" implications of these proposals caused concern for the RRCC, as well as for local amenity groups and residents. The input to the decision process, in the case of Morehall can be noted in particular, as this appears to be the one that caused the most concern. This example is of interest because it showed the way that communication could be achieved through the committee, but it also raises the question of the potential impact of the members on the decision of the Authority.

The matter was first aired at the 5 June 1987 meeting, where the member for the CPRE presented two papers outlining that organisation's concerns about the environmental effects of Yorkshire Water's proposals, and also put forward CPRE's own proposals regarding the proposed siting of the works, for changes in design of the buildings and the choice of materials, and landscaping work. In response, the Southern DGH gave a presentation detailing why this, rather than an alternative, site had been chosen, the "consultation" that had already been undertaken, and the changes that had been made as a consequence of that. Interestingly, the committee then resolved to use its power to appoint a sub-committee, consisting of the chairman, deputy chairman and six other RRCC members, to visit the proposed site and consider the proposals further (minute 25). It should be noted, however, that this process actually coincided with the application for planning permission for the preferred site, which, by the time of the next meeting, had been refused. Without Yorkshire Water, apparently, further involving the committee, the Authority appealed, rather than seeking an alternative site - the latter being the preference of some RRCC members (see 2 October 1987 meeting). At the meeting in June 1988, members of the committee expressed the view that there had been a failure of "consultation", especially as they were
informed that, while the original application was to be subject to a public inquiry, the Authority had made a revised application relating to the same site. The committee also expressed concern that, on this occasion, the Southern DGM was not present to answer further questions. The committee resolved that a further meeting of the sub-committee be held so that the implications of the new proposals could be considered. This meeting was held on 5 July 1988, and provided the Authority with an opportunity to explain why there had been the apparent "failing" in the consultation process, as well as to provide, in the form of a slide presentation, further details, including technical, relating to the preference for the site, and the way the Authority had taken care to minimise the environmental impact.

The above process indicates the way in which the committee offered the possibility for communication in detail regarding the proposals, but there appeared to be a failure on the part of the Authority to involve the committee in the actual decisions regarding the choice of site and related planning applications. The matter was actually resolved outside the RRCC/WA forum by the DoE Inspector at the public inquiry in September 1988, where the site was rejected and the Authority advised to find an alternative - the need for a new treatment works was however accepted. (3 February 1989, minute 4(a)).

In the case of the Bradfield and Rivelin works (where Yorkshire Water was seeking to replace the existing works, but on the same sites) the RRCC did not appear to be the main fora for participation, but the committee was used to explain the potential choice of sites, and the reasons why the Authority had chosen the ones it did. It is, therefore, open to question whether the Authority was prepared to be influenced on the question of the actual choice of site in each case, although it was clearly prepared to explain and justify its reasoning (3 February 1989,
minute 5). In contrast, it should be noted that, in the case of the Scarborough long sea outfall, it would appear that three options were put to the committee before the Authority had adopted one as its preferred (7 June 1985, minute 19).

In conclusion to the RRCC, the way that (potentially) the different stages of communication could be achieved between the committee members and the Authority can be noted, and the link with the nominating organisations could be expected to be stronger. However, there are wider questions relating to the link with the public per se. Limited evidence is available regarding the extent of education of the public about the committee, and the above examples have indicated possible question-marks about the existence of the necessary political will in the case of the Authority being open to influence. It would seem, however, that central government control of the Authority was less a concern here, than for the CCCs.

III. THE REGIONAL FISHERIES ADVISORY COMMITTEE

To continue the theme of the provision of opportunities for participation on the part of "specialist interests", the next committee to consider is the RFAC, through which communication with the Authority was possible in relation, specifically, to the fisheries function of the WAs. Again the nature of the Yorkshire Water committee will be outlined, including any notable differences with the above committees, and with two examples of the committees in practice. Again the question of privileged access is central. It should be noted that the RFAC was a statutory requirement, first enacted in the Water Act 1973 (amended by the Salmon and Freshwater Fisheries Act 1975), and, therefore, long before the CCCs were established the WAs were experienced in formal
participation with fisheries groups. The perceived "importance" of such interests is, however, reflected in the way that, alongside the RFAC, fisheries organisations were also given representation on the RRCC (supra.).

A. The Structure of the Committee

1. Terms of Reference

These were expressed as follows:

"To advise the Authority on the manner in which it is to discharge its duty to maintain, improve and develop the salmon, trout, freshwater and eel fisheries in its area" (YV, 1984a).

2. The Objectives of the Committee

In assessing the approach of the Authority to the RFAC, it is worth noting what Yorkshire Water itself, as indicated by the Deputy Chairman, (and chairman of the RFAC), considered to be the objectives of the committee. In 1983, following the re-organisation of the Yorkshire Water Board, the Deputy Chairman stated that the Minister of AFF, had briefed him to the extent that the Minister

"... required the Committee to be a management committee managing all the fisheries as a resource" (emphasis added)
and, therefore, it was intended that a "management plan" would be developed with the assistance of the committee and the nominating organisations (minutes, December 1983). Thus, it would seem that the RFAC would be asked/allowed to play a very positive role in policy development, potentially more so than for the CCCs.

3. Interests Represented

The requirements for membership laid down by s. 18 of the 1973 Act (as amended by s. 28(1)(b) of the 1975 Act) were that the RFAC should be a committee of "... persons who appear to [the WA] to be interested in ..." salmon, trout, freshwater and eel fisheries. As indicated by Figure 4.3 (Appendix B), in the case of the Yorkshire Water committee, it was the main fisheries organisations who were given the right to nominate members to the RFAC.

In the case of the RFAC, possibly even more than for the CCCs or RRCC, it could be expected that the link between the members and their nominating organisations would be stronger. Indeed, in practice, this was indicated by the way in which the WAs, including Yorkshire Water, and respective fisheries interests, sought to ensure such relationships through the setting up of the Fisheries Consultative Associations. In the case of Yorkshire Water, seven FCAs were formed in 1974, covering geographical areas based on the inland river systems feeding the River Humber, which were the responsibility of Yorkshire Water. The FCAs thus provided a means for bringing together local angling clubs and linking them to the RFAC as the mechanism for communication with the WA. As such, they also complemented the developed structure of angling interests through the Salmon and Trout Association, and the National
Federation of Anglers, both nationally and locally, to which many of the clubs also belonged. 70

In terms of ensuring the link between the Authority and the committee, it can be noted that, not only was the chairman of the committee a Board member, 71 but three other Yorkshire Water Board members were also appointed to the RFAC, a process also coupled with the practice of the minutes being submitted to the Board.

In terms of the links between the members and the nominating bodies, the impression gained from attendance at RFAC meetings is that this process was far stronger than in any of the committees already considered. For instance, it was often clear by the way members spoke, that they were putting forward the views of their organisation. This is further supported by attendance at meetings of the East Riding FCA, the South Yorkshire Salmon and Trout Association, 72 and discussions with members of the FCAs and WA officers. However, it must be noted that such communication reached only a limited proportion of the total angling fraternity, a point which Yorkshire Water, in particular, readily recognised. Many anglers and clubs were not members of the FCA system, nor had some of them actually heard of it. 73

The RFAC did not produce an annual report, and its relationship with the wider public can be questioned. The Press and public were permitted access, but, in respect of the former, there was no advertising of the meetings, although agenda and minutes were available (free) from Yorkshire Water, provided one knew to request them. Importantly, in the case of the Press, invitations to attend the meetings were sent out in a similar fashion to Board meetings and the CCCs. It was thus, the Press who were to provide the main, albeit limited, link with the wider public. The point must be made that it was vital that the wider public
were able to communicate with the WA through other mechanisms - if not through the RFAC - and their views given equal weight to those expressed through the RFAC. The real problem, in the absence of thorough education and interaction of the various committees, is how the public would have known that items were on the "agenda".

Interestingly, in the case of the RFAC, there did not appear to be the concern expressed over the structure of the committee in the way that had been the case for the CCCs, except over the extent of FCA representation, but the RFAC was permitted four meetings per year from 1983 onwards - the importance of this is unclear, but it is interesting, in comparison with the way in which the Authority resisted such a development for the committees specifically created to represent (general) consumer interests.

B. The Practice of the Yorkshire Water Committee

As indicated above, the RFAC had the potential to enable all the channels for communication, the main concerns being the processes of communication outside the members and nominating bodies. It may be suggested that a key difference from the CCCs was that the members of the RFAC brought more experience and local knowledge to the committee, leading to more detailed examination of policy proposals. As with the committees already considered, the RFAC received a series of standing reports, presentations were made by WA officers, visits undertaken, and the Authority also sought to improve the information provided at the request of the members. There was also a range of items on which the views of the committee were sought on a regular basis - most notably fishing licence duties (on an annual basis).
The Fisheries "Management Plan". This provides an interesting example of the practice of the RFAC, because the process of decision taking did not appear to run as might be expected, and hence, it is unclear to what extent communication was achieved. At the second meeting of the committee (following the "take-over" of the new Board) the AFR Manager presented a series of headings to the committee for consideration as the basis for the possible objectives, and suggestions from the Salmon and Trout Association were also tabled (minutes, 27 February 1984). Two meetings later, the comments that had been received by the Authority were reported to the RFAC, but the next step was the formation of a working party, consisting of the chairman and other members of the committee, charged to produce a set of draft objectives (minutes, 20 August 1984). Surprisingly, this was not then submitted to the next meeting of the committee, but to the Board, and the Corporate Planning Panel, and only then to the RFAC (minutes, 26 November 1984). However, this did not mark the end of the decision process, with further stages of participation at the next two meetings of the RFAC (25 February and 20 May 1985) which included the incorporation of amendments, and between those meetings, it would seem that further discussions were held with related organisations. The document was finally submitted to the CFP.

The example again illustrates the way that communication could take place with the WA, based on the strong links with the nominating organisations, but the extent to which the wider public and other committees had the opportunity to make an impact can be questioned.
IV. THE WATER QUALITY ADVISORY GROUP

As already indicated, the WQAG was a "standing" committee of the Authority, but in contrast to the other nine WAs, Yorkshire Water allowed the Press and public access to the papers and meetings of the Group. For this reason it is suggested that it formed an important formal mechanism for communication between the Authority and the public, at least in relation to the pollution control function. However, it will be suggested that not all the channels for communication were possible, but the Group provided a means through which, at least education, could be provided in a very detailed form, and could, therefore, act as a "catalyst" to participation through other mechanisms. Again an holistic approach is required.

A. The Structure of the WQAG

Because it was a committee of the Authority, membership was confined solely to members of the WA Board, and, therefore, participation by the public in the form of membership was not possible. This also indicates that members of the Group were not acting as "representatives" of particular organisations; in effect it could be suggested that the idea that the WQAG could be a mechanism for meaningful participation was coincidental to the concern of the members. Despite the changes in internal structure of the Authority and the Board in 1983, no significant changes were made to the WQAG. In October 1983 membership was seven, but this was reduced to just four in 1987 (YW, 1984a [amended 1988], Part C, and WQAG minutes, 27 February 1987).
The terms of reference of the VQAG were (inter alia) as follows:

"To consider, advise, and report on all aspects of water quality relevant to the Authority's functions ... and to provide reports on water quality for publication by the Authority both on the performance of outside bodies (in particular those making discharges to rivers...) and also on the Authority's own performance as water supplier, sewage treatment authority and custodian of the rivers, Humber Estuary and coastal waters" (YV, 1984a [amended 1988], Part C).

The main tasks of the Group were further identified as including the consideration of standards (discharge consents, EC directives, sampling programmes), any "derogations" therefrom, monitoring compliance with such standards, and assessing any explanations for non-compliance (ibid.).

This process was fulfilled in practice by the Group receiving quarterly standing reports on water quality from each of the divisions on: prosecutions taken by the Authority, non-compliance with required standards, and, as from 1985, the Group began a detailed consideration of each of the main river catchments (one per meeting) including the proposed "River Quality Objectives" (chapter five) and the action required to meet those objectives (minutes, 2 May 1985). Ad hoc presentations and reports were also provided by WA officers, who, in a similar manner to the CCCs, attended WQAG meetings to provide fuller information and answer questions. Such reports included the consequences of the North Sea Ministerial Declaration in 1987, "raw water quality", and "Her Majesty's Inspectorate of Pollution". The way in which, on a number of matters, the WQAG sought more informative reports was also
The Group also took a close interest in matters such as the development of aquifer and abstraction "protection policies" developed by the Authority, pollution from waters from abandoned mines, and pollution from farm waste.

B. The Practice of the WQAG

It can be seen from the above discussion, therefore, that the WQAG was intended as a "watchdog" mechanism (to use the [YW] Chairman's phrase) to monitor the way in which the Authority carried out its pollution function, but Yorkshire Water, unlike the other WAs, intended that this monitoring should also occur publicly. The Group was, therefore, seen by the Authority as an important part of the decision-making and checking process - rather than as a process for legitimation. Thus, it could be anticipated that the Group would be provided with full information, and that its communication with the executive part of the Authority would be "effective" in terms of the potential to influence policy-making. In turn this would increase the value of the WQAG as a mechanism for communication.

From the point of view of communication, the above comments are important, as it can be noted that the WQAG essentially offered a mechanism through which the public, directly, or indirectly (via the press) could receive information from the Authority (either stage I or VI). However, in contrast to the above committees, the limitations regarding the remaining channels must be noted. There were no means through which the public could give information, or request more detail - this had to be achieved through other mechanisms, formal (such as the CCCs) or informal - hence the need for an holistic approach. It is, however, suggested that the WQAG was of particular importance in terms
of education - in providing information about the functions of the Authority, and the types of decisions with which the Authority was involved. 82

Given the above limitations, unlike the committees already considered, it is suggested that public attendance was far more important - especially as a "representative" could not be relied on for the process of communication. 83 The difficulties of this were considerable, however. First, in terms of the practicalities of attendance (cost, time-off work for those working), including the fact that meetings were normally held at the Yorkshire Water headquarters in Leeds, 84 but, potentially, the biggest problem was the lack of public awareness of the Group. The Authority was "required" (according to Public Relations staff) to post a notice in the Authority headquarters' reception in advance of each meeting, but no advertising was undertaken. It was thus, a case of only those who knew could benefit. Interestingly, there did not appear to be any notification to members of the other committees of the existence of the WQAG. 85 Attendance at meetings was thus very limited, but not actually much less than for any of the other committees. 86 Press coverage of the Group was consistent, always in the form of a local news agency, but on occasions sparking greater interest, especially when matters such as sewage works' performance was on the agenda. 87

In conclusion, the extent to which the Group was able to fulfil its potential as a "catalyst" can be questioned. It seems unfortunate that Yorkshire Water did not do more to promote it, especially in terms of public awareness, and hence, fully realise the value of the Group as a vital part of the whole range of opportunities for public participation.
In conclusion to the chapter, it is possible to attempt an overall comparison between the full range of committees and the process of Board meetings, in contrast to the pre 1983 arrangements. Before doing this, it has already been indicated that the actual "interaction" between the different committees is considered to be important for ensuring that public participation, rather than privileged access to decision-making, was possible. In other words, that because particular functions or interests were served by specific committees, it was likely that a different range of matters would be considered by them, in more detail, and, potentially, they would have been given more weight by the Authority. There was, therefore, the need for the wider public to have known that such matters were under discussion within these fora and to have been able to communicate about them.

Committee Interaction. Overall, it is suggested that the extent of committee interaction was very limited; such that it would seem doubtful that it was a matter that had been considered by Yorkshire Water or many members of the various committees. It may be argued that this was a significant limitation towards meaningful participation being achieved in practice. Two types of what would appear to have been ad hoc interaction, can be reviewed. First, those cases where more than one committee was informed of, or allowed to participate in respect of a matter; second, those where a committee asked to be informed about the discussions of other committees.

In the case of the CCCs, the final (SoS) guidelines required that there be "suitable" arrangements for liaison between the CCCs and the RRCC
but apart from the meetings between the five chairman and the Chairman of Yorkshire Water, and the regional seminars, there seems to have been only limited response to this. However, as previously noted, the Central Division CCC did request a standing report at each meeting of the matters considered by the RRCC - the same approach was not taken in respect of the other divisional committees, or in respect of the RFAC or WQAG. In the case of the RRCC, there did appear to be dual consideration (with the RFAC) of fishing licence charges, and there are also examples of ad hoc consideration of matters, such as the poisoning of swans by lead (7 June 1985 onwards). There was also a notable degree of interaction between the WQAG and the other committees, but again only on an ad hoc basis. For instance, the presentation on "bacteriological water quality problems" was to be presented to the CCCs as a means of passing on the information to the public (minutes, July 1988). The reports received by the WQAG in relation to River Quality Objectives were also passed on to the RFAC "for information" (chapter five), and a rare case of actually giving another committee an opportunity to make an input to policy-making was the proposed "abstractions" policy submitted to the RFAC, with comments received taken into account at the next meeting of the WQAG (minutes, 7 February, 1985). The standing reports on prosecutions, received by the WQAG, were also passed onto the RFAC (February 1988).

It is, therefore, submitted that where there are to be a range of committees, as in the example analysed here, their potential, as mechanisms for public participation, needs to be recognised along with the importance of each committee being aware of the other committees and their work, especially where some of the committees provide apparently "better" access for some groups at the expense of others or the wider public.
Meaningful Participation and the Board of Yorkshire Water. It has been argued that the opportunities for public participation in relation to the WAs as corporate entities needs to be assessed as a whole - that provided meaningful participation was possible through a combination of opportunities, the individual opportunities per se, were less significant. For this reason no specific view was taken of the refusal of Yorkshire Water to admit the Press and public to its meetings after 1983. Having completed the comparison of the individual facilities for communication with the Board, it is now possible to attempt to draw overall conclusions regarding the ability of the public to participate meaningfully with the Board.

In comparison with the alternatives of access to Board meetings, it is suggested that the system of committees was a significant development in providing a forum which included members of the public per se, and through which detailed two-way communication with the Authority could take place, in a way not possible through access to Board meetings. However, the point must be made that the latter offered the benefit of the provision of "undiluted" information. It can, therefore, plausibly be argued that the options did not have to be seen in an either/or context - a stronger system might have been developed by providing access concurrent with the CCCs. Certainly the arguments presented by the Government during the enactment of the 1983 Bill in favour of closure, were not convincing; closure was essentially a further demonstration of the Government's ruling ethos, imposed on the WAs - and welcomed by appropriately appointed WA chairmen.

The question of the options available for the Press must also, it is argued, be seen from what will enable meaningful public participation. Any answer is likely to be shaped by personal views of the role of the Press, and the need for political will on the part of the Press. It
would seem that, in the case of the Press, there is little to suggest that both options (access to meetings and Press conferences) could not have been considered more closely. However, if a choice is required (from the assessment in chapter three) there seems to have been little available to the Press through the conferences, that (given the necessary political will) could not have been achieved by obtaining agenda, and attending meetings. The latter would, therefore, have allowed the Press to determine for itself the matters deemed appropriate to report.

The central concern revealed by this study, however, is that, irrespective of the different arguments relating to access to meetings instead (or as well as) the CCCs, the problem lies with the CCCs not having fulfilled their potential, primarily because of the limitations in communication between the committee members and the public. Clearly, also, far greater education about the committees was needed. The point must also be re-iterated, that the committees were required to operate within the framework laid down for the WA - the business principles ethos being the overriding priority - as indicated, it is submitted, by the way that Yorkshire Water seemed reluctant to allow the CCCs independence.

It is submitted, therefore, that in devising any mechanism for public participation, the kind of problems identified here must be addressed, and solutions sought. Chapters three and four also demonstrate that no mechanism can successfully operate without the necessary political will on the part of all involved - from government to the committee members; and the need for greater public awareness of the opportunities and how to make use of them.
NOTES:

1 Kinnersley (1988, p. 113) has used the phrase "token balance".  

2 Two sets of guidelines were issued before the final set on 19 October 1983, which was laid before Parliament. For concern over their use, see for instance, Hansard, HL, vol. 441, col. 103 et seq.; 12 April 1983. The Government stated that the WAs would be allowed "maximum discretion to ... take into account ... local circumstances (DoE, 1983b, para. 7).  

3 1988, pp. 113-4, and see his comparison with experiences in the USA (p. 115).  

4 Note the objections of Kent County Council, reported by Saunders, 1984, p. 13.  

5 It should be noted, as indicated by Figure 4.1 (Appendix B), that for organisations, such as the local authorities, CBI, NFU, specific places were "reserved" for them.  

6 In 1974 Wessex created three divisional "local water advisory committees" including representation from the district councils, the CLA, NFU and CBI (pers. comm., Wessex Water). Thames created six "divisional advisory panels", in 1982 (pers. comm., Thames Water).  

7 Annual Report 1976, p. 42, and see the minutes of the Authority meeting (21 July 1976) and PRC meeting (6 October 1976).  

8 Five such committees were created, meeting initially twice, and then once, each year, and giving the local authorities in particular, an opportunity to comment on water charges before being set by the Board (Annual Reports 1975, section 11, and 1979, p. 35).  

9 It had been made clear in Parliament that there would be matters which, according to Lord Skelmersdale, would be "too sensitive" for the CCCs to consider (Hansard, HL, vol. 441, col. 239; 13 April 1983). These were defined by Yorkshire Water to include matters
relating to "industrial relations negotiations", transactions involving the WA and a customer, and security (YV, 1984a, para. 3).

In practice this did not appear to be a limitation. It should also be noted that the committees were given only an oversight role in relation to complaints; this, it is submitted, was an advantage.

Similarly Prosser has recorded the extent of government interference in relation nationalised industry price setting (1986, p. 163 et seq.) including that the role of the consumer councils was limited to "making a fuss" (p. 173).

See for instance, the minutes of the Southern Division Committee, first meeting, July 1984.

Consideration of this issue must, however, be balanced by reference to the seminars which were provided regionally for the committee members (at least one per year).

A matter also considered by the MMC, Cmnd. 9392, 1984, para. 5.47.

As will be explained below, (as advised by the DoE) the arrangements provided for a member of each WA Board to serve on each divisional committee, either as chairman, but more usually as deputy chairman. Because the Board member had voting powers, this could have provided a further internal constraint, where his vote was crucial when as chairman (or acting chairman) in the form of the casting vote. The example of the vote of no confidence in the Chairman (chapter three) illustrates the way Board members could not (always) be expected to vote against the Authority, but in practice it did not appear that Board members were seeking to "impose their will" on the committees. There appear to have been no cases where the vote of confidence was decisive, but it is submitted that, as a matter of the independence of the committees, it was inappropriate that the Board members were entitled to vote.

Kinnersley is more damning of the combined efforts of the ten WAs, thus: "The WAs set about blocking [the national forum] in every way they could - with allegations of empire-building against the promoters ..." (1988, p. 115).

Hansard, HL, vol. 440, col. 202; 8 March 1983; c/f the arrangements for the NRA committee discussed in chapter eight.

The committee was far from pleased when the chairman was "retired" from the Board of Yorkshire Water, (see Western Division, Annual Report, 1986/7, para. 2.4).

This was the case regarding "access to meetings", noted below.

The DoE stated in its final set of guidelines that "Every effort should be made to ensure that the members appointed are in close communication with those whose interests they represent and the water authority ... at the appropriate level" (DoE, 1983c, para. 2; emphasis added).

An approach influenced by the Wessex committees set up in 1974 (DoE, 1983c, para. 15). Meetings were also attended by a range of WA officers, relating to the specific matters under consideration, thus enabling more detailed information to be provided on "operational" matters.

See below, regarding contact with the chairmen of the committees.

It should be noted, however, that the (whole) Board received the minutes of the committee meetings, and in return, committee members received copies of the "list of items" of matters discussed at the Board meetings, and the Authority news releases.

Yorkshire Water's reluctance to increase the number having already been noted.

In the case of water charges, this had to occur informally outside the meeting fora, because, having been considered by the committees in February, by the time of the next meetings, the new charges would have been operational.
I.e. members of the public per se.

It would appear that they were stronger in the case of organisations, rather than the local authorities, but this is purely impressionistic.

It was, however, by the Welsh Affairs Committee in relation to the proposals for the Welsh committees in 1981/2. The Committee stated that it could not comment on the appropriate extent of local authority representation until the roles of the members had been defined (HC 335, 1981/2, paras. 14-17). The Government appeared, however, to "gloss" over this (HC 499, 1981/2, para. 3(a)).

This would seem to be suggested by the label "to represent the interests of the public generally" and the way in which Yorkshire Water sought to create a balance between people from different social circumstances - such as high and low rateable value properties. The Authority also stated that it expected members "... to have regard to the needs and wishes of the users of water services in Yorkshire Water as a whole" (YW, 1984a, para. 5.2).

The actual nature of these members, indicates that some had been nominated by particular organisations - such as the Women's Institute - and could be expected to fall into the above categories, to some extent. Others could be seen to be from backgrounds where they would have day to day contact with the public - such as the Hull Council for Voluntary Service - thus making it easier to act on behalf of the public.

Discussions with members seemed to suggest that they did a great deal in relation to individual problems - thus as grievance remediers.

21 per cent in 1986 (YW, 1986a, p. 3). Meetings were also advertised through the local Press.

Figures for attendance are provided in the annual reports of the committees, but the reasons for non-attendance were regarded as
"confidential" as between the members and the VA, a process not promoting personal "accountability".

34 It can be noted that the Secretary to the Committees, a VA officer, was provided with a direct telephone line, which was publicised as above.

35 Although the right to attend is; c/f the arrangements for the RRAC considered in chapter eight.

36 The commitment on the part of members of the public must also be noted, in terms of time and cost; expenses were paid to members only. Public awareness must also be seen as a major problem.

37 By way of introduction, an indication of the range of matters considered by the committees can be given. These included issues relating to methods for paying water bills, flouridation, arrangements in case of nuclear attack, nitrate pollution and water metering.

38 It can also be noted that the agenda was always a detailed document which provided reports on other matters included on the agenda.

39 Under the terms of reference, the committees were enjoined only to deal with individual complaints at meetings where these were deemed not to have been dealt with adequately by the Authority; but the committees were also required to monitor the "... volume and content ... of complaints generally" (YY, 1984a, para. 3).

40 The main problem was that the system for recording "contacts" with the public could not distinguish between a "query" and an actual "complaint", nor could it distinguish between whether 100 calls related to the same incident (e.g. a burst main) or 100 different incidents.

41 See minutes of the October 1984 meetings for initial discussions, and then October 1988, and June 1989 for the improvements introduced. Other improvements were made in the meantime at the request of
members, such as dividing queries received according to local authority areas.

42 The Central Division Committee also requested the introduction of a standing report on matters discussed by the RRCC, but interestingly, a similar report did not appear to have been requested, or offered, by the other committees.

43 It can be noted that in some cases, where information was requested by members, this was provided outside the meeting forum where only one or two members wanted it.

44 Thus, the DGX would always seek to attend. The benefit of this could be seen in the ability to get a "straight answer", unavailable through other mechanisms. A (personal) request for information via a member of the North and East Division Committee, relating to the Government's proposals for "time limited consents" for sewage works discharges (chapter six) led to a very detailed report from the DGX (notes of meeting, 6 February 1989). There appear to be only two examples of where information was actually refused by the Authority having been requested by the committee - the first in relation to "access to meetings" and the second, relating to the full cost of the "public awareness campaign"; both of these are discussed more fully below.

45 In particular, it was not open to the committees to suggest that more spending should be financed by borrowing, although this was repeatedly attempted; in practice the CCCs could only propose different levels of increase above the minimum created by the combination of government controls. It might be suggested that in practice members tended to become "distracted" by their indignation at government controls, thus giving less thought to the extent of the decision they could potentially influence.

46 Interestingly in 1988, against the background of public concern about the environment, and the perceived need for improvements to WA sewage
works, the North and East Division Committee proposed an increase higher than that proposed by Yorkshire Water (notes of meeting, 18 January 1988).

For Parliamentary attempts to include a statutory duty to consult "early" with the committees, see (Hansard, HL, vol. 441, cols. 231-40; 13 April 1983) - Lord Hemingford's amendment being defeated by five votes in Committee.

Quoted from the Central Division Committee minutes, 13 June 1989. In contrast, the reasons given by the Deputy Chairman (of YV) were that the full costs could not be calculated until the Campaign had been concluded (pers. comm.). In the case of the sale of customers' names and addresses to commercial enterprises - "listbroking" - the Authority agreed to suspend the practice until each customer had been given the opportunity to "opt out". However, it is unclear whether the concern of the committees, or that of the Data Protection Registrar, was more influential in this. (See YV, Review of Listbroking, News Release, 10 June 1988, giving the decision of the Board to suspend). The third case was that of the inclusion of leaflets - especially those advertising personal loans - with water bills. When raised (ex post facto) by the committees, the Authority agreed to halt the inclusion of advertisements for loans (North and East Division Committee, minutes, 1 June 1987, and 5 October 1987).

These included the provision of the Board's "management papers" (Central Division Annual Report, 1984/5, para. 5), the agenda and minutes of the Board meetings (subject to matters outside the remit of the CCCs being excluded; North and East Division, 21 January 1985), and for the chairmen of the CCCs to be able to attend Board meetings as observers (Central Division, 15 January 1985). The main arguments of the Board against the proposals were that arrangements through the CCCs, including having Board members on those committees, were adequate to ensure communication between them.
And were clearly outside their jurisdiction as far as the meeting fora was concerned.

Including the appointment of a Board member as deputy chairman of the committee.

Although it will be noted below, that the committee did not discuss the proposed charges or capital programme of the Authority.

And note that local government representation was far smaller on the RRCC than the CCCs.

This is a point that will be developed further in the chapter (including in relation to fisheries).

Saunders speculated on the implications of the RRCC in respect of the Nature Conservancy Council, given, what he termed, the "quasi-corporatist" relationship of the latter with the WAs (1984, pp. 15-6).

It is possibly more justifiable in the case of land drainage, given the extraordinary nature of the arrangements for it, whereby the WAs merely had a supervisory function, and the committee in question - the Regional Land Drainage Committee - was an executive committee, which in turn filtered down to the Internal Drainage Boards.

The appointment of members related to specific functions was the spur to a range of attempts to follow suit in respect of, for instance, conservation and recreation, including, by Lord Melchett, to have at least one member appointed with capacity in recreation, and one re landscape or wildlife conservation (Hansard, HL, vol. 439, cols. 878-81; 24 February 1983). Such an attempt was also a reflection of concern over the proposed abolition of the Water Space Amenity Commission (WASAC) noted post. The main response of the Government was, first, that members were appointed to take a broad view of the work of the Authority, having been appointed for their abilities to run multi-million pound organisations (Hansard, Standing Committee B, col. 94; 30 November 1982) and second, that it was difficult to
decide where to "draw the line", per Lord Bellwin (Hansard, HL, vol. 439, cols. 883-4; 24 February 1983), but the latter also argued that there was no need for special members, because conservation and recreation were statutory functions and hence, the WAs would have to take them into account! (ibid, col. 888).

Further, Okun, 1977, pp. 177-8 and Dangerfield, 1979, p. 50.


Most of the WAs followed the recommendations of the Ogden committee (DoE, 1973), in 1974, of creating committees relating to recreation and conservation; in Yorkshire Water's case the Amenity, Fisheries and Recreation Committee, which held its first meeting on 12 March 1974.


For instance, in relation to the regularity of its meetings, see the minutes for July 1984, and June 1987.

In considering the committee, note must again be taken of the way the functions of the Authority of concern to the committee were arranged on a regional (through the Rivers "division"), rather than divisional basis.

Consider further the problems caused by the irregularity of the meetings.

Public meetings and exhibitions were held in the locality of the works.

Quaere as the result of effective bargaining by fisheries interests with government.

It can be noted that Saunders (1983, 1984) does not include consideration of the RFAC in his work.
Five years later, the same chairman stated "As I see it, [the RFAC is] here to keep an eye on the Authority to try and ensure that it does its statutory duty of improving and developing our fisheries" (YV, 1988c, p. 10). The "management plan" is considered further post.

Again note that both the NFU and the CLA were also given places.

Initially, the FCAs were granted only one place between them on the RFAC, but in 1979 they were permitted one place each (Yorkshire Water Annual Report 1979, p. 36), but with the internal re-organisation of Yorkshire Water in 1983 (chapter three) this was reduced to five to coincide with the number of operating divisions (Annual Report 1983, p. 18). By May 1988 there were the following FCAs - the Ouse, Derwent and Esk, East Riding, Don, and the Aire and Calder. The nature of the FCAs is suggested by the constitution of the Esk and Derwent Association (kindly provided by the Secretary) which specifies that membership is open to "angling associations, small angling clubs, and individual anglers, owners and managers of riparian land, salmon netsmen, fish farmers and representatives of the ACA, NFA, STA, Institute of Fisheries Management, and the CLA and NFU". The objects of the Association being (inter alia):

"(a) to make suggestions and comments to, and to consult with, the WA ... on fishery matters, and to act as a liaison body between the WA and fishery interests relating to the WAs' fishery duties ...

(c) to offer all possible advice and assistance on fishery interests to members or represented members of the Association" (emphasis added).

This constitution was further re-inforced by the guidelines drawn up for the associations by the WA itself, which included the requirement that a "major function" of the associations was to provide "an effective representative to serve on the RFAC". A further process of
communication was to be ensured, on the basis that the FCA was actually required to appoint two members, one of whom was required to be prepared to become a member of the regional organisation of the NFA, and the other of the STA (YV, 1984a [amended 1988], RFAC minutes, 25 November 1985). The power of appointment actually lay with the chairman of the RFAC in consultation with the STA and NFA.

As indicated earlier, he was appointed by MAFF partly with this function in mind, enabling the link with MAFF as the sponsoring government department for fisheries.

See Appendix A. In both cases there was provision for formal reporting-back to the members and for discussion of issues raised at the RFAC.

Pers. comm., Secretary of the RFAC, and see also the Angling Times survey, 2 December 1987, p. 2. The Yorkshire Water magazine, Catch, was also considered an important mechanism for reaching those outside the groups involved through the RFAC, which often included details of the work of the RFAC - and thus important in educative terms. Distribution was primarily through inclusion in the main angling Press, such as the Angling Times, although the magazine did experience a troubled history (see RFAC minutes 25 February 1985, and 23 February 1987).

The main one being the report of the Amenity, Fisheries and Recreation Officer - which gave details of events relating to the fisheries function during the preceding three months - which always received detailed scrutiny by the members at the meetings attended personally.

Again a process opposed for the CCCs.

The reasons for the change in suffix - from Panel to Group - are not known.
Interestingly, when the chairman of the Group (was) "retired" from the Board in 1988, he was invited to continue to chair the Group because of his experience.

For instance, details of the actual cost per case to the Authority of bringing a water pollution prosecution (5 November 1987), and in relation to water pollution incidents (3 February 1984, 31 July 1986 and 3 November 1988).

Ironically, it was not until 1985 that the public were provided with an active role in pollution control decision-making under COPA II (chapter two).

Indeed the Chairman of Yorkshire Water indicated that he considered the WQAG to be a sub-committee of the Board - thus, it reported directly to the Board (pers. comm.).

It can be noted that the members of the Group were always very willing to discuss matters further after meetings with those who attended, thus enabling some informal communication.

The Group also produced a very detailed annual report.

Although receiving the detailed agenda would be significant compensation.

Although, during 1984, meetings were held around the region.

But see further under "interaction", below.

In terms of political will on the part of the Authority, it is important that the power to exclude the Press and public from meetings was only ever used once each year, when the Group considered its draft annual report.

Members and officers always appeared willing to assist, and give interviews following the meetings.

Again it can be noted that organisations which had representation on more than one committee were at a possible advantage in having a more holistic perspective of the work of the WA.
For instance, it appears that members of the CCCs were not briefed about the other committees, unless this occurred at the regional seminars.

It was stressed that the availability of the agenda and supporting papers was as important as physical attendance.
PART III

THE POLLUTION CONTROL FUNCTION

In Part II the framework within which the WAs operated was outlined by looking in detail at one particular WA. It has been argued throughout the thesis that the way in which pollution was regulated would be affected significantly by such a framework, including the constraints to which the WA was subject and the priorities which it laid down, and, therefore, that any public participation in relation to pollution control specifically, would be subject to the same kind of limitations. Thus, it can be suggested that the fact of the WAs being subject to the business principles ethos, and intensive financial constraints would be the overriding factor within which all participation would take place. In this section of the thesis it is intended to look in detail at the pollution control function, the types of decisions which were involved and the opportunities that were available for public participation, and to seek to identify whether something akin to the argued for standard of meaningful participation was achieved in practice. This will be approached from a wider perspective than just the one WA, both because developments at a national level were of major significance, but also because a number of examples considered relate to other WAs, having not occurred in respect of Yorkshire Water during the period in question.
The regulation of water pollution was achieved in a number of ways. In respect of discharges of trade and sewage effluent, consents from the WAs were required, breach of which amounted to a criminal offence. With regard to pollutions occurring irregularly, these were controlled by a combination of preventative and remedial action, and prosecutions on a strict liability basis. The approach of Part III will be to outline the structure within which control over, primarily, trade and sewage effluent discharges was operated, starting with the concept of Water Quality Objectives and Standards, by reference to which consents were (notionally) set. Reference will be made to other forms of control as appropriate.
During the period under study, discharge consents were set by reference to the concept of "quality objectives" and "quality standards" which had been developed, pragmatically, in Britain during the late 1970s in relation to inland waters, and, as will be shown below, were essentially a response to pressures from the European Community and a resistance to the approach favoured by the other Member States. This approach involved the setting of an objective or target for each stretch of river specified in terms of quality classifications - such as "good", "fair" or "bad" - developed for use in the quinquennial river quality surveys. Scientific standards were then devised nationally for particular substances, on the basis that if the standards were not exceeded for each stretch of water the target (objective) would be achieved. The totality of these standards could then be "shared out" between the discharges to the stretch of river in question so that the combination of discharges did not lead to the quality standard being exceeded. It can be seen from this brief introduction that these objectives and standards formed the whole basis of the regulatory system (in relation to trade and sewage effluent discharges) in shaping the way that all subsequent decisions were made. Therefore, in accordance with the
argument for a principled approach to public participation, it is necessary that meaningful participation was possible in relation to the process of setting such objectives and standards, as much as in relation to the individual consents - otherwise the latter process will have been pre-determined. 3

This process of setting objectives and standards will therefore be explained in detail in this chapter, including the background to their development. 4 It is important to take account of the way in which, and the reasons why, the concept of objectives and standards was developed, because it will be seen that its development was clearly a response to EC requirements, and was thus, largely a development of "convenience" based on technical criteria, suggesting limited scope for public participation. It can also be noted that it was not developed on a statutory basis, and was developed at a time when the public did not have the rights to access to information and participation promised in COPA II (because of its non-implementation).

I. THE "FORMALISATION" OF THE WATER QUALITY OBJECTIVE APPROACH

A. Origins of the Approach

The origins of the approach have actually been the centre of a dispute, with successive British Governments claiming that it was a long-standing - albeit "informal" - practice. This has been subject to much criticism, including the suggestion that the concept was "manufactured" to suit British arguments, and it is unclear to what extent the EC was convinced by these arguments. The leading critique is that of Haigh (1984) who has suggested that the first hint of the WQO approach is to be found in the Rivers Pollution Prevention Act 1876, that it had first been understood
by the famous Royal Commission on Sewage Disposal (Eighth) Report in 1912, and existed in a very vague form since the Hobday Report in 1949. However, as he indicates, it was far from being an established practice for a number of reasons, including that the Jeger Report in 1970 (MHLG, 1970) proposed such an approach, and, that the approach was not put on statutory footing when the clearest opportunity arose (the enactment of COPA II in 1974). The final point which, it is submitted, shows conclusively the vagueness of the WQO practice, is the way in which it was actually "formalised" under the auspices of the National Water Council in the late 1970s, as explained post.

B. Reasons for "Formalisation"

The rationale for British claims that the WQO approach was long-standing, and for its formalisation, was the problem posed by EC legislation, in the form of a series of Directives on the aquatic environment, which threatened to impose a different approach - termed either "uniform emission standards" (hereafter UES) or "limit values". This was the approach whereby the scientific standard for each substance was applied to each discharge irrespective of the location of that discharge and the capabilities of the receiving water, as opposed to sharing out the capacity of the receiving water under the British approach; the effect of the latter being that different discharges could be subject to different standards for the same substances. This "conflict" came to a head during the enactment of the so-called "Dangerous Substances Directive" (76/464/EC) where the British Government made it clear that it could not accept the UES approach as it ran counter to "established" (sic.) British pollution control practice. The Government also argued that the UES approach would deny the benefits of the greater capacity of British rivers (in contrast to, for instance,
the Mediterranean which, being shallow, had no such capacity). In contrast, other Member States argued that one of the aims of the Directive was to achieve equality of competition, and they were suspicious that the UK would be subject to "lighter" controls through the WQO approach.\textsuperscript{10} Farquhar (1983, p. 148) has argued that one of the main problems in enacting the Directive was that of "nationalism" and in particular, it can be argued that at the heart of this "fear", was the likely cost implications of a standardised form of control.\textsuperscript{11}

The result of the British claims was the realisation that, in fact, the WQO approach had been used in no more than the most informal way, and that it needed to be formalised as quickly as possible to convince the EC that it was an approach which could protect the environment as effectively as the UES, and therefore merited adoption in Directive 76/464/EC. To cite Haigh:

"Certainly the dates fit the hypothesis that water authorities were encouraged by central government to adopt explicit quality objectives in order to comply with Community legislation and in order for there to be consistency with the British Government's posture in negotiating that legislation, and in particular in resisting the limit values of Directive 76/464" (1984, p. 46).\textsuperscript{12}

The conflict between the parties took a number of years to resolve, although in the Directive itself, a compromise solution - termed the "parallel approach" - was adopted, which allowed Member States to choose to use either the UES or WQO approach, but stricter monitoring requirements were applied in respect of the latter.\textsuperscript{13}
The argument that cost was again at the heart of the British arguments is important from the point of view of considering possible political will towards meaningful participation in the process of setting and reviewing WQOs and WQSs, as considered below. It may be argued that the same kind of business principles approach was being demonstrated, where the interests of the water (and other industries) was being put before any concepts of protecting the environment or the adoption of controls agreed through a process of informed public debate and consent. It can thus be questioned to what extent parties involved in the decision-making processes would be open to influence from anyone other than the most "powerful" interest groups. However, the theme will also be developed that the formalisation of the WQO process provided an important benefit for public participation in terms of creating a system that could be understood by the public.

C. The Process of "Formalisation" - The Role of the National Water Council

Having explained the background to the formalisation of the WQO approach, the next stage is to outline the way in which this was achieved, and the possible scope for meaningful participation that was provided. Given that this process took place a number of years ago, the extent to which it is possible to identify the full range of public participation is limited, but the main opportunities that were provided will be noted. In considering this process, it is submitted that the parties involved, especially the National Water Council, were more concerned with individual discharges, including the standards applying thereto and the lack of compliance of a high percentage of discharges, rather than with creating a "rational" system of WQOs, and then reviewing all consents based on those WQOs. It is suggested that the NWC
wished to review discharge consents and then set objectives to suit the consents - the reverse of what the WQO approach was supposed to involve. This was also inspired by the "fear" of private prosecutions under the (then) soon to be implemented COPA II. It should also be noted that the process was only concerned with non-tidal waters; as indicated in chapter two, concern with tidal waters developed only as a result of (later) pressures from the EC.

The basis of the process was the issuing of two consultation papers by the NWC. The first, issued in 1977, recommended that the WAs specify "interim" or "permanent" "river quality objectives" for surface waters, as the basis for the review of discharge consents (NWC, 1977, para. 2). Such RQOs were not, however, concerned with defining the uses to which each river would be put and then seeking to protect these uses; instead they were concerned only to specify which "river quality classification" would be adopted whereby Class 1, defined using chemical criteria, was designated as "good" quality, down to Class 4 - "bad". This is important, it is submitted, from the point of view of public participation, in that the public were not being offered a full opportunity to agree the uses to which each river would be put. A more significant criticism of the consultation paper must also be made, as it appears that there was limited scope for the public to influence the outcome of the "consultation". First, the NWC stated that, initially, the existing classification should be designated as, either the "permanent" objective, or the "interim" objective but with the option for improvement in the longer term (para. 10). Second, it appeared that the criteria which would determine the targets would be based on available finances, rather than the targets being publicly agreed, with the funds, necessary for their attainment, being made available - business principles once again in evidence. For instance, in reviewing the position inherited by the WAs in 1974, the NWC stated
"... a number of existing consents are not consistent with what is currently practicable with existing treatment plant or with funds available to produce improvement within the immediately foreseeable future" (1977, para. 7; emphasis added).

A further criticism is that the public were involved in this process of "consultation" at too late a stage, the approach using WQOs, and the need for a review of discharge consents (post) having already been determined.

1. The Review of Discharge Consents

A year later, the NWC published a second paper in which it indicated that, from the responses to the first paper, the main difference of opinion was as to the speed at which improvements should be achieved (1978, paras. 1-4) - emphasising the importance of the point, already made, as to which decision should be made first. The Council also recognised that the WQO approach had not been used fully as the basis for setting consents and hence, a review of consents was necessary.

The process of public participation can be considered at two levels. First, nationally in respect of the above consultation papers, and second, regionally, both in the responses of the WAs to the above papers, but also in the process of the setting of WQOs, and subsequent reviewing of discharge consents, by each WA. Each of these stages will be considered in turn.
2. National "Consultation" with the National Water Council

The extent to which participation took place in response to the two NWC papers is difficult to assess, although the first paper was distributed to a range of groups (including fishing and environmental) who were "expected" to be interested (1977, para. 1); but again a key issue is the need for the education of the wider public to know that such a process was ongoing. As indicated by the second paper (NWC, 1978) a range of groups did respond. In respect of that paper, criticisms can be levelled as to the extent to which constraints were being imposed by the NWC, thereby limiting the scope for influence. For instance, it appeared that the review of consents was to be seen as a technical exercise in achieving "better value for money", while the NWC considered the desire for speedier environmental improvements to be a "separate issue" (1978, para. 25). This is interesting when compared with the belief of the Council that the review would

"... provide a sound basis for informed discussion of the present quality of rivers and the priorities for their improvement" (1978, para. 26),

and it wished to see the WAs offer participation "subject to the need to avoid too much time-consuming and burdensome consultation" (ibid., para. 28; emphasis added in both cases).

3. Regional "Consultation" with Yorkshire Water

In respect of the first paper, a further opportunity for participation was provided, regionally, by Yorkshire Water™ prior to submitting its own formal response to the NWC. Three types of participation can be
identified, viz. (1) the provision of copies of the NWC document to selected parties, and to others on request, with the promise to take responses into account (Yorkshire Water, Annual Report 1977, p. 43); (2) participation through the Authority's "consultative committees" (as discussed in chapter three), involving bodies such as the CBI, NFU and the local authorities, and fisheries interests through the RFAC;¹⁹ (3) participation via the WA's Board meetings and committees through public attendance and Press coverage.²⁰ It should also be noted that, at the time, the WA was comprised of a majority of local authority members who were thus (theoretically) "consumer representatives".²¹

The final decision regarding the Yorkshire Water response, appears to have been taken at the meeting of the Policy and Resources Committee on 6 April 1977.²² Two comments can be made about the Yorkshire Water process. First, it would seem that the Authority adopted a similar outlook to the NWC, that improvements in river quality could be achieved only "as and when finance allows" (WQAP, 10 March 1977).²³ Second, the responses received by the Authority mirrored significantly those received nationally, regarding the "split" over the timing of improvements. The only change from the paper proposed was the replacement of the terms "interim" and "permanent" with "short" and "long" term, a change which, again was mirrored nationally, and agreed to by the NWC.

Public participation did, therefore, clearly, take place, but questions must be asked regarding the extent to which the decision-makers were willing to be influenced, especially over the central issue of whether WQOs were to determine finances or vice versa. It would seem that the latter was clearly the case.
II. THE SETTING OF WQOs BY YORKSHIRE WATER

Having explained the background to, and rationale of, the process of formalisation of WQOs, and outlined the potential extent of participation in that process, the next stage is concerned with the actual setting of the WQOs at regional level - again for purposes of detail, Yorkshire Water has been chosen as the basis for this study. Initially, the setting of WQOs for non-tidal waters will be outlined, a process undertaken in the late 1970s, and then the setting of WQOs for tidal waters - it will be seen that there was a considerable time delay between the two. The first step, in each case, will be to briefly explain the "technical" constraints which had to be taken into account in the decision process, before outlining the decision-making process and the extent, as far as it can be judged, of participation.

A. WQOs for Non-Tidal Waters

1. Constraints - The Technical Process

These can be divided into those which were outside (external), and those within, Yorkshire Water's control (internal).

a. External Constraints

Clearly the two main constraints are as outlined in respect of the WA as a whole (chapter three). First, the statutory duties of the WA, involving balancing the requirements relating to sewage disposal and water supply, and taking account of the duty (placed on the SoS for the Environment by the Water Act 1973) to maintain and restore the quality
Second, Government financial controls were likely to have been particularly important given the needs for public expenditure cuts, thereby limiting the extent of investment possible by each WA. It can clearly be seen that any development of WQOs would, as a matter of fact, be determined within the framework of what finance the Government would allow. 26

A further significant problem for the WAs, especially when seen in the context of the above constraints, relates to the actual condition of the rivers and sewage disposal/pollution control assets at the time the WAs were created. A WA with assets in poor condition would require far greater finances to achieve significant improvements. Unfortunately, the position "inherited" by all ten WAs, and some more so than others, was extremely severe. Okun (1977, pp. 214-5) has indicated that "each WA had its own list of 'horrors'", and it would seem that Yorkshire Water was one of the worst affected. 26

b. Internal Constraints

Reference has already been made to the priorities developed by Yorkshire Water within the constraints imposed externally, including those of the pre 1983 Authority. The overriding priority of the latter was the protection of the quality of drinking water, but by 1978, the Authority was also developing what it called "service objectives" in relation to all its functions. The aim here was to identify the defects in each area, and the effects of this on the public and the environment, and determine the costs of improvements, so that a regional strategy and individual priorities could be developed. The significance of this can be seen in that, by 1978, the Authority had identified some 300 capital projects as being necessary to achieve "interim objectives" at a cost of
£200m, of which about 30 per cent was to be allocated to river quality improvements (Annual Report 1978, paras. 3.1.4-9). The concept of WQOs would clearly have to fit within the already determined priorities of the Authority, therefore.

2. Yorkshire Water's Proposals

These were set out by the Authority in a document published in the first half of 1978, River Quality Objectives, and included what the document termed "general objectives" as well as more detailed objectives for each stretch of water. Essentially, the former were that the initial aims should be to achieve river quality in accordance with Class 2 of the WQC classification, so that Yorkshire Water's rivers would be capable of supporting a "viable coarse fish population", but a number of "minor watercourses" (classified by the Authority as Class "X") would be improved only to a level that would avoid a public nuisance. Those which were already Class 1, and used for water supply or as "good amenity and fishing rivers", would be maintained at that level. It should be noted that the detailed objectives were thus written only in terms of the target "Class", and not in terms of defined uses for each stretch of river, unlike the approach developed for tidal waters, post.

Development of the Proposals. The way in which the proposals were developed can be explained with reference to the river classification system created by the WQC. The original classification system had been developed by the MHLG for the first (national) River Quality Survey in 1958, and then adopted, in modified form, by the WQC. (It was also influenced by the then recently agreed EC Directive 75/440/EC Concerning the Quality Required of Surface Water Intended for the
Abstraction of Drinking Water in the Member States. The NWC also included chemical criteria based on biochemical oxygen demand, dissolved oxygen, ammonia and toxicity, but apart from the presence of absence of fish, no biological criteria were included (Lester, 1980, p. 429). Again with regard to a principled approach to public participation, it can be pointed out that there seems to have been no scope for public involvement in the process of developing the river classification criteria.

In developing their proposals, the WAs were also assisted by the information they were required to obtain under s. 24 Water Act 1973, essentially to undertake "surveys" of the water resources in their area with regard to all their functions, including the state of their rivers, and to update this information at least every seven years. In the case of Yorkshire Water (at least) the surveys were carried out in the context of the annual corporate plans and provided the basis for the projections for the next five years.

3. The Decision-Making Process

It would appear that responsibility for the production of the Yorkshire Water proposals rested initially with the divisions, who then submitted to Head Office, for the production of the single document. This in turn was submitted to the WQAP, followed by the PRC (Board minutes, 15 March 1978). It can be seen, therefore, that, in a similar way to the Authority's response to the NWC (supra.), the main mechanisms for public participation were through the Authority committee structure (open to Press and public), as well as by making the document available for public response. These will be considered respectively.
a. Consideration by the Yorkshire Water Committees

The starting point for this was in the form of the submission of the initial document (produced primarily by the Director of Operations) to the WQAP on 15 June 1978. This was explained to, and considered by, the Panel. Interestingly, this included the view that it was "sensible and reasonable" to aim for a general target of Class 2, but a proposal to maintain the existing levels of quality was rejected as inconsistent with the "national aim" of a steady improvement in water quality (minutes). The fact that the WQAP was, in this case, the main forum for detailed scrutiny of the proposals is indicated by the way in which the PRC, and in turn, the Board, "merely" recommended adoption of the document as the basis for public participation (5 July 1978 and 19 July 1978 respectively).

One committee which was specifically allowed to participate was the RFAC at its meeting in September 1978, where the document was considered at length and the proposed policy generally supported.36

b. Participation by the "Public"

The extent and nature of the participation was also discussed by the WQAP at the above meeting, following on from the promise by the PRC that the Authority would allow "proper public participation" (6 April 1977). This included agreeing the range of bodies to which copies would be sent and responses sought; meetings would be held with any organisations that requested it; the report would be sent to any other bodies or individuals who asked for it; and comments welcomed from any "interested parties" (WQAP, 15 June 1978).37 In arguing for a "principled approach" the implications of such a policy are noteworthy. It is contended that
it was vital that adequate education was available to those who were to receive copies on request so that they would have been able to know that the decision process was being undertaken, and that such action on their part was necessary to join the process. Otherwise a de facto form of privileged access would have resulted.

c. Consideration by the Consultative Committees

The document was also submitted to the Autumn round of meetings of the consultative committees involving the local authorities, CBI, Chambers of Commerce, and the National Parks, with the intention of determining whether

"the Authority's proposals struck a reasonable balance between the views of those who would like to bring all Yorkshire's rivers up to the highest quality regardless of cost and those who set a greater value on limiting the financial burden on ratepayers and industry" (Yorkshire Water, Annual Report 1979, p. 35).

d. Responses and Completion of the Decision Process

While a comprehensive analysis of the actual extent of public participation cannot be attempted because of the absence of sufficient empirical information, the nature of the responses received, and the existence of any potentially important constraints (re political will) can be noted. While an initial indication of responses received was given at the WQAP meeting on 15 March 1979, a fuller report was given on 28 June 1979. 26 responses were recorded, which included concern over
individual stretches of water, as well as a promise (by Yorkshire Water) to include a section dealing with nature conservation following the comments of the Nature Conservancy Council.39

In terms of constraints, three important points can be noted. First, in response to the concern of North East Derbyshire County Council, in relation to the river Whitting, it was explained that the pollution problems were the result of waters from abandoned mines which the WAs had no legal powers to control (and such powers were repeatedly refused by central government). Hence, this can be seen as having important implications for the planning process (especially as it applied to more than just the one river), but was a matter outside the jurisdiction of the WA and hence, the influence of the public (at this level). Second, again the issue of available-finance-versus-choice was raised, and again shown to be dominant, in that, at the Board meeting on 19 September 1979 it was stated that the originally planned seven year definition of "short term" had had to be revised because of the most recent round of public expenditure cuts. This can be seen as an ex post facto (external) constraint on the process of public decision-making - the question of time-scales being as important as the actual targets. Finally, the effect of the later process of reviewing consent conditions in agreeing the RQOs can also be questioned. It has already been suggested that perhaps greater attention was to be paid to the former (as discussed in the next chapter also), and support for this can be found in the statements that the discharge consents were to be reviewed and set at levels at which they were currently (sic.) achieving because of the need for "major capital expenditure" before improvements could be achieved (YV, Annual Report 1978, p. 21). This suggests a clear constraint, at least, regarding time-scales.
Following the receipt of the responses, they were incorporated in a revised document considered by the VQAP (28 June 1979) and adopted by the Authority on 19 September 1979.

B. WQOs for Tidal Waters

The above process in relation to WQOs, and the later discharge consent review, had no application in respect of tidal waters, partly because of the absence of control over such waters, although ironically, the process was in part in preparation for the implementation of COPA II which was to introduce such control (chapter two). The point can also be made that if WQOs had been established British practice in the way argued in 1975, this should have enveloped tidal waters as well. As it was, the process of setting WQOs for tidal waters was very clearly a response to further EC pressures in the form of a number of Council Directives which required discharges to tidal waters to be "authorised" (consented) by the "competent authority". This was especially present in the case of the Humber Estuary, on the south bank of which, were two plants discharging titanium dioxide waste. From 1978 onwards such waste became the subject of a series of directives40 which were aimed at its eventual elimination. The three WAs responsible for the Humber, and especially Anglian Water (responsible for most of the south bank), were thus spurred into action to develop WQOs well in advance of the remaining WAs.41 A similar approach will be adopted in this section as for the setting of WQOs for non-tidal waters, above.
1. The Technical Process

This was largely as for inland waters, although two potential differences can be noted. First, the likelihood was that the inherited position of each WA was less severe by the early 1980s, and although tidal waters had been subject to limited control (with the exception of the Mersey), they were generally in a reasonable condition. Second, it could be argued that estuaries were likely to be of far greater amenity value, and therefore, potentially could pose more constraints, in the form of baseline requirements, for the planning process. The NWC (1977) had recognised the interrelationship between the two sets of VQOs, including that for some WAs the volume of discharges was greater to tidal waters than to non-tidal, and that priorities for non-tidal waters could therefore be affected by those for tidal, which would only be worked out in the future.

2. The Development of the VQOs

An important contribution towards the concept of VQOs for estuaries had been made in 1972 by the Royal Commission, the Third Report of which also goes some way to indicating the rather different nature of the objectives which were developed. In discussing the extent of improvements necessary, the Report suggested there were two criteria which needed to be adhered to:

"(a) the ability to support on the mud bottom the fauna essential for sustaining sea fisheries;

(b) the ability to allow the passage of migratory fish at all states of the tide". 

- 229 -
The Commission also indicated that monitoring and research were required for three main reasons (inter alia) to "find practical and economic ways of reducing the amount of pollution", so that a national and local policy could be developed through which it could be ensured that

(a) no irreversible damage is being done to life support systems,
(b) marine food is unquestionably safe for human consumption,
(c) waters and beaches are aesthetically acceptable and fit for recreational use" (ibid., para. 161).

The management process at the national level initially involved a joint sub-group of two main working parties - the Marine Pollution Monitoring Management Group (MPMMG) and the Freshwater Monitoring Group (FMG) - who were mandated to consider the appropriateness of the river classification system in relation to tidal waters at the same time (1977) as the DoE had decided that a new classification system was needed for inland waters. In particular the sub-group was asked, inter alia, to have regard to the uses to which an estuary might be put - for instance, the passage of migratory fish, shell fisheries, wildlife, amenities, such as sailing, bathing, appearance and industry (Sayers 1980, p. 148). The idea that the protection of all "legitimate uses" of estuaries was the key reason for imposing conditions on discharges, was supported by a working group of the NVC which had formerly considered the review of consents for inland waters and was also reconvened in respect of tidal waters. The NVC Working Group did not, however, consider the MPMMG/FMG classification proposals workable, and indicated that it would be necessary to be able to "quantify" the degree of cleanliness needed for particular uses to be protected (ibid. p. 149).

The approach put forward by the NVC group was first used in the 1980
River Quality Survey, although the Survey also noted the limitations of the classification system.

3. WQOs for the Humber Estuary

At the regional level, the work of setting WQOs for the Humber was initially the responsibility of the Humber Estuary Committee (chapter three), a technical working party of which carried out the main work in association with the DoE and the Water Research Centre. The HEC then reported to each of the three member WAs, including Yorkshire Water, where, in the case of the latter, the proposed objectives were discussed and agreed by the WQAG on 20 December 1983. A target date of 1995 was set for achievement of the objectives.

a. Public Participation in the Humber WQOs

The only scope for public participation in the setting of the Humber WQOs was in the form of the meeting of the WQAG noted above. There was no wider participation, in contrast to the approach for the objectives for inland waters (above). The reasons behind this were simply the need for "speed", given the pressures from central government, the latter itself being under clear pressure to meet EC requirements in relation to the Directives already mentioned (CSO, Yorkshire Water, pers. comm.). Interestingly, the matter was not put to the RFAC, and despite the fact that, by the time of actually finalising the objectives the new Board (meeting in private) had taken over, the CCCs and RRCC had not by then been set up.
b. The Nature of the Humber Objectives

It is worth noting the different nature of the objectives which were adopted for the Humber compared to those discussed above for inland waters. These were as follows:

Humber Estuary - Water Quality Objectives

"(1) The protection of all existing defined uses of the estuary system;
(2) The ability to support on the mud bottom the biota necessary for sustaining sea fisheries;
(3) The ability to allow the passage of migratory fish at all states of the tide" (Yorkshire Water, (1986) Water Quality Report, p. 72).

It is submitted that the move, albeit a limited one, to agreeing WQOs in terms of actual uses is an important development in terms of creating a system which is easily understood and allows clearer agreement about the desired nature of the aquatic environment, and the benefits to be gained from it — all to the benefit of those wishing to participate. In particular, it goes some way towards resolving the "conflict of uses" which arises for many rivers. This is reflected by the views of the REC, that objectives written in terms of river classifications only, were "unhelpful" (CSO, Yorkshire Water, pers. comm.).

III. THE SETTING OF WATER QUALITY STANDARDS

Having explained the first stage of the process, the setting of WQOs, and the way that a different approach was taken for inland and tidal
waters, the next step is to consider the standards which were developed to accompany the objectives. WQS have been defined as follows:

"That concentration of a substance which must not be exceeded if a specified use of the aquatic environment [the WQO] is to be maintained" (Sayers, 1986, p. 277).

The setting of WQSs must be considered at three levels. First, it will be seen that EC legislation had a significant impact on British WQSs, in that the limits for individual substances set in particular EC Directives were adopted as the individual WQS - being the minimum required. The whole question of public participation in the setting of those limits by the EC must, therefore, be considered, especially given the disquiet which has been expressed about the scientific validity of many of the limits. Apart from those set by the EC, the remainder of the British WQSs were developed nationally by the DoE and the WRC. The potential for public input will be considered at this level, but with account being taken of any opportunities at the regional level in the case of Yorkshire Water, given the latter's likely input to the national process.

The distinctions between the approach favoured by most of the Member States of the EC and Britain can be noted. In the case of the former, the UES for each substance would be applied directly to each individual consent, but in the case of the WQO approach, the WQS would provide the vital link between the WQO and the consent - but consent standards would vary, subject to the pre-condition that their total effect would not be such as to cause the WQS to be exceeded in the receiving water. The difficulties of this approach have been noted, however, including the need for a "matrix" of WQSs, where a range of uses are to be protected, so that the lowest applicable WQS would have to be adopted (Mance, 1984,
p. 510), and the technical difficulties of "accurately" deriving the appropriate WQS, and then in turn accurately transposing the WQS into variable consent conditions (Renshaw, 1980, p. 235 et seq.).

A. EC Requirements and Decision-Making

In considering the way in which WQS were developed, it is intended, first, to briefly outline the nature of the EC requirements and the processes of decision-making underlying these. The main Directive of concern was the "Dangerous Substances Directive" (76/464/EC) which provided for two "Lists" - List I (or the "Black" List), which included the most dangerous substances, and List II (or the "Grey" List) of the less dangerous substances. Values for List I substances were to be set at EC level, with a view to the eventual elimination of such substances, while List II values were to be set nationally - List I were to be treated as List II until a "Daughter" Directive had been agreed.

In considering the decision process in relation to the Directive, two issues need to be taken into account. First, the decision to include a substance in List I, and second, the actual standard set for each substance. Both processes have been detailed by Mance (1984, p. 509) and the WRC (1987), and can be summarised as follows. With regard to the first decision, the EC commissioned several studies to rank compounds in order, based on their "toxicity, persistence and bioaccumulation" and also took account of the levels of production to assess their likely concentration in the aquatic environment. This resulted in the publication, in 1982, of 129 potential List I compounds. In selecting which of these would then receive early action as the basis for a Directive, three further reports were then commissioned in each case, one relating to "ecotoxicity", plus a technical report, and an economic
report. The opinion of an expert advisory committee could also be sought, although the European Commission was not bound to do so (WRC, 1987).

In the setting of standards, reports were commissioned from expert consultants, which included proposals as to “safe environmental levels”, including a “safety factor” - the extent of which varied significantly. The process at this stage relied only on published data, thus excluding any that was unpublished and held, for instance, by the (English and Welsh) WAs and regulatory agencies in other Member States. Experts from the national governments would then meet behind closed-doors with the process not becoming public until the proposal for a Directive had been published. Following this, national negotiations would begin (for instance with the appropriate regulatory agencies), followed by a process of political bargaining and compromise (Wance, 1984). It should be noted that the final decision on the agreement of a Directive rested with the Council of Ministers (comprised of the Ministers for the Environment for each Member State) and not with the (unelected) Commission.

Apart from 76/464/EC, a range of other Directives, including some which were use-based, were significant in laying down standards which would need to be adhered to through British WQSs. These included Directive 76/160/EC Concerning the Quality of Bathing Water (OJ L31, 5 February 1976); Directive 78/659/EC on the Quality of Fresh Waters Needing Protection or Improvement in Order to Support Fish Life (OJ L222, 14 August 1978); and Directive 79/923/EC on the Quality Required for Shellfish Waters (OJ L281, 10 November 1979).
B. Decision-Making Nationally

In the case of List II substances, and those not covered by EC requirements, the standards were drawn up by the Member States, and in the case of Britain by the WRc under contract for the DoE (Mance, 1984, p. 510). Mance has indicated that this was a continuous process of collating, reviewing and assessing existing data—both laboratory and "field observations"—regarding the toxic effect of each substance, with the aim of identifying the "maximum safe concentration for continuous exposure". A "safety factor" was then introduced before a tentative WQS was produced, which was circulated to the WAs for comparison with their own water quality and biological information, followed by further stages of revision where there were any obvious differences between the data. Finally, the proposed standards were reviewed by a series of DoE/WRc/VA committees, before the publication of the full report detailing the WQS and the supporting information.61

In outlining this process, account can be also be taken of the main factors which had to be considered, especially any technical or practical limitations which would thus limit the "choice" available in making the decision. The prime criteria was clearly that of devising a standard which would ensure the achievement of any WQOs, but other factors have been identified, including the limits of scientific knowledge—especially the "limits of detection",62 the need to allow for "future capacity",62 and inputs from sources other than discharges, especially the effects of accidental spillages.64 The key problem, however, has been in determining the appropriate size of the "mixing zone"—the area around each discharge outfall where the pollution will be greatest because the natural capacity of the receiving water has not had the chance to disperse the effluent (Sayers, 1986). Within this area it cannot be expected that the WQS will be achieved, but this should not
be allowed to) prejudice the WQOs for the water in question. This was identified by Welsh Water, in evidence to the Environment Committee, as "the most significant technical problem water authorities face in managing estuarine ... water quality at the present time."

In response to which, the Committee were of the view...

"... that the universal application in estuaries of the mixing zone must be regarded as seriously flawed, with the result that it is not always possible to apply effective estuarine [Water] Quality Standards" (HC 183, 1986/7, para. 115).

Sayers has indicated that the characteristics of the individual estuary are the main factor, and that the size of the zone will vary as between discharges, and even for the same discharge at different times.

C. Public Participation in the Setting of WQS

To complete the picture, the question must be raised of the scope for public participation in the above process at the two levels of decision-making. While it cannot be argued that WQSs are as fundamental as the actual WQOs, they are clearly important in implementing the WQOs in practice to ensure the latter are achieved, and hence, it is submitted that the requirements of meaningful participation should be adhered to equally at all levels of decision-making.
1. At European Community Level

While a detailed critique of the decision-making processes of the EC will not be provided, the main criticisms, especially in the context of water Directives, can be outlined. Haigh has highlighted the trend towards increased Community level decision-making, especially in the case of standard setting, and that during the dispute between the British Government and the remaining Member States in the mid-1970s (noted earlier), the former claimed that it was defending the right of the WAs to set standards, and hence, prevent a shift away from the regional level (1986, p. 204). Lawrence and Taylor (1987) have been leading critics of the way in which the EC produced Directives, especially the absence of "open government", citing, in support of this, the way that the studies, used as the basis for standard setting, were not open to public or "peer" scrutiny, nor was the advice received from consultants available to interested parties. Further, they were critical of the way that the advice of the Economic and Social Committee and the European Parliament was generally ignored without adequate explanation.

In the wider context, therefore, it would seem that the practice and ethos of the EC may to some extent mirror that of Westminster and Whitehall in the preference for secrecy and limited access to decision-making. This has been seen more recently in the context of calls for significant reforms, including the need for greater power for the (elected) European Parliament, for openness in the meetings of the Council of Ministers, and for greater (and earlier) scrutiny of EC proposed legislation for the Westminster Parliament. It is submitted that the EC, as much as the British Government, needs to adopt fully the principles of meaningful participation in its law-making processes. This
is a point which will become all the more important as Europe increases its control over the Member States.

2. At National Level

In the case of the setting of WQSs nationally, there appears to have been very little opportunity for the wider public to participate, and a distinct lack of education about the process. A study of the Yorkshire Water committees supports this view. Equally, there was little or no opportunity at the regional level. This is a point which must be taken on board in future decision-making.

IV. THE REVIEWING OF WQOs AND WQSs

It has been argued that, as part of the requirements for the whole process of communication, a key stage is the opportunity (and willingness) to keep decisions under review. This applies, it is submitted, a fortiori to WQOs and WQSs. One of the central issues, in the case of the WQOs especially, was that of financial constraints, and it can be noted that, apart from the decision of what target to set, there are the equally important questions of the time-scale within which any WQO should be achieved (which has been the most affected by financial constraints) and the actual target within each "Class" that should be sought. Because both groups of objectives and standards for inland and tidal waters were set prior to, or at the very beginning of, the main period of WA decision-making under study here (1983-89) it is intended to briefly review the extent to which any review was undertaken. Clearly the type of structures discussed in chapters three and four provided mechanisms through which such reviewing could take
place at regional level (subject to the requirements of political will and education and the reservations expressed therein), but in practice these were utilised only to a very limited extent. A number of recent developments have also raised the question of such reviews, but again very much at the dictates of bodies other than the public or the WAs—account will be taken of these as appropriate.

A. The Reviewing of WQOs

In his preface to the NWC consultation paper (1978) on the review of discharge consents, the Minister, Denis Howell, stressed the importance of keeping the objectives under review and of including the public in this process. However, there does not seem to have been any process akin to the original setting of the WQOs for inland waters with extensive public participation either offered nationally, or regionally in the case of Yorkshire Water. The main concerns, however, relate to the question of the time-scales for achieving the targets, and the ability to comply with them within the framework of government financial controls of the WAs. This is reflected by the main assessment of the Yorkshire Water WQOs which was carried out on a systematic basis by the WQAG (chapter four). This process was commenced by a resolution of the Group (in May 1985) that it would review the quality of the rivers in the Yorkshire Water area on a

"... catchment by catchment basis, ... in relation to the predicted quality based on a strategy for the catchment together with a review of the progress achieved" (minutes, 2 May 1985).
Reports detailing (inter alia) the action required to achieve the WQOs were presented to the Group on the Aire catchment (7 November 1985), the Don (20 February 1986), the Calder (1 May 1986), the "Northern rivers", and the tidal Ouse, Humber Estuary and the North Sea coast (both 31 July 1986). Apart from an update on 5 November 1987 the Group did not, however, repeat the exercise.\textsuperscript{74}

In chapter four the question of the interaction between the various committees was considered, with the importance of equality of access, and committees knowing what was on the "agenda" for consideration by other committees, being stressed. The approach in the case of the WQOs mirrors the main findings in chapter four, to the effect that none of the information noted above was offered by the Authority to the CCCs or the RRCC, but a range of the above reports were passed on to the RFAC "for information". Primarily this included the initial report regarding estuarine and coastal WQOs (19 August 1985), followed by each of the individual catchment reports. Apart from these examples, however, there do not appear to have been any occasions on which members of the RFAC requested any form of review of the WQOs or related time-scales.

Finally, an interesting process which needs to be recorded, is the practice which Yorkshire Water developed of holding symposia relating to the major rivers in its area. These were apparently well attended by local interest groups in particular, and provided an opportunity for a variety of matters relating to the management of the rivers to be considered. For instance, at the Aire seminar (Water in the Aire Catchment, 24 February 1988) a local group, concerned with the quality of the Aire, raised the issue of the target dates not being met.

It can be seen, therefore, that there was no systematic review of the actual objectives themselves, only in respect of the action to achieve
the objectives, and that there was a clear absence of the presentation of this information to the CCCs and RRCC.

B. The Reviewing of WQSs

In the case of WQSs, it can be suggested that there has been even less reviewing (but again concern about achieving compliance), although this issue is complicated by their national (and supra-national) character. However, it can be suggested that the framework of the control system itself has come under close scrutiny from 1987 onwards with a number of international developments relating to the North Sea, and the British Government's proposals to introduce the concept of "Integrated Pollution Control" (see DoE, 1988a), ultimately as Part I of the Environmental Protection Bill, published in December 1989. Following on from the Second Ministerial Conference on the North Sea in 1987, and the resolution to cut total inputs to the North Sea by 50% by 1995, the Government published a consultation paper (DoE, 1988b) regarding the most dangerous substances, selecting 24 from the Black List (of Directive 76/464/EC), which it perceived to be the most dangerous, and resolving to work towards their elimination from discharges into rivers - this was labelled the "Red List". In other words, that in such cases - and under central government dictat - any existing standards would be replaced by the target of "zero". Such a process will have a knock-on effect for individual discharge consents. While reference will be made to this issue in the following chapters, the point can be noted at this stage, that the development of the "Red List" was subject to national consultation, and consideration regionally by Yorkshire Water's WQAG.

Finally, as will be noted in the final chapter, it can be argued that the issue of the review and development of WQSs was more at the
forefront of policy-making following the reorganisation of the water industry in September 1989, including the request of the SoS for the NRA to undertake a full review of the consent system, (and hence implicitly WQOs and WQSs) and reviews of the river classification system ready for the River Quality Survey to be published in 1991, and statutory WQOs to be agreed in 1992.

V. CONCLUSIONS

From the above discussion a number of conclusions can be drawn. For instance, it is submitted that very few of the decision processes were close to meeting the requirements of a "principled approach" based on meaningful participation, either because only limited, or in some cases, no public participation, was provided. A particular concern is the increasing control by the EC, where the scope for meaningful participation also appears limited - reforms of the law and policy-making processes at all levels must therefore remain a priority. A fortiori, the perceived "failings" of representative democracy at the national level may be intensified at the EC level. The development of a "super state" may thus pose the greatest challenge or the greatest opportunity for a concept based on a participatory form of democracy.

Further, it is believed that the overall concept of WQOs is valuable as a basis for providing a relatively clear system of management (subject to the problems of transition through WQS to consents) which could provide a major benefit for public participation. However, in a number of ways it is questioned whether the system has ever worked in the way in which, it is submitted, it should. First, the concept is only beginning to take its first tentative steps towards actually agreeing targets in terms of intended uses - those for inland waters still being
based only on the NWC river classifications. Second, it will be questioned, in the next two chapters, whether the WQOs and WQSs have been "successfully" translated into individual consents, a problem made worse by the extensive rate of non-compliance, and the absence of control over many discharges until the mid 1980s (chapter two). Related to this, has been the recent "over-emphasis", it is contended, on discharge compliance without regard to whether consents were set "correctly" in relation to the WQO/S in the first place. It was argued that the NWC was more concerned with the individual consents than the WQOs, and a similar impression has been created by the process of introducing "time limited consents" for WA discharges and the promise of £1bn from central funds to enable all WA sewage works to be brought into compliance by 1992. Such an approach was thus carried out regardless of the need, and later promise, to review the consent/WQO system.

Finally, although there is limited evidence available, it is questionable whether sufficient education was ever provided of the whole concept of WQOs and WQSs, and thus it is perhaps unsurprising that the public should have been so concerned at rates of compliance per se in the run-up to privatisation. It can also be suggested that the very technical nature of many of the above decisions provides an ideal opportunity for the implementation of an managerialist/business principles approach which, it has been contended, was the dominant ethos of the WAs from start to finish, and hence the danger that the necessary political will would be absent either from decisions to grant public participation, or in the actual process thereof.
NOTES:

1 Although in the case of Water Quality Objectives and Standards (in chapter five) Yorkshire Water will again provide the main focus.

2 The fundamental importance of this approach in ensuring planned investment rather than the setting of consents on an ad hoc basis has been noted (Humber Estuary Technical Panel, 1986, p. 1) and c/f the approach analysed by Richardson et al, 1982.

3 The point can also be made that because such objectives and standards amount to a definition of "pollution", there is need for public agreement about that definition, the word itself being emotive. Furthermore, the use of a river necessarily involves resolving a conflict of potential uses, and hence, it is submitted that there is a clear need for public agreement as to how that conflict should be resolved.

4 It should be noted that there have been considerable problems over terminology in this context, including different definitions of the term "quality objective" and their prefacing with titles such as "river", "environmental", and "water". In this work the terms "water quality objective" (WQO) and "water quality standard" (WQS) will be used in accordance with the terminology adopted in the Water Act 1989, and these will be given the definitions indicated above, rather than those adopted by other EC Member States (as illustrated below).

5 Report of the Rivers' Pollution Prevention Sub-Committee of the Central Advisory Water Committee, Prevention of River Pollution.


For further reading, including the idea of "pollution budgets" (a related concept) see the Royal Commission Third Report (Cmd. 5054, 1972, paras. 24 and 86); DoE, Circular 118/72, para. 5 and Renshaw (1980, p. 233).

It is not intended to rehearse the details of the EC legislative programme which led ultimately to four "action programmes on the environment", but see further Haigh (1984, 1989), Farquhar (1983), and Howarth (1988), and Booth, H, and Green A, "The European Community Environmental Programme and UK Law", (1976) European Law Review 444.

The Directive that was finally produced was, what has been termed, a "framework" or "parent" directive, leaving the details for individual substances or industrial processes to be developed by later "daughter" directives - a process described by Farquhar (1983, pp. 147-8) as "little more than a delaying tactic". See further Booth and Green (ibid., p. 537), and Guruswamy, L D, "EEC Legislation Controlling Dangerous Substances: Legal Odyssey or Unchartered Voyage of Discovery?" (1983) Lloyds Maritime and Commercial Law Quarterly, 464, on the suitability of Directives for the protection of the environment.


It should be noted that the Treaty of Rome did not provide for legislation on the environment, and so, before the Single European Act in 1986, a combination of Articles 100 and 235 were relied on - see House of Lords Select Committee on the European Communities,

11 Thus, consistent with the arguments relating to the non-implementation of COPA II, (chapter two).

12 See further Dick, T A, EEC Directives and the Aquatic Environment - Setting the Scene, (1978), Institute of Water Pollution Control, Scottish Branch Symposium, 15 March 1978, at p. 13. It is submitted that the claims of Renshaw (1980, p. 234) miss the point.

13 See Article 6(3), and Guruswamy, ibid., p. 471. It was, however, only in the mid 1980s that a more "enlightened" and positive approach was agreed, with both "sides" recognising that a combination of the two approaches could yield significant environmental benefits. See the Ministerial Declarations on the North Sea (1984 and 1987) following the Conferences in Bremen and London respectively, the Government's response to the Environment Committee, HC 543, 1987/8, para. 1.24 et seq., and the "Red List" consultation paper (DoE 1988b).

14 The classifications (for freshwaters) were as follows: Classes 1A and 1B - "Good Quality", 2 - "Fair Quality", 3 - "Poor Quality", 4 - "Bad Quality". This does bear some correlation to the uses to which the river can be put, however. The classification system is considered in more detail, post, including that the first step for the WAs was to determine which classification each river already met.

15 Again note that this all occurred against the back-drop of the severe public expenditure cuts, referred to in chapter two.

16 In the first paper it had been noted that many consents had been set at the so-called "Royal Commission 30/20 Standard" relating to the 1912 Royal Commission, but the latter had intended that the capacity of the receiving water also be taken into account (NWC, 1977, paras. 4-6).

17 Including the review of consents in the next chapter.

- 247 -
And presumably by the other WAs. The following is gleaned from the minutes of the meetings of the Board and committees of Yorkshire Water, viewed at the Authority library in Bradford.

A special meeting was convened on 7 March 1977, where the committee was given a presentation of the paper.

Ibid., chapters three and four.

The matter was considered primarily by the Water Quality Advisory Panel on 10 March 1977.

Members were then informed on 3 August 1977 (PRC) that the Authority was expected to complete its development of "RQOs" by March 1978, and the review of consents by March 1979.

It was also indicated to the RFAC (7 March 1977), that Yorkshire Water's priorities were the protection of drinking water quality "first and foremost".

The NVC considered this a "broad duty" which it did not think the concept of WQOs would conflict with (NWC, 1978, para. 25). Account would also have to be taken of additional localised duties arising through Sites of Special Scientific Interest, for instance.


See, in particular, the Annual Reports of the Authority for 1975-8, the report produced by the Yorkshire Water WQAP on the Authority's "Inheritance", and the same named report of the NVC. An additional problem for Yorkshire Water lay in the long-term commitments entered into by its predecessors, which had the effect of constraining resource planning for the early years, and that, by 1978, only two-thirds of its likely length of sewers had been identified and their condition catalogued (Annual Report, 1978, section 3).
27 A further factor was the drought of 1976, as a result of which, the Authority decided to develop a water supply "grid" at considerable expense (Policy and Resources Committee, minutes, 7 April 1976).

28 A more detailed version of this document was actually presented to the WQAP on 15 June 1978 - details, herein, are from the WQAP version.

29 In contrast to the NWC, Yorkshire Water (temporarily) adopted the approach of classifying water supply rivers as Class "0" (PRC, minutes, 8 January 1975).

30 Although the classification based on chemical criteria was considered to be in some way linked to potential uses (Lester, 1980, pp. 430-1), as suggested earlier.

31 Although the Royal Commission in 1912 is often considered as the founder (NWC, 1977).


33 It is important to take account of the criticisms that have been made of the classification system, on the basis that, potentially, fundamental decisions were being made on less than "perfect" information. For instance, the point has been made that it was possible to have a fishless Class 1 river, but healthy fish in a Class 3 river (CSO, Yorkshire Water, pers. comm., and Birch, 1988). Further, the system did not take account of the flow and capacity of rivers, so that a high quality river could not be used for water supply because of inadequate capacity (quantity) but the system would not reveal this (Okun, 1977, p. 210), and Royal Commission Fourth Report, Cmnd. 5780, 1974, para. 106). Finally, the Environment Committee recommended that the DoE should consider further the "adequacy and sensitivity to change" of the system (HC 183, 1986/7, para. 42). These problems will be noted further in chapter eight.

34 Indeed the NWC (1978, para. 23) recognised the link between the two suggesting that "the formalisation of ... aims for river quality will
no doubt influence the plans and programmes proposed under s. 24". This information, which had also been required from the river authorities, was used by central government to produce the quinquennial river quality surveys.

The corporate plans were, however, intended primarily as information for central government to be used in the setting of financial controls (DoE, pers. comm.).

Minutes, 4 September 1978. The minutes of this meeting were submitted to the Board on 15 November 1978.

The list of organisations was as follows: all County and District Councils in the Yorkshire Water area, CBI, RFAC (supra.), division FCAs, NFU, Yorkshire and Humberside Economic Planning Council, CLA, Chambers of Commerce, and Yorkshire and Humberside Council for Sport and Recreation (Yorkshire Water, 1978, Appendix 1).

No evidence is available of the extent to which education was, in fact, provided.

From the Authority meeting on 19 September 1979, it would seem that comments were also received from various nationalised industries.


Sayers (pers. comm.), and see Garnett, 1981, p. 175 regarding the similar effect of 76/464/EC.

For instance, the Humber Estuary was classified by the 1980 River Quality Survey (NWC, 1981, summarised in Edwards, 1985, p. 34, Table 8.3) as "Class A" ("Good Quality") for 44.8 km, and "Class B" ("Fair Quality") for the remaining 18.7 km along its north side (for which Yorkshire Water was responsible). The inland rivers feeding the estuary were, by far, a greater problem.
For instance, in the case of the Humber, see Edwards (1985).

Cmd. 5054, 1972, para. 23) The Commission considered this would do "for estuaries what the miners' canary did for miners". Also note earlier references to the concept of "pollution budgets" (para. 24).

Thus the basic "philosophy" between the two was essentially the same (Sayers, 1980, p. 149).


In particular the WRc was involved in the development of a "mathematical model" of the estuary, which was considered a significant part of the process (Yorkshire Water, Annual Reports 1978, p. 20, 1980, p. 14).

It should be noted that this was under the "new" Authority; it would seem likely, therefore, that the objectives would have been finally agreed by the Board (meeting in private). For further details see Humber Estuary Technical Panel, 1986.

However, the WQAG later reported that this was impractical within Yorkshire Water's (then) existing capital programme (minutes 8 August 1985) - public expenditure controls again clearly dominating.

There may have been with particular interest groups, but no evidence of this has been found; it can be expected, however, that, at the very least, the industries reliant on the Humber would have been allowed some input, thus creating the kind of "privileged access" argued against here.

Similarly, at the WQAG meeting (20 December 1983) it was noted that the three WAs had been under "direct pressure" from the Minister (for the Environment) to produce the WQOs.

A problem indicated by the ongoing action relating to navigation rights on the (Yorkshire) Derwent - A-G (ex rel Yorkshire Derwent Trust Limited and others) v Brotherton and others [1989] 2 ALL ER 423.

It was however, open to Britain, or any Member State, to develop stricter standards.

And published in a series of WRc Technical Reports.

The benefits of UES, in terms of being easily understood, have also been noted, as well as the need for them in the case of watercourses which cross national boundaries (ibid., pp. 238-9).

This was an approach modelled on the Paris Convention for the Prevention of Marine from Land-Based Sources, 1974, Cmnd. 8941.

It is not intended to provide full details of the Directives or their requirements; these can be found in Haigh, 1989.

See for instance Mance's example of the Cadmium Directive, p. 511.

Reference has already been made to Directive 78/176/EC on Waste from the Titanium Dioxide Industry (OJ L54, 25 February 1978). This required the eventual elimination of waste into rivers from the industry, and as such, did not lay down specific standards, but required Member States to draw up "pollution reduction programmes" (Renshaw, 1980, p. 233). This will be considered in more detail in the following chapter.

The List II WQEs are found in WRc Technical Reports TR-206-212.


Especially for new discharges.

A problem the UES approach cannot deal with directly.
He also concluded that "mixing zone size should, therefore, reflect the ability of the estuary at the point of discharge, to absorb pollution without undue detriment." In respect of the two titanium dioxide discharges on the south bank of the Humber, a survey undertaken by Anglian Water in 1984, was the first time that the Authority had attempted to measure the existing mixing zones around any discharges under its control (1986, pp. 280-2).

The point must also be made that in talking about the "public", this includes organisations with the existing technical ability, such as Greenpeace and Friends of the Earth, thereby indicating that all information does not rest with the government machine (chapter one).

Clinton Davis (1989), a former EC Commissioner, has been a leading critic, especially in relation to the powers of the European Parliament (which he has described as "hopelessly inadequate"), and the "secretive" nature of Council (of Ministers) meetings.


See further chapter eight. The point can be made regarding the extent of education that would be needed to develop a public able to participate in this decision. It should also be noted that an important decision, apart from the actual setting of standards, was in the application of the Directives, where it was necessary to "designate" waters to which particular directives would apply. The Directive 76/160/EC Concerning the Quality of Bathing Water (OJ L31, 5 February 1976) provides the clearest example of this in the initial approach of the Government to designate only 27 beaches, less than land-locked Luxembourg (see Haigh, 1989, pp. 65-8).

This was also a theme of a one day conference hosted by Derbyshire County Council ten years later (Rivers for Life, 9 November 1988).

Bearing in mind there was no consultation at all in the case of the Humber WQOs at least.
Again it is submitted that the detailed reports provided to the Group in this context show the value of the Group for education and as a catalyst for public participation.

When it was also agreed that the CSO should report annually on any problems that were likely to prevent the WA from achieving the WQOs - in the case of the Don, pollution by waters from abandoned mines was a particular problem.

A general presentation was also made to the Group regarding the river Wharfe (27 February 1987).

The minutes do not reveal the nature of any discussion which ensued.

At a meeting of the WQAG (1 May 1986) the scientific basis for the standards was considered. Mance has, however, argued that the most significant part of the WQS process lies in the "gaining of practical experience" from applying them to the control of discharges, and thus, after a few years, he expected this experience to be "harvested" in a review of the standards (1986, p. 511).

It can also be noted that such an approach constitutes the kind of positive "welcoming" of a combined UES/WQO approach noted earlier in the chapter, and commended by the Environment Committee (HC 183, 1986/7, paras. 97, 112-3).

See the statement of the (then) SoS for the Environment to the House on 4 November 1988 (Hansard, HC, vol. 139, cols. 1289-90).

Its interrelationship with privatisation cannot, however, be overlooked.
CHAPTER SIX

Imposing Control II

- The Discharge Consent Process

Following on from the process of setting WQOs and WQSs, the next stage in the control regime to consider is the setting of (conditional) consents for individual discharges of trade and sewage effluent. Such consents were backed up by the force of law, as will be explained in the next chapter. This formed one of two main methods through which it was sought to prevent or limit "pollution" from occurring, the other being (again through the use of the criminal law) in the form of strict liability offences relating to "irregular" pollutions, such as spillages or deliberate "dumping", and a variety of powers to impose limits on activities which might lead to pollution occurring. The emphasis of the chapter will, however, be on the consent process because a variety of potentially significant rights to public participation were provided for in respect of the setting (and also the enforcement) of consents; as indicated in the Introduction, this provided the initial spur for the research, seeking to analyse whether the potential of the rights was realised in practice. It is intended, therefore, to work through the consent setting decision process, outlining and analysing the opportunities for public participation at each stage, and effecting a
comparison with the requirements of meaningful participation. At the end of the chapter the position in relation to the control of "irregular" pollutions will be noted. 2

Reference can be made to initial expectations, that by providing such rights, it had been intended that the public should be fully involved in pollution control decision-making. However, account must taken of the arguments regarding the rationale of the provisions, and their delayed and then phased implementation (outlined in chapter two), as well as the framework of the WA as a corporate entity within which such rights were to operate - thus the domination of the business principles ethos. It will be argued that, in the context of the control of both types of pollution, the attitudes of the regulatory authority were particularly important where the authority was dealing with various types of industry, large and small, for whom the discharge of waste was a vital part of the production process, and by whom, sometimes significant, local employment was provided. The danger is, therefore, that if the authority possessed significant discretion in the imposition and enforcement of control, that this would be used for the benefit of industry, or some industries (and hence "unequally") thus negating the process of public participation, and a fortiori, where such discretion was exercised as the result of "hidden" bargaining without reference to public scrutiny or comment. Thus the issue of political will, although difficult to test, must always be considered an essential part of the relationships between the regulatory authority, the regulatees, and the public. 3 Again much of the material used in the following chapters has been collected with regard to the practice of Yorkshire Water, but, because some of the most important examples of the use of the public participation provisions occurred in relation to other WAs, these are included also.
I. THE CONTROL OF TRADE AND SEWAGE EFFLUENT DISCHARGES

A. The Background to the Control Regime

In the previous chapter the review of discharge consents by the WAs, under the auspices of the NWC, was referred to as being part of the process of developing WQOs in response to EC requirements. The second consequence of EC legislation was the need to have in place controls over any discharge which contained EC controlled substances. COPA II was the main mechanism to achieve this, and in the late 1970s serious steps towards its implementation were taken, for which the review of discharge consents was the key. Having briefly referred to the review in the previous chapter, it is intended here, too consider it more fully, taking account of its implications for the control regime, and public participation therein. Following this, the decision process under COPA II will be analysed.

The significance of the review lay in the way in which it would provide the "baseline" for virtually all WA consents to inland waters, but the approach taken suggested a dissonance with the concept of WQOs which the WAs had been required to develop in the months prior to the review. The problem was that the WAs had specified short and long term targets, but were then being required to redefine consents in accordance with the standards which the discharges were achieving at the time - apparently irrespective of the targets which had been set - or at least, that the short term targets would have been set to accord with the intended reviewed consent. This, arguably, was a process of planning in reverse. This argument is re-inforced by a number of factors. First, (as noted in chapter five) the NWC regarded the review as a process of obtaining the "best environmental value" from available investment, rather than a process of allocating new resources - in other words of achieving what
was practicable with existing funds (1977, para. 3). Second, the NWC recognised at the time, that progress was likely to be delayed, or even set back, by further cuts in VA investment (ibid., para. 3). Third, as will be noted below, seven years later a further review of consents, adopting the same approach, was carried out. It is difficult to see, therefore, how repeated amending of consents to the levels they were achieving in practice, could do anything but negate the already publicly agreed WQOs and, therefore, a true concept of publicly agreed WQOs, with consents based thereon, could not have begun to operate, at least until after the mid 1980s.

This further lends support for the contention, set out in the previous chapter, that the Government's claim, in the mid 1970s, that it was established practice for consents to be derived from WQOs, was "rhetoric" only. This is also suggested by the main justification for the review which was the "anomalies" (Fish, 1978, p. 239) in the way consents had been set until then. In particular, it was claimed that there had been an over reliance on the recommendations of the 1912 Royal Commission on Sewage Disposal. This had suggested that consent conditions of 30 mg/l suspended solids, and 20 mg/l biochemical oxygen demand should be appropriate for most works (hence the so-called "30/20 standard"), but in many cases it was overlooked that the Commission had stressed that such conditions should be varied in accordance with the available dilution in the receiving water in question - anything less than 8 times the volume of the discharge required a stricter standard (Fish, 1978, pp. 238-9). The NWC noted that "... existing consents ... are not always rationally related to WQOs" (1977, para. 7).
To complete the picture of the involvement of Yorkshire Water in the WQO and consent process (following on from the previous chapter), the impact of the review, and the extent of participation, can be noted. It was stated by the Director of Operations that, with present levels of public expenditure, not all consents could be brought into compliance (RFAC, 7 March 1977), nor could actual improvements in water quality be achieved in the near future (VQAP, 10 March 1977). The Authority put forward a two stage review. First, consents would be reviewed to set them at "realistic" levels — in other words the level of quality actually being achieved — where compliance could not be achieved at present levels. Second, all consents would be "rationalised" so that they would accord with the target WQOs. It is difficult to see how the latter fits into the former, unless stage 2 was intended to be carried out further into the future, and given the subsequent review exercises (post), it seems doubtful that such an exercise was ever "properly" carried out.

Importantly, the Authority was of the view that no consultation was required in the first stage of this process, according to the Director of Operations, because the revised consents would merely be "statements of fact" and hence, there was nothing that could be negotiated about (VQAP, 15 March 1979). It is submitted, however, that this is an unjustifiable approach, given the benefits, it has been argued participation can produce in terms of "better" decisions. There was some scope for participation through consideration of the review process by the Yorkshire Water committees (on the same basis as in chapter five, including again the RFAC), but there appears to have been no wider scale participation, unlike for the WQOs. This seems to be equally true for the second stage, despite indications that participation might be appropriate for the latter (VQAP, 15 March 1979). In terms of the actual
decision-making process, a progress report was presented, by the
Director of Operations, to the WQAP in November 1978, indicating how the
review was being conducted and its implications (9 November 1978). This
was followed by a further report, supposedly as the basis for public
involvement, which was received by the Authority on 17 January 1979, and
the WQAP on 15 March 1979. However, the next consideration of it seems
to have been at the WQAP on 30 October 1980, with very limited evidence
of participation on any wider scale in between."

2. The 1985 Review

With the announcement by the Conservative Government in 1984, that
implementation of COPA II would finally take place (albeit in phases),
preparations were made in the form of a further review of consents to
again ensure that consents reflected the levels they were achieving in
practice. It would seem that the demand on sewage works since 1979 had
continued to rise, but because of public expenditure, and hence WA
investment, constraints, the capacity of the works had not kept pace,
thus the (new) 1979 levels were no longer being achieved. It is
difficult to see, therefore, how, even by 1985, the WQO-consent system
could be working in the way the WVC claimed that it would. In the case
of Yorkshire Water, proposals for the latest review were considered in
late 1983, and put to the SoS Environment in early 1984, thus involving
the new Board (once again in the absence of the CCCs). Formal
applications were made in 1985 (YW, Annual Report 1986, p. 24).
B. The Process of Setting Consents for Discharges Commenced After 4 July 1984

In the main body of the chapter, the process of setting new consents during the period under study, will be explained, including the provisions for public involvement under COPA II. The significance of the provisions should be noted in the way they differ from the "traditional" British approach to public involvement in "rule-making" (c/f the US APA 1946). Further, the provisions are notable in respect of their potential effect on the relationships between the WAs and dischargers who, before COPA II, were used to consent setting being a process of private bargaining. The public can thus be seen as an extra "dimension" in this relationship, making it all the more important that all parties possessed the necessary political will. The danger was that such private bargaining would continue, thereby reducing participation to legitimation, outcomes having already been determined.14

1. Responsibility for Consent Setting

It should be explained that, while the WAs were responsible for the setting of non WA discharge consents, those for WA discharges were set by the SoS Environment (with HMIP providing the technical expertise from 1987).16 Because of this, reference will be made to the role of the SoS as appropriate, but the majority of data available relates to the process of consent setting by the WAs, especially Yorkshire Water.
2. Technical Constraints

In accordance with the approach adopted in previous chapters, it is intended to briefly outline the "technical constraints" involved in setting consents, prior to consideration of the decision process in practice.

a. Legal Limitations

The WAs were empowered by s. 34 of COPA to either grant a consent unconditionally, subject to "reasonable" conditions, or to refuse consent, but not "unreasonably". The idea of reasonableness thus provides the route through which a variety of requirements could be achieved, including the setting of conditions to meet EC obligations (as discussed in the previous chapter),"16 complying with the WAs' general statutory duties,"17 and (at least according to NYC intentions) the implementing of the WQO/WQS approach. Thus, in contrast to the UES approach, different conditions could be applied to individual discharge consents, provided that the combined effect of all the discharges to each stretch of river was not such as to cause the WQS to be exceeded (especially where this was a "mandatory value" under EC law). Therefore, although the WQO/WQS was intended to be the key element in the setting of consents, it was not provided for in COPA, being (arguably) a later development."18

b. Practical Limitations

A number of these applied in the process of consent setting, including, primarily, the available dilution, and in some cases turbidity, of the
river (given that this enables the effluent to be dispersed). A particular problem was also the need to take into account existing discharges - the new consent had to be "slotted in" to the existing total load on the river, and a fortiori capacity had to be left for future (new) discharges.19

c. "Political" Limitations

A more significant problem in practice, at least prior to COPA, was the right of the applicant for consent to appeal to the SoS against the WA's decision. This was often used as a "delaying tactic", because the discharge was allowed to proceed unconditionally until the appeal had been determined, which often took many months. WAs thus sought to negotiate to avoid appeals wherever possible.20 This position was reversed by COPA (s. 39) but was still, potentially, a factor in practice, and important because of the scope for the WAs to take into account the effects of consent conditions on the economic position of the discharger.

3. The Decision-Making Process

Applications for consent were required to include a range of details specified in s. 34(1) of COPA, including (inter alia) the nature and composition of the matter proposed to be discharged and hence, the individual substances which were to form the discharge. In practice submission of the application was rarely the first contact between discharger and the WA department responsible for consent setting. A process of prior informal negotiation was common place - and encouraged by WAs - so that applicants did not go through the process of applying,
and the expense of advertising (post), for the application to be rejected. Because of this approach refusals were rare, but this does not mean that the WAs did not consider refusal an option. In terms of political will, however, it is important to stress the need for the application not to have been effectively determined at this negotiation stage, thus making the participation process no more than tokenistic.

4. Public Participation in Consent Setting

Each of the main opportunities for public participation under COPA II will be outlined, and a comparison with the principles of meaningful participation attempted, in particular, with regard to the different stages of communication, and the constraints identifiable from practical experience. Information provided by WAs and national and local "amenity" groups is used as appropriate. In considering this process of setting consents, and public participation therein, it should be noted that the latter applied only to new applications after 4 July 1984 (following the long-awaited implementation of COPA II) and, therefore, to only a small percentage of the total number of discharges subject to control. The provisions can be analysed as a series of progressive stages of the decision process.

a. Obtaining Information About the Application

The first requirement for communication is the means through which information about the proposed decision can be obtained. Under the terms of COPA II this could be achieved in three main ways.
The Requirement to Advertise. Section 36(1) placed the WAs under a duty to advertise all applications in local newspapers for two successive weeks, and in the London Gazette, in the form prescribed by Regulation 2 (SI 1984/864). However, there were two important exceptions to this. First, under subs. (4) the WA had the discretion to not advertise where it

"...propose[d] to give consent ... and considere[d] that the discharges in question [would] have no appreciable effect on the water in which they [were] proposed to be made." 24

This provided a significant internal constraint because of the discretion it presented to the WAs, coupled with the difficulties of interpreting "appreciable effect". 25 Guidance was given by the DoE on this phrase, by providing a series of complex criteria which had to be met before advertising could be "waived" (DoE, Circular 17/84, Annex 3). WAs' reaction to this was mixed. For instance, as previously reported, North West Water sought to uphold "the spirit" of s. 36 by advertising when they were in doubt or the application might cause local concern (Burton and Freestone, 1986, pp. 256-7). 26 Yorkshire Water published its own policy with regard to the use of the "waiver", which favoured advertising whenever the proposed discharge had implications for the appropriate WQO, for water supply abstraction points, or underground waters, and all applications from fish farms were to be advertised (Rhoades, 1984, p. 501). 27

The rationale behind the "waiver" was that it was designed to deal with

"... hundreds of small and very insignificant discharges made from such places as domestic septic tanks" (Denis Howell, Hansard, HC, vol. 877, cols. 969-70, 19 July 1974).
but despite the DoE's statement that the "normal presumption" should be that the application be advertised because "advertisement is a fundamental feature of the public involvement provisions" (DoE, Circular, 17/84, Annex 3, para. 2), the use of the provision was the cause of much concern due to the extent of its use. There were apparent inconsistencies of approach between the different WAs, and with the DoE, in respect of WA applications. The low level of advertising is indicated by the analysis of Clayfield and Woodward who have questioned whether this was "in the spirit of the Act" (1987, p. 6), and is supported by the interviews carried out at a number of WAs. It may, therefore, be suggested that the WAs were not confining themselves to those situations envisaged during the enactment of COPA. Furthermore, there was no requirement in the Act for the WA to give (written) reasons as to its refusal to advertise; a willingness to do this would, therefore, be a matter of political will. Finally, the complexity of s. 36(4), and interpretations thereof, can be noted from the point of view of education.

Copies of Applications Displayed on the Public Registers. Given the potential for applications not to be advertised, other mechanisms for obtaining information need to be considered. One of these was the requirement that all applications (with the exception of those subject to a s. 42 certificate) had to be recorded on the public registers open to inspection at all "reasonable hours" at WA offices. Copies were to be available at a "reasonable charge." While the registers are considered in more detail in the following chapter, the main differences with advertising can be noted, in particular, that having to inspect the register would involve more inconvenience and "cost" - and hence a greater commitment - for members of the public. The DoE considered that where applications were not advertised the registers would provide
"sufficient publicity" (DoE, Circular 17/84, Annex 3, para. 2) but it is submitted that the level of public awareness of the registers, and especially the fact that applications were included on them, was very low. No evidence was found of the registers having been used for this purpose.

Copies to Specified Bodies. The Act further specified that local (county and district) authorities in the area of the proposed discharge were to receive copies, but this did not apply where the application was not advertised. This clearly raises the question of whether the aim was to keep them informed given their historical/ongoing interest in water services, but clearly it could also provide a further means through which the public could obtain the information, albeit that reliance was being placed on the "representative" model. No detailed research was undertaken in this context, but no evidence has been found, from any source, of individuals or groups benefiting from it.

b. Making Representations in Response to an Application

The next requirement for communication is that of channels through which the public can give information to the decision-maker, in this case, in response to the application for consent, and to have that response taken into account (stages II and III). Section 36(1)(c) provided such a requirement, but it would appear that this only applied where the application had been advertised. This is suggested by the requirement to consider representations - taking a literal approach - only applying for representations received within six weeks of the date of advertising in the London Gazette, and further, subs. (4) (the "waiver") refers to "subsection 1" not applying, rather than just the advertising itself.
being waived. If this interpretation is correct, then sub. (4) created, it is submitted, a very serious loop-hole for the process of public involvement in consent setting, and indicates that the alternative mechanisms for obtaining information (supra.) were of limited value if representations could not be made. This raises the question of whether, irrespective of the wording of the Act, WAs were prepared to accept, what can be termed, informal representations. This would seem likely, but in such a case, there would then have been no statutory duty to take the representations into account - political will, therefore, being essential.

Subject to the above concern, s. 36 clearly provided an important development for public involvement in the consent process compared to the position before COPA, especially in terms of providing a means through which members of the public could seek to influence the decision-maker. A number of points can be made about the process, in conjunction with the "obtaining" stage, above. First, the clear need for education, both in respect of the actual existence of the facilities, and also with regard to the nature of the consent setting decision and its dependence on the WQO/S, the complexity of which has already been recorded. It would appear that in practice there was limited awareness of the existence of the provisions and also, even at a superficial level, about the way in which consents were intended to be derived from the appropriate WQO/S. For instance, one of the Yorkshire Water fisheries consultative associations was experienced in making representations under similar provisions relating to applications for water abstractions (under Water Resources Act 1963, s. 28) but appeared to be unaware of the equivalent COPA provisions for discharges (pers. comm., through attendance at one of the meetings), or of the WQO system. It is contended, therefore, that a great deal more education needed to be provided by the WAs, including through their formal
channels such as the CCCs and RFAC. With regard to understanding the regulatory system, the argument was developed in chapter one, that individuals can learn through involvement - however, a particular weakness of COPA II was in not requiring the WAs to explain to individual representors, the effect that representations by the latter had on the decision, and thus why such representations were "not valid" if this was the case. This seems to mirror the position throughout the decision-making process for the WAs. Once again, it would have been necessary for this to have been done informally, dependant on the political will of the WAs.

From the research undertaken, it is clear that representations were made by a whole range of groups and people regarding different types of applications for consent. In particular, North West Water and Thames Water reported that proposed consents had been altered in the light of representations received. Of the "amenity" groups who assisted the research, most seemed to have some form of "monitoring system" for checking, either the local newspapers, or the London Gazette, and then of responding to particular applications. However, interestingly, groups such as the Anglers' Co-operative Association, South Yorkshire Salmon and Trout Association and the Esk and Derwent Fisheries Consultative Association indicated that they generally considered abstractions to be more of a threat to rivers (in terms of the river flow which could thereby increase the concentration of any pollution), and hence, the majority of representations they made were in response to applications for abstraction licences (under the 1963 Act) rather than under COPA (all pers. comm.).
c. The Determination of the Application

The above processes of decision-taking were all subject to an over­arching requirement that the application be determined within three months of receipt by the WA (unless a longer period was agreed in writing with the applicant) (s. 34(2)). If the process was not completed within this time the application was deemed refused. As indicated earlier, the WA was required to decide whether to grant consent, either conditionally or unconditionally, or to refuse it (but not "unreasonably").

In terms of communication, stage VI requires notification of the decision and the reasons for it. However, COPA merely required the WA to "serve notice" on those who had made representations, of the intention of the WA to grant consent (s. 36(6)(a)), thus not where it intended to refuse. It was, therefore, a matter of the political will of the WA as to the extent of the detail of the reasoning. It was argued (in chapter one) that such detail was important with regard in terms of subjecting decision-making to scrutiny, and thereby, seeking to ensure that decisions were adequately thought out.

Determminations by the SoS. It has also been argued that it should be possible, at least in respect of some decisions, to engage in further stages of communication. COPA also provided a mechanism akin to this, by providing that representors could request the SoS to take-over the application, and determine it himself (s. 35). This mechanism could come into play in three ways. First, at the volition of the SoS. This could be achieved by the SoS specifying (a priori) particular types or classes of application which he would determine, or by him identifying individual applications he wished to determine. The third method was for
the SoS to exercise the power following representations. Section 35(1) merely stated "... in consequence of representations made to [the SoS] ...", suggesting that they could be made by any person at any time, although the SoS was not under a statutory duty to consider those representations. Thus representations could be made prior to an application even being considered by the WA, or during the course of the WA decision process, but the main example, contemplated by the Act, was where a person had made representations following the advertising of the application, and been informed by the WA of its intention to grant consent (as explained above). In other words effectively an "appeal". An important educative feature, in this respect, was the requirement that the WA also had to notify the representor (but only him) that, within 21 days of receiving the notice, he could request the SoS to determine the application, and the WA was thus barred from granting consent until the SoS had indicated whether he intended to determine the case (s. 36(6)(b)(c)).

It was indicated that in deciding whether to consider an application

"... the SoS [would] have particular regard to the extent to which the proposed discharge [was] of more than regional significance and to which it [would] raise novel or unusual issues which had not been publicly debated in another context" (DoE, Circular 17/84, para. 46).

In the case of a refusal to determine an application, following any form of representation, it is argued that reasons should have been provided for this decision. COPA did not require such a step, but it was indicated that the SoS would inform "third parties" of his decision (ibid., para. 40) - again the degree of detail would have been a matter of political will.
Mechanisms for Determination. Where the SoS had decided that he was going to decide an application, arising through whichever means, there were then three ways in which the application could be determined - the SoS could either decide the matter based on the information available to him, or he could direct a local inquiry or a hearing of the parties. Where either the applicant or the VA requested a hearing then the SoS was under a duty to provide this (s. 35(2)). Where a hearing was to take place, the SoS was under a statutory duty s. 35(3) to give any person who originally made representations (at any stage of the decision process) the opportunity of being heard. The Act was, however, silent in relation to the alternative of an inquiry, but it was made clear by the DoE that the same position would apply. Equally, it was stated that for, either a hearing or an inquiry, members of the public who had not made representations would be heard at the discretion of the Inspector or person holding the hearing (DoE, Circular 17/84, para. 49).

The Titanium Dioxide Public Inquiries. As far as is known there was only one case where the decision-making was "transmitted" to the SoS for his determination. Although this related to Anglian Water, rather than Yorkshire Water, the case, being the only one of its kind, will be briefly reviewed, and the public inquiry mechanism considered in the light of the requirements of meaningful participation. The case concerned the two titanium dioxide manufacturers on the south bank of the river Humber - SCM Chemicals and Tioxide UK Ltd (TUKL) respectively. The background to this case lay in the (already mentioned) EC Directive Directive 78/176/EC on Waste from the Titanium Dioxide Industry (OJ L54, 25 February 1978) which had, as its eventual aim, the reduction and then elimination of waste from the industry. The Directive required the establishment of "pollution reduction programmes" by 1 July 1980 (Arts. 1(1) and 15) which were to set targets for reduction to be achieved by 1
July 1987 (Art. 9). The UK Programme in response to this, involved three phases - the first being a water quality survey of the estuary, undertaken by Anglian Water in 1984, which sought to analyse the "polluting" effects of the discharges from the two existing outfalls, and the consequences of different outfall lengths. Phase 2 was the construction of new outfalls implementing the best option, as identified by the survey (AW, 1987c). SCM proposed the building of a new 300m outfall (to replace the existing 50m) with a 50m "diffuser", whereas TUKL proposed a 1300m outfall to replace the existing 800m (ibid.). Although, in neither case the effluent volumes were being reduced, Anglian Water considered that there would be reductions of some 80% in the "environmental effects" of the discharges (AW, 1987b, p. 23).

In both cases the new outfalls required the consent of Anglian Water. Originally this was to be achieved by the variation of the two companies' existing consents, but following discussions with the DoE, Anglian Water decided that both cases were more appropriately treated as new applications under s. 34 (AV officer, pers. comm.). This is significant because, as will be discussed in the next chapter, where a variation of consent was to be carried out, the advertising and representations procedure did not apply (s. 37). However, it would apply (subject to s. 36(4)) for new applications under s. 34. The applications were submitted by SCM on 29 August 1986 and TUKL on 22 October 1986. However, by letters dated 17 and 18 December 1986, the SoS advised Anglian Water that he was "calling-in" both applications for his own determination exercising his powers under s. 35(1), on the basis that

"the issues raised by the proposed discharge(s) are such that it would be appropriate for [the SoS] to deal with the application(s)" (per the letters).
The decision of the SoS had a significant impact on the decision process by taking the decision out of Anglian Water's hands during its course after the applications had been advertised, but before any representations had been received. Representations in respect of the TUKL application were later received from Greenpeace (19 December 1986) and MAFF (17 February 1987).

From the point of view of meaningful participation, a number of points can be made about the practice of the inquiries, based on impressions gained through attendance at the last day of each inquiry. The inquiries were conducted by an independent Inspector assisted by a DoE Assessor, and notionally, the role of Anglian Water was intended to be neutral in assisting to provide the facts, however, the Authority considered itself less able to do this in the case of the SCM application because it objected significantly to the proposed increase in load. (SCM, in turn, considered Anglian Water had been "disgenerous and unhelpful"). The two companies and Anglian Water employed counsel as well as sending a number of staff as witnesses and for technical support. In terms of representors, Greenpeace gave evidence along with a retired Anglian Water official (Chief Scientific Officer) who was permitted to speak at the discretion of the Inspector. From the point of view of those taking part, there is no doubt of the amount of detailed research that was required to understand the arguments and to provide information at the inquiry.

In relation to the general public, the same issue must be raised, especially in terms of the ability to follow the arguments and issues raised, given their technicality, and that proceedings were conducted for the benefit of the parties and not for the watching public. Clearly, an important point, therefore, was the availability of information during the proceedings. From a personal viewpoint (albeit
only attending the last days) it was not obvious how, or from whom, documents could be obtained - those on display were marked "not to be removed" - and there was no "secretariat" present to assist those attending in the way that was standard practice at CCC meetings (chapter four).55

The inquiries were advertised in local newspapers, although, according to Anglian Water staff, and members of the Press in attendance, there had been no "genuine" members of the public present, only a small number of people who were in some way associated with the parties (pers. comms.). Press attendance was, however, apparently consistent including local radio stations, local newspapers and a BBC regional television news programme.56

In conclusion, the extent to which the inquiries were beneficial, both for deciding the issues and for providing any form of meaningful participation in the decision-making process, can be questioned. Clearly, a high level of technical expertise was required to participate with a view to seeking to influence the outcome. For those actually attending, or following proceedings through the Press, while this could, potentially, have an educative effect, it is suggested that this would have been very limited for those not already familiar with the subject matter. It is contended that far more attention needs to be paid to these issues before the inquiry process is again utilised.

Final Determination by the SoS. Where the matter was placed in the hands of the SoS, he was required to direct the WA to grant consent, conditionally or not, or to refuse it (s. 35(4)). The final decision to grant the above consents, subject to conditions, was taken in June 1988.
d. Participation in the Appeal System

The final stage in the decision-making for new consents was the right of an applicant to appeal against either the refusal of a consent, or against the conditions imposed on a consent - in both cases on the basis that the decision was "unreasonable" (s. 39(1)). Limited public participation was provided for in this case, the extent of which will be outlined. First, it should be noted that the appeal was of "right" whereas, as explained above, the public could only request that the SoS determine the application. Second, the introduction of the public into the decision process raises the question of whether appeals would have been more likely, assuming that the decision to grant consent was no longer a matter of (solely) private bargaining between the applicant and the WA.

The opportunities for participation in the case of appeals, were essentially the same as the procedure for the SoS to determine applications *ab initio* (supra.). Thus, the WA was required to inform anyone who made representations in relation to the original application of the appeal within 14 days of the WA being informed of the appeal by the SoS. This had to include informing the representor that he had the right to make further representations within 21 days (SI 1984/865, Regulation 7). The SoS was then under the vaguely worded duty "... to take account of ..." such representations (s. 39(5)). Again, therefore, the importance of having made representations at the initial stage of the decision process is clear. The DoE recognised the importance of this procedure for education, given that there was no requirement in COPA for appeals to be advertised. The procedure had the aim of seeking "to ensure that the SoS may be aware of matters raised with a WA in response to an earlier advertisement" (DoE, Circular 17/84, para. 45).
The procedure for hearing the appeal was also very similar to SoS determinations under s. 35. Thus the SoS could either determine the matter on the evidence available to him, but not before 14 days from announcing his intention to do so had elapsed, during which time either the VA or the appellant could request that there be further investigation. In such a case it was for the discretion of the SoS to decide whether to adopt the local inquiry or hearing approach. Presumably it would have been open to third party representors to make a similar request, although the regulations did not provide for this.

Although the regulations were silent, the DoE indicated that those who made representations, either originally, or in respect of the appeal, would be heard at either the hearing or the inquiry, and at an inquiry other members of the public would be heard at the discretion of the Inspector (DoE, 1983a, para. 48). No evidence is available of the extent of any public participation in the appeals process, but as far as is known, no inquiries were held. Finally, the SoS was empowered to direct the VA "as he [thought] fit" with regard to any aspect of the original decision which he deemed to be unreasonable (subs. (6)).

With regard to the process of appeals, the importance of having been involved through making representations in respect of the original application can be noted, and hence, the essential nature of the original application actually being advertised, rather than s. 36(4) being too readily used by the WAs. Again, as seemed to be a common feature of the COPA provisions, there was no formal requirement for communication by the decision-maker following the making of the decision, either as to the reasons for the decision, or in terms of the effect of individual representations. This may have occurred informally, but should be encouraged at all times, it is submitted.
e. Other Mechanisms for Participation in Consent Setting

The structures outlined in chapters three and four could be expected to provide an important means through which the process of consent setting could be monitored and communication undertaken — especially with regard to wider issues of policy, including the use of s. 36(4). However, an analysis of the minutes of the CCCs, RRCC, and RFAC for Yorkshire Water, reveals that this was barely the case. Whether this was the result of a lack of education or interest, can only be the basis for speculation.

C. Decision-Making Procedures in Respect of Other Discharges

The above presents the decision-making process, and the opportunities for public participation in respect thereof, as it was intended to operate for applications for new consents. However, in practice this provided only a proportion of the pollution control regime, because there were a range of other categories of discharges which were controlled in different ways. These will be briefly outlined because of the implications for achieving meaningful participation based on a principled approach — clearly if the above system did not operate in all cases, this provided for an important external constraint on meaningful participation.

Discharges Existing but Unconsented before 1974. The most significant problem related to the "troubled" history of the introduction of extensive controls through COPA II — first, the delayed implementation, and then the system of phasing through exemptions and deemed consents. As the nature of this process, and its implications for the above
procedures, has already been analysed (Burton 1987a), it is intended here only to place this analysis in the framework of the requirements of meaningful participation. To summarise the position, the combined effect of the Rivers (Prevention of Pollution) Acts 1951-61 (supra. chapter two) was that discharges to estuarine and coastal waters commenced before 1960 did not require consent unless, since that date, they had been "substantially altered". This created two problems. First, it meant that there was no comprehensive control of water pollution in England and Wales (as identified for instance by the Jeger report (MHLG, 1970)), so that a true system of WQO/Ss could not be put into effect. Second, EC obligations in relation to such waters could not be fulfilled because a number of Directives required that affected discharges be "authorised" in advance. COPA offered the solution to both, however, as argued in chapter two, successive Administrations put the concerns of industry, including the WAs, and public expenditure requirements, first. This was reflected in the manner in which COPA II was finally implemented. First, all discharges unconsented before 1974, other than those needing consent to meet EC requirements, were exempted from control (SI 1983/1182). Second, those discharges which did need a consent for EC purposes were granted "deemed consents" - in other words an unconditional consent allowing the discharge to continue as before, lawfully, until such time as the WA chose, or was able or required, to set conditions. Finally, when the above exemptions were withdrawn (for the majority of discharges), in October 1987, those discharges losing their exemption were eligible for deemed consents also. The effect of this whole approach was that, even after 1987, many discharges, especially to estuarine and coastal waters, were subject only to notional control - with no conditions imposed and hence, no monitoring. Furthermore, it was not expected that the setting of conditions - termed "positive determination" - could be achieved
immediately; the DoE merely required that it be achieved by 1992 - 18 years after the enactment of COPA.69

Of greater significance for the requirements of meaningful participation based on a principled approach, was the way that the COPA requirements for public involvement were blatantly side-stepped in respect of the above, further suggesting, if not a lack of commitment by all parties to the concept of meaningful participation, at least an indication of the dominance of the business principles ethos. It would seem doubtful that there was any significant "public" participation in the decisions as to how and when to introduce control in the manner described above. Regarding the 1983 exemptions - mechanisms such as the CCCs, for instance, were not operational, and the 1987 changes were not put to the committees according to the minutes for Yorkshire Water.

In terms of the introduction of control, two stages can be considered. First, when a deemed consent was applied for (either for EC affected discharges or those in 1987) the DoE "advised"70 that such applications would not require advertising (and hence attract the procedures appropriate for new consents), on the basis that the deemed consent would be granted under s. 40(4) (which provided for transitional arrangements). They were not applications for consent under s. 34 - because they were merely the continuation of existing discharges - and s. 36(1) clearly applied only to such applications under s. 34 (DoE, 1982b). Second, even at the stage when consent conditions were to be imposed in respect of the discharge, the WAs were to be entitled to utilise s. 36(4) and waive the requirement to advertise, because the discharge would have already demonstrated its effect on the receiving water and, therefore, in most cases, indicated that the discharge would have "no appreciable effect" (DoE, 1983a, para. 14). While the latter may be justifiable on the wording of the Act, it is submitted that both
approaches fly in the face of the requirements for a principled approach. It is difficult to see why public participation was warranted, and accepted as such, for entirely new discharges, but not for existing discharges for which control was finally being introduced. The aim of COPA was, and should have been, to enable (meaningful) participation in the whole regime of water pollution regulation.71

Finally, in respect of the process of introducing control, when conditions were being set for deemed consents, the discharger had the right of appeal,72 but because there had been no advertising in the first place, there was no right for the public to be involved in the determination of the appeal through representations or attendance at any hearing or inquiry.73 Arguably members of the public could have sought informally to persuade the SoS to exercise his general discretionary powers to hold a public inquiry under s. 96, but this would not have been an ideal means for involving the public, in terms of an opportunity to influence the outcome of the decision.74

II. THE CONTROL OF "IRREGULAR" POLLUTIONS

Having considered the decision-making process for discharges of trade and sewage effluent, and the opportunities for public participation therein, to complete the picture it is necessary to take account of the way in which other forms of pollution were sought to be controlled. This relates to the "irregular" pollutions which arose through accidents and deliberate acts, which were not discharged systematically as part of the production process.75 Control of such forms of pollution will be considered in two respects. First, in the remainder of this chapter, the powers for seeking to prevent such pollution will be outlined - this will, however, be brief, because, despite the importance of the powers,
few were actually implemented during the life of COPA, and the range of opportunities for public participation were distinctly limited. Second, in the next chapter, the controls available ex post facto will be explained. Under COPA it was an offence for any person to "cause or knowingly permit" any "poisonous, noxious or polluting matter" to enter waters controlled by the Act (s. 31). The main sanction against this was, therefore, in the form of criminal prosecution.

A. Voluntary Control

By way of introduction, it can be noted that a great deal of emphasis was placed, by the WAs, on the use of voluntary control through persuasion, rather than resort to formal legal powers. For instance, the use of intensive campaigns by Yorkshire Water in relation to farmers, can be noted. Inevitably, therefore, there was limited scope for public involvement and scrutiny of this process, and all attempts to persuade the WA to act, or explain its actions or inactions, would have had to have been directed informally or via the committee system.

B. The Imposition of Legal Controls

A range of formal legal powers to prevent pollution were specified in COPA but their impact in practice was limited. However, as will be seen in the final chapter, in respect of the NRA, the importance of powers for pollution prevention, and their practical value, is being increasingly recognised.
1. Regulations to Control Activities Likely to Cause Pollution

The first controls which can be noted are those which would have enabled the WAs to limit pollution in relation to specific activities, including in specified areas. Section 31(4) provided for the SoS to make regulations

"... as to the precautions to be taken, by any person having the custody or control of any poisonous, noxious or polluting matter, for the purpose of preventing the matter from entering any relevant waters ..."

and the subsection further provided that contravention of such regulations could be a criminal offence. The main context in which such regulations were envisaged was with regard to the storage of potentially polluting substances, and in particular, given the concerns of the Environment Committee (HC 183, 1986/7, para. 65 et seq.), slurry and silage liquors. This would have enabled requirements as to the construction and location of storage facilities to be specified. Section 31(5) also provided for regulations to be made where the SoS deemed it fitting "to prohibit or restrict" activities in specified areas where those activities were likely to cause pollution. This could have included specifying that such activities could only be carried on in the specified areas with the conditional consent of the WA, again with the threat of criminal sanction for non-compliance. In this context it was envisaged that regulations would be designed to protect particular areas, such as around water supply boreholes, and those areas badly affected by nitrate pollution."
2. "Anti-Pollution Operations"

The powers of the WAs to carry out, or require, clean-up operations following pollution incidents, will be explained in the next chapter. Under s. 46(4) the WAs also had powers to carry out "operations as ... consider(ed) appropriate" where they believed that any "poisonous, noxious or polluting matter, or any solid waste matter [was] likely to enter ... any relevant waters" for the purpose of preventing the entry.79 This provision was implemented (unlike s. 46(1)-(3)) and also included, by subs. (5), the power to recover costs from persons who caused the matter to be in any place from which the above perceived entry was possible.80

3. Notices to Abstain from "Good Agricultural Practice"

As will be noted in the next chapter, it was a defence to a charge of "causing or knowingly permitting" "pollution" (under s. 31(1)), if the incident had arisen in the course of farming practices recommended by a code of practice developed by MAFF (subs. (2)(c)). COPA provided a means by which this defence could be withdrawn in individual cases, where the WA believed that pollution had, or could arise, through such practices (s. 51). Section 51, however, provided for a complex procedure, whereby the WA was required to request the SoS to serve a notice on "the occupier" requesting him to cease potentially polluting practices, thereby withdrawing the defence. Copies were to be served on MAFF, and the occupier, who was given a 21 day period within which to make representations to the SoS; the latter being required to consider them (subs. (2)(3)). Despite the widespread criticisms of the code, the procedure under s. 51 was never used.82
4. Opportunities for Meaningful Participation in Relation to Pollution Prevention

In each of the above cases COPA did not lay down any formal mechanisms for public involvement, in stark contrast to the position for the setting of discharge consents. From the point of view of a principled approach this is unfortunate. Further, it is disconcerting that the full process of pollution control, envisaged by the Legislative, was not given effect to, in this case in the form of the SoS not making regulations, where there was a demonstrable need. In relation to such (non) decision-making, the point can again be made of the need for public participation, but the example considered here, is no more than a reflection of the absence of adequate mechanisms in relation to central government.

Because of the absence of opportunities at the WA level, participation would have been dependant on political will on the part of the WAs in being prepared to accept informal communication, and it can be suggested that, more than ever, the Yorkshire Water committee system would have had an important role to play. Surprisingly this potential was, once more, not realised. Few examples can be traced from the minutes of the respective committees, although the benefit of the committees for the provision of information can clearly be seen, for instance, in the way that standing reports were provided of pollution incidents and actions taken in relation thereto, especially to the WQAG.

III. CONCLUSIONS

In conclusion, it can be argued that, although COPA II appeared to offer a developed concept of public participation at the a priori stage of
imposing control over pollution, practice reveals the emptiness of the promise. First, because of the lack of commitment on the part of government and industry, including the WAs. Higher priority was attached to the consequences of costs and public expenditure, so that implementation was delayed, and then phased-in in such a manner that the public participation requirements were by-passed, or rendered almost otiose. By the end of the period of service of the WAs in 1989, the public involvement procedures still accounted for only a proportion of the total regulatory decision-making process. Second, a principled approach was not achieved with regard to "irregular" pollutions, with heavy reliance being placed on informal methods and the (already analysed) WA committee system, which, it is submitted, failed to achieve its full potential in this context, either as a means for education, or communication.
NOTES:

1 It should be noted that the discharge of any substance not falling within the terms "trade" or "sewage effluent" (s. 105 COPA) would be treated as an irregular pollution.

2 While discharges of effluent to sewers (commonly known as "trade effluent"), and the control of abstractions, are also important in overall pollution control terms, limited reference will be made to them in the next two chapters given the limitations of space and the desire to provide a more detailed account of the position for "direct" discharges. The emphasis of the chapter will also be on consents issued after 1984, as this illustrates how COPA had been intended to operate, although it will be seen that this position was not as common in practice as it should have been.

3 This is even more crucial in the case of the WAs because, as already noted, they were not just "regulators", but also major dischargers of effluent.

4 See NVC, 1977, para. 9. As argued in chapter two, the "fear" of private prosecutions was a key factor in the perceived need for the review - according to the NVC to avoid prosecutions "at random" (ibid.). A useful account of the NVC document is provided by Bates, 1979, and see further, Purdue, 1979, Lester (1979, p. 432), Hawkins (1984, pp. 34-5), and Robinson, R, "The Control of Pollution Act 1974: Implications for River Quality Management", (1980) 34 Journal of the Institution of Water Engineers and Scientists 129, p. 132 et seq.). Hammerton (1983, p. 345) has indicated that a similar review was undertaken in Scotland in 1965, but not in 1978 - notably private prosecutions were not to be introduced by COPA for Scotland. It should be noted that the review only applied to WA discharges (to
inland waters), although the NVC stressed the need for "parity" with non WA discharges (1977, para. 16).

See further Fish and Wood (1977, pp. 28-9) who argued that it was "illogical" to impose a consent that a works could not meet.

The NVC claimed that the process would not have an "unacceptable adverse" effect on river quality (ibid., para. 3), but it is submitted that this misses the point.

Details are again found in the Annual Reports and Authority and Committee minutes.

Some 431 discharges were identified as failing. This was to include non WA discharges it would seem. (Ibid.).

It is not clear at what point it was carried out, however.

Assuming it was ever undertaken.

The possible consequences of the change of Government, May 1979, must also be noted (chapter two). This had the immediate effect of the plans to implement COPA II being abandoned in the short term. Any original urgency, in the process of reviewing consents, was thus dissipated.

This was particularly through increased agricultural loads and loads from new housing estates (CSO, Yorkshire Water, pers. comm.).

In accordance with new DoE policy, "descriptive consents" (ie those not including numerical conditions) were applied for in respect of 240 of Yorkshire Water's 550 works - being "small" works serving less than 250 people (Annual Report 1985, p. 18, and see Matthews, 1985, pp. 81-2). Doughty (1988) has argued that there was, effectively, a further "review", in the form of the formal introduction of the 95%ile as a condition of WA (but not non-WA) consents, achieved through a "national notice of variation" (Matthews, 1985, p. 81) in January 1985. This replaced the, previously informal, agreement (that 100 per cent compliance would not be required) with a clear provision open to public scrutiny (see Burton 1989a, p. 201; Matthews, 1987, p. 143 et
seq., and DoE, 1985). The implications of the 95%-ile will be considered further in the next chapter. Finally, the effects of the way in which COPA II was implemented (as discussed below) must be noted, as this also limited the achievement of a true VQO-consent regime.

The importance of the practice of the WAs is indicated by their role in defining the "boundaries of regulatory deviance ... pollution, in other words, is an administrative creation ... agencies ... actually determine the reach of the law ... they exercise a real legislative authority" (Hawkins, 1984, p. 23). For the theoretical perspective to consent setting see Hawkins (ibid.), Richardson et al (1982), and Brittan (1984), especially as to the kind of factors that WA staff and dischargers considered important in the process of bargaining. All of these works, however, pre-date public involvement in the process. It is not intended to duplicate their analysis here.

See COPA s. 55, the Control of Pollution (Discharges by Authorities) Regulations 1984, SI 1984/1200, explained by DoE, Consultation Letter WS/920/40, 16 March 1983.

Further see DoE, Circular 7/89. It should be noted that under Article 5(3) of Council Directive 76/464/EC, the "competent authority" was required to refuse consent where it was "evident" that the discharger would not be able to comply with the appropriate standards.

Such as to further conservation, discussed in chapter three.

Section 34 actually specified a number of conditions which could be included, but this was stated not to be inclusive; nor did it provide any of the actual standards for individual substances - thus the labelling of COPA II as a "framework" Act, as noted in chapter two. The VQO approach provides the kind of "objective" approach to consent setting that Brittan (1984, p. 7) identified as absent. For a detailed (technical) account of the process of deriving consent conditions from WQSs, see Fish and Wood (1977), Warn, A E.

19 See NWC, 1978, para. 22. The problem of the size of the "mixing zone" was referred to in the previous chapter. A further problem related to those cases where the WA did not have the legal powers to deal with a source of pollution - the example of waters from abandoned mines having already been noted. The issue of farming practices will be considered post.

20 Hawkins has spoken of their "fear", and note his explanations of appeals limiting the WAs "whip hand" (1984, pp. 27-8). See further Greenpeace, Aspects of River Quality Management - Submission to the Royal Commission on Environmental Pollution, (1987), p. 4. Richardson et al (1982) have suggested that appeals were a means to control WA discretion (pp. 47-8).

21 Thames Water officers indicated that they only provided forms via field officers so that the latter could discuss the application with the would-be discharger (pers. comm.). Note further the Guidance Leaflet (VAA/NFU/CLA, COPA 2 - Guidance on the Application of the Act to Agriculture in England and Wales, 1985), at para. 3.4, Trice and Godwin, 1974, p. 324, and James, 1984, p. 582.

22 Commencement Order No. 17, SI 1984/853.

23 See Macrory, 1984, p. 3.

24 The second exception was the provision under s. 42 allowing applications to be exempted from publicity, by the SoS, where "trade secrets" were involved. As far as is known no such certificates were ever granted.

25 The point can be made that the decision to grant consent would in most cases have been made prior to submission of the application as noted above, but the sub-section does require that this be settled
without public involvement - only the decision as to actual conditions to be included in the consent would therefore be open to negotiation.


27 This policy was discussed at the VQAG on 20 December 1983 and was, therefore, open to, at least limited, scrutiny. Again it can be argued that it was important that the public could seek to influence such a policy.

28 It should be noted that the WA was entitled to recover the cost of advertising from the applicant (subs. (3)) so the cost factor should not have dissuaded the WAs from requiring advertising.

29 Interestingly, in the case of the "time limited consents" (*revised* consents designed to prevent WA discharges falling foul of the law, and hence being liable to prosecution, until all improvement work could be carried out, by 1992, when the original consents will be re-instated) issued for WA discharges in 1989, the Government stated that all 1800 of these would be advertised despite apparently falling within subs. (4) (according to the Earl of Caithness [Water Bulletin, 2 June 1989, p. 17]).

30 Macrory (1984, pp. 3-4) has suggested that the registers provided a potential means through which the public could seek to influence the WAs' decision to advertise, but clearly this would have required continuous monitoring of the register, and for the application to have been entered before the decision not to advertise had been taken. Entries were required within 28 days of receipt of the application (SI 1985/813, Regulation 4(2), subject to exceptions).

31 The applicant was also required to specify a place "within the locality of the proposed point of discharge" at which copies of the application could be inspected (SI 1984/864, Schedule), which in the case of non-VA discharges could have been the offices of the discharger. This offered a further opportunity, but again involving
commitment on the part of the public. Also note the idea of automatic notification of particular (amenities) bodies, put forward by Macrory (1984, p. 3).

32 MAFF was also specified (where the discharge was to be made to estuarine and coastal waters) given its statutory interest in relation to fisheries. This would appear to have no informational value for the public.

33 Note that when this provision was enacted, it had been envisaged that local authority members would form the majority on each VA.

34 As to which see Bates, 1979.

35 Importantly, the advertisements were required to state that representations could be made by a specified date, in writing, and giving the appropriate address (SI 1984/864).

36 Informal discussions with CCC members gave a similar impression.

37 Initial findings are presented in Burton and Freestone, 1986.

38 And of one application actually being withdrawn (Thames).

39 In relation to the "time limited consents" [supra.], the advertising of them led to concerted representation campaigns by Friends of the Earth and the ACA/National Federation of Anglers (Angling Times, 28 June 1989). However, it can be strongly argued that such advertising was no more than legitimation, with the DoE clearly intending that such consents would be granted. For instance, a DoE spokesman is quoted as saying that objections would be taken into account, but those who "... object[ed] for the sake of it [would] be objecting to reality" (Angling Times, 7 June 1989).

40 This "three months" rule was the cause of some concern for VA staff, especially as it did not apply to DoE determinations of WA applications, and if advertising was completed, it was a tight timetable after six weeks had been allowed for representations. Again the process of "prior negotiation" was deemed important and, comparisons were made with the abstraction licence process, where the
applicant was responsible for fulfilling the advertising requirement (pers. comm.).

41 It is also contend that the WAs should have been prepared to give reasons to anyone requesting them, not just to those who made representations.

42 Where this applied, the three month time limit was suspended (ibid., subs. (6)). Disconcertingly, "service of the notice" was to be in accordance with s. 95 which did not appear to require the use of registered post, thus indicating the possibility that, if the letter never arrived, the representor would lose his notification. For further details of the procedures involved see SI 1984/865, and DoE, 1983a.

43 It should be noted that where the SoS took over an application which had not by then been advertised, advertising would continue to be carried out in accordance with the modified procedures specified in Regulation 4 of SI 1984/865, and, "as a matter of policy", the SoS intended that all applications under his consideration would be advertised even where the WA had not intended to advertise (DoE, 1983a, para. 32).

44 In fact two applications, but they were treated together.

45 The WA with jurisdiction over the section of the south bank in question.

46 See AV, 1987a and AV, 1987c. The documents referred to are those prepared by the two companies and Anglian Water specifically for the inquiry. I am grateful to all three parties for supplying copies of the documents.

47 In both applications the companies proposed to increase the loads of the discharges to enable them to increase production; a point which was of concern to Anglian Water at the ensuing inquiries.

49 Two contrasting views have been offered of the rationale for the call-in. First, the desire for the Government to be seen to be acting...
in respect of the Directive, given the "threat" of future Directives in relation to the industry, and second, that the SoS wished the matter to be settled "in front of the people" (both pers. comm.).

With the effect that the proposed new consents were never put to the Authority Board.

These were held, successively for one week each in October 1987, at Grimsby Town Hall. References are to notes taken from the proceedings, unless otherwise stated. Through s. 96 of COPA such inquiries were to be conducted in accordance with s. 250 Local Government Act 1972.

It was noticeable that, generally, each of the days' proceedings were conducted "congenially", although they became far more adversarial during the closing speeches. The Inspector, however, commented that the inquiry had been carried out in a "helpful" manner.

Although, apparently, the person who wrote their formal evidence was not available having been arrested in international waters a few days earlier (pers. comm.).

In particular, a familiarity with the titanium dioxide industry, and production processes and problems, was required, as well as knowledge of water quality management. An Anglian Water officer has suggested that one possible benefit of the inquiries would have been in demonstrating the complexity of setting consents for estuarine discharges (pers. comm.).

This point can be emphasised by the way in which a notable amount of "bargaining" was undertaken outside of the inquiry room - at the TUKL inquiry the parties were given an extra 25 minutes after lunch for this purpose. Importantly, such negotiations did not include the representors. Further, there was also the issue of a DoE document which was apparently "restricted". It had been made available to TUKL and Anglian Water, and was to be made available to SCM during the course of the inquiry so that the company could respond to its
contents in their closing speech. Naturally the document, or its implications, were not made available to the public.

It was indicated, by Anglian Water, that they were responsible for local administration and that documentation was available (pers. comm.).

The role of the Press as a mechanism for meaningful participation must again be considered in the light of the analysis in chapter three.

The procedures for appeals were provided in SI 1984/865, regulation 7.

As noted earlier, under COPA, the right of appeal could no longer be used as a "delaying tactic" by the applicant, the decision of the WA being deemed "reasonable" unless the SoS determined otherwise (subs. (7)).

This was a matter of some concern to Viscount Dilhorne during the enactment of the Bill - for instance, Hansard, HL, vol. 348, col. 1691; 24 January 1974.

Note that the SoS was required to send copies of further representations to both the WA and the appellant.

It should be noted that consideration of the consent process was part of the terms of reference for the WQAG, but again consideration seemed to be far less than might be expected.

Two examples can be given. At two meetings of the North and East Division CCC, inquiries were made by members as to the procedures for issuing and reviewing consents, and sampling, and the methods of advertising (minutes, 20 January and 2 June 1986). Second, at a meeting of the RRCC, the Nature Conservancy Council sought an assurance, which was received, that the conservation of wildlife was one of the criteria taken into account when considering consents for agricultural discharges (RRCC Annual Report 1984/5, para. 14).

For example the TUKL discharge (supra.).
Although it should be noted that COPA was not enacted with EC requirements in mind.

With the special exception of those to the Mersey.

See further DoE, 1982b.


The implications of which are considered in the next chapter.

And, as it turned out, 3 years after its repeal and re-enactment! See DoE, 1986a, para. 6, and Burton 1987a, pp. 12-17.

Government by "administration" once more?

Further, note the incongruities with the DoE's views regarding applications "pending", already pointed out, 1987a, p. 18. The WAs were required to enter all deemed consents on the public registers, thus providing a very limited opportunity for the public to seek to solicit, informally, the WAs to impose conditions - the timing of the decision to set conditions being equally important, it is submitted.

Section 39. Again the decision of the WA was to be deemed "unreasonable" until the SoS decided otherwise (SI 1986/1623, Regulation 3(c)); c/f the position for new discharges (supra.).

Except as a member of the public per se, at a local inquiry.

Other categories of discharge which can be referred to, include those applications which were pending on the day on which s. 34 came into force - in other words, having been originally submitted under pre-COPA legislation. The DoE considered that to fulfil the spirit of COPA, especially with regard to advertising, these were best treated as new applications under s. 34 and hence, subject to s. 36 (DoE, 1983a, paras. 17-18). Those consents which had been issued under pre-COPA legislation were to be translated (by s. 40) as if granted under COPA, and hence, valid as a defence to offences under s. 32. Thus participation in respect of such discharges could only arise in
respect of the enforcement and review of the discharge as indicated in the next chapter. Finally, those discharges commenced after COPA had received Royal Assent, but before it was implemented, posed something of a legal problem, having not been contemplated by the Act (Sayers, pers. comm.). Most of these had been exempted until 1987 under SI 1983/1162.

It is worth noting that the Environment Committee were of the view that regular discharges under COPA had been generally well controlled, (c/f, Birch, T, Poison in the System - A Critical Review of the Role of Industry, Water Authorities, the Public and the Control of Pollution Act 1974 in Water Pollution, (1988), p. 44), but they were far more concerned over the control of irregular pollutions especially in relation to farming practices (HC 183, 1986/7, para. 96 and chapter 6).

See for instance the work of Hawkins already cited.

The value of the Yorkshire Water committees, especially the WQAG, can again be noted, including the way in which they were provided with detailed reports on pollution incidents, including any action that had been taken in respect of such incidents (chapter four).

See for instance, the references to "water protection zones" in the Green Paper (DoE, 1986b, sections 5 and 7), and HC 183, 1986/7, para. 83. Eastwood and Ord, (1986, p. 242) have suggested that farming and forestry were the most likely to be affected.

However, the WAs were specifically barred from impeding a discharge consented by them under s. 34.

Concern has been expressed, however, about the type of work which could constitute "operations" and hence, be eligible for cost recovery; notably it has been suggested that the provision of "advice" would fall outside this criteria (Howarth, 1989, pp. 36-7). WAs also expressed concern about how they would make use of the s. 46 powers (reported in Burton and Freestone, 1986, pp. 253-4).

Note that the Government were, apparently, of the view that because of the code, no regulations under s. 31(4) were needed (DoE, 1986b, para. 5.4); the Environment Committee, however, gave this a frosty reception (HC 183, 1986/7, para. 75). As to WA bye-law making powers, see s. 31(6).

Although quaere the potential workload, especially given the irregularity of CCC/RRCC meetings.

One incident which was considered was a pollution of the river Don in 1984, raised by a member of the RRCC, who urged action to be taken to prevent future oil spillages of this kind (RRCC Annual Report 1984/5, para. 15).

Given its specialised role in relation to pollution.
In chapter six the process of seeking to prevent pollution by imposing control over systematic and irregular discharges, and the opportunities for public participation in relation to that process was explained. Once such control was imposed, the next stage in the regulation of water pollution was the monitoring of both systematic discharges and the waters being protected. Where non-compliance with the legal requirements was identified, various forms of enforcement action would ensue - prosecution in a criminal court being the ultimate sanction. It is intended to outline these two remaining stages of the control process, identifying the scope for public participation, and effecting a comparison with the principles of meaningful participation. Consideration of these aspects is important given public concern that consent compliance, especially by the WAs, attracted towards the end of the 1980s. COPA was also significant in, for the first time, providing the public with the right to prosecute any "polluter", including for exceeding the conditions of a consent; during the period under study four WAs were prosecuted by members of the public. It will be suggested that undertaking a private prosecution was exceedingly complex and subject to a range of external constraints. It will be noted that the
impact of the public on the relationship between the "polluter" and the regulator, a relationship which was barely scrutinised in practice, was potentially significant - developing far more transparency, and arguably a more objective approach to determinations of compliance and enforcement.

The importance of the process of achieving compliance as part of the whole regulatory regime, must be noted with regard to meaningful participation in practice. Having (theoretically) agreed the targets for each stretch of river in the form of WQOs, and then translated these through WQS to discharge consents, it is essential that consent compliance was achieved, otherwise the whole concept of publicly agreed WQOs would be negated. In this chapter, account will be taken of the formal mechanisms in relation to Yorkshire Water, although reference will be made to the practice and experience of other WAs, especially where important examples are available.

I. MONITORING COMPLIANCE

A. Discharges of Trade and Sewage Effluent

1. The Process of Monitoring

The main concern here is the way in which monitoring of compliance, both with WQO/Ss and individual discharge consents, was carried out - the decision-making process and the involvement of the public in that process, and hence, the extent to which the public could find out whether compliance was being achieved. The latter could be attempted in two ways - either through the public taking their own samples, or seeking to obtain the results of monitoring by the WA (or by
dischargers). It can, therefore, be seen that the extent, and way in which, such monitoring was carried out would have significant consequences for the nature, and amount, of information available to the public through which to judge if the agreed consents and VQOs were being achieved. It is submitted that the decision process relating to monitoring should have been subject to the principles of meaningful participation, given that monitoring provided the "gateway" to later stages of enforcement, as discussed below.

It will be suggested that in practice the decisions regarding monitoring were largely a matter of discretion for the WAs, and there was significantly limited scope for public involvement through formal mechanisms, other than the process of WA committees. However, in terms of actually obtaining the results of such monitoring, there was a key facility in the form of the public registers. For this reason emphasis will be placed on the latter, but with the former outlined by way of comparison.

a. Monitoring by the WAs

It would appear that the WAs possessed significant discretion in practice as to the extent of the monitoring undertaken, although the limitations on this, and the factors taken into account can, be noted. First, various EC Directives laid down minimum requirements as regards regularity the regularity of sampling, and the locations of sampling points. Second, practical considerations were important, especially with regard to the resources that monitoring involved in terms of the actual equipment, man-hours of the field officers taking the samples, and of the laboratory staff in analysing the samples. With regard to non WA discharges, there was no formal or "transparent" regime for the
actual regularity of sampling, but WAs took into account factors such as the potentially polluting effect of the discharge (including the type of substances involved), the volume, and the nature of the receiving water in question (pers. comm. WA officers). Negotiations with the discharger would also take place. Finally, the record of the discharger would be significant - a discharger with a history of non-compliance being likely to be sampled more often than one with a "good" record.

With regard to their own discharges, the WAs were subject to close scrutiny by the DoE (and more so with regard to rates of compliance). In particular, the WAs were required to specify, in what were termed "sampling guidelines", the regularity with which their discharges would be sampled, and these guidelines were to be subject to the approval of the SoS, and included in each discharge consent. In theory, therefore, public involvement in the development of these guidelines, and in checking that they were fulfilled in practice, could have occurred. However, from the research undertaken, this would seem to have been unlikely in reality - in particular because it proved impossible to obtain copies of the guidelines either from WA staff or other sources. Figures for WA compliance with the overall sampling programme were provided at Yorkshire Water WQAG meetings, including the reasons why sampling fell short of the target, but no details of individual requirements were ever given. It was also possible to test how often an individual discharge had been sampled from the results contained on the public registers - explained below - but this provided only ex post facto involvement.

In summary, it can be suggested that there was very limited scope for public involvement in decisions relating to the nature and extent of WA sampling, and clearly an absence of education about these decisions.
b. Monitoring by the Public

An alternative method, therefore, was for the public to seek to undertake their own monitoring of the receiving water around the discharger's outfall. This presented a range of practical problems, including the actual ability to take the sample - given that this could involve trespassing on the discharger's land - the alternative being access via the river itself. Second, the actual problems of getting the sample analysed, especially in terms of cost, and the need, in most cases, for more than one sample to ensure a "representative" result, must be noted. Sampling on the part of the public could not, therefore, be regarded as a practical possibility for the majority of the public.

2. Obtaining the Results of Sampling - The Public Registers

In contrast to the absence of facilities for public participation above, in terms of being able to obtain the results of sampling COPA provided a significant mechanism in the form of registers maintained by the WAs and open to the public at all "reasonable hours" (s. 41). However, it will be shown that there were significant limitations to the "effectiveness" of the registers in practice, again supporting the contention that legal rights do not guarantee their fulfilment in reality. A range of key limitations, based on research at a number of WAs, including Yorkshire Water, have already been reported (Burton, 1989a). The main points will be noted and the research placed in the context of the principles of meaningful participation.

Apart from applications for consent (discussed in the previous chapter) the WAs were required to record all consents granted (including any
conditions attached thereto), the results of analysis of samples taken by the WA, any certificates of exclusion issued under s. 42, and any notices requiring abstention from "good agricultural practice" under s. 51. The registers were first opened to public inspection on 1 August 1985, and were required by that date to show all extant consents, but only the results of samples taken after that date. From the point of view of the public, the registers were likely to be most significant mechanism in respect of sample data, by enabling compliance to be monitored through a comparison of sample results with the conditions specified in each consent. In terms of providing a channel for communication, the registers, therefore, enabled information to be obtained on request (supported by a legal right) in accordance with stage VI, but this could equally act as the basis for further communication, and hence, a further series of decisions, where a discharge was found to be non-compliant. However, the registers provided no information about the reasons behind much of the information recorded - this had to be obtained through other means.

The practicalities of using the public registers can be considered in terms of the nature of the constraints imposed either externally or internally (or a combination of the two). These will be noted in turn. It will then be suggested that in practice the registers were little used, and a number of possible explanations for this propounded. Thus, it will be argued that the principles of meaningful participation were not fully realised in the case of the registers.

a. External Constraints on Obtaining the Data

First, it must be noted that the registers were concerned only with discharges of trade and sewage effluent, thereby excluding information
about the quality of drinking water, and discharges to sewers (where secrecy was maintained even following COPA)." Abstraction licences were provided through another register set up under the Water Resources Act 1963, s. 53. In the context of trade secrets, two further bars operated to restrict the data available. Section 42 "certificates" have already been noted in the previous chapter, (including that none were issued)," but s. 94 also created a general offence (applying to more than just register-data) of "disclosing" information relating to any "trade secret" unless specified conditions were met. The impact of this provision is not known, however, it operated subject to s. 41 and, therefore, could not limit the availability of information required to be maintained on the register." Again account must be taken of the manner in which COPA II was implemented, in that any discharge which had been exempted until 1987, and subject to a deemed consent from then onwards, would not have been subject to monitoring and hence, there was no sample data available to be recorded.

There were also two further external constraints which were potentially significant, but it can be suggested, because of the political will on the part of the WAs (as far as is demonstrated by the research), they did not prove to be a major problem. First, a number of authors were of the view that there was an important "loop-hole" in the data required to be recorded, in that, where the WAs required dischargers to undertake the sampling on behalf of the WA (as a condition of the consent), the regulations which supplemented s. 41 (SI 1983/813) did not specify that the results of this sampling had to be recorded. For instance, Tinker (1972, p. 531) noted that such data would in fact be the property of the discharger, and according to Bates (1979, p. 211) it was likely that it would be more detailed than monitoring by the WAs. Furthermore, it was suggested that, given the cost of monitoring in the context of public expenditure constraints, WAs might be more keen to use such an approach.
Three points can be made, however. First, it would have been open to the WAs to require, also as a condition of the consent, that the discharger permit the WA to include the data on the registers. Second, given the "fear" of private prosecutions, it would seem unlikely that the WAs would have sought to offer indirect "protection" to a discharger where this was not available to the WAs themselves. Thus while an external constraint according to the regulations, it was open to the discretion of the WAs, given the necessary political will - which appeared to exist - to overcome it. Third, and more importantly, for what ever reason, it would seem that in practice the omission was not a real problem. WA staff interviewed variously reported that they either rarely required dischargers to carry out such monitoring, or the WA monitored simultaneously. There were no suggestions that WAs were seeking to save money by widely adopting such a practice.

The regulations specified three types of sample to be recorded: (inter alia) samples of effluent taken by the WA either (1) in accordance with s. 113 Water Resources Act 1963,17 (2) of their own discharges, and (3) samples of water taken by the WAs in relation to pollution control. The effect of this was to exclude samples taken by the WAs of other dischargers' effluent which were not "statutory samples". In practice, it was likely that most sampling would have been "routine" - designed to measure compliance - not with legal action in mind - and hence, a strict reading of the regulations indicates that this would not have been available to the public. This would have been a serious omission, but the DoE made it clear that they expected all samples taken to monitor discharge consent (therefore including any samples taken in accordance with the sampling guidelines for WA discharges) to be recorded (Circular 13/85, para. 26). It would seem that in practice this was fulfilled by the WAs.18
b. Internal Constraints on Obtaining the Data

One important factor within the purview of the WAs, already referred to, was the question of the regularity with which discharges were monitored. In the context of the registers, this would clearly have a direct bearing on the volume and representative nature of the results available to the public. However, concerns can be expressed about the whole system of monitoring, as indicated supra. It is submitted that any future approach requires a more developed concept of decision-making which can involve the public and be comprehended easily.

c. Practical Utilisation of the Registers

There is no doubt that the registers were little used during the four years from 1 August 1985 until the NRA took-over responsibility for them. Two surveys have demonstrated the low number of inquiries made, and personal research has indicated that a limited range of people have benefited from this potentially significant mechanism for obtaining information (Burton 1989a, p. 193 et seq.). Generally, it has been a small number of groups with an organised approach to using the registers, and the knowledge of how to use the data, who have benefited.

It can be suggested that there were a number of practical difficulties which could explain why the registers were rarely used (bearing in mind the apprehension of the water industry at their implementation, supra. chapter two). First, it is contended that there was a lack of awareness on the part of the public, which was symptomatic of a general lack of understanding of the role and functions of the VA - hence the "public awareness campaign" in 1989 (supra. chapter three). It is argued
that this provides the clearest example of the need for education, but the approach of the WAs was very low key - neither providing an extensive advertising campaign when the registers were first opened, nor producing leaflets about the registers and how to use them. This was in contrast to the amount spent on privatisation (Burden, 1988), and to the information provided about the CCCs. Such an approach seems illogical given the extensive capital investment involved in actually setting up the registers.23 Second, the extent of the commitment required on the part of the public was considerable, both to actually access the registers themselves, and then to obtain any useful data. This includes the location of the registers - even where copies were provided at divisional offices this often involved travelling considerable distances, and access was only possible during the "working hours" of the WAs, suggesting the requirement for time-off work for many would-be inquirers.24 Problems were also identified in terms of some computer systems (which were used to store and enable access to the data) being "dated", and not "user-friendly", as well as in terms of the costs of actually obtaining copies, with some WAs interpreting "reasonable charge" disgenerously, it is suggested.

Further problems were in terms of whether members of the public could understand the data, and hence, the danger that they would be too apprehensive to make an initial inquiry, and whether an "adequate" volume of data was available. The main factors in relation to this have already been noted (supra.), including the effect of a number of outstanding deemed consents, the regularity with which discharges were monitored, and the potential, although it seemed not actual, "loop-holes" regarding monitoring by dischargers and "routine" samples.

It can be seen from the above, brief assessment, that to transpose "paper" legal rights into meaningful participation both education about
the rights, and the political will of the WAs, were crucial. While criticism has been levelled in respect of the former, WA staff were consistently keen to assist members of the public as much as possible, including providing on the spot guidance as to how to use the registers and the data which they contained. It can be argued that the WAs needed to take a more dynamic and positive approach towards promoting the registers, and thus, the views of the DoE - that the registers provided "free and unimpeded access" (HC 543, 1987/8, para. 5.27) - are disconcerting. It is encouraging, however, that the Government also accepted the need to keep the arrangements under regular review (ibid., para. 5.28).

In terms of a holistic approach, consideration of the registers should be placed in the context of other mechanisms already considered. First, the extent to which members of the CCCs were aware of the registers is interesting, as it might have been expected that members would have made consistent use of the registers. However, this seemed not to have been the case for the Yorkshire Water committees. A presentation was made to the committees (North and East Division Committee, minutes, 19 January 1987) but this was not updated, and thus, members spoken to informally in 1988/9 were completely unaware of the registers. Questions relating to register-data appear to have been asked on only a couple of occasions, one of which included a promise that information about the number of inquiries of the registers would be provided at CCC meetings, but this was not followed up (North and East Division Committee, minutes, October 1985). It should also be pointed out that the Committees provided a means through which the issues raised above could be considered, but the opportunity was not taken except with regard to the provision of a copy of the register in Hull (ibid., 2 June 1986), an idea rejected by Yorkshire Water.
B. Irregular Discharges

In the case of irregular discharges, the system of monitoring was largely dependant on the role of individual field officers keeping a close eye on their particular stretches of water (as explained fully by Hawkins (1984) and Brittan (1984)), but the public, and dischargers themselves, also had a particularly important role in identifying pollution incidents. Hawkins (1984) has also indicated how this put more pressure on the WAs to take action in respect of such cases, because of the "visible" nature of the decision-process. However, there was no formal mechanism for the public to obtain details of pollution incidents similar to the public registers, but it may be suggested that here the Committee system again played a particularly important role. As indicated in chapter four, standing reports were provided to the WQAG and RFAC on pollution incidents and prosecutions. Thus information could be communicated through this method, subject to the limitations considered with regard to the committees.

II. SECURING COMPLIANCE

Having identified that a discharge was not compliant with the conditions of its consent, or that a pollution incident had occurred, the next stage in the decision process was concerned with the way in which each of those states of affairs was dealt with. It will be seen that, although they potentially posed different issues, they were generally dealt with in similar ways. The WAs were seen to be concerned with remedying the effects of the breach and ensuring future compliance, rather than with the individual incident or breach for its own sake. Prosecutions were seen as a means to achieve compliance, but not as a means to punish "offenders". Thus, although prosecution was the course
envisaged by the legislation, it was not an automatic consequence, and was often used only as a "last resort" where other methods were deemed to have "failed". The implications of this preference for "negotiated" compliance through "persuasion", is of great significance for an assessment of public participation, because much of the decision-making was "hidden", involving only the field officer and the "polluter" and, therefore, open to limited scrutiny by the public; indeed as Hawkins (1984) has indicated, even from the senior WA officers at times. The use of "persuasion" will be outlined, followed by consideration of more formal approaches, including the legal process.

The significance of the enforcement process needs to be noted with regard to the level of non-compliance with discharge consents - as indicated by the debate over WA sewage works in particular - and the number of "irregular" pollution incidents occurring each year. The point must again be made that both forms of non-compliance posed a threat to the publicly agreed WQO for each receiving water, and hence the process of public participation leading to that. In accordance with the principled approach, meaningful participation is equally important at the enforcement stage.

A. Discharges of Trade and Sewage Effluent

1. WA Enforcement Strategy

Two key points need to be recorded at the outset, in relation to the nature of organisational decision-making regarding enforcement. First, possibly unlike many other policy decisions, the WAs were given significant freedom from government interference as to the kind of enforcement approaches taken. Second, individual field officers within
the WA organisations, also possessed significant discretion, and it was often difficult for WA policy agreed at Board level to be effectively transmitted to the level of individual discharges (Hawkins 1984, chapter 4). Thus, WA policy itself provided a "gloss" on the bare words of the strict liability offences created by the legislation (COPA II) and often, the field officers added their own criteria as well.

Two features of WA enforcement policy have already been noted (Burton, 1989b) viz. the disjunction between the legislation and WA policy in practice, and the actual choice of that policy in the form of the positive adoption of the "compliance" or "accommodative" strategy - bargaining and negotiation - rather than the "sanctioning" strategy - the use of prosecutions (virtually) whenever an "offence" is committed. Essentially, this positive choice was based on two key criteria. First, the belief that negotiation was a more "effective" approach in seeking to achieve compliance, and second (especially on the part of field officers), that many cases of non-compliance did not "deserve" criminal prosecution. Thus, some element of mens rea or "moral blameworthiness" (of at least negligence) was sought before field officers considered legal action to be "appropriate" (e.g. Hawkins, 1984, p. 11 and p. 191 et seq.). A range of factors were taken in to account in varying degrees of importance. These included whether the non-compliance threatened to cause "harm" to the receiving water, whether the discharger had been warned before and failed to take preventative action (such as installing treatment processes), and the general intention and attitudes displayed by the discharger. Thus, it has been indicated that the formal definition of unlawfulness was not the de facto definition (Richardson et al, 1982, p. 194), and that pollution is an "organisational and moral rather than a legal construct" (Hawkins, 1984, p. 74). 

The above assessments of WA enforcement policy were mirrored by the
interviews at different WAs - although far less detailed and more impressionistic - where WA officers indicated a similar overall approach and verified the kind of factors involved in the decision process. In the case of Yorkshire Water specifically, the main factors included whether the breach was a first offence, and the likelihood of - or actual - damage to the river (especially to fish). It was also indicated, especially at Yorkshire Water and North West Water, that prosecution was more likely in the case of an unconsented discharge, than one where the consent was held but had been exceeded.

a. Implications for Meaningful Participation

The above policies of the WAs have notable implications for any concept of meaningful participation, given that the role of the public, as already suggested, provides the extra "dimension" in the "polluter"-WA relationship, a relationship which was not only well established but influential in the kind of response given by the WA to any "technical" offence. Clearly, in the decision regarding WA enforcement action, there were no facilities for public involvement. Equally, in this respect, COPA II had a very limited effect. The public register was required to include information as to the "steps taken" in consequence of a discharge exceeding its consent (regulation 7(2)(d)), but the research undertaken suggested that this was near to useless as an information tool, being limited in the range of information included by many WAs and rarely being sufficiently up to date. However, arguably, if the registers were to be valuable in themselves, this was the sort of information, provided in more detail, which could have helped achieve such a goal.
It is submitted that public involvement should have been possible, not only in relation to overall policy, but also in respect of individual cases, a view which is supported by the right of the public to prosecute (post), and hence the need, at the very least, for those considering prosecution to know—and quickly—whether the WA intended to take action. Equally, it should have been possible for the public to influence the decision of the WA as to whether to prosecute; thus demonstrating the way public involvement would cut-across the existing relationship of the WA and discharger. Such influence could in practice only be achieved informally with WA staff or Board members, and hence, the vital need for political will on the part of the WA, and the need for basic information about any cases of non-compliance.**36** WA staff interviewed, indicated that they would be open to the views of the public regarding possible prosecutions. The implications of the public, and other "external actors", was noted by Hawkins, in particular, who explained the way in which this also affected WA decisions in individual cases—especially in the form of creating a "defensive" response—the desire to protect the image of the Authority (1984, chapter 10). However, two factors actually worked to further dissuade the use of prosecutions. First, a perceived public ambivalence towards the use of the law**37** and the "fear" that the public would be more critical of the WA losing a case than of failing to take a prosecution. Hawkins reports that it was the certainty of conviction which determined legal action rather than a prima facie case (p. 185). The key theme of this aspect of his findings was, however, the extent to which WA decision-making was "visible" and hence open to (public) scrutiny.
b. Possible Solutions

It is submitted that the crux of the enforcement decision for the WAs should have been in the form of the WQO system, whereby, because a consent was (intended to be) tailored to the appropriate WQO/S, any non-compliance, or at least significant non-compliance, would have put the WQO in jeopardy and, therefore, required remedial action. This in turn would have overcome the problem of public ambivalence in that there would be a natural desire on the part of the public to see the WQOs, which they had been involved in agreeing, protected. The issue then becomes the question of the appropriateness of the criminal law, and of a prosecution followed by a fine. It may be argued that more "imaginative" remedies than fines provide the solution, and it is disappointing that this was not considered in the Water Act 1989. The proposal of Hutter (1988) (albeit in the context of environmental health officers, but applying *mutatis mutandis* to water pollution) of the introduction of a negligence requirement has already been supported (Burton, 1989b, p. 10). In the case of water pollution and breaches of consent, this could be achieved by a form of enforcement notice, non-compliance with which could lead to prosecution. In practice the WAs were hindered by a further external constraint in terms of, both the level of fines actually imposed - arguably this did not pose a sufficient deterrent - and the failure of magistrates to appreciate the actual costs of prosecuting, with the effect that the public, through water charges, have had to subsidise polluters.

The above argument relating to the WQO was, however, negated in practice by the way in which the regulatory system was not achieved in practice in the way envisaged by the NVC. Many consents did not tie-in with their WQOs, many discharges were not controlled, and in the case of the Humber, for instance, there had been no public participation in the
setting of the WQOs (chapter five). It is submitted that under the auspices of the NRA, this is the direction in which water pollution control should proceed in the 1990s.41

A further underlying problem for the WAs in the use of formal enforcement powers was in the need for "even-handedness" in their treatment of other dischargers, given that the WAs themselves were achieving compliance rates no higher than 80 per cent in many cases.42 This problem, at least, should be solved by the creation of the NRA. The problem was further emphasised by the inclusion of the 95%-ile condition in all WA discharges (supra.). The effect of this condition was that 5% of samples in any 12 month period could exceed the permitted level, but the discharge would still be deemed compliant, and, therefore, lawful. Non-WA discharges did not include a comparable condition, which again raised the question of parity, especially where the non-compliance (of the non-WA discharge) was "marginal". As a consequence, informally, a level of non-compliance was tolerated by the WAs. It is submitted that the question of discharges which only marginally exceed their consent conditions (including the issue of whether, for instance, only 95 per cent compliance is appropriate) must be addressed. It may be argued that a 95%-ile should be included for all discharges, subject to an "upper tier",43 with the guarantee of the service of an enforcement notice (supra.) and then prosecution where either the upper tier is exceeded, or the lower tier for more than 5 per cent of samples taken, on the basis that such non-compliance would present a threat to the publicly agreed WQO.

The research identified a number of attempts which had been made to persuade the WAs to take legal action against dischargers.44 Two notable examples were first, by Friends of the Earth, who claimed that a campaign by their Avon and Vale of Evesham Groups was successful in
persuading Wessex Water to prosecute Tenneco (Friends of the Earth, 1988), and second, the case brought by Derbyshire County Council against North West Water was undertaken following a long running attempt to persuade the Authority to ensure, through the necessary investment and remedial works, that the discharge from the Whaley Bridge works complied. This process continued for some ten years before the Council concluded that legal action was "required" (pers. comm., and Doughty, 1987). It would appear, however, that HMIP (see below) was not approached.**

2. Prosecution by the WA for Breach of Consent**

The crucial step, prior to the actual commencement of legal proceedings, was the taking of what was known as the "statutory" sample ("stat" for short, but also known as the "tri-partite" sample), which, according to Hawkins (1984), was sometimes used as a threat in itself. Section 113 of the Water Resources Act 1963 (unaffected by COPA) specified that proceedings against a non-WA discharger could not be brought other than based on data resulting from a sample which had been taken in the correct manner. Essentially this involved the taking of the sample in the presence of a representative of the discharger, and then splitting of the sample into three parts, one part for WA analysis, one for the discharger, and one to be retained as a "control". This enabled the discharger to obtain his own independent analysis of the sample as a basis to test the accuracy of the WA results and interpretation.** Thus, for the public in seeking to persuade the WA to take action it was vital that the WA was persuaded to take a "stat".

Exceeding, or failing to hold, a consent amounted to an offence under s. 32 of COPA, which was written in the well used formula of COPA's
predecessors, of "caus[ing] or knowingly permit[ting]" the entry of trade or sewage effluent into controlled waters. As noted earlier, it can be seen that the WQO had to be transposed through the WQS into the conditions of the consent, because only non-compliance with those conditions was an offence; the WQO not being referred to in COPA. The main defences to such an action, and the problems in bringing a successful prosecution, are discussed more fully below, because they were more acute for the private prosecutor than for the WA. The point must be made, however, that if the process was over-complex for the WAs, this may have dissuaded them from taking action, thus leaving the onus on the public to prosecute, whereas it can be argued that prosecution was the responsibility of the WA, as the regulatory authority.

3. Enforcement of VA Discharges - the Role of HMIP

In considering the use of the law, while the above is concerned with enforcement by the WAs, the point has already been made that in practice VA sewage treatment works were achieving on average about 80 per cent compliance. The issue of VA compliance, therefore, raises the question of whether the public were able to persuade the WAs to improve this position in relation to specific, or all, works. Clearly attempts could be made through the VA committee system or informally - following the obtaining of information through the public registers - but the question must also be addressed of the oversight of the WAs and the possibility of the WAs being prosecuted for non-compliance. Prosecution by the public will be considered below, but formal oversight was the responsibility of the SoS for the Environment and his Department. From 1 April 1987 Her Majesty's Inspectorate of Pollution was created as a unit within that Department, which brought together the staff previously
responsible for water and air in particular,\textsuperscript{51} and from them on it was HMIP which provided the technical "expertise" for the SoS in setting WA consents and monitoring subsequent performance.

While it seems established that the WAs could not prosecute themselves, it was clearly open to the SoS to do so, but this would seem not to have been seriously contemplated in practice, and it was the attitude of the DoE, in relation to such prosecutions, which drew some of the heaviest criticism from the Environment Committee. The Committee considered that it was not "realistic" for the DoE to leave it to the public to prosecute WAs, and were surprised at the DoE "absolving themselves of the responsibility".

"Arguably, prosecution of a WA has become anybody's right but nobody's job. We recommend that the DoE, or the water inspectorate of HMIP, should be given a duty to prosecute those WAs which pollute watercourses" (HC 183, 1986/7, para. 47).\textsuperscript{52}

The fact that such prosecution was a possibility was, however, indicated by Colin Moniyhan in 1988, to the effect that:

"HMIP, in examining detailed reasons for non-compliance, will continue to consider whether prosecution is justified in individual cases" (Written Answer, Hansard, HC, vol. 132, col. 562; 5 May 1988).\textsuperscript{53}

In practice it would seem that, since the setting up of HMIP, the Inspectorate began to take a closer interest in the compliance levels of WA discharges.\textsuperscript{54} Yorkshire Water staff indicated that annual reports on compliance, including reasons for non-compliance, were required, coupled
with regular visits to every works by the area Inspector. Matthews has pointed out that visits by Inspectors to all the WAs included checks of the public registers, and HMIP began to introduce new conditions into WA discharge consents empowering the Inspectorate to take samples of WA discharges (1987, p. 144).

In considering the, arguably slim, possibility of prosecutions by HMIP of WA discharges, the issue of whether HMIP was genuinely open to public influence must be addressed, including through which channels this could be attempted. Again there were no formal means—and it may be suggested an absence of education about the existence and work of the Inspectorate. No evidence has been discovered of attempts to persuade HMIP to act, but it is submitted that in the run-up to privatisation, such prosecutions would not have been countenanced by the Government.

4. Enforcement by the Public

The final stage in the process for the public was the commencement of legal proceedings against either a WA or a non-WA discharger, assuming that attempts to persuade the WA/HMIP to act had either failed, or the action (short of prosecution) was not to the satisfaction of the party in question. COPA was significant, not only in making information about discharge performance available to the public, but in also providing a right to bring a prosecution, repealing the requirement to first obtain the consent of the Attorney-General (formerly s. 11, Rivers (Prevention of Pollution) Act 1961). However, COPA did not resolve, or even address, a range of complications which in practice made prosecuting an uncertain process. Thus, in contrast to the fears expressed by many in the industry, prior to the implementation of COPA II (supra. chapter two), that every breach of consent, however minor, would be prosecuted, only a
handful of cases were brought and none of these were against non WA dischargers. It is intended to review the main constraints which have been identified, and outline the key features of the cases that were brought during the period under study. It is important to note that, although the final decision in a prosecution rests with the court, it does amount to a mechanism of "control" rather than merely "influence" (Arnstein, 1969) over the policy-maker (discharger) with regard to compliance, although the "value" of a prosecution against the WAs has been questioned, and the possible implications for resources considered.\textsuperscript{66}

\section*{a. External Constraints}

\textit{The Absence of Legal Control.} The first problem for the public was in relation to those causes of pollution over which there was no legal control. Detailed reference has already been made to the range of discharges which were not subject to conditional consents and hence sampling. A further range of "discharges" not subject to detailed monitoring was the storm sewage overflows which operated during periods of heavy rain to cope with any potential over-loading of sewers. It has been estimated that there were some 5000 such overflows but, as a matter of practicality, these were not subject to the same kind of control as the discharges already discussed.\textsuperscript{55} A second significant category, which became a centre of public concern towards the end of the period under study, was in relation to substances present in discharges which had not been included in the original application for consent. There has been intense debate as to whether the discharge of such substances was illegal as being without consent, or whether a consent issued under s. 34 was all-embracing - in other words that anything not strictly prohibited or limited by individual conditions was thereby permitted.\textsuperscript{56}
The Government, in response to the concern of the Environment Committee (HC 183, 1986/7, para. 102), stated that it considered such substances would be illegally discharged, and hence open to prosecution, although it did accept that it would be possible for a "broadly worded" consent to lead to "doubt" (HC 543, 1987/7, para. 4.4).

Cost. The second constraint, which provides the real reason why fears about prosecutions were exaggerated, was the cost which faced a private prosecutor (a problem also experienced by the WAs). For instance, in the first action, by David Wales against Thames Water, costs were estimated at £2000 but only £800 was awarded by the court. This action was brought with the financial and administrative support of the ACA, who have supported many civil actions in relation to water pollution in the past. Clearly financial requirements mean that such a prosecution was only a realistic possibility for those with the resources.

b. Legal Uncertainties in Relation to Prosecutions

Apart from the absence of control limiting the pollutions in respect of which prosecution could be brought, there were a number of uncertainties in relation to the legal process of prosecuting, which can be seen as additional to the above constraints.

The Admissibility of Evidence. The first key issue was the evidence on which a private prosecutor could rely. The possibility of the public taking their own samples has already been considered, but in practice it was more likely that the data from WA samples recorded on the public registers would have been relied on. Logically, it has to be assumed that this was the intention in creating the registers coupled with the
right of private prosecution, although the issue does not appear to have been addressed during the enactment of COPA.60 The issue is whether such data was admissible in court being "hearsay" evidence,61 and with the added complications that the person who made the "record" (entered the data on the register) was not the same person who produced the results through analysing the sample in question. This issue will not be considered in detail here,62 as in practice, a more significant issue related to the question of whether data from samples not taken in accordance with s. 113 Water Resources Act 1963 (supra.) was admissible.63

It will be remembered that, for the WAs to prosecute non WA dischargers, they had to comply with the requirements of s. 113 by taking a "statutory" sample. It would seem that as a consequence, actions by the public against non WA dischargers could only be brought in reliance on the analysis of such samples (as recorded in the public registers), but any other samples would not qualify. However, even at the end of the period of study this position had not been determined conclusively, primarily because there had been no private actions against non-WA discharges in which the matter could be tested. WA discharges were sampled in accordance with s. 34 COPA, and thus s. 113 did not apply (Matthews, 1987, p. 143) with the effect that even "routine" (non "statutory") samples could be used as the basis for prosecution.64 The question of the admissibility of such registered data has also not been conclusively determined, this time because it was not raised in any of the actions brought against the WAs. It was unlikely that the WAs would have sought to challenge the data they had provided as part of their own pollution control work; such a challenge would have threatened their own credibility, and potentially, would have led to challenges by non WA dischargers when being prosecuted by the WAs. It is submitted, however, that had there been any possibility of such data not being admissible it
would have been challenged by the VAs.\textsuperscript{66} This raises the question of whether such challenges would have been mounted had (private) actions been brought against non WA dischargers, and leaves open the possibility of challenges against actions by the NRA (including by any of the newly privatised sewerage undertakers) following the 1989 restructuring of the industry. As explained in chapter eight, the NRA took over responsibility for maintaining the public registers.

\textit{Interpretation of the "95%-ile" Condition.} A further uncertainty in relation to WA discharges was the 95%-ile consent condition, which required data to be collected over a 12 month period to compare performance with the consent to determine whether more than 5 per cent of samples taken had been exceeded.\textsuperscript{66} One of the key issues regarding the 95%-ile, was the correct way to calculate it. In particular, whether the permitted degree of non-compliance related to actual samples (i.e. the number of bottles of effluent) or to each individual determinand for which a specific limit had been set in the consent. Thus, on the former it would have been easier to find non-compliance above the 5 per cent permitted, on the basis that one failure in relation to say BOD, and one for DO would amount to two failures, whereas on the latter interpretation, the permitted number would have to be exceeded for each determinand separately.\textsuperscript{67} This is clearly central to the question of compliance, and hence the ability to prosecute. It appears to first have become an issue in the Derbyshire CC case. The WA (IVV) argued that the "determinand" approach was correct, and, therefore, the number of samples which had exceeded were insufficient to cause a breach of the consent according to the 95%-ile. This view was based on the notice of variation of WA consents issued by the DoE in January 1985 (\textit{supra}.), which also relied on WRc technical report TR 230, and a further report by the author of TR 230 which justified this approach on the basis that
consents were issued on an "individual determinand basis", which the author considered to be a "clear-cut principle" (para. 7.3.1, extracted in a letter from the NWV Solicitor to Derbyshire CC, 17 June 1986, kindly provided by the Council). This was fatal to two of the counts on which the action against NWV was brought. The magistrates (apparently) decided that the position was unclear and, therefore, the case had not been proven beyond reasonable doubt by the prosecution.

c. Actions Concluded

Despite the fears that led to COPA II being dubbed the "busybody's charter" (quoted by Pearce, 1984, p. 11), from 1 August 1985 to the end of the period under study there were, as far is known, six actions by private bodies/individuals all of which were against WAs (and all heard in magistrates' courts). These were as follows: David Wales v Thames Water (1987), Derbyshire County Council v North West Water (1988), ACA v Anglian Water (1988), ACA v Thames Water (1989), Palumbo v Thames Water (1989), and Derbyshire County Council v Severn Trent (1989).

In conclusion, it can be argued that there were a number of legal and practical constraints in seeking to utilise the right of private prosecution, thus limiting its potential value as a mechanism for meaningful participation. Equally, it is clear that it was a facility that was not well "advertised" (unsurprisingly), but was closely linked to use of the public registers - those using them would be likely to know that prosecutions could be brought. As a mechanism for communication, clearly such actions were limited to a very narrow focus in seeking to affect priorities, especially investment, regarding the compliance of individual discharges. However, prosecutions could be seen as potentially more "powerful" in influencing such (future) priorities,
bearing in mind the legal nature of the penalty, but the argument put forward earlier, of the need for an "enforcement notice" type system, would strengthen this even further, by requiring specific remedial action, non-compliance with which would again be actionable. Finally, in terms of political will, it can be noted that the political will of the WAs was less important at this stage of the process, but the political will of other actors was important – most notably that of magistrates in being willing to accord "appropriate" penalties, and full award of costs to the prosecutor.

B. Irregular Discharges

In the case of "irregular" or "sporadic" emissions, similar issues arise in terms of the potential for the public to seek to persuade the WA or the SoS to take enforcement action, but again there were no specific mechanisms under COPA through which this could be channelled. A number of points can be noted, however. First, potentially, such incidents would be more "visible" by their nature (discolouring water or causing fish kills) and hence, be open to reporting by the public (indeed the WAs relied on the public, and sought to encourage them to report such incidents). As a consequence, the manner in which such an incident was handled would have been of a higher profile, especially where (for instance) a local angling club was directly affected. Second, such incidents were not recorded on the public registers (supra.) – even where samples were taken to prove the polluting nature of the emission. Thus, members of the public were reliant on information from the WA, or on taking samples themselves. In practice it appeared that, although the WAs adopted similar criteria as for s. 32 offences (above), adding a "gloss" to the legal definition of non-compliance, they were more willing to take action, in part because of the increased visibility of
the decision process, and also because of the more "discreet" (Hawkins, 1984, p. 6) nature of the incident - it was not a "continuing state of affairs" suited to "incremental" enforcement measures, to use Hawkins' terminology. In particular, it was possible that, in many cases, there would be no ongoing relationship with the polluter - for instance a road tanker accident causing a spillage into a river - but this was not always true, especially in relation to agricultural incidents from defective silage stores, or where incidents occurred at plants where consented discharges took place, but where the incident was not the result of that discharge.

Assuming, however, that the VA had not acted to the "satisfaction" of a member of the public or group, again a private action was possible, although only one definite (attempted) case is known about (post). Section 31 used a similar formula to s. 32, in relation to "causing or knowingly permitting", but instead of being concerned with the breach of consent conditions, the criteria of "poisonous, noxious or polluting matter" was utilised to define what amounted to pollution. There were a number of defences to s. 31, the most controversial of which was that the action leading to the emission was in accordance with good farming practice as specified in the (non-statutory) code drawn up by MAFF (s. 31(2)(c)). The practical significance of the Code is, therefore, difficult to judge, either for VA prosecutors or potential private prosecutors, but it can be noted as a further external constraint.

The main case that can be noted is the attempted private prosecution under s. 31 by the ACA against South West Water in relation to the pollution of the river at Camelford by aluminium sulphate (chapter three). The action was apparently taken based on the view that the Crown Prosecution Service were proceeding "too slowly" (ibid.), however, it was ultimately taken over by the DPP (The Independent, 7 November
1989, and Observer, 19 November 1989). The case was expected to be heard in a Crown Court in Summer 1990.  

III. MODIFYING THE CONTROLS

Where a pollution from a systematic discharge did occur, there were two further types of action that the WA could take (but only one in relation to irregular pollutions). These related, first, to remedying the effects of the pollution in terms of any actual damage to the receiving watercourse, and second, to action in relation to the consent where its terms had been exceeded, either by varying the consent (up or down) or, ultimately, revoking it.  

The powers in each case will be outlined and the opportunities for meaningful participation analysed.

A. Remediuing "Damage" to the River

A further important feature of COPA, in relation to the powers it provided to deal with pollution, was in giving the WAs new and more comprehensive powers to remedy and "forestall" pollution, and charge the cost of the work to any party who caused, or was likely to cause, such pollution. However, while the WAs were granted discretionary powers in relation to virtually all waters, including inland and tidal rivers and underground waters, a range of duties in relation to inland waters only were not implemented. It will also be seen that, again, there was no scope in the legislation for formal public involvement in this decision process.
Under s. 46(4) the WAs were empowered in the following terms:

"where it appears to a water authority that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or is or was present in, any relevant waters in its area, the authority may ... carry out in its area or elsewhere such operations as it considers appropriate -

(a) ... 
(b) ... for the purpose of removing or disposing of the matter or of remedying or mitigating any pollution caused by its presence or of restoring the waters (including the flora and fauna in them), so far as is reasonably practicable to do so, to the state in which they were immediately before the matter became present in the waters".

Initial impressions of the likely practical benefits of this section have already been presented (Burton and Freestone, 1986, pp. 253-4), but Howarth has noted that, although the section appears to give practical meaning to the concept of the "polluter pays", the power of cost recovery (subs. (5)-(7)) was severely limited because of the use of the word "operations". Thus anything, including the provision of advice, however costly, falling short of "operations" was not recoverable. He has, therefore, argued for a wider definition. It was foreseen that one of the main uses of the provision would be in relation to the re-stocking of rivers with fish where the pollution had resulted in a fish kill, and that this would not, therefore, need action on the part of the affected angling club. Consequently, such clubs were likely to seek to influence the WAs in their use of this power, being discretionary (Eastwood and Ord, 1986, p. 244).
It can be seen that there was an absence of any procedures laid down through which such influence could be *channeled* and hence, individuals and groups would have had to rely on *informal* means, such as direct contact with WA officers, or through the WA committee system. In this respect fisheries interests would have been at a clear advantage in having representation on the RRCC as well as the RFAC (chapter four), but again the importance of the effective link between the members of the committees and those outside them must be stressed. A further key factor was clearly the need for *political will* on the part of the WA in being prepared to use the above powers. Presumably, it was equally important that the WA, or angling clubs, possessed a detailed knowledge of the state of the river prior to any incident, given the use of the term "immediately before" in the subsection.

B. Re-Determining the Consent

In relation to consented discharges, the WAs were also given powers to modify the conditions imposed in the consent, or ultimately to revoke it. This was, potentially, an important provision, the former in terms of ensuring that consents were "correctly" tied-in with WQOs and kept pace with changes in the composition of discharges, and the latter in terms of ensuring that a discharge, unable to comply, was not permitted. Despite the detailed mechanisms for the involvement of the public described in the previous chapter, it will be seen that, in the case of reviews of consents especially, there were no formal mechanisms through which *communication* could take place.
1. Revocations of Consent

Having granted a consent under s. 34, the WAs were then under a duty to "review from time to time" that consent and any conditions attached to it, and were further empowered to either revoke the consent if "reasonable to do so" or to make "reasonable modifications" to the conditions (s. 37(1)). While no clear definition of "time to time" was provided by COPA, or available from WAs, this review was subject to the minimum requirement that, except in special circumstances, it could not take place less than two years from the date of granting the consent. This was because, in each notice granting consent, the WA was required to specify a "reasonable" period of "not less than two years" (s. 38(1)). This was provided, apparently, to give a degree of certainty to dischargers, given the investment likely to be required to achieve the initial consent. The "special circumstances" allowed this minimum period to be dispensed with; however, this latter power (s. 38(3)-(5)) was not implemented, and hence, as recognised by the Environment Committee (HC 183, 1986/7, para. 98) the WAs did not have the de facto power to stop a discharge in any kind of emergency.

In practice, therefore, it was very difficult for either WAs, or members of the public, to argue that the power of revocation should be used as a means for bringing to an end a discharge which was repeatedly non-compliant. In particular, apart from the time limitations, because the action was required to be "reasonable", it might have been difficult to argue that revocation was reasonable, given the potential effects on (for instance) a large company, although it could potentially have been used as a means for requiring the company to dispose of its waste by an alternative method such as via discharge to sewer.
Again there were no formal mechanisms for public involvement (other than those already described in relation to the WA as a whole) in such a decision, but it should be noted that s. 37(2) provided the option for the SoS to direct the WA, not only to use its powers under subs. (1) - subject again to s. 38 - but as to how to use its powers. This adopted a similar formula to s. 35 (chapter six) in indicating that the SoS could act, either on his own initiative, or "in consequence of representations". It is to be presumed, therefore, that the SoS would have been open to receiving such representations at any time, and would have been prepared to fully consider them. Finally, it must be noted that where the WA did decide to revoke a consent under s. 37, the discharger had the right of appeal under s. 39(1).

2. Variations of Consent

The alternative to revocation, envisaged by s. 37, was the variation of consent, which in practice was a far more important provision. This was because of the likelihood that some consents would be shown, through practical experience, not to be set at the "necessary" level to ensure that the appropriate WQO was achieved, or that consent conditions would have to be tightened to meet new EC obligations. Recent developments have also shown the importance of the successor provision in the Water Act 1989 (sch. 12, para. 6) in relation to the commitment at the Second Ministerial Conference on the North Sea to achieve a total reduction in inputs to the North Sea of 50 per cent by 1995, a requirement which in part will have to be achieved through reduced pollution loads from individual discharges.

As was explained in the previous chapter, where an application for a new consent to discharge was made under s. 34, extensive opportunities for
public involvement went into operation (subject to s. 36(4)). However, where the WA proposed to undertake a review (under s. 37) these provisions did not apply and, therefore, the whole process of public involvement was to be by-passed. It is submitted that this position cannot be justified, and again demonstrates the absence of a principled approach to public participation. It was suggested by WA officers interviewed, that they would never contemplate the relaxation of a consent under this provision and hence, public participation was not required, but it is submitted that public participation is required as much in the decision to determine to what extent a consent should be tightened, as in the decision to relax it. It would seem possible that participation could take place again through informal means, or the WA committees, but this would be subject to the public knowing about the proposed review and the willingness of the WA to be open to influence.

The nature of the problem is highlighted, and a partial (but inadequate) solution suggested, by the example of the two titanium dioxide discharges discussed in the previous chapter. Both went to public inquiries following the calling-in of the applications by the SoS, but they would not have been subject to publicity, and the opportunity to make representations, had the WA not decided to treat both cases as new applications under s. 34, having originally decided they would be treated as variations (which they strictly were) under s. 37. This indicates that WAs possessing the necessary political will and wishing for public involvement, could have sought to require the discharger to submit a new application, but it may be argued that they would have had no jurisdiction to require this, and equally, if it was being proposed to tighten the consent, then the s. 36(4) "waiver" would seem likely to have applied. Either way, it is submitted that this is a highly unsatisfactory position, which was not, however, remedied in the Water
Act 1989, despite the continually increasing importance of the need to review consents.

IV. CONCLUSIONS

Two main conclusions can be drawn from the above analysis. Apart from the apparent continued low level of education made available, and the importance of political will, the limited range of formal facilities provided under COPA in relation to the decision process following the granting of consent can be noted, in contrast to the arrangements for granting consents (chapter six). This would seem to increase the emphasis on the WA committee systems and the need for informal contacts. It might be argued that not all the decision processes above would be amenable to formal mechanisms for participation, but it is clear that improvements could be made especially in relation to the reviewing of consents and the action to be taken in relation to individual discharges which did not comply with their consents. Further, while the right of the public to prosecute was an important development, there were a range of constraints and uncertainties which threatened to make the process far more difficult than, it is argued, should have been the case. Related to this is the second main theme, of the "effective" operation of the regulatory system. If the public are to participate in the process of pollution control, it is vital that the system operates as intended, from the agreement of WQOs to their implementation in individual discharge consents and the enforcement of those consents. Thus the question of the policies of the WAs in relation to enforcement need to be addressed, and the problems that the WAs, along with the public, faced in utilising the law. A number of suggestions have been put forward relating to changes in the substantive law that could improve this position. In relation to compliance by the WAs themselves.
this was clearly connected to investment, and hence, the finances permitted by central government, which the present Government in turn have strongly argued will be remedied through privatisation and the additional expenditure permitted to achieve compliance by 1992.
IOTES:

1 Similarly no reference will be made to discharges to sewers, and again the main emphasis of the chapter will be on discharges of trade and sewage effluent, with brief reference to irregular pollutions.

2 It will be shown that the "regularity" of sampling was essential in terms of the amount of information actually available, and the "accuracy" of any picture of compliance presented by the data. The importance of monitoring was stressed by the Environment Committee (HC 183, 1986/7, paras. 108-110), and see the Government response (HC 543, 1987/8, paras. 5.19 et seq.).

3 The clearest examples of this are Directive 76/160/EC Concerning the Quality of Bathing Water (OJ L31, 5 February 1976) and Directive 80/778/EC Related to the Quality of Water Intended for Human Consumption (OJ L229, 30 August 1980). See further DoE, Circular 18/85, super-seded more recently by Circular 7/89, paras. 30-6, 51. And note the information that the WAs were required to provide to the DoE.

4 By comparison (in relation to trade effluent sampling) see the concerns expressed to Richardson et al (1982), and the problems of obtaining a "representative" sample. Importantly this also had an effect on the level of compliance sought by individual officers (pp. 120-2); further below.

5 The DoE indicated the principles that should apply to monitoring, and the differences in relation to WA and non-WA discharges (Circular 13/85, paras. 34 et seq.). The process and implications of sampling in the context of pollution control "in the field", are described fully by Hawkins (1984, p. 80 et seq, and p. 155 et seq.). The views of the dischargers are presented by Brittan (1984).

Especially staff shortages (for instance, notes of meeting, 25 February 1988).

The WAs also undertook a programme of monitoring of overall river quality, enabling assessments of compliance of total riverine inputs and the WQO/S. For instance, Yorkshire Water updated, on an annual basis, the five yearly river quality survey for their region. Sampling was also undertaken by dischargers themselves, which some dischargers have claimed to be more "representative" than WA results (in Brittan, 1984, p. 33). The discretion for the WAs to require dischargers to monitor their own effluents also had potential implications in relation to the public registers. The implications of both points, in relation to enforcement, will be considered post.

Criticisms of WA sampling have also been made with regard to its inconsistency - in particular by Birch, 1988, and Jackson, 1988, p. 10.

Especially with regard to the "95%-ile", below.

As opposed to actually identifying river pollutions (below) or of monitoring overall water quality, as undertaken by Greenpeace, in particular.

Section 41 was notable in reversing the pre COPA position whereby registers had been required under the Rivers (Prevention of Pollution) Act 1951, but s. 7 had severely limited access - see Tinker, 1972.

The details for each category were provided by regulations - SI 1983/813, explained by DoE, Circular 13/85, and DoE, 1984b.

See chapter eight in relation to the Water Act 1989.

Had any been issued this would have had the effect, inter alia, of preventing the recording of the details of discharge consents and the results of sampling.

The so-called "statutory" samples, explained post.

Indeed the DoE indicated that the regulations were deliberately framed so that more than the above three categories of data could be included, thus apparently including samples (of water) taken in relation to overall water quality (*ibid.* paras. 26-7). In relation to WIQOs see further, para. 35.

And see Burton, 1989a, pp. 202-4, where it was argued that regularity of monitoring appears not to have been "subject to clear understanding or logical criteria".

One exceptional case which caused a great deal of concern, and ultimately a change in the law, was in relation to the time within which sample results had to be recorded on the register. According to the regulations, recording had to take place within 28 days of the results being received by the person in charge of the register, rather than of the sample actually being taken. In preparing a legal action against North West Water, (further below) Derbyshire County Council had obtained a print-out of the NVW register (on 29 April 1988) showing sample results from 1 January to 22 March 1988, which indicated that the discharge consent limits had been breached on five occasions. The day after the action commenced, the Council received, via a third party, a further print-out for the above period which revealed a sixth breach - the sample result (for 1 March) had, however, only been recorded on 14 June. It was thus not possible to include it in the ongoing action. The Authority claimed that the sample had been subject to more detailed analysis, although the Council were not wholly satisfied with this, and wrote a number of letters to the SoS requesting a tightening of the rules to prevent...
such delay. The delay was also crucial because a prosecution in a Magistrates Court could only be commenced within six months of the date of the sample (pers. comm. Council officers, including documents supplied by them, and see further Doughty, M, "A Case to Answer", (1988), Surveyor, 27 October 1988, 16). Friends of the Earth have also alleged that four WAs failed to maintain their registers fully in accordance with the regulations regarding the details of the "composition" of discharges (Observer, 2 April 1989, p. 2).

For instance, Friends of the Earth have carried out regular "audits" of different WAs' registers, especially with regard to the way that the registers were maintained (supra.), and also as to sewage works compliance. From the feedback they received from their network of local groups, it was suggested that members required a great deal of assistance in using the registers (pers. comm.). Possibly the most interesting example witnessed was in the case of the South Yorkshire Salmon and Trout Association, where data relating to all discharges to the River Don was being collected, and a system of maps and graphs denoting all the discharges and their performances, was being developed. Yorkshire Water were sufficiently impressed to wish to purchase a copy! The member leading this work had also written a leaflet on how to use the register, for the benefit of other members (pers. comm., attendance at the AGM). Data has also been systematically collected as part of the preparation for legal actions by groups such as the ACA and Derbyshire County Council, as indicated below, and the National Federation of Anglers has indicated that it intended to systematically monitor sewage works in the south east, with a view to making it countrywide (Angling Times, 14 December 1988, p. 8).

Again only a brief resume of the earlier report of the research is provided here - see Burton (1989a) for a fuller account.
In terms of advertising, in the case of Yorkshire Water, there was one exception, where advertisements were placed in local newspapers giving details of the registers and the new charges for copies that had been introduced (Yorkshire Evening Post, 7 October 1987). It has been suggested that the Yorkshire Water register cost £40 000 to provide (pers. comm., Yorkshire Water officer).

During enactment of the Bill, a number of alternatives were suggested, such as providing access at local authority offices (see for instance, Hansard, HC, Standing Committee F, col. 90; 27 June 1974).

For instance, by including explanatory leaflets with every customers' water bill.

Many incidents, such as foam or dead fish, being highly visible. A number of groups have indicated that they regularly monitored rivers systematically in this way (pers. comm.) and see WATCH, sponsored by the Sunday Times. Friends of the Earth also set up a national "water pollution incidents reporting scheme". The contributions of anglers were also clearly significant.

Hawkins (1984, p. 190) - law as the "shadowy entity"; and see further the report by Lidstone, K W, Hogg, R and Sutcliffe, F, Prosecutions by Private Individuals and Non-Police Agencies, 1980, Royal Commission on Criminal Procedure Research Study No. 10.

In 1985/6 there were 20 000 pollution incidents (Angling Times, 20 May 1987), and an average 22% failure rate by WA sewage works discharges (HC 183, 1986/7, para. 25). Further details are provided in the DoE publication Annual Digest of Environmental Protection and Water Statistics.

Arguably they were actually assisted in the form of the consent reviews (chapters five and six) and the granting of "time limited consents". However, as the Environment Committee noted (HC 183, 1986/7, para. 26) the inability of WA sewage works to comply, acted
as a constraint on WA enforcement policy in relation to non-WA discharges, because of the need for an "even-handed" approach.

Hawkins, 1984, chapters 5-10. Richardson et al. (1982, p. 171) report similar findings in relation to trade effluent discharges, and they have also indicated that field officer perceptions of the consent standards were important. Where officers considered the consent standards "inappropriate" or "incorrect" they were willing to tolerate higher non-compliance; concern was also expressed in respect of the reliability of sampling, noted earlier (p. 121 et seq.).

An interesting comparison with the findings of Hawkins et al. is provided by Hutter (1988) in her study of the work of environmental health officers; she found officers were generally reluctant to class technical breaches of the law as "crimes", and even more reluctant to class the offenders as "criminals" (pp. 62-3). Similar criteria as for water were employed in the decision to prosecute - "gaining compliance is regarded as an open-ended and long term process" (p. 132), a process which was not geared towards punishment (p. 191).

Regarding law enforcement for air pollution offences, see Gunningham, 1974, chapter 6, and especially note his contrast with law enforcement for crimes against property (p. 69). Brittan (1984) also analysed the reasons why, given the low level of prosecutions for non-compliance, dischargers did actually comply (p. 69 et seq.); but also note the general conclusions that dischargers wanted more advice and education, which was seen as the best way of securing compliance (p. 104). She also found that dischargers perceived field officers were most concerned with the prevention of damage to the watercourse, and hence, dischargers were quick to provide "first aid" to remedy any damage and limit its extent (p. 49).

It should also be noted that discussions were with senior, rather than field, officers, c/f Hawkins et al.

Hawkins (1984, p. 16) has stressed this in terming the relationship "symbiotic", indicating its interrelated and long-term nature, thereby creating the perception that prosecution is precluded unless other more informal methods are "unsuccessful".

The committee system might be considered of potential value in terms of WA policy for offences in general, but they met too infrequently to be an effective mechanism for individual cases. It has already been noted, however, that at least two of the committees did begin to receive standing reports on pollution incidents.

The point must be made that, unlike for pollution incidents (as noted above), it would have been impossible, before the introduction of public registers, for the public to detect that a discharge was non-compliant.

Also found by Hutter (1988) for environmental health officers.

It should be noted that all the research referred to here, revealed that WAs and dischargers alike wanted the retention of the criminal law for "serious" cases.

An alternative, but similar approach - but not within the control of the WAs - was the imposition of conditional discharges where the defendant promised to remedy the problem (WQAG minutes, 25 February 1988).

Yorkshire Water were always very keen that every effort should be made to ensure that full costs were recovered, and standing reports at the WQAG were closely scrutinised for this information. The low level of fines, as a factor dissuading prosecution, was a strong theme at NNW, as well as the costs and staff-time involved. Welsh Water, however, considered themselves to have been historically one of the "harder-line" authorities (pers. comm.). The problem of low
fines, and the question of costs, was recognised by the Environment Committee (HC 183, 1986/7, para. 45), the maximum being £2000. The Parliamentary Under-Secretary for Agriculture has been quoted as saying that the real problem lay in the level of fines imposed rather than the level of the statutory maximum (The Independent, 6 May 1989).

A strong argument can also be made for the involvement of other dischargers (as members of the public) in decisions about others' breaches of consent, on the basis that discretion can lead to unequal treatment of individual cases (Davis, K C, Discretionary Justice: A Preliminary Inquiry, (1969)). Brittan (1984) found that dischargers wanted such equality - their concept of "justice" - both in consent setting (p. 26) and in enforcement (p. 67).

Noted by the Environment Committee, supra.

A limit, possibly two or three times the consent limit, for which 100% compliance is required. This is designed to ensure that the 95%-ile is not "abused", and was introduced for WA discharges as part of their "time limited consents", and is expected to become common practice in the future.

It is assumed that there were many more which have not been discovered.

The problems of informal contact with the WAs was suggested by the South Yorkshire Salmon and Trout Association, who indicated that they dealt regularly with Yorkshire Water in relation to discharges to the Don, but the continuous flow of letters was a "slow process". However, it was stated that they would seek to increase the formality of the process as appropriate, including, ultimately, using their representative on the RRCC, and interestingly, making use of their MP (pers. comm.).

Alternative formal action by the WAs is considered at the end of the chapter.
As explained below, this rule did not apply to the prosecution of WA discharges, but did suggest potential problems for private prosecutions.


The issue has been raised, however, of whether the summons should specify "causing" or "knowingly permitting" where the action was in relation to a breach of consent conditions; a point raised by Thames Water in the action against them by David Wales — see Turner (1988, p. 2), c/f Jackson (1988, p. 3).

Note the comments of the Environment Committee that "poor WA performance in meeting their own effluent consents cannot be excused", but the Committee went on to recognise that an historical lack of investment was a key factor in this (HC 183, 1986/7, paras. 26-30).

For details see Howarth 1988, pp. 58-61, and the annual reports of the Inspectorate.

In response to the Committee, the Government stated that it "fully accept(ed)" the criticism in relation to compliance rates and that this required "urgent improvement" (HC 543, 1987/8, paras. 2.6-7). It should also be noted that as part of the process leading up to privatisation, the Government announced that £1bn would be made available to the WAs for the improvement of sewage works compliance, with a view to achieving almost total compliance by 1992 (see the statement of Nicholas Ridley [noted in chapter six] during the Debate on the Government's response, 4 November 1988).

And further the Government response (HC 543, 1987/8) paras. 2.10 et seq.

Perhaps unsurprisingly, given the public nature of the issue.

See Turner, 1988, and Jackson, 1988. The ACA also considered that the right was important as a threat, which should not be over-used, but
needed to be used occasionally to prove its real value (pers. comm.). In the case of the WAs, the question of available finance, given central government control, must also be considered.

It has been reported that it would cost £637m to adequately replace them (Sunday Times, 12 March 1989, p. A15), and see HC 183, 1986/7, para. 23. A further problem in pollution terms, already mentioned, was waters from abandoned mines. These were not subject to control primarily because of the likely costs and the problems of determining who should be responsible.

The Yorkshire Post was a leading campaigner in this respect (for instance, 21 November 1988, pp. 1 and 7), supported by Friends of the Earth. (I am grateful to Andrew Lees, of Friends of the Earth, for bringing this issue to my notice).

Further Burton, 1987b, pp. 293-4. This clearly raises wider issues about access to law and the administration of justice, which are outside the scope of this work.

And see the references cited in Burton 1989a, pp. 204-6. The main difference for the ACA with such prosecutions was that the mainstream of their actions were civil suits aimed purely at obtaining damages where, for instance, a pollution had caused a fish kill and the affected fishing club required finances to re-stock. The power of the courts, following conviction of the defendant, to award compensation under the Powers of the Criminal Courts Act 1973, can, however, be noted - see Hawke, N, "Private Prosecutions for Water Pollution Offences in the UK", (1988) 3 International Journal of Estuarine and Coastal Law 266.

The statement of the DoE in Circular 13/85 (para. 40) is, however, interesting. This states that the registers were designed for "public information", and not as the "basis for legal proceedings", but it is presumed that this was directed solely to the WAs in their
enforcement role, and was not speaking generally about the role of the public.

61 An out of court "statement" tendered to prove the truth of its contents.

62 Although it has been addressed by Jackson, 1988. A further uncertainty which can be noted, but which will not be considered in detail because it did not arise in practice, is the question of on whom the burden of proof lay in a prosecution for breach of consent conditions. This raises the issue of whether the rule relating to reliance on "exceptions", "exemptions", "provisos" etcetera under Edwards [1975] QB 27, and Hunt [1987] 1 ALL ER 1 (for trials on indictment), and s. 101 Magistrates' Courts Act 1980 (for summary trials) applied, with the effect of placing a legal burden of proof on the defendant. Conflicting views have been expressed by Jackson (1988, p. 4) and Turner (1988, p. 2). It is contended that, as a matter of administrative convenience (the rationale for the rule) it would have been easier for the WA (as the regulatory agency, with the data to hand) to prove the breach of consent, than for the defendant to prove there was no breach. The question of the correct charge - "causing", or "knowingly permitting", has also been referred to, supra. Again this has not been conclusively determined.

63 For the reasoning indicated below, it is suggested that, as a general principle, registered data was admissible.

64 This was the cause of great concern for the WAs who considered that they were being treated unequally, by being given less "protection"; see for instance Clayfield (in Lester, 1980, p. 174). The fact that it was the WAs who were providing the data, also raised the issue of the "privilege against self-incrimination" - see for instance the views of David Walker of the NWC, quoted in (1982) 94 New Scientist, 1 April 1982, 6.
It was argued by the solicitors for Thames Water (pers. comm.) that
the first case did not settle the point on the basis that the
Authority pleaded guilty. North West Water defended their action
against Derbyshire CC but did not dispute admissibility. Similarly
Jackson (1988, p. 9) has suggested that, for the same reasoning, the
WAs would not challenge the accuracy of the data, and hence ss. 68-9
Police and Criminal Evidence Act 1984 (as amended by ss. 23-4
Criminal Justice Act 1988) would not have needed to be resorted to.

Thus if members of the public were to take, and seek to rely on,
their own samples, a number of samples, rather than just one, would
have been required (Jackson, 1988, p. 9).

Further, see Rees, J, Water Privatisation and the Environment: An

An action was also reportedly commenced against British Tissues, in
relation to a discharge to the river Llynfi, but no further details
have been obtainable (Angling Times, 9 March 1988).

An action brought on behalf of a Federation of eight angling clubs in
relation to a breach of consent to the river Lark in Cambridgeshire,
heard at Mildenhall Magistrates' Court. The Authority was fined £750
on each of two counts (Angling Times, 13 July 1988, p. 6, and 15
March 1989, p. 11).

Five counts of breaches of consent were charged in relation to the
discharge from the Wargrave works to the river Loddon in Berkshire,
the action being on behalf of the Wargrave Residents Association and
the City of London Piscatorial Society. The Authority pleaded guilty
to three counts, with fines totalling £4500 including, for one count,
the maximum of £2000, plus £1000 costs (Angling Times, 18 January

The Authority was fined £3000 with £1000 costs for a discharge to a
stream at Winterbourne in Berkshire, in an action by the Chairman of
the Arts Council and local residents (The Independent, 3 October 1989).

72 The Council issued summonses in relation to the Ashbourne, Pye Bridge, Pinxton and Bakewell works on a total of 16 counts, in respect of all of which the Authority pleaded guilty and was fined a total of £6800 with £220 costs (pers. comm., Council officers).

73 The question of the appropriateness of more severe penalties, such as the imprisonment of company directors, instead of "just" fines can also be addressed.

74 The importance of political will on the part of the WAs at the earlier stages of the enforcement process can be reiterated, in their willingness to prosecute, rather than leaving it to members of the public (supra.).

75 Supra. (chapter six) in relation to withdrawal of the defence. The Code received sharp criticism from the Environment Committee especially the idea that causing pollution could never be excused (HC 183, 1986/7, para. 64). The Committee thus called for the withdrawal of the defence. Note that the WRC submitted to the Committee that had the Code been properly followed, there would have been virtually no agricultural pollution incidents (1987, p. 19). The Government suggested that the Code had only been successfully used a couple of times by way of defence, and agreed to its repeal (HC 543, 1987/8, para. 3.6). For a critique see Howarth, 1989, p. 30.

76 Summonses were also issued for offences under the Salmon and Freshwater Fisheries Act 1975 (Angling Times, 26 July 1989).

77 Actions at Civil Law. It should also be noted that in respect of pollution occurring, which contravened either s. 31 or s. 32, it was open to those who had suffered "damage" to bring an action at civil law, primarily for damages. This was the main approach of the ACA, and had been since its formation in 1948. In 1987 the Association won "record" damages of £350 000 in relation to a 1983 pollution of the
River Tees (Angling Times, 30 December 1987, and 24 February 1988). The details of the law will not be considered here on the basis that such actions raise similar issues to prosecutions under COPA, as a mechanism for meaningful participation. Detailed accounts are, however, provided by Bennett, G, "Pollution Control in England and Wales: A Review", (1979) 5 Environmental Policy and Law 93, and Howarth (1988, chapter 3). The most crucial limitation, in relation to the civil law, which thus highlights the importance of the right of private (criminal) prosecution, is the locus standi requirement, generally in the form of a proprietary interest, such as riparian ownership. Bentil has provided a detailed account of the common law as a mechanism for environmental protection for pressure groups, but found it "lamentably ... wanting ... and unsuited to modern needs" (1981, pp. 324-5). He, therefore, analyses the model of "citizen suits" being developed in the USA, an approach he finds "desirable" despite its many limitations (p. 342).

Variation and revocation were also possible, irrespective of whether there had been an breach of consent, and importantly, this included the situation where practical experience revealed that the consent did not "accurately" tie-in with the appropriate WQO, and hence, even though compliant, the discharge was deemed to be having a deleterious effect on the receiving water. Yorkshire Water recognised that this was the case with a number of their sewage works' consents.

As discussed in the previous chapter.

S. 46(1)-(3), as to which see HC 183, 1986/7, para. 15; HC 543, 1986/7, para. 1.12 et seq.

1989, pp. 36-7. He further noted that on conviction for a pollution offence the defendant could be required to pay compensation (ibid. n. 77) under s. 35(1) Powers of the Criminal Courts Act 1973 (as amended) (also mentioned supra.).
For instance, it was noted that not all angling clubs were members of the fisheries consultative system.

Partly, it is believed, because of the complications of the requirements for compensation to be paid to dischargers.

In relation to inland waters the WAs would have been under a duty to revoke or vary the consent where the discharge had caused damage to flora and fauna, but this provision was also never implemented. Under s. 46(4) (above), while the WAs could undertake their "anti-pollution operations", they could not interfere with a consented discharge.

This was the case initially with the titanium dioxide discharges to the River Humber (chapter six and post).

As s. 36(1) specifically refers to an application under s. 34.


From the point of view of equity, the discharger had a right of appeal against such decisions - in relation to s. 34, s. 36 was seen as the equivalent to that for the public (supra.) - but apparently not here.

Information would only be provided on the public registers once the new consent had been issued.

Alternatively, it could have been sought to persuade the SoS to use his general discretion to hold a public inquiry under s. 96, but reservations were expressed about this mechanism in the previous chapter.

The DoE indicated that a variation requested by a discharger was always to be treated as a s. 34 application (DoE, 1983a, para. 36), but that where the WA initiated the variation, and considered advertisement "... desirable it would appear to be free to invite the discharger to make a fresh application under s. 34" (ibid. para. 38).

As noted earlier, in the case of the "time limited consents", although advertising was not required, the Government announced that all the variations would be advertised.
PART IV
Conclusions and the Future:

The Water Act 1989

In this thesis it has been contended that while public participation has been accepted as a principle by successive administrations it has not been successfully translated into practice through a "principled approach"; and that such an approach is needed. In particular, it has been argued that the decision of when and how to provide participation has never been subjected to adequate analysis. This has had the effect that participation has not been provided comprehensively - it has not been offered in respect of all decisions and decision-makers, and when it has been provided it has often amounted to no more than "legitimation", offering no real opportunity to influence the outcomes of decisions, or providing access only for particular "favoured" groups rather than the public per se. The concept of "meaningful participation" was, therefore, put forward as a means through which a "principled approach" could be developed, involving the ideas that participation should be provided on a comprehensive basis, directed at the actual locus of decision-making, and provided in a manner which would enable its actual utilisation in practice. Three elements to this concept of meaningful participation were, therefore, suggested, viz. (1) the ability to participate; (2) the opportunity, in the form of "channels for communication"; and (3) the willingness of the decision-maker (and
the participants) to treat the process as a "genuine" exercise designed to yield benefits for all involved.

Meaningful participation was also put forward as a standard through which it can be sought to test whether any given decision process does enable such "genuine" public participation to take place, and it includes a number of principles which can be taken into account in the design of such processes. The legal regulation of water pollution was put forward as a significant example of policy-making because the opportunities for public participation, primarily through COPA II, were more extensive than in most areas of public administration. This provided an ideal case study through which to illustrate the way that the concept of meaningful participation could be applied to practical examples of decision-making to analyse the nature of any opportunities for public participation, as well as a means through which the concept - embryonic as it is - could be evaluated. The main body of the thesis presented the application of the principles of meaningful participation to the work of the WAs in relation to water pollution control, but set in the context of one WA - Yorkshire Water - which was studied as a "corporate entity", including its relationships with bodies such as central government and the EC. In this chapter it is intended to draw together the conclusions from the application of meaningful participation to the case study, including noting to what extent it can be argued practice did, or did not, accord with the concept, following which the concept will be re-evaluated. Finally, the Water Act 1989 introduced significant changes to the structure of the water industry, including the abolition of the water authorities and the creation of a new, national public regulatory authority with responsibility for pollution control. This provided an opportunity for improvements to be made to the range, and nature, of the opportunities for public participation. This new structure will be outlined, and, as far as can
be judged at this early stage, its implications for meaningful participation, in the light of the conclusions reached about the pre-1989 position, will be assessed.


Water pollution control, primarily under the influence of COPA II, was put forward as an example of decision-making which was, potentially, one of the most "advanced" in terms of offering an extensive range of opportunities for the public to participate in the policy-making of the WAs. However, it is contended that the empirical research presented in the main body of this thesis provides clear support for the central argument of the thesis - that participation is rarely provided on a comprehensive basis, and when it is provided, this is often without the necessary commitment to a genuine process enabling equal chances for the public to influence the outcome of decision-making. First, it was shown that there was an absence of the necessary political will on the part of the Executive towards providing comprehensive opportunities. Despite the enactment of important new (legal) rights in 1974, successive Administrations were willing to frustrate the will of Parliament by postponing the implementation of these rights for over ten years, partly at the behest of the WAs themselves, because of a mixture of the consequences of the rights for the WAs, and the pervading economic problems requiring extensive cuts in public, including WA, expenditure. COPA II, incorrectly, it is submitted, was seen as likely to increase significantly such expenditure. Finally, in the mid 1980s, serious steps were taken towards the implementation of the provisions, but the manner in which this was achieved further illustrated the absence of commitment.
on the part of the Executive. Thus the legislation was phased-in, coupled with directions by the DoE that, in respect of virtually all discharges then coming under control, the main provisions for participation (advertising and representations) could be disregarded. The effect of this was to apply the, apparently extensive, opportunities to only a limited proportion of the control regime, rather than to all discharges of trade or sewage effluent to rivers. The more detailed analysis of COPA II, provided in Part III, further serves to illustrate the limited scope of the opportunities. In the case of "irregular" pollutions, actions designed to prevent pollution, and the review of discharge consents, there were, in reality, few opportunities for public involvement.

Second, prior to the final implementation of COPA II, the Thatcher Government made significant changes to the internal constitutions of the WAs through the Water Act 1983. This included the removal of the right for local authorities to appoint Board members, the power for the Boards to meet in private, and clear directions to the new Boards that their first criteria was "economy and efficiency". Saunders has argued that this amounted to a sharpening of the "managerial ethos", instilled in the WAs from the start (under the Water Act 1973), into what he termed the ethos of the "balance sheet" (1984, p. 7), or what has been termed in the thesis, that of "business principles". Furthermore, all activities of the WAs - including public participation - would have to take place within the framework of this governing ethos, itself described as "antithetical to participation" (Saunders, 1983, pp. 34-5). It is contended that there is enough evidence in this thesis, despite the already recorded difficulties of testing, to suggest that Saunders' assessment is valid - witness, for instance, the extensive control exercised by Yorkshire Water over the CCCs, coupled with the effects of central government controls over the WAs finances, thus limiting the
potential impact that the CCCs could have on the setting of water charges.

Third, it was suggested that one of the key problems with the practice of participation has been that when it has occurred it has not been on an "equal" basis - "privileged" access has been the theme. Concern was expressed at the way in which the new arrangements, including those for consumer representation, would fit within the existing established relationships which a number of groups/organisations had with the WAs prior to 1983 (as described by Saunders [1983 and 1984] in particular). The need was stressed for political will on the part of such groups, as well as the WAs, to accept a positive role for the public per se, and to treat the various committees as the main fora for policy consideration. However, doubts were expressed, as a result of the analysis in Part II, whether equal access was being achieved. First, because of a perceived failing of the COGs in particular, to act as communicators between the WA and the public per se, and second, because of the apparent lack of interaction between all the open committees. It is suggested that privileged access was achieved (at the very least) by default for two reasons. For instance, certain interests were catered for with membership on more than one committee, while the public per se were only given places on the CCCs, but not the RRCC or the RFAC. Because of the very limited interaction, the effect appeared to be the de facto exclusion of the wider public from many of the issues put before the RRCC and RFAC. The limited availability of education about the existence of the channels for communication and how to use them, also contributed to this situation of "privileged" access by default.

Finally, the thesis also lends support to the argument that significant constraints are often put in the way of those seeking to participate. As part of the analytical framework (set out in chapter one) both external
(relating to bodies above the WAs in the "hierarchy") and internal (relating to the WAs themselves) constraints were identified. In relation to most of the opportunities analysed there were a range of constraints evident. For instance, in the case of the CCCs, the extent of government financial control was seen as an important constraint and doubts were expressed about the willingness of Yorkshire Water to grant the committees significant independence; in the case of the requirement to advertise applications for consent to discharge; the discretion to "waive" the requirement appeared to present an unnecessary internal constraint.

Apart from demonstrating the way that participation is rarely provided on a comprehensive basis in practice, a second major theme of the work was that if the regime for water pollution control did not operate in the way intended, this would provide a further constraint to public participation by negating much of what was publicly agreed, thereby limiting the impact of that participation. In other words, if targets - such as the Water Quality Objectives - having been determined following processes of public involvement, were not successfully put into practice through derivation into Water Quality Standards and then individual discharge consents, this diminishes the value of that participation, making it appear futile. It is suggested that the research shows that, by the end of the period of study, the control regime was barely operating in the way that had been intended; this is unfortunate, as it is suggested, that the system of Water Quality Objectives was an important development which, if it can be made to operate, will yield significant benefits both for the aquatic environment and for those who wish to participate in policy-making about that environment. However, as described in Part III, the system was hastily created in response to external pressures, and applied to a structure where not all discharges were subject to control, and many of those which were, actually failed
to comply. More attention seems to have been paid, thereafter, to the discharge consents, without adequate regard to the governing WQOs. This can be coupled with the delay in the introduction of extensive controls (as noted above) such that some discharges were only being brought into control from 1987, and the problem of non-compliant discharges from WA sewage works was only beginning to be seriously tackled as a prelude to the privatisation of the utility functions of the WAs.

A. Overall Comparisons with the Requirements of Meaningful Participation

Apart from providing support for the central argument regarding the realities of public participation, a number of general conclusions can be drawn from the comparison of the case study with the three elements of meaningful participation put forward in chapter one. These general conclusions will be outlined, followed by a summary of the main conclusions from the case study.

First, in terms of the provision of channels for communication, these were not always made available in the shape of formal facilities in relation to every decision, or stage of the decision process. It is suggested, however, that from the point of view of making participation available to the public this was necessary; the public cannot (at least without extensive education) be expected to know how to deal informally with a decision-making body, especially one as complex, and responsible for as many functions over a large geographical area, as the WAs were. A further danger, where informal means have to be relied upon, is that this provides significant discretion to the decision-maker as to who to deal with and how, in the knowledge that such dealings will largely remain hidden from wider scrutiny. Thus, without the necessary political
will, this perpetuates the danger of privileged access. This is especially the case where, as was suggested for the WAs, the decision-maker is subject to an overriding ethos which, by definition, does not encourage "genuine" participation.

A number of different stages of the decision process, for which channels for communication were required, were identified (chapter one). It was argued that to achieve the kind of fluid two-way process of communication which accords with a "principled approach" to participation, there is a need for all of these stages to be provided in relation to every decision to a degree consistent with the nature of the decision in question. While the latter point will lead to a number of conflicting views in respect of the same decision, it is suggested that there were a number of examples in the study where particular stages were not complied with. The setting of (new) discharge consents is perhaps of greatest interest in coming close to the kind of standard argued for, but a number of gaps were still identified (irrespective of the constraints also noted), including the apparent inequalities in the rights to have the decision taken over by the SoS in place of the WA, and further stages of communication (stage V) undertaken as a result. Similarly, it was suggested that the committees offered an important development in (apparently) making all the stages possible, formally, but the main concern lay in the irregularity with which the committees met, and hence, the very long time-scale if matters were to be considered and reviewed, including involving the nominating bodies and wider public. Despite such weaknesses, however, it is contended, that both mechanisms are significant in illustrating the way that the channels for communication can be put into practice if their full potential is recognised, and major constraints removed.
Two common features of the results of the analysis were also that stage IV was apparently never complied with (as far as can be detected), and stage VI only sporadically, and to different degrees. In the case of the former, it is argued that this is a vital feature of the concept of meaningful participation if the benefits of meaningful participation (propounded in chapter one) are to be realised. One of the problems identified was that of people not knowing how to participate, or providing "irrelevant" information, and it was argued that by participating, with the significance of the contribution made being explained, this would assist the participant in a "self learning-process". It is hoped that decision-makers will pay greater attention to this point in the future. Equally, it is believed that stage VI (akin to what is more commonly termed "accountability" or "reason giving") is fundamental to any decision process, both in seeking to ensure that decisions are adequately considered (the "Franks" reasoning [Cmnd. 218, 1957]) and that participants can know the decision and the reasons behind it. In practice, it is suggested that the amount of detail given varied significantly, especially as to why particular options had been rejected. In the case of the discharge consent regime there were few such requirements, however, again the committees were of great potential (sometimes realised) in providing a means through which WA Board members and officers could be questioned as to the reasons behind decisions (including, in some cases (chapter four) why decisions had been taken without the prior involvement of the CCCs).

Second, in terms of the requirement of education, a particular concern must be expressed here, that insufficient education was provided to the public about the work of the WAAs, ongoing decisions, and the opportunities for participation and how to use them. It is, therefore, unsurprising that the need for the "public awareness campaign" (chapter three) was identified, and that public concern over the performance of
sewage works reached a peak, coinciding with the move towards privatisation. Equally, it is unsurprising that facilities such as the committees and the public (discharge consent) registers were "underused". It is unfortunate that there was such inconsistency in the approach of the WAs, including Yorkshire Water, to the different facilities - for instance advertising the CCCs but not the registers or the Water Quality Advisory Group. Education is an issue which must be addressed in relation to any decision process, a point which will be continued below, in the context of the post 1989 water industry.

As suggested at the beginning of the thesis, the presence or absence of political will was the hardest factor to take account of, and hence, this was only attempted to a limited degree, primarily in the form of seeking to identify external or internal constraints (as noted above). Apart from such constraints, it can be suggested that Board members and staff of Yorkshire Water, in particular, sought to be helpful and welcoming to participation (at least from those who knew how to participate). This was evident in particular from the range of committees, where requests for (more detailed) information were met, members were assisted through seminars, visits to works, and detailed presentations on particular matters. The question of the extent to which the Authority was always "open to influence", however, must remain unanswered, although, given the business principles ethos, there must be doubts in relation to some decisions (witness "access to Board meetings" [Part II]).

A final point which needs to be made at this stage, relates to the EC. Although the Community, and its decision processes, have only been considered to the extent that they inter-linked with the regulation of water pollution, it can be questioned whether a principled approach based on meaningful participation has been achieved at Community level.
It has been suggested that the EC has been a major influence on the English regime for water pollution control through a series of Directives (Part III), and it is likely that this influence will continue. It can be argued, therefore, that the application of meaningful participation is as appropriate at the supra-national level as the national or regional, but a number of steps will need to be taken for the decision-making processes of the EC to accord to the principles set out in chapter one - a number of criticisms of the present EC structure were noted (chapter five). There will always be a need for extensive education of the public, about the decision-making structures of the EC, and how they interrelate with the British structure, as well as in relation to individual decisions. Equally, there are clear difficulties in providing channels for communication given that the adoption of EC legislation rests with the Council of Ministers, and not the elected Parliament. Such an approach is therefore dependant on effective communication through the appropriate (British) Minister, but this rests on the kind of representative democratic structure already argued to be ineffective (chapter one). The question of whether mechanisms can be developed to achieve such communication with the public per se, therefore, needs to be addressed.

B. A Summary of Individual Chapter Conclusions

The thesis was divided into four parts. Part I was concerned with setting out the contentions of the thesis, their justification, and explaining the concept of meaningful participation and how this would be applied to the case study. Account was also taken of the intentions of the Executive in the development of the water industry to the start of the period under study. Part II was then concerned with an analysis of Yorkshire Water as an example authority, Part III with the workings of
the pollution control regime, and Part IV with concluding the work and considering the implications of the post 1989 structure. In this section it is intended to review the main chapter conclusions.

In chapter two it was sought to establish whether the Executive intended, in initially creating, re-constituting, and then arming with extended pollution control powers, the WAs to operate in accordance with an approach similar to meaningful participation. The reasons for the development of the WAs, and, in particular, the issues behind their constitution and the provision of opportunities for public participation, were considered, and it was contended that they were to be subject to a dominant ethos, and that most opportunities for participation had actually been granted as concessions to powerful groups such as the local authorities and industry. Furthermore, as noted above, further concessions were granted in the form of actually delaying the implementation of the provisions in relation to pollution control.

Chapter two, therefore, provided an indication of the framework within which the WAs were required to operate. These "expectations" were analysed more fully in Part II where one WA - Yorkshire Water - was studied in detail as, what was termed, a "corporate entity". In chapter three, the structure of the Authority was outlined, including its relationships with central government - the extensive nature of the financial controls to which it was subject - and its Board and committee structure. The aim of this was to illustrate the kind of environment within which the regulation of water pollution, being only one of the range of WA functions, would have to take place, and also to show the extent to which meaningful participation could take place with the Board, given that many important decisions about pollution control would actually be taken at Board level, and, therefore, there had to be a real opportunity to influence the Board. In terms of opportunities for public
participation, the mechanism of holding Press conferences after Board meetings was analysed, compared with the previous practice of allowing both the Press and the public access to the Board meetings. Account was also taken of the Authority Annual Reports and Accounts and the extensive range of information provided by the Public Relations Department. To provide an holistic approach to the study of the Authority, chapter four presented a study of the range of committees through which some form of public participation was possible, with the main emphasis on the CCCs. The totality of mechanisms for communication with the Board could then be analysed as a whole.

It was suggested that the Government had successfully instilled in the WAS the ethos of "business principles", but that within that framework Yorkshire Water had shown considerable commitment towards participation, both through formal and informal means. Specifically, it was suggested that the CCCs were a significant development in allowing for the involvement of the public per se, both through actual membership, and by communicating through the committees. Concern was, however, expressed at whether the potential of the committees had been fulfilled, because of a confusion over the roles of the committee members, and a lack of education of the public. It was difficult to see how members could generally play other than an "interpretative" role, and little evidence was found of them acting on behalf of the public in relation to policy-making. Further, it was clear that the committees were subject to tight control from Yorkshire Water, especially as to the regularity of meetings - a matter of some concern. In the case of access to meetings, it was argued that the choice should not have been seen solely as an either/or situation - that improved communication might have been achieved through a combination of access to meetings and the CCCs. The arguments for closure of meetings, presented by the Government during the enactment of the 1983 Bill, were not accepted as convincing.
the point of view of the Press, it was suggested that there was little that could be gained through Press conferences that would not have been available through obtaining agenda and attending meetings, and indeed the latter would have allowed the Press to decide for themselves what they considered "newsworthy". However, it was argued that the governing criteria had to be what would best enable meaningful public participation, and in relation to all the mechanisms in Part II, the analysis re-inforced the importance of political will on the part of all parties involved, including central government, the Press and the public.

Part III was concerned specifically with the pollution control regime, which was outlined, with reference to its historical background, and an analysis of the opportunities for public participation in relation to the setting of Water Quality Objectives and Standards, both nationally and regionally (again using Yorkshire Water as an example), and the control of pollution from both "systematic" (trade and sewage effluent discharges) and "irregular" sources. It was suggested in chapter five, that the system of WQOs and WQSs provided the baseline against which individual discharges would be controlled, but that their development was an urgent response to EC pressures, and occurred outside the statutory framework. It was argued that this was, in fact, a potentially beneficial development in providing a relatively clear method of management amenable to public participation, but it was questioned whether, in practice, it had ever worked in the way intended, and that there appeared to have been a clear absence of the desired "principled approach". Both points were heightened in the following two chapters. In chapter six the process of setting discharge consents was explained, but it was found that only a limited proportion of consents were being set in the manner intended. The opportunities for public participation were being by-passed, either through the exercise of VA discretion, or under
DoE guidance, coupled with the absence of control for many discharges. In the case of irregular pollutions there were no actual facilities for public involvement, and a number of potential controls, requiring secondary legislation, had not been introduced. In chapter seven, the process of retaining control through monitoring and enforcement was analysed. Many of the initial stages, including the regularity of monitoring, remained at the discretion of the WAs, although the public registers offered an important development as a means to obtain information about discharge performance. These were, however, under utilised due to a lack of education about them, and a range of constraints. Again informal means had to be relied on to seek to persuade the WAs to use the law to enforce discharge consents, and the process of the public themselves undertaking a prosecution was seen to be complex and was, therefore, unlikely to be common, and possibly only available to organisations with extensive financial backing. Finally, concern was expressed at the absence of similar opportunities for participation in the reviewing of discharge consents, and the remedying of damage to rivers, in contrast (theoretically at least) to the setting of consents.

II. RE-EVALUATING THE CONCEPT

At the beginning of the thesis it was indicated that the concept of a "principled approach", based on meaningful participation, was embryonic, having been developed inductively during the course of the research. An initial evaluation was undertaken in chapter one, and here a re-evaluation will be attempted in the light of the case study and conclusions thereof.

It is submitted that the work has validated the essential concept and
especially the three elements on which it is based. Two clear themes of the empirical work have been, first, the need for the education of the public about the functions of the decision-making body in question, the facilities for participation and how to use them. Such education can be seen as a precondition to participation based on equal access which can thereby yield the benefits argued for in chapter one, as well as legitimating governmental activity. Second, no system of participation, which seeks to offer a genuine opportunity to influence the outcome of decisions, and hence lead to responsive decision-making, can operate unless there is the necessary political will on the part of all the parties involved in the decision process (whether national or regional government, the Press or public) to make the process beneficial. The thesis also emphasises the difficulty in seeking to identify the presence of political will at the different levels of administration, especially where those levels interrelate and such interrelation is often hidden. This difficulty of identification arises even where "obvious" indicators such as "constraints" are utilised. McAuslan's definition of "ideology" (1980, p. xii) indicates the problem of really knowing what a person intends.

One of the difficult issues relates to the different stages of the decision process at which a channel for communication is appropriate. The seven stages which have been included in the concept, are designed to demonstrate the need to develop a fluid process of two-way communication. It has also been sought to demonstrate that such communication needs to be analysed based on the interaction between the different processes amounting to participation. Thus participation is not just concerned with activity prior to the making of a decision. For this reason the existing terms such as "access to information" or "accountability" were rejected. The view remains, however, that the decision as to the appropriate degree of communication must be
determined in the context of the decision in question. As noted earlier, the thesis has reinforced the view that, as far as possible, actual facilities should be provided for each of the stages; the wider public cannot be expected to rely on informal means, especially in the case of large and complex administrative organisations.

The thesis also demonstrates the need to take a holistic approach in studying any decision process, including the environment within which the decision-maker operates, and all opportunities for public participation.

Finally, the issue again needs to be addressed of the likelihood of such a concept being put into practice. Doubts were expressed at the outset, with works such as McAuslan (1980) and Gunningham (1974) being cited (chapter one). It is suggested that the thesis has further indicated the limited scope for optimism under present conditions, given the extent of central government control, and the imposition of an overriding ethos (of business principles), in relation to the WAs; all set against the back-drop of the present system of representative government serving to buttress the status quo. Clearly, for the principles of meaningful participation to be put into practice in the manner argued for in this thesis there must be significant changes in attitude, primarily in Westminster and Whitehall, but equally at all levels of public administration. However, it is hoped that this work demonstrates the need for a principled approach being put into practice, and provides guidance as to the problems which must be solved for it to be achieved.
III. THE FUTURE: MEANINGFUL PARTICIPATION AFTER THE WATER ACT 1989

It was indicated in the Introduction to the thesis that between 1 October 1983 and 31 August 1989 provided an ideal time period within which to base the case study, as the practice of the WAs could then be studied and compared with arrangements before that period. The end of the time period is marked by the major changes which took place in the water industry, primarily inspired by the privatisation proposals of the present Government, leading to the National Rivers Authority and the Water Services plcs commencing operations on 1 September 1989. The conclusion to the thesis, therefore, provides an ideal opportunity to outline these changes and to analyse their implications for the concept of meaningful participation presented here. In particular, it offers the possibility of assessing how the main issues raised in the thesis are dealt with post 1 September 1989, and hence, whether, as far as can be assessed at this early stage, the new structure moves any closer to achieving a principled approach based on meaningful participation.

By way of introduction, it is apposite to identify the background to the changes, and the main reasons for them. This will be followed by a brief outline of the new structure of the industry. The emphasis will again be on the arrangements for water pollution control, and opportunities for participation therein, but a similar kind of holistic approach will be taken, as it was in the main body of the thesis.

A. Background to the Changes

"... the water authorities were never planned for privatisation ... The government and the water authorities stumbled into it without any clear or coherent view of its implications" (Kinnersley, 1988, pp. 118, 127).
It has been contended that the proposals for water privatisation were born of "naked political expediency" (Herrington, P, [letter to] Water Bulletin, 3 February 1989, p. 4) in that they originated during a debate over a proposed Statutory Order (required to set Thames Water's financial target) during which intense backbench concern was expressed over the likely increase in water charges for Thames.

"... to overcome backbencher unrest, Ian Gow [Environment Minister] spoke of 'examining the possibility of a measure of privatisation in the industry' - vague and cautious words but enough to gain the votes he needed" (Kinnersley, 1988, p. 127).

This came - in February 1985 - just two months after the Parliamentary Under-Secretary of State, Neil MacFarlane, had announced that the Government had "absolutely no intention of privatising the water industry" (Hansard, HC, vol. 70, col. 457; 19 December 1984). The next stage in the process was the issuing, by the DoE, of a discussion paper, which was heavily criticised at the time and it has been suggested by Kinnersley that this provided the "clearest evidence" of the privatisation having been "unplanned, or not even thought through" (ibid.). This was followed by a White Paper in February 1986 and then a Green Paper in April that year (DoE, 1986b). The main points of these proposals were that the WAs would be privatised as complete entities (including, therefore, their pollution control functions), as Water Services Public Limited Companies (WSPLCs) to be regulated by a Director-General of Water Services.

The change in SoS at the DoE, however, brought a significant change in outlook towards the proposals. One of the first actions of Nicholas Ridley was to suspend the proposals which had been set out in the White
Paper. The matter was then apparently left in abeyance until just before the 1987 General Election, when new proposals for a separation of the industry were included in the Conservative Manifesto. The regulatory functions relating to the environment (including pollution control) were to come under the jurisdiction of a new (public) body, the National Rivers Authority, and only the "utility" functions were to be privatised under the guise of the WSPLCs.

Following re-election, the details of these new proposals were published, in July 1987 (DoE, 1987a), however, there appear to be two views as to their rationale. The "official" version (stated in the consultation paper) was that none of the protections that had been devised to prevent "abuse" by the WSPLCs in the operation of their regulatory functions were adequate, or could overcome the "objection that regulation must not only be impartial, but also be seen to be impartial" (para. 1.5). The alternative view was that EC law would not allow a "competent authority" to be a private body. This resulted from a legal opinion obtained by CPRE.10

After the publication of the July 1987 paper (DoE, 1987a) the proposals gathered momentum with a further consultation paper on the NRA in December 1987 (DoE, 1987b), and the enactment of the Public Utility and Water Transfer Charges Act on 10 May 1988. The latter (inter alia) empowered the WAs to begin the process towards the 1989 changes, including the setting up of shadow units,11 and transferring property to these units.12 The culmination of the process was the publication of the Water Bill in November 1989, receiving Royal Assent on 6 July 1989. As already noted, the new structure became operational on 1 September 1989, with the privatisation of the WSPLCs taking place in November 1989.
B. The **New Structure of the Industry**

Given the above proposals it is appropriate to outline the structure of the industry after the latest re-organisation. Essentially the Water Act 1989 created a split between the regulatory functions and the provision of the utility services. Thus the **NRA** was charged with responsibility for pollution control, fisheries, flood defence, abstraction licensing and limited navigation and harbour authority functions. The functions of water supply and sewerage disposal were transferred to the ten water and sewerage undertakers (who were to be licensed as such by the Director-General) joining the existing 28 "statutory" water supply companies who were already in the private sector. These ten water and sewerage undertakers are each subsidiaries of the ten "nominated holding companies" (the bodies actually privatised), the former being the successors to the WAs. Under the terms of the Water Act, the water and sewerage undertakers are regulated by the **Director-General of Water Services** (DGWS) (head of a non-ministerial government department - the **Office of Water Services** (OFWS)). The main task of the DGWS is to balance the needs of the undertakers to carry out their functions, while at the same time protecting the consumer from the consequences of monopoly power. A major task will, therefore, be the operation of the price control formula (RPI + K) in respect of the plcs.

The **NRA** is thus the key player for present purposes, in being responsible for most of the powers and duties described in Part III of the thesis, with COPA II having been largely re-enacted in the Water Act. This was seen as a significant move in terms of ending the "poacher-gamekeeper" conflict of the former WAs and it was hoped that this would lead to stronger regulation, and consequent improvements in river water quality. However, the Act also places a role of oversight on
the SoS in relation to all three actors noted above. This includes the power of enforcement of many of the duties under the Act (s. 20), and the power to issue directions of a general or specific nature to the NRA (s. 146). As will be explained further, below, the SoS also has an important role to play in the pollution control regime.

Part of the sheer complexity of the legislation (apart from its length) is the result of the way in which the functions and duties of the main actors overlap. For instance, s. 8 (supplemented by ss. 9 and 10) places each actor under a duty to take account of nature conservation and matters relating to recreation (modelled on duties formerly contained in the Wildlife and Countryside Act 1981). The first point, in relation to meaningful participation under the new regime, to note, therefore, is the greatly increased importance of education, first, about the new structure and the key actors, and second, about their respective functions and duties, and the opportunities for public participation. Given the perceived failings of the WAs, in this respect throughout their 15 years, this is an issue which must be addressed early in the lifetime of the new structure. The first few months, however, have shown no indications of such education being provided.

C. Prospects for Meaningful Participation

The final stage of the chapter is to seek to assess to what extent the regime for pollution control under the Water Act 1989 accords with the requirements of meaningful participation set out in chapter one. A number of issues can be raised, adopting a similar approach to the main body of the thesis."

- 373 -
1. The Structure of the NRA

The first point of which account must be taken is the structure of the NRA, and hence, its arrangements for decision-making, its operational environment and the opportunities for public participation. The Authority is constituted of a Board of 15 members, 13 appointed by the SoS, and 2 by the Minister of AFF (s. 1(2)), at national level, and ten regions (each based on the boundaries of the former WAs) each of which is overseen by a regional Board accountable to the national Board. The DoE has made clear that in practice it will be the national Board which will be responsible for policy-making, and the main forum for negotiation with government (DoE, 1988c, para. 27). Apart from the question of appointments to the respective Boards — for which it can be suggested that little has changed compared with the WAs — a key issue is the question of communication between the public and the NRA. It would appear, as will be illustrated further below, that most of the public input is designed to occur at the regional level, and hence this creates another indirect relationship, which means that effective communication between the regional Boards and the national Board (and vice versa) will be critical. In terms of those seeking to communicate via the regional committees (post) this effectively imposes an extra tier, potentially leaving the public more remote from the actual decision-maker. It is submitted that this is a matter which must always be borne in mind when significant (national) policy decisions are being made. In part the structure of the two-tier Boards is designed to alleviate this, in that ten of the members of the national Board each chair one of the regional Boards (NRA Advisory Committee, 1989b) and will co-ordinate the work of the advisory committees (DoE, 1987b, para. 29).
2. Relations with Central Government

The question of relations with central government raises a number of related issues, which logically follow from the problems which the WAs faced in relation to central government control. First, the NRA is far more dependant on central funds than the WAs were (because of their ability to raise revenue through water charges), and the Act specifies that grants may be paid to the Authority, and that it may raise revenue through loans (sch. 1). However, it was the clear intention of the Government that the NRA would work towards reducing its financial dependency as far possible through implementation of the "Polluter Pays Principle" (DoE, 1986b, para. 6.1). Thus, it was intended that charges would be levied on dischargers to cover the administrative costs involved in setting and monitoring discharges, and that, ultimately, a scheme of charges for the right to discharge per se would be introduced to increase revenue significantly. The power to do this had been included in COPA (s. 52) but was not implemented, in contrast with the scheme of charges for discharges to sewers. Second, as indicated earlier, the SoS is provided with powers of direction over the NRA (s. 146), a provision likely to be of great significance in governing the relationship between the two, especially given the breadth of the power in s. 146 which includes the work of the NRA in relation to pollution control. Only a limited safeguard is provided regarding the use of this power, viz. the requirement that Annual Reports of the NRA must detail any directions received during the year in question (s. 150), but there appears to be no requirement for directions to be otherwise publicised, especially at their making.

A key issue with regard to the operation of the WAs, was the dominating ethos (of business principles) instilled in them by central government, especially under the Water Act 1983. The extent to which any similar
ethos, which may be detrimental to public participation, may apply to
the NRA, must also be considered, although at this stage, there is only
limited information on which an assessment can be based. Despite the
large degree of dependency on central finance, and the likely close
relationship with government, it can be suggested that the NRA will not
be subject to a requirement which places as precise an emphasis on
"economy and efficiency" as the business principles ethos did for the
WAs. This is primarily because the present Administration has proclaimed
itself as truly "green" (in the environmental sense), and put forward
the NRA as the key body to achieve a major improvement in the quality of
the aquatic environment. It is unlikely, therefore, that the NRA will be
too readily required to pay close attention to finance to the detriment
of the performance of its functions. For instance, to quote the SoS for
the Environment, that the Act

"... is a major environmental [Act] in that it establishes
proper arm's length state control of the entire water
environment" (in Lucas, 1989).

It is submitted, however, that the above view must be tempered by the
belief that the pervading attitudes of British government did not change
with the implementation of the new structure, and, therefore, it is
unlikely that the creation of the NRA has brought with it a sweeping
commitment towards meaningful participation, as suggested by the
analysis regarding access to meetings et al (post). It can be argued
that this is also demonstrated by the following comment of the Chairman
of the NRA (a former SoS for Wales), the emphasised section of which
suggests that regard may be paid to the stages of communication
following the making of policies (stage VI), but not the earlier stages;
therefore, raising the question of whether the public will be able to
influence NRA policy-making. To quote the Chairman:
"We have both the resources and the expertise to be effective, and to strike a balance between all the competing interests that use our rivers, while at the same time providing the strongest protection for their plant and wildlife... We will operate openly by publicising our policies and publishing available information. The existence of a powerful, impartial and independent organisation with a clear statutory responsibility to carry out its duties transforms the way in which our water environment is guarded. It is an immense improvement on the arrangements that have existed before" (WRA - Yorkshire Region, 1989, p. 4; emphasis added). 22

3. The "Open" Committee Structure - The Regional Rivers Advisory Committees

In terms of other opportunities for communication, no provision for access to the meetings of either the national or regional Boards has been made. 23 Indeed it may be suggested that it was taken for granted that the Boards would meet privately, the issue appearing not to have been raised extensively. Similarly, no details are available as to any formal arrangements for Press conferences following meetings in a manner similar to that for the WAs under the guise of the Code of Practice (supra. chapter three). It would appear that the mainstay of public involvement is intended to be through the system of ("open") committees, 24 primarily the Regional Rivers Advisory Committee (RRAC), supported by the Regional Fisheries Advisory Committee which continues essentially unchanged from the arrangements described in chapter four.
Given their potential importance in relation to meaningful public participation, the emphasis here will be placed on analysing the implications of the RRACs.

a. Terms of Reference

These were defined by the NRA as follows:

"To advise the NRA on all regional aspects of the broad framework for river basin management, including:
- the setting and monitoring of river, estuary, coastal and underground water quality objectives;
- enforcement procedures for securing compliance with NRA requirements;
- the promotion of conservation through NRA regulation, operations and works;
- all aspects of recreational uses including policy initiatives and use of byelaws;
- the reconciliation of any conflicts between different river uses;
- charging policy for the provision of all services except in the areas of flood defence and fisheries;
- water resources management plans, including policy guidelines for licensing;
- any relevant codes of practice/guidelines
and to report annually to the NRA on its activities" (quoted from the Yorkshire RRAC Agenda, 13 December 1989, item 7).

It can be seen from the above, that the intention appears to be that the committees will be significantly involved in the development of policy

- 378 -
and its implementation at the regional level. This is re-inforced by the
terms of s. 2, which places the NRA under a specific duty to "consult"
the committees in relation to the carrying out of its functions, and to
consider any "representations" made by the committees. 26 For the RRAC
system to accord with the requirements of meaningful participation it
must be possible for the wider public to communicate with the NRA (both
regionally and nationally) through the committees. A number of concerns
in this respect, can be expressed. 26

b. Interests "Reflected" on the Committee

The first point to consider is the interests which are now "reflected"
through membership on the committee. 27 The Government made clear that
decisions as to the terms of reference, the size of the committees, the
interests involved, and the actual appointment of the members, were
matters for the NRA to determine. According to the December 1987
consultation paper (DoE, 1987b) the RRCCs (chapter four) were to form
the basis of the committees, but the NRAAC, in its consultation paper on
the committees, 2 May 1989 (NRAAC, 1989a), 29 expressed the view that the
composition of the RRACs should be "considered from first principles"
because the committees would have wider responsibilities than the RRCCs
(para. 15). It was also stated that the committees would be kept to a
"manageable" size, of 15-20 members (ibid.). 29 Organisations were not to
be given the right to appoint members, but they would be invited to make
nominations, from whom the NRA would make the appointments (para. 16). 30
The interests, from whom members were actually appointed (in the case of
the Yorkshire region committee) are indicated in Figure 8.1. (Appendix
B). From this it can be noted that the extent of local government
involvement is further reduced, and it can be questioned whether any of
the members are specifically members of the public per se. 31
c. The Role of the Members

In contrast to the CCCs, this issue was clearly addressed before creating the new committees, but not for the better, in terms of meaningful participation, it is suggested. In chapter four concern was expressed about the ability of the CCCs to act successfully as communicators for the wider public in policy-making, and it can be argued that the emphasis of the RRACs is to move even further from this role. While the consultation paper states that the NRA would be looking to members to "reflect a broad area of interest" and to "make arrangements for liaison with the interested bodies and organisations" (NRAAC, 1989a, para. 15) members

"... would not be regarded as representatives or delegates of the bodies in question; they would be individually selected for the contribution they would make to the overall work of the committee" (ibid. para. 16; emphasis added).

This view was re-inforced at the first meeting of the Yorkshire region committee - that members were appointed for their "individual expertise". It is submitted that this is a backwards step which brings into question how the public can be expected to communicate with the NRA. Again it would seem that the main responsibility will fall on local authority members, but the nature of the membership (not all local authorities are covered) makes clear that even they are not intended to take this role.
d. Access to Committee Meetings

The above raises the concern that the committees may in effect become an extension of the (regional) NRA, thus with even less independence than the CCCs. This is buttressed by a new power given to the RRACs to exclude the Press and public by resolution under the Public Bodies (Admission to Meetings) Act 1960, the same power available to local authorities. It is contended that this is a wholly unjustified power, and it is hoped that it will never be used.

e. Regularity of Meetings

There are two positive points which can be noted from the structure of the committees and indications from the first meeting of the Yorkshire RRAC. First, although indications were that four meetings per year would be held, (according to the Chairman) there might be the need for more because of the likely workload of the committee.

f. Interaction of the Committees

Second, provision was made specifically to ensure some form of interaction between the various committees (including the RFAC and the Flood Defence Committee), in the form of the chairman of each committee being a member of the other two. Further, a combination of the three chairmen, the Regional General Manager (the head of the operational side of the regional unit) and the NRA (national) Board member, would together form the "Regional Advisory Board", the purpose of which (inter alia) would be "... to enhance ... links between the NRA centrally and its regions" (NRAAC, 1989a, para. 8). An interesting feature of the
consultation paper is the statement that the RRAC would not "normally" advise on matters within the jurisdiction of the RFAC (NRAAC, 1989a, para. 16). This suggests clarity in terms of who should be contacted on particular matters, but it further means that, if there is to be any successful communication through the committees, there must be adequate education as to which committee is responsible for which matters.40

4. The Pollution Control Regime

Apart from the major changes in structure already noted, the Water Act 1989 also provided an extensive (although not totally comprehensive) revision of water law. This was the result of work carried out by the "Law Review Group" of the DoE, which was unconnected with the privatisation proposals (Howarth, 1988, p. 403), and which resulted in the publication of the consultation paper Water and Sewerage Law in March 1986. The Water Act, therefore, provided a suitable vehicle for any changes deemed appropriate. In the case of pollution control, specifically, the Act actually introduces few significant changes,41 COPA II being largely re-enacted.42

a. Water Quality Objectives

Arguably one of the most significant developments is the placing of Water Quality Objectives on a statutory footing for the first time. Section 105 empowers the SoS for the Environment to serve notice of any WQOs on the NRA "for the purpose of maintaining and improving the quality of controlled waters", which is to include a date for their achievement.43 Equally significant is that, in contrast to the practice reported in chapter five, provision is also made for the involvement of
the public - through a system of notice and "representations" - in the setting and reviewing of objectives (s. 105(4)). Clearly, the success of this approach will be dependant on adequate education and political will, and it must be hoped that as many communication stages as possible will be incorporated, including the notification of individual representors regarding the effects of their contributions, and the giving of detailed reasons following decisions being made.

At this stage the whole regime is, however, in a state of flux because of the need for the reform of the existing system of river classifications and WQOs, and the need to rationalise the, at times, distinct approaches of the ten WAs. Thus the WQOs of the former WAs have been adopted by the NRA, a review of the classification system is in progress, and the DoE have made it clear that new statutory objectives will not be set until 1992, by when the classification system should have been revised. 44

b. The Consent System - Imposing and Retaining Control

Similarly, it may be suggested that the consent system, for controlling systematic discharges, is also in flux, and for which 1992 will also be an important year. By then virtually all WA works should be in compliance (and hence their "time limited consents" will expire), all remaining deemed consents should have had conditions imposed, and the NRA committee reviewing the consent system (under the auspices of David Kinnersley) 45 will have completed its work, and had an opportunity to provide extensive public involvement in relation to its findings. 46 It is hoped that, thereafter, the pollution control regime will begin to operate more coherently than, it is suggested, it has to date. This in

- 383 -
turn will yield benefits for the public wishing to be involved in policy-making in this context.

Essentially the system of setting (and reviewing) consents remains as it was in COPA II, (although with responsibility having passed from the WAs to the SoS, advised by the NRA). It can be argued, therefore, that in practice there are likely to be few improvements in relation to achieving meaningful participation compared to the findings of this thesis.

The Water Registers. The system of water registers (open to the public) has been maintained, although with few signs of greater education being provided about them. However, the information which is to be contained in them has been extended to include all statutory WQOs and all samples of water or effluent whomsoever taken by (thus removing the "loop-hole" identified in chapter seven) (s. 117). Inevitably, there has needed to be a process of rationalisation following the succession of the NRA, and in the case of the Yorkshire region, this has included the reduction in the number of copies of the register to three (to coincide with the number of operating divisions). However, prior to the take-over of the NRA, staff were engaged in a process of seeking to improve the way that information is recorded and retrieved, taking account of the views of people who had used the registers in the past (pers. comm.).

Enforcement. A number of changes can be noted in this context. In terms of the legislation, the two separate provisions creating offences for systematic and irregular pollutions have been merged (s. 107), with the six month time limit for prosecutions in magistrates' courts extended to twelve. However, an important limitation (which caused a great deal of
controversy during the enactment of the Bill) is the so-called "amnesty", whereby only samples of effluent taken after 1 September 1989 (the start of the NRA) can be used as the basis for a legal action against a discharger (sch. 26, para. 25(7)). Because of the 95%-ile condition applying to the plcs' discharges, and hence the need to collect data over a 12 month period, this means that the plcs cannot be prosecuted for breaches of consent before 1 September 1990. In terms of prosecutions by the public and the admissibility of samples, the Act has provided important clarification, although arguably achieved by a restrictive interpretation. Section 148 makes clear that only those samples which were taken in accordance with the "tri-partite" method (formerly under s. 113 Water Resources Act 1963) will be admissible in legal proceedings. However, this applies only to samples taken "on behalf of" the NRA, and, therefore, if sampling by the public is practicable, such samples will not have to comply with this section, and hence, presumably will be admissible. It can thus be questioned whether any significant constraints have been removed, in terms of the public seeking to bring actions, but early signs from the NRA are that the Authority is going to take a much stricter line with polluters, and hence, it may be more amenable to persuasion with the public less reliant on private actions as a consequence.

Pollution Prevention. Finally, it can be noted that the Act places a greater emphasis on the prevention of pollution, following criticism of the Government's failure to use its powers under s. 31 of COPA. Thus, the SoS is empowered to make regulations to control the way in which "poisonous, noxious or polluting matter" is stored (s. 110), and (at 1 January 1990) it was expected that regulations would soon be submitted to Parliament aimed at laying down construction standards for silage and slurry stores, and oil facilities. Section 111 empowers the creation of
"water protection zones" within which certain activities can be restricted or prohibited (most likely to be used to protect areas around boreholes), and under s. 112 the Minister of AFF (on this occasion) is empowered to designate "Nitrate Sensitive Areas" designed to prevent the entry of nitrate into controlled waters. Concern was expressed in Part III of the thesis, at the absence of formal opportunities for public involvement in decisions about pollution prevention. Little has changed under the Water Act 1989, although a small step forward is provided in the case of water protection zones and nitrate sensitive areas, where a process of public notice (through local newspapers and the London Gazette) and response, is laid down (schs. 7 and 11 respectively).

5. Conclusions

The above has presented an outline of the complex regime after 1 September 1989, and indicated some of the major issues in relation to the requirements of meaningful participation. Overall, it can be suggested that little has changed, and the need for education and the necessary political will on the part of those involved will be at least as great. Emphasis has been placed on the "open" committees of the NRA because of the likely importance of them for achieving public involvement with a number of very significant policy decisions to be made in the next few years. However, it is submitted that the committees are even less likely to achieve meaningful public participation than were the CCCs, a point to be regretted.

In the next few years the need for education about the institutions for pollution control, and their functions will continue to grow, it is suggested. This is because the structure outlined above will not remain static - as was made clear by the publication of the Environmental
Protection Bill on 20 December 1989. This proposes the introduction of "Integrated Pollution Control", which aims to ensure that all waste is discharged to the environmental medium - air, land or water - to which it will cause the least damage. Each discharge, including those to water, will require an "authorisation" from Her Majesty's Inspectorate of Pollution. It has been indicated that aquatic discharges containing any of the 24 "most dangerous substances" (DoE, 1988b - the so-called "Red List") will be subject to IPC, and hence responsibility for them will pass from the NRA to HMIP. Procedures, including those for public involvement, will, therefore, be governed by the new legislation which will include requirements for advertising, representations and a public register. It can be suggested, therefore, that the move towards IPC will lead to further public confusion about the responsibilities of the different regulatory agencies, thus increasing significantly, the need for education. Likewise, while the proposals in the Environmental Protection Bill for public involvement are to be welcomed, one consequence, in conjunction with the Water Act 1989, will be a complex structure of opportunities for public involvement, including different public registers, probably at different locations. It is therefore, open to question whether the new structure will lead to water pollution control being carried out in accordance with the principles of meaningful participation any more than was the case before 1 September 1989.
In particular the right of the public to prosecute WAs for exceeding their discharge consent limits.

And coupled with this, the danger that the committees could actually legitimise such privileged access by appearing to be mechanisms designed to overcome it.

It is unfortunate that public attention also came to be focused almost solely on the question of consent compliance, rather than with the importance of the relationship between consents and their appropriate WQOs.

It can also be suggested that developments within the EC may assist with the development of meaningful participation at the domestic level — witness the proposed Directive on access to environmental information.

But with the emphasis on the former.

Again see the comment of McAuslan, quoted in chapter one.


Cmnd. 9734; of which Kinnersley is equally damning (ibid., p. 132 et seq.). The following account is based on Kinnersley, unless otherwise indicated.

The exception was to be land drainage which was to pass to separate, public bodies (Cmnd. 9734, 1986, paras. 46-48), and see further Financing and Administration of Land Drainage, Flood Prevention, and Coast Protection in England and Wales, Cmnd. 9449, March 1985.

CPRE, Annual Report 1987, p. 4. As to the raising of the matter in the European Parliament (Haigh, 1989, p. 29). Interestingly, even at
the initial stages of the process, there had been those who had recognised that the privatisation of the whole of the WAs was not practicable - see for instance the comments of Lord Nugent, cited by Kinnersley (1988, p. 128)

11 For the NRA and the plcs.

12 For the reasons behind the Act, see DoE, Water: Preparations for Privatisation and Creation of the National Rivers Authority, News Release No. 255, 11 May 1988; but note the strong criticisms of members of the Lords (Hansard, HL, vol. 495, cols. 1637-1651; 21 April 1988).


14 The "new" term for land drainage, reflecting that this is now the main problem to be faced in that context.

15 This role includes the duty to provide the necessary sewage disposal works, to receive effluent from other traders into those works, and to then dispose of the trade and domestic effluent to suitable environmental media, including rivers. In relation to trade effluent, therefore, the plcs are designated as the consenting authority for discharges via sewers to their works, applying the provisions of the Public Health (Drainage of Trade Premises) Act 1937, as amended by Schedule 8 of the 1989 Act. Discharges containing any of the most dangerous substances (noted further below) will, however, be controlled by the SoS for the Environment under SI 1989/1156.


17 See further below.

19 Here the emphasis will be on arrangements nationally, but with appropriate reference to the position in the area formerly served by Yorkshire Water. Equally, most of the following concentrates on the
NRA as the main body responsible for pollution control, but with account taken of other actors, especially the SoS, as appropriate.

19 References are to the Water Act 1989 unless otherwise stated.

20 See further below. The rationale for one national body, rather than ten, is explained in DoE, 1987a, para. 2.3.

21 In particular, note the catch-all nature of subs. (1)(c); further see Macrory (1989, p. 213), who has also suggested that in practice the DGWS is likely to be allowed far greater independence than the NRA (ibid. p. 16).


23 Note that the Authority is empowered to regulate its own proceedings (sch. 1, para. 4).

24 At this stage nothing is known of any "closed" committee structure which may be operating either regionally or nationally.

25 It will be remembered that the Government refused to place such a duty on the WAs in respect of the CCCs (chapter four).

26 This includes that again there was a delay in the creation of the committees, with the Yorkshire Region committee meeting for the first time on 13 December 1989.

27 The reasons for avoiding the term "represented" are made clear below.

28 Submitted to the Yorkshire Water CCCs at their June 1989 round of meetings.

29 It can be noted, therefore, that in considering committee membership itself as a form of participation, this was being significantly reduced, including that the former position of four divisional CCCs, plus one RRCC, was being replaced by just one (smaller) committee.
An NRA news release (NRA, 1989) indicates that a range of organisations had been written to, inviting them to make nominations by 4 August 1989.

Note that according to the July 1987 Paper (DoE, 1987a, para. 9.4):

"Membership should clearly reflect functions. While it is desirable that the committees include some members of the general public, the bulk should clearly be drawn from those with special standing and experience in the subject covered by the committee, as well as including representatives of interested organisations". Membership also includes a member from the two water supply undertakers in the region (the successor to Yorkshire Water, and the York company), on the basis that the committees would also provide the companies with advice on recreation matters relating to reservoirs and land in their ownership (ibid. para 9.3).

No mention of the public.

It was also stated that, for this reason, provision was not being made for members to send deputies in their absence.


One of them is the former chairman of the RRCC.

One of the purposes of meaningful participation is the ability to provide a "check" on the administration.

The above also raises the question of the importance of the public attending meetings, again in contrast with the CCCs. Press coverage is clearly going to be important, albeit as a limited means of communication.

One more than the CCCs.

The Chairman of the RRAC is, therefore, given a much more important role than in the past, and for this reason was appointed specifically by the NRA to this post, rather than being elected by the committee.
He is, however, "independent" of the NRA. At the RRAC meeting, it was indicated that the RAB meets monthly, but does not keep minutes.

It might also be questioned whether a distinction can always be easily drawn. In the case of the RFAC, it was also indicated that members would be appointed to serve as individuals and not representatives (ibid. para. 14). See further s. 141, Water Act 1989.

The committee to advise the SoS for Wales (s. 3) had not been appointed by 1 January 1990. It can be noted that in relation to the work of the DGWS, the Director was required to establish ten "Customer Service Committees" (s. 6), which would be independent of the plos, based broadly on the format of the CCCs (again with reduced "representation"). Concern can be expressed that one of the main functions of the committees is to deal with consumer complaints (s. 27). They will also be subject to the 1960 Act in relation to public and Press access, but by 1 January 1990 they were still be in the process of being appointed. See further DoE, Water Privatisation: New Steps for Promoting the Interests of Consumers, News Release, 19 May 1989.

See Part III, Chapter 1 of the Act.

The clearest guidance as to the Government's intentions and objectives in this respect are to be found in the Green Paper (DoE, 1986b) and the Government response to the Environment Committee (HC 543, 1987/8).

The SoS is no longer under the vague duty to "maintain and improve" river water quality, but by s. 106, he is under a duty (along with the NRA) to ensure that WQOs, notified under s. 105, are achieved.

DoE 1988d, para. 8.3. Initial objectives have been notified to the NRA in relation to mandatory values under EC Directives 75/440/EC (see SI 1989/1148), and 76/464/EC (SI 1989/2286). In both cases, because of the need for immediate compliance with EC law, the provisions for public involvement were by-passed (Regulation 5).
Interestingly, it was indicated at the first meeting of the Yorkshire RRAC, that the committee would be given a full role in assisting the NRA to advise the SoS on WQOs and that this process would be commenced by presenting a series of "position statements" to the committee in relation to the major river catchments in the region (notes of meeting).

45 See Water Bulletin, 8 September 1989, p. 3.

46 It is believed that the review will include a number of issues raised in Part III of the thesis, as to the substantive working of pollution control. For instance, the need for consents to accurately tie-in with the respective WQOs, the problem of 95%-iles only applying to sewage works discharges and so on.

47 With the exception noted post.

48 For instance, the power to waive the requirement to advertise applications for consent is retained, apparently because otherwise this would have involved advertising a large number of applications relating to domestic septic tanks (per a WA officer). Equally, there is again no requirement that variations for consent must be advertised, despite an attempt by Lord Aldington, during the House of Lords Committee stage, to introduce one. It is also disappointing that all the provisions relating to public involvement have been "relegated" from the main body of the Act to the Schedules (sch. 12). However, a wider power to hold public inquiries is included (s. 120), which may, in particular, be used in relation to the setting of WQOs (1986d, para. 2.7.c), and inquiries could also be held in relation to any matter concerned with river water quality.

49 And see the minutes of the WQAG, 2 March 1989. The Act also provides for two new registers; one providing information concerning the regulation of the plos by the DGWS (s. 31), and, for the first time, details of discharges to sewer are to be made public (sch. 8, para. 3).
No changes have been made to the kind of remedies available following conviction, such as the "improvement notices" argued for in chapter seven, however.

It does not mean, however, that the plc's are immune from prosecution for breaches of consent occurring during the first year.

For instance, the NRA sought to prosecute Shell in the Crown Court (where fines are unlimited).

The issue of increasing centralisation must, therefore, be addressed.
APPENDIX A

The following provides the details of the research undertaken (October 1986 - 1 January 1990).

A. Informal Interviews

Interviews were arranged following a request by letter (indicating the general areas of interest, and the nature of the research), or at the invitation of the interviewee following correspondence. They were conducted "informally", structured only to the extent of using an outline list of points for discussion. During the interviews, written notes were made with the agreement of the interviewees. In all cases interviewees were given the opportunity to comment on the information used, prior either to publication of aspects of the work, or submission of the final thesis. (The interviews conducted during the "pilot study", referred to in Burton and Freestone (1986) are not included below).

1. Water Authorities:

18 March 1987: Mr C Chubb, Welsh Water (Bridgend).

19 March 1987: Mr J D Foster, Severn Trent Water (Nottingham).

23 March 1987: Mr R G Stead, Northumbrian Water (Newcastle).
11 May 1987: Mr P R Chatfield, and Mr C Hoggart, Thames Water (Reading).
23 February 1989: (Sir) Gordon Jones, Chairman, Yorkshire Water (Leeds).
25 April 1989: Dr A J Shuttleworth, Chief Scientific Officer, Yorkshire Water (Leeds).

2. "Amenity" Organisations:

29 June 1987: Mr A Edwards, Director, Anglers' Co-operative Association, Grantham.
1 October 1987: East Riding Fisheries Consultative Association, Beverley, North Humberside (including attendance at Association meeting).
16 March 1988: CONSYDER (Conservation of the Yorkshire Derwent), York (including attendance at committee meeting).
14 February 1989: Salmon and Trout Association, South Yorkshire Branch, Barnsley (including attendance at Association AGM).

3. Industry:

15 February 1988: Mr P J Lynskey, Hazard and Environment Manager, SCM Chemicals, Stallingborough, Lincolnshire.

4. Local Authorities:

24 October 1988: Mr R Higgs and Councillor M Doughty, Derbyshire County Council, Matlock.
B. Attendance at Yorkshire Water Committee Meetings

Meetings were attended whenever practicable to observe proceedings, coupled with agenda and minutes of all meetings being obtained. At each meeting the opportunity was also taken to discuss issues informally with WA officers and members of the committees and Press. Gratitude is due to all those involved for their willingness to discuss matters, at times at length.

1. North and East Division Consumer Consultative Committee:

1 June 1987.
5 October 1987.
3 October 1988.
6 February 1989.
5 June 1989 (Scarborough, including a visit to the Scalby Mills Visitor Centre with the Committee, courtesy of Yorkshire Water).
(at York, unless stated).

2. Regional Recreation and Conservation Committee:

2 October 1987.
3 June 1988 (York).
7 October 1988.
3 February 1989.
2 June 1989 (Hull).
(at Leeds, unless stated).
3. Regional Fisheries Advisory Committee:

20 February 1989.
(at Leeds).

4. Water Quality Advisory Group:

5 November 1987.
7 July 1988.
3 November 1988.
2 March 1989.
(at Leeds).

C. Attendance at NRA - Yorkshire Region Committee Meetings

1. Regional Rivers Advisory Committee:

13 December 1989 (Leeds).

D. Inquiries of the Control of Pollution Act Public Register:


E. Attendance at COPA Public Local Inquiries

22 and 29 October 1987 (Grimsby).

F. Letters Received:

Letters were written to an extensive range of national and local amenity groups, as well as governmental organisations and organisations involved in the water industry, either requesting documents or information on specific issues. Only those responses which included details in their text are noted below.

J A Wakefield, Chairman, Coastal Anti-Pollution League, 5 March 1987 and 22 June 1987.

J Stevens, Secretary, Humber Pollution Action Group, 19 March 1987.

S Jackson, Solicitor, Jansons, 8 July 1987.


P Lester, Secretary, East Riding FCA, 23 September 1987.


R G Stead, Principal Water Quality Officer, Northumbrian Water, 19 November 1987.

R W T Turner, Company Secretary and Legal Adviser, Tioxide UK Limited, 2 December 1987.

I C Sinclair, Authority Secretary and Solicitor, Severn Trent Water, 4 December 1987.


Dr A E Warn, Regional Scientist (Regulation), Anglian Water, 4 February 1988.

P R Wellings, Clerk to the North Eastern Sea Fisheries Committee, 8 February 1988.

V Jackson, Secretary, Esk and Derwent FCA, 27 May 1988.

B Thorpe, Toxics Division, Greenpeace, 19 June 1988.


J Le Patourel, Secretary, Thames Water, 4 July 1989.

J Raine, County Director, Derbyshire County Council, 9 August 1989.

N G Wooller, Assistant Secretary, Wessex Water, 10 August 1989.

G. Publications and Papers Produced During the Course of the Research:

1. Publications:


Forthcoming (at 1 January 1990):


2. Unpublished Papers:


3. Papers Presented at Seminars and Conferences:

26 June 1987: "Water Pollution: The COPA II Registers - Promoting the Public Interest?" Law School, University of Hull.

18 May 1988: "The COPA II Registers - Promoting the Public Interest?" (up-dated and extended) - for which awarded the "Otter Trophy" by the Tyne and Humber Branch of the Institution of Water and Environmental Management, following presentation of the Paper at the Branch AGM.


11 April 1989: "The Exchange of Information: Definition and the Ideal - Its Application to the Legal Regulation of Water Pollution" (extended), Socio-Legal Group Annual Conference, University of Edinburgh.
Appendix B - Figures

Figure 1.1 - Elements of the Concept of "Meaningful Participation"

1. "Education" - about:
   - the functions/responsibilities of the decision-making body
   - the channels for communication and how to use them
   - proposed decisions, and those already made

2. The "Channels for Communication" - Channels through which:

   PRIOR TO THE MAKING OF A DECISION -
   stage IA - information can be made available by the decision-maker
   stage IB - information can be requested, and received from the decision-maker
   stage II - information can be given to the decision-maker, whether following I, or not
   stage III - information given under II will be taken into account by the decision-maker
   stage IV - an explanation of the effects of the information given under II can be provided in relation to the decision
   stage V - stages I to IV can be repeated as appropriate

   FOLLOWING THE MAKING OF A DECISION -
   stage VI - details of the decision and the reasons for it can be provided by the decision-maker
   stage VII - the decision can be kept under review by repeating stages I to VI as appropriate

3. "Political Will" - the need for the decision-maker:
   - to be "open to influence" at all stages of the process
   - to treat all participants equally, at all stages of the process
   - to consider all information on its merits, irrespective of its source

(For clarity, the terms used within the concept of "meaningful participation", and the analytical framework are italicised throughout the text).
Figure 4.1 - Membership of the CCCs in 1984

Central Division CCC

<table>
<thead>
<tr>
<th>Organization</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Yorkshire County Council</td>
<td>1</td>
</tr>
<tr>
<td>North Yorkshire County Council</td>
<td>1</td>
</tr>
<tr>
<td>Boothferry Borough Council</td>
<td>1</td>
</tr>
<tr>
<td>Leeds City Council</td>
<td>3</td>
</tr>
<tr>
<td>Selby District Council</td>
<td>1</td>
</tr>
<tr>
<td>City of Wakefield Metropolitan District Council</td>
<td>2</td>
</tr>
<tr>
<td>Confederation of British Industry</td>
<td>1</td>
</tr>
<tr>
<td>Association of Yorkshire and Humberside Chambers of Commerce</td>
<td>1</td>
</tr>
<tr>
<td>National Chamber of Trade (West Yorkshire Council)</td>
<td>1</td>
</tr>
<tr>
<td>West Yorkshire Association of Trades Councils</td>
<td>1</td>
</tr>
<tr>
<td>National Farmers' Union</td>
<td>1</td>
</tr>
<tr>
<td>Country Landowners' Association (Yorkshire Branch)</td>
<td>1</td>
</tr>
<tr>
<td>Members selected by the Authority from amongst persons duly nominated in response to public advertisement</td>
<td>6</td>
</tr>
<tr>
<td>Yorkshire Water</td>
<td>1</td>
</tr>
<tr>
<td>* Including one from the York Waterworks Company area</td>
<td>30</td>
</tr>
</tbody>
</table>

North and East Division CCC

<table>
<thead>
<tr>
<th>Organization</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Yorkshire County Council</td>
<td>1</td>
</tr>
<tr>
<td>Humberside County Council</td>
<td>1</td>
</tr>
<tr>
<td>East Yorkshire Borough of Beverley</td>
<td>1</td>
</tr>
<tr>
<td>East Yorkshire Borough Council</td>
<td>1</td>
</tr>
<tr>
<td>Hambleton District Council</td>
<td>1</td>
</tr>
<tr>
<td>Harrogate Borough Council</td>
<td>1</td>
</tr>
<tr>
<td>Kingston Upon Hull City Council</td>
<td>2</td>
</tr>
<tr>
<td>Holderness Borough Council</td>
<td>1</td>
</tr>
<tr>
<td>Richmondshire District Council</td>
<td>1</td>
</tr>
<tr>
<td>Ryedale District Council</td>
<td>1</td>
</tr>
<tr>
<td>Scarborough Borough Council</td>
<td>1</td>
</tr>
<tr>
<td>York City Council</td>
<td>1</td>
</tr>
<tr>
<td>Boothferry Borough Council</td>
<td>&gt; 1</td>
</tr>
<tr>
<td>Selby District Council</td>
<td>&gt; 1</td>
</tr>
<tr>
<td>Confederation of British Industry</td>
<td>1</td>
</tr>
<tr>
<td>Association of Yorkshire and Humberside Chambers of Commerce</td>
<td>1</td>
</tr>
<tr>
<td>National Chamber of Trade (North Yorkshire and Humberside Councils)</td>
<td>1</td>
</tr>
<tr>
<td>North Yorkshire Association of Trades Councils</td>
<td>1</td>
</tr>
<tr>
<td>National Farmers' Union</td>
<td>2</td>
</tr>
<tr>
<td>Country Landowners' Association (Yorkshire Branch)</td>
<td>1</td>
</tr>
<tr>
<td>Members selected by the Authority from amongst persons duly nominated in response to public advertisement</td>
<td>7 *</td>
</tr>
<tr>
<td>Yorkshire Water</td>
<td>1</td>
</tr>
<tr>
<td>York Waterworks Company</td>
<td>--</td>
</tr>
</tbody>
</table>

(* Including one from the York Waterworks Company area)
Southern Division CCC

South Yorkshire County Council 1
Derbyshire County Council 1
Barnsley Borough Council 1
Bolsover District Council
Chesterfield Borough Council 1 between them
North East Derbyshire District Council
Doncaster Metropolitan District Council 1
Rotherham Metropolitan Borough Council 1
Sheffield City Council 2
Confederation of British Industry
(Yorkshire and Humberside Region) 1
Association of Yorkshire and Humberside Chambers of Commerce 1
National Chamber of Trade (South Yorkshire Council) 1
South Yorkshire Association of Trades Councils 1
National Farmers' Union 1
Country Landowners' Association
(Yorkshire Branch) 1
Members selected by the Authority from amongst persons duly nominated in response to public advertisement 6
Yorkshire Water 1
-- 21

Western Division CCC

West Yorkshire County Council 1
North Yorkshire County Council 1
Bradford City Council 2
Calderdale Borough Council 1
Craven District Council 1
Kirklees Borough Council 2 *
Leeds City Council 1
Confederation of British Industry
(Yorkshire and Humberside Region) 1
Association of Yorkshire and Humberside Chambers of Commerce 1
National Chamber of Trade (West Yorkshire Council) 1
West Yorkshire Association of Trades Councils 1
National Farmers' Union 1
Country Landowners' Association
(Yorkshire Branch) 1
Members selected by the Authority from amongst persons duly nominated in response to public advertisement 6
Yorkshire Water 1
-- 22

(* Kirklees Council did not accept the invitation to nominate members to the committee).

Figure 4.1 (Source: Annual Reports of the Divisional Committees, 1984/5).
**North Yorkshire County and District Councils** 1
**Yorkshire and Humberside Council for the Environment** 1
**Royal Society for the Protection of Birds** 1
**South Yorkshire County and District Councils** 1
**British Trust for Conservation Volunteers** 1
**Countryside Commission** 1
**West Yorkshire County and District Councils** 1
**Yorkshire Wildlife Trust** > 1
**Royal Society for Nature Conservation** > 1 between them
**Yorkshire Naturalists' Trust** > 1 between them
**British Canoe Union** 1
**North Yorkshire Moors and Yorkshire Dales National Parks Committees** 1
**Council for the Protection of Rural England and Youth Hostels Association** 1
**National Anglers' Council** >
**National Federation of Anglers** >
**Hull and District Anglers Association** > 1 between them
**British Field Sports Society** >
**Milton Angling Club** >
**Inland Waterways Association** 1
**Humberside County and District Councils** 1
**Yorkshire and Humberside Orienteering Association** 1
**Ramblers Association** 1
**Peak Park Joint Planning Board** 1
**National Anglers' Council and Salmon and Trout Association** 1
**Yorkshire and Humberside Council for Sport and Recreation and the Sports Council** 1
**Nature Conservancy Council** 1
**Yorkshire Water** 1

---

**Figure 4.2 (Source: Annual Report of the Committee, 1984/5)**
Figure 4.3 - Membership of the RFAC in 1984

Fisheries Consultative Associations 5
National Federation of Anglers 1
Salmon and Trout Association 1
Netting Fisheries interests 1
Institute of Fisheries Management 1
British Waterways Board 1
National Farmers' Union 1
Country Landowners' Association 1
Universities of Leeds and Hull jointly (person with expert knowledge of river or lake ecology) 1
Yorkshire Water 4

Figure 4.3 (Source: Yorkshire Water, 1984a).

Figure 8.1 - Membership of the NRA (Yorkshire Region) RRAC in 1989

(Independent) Chairman 1
NRA Yorkshire Region Appointee 1
Country Landowners' Association 1
National Farmers' Union 1
Royal Society for the Protection of Birds and Royal Society for Nature Conservation 1
Eye on the Aire 1
Countryside Commission 1
Nature Conservancy Council 1
Confederation of British Industry 1
Central Electricity Generating Board 1
North Yorkshire County Council/Craven District Council 1
British Waterways Board 1
Association of Metropolitan Authorities 1
Sports Council/Yorkshire and Humberside Sports Council/Central Council for Physical Recreation 1
York Waterworks Company 1
Yorkshire Water plc 1
CPRE (Southern Area) - representing general interests 1
Peak District National Park 1

Figure 8.1 (Source: RRAC Agenda, 13 December 1989).


Anon., (1975), "Was Hope Pollution Act Will Stay on Shelf", 152 Municipal Engineering and Environmental Technology, 11 July 1975, 1315.


Birkinshaw, P, (1985b), Grievances, Remedies and the State, (Sweet and Maxwell).


Brittan, Y, (1984), The Impact of Water Pollution Control On Industry, A Case Study of Fifty Dischargers, (ESRC).


Caulfield, C, (1982), "Key Pollution Law To Be Implemented Soon", 93 New Scientist, 211.


Garnett, P H, (1981), "Thoughts on the Need to Control Discharges to Estuarial and Coastal Waters", Water Pollution Control, 172.

Gunningham, N, (1974), Pollution, Social Interest and the Law, (Martin Robertson and Co Ltd.).


Haigh, N, (1984), EEC Environmental Policy and Britain - An Essay and a Handbook, (Environmental Data Services Ltd.).


Lawrence, J R, and Taylor, D, (1987), "Towards a Rapprochement in Europe on Water Quality Legislation", Water Pollution Control, 323.


- 415 -


Water Research Centre, (1987), Evidence to the Royal Commission on Environmental Pollution Study on Freshwater Quality.
Yorkshire Water, Minutes of Authority and Committee Meetings, 1973-89.


OFFICIAL BIBLIOGRAPHY

Royal Commission on Environmental Pollution Reports


Command Papers

Committee on Administrative Tribunals and Enquiries, (1957), Cmnd. 218.
House of Commons Papers


Committee on Welsh Affairs First Report, Welsh Water Authority: Establishment of Local Consumer Advisory Committees, Session 1981/2, HC 335.


House of Commons Environment Committee Third Report, Pollution of Rivers and Estuaries, Session 1986/7, HC 183.


Departmental Committee Reports

Department of the Environment


(1986a), Control of Pollution Act 1974, Control of Pollution (Exemption of Certain Discharges From Control) (Variation) Order 1986, WS/920/76, 30 September 1986.


Department of the Environment: Departmental Circulars

(92/71), Reorganisation of Water and Sewage Services: Government Proposals and Arrangements for Consultation.


(118/72), Third Report of the Royal Commission on Environmental Pollution.


(100/73), Water Act 1973: Water Authorities and Local Authorities.

(16/83), The Water Act 1983.

(17/84), Water and the Environment: The Implementation of Part II of the Control of Pollution Act 1974.

(13/85), Discharges to the Water Environment: Public Registers.
(7/89), Water and the Environment, the Implementation of European Community Directives on Pollution Caused by Certain Dangerous Substances Discharged into the Aquatic Environment.

Ministry of Housing and Local Government


Department of Trade