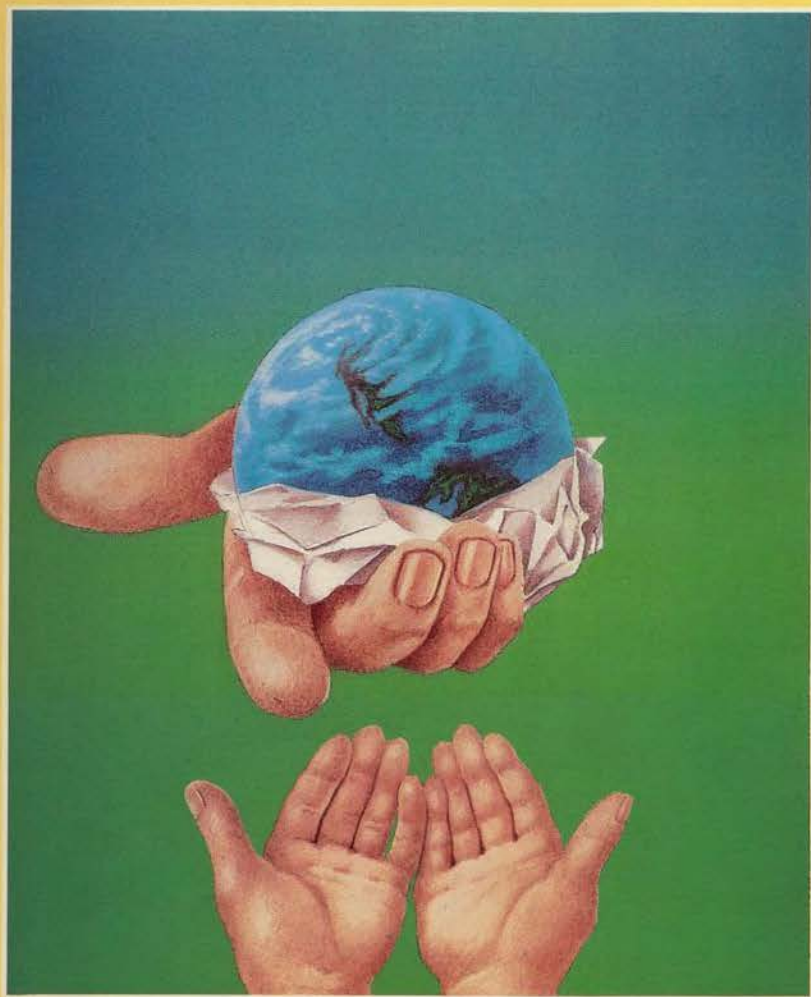


# The Environmental Code

Focused and Co-ordinated Environmental  
Legislation for Sustainable Development



A BRIEF BACKGROUND TO, AND OVERVIEW OF, THE REPORT  
(SOU 1996:103) ENGLISH VERSION

PUBLISHED BY THE GOVERNMENT ENVIRONMENTAL CODE  
COMMISSION IN STOCKHOLM, SWEDEN, 1996

SOU 1996:11



KUNGL.  
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STOCKHOLM

## Preamble

On 4 July 1996, the Government Environmental Code Commission in Sweden presented its primary report: (SOU 1996:103) the Environmental Code, Focused and Co-ordinated Environmental Legislation for Sustainable Development.

The Environmental Code Commission is a Government commission charged with, *inter alia*, submitting proposals for an environmental code in which the greater part of the Swedish environmental legislation will be consolidated. The results of the work in this regard are set forth in the above-stated report. The Commission will continue its work by submitting proposals for transitional provisions and follow-up legislation and by reporting on remaining issues in a final report including, *inter alia*, the drafting of regulations which should be tied to the Environmental Code.

The purpose of this document is to provide a brief and easily accessible background and overview of the proposal for the Environmental Code.

Consequently, this document deals, in brief, under Section 1 with an overview of Swedish environmental policies and the background to the proposals and Section 2 provides a summary of the proposal for the Environmental Code.

For a more thorough description of the background and proposal, reference is made to the primary report of 1,300 pages.

Stockholm, July 1996

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## 1 Background to Proposals

The Governmental Environmental Code Commission in Sweden has, in addition to its terms of reference, taken into consideration as background to the proposals, *inter alia*, the following:

### 1.1 The Urgency of Environmental Protection

Protection of the environment is today one of the most urgent responsibilities of society. This was reflected, for example, in the Government declaration submitted in the autumn of 1994. It was declared there that one of the Government's primary tasks is to achieve an ecologically sustainable industrial society. It was emphasised there that the environment in which we live is a joint responsibility for everyone and it was seen as a hopeful sign that this realisation is growing and spreading. In addition, it was stated that not least of all, the young people understand what is at stake if environmental destruction is permitted to continue. In the Government declaration in March of 1996, it was emphasised that the environment is to be a clear and long term priority. Sweden will be a driving international force and a model country in the struggle to create a sustainable society.

At the beginning of the 1970's, a debate regarding, *inter alia*, protection of nature, expansion of hydraulic power and water and air pollution had gone on for some time, but that interest for such issues was still weak. Legislation as an instrument for controlling the development in the area was meagre. The 1964 Nature Conservation Act and the 1969 Environment Protection Act were the most pronounced environmental laws at that time. Nor had international co-operation in this area developed to any significant degree.

### 1.2 Sweden's Role in the Area of the Environment

Even if a commitment to the environment in our country, as in many other countries, began somewhat hesitantly, we are now charged with administering and defending an active and leading position in the area of the environment. Since the first half of the 1970's, interest and commitment to environmental issues has grown strongly.

A large number of Acts which relate to these questions, in whole or in part, have been enacted and form a new area of the law: environmental law. In addition, several types of control mechanisms within the framework of legislation have been developed in order to tackle environmental problems. This applies not the least to economic control mechanisms of various types.

Sweden has, on the international plane, in several respects, been a model country within the area of environmental policy. Our role internationally must be seen against the background of the fact that Sweden pressed certain environmental issues strongly very early. When, for example, the OECD formed an environmental committee in 1970, Sweden was a driving force with respect to, *inter alia*, the problem of acidification. The same organisation made a lasting contribution in the beginning of the 1970's by introducing the principle that the party who pollutes must pay the costs for the damage which results, the so-called Polluter Pays Principle.

In 1972, Sweden was the host country for the first UN conference on the human environment. The country received, in this manner, a leading position in the area of environmental protection. The conference, which was held in Stockholm, was a breakthrough for global environmental co-operation and for environmental co-operation outside of the industrial world. On the basis of a proposal by the conference, the General Assembly of the United Nations resolved the same year to establish an environmental programme (United Nations' Environment Program, UNEP).

The Stockholm conference contributed to an increased public consciousness about the significance of the environment. International convention rules designed to maintain and improve the condition of the environment in the world began to be developed at an increased pace. One example of this is the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the so-called CITES or Washington Convention. A draft of this convention was presented at the Stockholm conference. The convention text was drafted on the basis of a resolution adopted at the conference and was signed in Washington some years later. The CITES convention is now one of the most significant environment protection conventions, even if it can also be described as a trade convention.

Of special significance for Europe's environment was the fact that the European Community



(EC) also commenced environmental work in 1972. As early as 1975, the above-stated OECD principle that the polluter must pay was adopted by the EC. The value for the environment of this principle had still not been developed entirely at that time. The main emphasis was placed on avoiding a distortion of trade and competition.

### 1.3 Sustainable Development

In 1987, the World Commission for Environment and Development, the so-called Bruntland Commission, presented its report: *Our Common Future*. The message was that the countries of the world must create a global policy for permanent sustainable development. The new challenge was to attempt to satisfy today's needs without jeopardising the possibility for future generations to satisfy their needs. The Commission's report addressed the possibility of a World Conference for environment and development. Sweden later presented a direct proposal for such a conference. Following comprehensive preparatory work, the United Nations held a conference in June of 1992 on the environment and development (United Nations' Conference on Environment and Development, UNCED) in Rio de Janeiro, Brazil.

The Rio conference, which in part can be considered a follow-up to the Stockholm conference, resulted in three especially important documents. In one document, the Rio Declaration, a series of fundamental principles were adopted for people's and countries' rights and obligations with respect to safeguarding our common future. According to the declaration's introductory principle, mankind stands at the centre of the struggle for a sustainable development. Mankind has the right to a healthy life in harmony with nature. The "Polluter Pays Principle" was raised to a global environment principle in the declaration. The same status was afforded, *inter alia*, to the precautionary principle. This principle holds that a lack of scientifically guaranteed evidence regarding the connection between an action and its effect on the environment may not be used as an excuse for postponing cost effective measures which are necessary in order to prevent destruction of the environment. Another important document from the environment conference is Agenda 21. It contains a plan of action for sustainable development for the 21st century with the purpose of addressing the largest environmental and development problems. In a third document, the Forest Principles, guidelines are set forth for how the world's forests may be used without harming the environment.

Two important conventions were also signed at the conference, viz. the climate convention for counteracting climatic changes and the convention on biological diversity for protecting the richness of diversity in fauna and flora. In addition, a negotiating committee was appointed under a Swedish chairman and charged with the task of producing a convention against the spread of deserts. Such a convention was signed in October of 1994.

#### **1.4 Follow-up on the Rio Conference**

The resolutions adopted at the Rio conference require follow-up and execution. The Government's proposal for focusing the Swedish work on execution of the resolutions at the conference was adopted in 1993. A strategy for the continued work towards realising the goal of sustainable development and a strategy for Sweden's efforts for the global environment and development co-operation has therefore been established. The basis for this is formed by the environmental policy goals and priorities regarding development of society based upon an ecocycle which were adopted with producer responsibility for various product groups, climate issues, biological diversity and forest policies.

The tasks resulting from the Rio Conference are directed to all countries, municipalities, organisations and companies and even to the individual. A transition to sustainable development must permeate and characterise all aspects of society's activities and must form the basis for the design and focus of policies within various sectors of society. The respective sectors' responsibility for their own effects on the environment and for sustainable development have thereby been strengthened. This means that the land businesses, agriculture and forestry for example, have an environmental responsibility to as great a degree as the transportation sector, the energy sector, defence in peace time, etc. It has also been demonstrated that the various participants within the different sectors, to an ever increasing degree, have accepted the challenge which sector responsibility implies and activities within agriculture and forestry, transportation, etc. are being gradually adapted to environmental needs. The importance of channelling all questions down to a local level is especially emphasised in the Rio document. In Sweden, approximately 200 municipalities have resolved to follow the UN's recommendations of producing a local, long-term plan of action, a local Agenda 21.

The Swedish plan for the execution of the primary portions of the Rio Conference's



resolutions continue initially up to 1997. The UN will, at that time, at an extraordinary meeting of the General Assembly, address the forms for a continued follow-up of the Rio Conference and will assess how Agenda 21 is applied in the various countries around the world. The 1997 meeting is being prepared by the UN's Commission on Sustainable Development, CSD, which is the responsible body for the follow-up of the Rio Conference.

On a national level, the Government's council for environmental issues, the Environmental Advisory Council, has worked with a follow-up of the Rio Conference and Agenda 21. In 1995, an Agenda 21 committee was also appointed which will develop, deepen and stabilise Agenda 21 and work for the preparation of Sweden's report to the extraordinary meeting of the UN general assembly in 1997. In addition, the committee will also ascertain the manner in which the environmental goals adopted by the Swedish Parliament have been fulfilled and are functioning.

### **1.5 Sweden's Participation in Global and European Environmental Co-operation, etc.**

Sweden participates in many different forms of international environmental work. According to the Government declaration in March of 1996, it is the Government's goal for Sweden to be a driving international force and a model country in the struggle to create a sustainable society. An example of global environmental work is found in the activities within the Basel Convention which govern transboundary movements and final disposal of hazardous waste. At the third-party meeting in 1995, it was resolved, following a Nordic initiative, to supplement the convention with a prohibition against the export of hazardous waste from OECD countries to countries outside of the OECD. Sweden has actively worked for a number of years for the adoption of such a prohibition.

During the spring of 1996, a memorandum prepared by the Ministry of the Environment with proposals for goals and the focus of the Swedish work with the global environment conventions and Agenda 21 was the subject of circulation of legislative proposals for comment. It is stated in the memorandum, for example, that Sweden should work for increased public supervision and increased influence for both voluntary organisations as well as the representatives of commerce and other groups in society in the work with environment and development issues. The purpose of the report is to provide an accounting

of the Government's view of the relevant issues in a Government report to the Swedish Parliament during the summer of 1996.

For Sweden, membership in the European Union means new and expanded opportunities to participate and to be a driving force in European environment efforts. The Swedish Parliament has declared its support for the main principle in the Government's strategy for the environmental policy work in the European Union. Four prioritised areas have been identified for the work. These are the fight against acidification and climatic changes, the work for adaptation to an ecocycle, higher goals with respect to chemical controls, and decreased use of pesticides as well as the maintenance of biological diversity. With respect to the latter activity, it can be mentioned that Sweden, during the last year, reported several areas to the Commission which the country believes should be included in Natura 2000, the coherent European ecological network which was created pursuant to the EU's Habitats Directive. At the EU's large government conference, which began at the end of April 1996, it was emphasised by Sweden that environmental issues must be raised in conjunction with a discussion in respect of changes in the treaties, *inter alia*, so that the Rio Conference's conclusions in respect of sustainable development are reflected in the EU Treaties. Of significance for development up to the turn of the century is also the current review of the EU's fifth environment action programme from 1992.

### 1.6 Baltic Sea Co-operation, etc.

Regional inter-government environmental co-operation is being conducted with respect to, e.g., the Baltic and North Sea regions. Following a Swedish initiative, heads of state in the countries bordering the Baltic met at a government conference in Visby at the beginning of May 1996. The environment was one of the principle issues and Sweden presented, *inter alia*, views regarding continued high prioritisation of the Baltic Sea Programme, i.e. the action programme which was adopted at a similar conference in Ronneby in 1992. At the Visby meeting, a desire was also expressed by the Swedish delegation that a greater degree of attention be focused on rivers and streams which cross national boundaries. The environment ministers were charged with continuing the work with the region's environmental issues. With respect to the environmental co-operation of the North Sea countries, it can be mentioned that the environment ministers in 1995 signed the fourth North Sea Declaration with common goals for improving the environment of the North Sea.



Following Sweden's and Finland's membership in the European Union, new demands are being placed on the Nordic environmental co-operation within the Nordic Council. According to the Government's environmental policy report to the Swedish parliament, the operations should, to a greater degree, be focused on strengthening and making more efficient the Nordic countries' efforts to combat environmental problems in the region, including the Baltic Sea region and the Barents Sea region.

### 1.7 Environmental Policy and National Environmental Goals

The Environmental Code Commission also notes that since the middle of the 1980's, parallel to the international activities, an ever clearer course has been charted for the country's national environmental work. In 1988 and 1991, the Swedish Parliament adopted extensive environmental goals in conjunction with the treatment of the Government's two environmental bills: Environmental Policy for the 1990's and A Sound Living Environment. To summarise, the environmental goals are to protect human health and to safeguard biological diversity, to conserve natural resources, and to protect nature and cultural landscapes. In its environmental decisions, the Swedish Parliament has also confirmed the previously mentioned sector responsibility and partial goals for environmental work in the form of guidelines as to how various environmental problems will be tackled in the future. The Parliament's decision in respect of a new forestry policy means that the environmental goals are afforded the same weight and significance as goals focused on the economy and production. Through the decision in respect of a Swedish strategy for the safeguarding of biological diversity, this principle has been expanded to also apply to other activities in society.

The environmental goals which were adopted presuppose that the environmental policy course is maintained. It is set forth in the Government declaration issued in the autumn of 1994 that environmental policy in the future will mean, *inter alia*, that the industrial society's ecocycle must be closed, that producer responsibility must be made clear, that the quantity of waste must be reduced significantly, that dangerous chemicals must be gradually eliminated and that economic means of control, e.g. taxes and public fees, must be introduced in environmental policy. In line with this, the Government declaration in the spring of 1996 affirmed the position that the environment is one of the main areas for the Government's policies. As a reason for this priority, it was stated, among other things, that

the threat to the environment is a threat to life itself. It was also declared that the environment will be a clear and long-term priority, that the ecological demands can lead to the next great leap forward in growth and that action by citizens is required and also clear policy in order to support increased ecocycle thinking. A partially new side to the environmental policy is implied here, namely the possibility of technological and corporate development within the rapidly growing environmental industry.

In this context, attention was also focused on some of the efforts by industry, largely during recent times, within the area of environmental work. Within the European Union, a regulation has been prepared in respect of voluntary participation for industrial companies in the Union's Eco-Management and Environmental Auditing Regulation (EEC No. 1836/93). The system for which the regulation forms the basis is often referred to as EMAS (Eco-Management and Audit Scheme). The Swedish Voluntary Environmental Management and Environmental Auditing Act (SFS 1994:1596), which entered into force on 1 January 1995, supplements the regulation. The purpose of the regulation is to support continued improvement of the environmental work of industrial businesses through the formulation and execution, *inter alia*, of environmental programmes and continuous follow-ups and controls. It should also be mentioned that the ICC, the International Chamber of Commerce, has introduced a programme which is intended to strengthen the environmental efforts made by companies. Included in this is also information to the public. It should also be mentioned briefly that within the ISO, the International Standardisation Organisation, world-wide standardisation work is underway with respect to the environment (ISO 14001). In conclusion, it is mentioned in this section that the Ministry of the Environment and the Ministry of Industry and Trade have formed a special working group in order to jointly determine the key areas where the control mechanisms of environmental policy and industry and trade policy can be developed and co-ordinated.

### 1.8 The Execution and Development of Environmental Policy

In order to assist the Government and the Government Office with the preparation of special environmental policy issues, there are, in addition to the research operations in general, bodies of a more permanent nature. The previously mentioned Environmental Advisory Council is one such example of these.



In the coming years, the Council's primary task will be to study, formulate and propose concrete measures in order to achieve sustainable development and to work for the integration of the issues of environmental responsibility and environmental concerns in these various sectors of society. The Council has, for example, worked with issues regarding measures in order to protect the mountains and is preparing strategy and measures for a better environment in the country's archipelagos. In the first area, the authority's proposal has, *inter alia*, formed the basis for a Government bill in May of 1996 regarding sustainable development in the mountain regions.

A research body of a similar nature is the Ecocycle Commission which is charged with producing a strategy for adaptation to an ecocycle in the goods sector and with gradually proposing producer responsibility for new categories of goods. The Commission has, for example, presented proposals for producer responsibility for tyres, automobiles, the construction sector and electrical and electronic products. With respect to the issue of tyres, the delegation's proposals have led to legislative provisions in the ordinance regarding producer responsibility for tyres and a proposal in the Government bill regarding producer responsibility for obsolete automobiles is expected to lead to equivalent rules in the automotive area.

As an example from the investigation procedures, it can be mentioned that the so-called Battery Commission issued a report in the beginning of 1996 with respect to the handling of environmentally hazardous batteries. Measures are proposed in the report in order to improve the collection and disposal of environmentally hazardous batteries. Comprehensive work has been commenced by the Communications Committee with respect to, *inter alia*, improved traffic environment. During the spring of 1996, a committee also proposed that two regions, Uppsalaåsen - Fyrisån and Älvrummet in Trollhättan should be protected as national parks together with the only park which currently exists of this type in Sweden, viz. Ulriksdal-Haga-Brunnsviken-Djurgården, sometimes also referred to as the Eco Park.

New risk areas are being continuously identified and require attention and initiative. During recent years, for example, hormone-affected substances are being debated more and more. In addition, attention has been focused on the diffuse dissemination of anti-microbial substances (e.g. anti-biotics) into the environment, primarily due to the fact that these substances can give rise to resistant bacteria. In light of, *inter alia*, a possibly changed risk

scenario in respect of the use of chemical substances, the Government appointed a committee in May of 1996 to review policy with respect to chemicals. The review is also required pursuant to Sweden's membership in the EU.

Following preparation of, *inter alia*, the proposals which were gradually submitted, the Government intends, according to an environmental policy report submitted to the Swedish Parliament, to introduce a comprehensive environment bill during the spring of 1998. Proposals will be made in the bill for, *inter alia*, new and reformulated Swedish environmental goals based upon, for example, the proposals of the Agenda 21 Committee and the Chemicals Committee.

### 1.9 Legislation as a Means of Control for Environmental Policy

The Environmental Code Commission states that towards the end of the 1980's, it was demonstrated that active measures by those parties which primarily affect the environment, i.e. various activities under private, co-operative, municipal or state control are some of the most important in order for environmental protection work to be successful. Public efforts are also required in the form of, *inter alia*, investments in land and maintenance, environmental supervision, environmental research and education as well as administrative and economic means of control within the area of the environment. As a consequence of this, legislation in this field must be adapted to the requirements of the time and must work in the manner envisaged by environmental policy. It is, in other words, the task of legislation to secure the environmental policy goals. It must be clear and effective in order to contribute to a situation where environmental concerns permeate all sectors of society. The trend of increased imports of pollutants and many small and more diffuse emissions has led to the fact that problems today appear to be different than the problems at the time at which the primary components of environmental legislation were enacted. In light of the principles which now characterise international and national environmental policy, legislation cannot, as has been the case to date, be primarily focused on acute problems and large sources of emissions.

Through the partial reforms in environmental legislation made during the 1980s, e.g. in environmental protection, health protection and chemicals legislation, the foundation has been laid for environmental rules which are more in line with the goals of environmental



policy. Certain principles, e.g. the substitution principle regarding chemicals, have been introduced in legislation. Taking into account the development of environmental policy, there are still, according to the Environmental Code Commission, some deficiencies remaining in the legislation. Regulations split up in various legislative systems overlap each other, and the responsible governmental authority is not always obvious. In addition, there is a need for, *inter alia*, stricter licensing regulations, expanded possibilities to issue regulations with general application and adaptation of special legislation, e.g. with respect to traffic, to the general environmental legislation. In this context, one should also be reminded that, according to one of the principles of the Rio Declaration, all states have agreed to enact effective environmental legislation in which should also be included the right to compensation for those who are affected by environmental damage. Through the harmonisation of legislation which was a consequence of Sweden's entry into the EU, additional studies and considerations of the relationship between Swedish environmental legislation and international measures becomes relevant.

In light of, *inter alia*, the deficiencies in legislation which are pointed out here, investigation work was initiated in order to carry out a comprehensive reform of Swedish environmental legislation. The goal was to make it easier to form an overall view of the legislation and to apply the legislation and to provide the opportunity for various stricter provisions in pace with the changing needs of the time. The idea of combining and making more stringent the various provisions in a single legislative system, an environmental code, arose in the beginning of the 1990s. A formal decision in this respect was taken with the support of the Swedish Parliament of the Government's proposal in the 1991 environmental bill. A previous proposal for an environmental code was introduced and later withdrawn.

In the Government declaration in the autumn of 1994, it was stated that a new proposal for an environmental code will be submitted to the Parliament. The Environmental Code Commission presents, in its primary report: (SOU 1996:103) the Environmental Code, Focused and Co-ordinated Environmental Legislation for Sustainable Development, a proposal for an environmental code. The proposal is for modern, co-ordinated, and stricter environmental legislation harmonised with EU law.



## **2 Summary of the Proposals**

### **2.1 Replace Divided Legislation!**

The Environmental Code Commission observes that Sweden has, for a long time, occupied an advanced position with respect to protection and care of the environment. This is reflected in the extensive scope of Swedish environmental legislation.

It has become difficult over the years to gain an overview of the legislation, which, in certain cases, has even become contradictory. The various Acts were passed at different times and therefore express different values. Similar issues have received differing solutions in the Acts. It has therefore been felt, from several points of view, that it would be desirable to co-ordinate legislation relating to the environment.

The Swedish Parliament resolved in 1992 that the objective underlying environmental policy should be to protect human health, preserve biological diversity, manage the consumption of natural resources so that they can be used in the long-term and to protect our natural and cultural landscape. The Parliament, at the same time, approved the Government's proposal that environmental legislation should be collected in an environmental code.

The Environmental Code Commission, in its primary report of 4 July 1996, presented a proposal for an Environmental Code: (SOU 1996:103) the Environmental Code, Focused and Co-ordinated Environmental Legislation for Sustainable Development. It is intended that the proposal will initially be circulated for comment and will thereafter be submitted to the Government Office to be published as a Submission to the Council on Legislation and as the Environmental Code bill, which thereafter shall be tabled before the Parliament for debate and decision.

### **2.2 Codified Environmental Legislation**

The Environmental Code Commission proposes that the provisions contained in the following acts should be inserted in the Environmental Code:



- the Nature Conservation Act;
- the Environmental Protection Act;
- the Act on the Prohibition Against Dumping Waste in Water;
- the Act on Sulphur Content of Fuels;
- the Act on the Management of Agricultural Land;
- the Waste Collection and Disposal Act;
- the Health Protection Act;
- the Water Act;
- the Act on the use of Pesticides on Forests;
- the Chemical Products Act;
- the Environmental Damage Act;
- the Natural Resources Act;
- the Act on Temporary Driving Restrictions;
- the Act on Advance Testing of Biological Pesticides;
- the Gene Technology Act, and
- the Act on Measures concerning Endangered Animals and Plant Species.

Altogether, the provisions of 16 Acts will be inserted into the Environmental Code.

The Environmental Code is an extensive statutory work. The proposed Code will contain



approximately 450 sections divided into 31 Chapters. In addition to this there will be ordinances and regulations.

### **2.3 Common Rules for Health and Environment**

The Environmental Code Commission has determined that the basic philosophy behind the Environmental Code should be that common rules should apply irrespective of the type of activity concerned. The same requirements should be made, according to the general rule, with respect to measures which risk similar damage being caused to health and environment. It is irrelevant, for example, whether the activity concerned is performed on land or in water, that it is carried out by the public at large or an individual or in a commercial context or in some other manner. The governing principle is thus that it is the effect of the measure, not its nature, which is to determine the requirements to be imposed.

### **2.4 Sustainable Development as the Goal of the Environmental Code**

The goal of the Environmental Code is to establish the prerequisites for sustainable development in society. Through the provisions of the Environmental Code and other means of control, living and future generations will be guaranteed a healthy and sound environment in which to live. In order to achieve this goal, human health and environment must be protected against harm and nuisances irrespective of whether they are caused by pollution or other disturbances or in some other manner. Further, valuable aspects of the natural and cultural environmental heritage must be protected and cared for, biological diversity must be maintained and the terrestrial, aquatic and physical environments must, in other respects, be used in such a manner that ecological, social and socio-economic points of view, sound management of natural resources and energy are ensured. Finally, an ecocycle characterised by management, reuse and recycling must be promoted.

The Environmental Code Commission proposes that the environment be afforded a stronger status in the new Environmental Code. It must be a priority for all individuals within their activities and social sector, to endeavour to implement the objectives of the Code. General rules of care must apply with respect to both so-called environmentally hazardous activities and, in principle, all other human conduct which can be expected to undermine the prerequisites to achieving the goal of the Code.

Several environmental statutes will be incorporated into the Environmental Code (see Section 2.2) in order to generate a better overview and more effective and accessible environmental legislation.

Naturally, thought was given as to whether further statutes should be incorporated in the Code, e.g. , as well as statutes which are, at present, linked to . The Commission is continuing its work with respect to those types of statutes. The same applies with respect to automobile and vehicle emission legislation, nuclear safety legislation and legislation relating to radiation protection, etc., which, for the present, is not included in the Environmental Code.

### **2.5 Scope of Applicability**

According to the Environmental Code Commission, the Environmental Code shall apply with respect to all activities which can undermine the objectives of the Environmental Code. The scope of applicability, in principle, extends to all human conduct which can be expected to have health or environmental consequences or jeopardise the management of natural resources. Where a person is going to conduct activities or undertake some form of activity which can be hazardous to the environment, the Environmental Code will thus apply. The Code, in other words, has a broad scope of applicability.

The Environmental Code applies to activities which *can* undermine the objectives of the Code. It is therefore not necessary to establish absolutely that the objective will be undermined. The risk alone of this is sufficient.

### **2.6 General Rules of Care**

The Environmental Code Commission proposes that the Environmental Code contain common general rules of care to be observed by everyone. It is first prescribed that a person who conducts activities must acquire the requisite knowledge in order to protect human health and the environment and to promote reuse and recycling of materials and management of land and water. The fact that it cannot definitely be established that an activity is causing disturbances, does not release the individual conducting the activities from the obligation to prevent or restrict the disturbance.



The Environmental Code Commission proposes that a **general rule of care** be included in the Environmental Code, according to which, a person who conducts a business or other activity must take such protective and other prudent measures as are necessary in order to prevent, restrict or counteract damage or disturbance to human health or the environment caused by the activities.

The proposed Environmental Code contains a **localisation provision**. An activity which is linked to a particular place, may only, according to this provision, be conducted at a place which is appropriate. The place must be selected so that the purpose can be achieved with the minimum amount of interference and disturbance.

The Code's **resource management and ecocycle principles** provide that a person who conducts activities must use natural resources and energy efficiently and exploit opportunities to reuse and recycle.

According to the so-called **substitution principle** or **product selection principle**, chemical and biotechnical products which can be replaced by less risky products, must be avoided. That requirement also applies with respect to goods which have been treated with chemical or biotechnical products.

The Code also provides that a person who is professionally engaged in an activity, shall apply the best available techniques for protecting human health and the environment: **the BAT principle**.

Activities which are conducted adjacent to a protected area, e.g. a national park or nature reserve, must be conducted in such a way that the area is not damaged.

In accordance with the polluter pays principle, the person conducting an activity which has caused damage must take such measures and incur such costs as are necessary in order to rectify the damage. That liability remains until such time as the damage is corrected (**the Polluter Pays Principle**) (PPP).

With respect to each of the rules of care, they are to be applied to the extent justified on environmental grounds, provided this is not economically unreasonable.



If unacceptable damage arises, despite the fact that the rules of care have been complied with, the Code's so-called **stop rule** comes into operation. According to this, an activity may not be conducted where it alone risks a deterioration of public health or materially has a deleterious effect on the environment or the efficient use of natural resources.

## **2.7 Efficiency Provisions**

The Environmental Code Commission proposes that the Environmental Code contain a number of fundamental provisions for altered use of land. The general rule is that land and water areas shall be used for those purposes for which the areas are most suited, taking account of their characteristics and location and existing needs. Preference shall be given to use which contributes, from the point of view of the general public, to sound and efficient use of resources.

## **2.8 Specific efficiency provisions**

According to the Environmental Code Commission, certain geographical areas shall be enumerated in the Environmental Code which, taking account of the natural and cultural treasures located in the areas as a whole, are of national interest. In these areas, development companies and other intrusions will not normally be permitted. These include, *inter alia*, the Swedish mountain regions and the greater part of the Swedish archipelagos.

## **2.9 Environmental quality standards**

The Environmental Code Commission proposes that it be possible to issue regulations with respect to geographic regions or for the entire country concerning the quality of land, water, air or the environment in other respects. Such regulations shall be designated *environmental quality standards*.

Environmental quality standards shall indicate the pollution levels or disturbance levels to which humans or the environment may be exposed without significant risk. More particularly, environmental quality standards shall indicate:

- the maximum or minimum levels allowed of chemical or biotechnical products;

- the maximum or minimum levels allowed of any particular organism which can contribute to an assessment of the state of the environment;
- the maximum level allowed for noise, vibration, light, radiation or other disturbance; or
- the maximum or minimum levels or values allowed for still or running water.

Where necessary for compliance with an environmental quality standard, the Government, the County Administrative Board or the Municipality shall prepare an *action plan*. An action plan shall indicate, *inter alia*, those measures which are to be taken in order to fulfil the environmental quality standard and when they must be completed. The action plan must be reviewed at least every five years.

Public authorities and municipalities shall ensure that the action plan is implemented so that environmental quality standards are complied with in planning, determining whether a licence should be granted, exercising their supervisory function and issuing regulations. The action plan shall indicate how the activity is to be conducted such that environmental quality standards are complied with. A licence will not be granted for an activity, the conduct of which involves a breach of an environmental quality standard. A licence may be revoked or reviewed where an environmental quality standard has been breached.

A municipality may be granted the right, for a temporary period, to prohibit traffic in an area in the municipality where air pollution in the area involves acute health risks.

## 2.10 Environmental Impact Assessments

The Environmental Code Commission proposes that an *environmental impact study* be prepared where an application is made for a licence to conduct an activity, and in certain other circumstances. The objective is to identify, describe and facilitate an overall assessment of the direct and indirect effects which the planned activity may have for human beings, fauna, flora, soil, water, air, climate, landscape, the cultural heritage and efficient use of land and water and other resource management, as well as the interaction between each factor.

Everyone who intends to conduct an activity which requires a licence shall, at an early point, consult with the public authority which is to assess the application for the licence and



with individuals who are specifically affected.

Following the consultation, the licensing authority shall determine whether the activity can be expected to have significant effects on the environment. If the licensing authority determines that this is the case, an environmental impact assessment shall be undertaken. Such an assessment shall involve a more extensive consultation.

An environmental impact study with respect to an activity which can be expected to involve *significant effects on the environment* shall include at least:

- a description of the project and the activity comprising information on the site, design and size of the project;
- a description of the planned measures for avoiding hazardous effects;
- the information required to assess the impact on the environment; and
- a report of the alternative locations, if such are possible, and alternative forms.

The environmental impact study shall, together with the application, be made available to the public, who shall be afforded an opportunity to express their views. Through notices published in local newspapers, it shall be ensured that the public is informed of the environmental impact study and the application.

The governmental authority responsible for assessing the application for a licence shall adopt a position with respect to whether the environmental impact study complies with the requirements. The authority shall, in assessing the application, take into consideration the contents of the environmental impact study and the assessment and the result of the consultation and opinions given.

## **2.11 Areas of Protection**

The Environmental Code Commission proposes that the Government be authorised to declare land and water areas which are owned by the state as National Parks. The objective



shall be to preserve larger contiguous areas in their natural state or in a substantially unchanged condition.

Land and water areas may instead be declared nature reserves by the County Administrative Board or a Municipality. This may be done for the purpose of protecting animal or plant life, to preserve valuable natural environments or to meet the need for the areas as recreational areas. Where the cultural aspects of a nature environment are to be preserved, the area shall be designated a cultural reserve.

Unusual natural phenomena may be declared nature sites by the County Administrative Board or the Municipality.

Smaller land or aquatic areas which are living environments for threatened animal or plant species or which are otherwise particularly worthy of protection may be declared biotope protection areas by the Government or by other public authorities.

A shoreline protection area shall apply adjacent to sea and lake areas and water courses. The objective behind shoreline protection is to preserve good living conditions for animal and plant life and to secure the maintenance of conditions required for the general public's recreational use. Shoreline protection relates normally to land and water areas up to 100 metres from the shoreline.

The Government may declare larger land or aquatic areas to be environmental protection areas. This may be done where the area is exposed to pollution or does not comply with an environmental quality standard.

Land or water areas may be declared water protection areas by the County Administrative Board for the purposes of protecting access to ground or surface water which can be used as a water supply.

In accordance with the EC's Birds Directive and the Habitats Directive, the Government may declare areas to be Special Protection Areas and Special Areas of Conservation.

Regulations shall be issued with respect to those special areas concerning restrictions on land

use and conduct of the general public. It is possible to obtain a dispensation from the regulations, but this is, in some circumstances, only possible where compensation is paid for any damage caused. The responsible public authority is entitled to take measures contrary to the wishes of land owners in order, for example, to conserve the area.

### **2.12 Protection of Animal and Plant Species**

According to the Environmental Code Commission, the Environmental Code will contain provisions which will protect endangered animal and plant species.

Regulations can be issued concerning prohibitions against killing animal species or destroying plant species which are threatened with extinction. Specific provisions are included concerning the release of animal or plant species in their natural environment. Regulations can also be issued concerning trade in animals and plants.

### **2.13 Environmentally Hazardous Activity and Protection of Health**

The term environmentally hazardous activity in the proposal for the Environmental Code, means:

- discharge of sewerage water, solids or gases from the ground, buildings or installations on land, aquatic areas or ground water;
- use of land, buildings or installations in such a way that will otherwise result in the pollution of land, water areas or ground water; and
- use of land, buildings or other installations in such a way that may result in disruptions in the vicinity through air pollution, noise, vibration, light or such like, if the disruption is not merely temporary.

A disturbance with respect to human health refers to an effect which, in medical terms or in terms of hygiene, can have an injurious effect on health and which is not minor in scope or merely temporary.



A licence or notification requirement may be introduced with respect to environmentally hazardous activity. An obligation to apply for a licence or to submit notice exists for a large number of activities. Applications for a licence for the most significant environmentally hazardous activities shall be dealt with by the Environment Court, and with respect to other activities which are subject to a grant of authority, by the County Administrative Board or the relevant Municipality. Notices with respect to environmentally hazardous activities shall be submitted to the relevant Municipality.

The Government may issue regulations concerning prohibitions in certain areas against discharging sewerage, solids or gases and against dumping solids. The Government or another public authority may also, in other cases, issue regulations concerning injunctions, protective measures, restrictions or other precautionary measures with respect to environmentally hazardous activities. Such general regulations may be applied as an alternative to determination based on individual applications for licences.

Sewerage water shall be purified or dealt with in such a manner that it does not compromise human health or the environment.

Residential and commercial premises used for general purposes shall afford secure protection against disturbances which can compromise human health. Residential premises shall be used in such a manner that human health is not compromised.

Equipment for ground water supply, e.g. private wells, shall be installed and used in such a way that human health is not compromised. Municipalities may introduce licensing or notice requirements with respect to the installation of equipment for ground water supply.

The Government may issue regulations to the effect that licensing is required in order to keep certain animals within densely populated areas.

## **2.14 Hydro-construction**

According to the Environmental Code Commission, hydro-construction means, primarily:

- construction, repair or demolition of dams, retainer walls, bridges and other installations



in water;

- filling and driving piles in water areas;
- excavating, blasting and cleaning in water areas;
- drainage of water from water areas;
- supply of water in order to increase ground water levels;
- ditch digging and other measures for draining land; and
- measures for protection against water.

The general requirements governing activities shall apply to hydro-construction, in the same manner as they apply, according to the Code, to other activities. In addition, a hydro-construction may only be undertaken if the advantages outweigh the cost and the damage and disturbance caused thereby. Any person wishing to carry out a hydro-construction which may damage fish life is obliged to make arrangements for the re-establishment of the fish population or for the protection of the fish life, to release water so that a flow is maintained and to observe those requirements otherwise necessary in order to protect the fish life.

According to the proposed general rule, a licence shall be required in all circumstances for hydro-construction enterprises. A licence is not required, however, if it is obvious that no damage will be caused. Applications for a licence shall be dealt with by the Environment Court. Applications for soil drainage shall, however, usually be dealt with by the County Administrative Board.

In areas where it is particularly important that wetlands be preserved, the Government may prohibit soil drainage.

Owners of hydraulic construction facilities are responsible for ensuring that they are maintained in order to ensure that damage is avoided. The maintenance obligation may be transferred to parties other than the owner.

### **2.15 The Common Right of Access to Private Land (*Allemansrätten*)**

The common right of access to private land doctrine is based on custom. In recent years it has acquired significance primarily with respect to recreational activities carried out on other people's property. It is, for example, acceptable pursuant to the general right of access doctrine to wander in forest land owned by someone else. The Environmental Code Commission proposes that a person conducting activities comprising the organisation, or commercial exploitation, of recreational activities on another person's property, shall be required to take preventive measures in order to prevent participants from causing damage or nuisance. In addition, a notification obligation may be imposed with respect to the conduct of such activity.

### **2.16 Extraction, Management of Agricultural Land and Certain Other Activities**

The Environmental Code Commission proposes that quarrying and extraction of stone, gravel, sand, clay, soil, peat or other soil types will require a licence issued by the County Administrative Board. Extraction for household use by the owner of the property will not, however, usually require a licence. The Government may, according to the Environmental Code Commission's proposal, prescribe that a licence is required for extraction for household use with respect to certain areas of the country.

In assessing an application for a licence for extraction, the Environmental Code's general provisions will, of course, apply. In addition, a licence may only be granted if security is provided with respect to the applicable conditions.

In the event that the conduct of activities which are not subject to a licensing or notification obligation may materially alter the natural environment, notice must be given to the County Administrative Board or another public authority. It may also be prescribed that such notice shall always be given for certain types of activities. The conduct of the activity may not commence earlier than six weeks after the issuing of notice. The public authority to which notice is made may issue orders with respect to measures to be adopted in order to restrict or counteract damage to the natural environment. In the event that such measures are insufficient, the public authority may prohibit the activity.



The Government or another public authority may issue regulations concerning the matters to be taken into account in the context of use of arable land and in the context of other use of land for farming purposes. Regulations may also be issued to the effect that farming on arable land may only be terminated following the giving of notice. Finally, regulations may be issued concerning the number of animals to be kept on one farm, concerning precautionary measures in the use of fertilisers and on plant growing.

A licence is required for the construction of wildlife fences. In assessing the licence application, consideration shall be given to the need to protect recreational activities and the environment.

### **2.17 Genetically Modified Organisms**

Provisions concerning genetically modified organisms, which are primarily aimed at protecting the health of humans, animals and the environment, and at ensuring that ethical issues are taken into account, should, in the opinion of the Environmental Code Commission, be included in the Environmental Code. The term genetically modified organism, refers to an organism in which the genetic material has been altered in a way which does not occur naturally by mating and/or natural recombination.

Contained use and deliberate release of genetically modified organisms shall, according to the Environmental Code Commission's proposal, be preceded by an investigation which can then form the basis of an assessment as to what damage the organism may cause to the environment or to health. Such an investigation shall also be undertaken before any product which contains or consists of genetically modified organisms is released onto the market.

Contained use refers to activities in the course of which organisms are genetically modified or where such genetically modified organisms are cultured, stored, used, transported, destroyed or disposed of and for which physical barriers, or a combination of physical barriers together with chemical and/or biological barriers, are used in order to limit their contact with the general population and the environment. Intentional exposure refers to the deliberate release into the environment of genetically modified organisms without any specific restriction.



Ethical issues shall be taken into account in the context of contained use and deliberate release of genetically modified organisms and their release onto the market. Account shall be taken of the fact that nature is worthy of protection and that mankind's right to change and exploit nature is subject to guardianship responsibilities.

A licence will normally be required, according to the proposal, in order to carry out an deliberate release of genetically modified organisms and in order to release products containing such organisms onto the market. Requirements for licences and notice can be introduced with respect to restricted use.

Any person who releases a product onto the market which contains genetically modified organisms, shall, by marking the product, provide details with respect to the genetic modification.

## **2.18 Chemical and Biotechnical Products**

The Environmental Code Commission proposes that the Environmental Code contain provisions concerning chemical and biotechnical products. Chemical products means chemical substances and formulas. Biological products means micro-organisms which are specifically produced for technical use, for example, to be used as pesticides.

The Government or another public authority shall be entitled to prescribe that the provisions concerning chemical and biotechnical products shall also apply with respect to goods which contain chemical substances.

According to the proposal, a person who manufactures or imports a chemical product shall ensure that a satisfactory investigation has been undertaken in order to assess what damaging effects the product might cause. In addition, persons who take such products into their possession on a commercial basis, must acquire the knowledge required in order to avoid damage. In addition, information shall be furnished with respect to the product through marking or in some other fashion. Separate information shall be submitted to public authorities upon request. The public authorities shall be immediately advised in the event that new information arises concerning the dangers associated with the products.

Chemical and biotechnical products which are commercially manufactured in Sweden or which are imported into Sweden shall, according to the proposal, be registered in a product register.

Regulations may be issued to the effect that notice will be given of the manufacture and importing of chemical or biological products which have not previously existed in Sweden. A licence is required with respect to the importing of and other commercial dealing with especially dangerous chemical or biotechnical products from countries which are not Member States of the EU.

Chemical and biological pesticides may not, according to the proposal, be sold or used unless they are approved. Approval is also required with respect to pesticides which are imported from countries which are not Member States of the EU. Approval will usually be given if the pesticide is approved in one of the Member States of the EU. The application for approval will be dealt with by the Chemical Inspections Board.

Other chemical or biotechnical products than those which are approved as pesticides, may only be used as pesticides if it is clear that such use will not involve a risk of harm to health or the environment. Distribution of a chemical or biological pesticide shall only be carried out in such a manner that humans are not harmed or caused other inconvenience and so that the effect on the environment is reduced as much as possible. The distribution of a chemical or biological pesticide from aircraft is prohibited. It is also prohibited to spread chemical or biological pesticides over forest land which is intended to defoliate, irrespective of whether this is done from the ground or the air. Nor may individual trees be treated with such pesticides.

### **2.19 Producers' Responsibility, Ecocycle and Waste**

The Environmental Code Commission proposes that regulations shall be issued concerning producers' responsibility to ensure that waste from goods or packaging and waste generated from the producers' activities shall be collected, removed, reused, recycled or finally disposed of in another environmentally sound manner. The underlying principle is to establish a society based on the ecocycle.



Producers' responsibility already exists pursuant to applicable ordinances relating to packaging, waste paper and tyres.

According to the proposal, each municipality shall be responsible for ensuring that household waste within the municipality is removed to a treatment station and finally disposed of. The municipality may also be subjected to a responsibility to remove waste other than household waste and ensure that it is disposed of.

Account shall also be taken of the opportunities available to private individuals to dispose of their own household waste in an acceptable manner. Where waste is to be removed by the municipality or the producer, private individuals will not be entitled to bury, compost or otherwise dispose of the waste.

In the context of the final disposal of waste, the method of disposal for each type of waste shall be selected taking into account the specific characteristics of the waste. The method which causes the least inconvenience and makes best use of the resources of the waste shall be selected.

Each municipality shall have a waste management regulation which shall contain those provisions adopted by the municipality with respect to waste management. The waste management regulation shall specify the extent to which private individuals may deal with their waste themselves. The waste management regulation shall also contain a *waste plan*. The waste plan shall contain information concerning waste within the municipality and the measures adopted by the municipality to reduce the quantity of waste and its hazardous nature.

No one is entitled to litter outside at a place to which the public has access or which is in the public view.

Waste may not be dumped within Sweden's territorial sea or exclusive economic zone. Nor may waste be dumped from Swedish ships or aircraft over other ocean areas. The same applies with respect to the incineration of waste.



## 2.20 Street Cleaning, Signs, etc.

The Environmental Code Commission proposes that the municipalities be responsible for street cleaning and snow removal from roads, streets, squares, parks and other public areas. However, this responsibility may be imposed instead upon the State or real estate owners.

According to the proposal, signs denying public access to areas in which the public is entitled to be may not be displayed without a licence from the municipality. A licence is also needed for advertising signs if they do not give information about an activity which is carried on at that location.

## 2.21 Regulation Council

It is the judgment of the Environmental Code Commission that regulations are needed to provide more detailed rules within the area regulated by the Environmental Code. The Environmental Code Commission proposes that a specific co-ordinating body, the Regulation Council, follow and co-ordinate the authorities' work with issuing the regulations.

The Regulation Council's activities also aim to simplify the regulatory system and to ensure the legal quality of the regulations. The Council shall also endeavour to see to it that the work is carried out in accordance with Sweden's international commitments, *inter alia*, in relation to the EU.

If the Council cannot agree in respect of regulatory issues, the Council shall submit the matter to the Government for determination.

## 2.22 Review

The Environmental Code Commission proposes that a licence may be given for a limited time. In addition, it shall be possible to combine it with conditions. In order to be valid, the licence may be finally conditioned upon the enterprise providing security for the costs of after-treatment.

A licence may not be given in contradiction of the municipality's plans nor for an activity

which causes an environmental quality standard to be exceeded. A licence may be denied to one who has abused a previous licence.

If an activity has been carried out without a licence, the enterprise has the burden of proof regarding the conditions prevailing before the activity was commenced.

### **2.23 Environmental Organisations Have Standing**

The Environmental Code Commission proposes that environmental organisations shall be permitted to appeal decisions regarding licences, decisions by governmental authorities not to interfere and decisions regarding action plans when an environmental quality standard has been exceeded. A precondition will be that the organisation has been active for at least three years and has no less than 1,000 members. The right to appeal may be granted by the body charged with hearing the appeal to local associations which do not fulfil these requirements.

### **2.24 Government Review**

The Environmental Code Commission proposes that a number of new enterprises and establishments be reviewed by the Government. Examples of such enterprises include iron and steel works, pulp and paper factories, oil refineries, facilities for storage and final disposal of nuclear waste, larger establishments for the treatment of environmentally hazardous waste and larger hydro-electric power stations. The Environmental Code Commission proposes further that the Government shall also review larger roads, railroads, public waterways and larger airports.

Applications for enterprises whose licence shall be reviewed by the Government shall be submitted to the ordinary authority granting such licences. They will handle the application, hold proceedings and, thereafter, submit the issue regarding the licence to the Government with its own opinion which will be submitted for consideration prior to the decision. If the Government allows the activity, the ordinary authority granting the licence shall, thereafter, issue the licence. It is then bound by the Government's decision.

Normally, the Government may allow an activity only where the relevant municipalities



have approved it. This is usually referred to as the municipality's right of veto. However, it is possible for the Government, in exceptional cases, to allow certain activities in contravention of the municipality's opinion. Examples of such activities include facilities for storage and final disposal of nuclear waste, larger establishments for the treatment of environmentally hazardous waste, public waterways, larger roads and railroads.

The Government also reviews certain appeals regarding, for example, decisions regarding regulations, the establishment of nature reserves, and action plans when an environmental quality standard has been exceeded.

### **2.25 Review by the Courts and Authorities**

The Environmental Code Commission proposes that the municipalities shall be able to adjudicate a number of cases under the Environmental Code, among others, including exemptions for construction on protected shoreline areas. A municipality's decision shall be appealed to the County Administrative Board.

The County Administrative Board adjudicates, in addition to appeals from municipalities, a large number of cases in the first instance. This group includes most of the environmentally hazardous activities for which a licence is obligatory, dispensation from prohibitions against activities in nature reserves and a licence for drainage of land. A County Administrative Board's decision may be appealed to the Environment Court.

Environment Courts shall hear appeals from County Administrative Boards and other state authorities. Furthermore, they hear a number of cases in the first instance. These cases include licences for larger environmentally hazardous activities, licences for hydro-construction enterprises, state compensation and damages for environmental damage.

Judgments of Environment Courts may be appealed to the Environment Court of Appeal. Leave to appeal is required in order for the Environment Court of Appeal to hear an appeal. Leave to appeal means that the Court itself determines whether the appeal shall be heard. The judgment of the Environment Court of Appeal may be appealed to the Supreme Court. Leave to appeal is also required in such case. However, the judgment of the Environment Court of Appeal in cases which have begun in a municipality, County Administrative Board

or other administrative authority may not be appealed.

It is proposed that the Environment Court of Appeal have the same organisation as the present National Licensing Board for Environmental Protection. It consists of a chairman who shall also be an experienced judge in a District Court, and a permanent member who shall be an environmental expert with technical training or education in natural science as well as experience with environmental issues, and two non-permanent expert members who shall have experience in environmental issues.

### **2.26 Validity and Reconsideration of Licences**

The Environmental Code Commission asserts that a decision regarding licences normally applies to all persons in respect of the issues which have been reviewed in the decision. However, the licence can be limited through general regulations for environmentally hazardous activities and regulations for environmental protection areas or water protection areas.

The Environmental Code Commission proposes that the authority granting the licence should be entitled to *revoke* or *cancel* the licence if, for example, the one who has the licence has abused it or an unpredicted material difficulty has occurred. Furthermore, the authority granting the licence may, under certain circumstances, *re-examine* the licence and impose new conditions. Re-examination may be made if, for example, the activity causes an environmental quality standard to be exceeded or if a new technique has been developed. In any event, re-examination may be made ten years after the date the licence was issued.

### **2.27 Trial Costs**

In cases regarding licences for hydro-construction enterprises, the applicant shall, according to the Environmental Code Commission, bear his own and the other party's costs incurred in the Environment Court. However, in cases regarding licences for environmentally hazardous activities, the parties shall bear their own costs.



## 2.28 Supervision

According to the Environmental Code Commission, supervision means an authority's practices which endeavour to enforce the Environmental Code and to ensure that various decisions issued thereunder are complied with. The supervisory authority monitors compliance with the Environmental Code and noted decisions, and takes corrective actions. The supervisory authority may also proffer advice. The supervision is carried out by various state authorities and municipalities.

The supervisory authority shall also report to the police or prosecutor violations of the code which are suspected of constituting crimes.

The Environmental Code Commission proposes that the Environmental Code provide that a supervisory authority may issue orders and prohibitions that are needed in a specific case in order to enforce the Environmental Code and decisions issued thereunder. This means that the supervisory authority may take action if, for example, the general rules of care in Chapter 3 are not complied with. However, one who carries on an activity pursuant to a licence is normally not obligated to do more than indicated by the licence. Decisions imposing orders or injunctions may be supplemented with fines. If the supervisory authority has issued orders or injunctions which are not complied with, the Enforcement Service Authority shall, upon notification, enforce the supervisory authority's decision. In lieu of enforcement, the supervisory authority may determine that corrective measures shall be taken at the expense of the party who carries on the activity.

The party who carries on an activity which may have deleterious effects on human health or the environment shall continually ensure that no injury or damage occurs. The party carrying on the activity shall carry out his own investigations. The party who carries on an environmentally hazardous activity which requires a licence shall submit an environmental report to the supervisory authority every year.

## 2.29 Supervisory and Licence Fees, etc.

The Environmental Code Commission proposes that authorities shall have the right to impose fees for their activities which include, for example, licence reviews or supervision.

Other fees that can be imposed are clean-up fees which are paid to the municipality which undertakes the clean-up, and producer fees that a producer, which has economic producer responsibility, pays to the municipality which undertakes what would otherwise be incumbent upon the producer if the producer had full producer responsibility.

### **2.30 Compulsory Access**

The Environmental Code Commission proposes that the Environmental Code shall contain conditions regulating when compulsory access to another party's property can take place. Access shall be made available, for example, so that an authority is able to perform its duties and so that a party carrying on an activity which causes damage may take damage prevention measures, compensation measures or after-treatment.

### **2.31 Penalties and Forfeiture**

The Environmental Code Commission points out that regulations regarding penalties for environmental crimes are found in both the Penal Code and in the proposal to the Environmental Code. The most severe penalty regulations are found in the Penal Code.

The Environmental Code Commission proposes that several of the crimes that will become crimes in the Environmental Code be subject to more severe punishment than exists in current law. Penalty rules are systematised and collected in one place in the Environmental Code. The purpose behind this is to facilitate implementation.

Property or the value of property which has been the subject of a crime may be forfeited. Furthermore, forfeiture may also be made of property used in the commission of a crime as well as the proceeds of a crime.

### **2.32 Environmental Penalty Fees**

The Environmental Code Commission proposes that *environmental penalty fees* shall be imposed upon one who carries out an activity and has:

- violated regulations imposed by the Environmental Code;
- without a licence or notification, carried out activities which require a licence or



notification; or

- violated the conditions of a licence.

The environmental penalty fees shall be imposed even if the violation was not intentional nor the result of negligence. The state shall receive the fee.

The Government will compile fee schedules indicating the amount of environmental penalty fees which can be imposed according to the type of violation. The fee shall be no less than SEK 5,000 nor more than SEK 500,000. Fees may exceed SEK 500,000 in cases of continuing violations.

According to the proposal, the supervisory authority decides questions regarding the imposition of environmental penalty fees. The decision may be appealed to the Environment Court.

### **2.33 Compensation to Individuals and in conjunction with Hydro-construction Enterprises**

According to the Environmental Code Commission, a landowner shall be entitled to compensation when the state or a municipality takes possession of land or significantly impairs the current use of the land. Such compensation shall be paid, for example, in respect of decisions regarding national parks, nature reserves, cultural reserves, biotope protection areas and water protection areas. The landowner will bear part of the damage. However, if the landowner suffers substantial impairment of his use, he is entitled to compensation for the land.

A person receiving a licence for a hydro-construction enterprise which damages another party's property shall be liable for compensating the damage. In addition, a person who suffers significant damage is entitled to compensation for the property.

### **2.34 Damages for Environmental Damage**

The Environmental Code Commission declares that if an activity causes damage to the surroundings, the one carrying on the activity shall pay *damages*. Damages shall be paid

for personal injury, property damage and economic damage. Liability is strict. Accordingly, there is no requirement of intent or negligence on the part of the person causing the damage. Damage which has not been caused intentionally or negligently is, however, only compensated to the extent it can be proven that the activity which caused the damage should not be permitted taking into account the local circumstances or the general occurrence of such activity.

In the event of serious damage, the landowner is entitled to compensation for the land.

A private individual may file a complaint against a person who carries on environmentally hazardous activities without a licence in order that further activities shall be enjoined or that protective measures or other preventative measures be taken.

### **2.35 Polluted Areas**

The Environmental Code Commission proposes that specific regulations shall apply to *environment risk areas*. An environment risk area means a land or aquatic area and buildings and installations which are so polluted that there is a risk for deleterious effects to human health or the environment.

Responsibility for after-treatment shall be borne by the person who is engaged in an environmentally hazardous activity and:

- carries out, or has carried out, an activity which may have caused the pollution; or
- acquired land with knowledge of its polluted state, or should have discovered the pollution through investigation in connection with the purchase.

One who has significant personal or economic influence over an activity may be found responsible for after-treatment to the same extent as the person who actually carries out the activity.

In the event more than one person is liable for after-treatment, they shall be jointly and severally liable. The party establishing that its contribution was insignificant shall, however, be liable only for the portion attributable to him or her.



The responsibility for after-treatment includes making an examination in respect of the nature and extent of the pollution and ensuring that the after-treatment measures shall be taken which can reasonably be required in order to prevent damage or deleterious effects on human health or the environment. Upon the evaluation of the responsibility for after-treatment, consideration shall be made of, for example, the extent to which the party responsible has contributed to the pollution as well as the amount of time which has passed since the pollution took place. There is no statute of limitations for liability for after-treatment.

The owner or occupier of real estate shall notify the supervisory authority, without delay, of the discovery of significant pollution on the real estate.

The Environmental Code Commission proposes that *registration* should be made of land and aquatic areas that are so severely polluted that, considering the risk to people and the environment, it is necessary to impose limitations on the use of the land or take other precautionary measures. The County Administrative Board shall make decisions regarding registration.

In connection with the registration, the County Administrative Board shall prescribe limitations on the use of the land or require that certain measures to be undertaken by the real estate owner or others be subject to conditions or preceded by notification to the supervisory authority.

### **2.36 Environmental Damage Insurance and Decontamination Insurance**

The Environmental Code Commission points out that a person, who carries out an environmentally hazardous activity and is under the obligation of a licence or which assumes the responsibility for notification, shall contribute to an environmental damage insurance fund in an amount determined by the Government. The Environmental Code Commission proposes that the environmental damage insurance be supplemented by *decontamination insurance*.

Proceeds from environmental damage insurance will be paid to those who suffered personal injury or property damage if the injured party is entitled to compensation for environmental

damage however;

- cannot obtain damages or the right to damages has been lost, or
- it cannot be determined who is liable for the damage.

The Environmental Code Commission proposes that proceeds from decontamination insurance shall be used for decontamination costs;

- which the party liable for after-treatment cannot pay, or
- where it cannot be determined who is liable.

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As noted initially, for a more detailed description of the background to the proposals and the proposals themselves, refer to the Environmental Code Commission's primary report: (SOU 1996:103) the Environmental Code, A Focused and Co-ordinated Environmental Legislation or Sustainable Development.



NORSTEDTS TRYCKERI AB  
Stockholm 1996







MINISTRY OF THE ENVIRONMENT  
S-103 33 STOCKHOLM  
SWEDEN

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FAX +46-8-205021, TELEFON +46-8-6909190

ISBN 91-38-20342-1  
ISSN 0375-250X