

**United States ‘Ghost Fleet’
Select Committee Hearing – 19 November 2003**

**FRIENDS OF THE EARTH’S
RESPONSE TO ORAL EVIDENCE OF
PETER MANDELSON MP**

Following are extracts of responses given by Mr Mandelson to the Committee (uncorrected transcript). The Committee’s questions are included only where the answers would otherwise be incomprehensible.

Mr Mandelson’s uncorrected evidence to the committee can be found at

<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmenvfru/uc1336/uc133602.htm>

Response to Question 1

“I suggested recently in a Radio 4 debate with the Director of Friends of the Earth that that organisation was scare-mongering, by which I meant using half truths but also making statements that lacked any sense of proportion or perspective or scale, which conjured up terrible pictures in people’s minds which were not justified. I do believe they have been crying wolf but I have I been immediately threatened by Friends of the Earth in a letter I have just received with legal action if I open my mouth to say any such thing again.

I do not see why they should be afraid of debate and I am certainly not going to be intimidated. I mention this, Chairman, because there are many other people in my town, councillors, the Mayor and officials who have similarly been on the receiving end of what I regard as bullying activity and they are more anxious and less confident about standing up to it, and I think that has been a fact.”

1. Friends of the Earth’s Director, Tony Juniper, wrote to Mr Mandelson on 17 November 2003. That letter related primarily to comments made by Mr Mandelson in a *Look North* programme on 12 November and in an interview on *Today* on 8 November and his comments to the *Northern Echo* the following week. Friends of the Earth made quite clear to Mr Mandelson that it relished robust debate on these issues and that whilst he was obviously entitled to disagree with Friends of the Earth’s interpretation of facts and to challenge them he was not entitled (and legal advice confirmed this) to accuse FOE of making false claims and of knowingly deceiving the public (as he had). Friends of the Earth explained that such statements were defamatory and without foundation and that he should either stand them up or apologise. He was not threatened with legal action by Friends of the Earth.
2. Note – Tony Juniper wrote to Mr Mandelson privately and did not intend to draw it to the attention of the media. The comment on it now is because of Mr Mandelson’s inaccurate public reference to it.
3. In that letter (and in a previous letter) Friends of the Earth specifically invited Mr Mandelson to discuss these issues. He has not accepted either of those invitations.
4. The suggestion that the Councillors and Mayor of Hartlepool have been bullied by Friends of the Earth into taking the position that they have is both absurd and extremely disrespectful to them.

Response to Question 1

“The political campaign then got going with great ferocity and the Council found itself on the receiving end of a lot of warnings from Friends of the Earth and others that they would face

legal action, and heaven knows what else, if is they persisted with the benign course as far as the ships are concerned on which they had originally agreed.”

5. Friends of the Earth’s legal adviser wrote to the planning officers at Hartlepool Borough Council on a number of occasions. The particular concern was to ensure that an application for permission to build a bund at the Able site would be made subject to Environmental Impact Assessment (‘EIA’) so as to permit members of public to participate in the assessment process. So far as Friends of the Earth is aware, it has never threatened legal action though it believes that Hartlepool was aware that Friends of the Earth would have seriously considered taking such action had Hartlepool decided to proceed with the process without an EIA. In the event, Hartlepool did inform Able UK that an EIA would be required. Able withdrew its application for planning permission the same day. Hartlepool also received similarly ‘legal’ letters from English Nature, RSPB and the Marine Conservation Society all of whom called upon Hartlepool to require an EIA.
6. The implication behind Mr Mandelson’s words ‘*heaven knows what else*’ is unpleasant and, so far as it implies any type of threatened action against the Council, untrue.
7. The only correspondence with Hartlepool’s elected representatives was by way of a letter from Friends of the Earth Campaigns Director to the Mayor of Hartlepool on 17 September 2003. Far from being a warning or threat it was an offer of help and of information and a plea for the Mayor and the Council to contact MARAD to request that the ships not leave the USA until Hartlepool had had an opportunity to carry out the necessary EIA and other environmental assessments. In particular:

“Due to the serious environmental concerns and the sensitivity of the sites in question it may be that the Council eventually decides not to grant the permissions necessary to allow this work to proceed. That is a matter for the Council although we will make representations in due course. However, for the time being, the important point is that any possible decision in the future by Hartlepool BC not to permit the work to be carried out (whether under planning law or the Habitats Regulations) will be substantially (perhaps entirely) undermined if the ships in question have already left the US and are en route to, or have arrived in, Hartlepool.

We are therefore requesting the Mayor and the Council to consider, as a matter of the greatest urgency, writing to the relevant US authorities (MARAD and the US Coastguard) and to the UK Marine Coastguard Authority requesting that no decision be made that would have the effect of allowing the ships to start their journey until Hartlepool (as the receiving local authority) has carried out any environmental impact assessments or “appropriate assessments” that it is required to carry out and has determined whether or not to permit the building of the dry dock that is necessary to accommodate and scrap the ships.”

Response to Question 2

“What happened was that one loose thread was pulled and the rest of the embroidery of permissions and licences promptly unravelled. The thread I am talking about is the disputed planning permission that Hartlepool Borough Council originally said Able UK had to construct a dry-dock to make the fulfilment of the contract even more safe and environmentally sound than it might otherwise have been. What happened was that a question was raised about whether the planning permission that had been given to Able UK was an extant planning permission.”

8. Mr Mandelson’s summary of the legal position is factually and legally incorrect, as Tony Juniper explained in writing to Mr Mandelson before he gave evidence to the Committee. Specifically, it is absolutely not the case that were it not for the issue of the lapsed planning permission none of these legal problems would have arisen and the shipment could have proceeded lawfully as intended. The legal issues at play are extremely complex. Friends of the Earth recognise that the ‘politics’ of the situation

mean that it was not in the interests of the Agency to draw particular attention the other legal issues however Friends of the Earth feels that it must do so. Any of the following can be confirmed with the Environment Agency and/or Hartlepool BC as appropriate. In particular:

- a. The Agency have now determined that the unmodified waste management licence did **not** permit the scrapping of ships but only of ‘off-shore structures’. There is absolutely no link to the ‘planning issue’.
- b. The Agency has determined that Able is required to make an application for a fresh waste management licence because it is not within the Agency’s powers to modify the quantity of waste permitted to be received at the site (being a term of the licence). There is absolutely no link to the ‘planning issue’ (Sir John Harman, Q82, “*We took legal advice and the legal advice we had was that the modification really was not valid, that it ought to require a new licence. That in itself would not have dissipated the problem over planning permission...*”)
- c. The Agency has determined that the its decision to modify the WML cannot stand, since the project of dismantling ships at TERRC on the scale proposed could be carried out consistently with that licence as modified, in ways that have not been assessed for the purpose of the Habitats Directive. Whilst this is directly related to the ‘planning issue’, the Agency’s legal position is not dependant upon the absence of that permission. A number of other licences which Able requires in order to construct a bund and therefore to carry out the dismantling work in a dry dock (including two of those referred to by Sir John Harman (Q66) have also not been obtained.
- d. Hartlepool BC have, in any event, informed Able (6 October) that even were the lapsed planning permission to be extant the construction that they now propose to create is sufficiently different from the permission previously granted (1997) so as to require a fresh planning application (which would likely require an environmental impact assessment).

Response to Question 5

“I talked about disputed facts or scaremongering and let me give you an illustration of this as you have touched on this. My constituents were left with the impression, because the wording tends to be loose and rather imprecise and poorly defined, that there are 800 tonnes of PCBs on these boats which sounds like a fantastically large amount to me and anyone else. On other occasions 700 tonnes or 300 tonnes have been the figures cited by Friends of the Earth and their allies. I have recently been informed that the scale of PCBs is more like one tonne rather than 800.”

9. Mr Mandelson’s statement that he has been informed that these ships contain one tonne of PCBs (and his implication that this is the true figure) is quite absurd and clearly indicates his lack of familiarity with the documents upon which Friends of the Earth’s concerns are based.
10. The ships contain 698 tonnes of PCBs (more precisely PCB contaminated materials), a figure which Friends of the Earth refers to for simplicity as 700 tonnes. That figure comes from the marine safety assessment carried out for Able by Det Norske Veritas and is not, so far as Friends of the Earth is aware, disputed by Able, the Agency or DEFRA – indeed the Minister specifically confirmed that figure in his evidence to the committee.

11. Friends of the Earth notes that when pushed by Mr Simpson on the question of whether the 700 tonnes set out in the DNV report could be treated as the factual base for the committee to work with Mr Mandelson commented that *“I am afraid that is a technical question which I am not qualified to comment on.”*
12. Mr Mandelson continues, stating *“As an avid reader of reports on this subject and receiver of other people's information all I can tell you is this information changes from the same source on a week to week basis.”* Friends of the Earth assumes that the reference to *‘the same source’* refers again to Friends of the Earth and is related to his early statement (see above) concerning the different tonnage figures (300 tonnes, 700 tonnes, 800 tonnes etc). This is an important point, amounting in effect, to a challenge to Friends of the Earth’s factual accuracy. Having reviewed Friends of the Earth press releases the problem is not with FOE accuracy but with Mr Mandelson’s reading of those releases. By way of example:
 - a. the 700 tonne figure (precisely, 698 tonnes) refers to the quantity of ‘non-liquid PCBs’ said to be contained within the 13 ships by Det Norske Veritas.
 - b. The 800 tonne figure (more precisely 837.3 tonnes) explicitly refers to the quantity of asbestos and PCBs in the second two ships (Canopus and Compass Island¹). The 300 tonne figure explicitly refers to the quantity of solid PCBs on those same ships².
 - c. Other figures relate specifically to, for example, the PCB and asbestos materials contained in the first two Ships³.

Response to Question 5

“Friends of the Earth also constantly refer to American reports and American assessments. For example, they quote an American report saying they contain hazardous substances such as asbestos and solid and liquid PCBs. They do not then go on and qualify that and explain that the liquid PCBs have already been removed from the ships thus creating the impression that this “toxic fleet” is sailing in our direction still full of liquid PCBs which, as I say, are variously weighed at 800 tonnes, 700 tonnes, 300 tonnes, it just sounds awful.”

13. Again Mr Mandelson is being extremely selective with the facts to suit his purpose. Friends of the Earth has always been clear that the PCBs on board the ships are in solid and not liquid form. Friends of the Earth has communicated that clearly in our press briefings where the PCB issue has been relevant. By way of example, in a press release of 11 November 2003⁴ FOE states:

“The ships collectively contain almost 700 tonnes of PCBs of which 400 tonnes are in the first four ships. These PCBs are in a solid state. The risk of these “leaking” from the ships is therefore negligible.”

¹ FOE Press release of 18 November 2003 stated *“The structure of the “Canopus” is made up of more than 500 tonnes of toxic materials. It will arrive in Hartlepool along with “Compass Island”. Between them the structures of the two ships contain more than 800 tonnes of American toxic waste – with more than 500 tonnes of asbestos and 300 tonnes of solid PCBs...”*

(http://www.foe.co.uk/resource/press_releases/united_states_ghost_ships0.html)

² See above.

³ Our press release of 4 November 2003 stated *“The Canisteo and Caloosahatchee each contains 34.1 tonnes of non-liquid PCBs and 61 tonnes of asbestos; the Compass Island contains 47.3 tonnes of non-liquid PCBs and 252 tonnes of asbestos; the Canopus contains 286 tonnes of non-liquid PCBs and 252 of asbestos.”* (http://www.foe.co.uk/resource/press_releases/environment_agency_in_cour.html)

⁴ http://www.foe.co.uk/resource/briefings/campaign_us_ghost_fleet.pdf

14. Similarly, in Friends of the Earth press release of 4 November 2003 we specifically stated that:
*“The Canisteo and Caloosahatchee each contains 34.1 tonnes of non-liquid PCBs and 61 tonnes of asbestos; the Compass Island contains 47.3 tonnes of non-liquid PCBs and 252 tonnes of asbestos; the Canopus contains 286 tonnes of non-liquid PCBs and 252 of asbestos”*⁵. (emphasis added).
15. Further, in Friends of the Earth’s detailed PCB briefing⁶ it makes clear that PCBs in ships are generally found in solid state in gaskets, cabling etc. Friends of the Earth has never sought to convey, and does not believe that any of Friends of the Earth communications could possibly have conveyed, the impression that the ships were carrying liquid PCBs.
16. The fact is that the US reports to which Mr Mandelson refers specifically categorise both solid and liquid PCBs as being hazardous. Indeed, it is for that reason that the export of both types is prohibited under US law.

Response to Question 8

“I think it is really very unfortunate, given that doing this work in dry rather than wet conditions would enhance conditions of safety and protection, that the protesters are effectively saying that in the absence of a constructed bund or dam there is a danger to protected habitats and the same people are saying we are going to do everything we can to make sure you do not get your planning permission to build on because this is what the politics of this situation has become, with enormous pressure on Hartlepool Borough Council to use this mishap, loophole, technical deficiency, disputed extant nature of a properly once given planning permission in an effort to make sure the ships and the recycling work cannot be carried out in Hartlepool.”

17. Friends of the Earth has never said (either implicitly or explicitly) that it is ‘going to do everything we can to make sure you do not get your planning permission’. Indeed, to the contrary, Friends of the Earth has very explicitly reserved its position as to whether or not we would object to any planning application until an environmental impact assessment process has been carried out. Our decision would depend on the precise details of the proposed planning application and, in particular, the environmental risks posed by the proposed project.
18. Mr Mandelson clearly sees the environmental impact assessment process as a ‘green obstacle’ in the way of development. In fact, that process is one of the most important processes in UK and European law for ensuring that members of the public (in this case, his constituents) are able to participate in planning decisions which are likely to have significant environmental impacts (such as this one quite obviously has the potential to do).

Response to Question 9

“I think you have to ask yourself why Friends of the Earth have taken this stand and Greenpeace have not. Greenpeace, who are a perfectly reputable, informed organisation with integrity are hardly slouches in coming forward and picking up on environmental issues. Why have we not heard their voice? Why do they take a different view? That really is something for Greenpeace versus Friends of the Earth to offer a view on. All I would say is that I think Greenpeace have a very real and legitimate concern - and it is one I share incidentally - about the export of British vessels to conditions which may end up in their breaking up and recycling taking place in less suitable and less environmentally concerned conditions in India, Pakistan

⁵ http://www.foe.co.uk/resource/press_releases/environment_agency_in_cour.html

⁶ http://www.foe.co.uk/resource/briefing_notes/ghost_fleet_pcb_keyfacts.pdf

or Bangladesh and that is an export trade which I do not favour, which Greenpeace have spoken up on and started to make their presence felt about and I shall be joining with them in doing that, but that is quite different from saying that there should be no trade in this recycling activity whatsoever and very different from saying that a qualified, expert and professional yard and facility like the one provided by Able UK at Graythorp is not best qualified to take on these vessels and do the necessary work.”

19. Mr Mandelson’s statements concerning Greenpeace are, again, simply incorrect. It is unclear whether Mr Mandelson was referring to Greenpeace UK or Greenpeace International (or both). For that reason Friends of the Earth sets out the stated positions of both organisations below.

20. On 5 November 2003 (before the evidence taking session) Greenpeace International issued a press statement headed ‘US Toxic Ghost Fleet not wanted in the UK’⁷. That statement, included the following:

“It is unacceptable that the US is allowed to dump its toxic waste on the UK, despite the fact that the actual conditions under which the ships will be scrapped are far more advanced those which are employed on the majority of ships (sic). The unfortunate irony is that this example has provoked protests and a government reaction, but there is little outrage that the UK and other nations send hundreds of similar ships every year to the Indian subcontinent for scrapping. That practice goes largely unnoticed and unregulated.

These ships should never have been sent to the UK for disposal. We oppose the export/import of hazardous materials for disposal and believe that hazardous materials should be dealt with in the country of origin, as long as suitable facilities can be provided to ensure safe disposal. The US Maritime Administration’s ships clearly contain hazardous materials and the US is clearly a country that is capable of dealing with its own waste.

The UK government should now act to ensure that no further ships are sent from the US to the UK. Secondly they should urgently determine what is the best environmental solution for dealing with the ships that have already arrived.”

21. On 24 November 2003 (after the evidence taking session) Greenpeace UK published its stated position on the US Ghost Ships in the following terms⁸:

“There has recently been considerable attention paid to the issue of scrapping redundant US naval vessels in the UK. The Greenpeace view is the following:

1. The UK should not import vessels for scrapping from other countries which have the technical ability to deal with their own vessels at high environmental standards. In the case of the US there is clearly the ability to scrap vessels in the country of origin to a high standard and this should be done. No further US vessels should be sent to the UK for scrapping.

2. Developed countries should not export their vessels to other countries for scrapping unless they have been thoroughly decontaminated and will be broken to a high environmental standard. It is particularly hypocritical for the UK Government to prevent the breaking of the so-called ‘Ghost Ships’ in the UK because of the lack of licences and safe dismantling facilities while simultaneously exporting Royal Naval vessels to yards abroad where they will be broken at lower environmental standards than in Britain.

3. With regard to the four US naval vessels currently moored at Hartlepool, it is still unclear whether the best environmental option is to scrap them in the UK (not necessarily in Hartlepool) or send them back across the Atlantic. Greenpeace believes that the Government should ascertain the best option using an open and transparent process and the act accordingly.”

22. The suggestion that there should be no trade in waste shipments of this type from

⁷ <http://web.greenpeace.org/news/details?campaign%5fid=3990&item%5fid=344596>

⁸ <http://www.greenpeace.org.uk/contentlookup.cfm?ucidparam=20031124152535&MenuPoint=D-C&CFID=204674&CFTOKEN=61050524>

countries such as the USA is not peculiar to Friends of the Earth. Recently, (19/11/03) the European Parliament voted on a further stage of amendments to the European Waste Shipment Regulations. One important development from the current Regulations which has been endorsed both by the Commission and the Parliament is that henceforth shipments of waste containing, contaminated with or consisting of the chemicals listed in the Stockholm Convention (including PCBs) are to be subject to the same provisions as shipments of waste for disposal (Art. 3(5)). The result of this is that imports of waste structures containing, consisting of or contaminated with PCBs will be banned unless coming from a country that “does not have and cannot reasonably acquire the technical capacity and the necessary facilities in order to dispose of the waste in an environmentally sound manner.” As a reportedly prospective European Commissioner Mr Mandelson would do well to pay close attention to the legal developments in this area.

Response to Question 12

“We, in our town and across Teeside, have lost a colossal amount of industry and employment over the decades. We cannot bring back the past, nobody pretends that we can or that we should, but I do not believe that dirty jobs are bad jobs for Teeside or anywhere else in the country. Nor do I believe that the thousands of people and families on Teeside who earn their living from industries like the chemical works at Seal Sands or our remaining steel and pipe mills, all of which could be described as dirty jobs are bad jobs, they are not, they are people's livelihoods. In the case of this recovery and recycling work we are opening up the opportunity and the possibility of the town and its skilled workforce being able to meet a very real environmental need and opening up a major industrial opportunity which is in this area of recovery and recycling of metals and other materials, and the disposal of waste when that is involved. We provide an environmental service in doing that, we also bring business and jobs to Hartlepool, and the alignment of those two things is no bad or mean thing for the people living in my town.”

23. Friends of the Earth does not, quite obviously, take issue with Mr Mandelson’s concern for jobs and business for Hartlepool. However, Friends of the Earth should points to the position taken by Hartlepool TUC in their statement on 23 October – an organisation for whom job creation and preservation is central. Hartlepool TUC stated that:

“Jobs and job creation are a major issue for HTUC within Hartlepool but there is no guarantee that any increase in workforce for Able UK would lead to increased employment opportunities for Hartlepool people. With this firmly set in mind it is without doubt that the potential short-term gain for Able UK could lead to long- term disadvantage for the people and community of Hartlepool.

US Congresswoman Jo Ann Davis said “I don't care if these ships are scrapped internationally or domestically” “we just want them out of our back yard ...” I can inform you that we don't want these ships in our backyard either. Due to the potential environmental damage, no guarantee of local jobs and possible impact on the economic development of Hartlepool as a whole, the HTUC are opposed to the arrival of these ships in Hartlepool.” (Evening Gazette, 23 October 2003)

Response to Question 13

“Mr Mitchell: How many jobs will it create?”

Mr Mandelson: On the immediate contract we are talking about work for a couple of hundred people but I am talking about the long-term future.”

24. Estimates of the amount of jobs that might be created as a result of the MARAD contract have varied wildly in the press from 50 to 1,000. Friends of the Earth is not in an authoritative position to comment but notes that in Able’s correspondence with the HSE (seeking an exemption to permit the import of asbestos) Able stated that *“The award of this contract will have a significant affect on both the local jobless community*

and business community, it is anticipated that a further 100 new jobs will be created to supplement our existing work force.” (Email from Able to HSE, 7 May 2003).

Response to Question 19

“There is an argument about whether the US currently has the capacity to take on these and all the other ageing vessels that need to be recovered and recycled, I believe by 2006. That is the time limit in the US. I think that to meet that deadline it would be impossible to depend on US facilities exclusively.

25. On what basis does Mr Mandelson ‘think’ that it would be impossible to depend on US facilities to meet the September 2006 deadline? Friends of the Earth accepts that this is an area of controversy but would draw attention to the statements of MARAD in its 2001 report to congress⁹:

“Slightly more than 30 vessels will need to be scrapped per year between FY 2003 and FY 2006 to meet the goal of scrapping 140 vessels by the statutorily imposed deadline. Historical data indicates that the average disposal time per vessel is approximately six to seven months. Therefore, MARAD intends to use qualified contractors with the capability of scrapping a minimum of three vessels per year”. (p.5)

“MARAD evaluated domestic capacity at both shipbuilding/repair yards and traditional shipbreaking yards (primarily located in Brownsville, Texas) to determine whether capacity is sufficient to meet program needs. An industry survey indicates that there are at least 12 domestic facilities capable of providing the services, to varying degrees. There are four East Coast facilities that indicated they can scrap 22 ships per year, six Gulf Coast facilities that can scrap 32 ships per year, and two West Coast facilities that can scrap 19 ships per year. Some of these facilities are involved in the Navy’s Ship Disposal Project under which the Navy plans to scrap an average of six ships per year through 2004.

In February 2001, the President of the Shipbuilders Council of America indicated that “the domestic capacity and expertise already exists to dismantle all of the surplus vessels in MARAD’s custody within a five-year period.” According to some shipyards, their interest is dependent, in part, on some continuity of work. The assignment of more than one or two ships to a facility is necessary to justify the capital and labor costs required to integrate scrapping into normal shipyard activities. Moreover, a regular supply of vessels should allow for long-term cost savings as shipyards become more experienced at scrapping.” (p.6)

Notwithstanding the overall domestic capacity to safely and environmentally scrap ships, the level of competition necessary to help control overall program costs and achieve “best value” as defined by the legislation is unclear.” (conclusion, p.21)

26. Friends of the Earth also draws to attention a letter dated 21 November 2003 from Mr Michael Donovan, Director, International Shipbreaking Limited L.L.C. to David Bowe MEP (in response to Mr Bowe’s comments that there did not exist sufficient capacity and/or technical expertise in the USA):

“Re: U.S. facilities handle thousands of tons of PCBs annually from US Navy and Maritime Administration (“MARAD”) ships

Our company, International Shipbreaking Limited, and a number of others dismantle ships for the U.S. government and appropriately remove and dispose of PCBs and other hazardous materials. Our industry’s collective capacity has, for many years, well exceeded the demand for such services as evidenced by funds appropriated for U.S. Navy and U.S. MARAD ship disposal programs. MARAD’s own study “A Report to Congress on the Program for Scrapping Obsolete National Defense Reserve Fleet Vessels” dated 4/30/01 concluded on page 6 that at least 12 domestic facilities had the capacity to dispose of 73 ships annually. Although I cannot speak for others in my industry, our company is a participant in both Navy and MARAD ship disposal programs and has the capacity to dispose of 12 ships per year at its own facilities.

I am concerned by the statements being made to the press that are so clearly erroneous and invite you and your colleagues to visit our facility in Brownsville, Texas. You will see, first hand, that abundant capacity exists for disposing of large government vessels in the United States by a shipyard that applies

⁹ www.foe.co.uk/resource/evidence/report_congress_vessel_scrap_2001.pdf

current technology to properly remediate, recycle and dispose of the vessels. We look forward to showing you facilities in place such as our grit blast system for properly removing PCB contaminated paint, asbestos removal procedures using vacuum shredding systems, aluminum smelting furnace, water treatment system, and metal cutting equipment including a 1400 ton Richards gravity shear. You may also visit our website www.shiprecycling.com to learn more in advance of a visit. Please feel free to call me with any questions at (303) 442-9675."

Response to Question 20

"I do not think anyone acted in bad faith, what [the Environment Agency] did do though was - I choose my words carefully - wobble in the face of a torrent of claims, allegations and legal threats and rather than wobbling I think they might have been better to stick their ground and see their detractors for their day in court rather than pull stumps, in my view prematurely."

27. The Environment Agency is not blameless in this matter and it is not for Friends of the Earth to defend them. However, credit should be given to the Agency where credit is due. The Agency did not, as he suggests, 'wobble'. It took very detailed legal advice from expert leading Counsel and, having reflected upon that advice and upon the legal arguments advanced by Friends of the Earth, acknowledged, quite properly, that the proper legal processes had not been followed and that the modification to the licence could not stand. Contrary to Mr Mandelson's implication, the Agency will indeed "*see their detractors for their day in court*", their detractors now being the company in question.
28. Friends of the Earth did not mount a "*torrent of claims, allegations and legal threats.*" Friends of the Earth analysed the legal position, gave the Agency fair and proper warning of FOE concerns and commenced legal proceedings on the basis of expert legal advice.

Response to Question 27

"If they were left to continue to fester, as they have been for so long, in the James River, yes they would continue to deteriorate, which is an unacceptable environmental outcome. If I can make this point: much has been made of the American Maritime Agency talking of these ships as an environmental disaster waiting to happen, if you look at the context in which that statement was made, Chairman - it is another example of the half truths about this - you will see that the view was if they were left to remain in their present deteriorating state, without any action being taken, and without proper movement and recovery and recycling of the materials involved, then indeed they would continue to deteriorate and become a greater environmental hazard. It was a plea to get rid of them, to have them dealt with, broken up, and their materials recycled, it was not a description of the toxic contents of these ships and their cargoes which had already been removed that was defined as the environmental disaster waiting to happen and yet you see how these clever elisions of fact and description -"

29. Mr Mandelson asserts that the statements by MARAD (Maritime Administration, not Maritime Agency) concerning the environmental risk posed by these ships "*was not a description of the toxic contents of these ships*" and continues to accuse critics of the project (by implication, in particular, Friends of the Earth) of "*clever elisions of fact and description...*" (described by Mr Wiggin as 'spin').
30. It appears that Mr Mandelson has not read the reports upon which he comments. Friends of the Earth by contrast has not only read the reports in great detail but has encouraged others (including Mr Mandelson) to do so and have made the key documents available in easy electronic form¹⁰.

¹⁰ See for example:

www.foe.co.uk/resource/evidence/report_congress_vessel_scrap_2001.pdf

31. Contrary to Mr Mandelson's assertions, the US authorities (including MARAD) base their conclusions of environmental risk very specifically upon the toxic contents (**not** cargoes) of these ships, including specifically the presence of large quantities of **solid** PCBs. At risk of again being accused of taking quotes out of context (by Mr Mandelson and Mr Peter Stephenson, Able UK) Friends of the Earth sets out the following brief quotes which clearly illustrate that point. We would encourage interested parties to consider the reports in full:

"Environmental dangers associated with MARAD's old, deteriorating ships are increasing daily. These vessels are literally rotting and disintegrating as they await disposal. Some vessels have deteriorated to a point where a hammer can penetrate their hulls. They contain hazardous substances such as asbestos and solid and liquid polychlorinated biphenyls (PCBs)." (Executive Summary, p.ii)

"The 110 vessels currently awaiting disposal pose environmental risks because they are deteriorating, contain hazardous materials, and contain oil that could leak into the water. Although MARAD considers the disposal of all 110 vessels to be a priority, it has designated 40 as "worst condition" vessels¹¹. These 40 vessels have been in MARAD's Fleet for an average of 20 years, are in particularly bad condition, and may require additional or special maintenance. A routine inspection of 11 of the 40 "worst condition" vessels revealed corrosion, thinning, and rusting of the hull; asbestos hanging from pipes below deck; lead-based paint easily peeled from the ship; solid PCBs (in cabling); and in some instances remnants of liquid PCBs in electrical equipment." (Executive Summary p.v)

"The vessels are deteriorating, contain hazardous substances, and pose an immediate environmental threat." (p.7)

Response to Questions 35 & 36

Q35 Mr Drew: From your understanding what is preventing the owners of these ships from sending the remaining ships to these shores at this time?

Mr Mandelson: What is stopping them sending the remainder of the fleet?

Q36 Mr Drew: They have a contract to have them dismantled in the UK, why have they not sent them?

Mr Mandelson: Because Able UK can only receive them if they have licensing and permissions without which the owners cannot allow them to set sail. Were they to do so they would be infringing the Transshipment of Waste Directive which would cause everyone to fall foul of the European Commission.

32. Mr Mandelson's does not answer the question. The reason that the remaining nine ships have not left the USA is because environmental groups in the USA (Basle Action Network and Sierra Club) successfully obtained a Temporary Restraining Order against MARAD preventing those nine vessels from leaving pending a full hearing of the case. Following extensions of time agreed between the parties that hearing is now set down for April 2004. (See also Mr McGarvey's response to Q58). The basis on which the Temporary Restraining Order was granted was that "*The public would be well served by requiring [MARAD] to comply with their statutory duty to prepare an Environmental Assessment before exporting additional ships containing PCBs, even if only the solid variety.* (p.9 of judgment)"¹²

Response to Question 39

I have to say that there is no question of the planning permission being anything other than extant until the political bandwagon got going. Even throughout October Hartlepool Council

www.foe.co.uk/resource/evidence/report_congress_vessel_scrap_2002.pdf

www.foe.co.uk/resource/evidence/report_office_inspect_general_vessel_scrap.pdf

www.foe.co.uk/resource/evidence/40_worst_ndrf_scrap_ships.pdf

¹¹ 11 of the 13 vessels due to be delivered to the UK are in the list of 40 worst ships (see

www.foe.co.uk/resource/evidence/40_worst_ndrf_scrap_ships.pdf)

¹² www.foe.co.uk/resource/evidence/judge_collyer_judgement_oct_03.pdf

was very reluctant to reach a firm view with any certainty whatsoever that the planning permission was not extant until the pressure became too great to withstand to be honest.

33. Mr Mandelson's answer is factually incorrect (again).
34. The Environment Agency was alerted to the fact that the planning permission '*appears to have expired*' as early as 1 July 2003 (at a meeting with one of Hartlepool BC's planning officers). Furthermore, at a meeting between the ports authority and the Environment Agency in relation to this matter on 22 August 2003 it was specifically stated that "*Able UK intends to reinstate the dry dock gates but planning permission for an interim bund has lapsed.*"¹³ Both dates are before '*the political bandwagon*' (as Friends of the Earth understands Mr Mandelson's term) got going.
35. Throughout discussions between Friends of the Earth and Hartlepool's planning officers from Friends of the Earth's earliest involvement in August it was made clear that Hartlepool BC's planning office believed that the planning permission had lapsed. That is no criticism of Hartlepool BC. The fact that Hartlepool BC only made any kind of 'formal' determination that the permission had lapsed was because Able only applied (on 29 September 2003 – the day before the Agency's decision to modify the waste management licence) for a modification to the planning permission in question to construct a new type of 'bund'. In order formally to consider that application, Hartlepool BC had formally to determine whether there in fact existed an extant permission capable of modification. On 6 October (the day that the first two ships left) Hartlepool BC formally wrote to Able stating that no such permission existed. Had Able not made such an application (or any other formal request triggering such a determination) then Friends of the Earth would still be none the wiser.
36. As noted above, Hartlepool BC also informed Able that the modifications applied for would, in any event, require a fresh application to be made and could not be made by way of a modification (even had the permission been extant).
37. In short, it was not Friends of the Earth or others who put pressure on Hartlepool to declare the planning permission lapsed – there was no need for FOE to do so; rather it was Able who vigorously contested (and continue vigorously to contest) Hartlepool's understanding (on Counsel's advice) of the legal situation.
38. The implication that the entire planning matter comes down to some 'missing papers' (Mandelson, Q3) is simply incorrect. Hartlepool BC will doubtless provide further information on that should the Committee require it.

Conclusion

Friends of the Earth does not understand why Mr Mandelson has taken the position he has without seeking fully (or at all) to acquaint himself with the basic facts and with the serious, legitimate, well-founded and multi-faceted concerns articulated by Friends of the Earth and by others (including Hartlepool BC, Hartlepool TUC, Margot Wallstrom, Greenpeace, members of the public, RSPB and many more). Put at its lowest, Mr Mandelson's evidence to the Committee was ill-informed and inaccurate.

¹³ Minutes of both of the meetings referred to here are available on request and can be made available to the Committee.