

**Friends of the Earth**

**Northern Ireland**

# Newsletter

Issue 9 Autumn 2004

Friends of the Earth inspires solutions to environmental problems which make life better for people

## 'Illegal' Crown immunity must go

In a move designed to bring Northern Ireland up to modern environmental standards, Friends of the Earth has asked the European Commission to take legal action on the issue of Water Service's Crown immunity.

Although Water Service is Northern Ireland's biggest polluter, it cannot be prosecuted for its environmental crimes because it enjoys immunity due to its status as a 'Crown' body. The worst that can happen to Water Service managers is a stiff letter from Environment and Heritage Service while their counterparts in the private sector can face large fines and even imprisonment.

Friends of the Earth's Northern Ireland Director, John Woods, said:

"We believe that Water Service's Crown immunity contravenes Article 10 of the Treaty of Rome as well as a large body of case law from the European Court. We would expect this to be an open and shut case for the Court - the Treaty obliges Member States to enforce European law and Northern Ireland has been deliberately obstructing the law by failing to remove the anachronism of Crown immunity."

Regional Development Minister, John Spellar MP, has said that Crown immunity will be removed in 2006 when Water Service is 'externalised' into an arm's length Government owned company. Friends of the Earth, however, believes that the 2006 deadline is likely to slip substantially, perhaps by a number of years, and that it is not acceptable for Water Service to remain above the law.

John Woods continued:

"We approached Government earlier this year with a plan for decoupling the removal of Crown immunity from the plans to 'externalise' Water Service. We proposed that legislation to remove immunity be passed without delay, that a proper enforcement policy be developed and that a legally binding timetable for the completion of new sewage works be agreed.

Government's negative response left us with no alternative but to lodge an official complaint with the European Commission."

"Ministers need to re-think their priorities. If they allow environmental standards to be a casualty of their drive to 'externalise' Water Service they will find that the financial benefits from increased revenue will be outweighed by



Water Service's Crown immunity from prosecution could be in breach of European law.

fines imposed by the European Court for deliberately failing to enforce the law."

Friends of the Earth raised this issue directly with the European Commission during a visit to

Brussels earlier this year. Commission officials were surprised to hear that Northern Ireland had no effective means of ensuring that Water Service obeyed European law.



Who will take responsibility for the failure of Northern Ireland's Waste Management Strategy?

## Waste strategy has "failed to deliver"

It's official - Northern Ireland's Waste Management Strategy has failed. A report from the Waste Management Advisory Board, published in June, states that only 14 out of 90 strategy targets have been achieved since its adoption in 2000.

On the key target of recycling 25 per cent of household waste by 2005, the Board reports "Northern Ireland has failed to deliver" and comments merely "some evidence of patchy progress". On the Department of the Environment's commitment to use recycled materials, the Board said "no progress". Reducing demolition waste going to landfill was "not measured - progress likely to be minimal." The report identifies a "huge infrastructure deficit" in waste management facilities including for recycling and for dealing with hazardous waste.

Key failures included an inadequate implementation plan and the lack of clear objectives. The Board states "this level of planning has not been completed for any key commitments" and it appears that no implementation plan existed for most of the strategy's life.

Serious questions are raised as to the competence of staff within Environment and Heritage Service (EHS). The report says that "a formal business planning process has not been used" in implementing new waste regulations and that there is a lack of appropriately qualified staff.

This is just the first of three reports on the performance of EHS's waste unit, to be released this year. The Northern Ireland Audit Office and the Northern Ireland Affairs Committee of the House of Commons are due to publish their own reports later in the

year. It is likely these reports will confirm the findings of the Waste Management Advisory Board.

John Woods, Director of Friends of the Earth (Northern Ireland) said:

"Not only has EHS failed to recruit qualified staff but questions must be asked about the performance of senior management. We expect that the Audit Office and the Northern Ireland Affairs Committee will agree with Friends of the Earth's impression of chaotic complacency within EHS. Some senior managers should start considering their positions."

The Board's first recommendation is that an independent Environmental Protection Agency is established. Friends of the Earth fully supports the Board on this proposal.



### Sammy Weatherup



The Craigavon campaigner talks to Lisa Fagan about his work.

### Comment



Why is Europe important for protecting Northern Ireland's environment?

### Rail threat



Northern Ireland's embattled railways face the axe again.

### Planning freeze



Is the introduction of a planning freeze just a matter of time?

# Sammy Weatherup

One man knows more than most why Northern Ireland needs an independent Environmental Protection Agency. Sammy Weatherup is a whistle-blower whose efforts to prevent pollution at the factory where he works are being frustrated by the Government regulator charged with protecting our environment. Lisa Fagan reports.

For eight years Sammy Weatherup has worked at Silverwood Enterprise, a zinc galvanising plant in Craigavon. Four years ago he was taken to hospital:

"I could hardly breathe and had severe chest pains, I was also vomiting. I thought I was having a heart attack. I was kept in and put on a nebuliser. Next day, the doctor gave me an inhaler and said I had asthma. I was shocked because I had no previous respiratory problems but he was adamant and said it might be work-related."

Dense clouds of gas are released during the galvanising process, filling the factory and escaping to the atmosphere. Sammy believed the pollutants had triggered his asthma so, on returning to work, he told management what his doctor had said:

"From being the blue-eyed boy, I had suddenly become the enemy. I was a supervisor but was demoted to being a forklift driver which meant my wages were cut by about one third."

The 54 year-old father of five recorded video footage of the air pollution and lodged a claim for occupational asthma which will be heard at Belfast High Court in September. Then he turned his attention to the issue of water pollution. Sammy and his co-workers had been asked to transfer a waste liquid, thought to be sodium dichromate, from a storage tank into a nearby stream. This stream feeds into Lough Neagh which is a source of drinking water.

Sammy joined Craigavon Friends of the Earth and began campaigning for the factory to clean

up its act. The group started by asking questions of Northern Ireland's environmental regulator, DOE Environment and Heritage Service (EHS).

In response, EHS insisted on the installation of new anti-pollution equipment but working practices in the factory reduce its effectiveness and the problem remains largely unmitigated. The pollution has gone undetected because EHS staff have warned the factory when an inspection is imminent.

And although there has been no repeat of the water pollution incident, Sammy is worried that the sodium dichromate is not being disposed of properly and remains stored on-site.

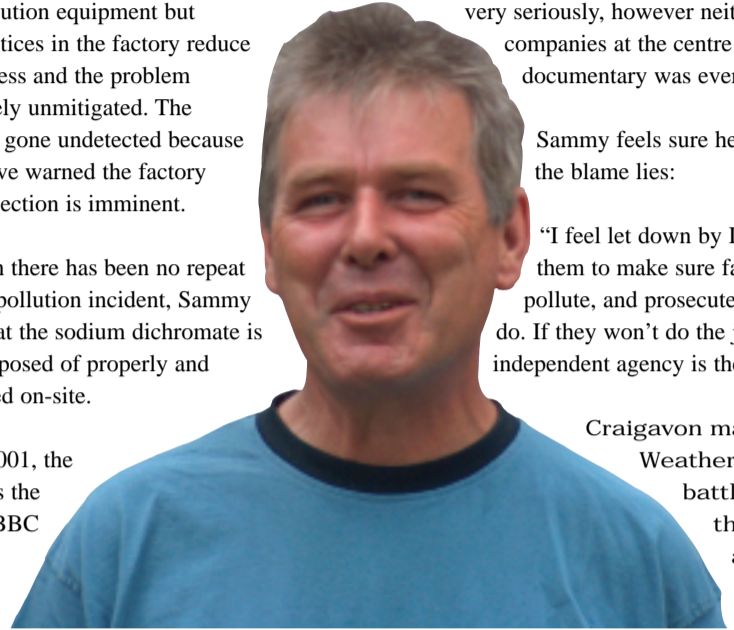
In October 2001, the company was the subject of a BBC Spotlight investigation into

pollution crime. The programme exposed the ineffectiveness of EHS in regulating polluters such as Silverwood Galvanising. Next day, the Environment Minister assured the public that his Department took the issue of pollution control very seriously, however neither of the companies at the centre of the documentary was ever prosecuted.

Sammy feels sure he knows where the blame lies:

"I feel let down by DOE - it's up to them to make sure factories don't pollute, and prosecute them if they do. If they won't do the job, then an independent agency is the only answer."

Craigavon man, Sammy Weatherup, has battled against the polluters and regulators alike.



## Environmental protection debate gains momentum

Momentum is building in the campaign by nine leading green groups to reform the institutions charged with protecting Northern Ireland's environment. One of the options being considered is the creation of a new independent Environmental Protection Agency.

A new agency to assume the responsibilities of DOE Environment and Heritage Service was just one of the remedies assessed by leading academic lawyer Professor Richard Macrory in his report published in April. Macrory was commissioned by a coalition comprising Conservation Volunteers, Friends of the Earth, National Trust, Northern Ireland Environment Link, Royal Society for the Protection of Birds, Ulster Wildlife Trust, Wildfowl and Wetlands Trust, the Woodland Trust and WWF.

The Macrory report formed the basis of a wide-ranging consultation exercise which included a conference held in May at which the issues were debated. The conference was well attended and attracted excellent media coverage. Reporting on the event, BBC Environment Correspondent Mike

McKimm said 'this time the NGOs [non-government organisations] have got the bit between their teeth and are not going to take no for an answer'.

More than 100 responses were received to the consultation. These are now being analysed independently of the coalition by Liz Fawcett Consulting whose report is due in the autumn, ahead of a meeting with Environment Minister Angela Smith. By then the environmental groups are expected to have considered the consultation findings and arrived at a common position which they will begin to advocate.

Northern Ireland is the only part of the UK and Ireland without an independent Environmental Protection Agency. In 1990, a House of Commons Committee called for the creation of an independent agency but their calls were rejected in the face of opposition from senior officials.

Friends of the Earth's response to the consultation is published at [www.foe.co.uk/ni](http://www.foe.co.uk/ni) The consultation findings will be published on the coalition website at [www.epconsultni.org.uk](http://www.epconsultni.org.uk)

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## Must try harder on recycling

Research carried out in May by Friends of the Earth leaves Northern Ireland languishing near the bottom of the UK's recycling league table. The research shows that councils here still have a long way to go before they meet the targets set out in the Waste Management Strategy.

The research found that:

- Only 6 councils (23 per cent) offer all their households a doorstep collection of at least one material;
- On average, local authorities serve about 50 per cent of households with a doorstep collection of two or more materials;
- 'Best practice' doorstep collections are more scarce. About one third of local authorities provide a collection for five or more materials. Only 15 per cent of households, on average, are served with this type of collection;
- But the news isn't all bad as doorstep recycling services are growing, with 18 councils (69 per cent) now offering a doorstep collection for two or more materials to some households.

Local authorities are being urged to follow Friends of the Earth's 'best practice' code to improve the collection service offered to householders and increase participation in recycling schemes.

Measures include:

- Collecting a wide range of materials on a weekly basis;
- Providing better information to householders; and
- Increased effort to reach out to 'difficult' properties such as high-rise and rural dwellings.

Some local authorities run excellent recycling schemes. For example, Banbridge, Fermanagh and Magherafelt District Councils provide a very high level of service for their residents. These 'best practice' schemes need to be copied across the country if Northern Ireland is to have a recycling record to be proud of.

Declan Allison, Friends of the Earth Campaigner said:

"Northern Ireland's recycling record leaves a lot to be desired. Some councils have done very well but most have a lot still to do. But the DOE

must shoulder much of the blame for this failure. It has produced neither an implementation plan for the Waste Management Strategy nor policed the waste industry effectively. It's time the DOE really did wake up to waste."



More doorstep recycling schemes need to be introduced if waste management targets are to be met.

# Why Europe is important



John Woods is the Director (Northern Ireland) of Friends of the Earth.

In my line of work, air travel is something that I try to avoid so it was not without some thought that I decided to fly to Brussels earlier this year for a series of meetings with European Commission officials. Actually I managed one leg of the journey by train – the Eurostar from London to Brussels and Paris is a wonderful service. I can't imagine why anyone chooses to fly.

Regular readers of this newsletter will be well aware of the string of complaints that Friends of the Earth has made to the European Commission on Northern Ireland's abysmal record on enforcing European environmental law. These have covered sewage pollution, illegal dumping of waste, closure of landfill sites and the neglect of Strangford Lough. In this edition we report on our latest complaint on the legality of Water Service's Crown immunity.

The Commission of course, receives thousands of such complaints each year, from right across the European Union and, at first sight, there is no obvious reason why Northern Ireland deserves swifter or more thorough action than any other part of the Union. And yet it was with precisely that in mind that I made my trip to Brussels. My mission was to persuade the Director-General for the Environment that Northern Ireland is uniquely needful of intervention by the Commission.

Northern Ireland's grim record speaks for itself. That alone would suggest that Europe should keep a close eye on what is happening here. The Commission is certainly now aware of the scale of our problems - officials were clearly surprised when they learnt that Water Service could not be prosecuted for breaches of the law. Add to this Northern Ireland's very weak institutions of environmental governance as exemplified by EHS's poor enforcement record on waste, water and habitats, and the argument becomes more compelling.

But the clincher, to my mind, is the absence of democratic accountability. Direct-rule Ministers are not electorally accountable to the people of Northern Ireland. The fact that for 34 of the last 36 years Northern Ireland has been ruled directly from Westminster has left a lack of public engagement with all-powerful Government departments. Many public servants have forgotten that it is their job to serve the public. Ministers (who typically devote no more than a day a week to each portfolio) are a poor counterbalance to this. Thus individuals and NGOs that would press for greater protection of the environment have no political levers to operate except turning to Europe.

I think the Commission is sympathetic to our predicament and it is pressing ahead with action on our official complaints. But ultimately it is up to the people of Northern Ireland to hold Government to account for its environmental performance. And the only way to do that is to bring back the Assembly.

## Rail threat

Just four years on from a hard-won campaign to save Northern Ireland's railways from closure, the fight is on again. This time the axe hangs over the Whitehead to Larne and Ballymena to Londonderry lines which together account for almost half the region's rail network.

In the spring, Regional Development Minister John Spellar published a Position Report and began a consultation on the future investment needs of Northern Ireland's railways. Rail campaigners have criticised the Position Report, however, because it underestimates passenger numbers on the threatened lines while exaggerating the cost of their retention. Figures for rail patronage are suppressed by the exclusion of passengers boarding at intermediate

stops, for example Ballymoney, Coleraine and University.

The Position Report also distinguishes between the 'Lesser Used Lines' (Ballymena-Derry and Whitehead-Larne) and the 'Core' (the rest of the network) but includes figures showing that three times more passengers use the Ballymena-Derry line than the Belfast-Ballymena stretch!

In 2000, another direct rule minister threatened to close all except the Belfast-Dublin line but the public outcry that greeted his proposal, coupled with the return of a devolved Assembly at Stormont, saw the network retained and an order placed for 23 new trains. The first of these will enter service in the autumn.

Almost 10,000 objections have been lodged to the renewed threat, with the campaign against closure being led by

lobby groups Rail 21 and Into the West. In its submission, Friends of the Earth expresses dismay that crucial decisions about the future of the rail network should be based on a report containing so many flaws.

Despite chronic under-investment in rail over many years, there has been a remarkable increase in patronage over the past four years. The network's potential for further growth is demonstrated by an independent analysis commissioned by Translink and carried out by leading transport consultants Booz Allen Hamilton (BAH).

Their report concludes that a prudent level of investment could see passenger numbers double by 2028/9 and the 60 per cent passenger growth target set in the Regional Transportation Strategy achieved by 2012. The BAH report envisages



A busy train at Coleraine station: crucial decisions about the future of the rail network will be based on a flawed report.

trains every 10 minutes to Bangor and Lisburn, every 15 minutes to Whitehead, every 30 minutes to Ballymena and Larne and an hourly service to Coleraine and Londonderry, together with faster journey times.

Friends of the Earth's consultation response is published at [www.foe.co.uk/ni](http://www.foe.co.uk/ni). The Minister's decision is expected in the autumn.

### Lignite protected

Following the decision by energy company Ballymoney Power to withdraw its application to mine for lignite near Ballymoney, Enterprise Minister Barry Gardiner announced that the reserves would be protected for potential future exploitation. Friends of the Earth believes that this is a regressive step and that he should be ruling out the use of lignite, not encouraging it.

### North coast windfarm

The feasibility study into siting a windfarm on Tunes Plateau, off the coast from Portstewart, is progressing well. Friends of the Earth supports the development of a range of renewable energy technologies, including windfarms.

### Planning appeals

The Minister of the Environment, Angela Smith MP, announced that she would not allow a right of appeal for objectors to planning applications, known as third party rights. A key argument against such rights is the cost of the loss of development due to successful appeals. So we are to be denied a right of appeal because the system might work!

If you would like to campaign with others for a better environment, you are welcome to join your nearest Friends of the Earth Local Group. Further information is available by contacting the group co-ordinator using the details below. If you wish to set up a group in your area contact Lisa Fagan at [lisaf@foe.co.uk](mailto:lisaf@foe.co.uk) or telephone 028 9023 3600.

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## Northern Ireland sensitive to sewage

Friends of the Earth's complaint to the European Commission on sewage of last year is being acted upon. The Commission has issued a 'Reasoned Opinion' to the UK Government which raises serious concerns about sewage treatment in areas sensitive to eutrophication (nutrient enrichment). The Reasoned Opinion stage is the final warning to the UK before the case is referred to the European Court of Justice which could see crippling fines imposed on Northern Ireland.

The Commission is particularly concerned with sewage works which discharge into Lough Neagh and Lough Erne. Sewage works in these areas require tertiary treatment, the highest level of treatment. But some areas receive only partial tertiary treatment while other towns receive no tertiary treatment at all. Northern Ireland has a problem with eutrophication of both inland and coastal waters and this inadequate

sewage treatment can only exacerbate the situation.

Eutrophication is the process by which freshwaters, estuaries and coastal waters become over-enriched with nutrients. This results in excessive growth in algae which can drastically reduce oxygen levels and disturb the balance of life in the water.

In addition the Commission is querying the timing of the designation of inner Belfast Lough as a sensitive area. The Urban Waste Water Treatment Directive required sensitive areas to be identified and designated by 31 December 1993. Inner Belfast Lough, however, was not designated until December 2001.

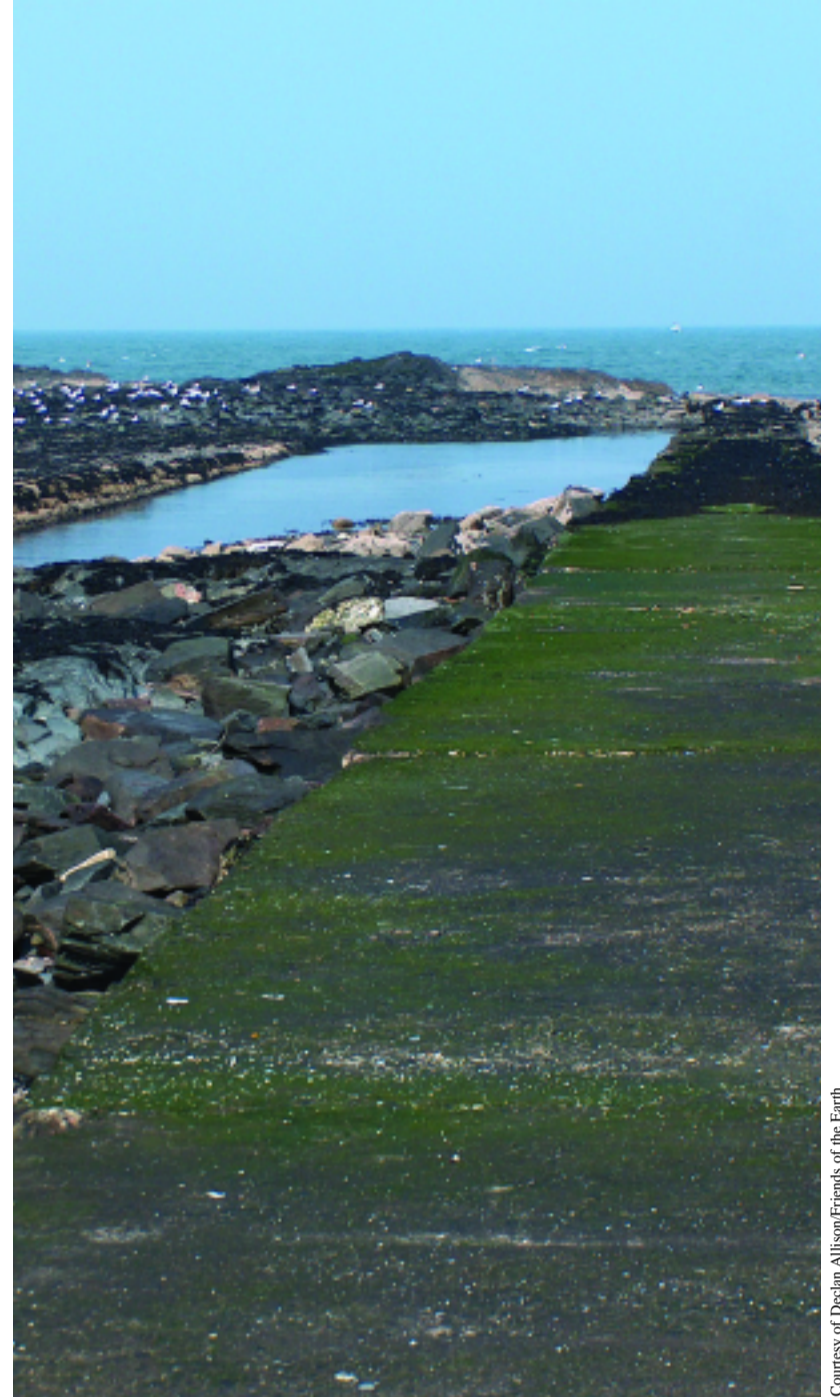
Under the Urban Waste Water Treatment Directive the Lough Neagh catchment, Lough Erne catchment, inner Belfast Lough, the tidal Lagan and the Quoile Pondage have all been designated as sensitive to eutrophication. The European Commission argues that the designation of some waters was unlawfully delayed and therefore the additional treatment should have been

provided earlier. It also maintains that outer Belfast Lough, Lough Foyle, Carlingford Lough and the Bann estuary should also be designated as sensitive. Furthermore it has recommended that all bathing waters and shellfish waters be designated.

Declan Allison, Friends of the Earth Campaigner, said:

"This action by Europe is very welcome. Lough Neagh is now the most polluted large lake on the island of Ireland and Lough Erne is also highly enriched. These substandard sewage works, pumping out poorly treated human waste, are only making the situation worse. But while Water Service continues to hide behind its Crown immunity from prosecution for this pollution, there is no incentive to clean up its act. The Commission's formal warning should provide that much needed incentive."

The UK has previously been the recipient of a Reasoned Opinion on its policy of designating sensitive areas. In July 2003 the Commission described the UK's designation system as inadequate and ad hoc.



Courtesy of Declan Allison/Friends of the Earth

Europe is not convinced that Northern Ireland's waters are being properly protected from sewage pollution.

## Europe begins legal action on planning

The European Commission has confirmed that it has begun legal action against the UK Government over the Department of the Environment's decision to allow housing development in 56 pollution 'hotspots'. In these areas, sewage treatment works are not up to the standard required by European law - the Urban Waste Water Treatment Directive. Friends of the Earth believes a planning freeze is now inevitable.

Friends of the Earth made a complaint to the Commission in March 2003 highlighting Northern Ireland's appalling record on sewage. The complaint also brought to the attention of the Commission the policy of allowing housing development to proceed despite inadequate sewage facilities. Such developments, if granted planning consent, would exacerbate the existing sewage pollution problem.

Friends of the Earth's Northern Ireland Director, John Woods, said:

"Environment Minister, Angela Smith, now has no choice but to ban housing development in these sewage pollution hotspots. To do otherwise would be to invite the

wrath of the European Court in the form of enormous fines."

Among the places most likely to have development put on hold until sewage works can be built or upgraded are Bangor, Donaghadee, Ballyclare, Newtownabbey, Carrickfergus, Ballymena, Cookstown, Omagh, Portrush and Portstewart.

The topsy-turvy policy dates back to October 2002 when the then Environment Minister, Dermot Nesbitt MLA, instructed Environment and Heritage Service (EHS) not to object to planning applications on grounds of sewage pollution. This gagging of EHS turned the planning process on its head and means that those areas most in need of protection are afforded the least. Direct rule Minister, Angela Smith MP, has continued the policy despite several warnings from Friends of the Earth that she is acting illegally.

John Woods continued:

"It is now nearly two years since Dermot Nesbitt announced his disgraceful decision to ignore the environment, public health and European law by allowing housing to be built without regard to pollution impact. The European Commission is sending a very strong signal to the

UK Government to bring Northern Ireland into line. We expect Angela Smith to act without delay."

The Commission's action, known as a 'letter of formal notice', is the first step in a legal process which could

ultimately see fines in excess of £100,000 per day being imposed by the European Court of Justice.



Courtesy of Declan Allison/Friends of the Earth

DOE is inviting the wrath of Europe by approving developments in pollution hotspots.