

EU COURT NEONICOTINOID INSECTICIDE JUDGMENTS: SIGNIFICANCE FOR UK AGRICULTURE, CHEMICALS AND ENVIRONMENTAL POLICY, PART III

In the first article of this series we reported on the three joined neonicotinoid pesticide judgements issued by the EU General Court on 17 May 2018 ([First Article](#)).

In the [second article](#) we considered in more detail why these judgements come at a particularly significant point for agriculture in the UK and EU, the immediate implications for Brexit, how they represent a divergence between the UK government and some farming organisations, and why that matters for the current consultations on an *Environmental Principles and Governance Bill*. We will consider environmental principles and governance further in future articles.

In the third and final article in this series we will consider some of the impacts of farm chemicals on farmland birds and on water and question the implications of the judgements and current policies and practices for human health.

Impacts of Farm Chemicals on Birds and Water

The Royal Society for the Protection of Birds 'RSPB' [reports](#) that increased use of farm chemicals – fertilisers and pesticides – is one factor, amongst several others, in the decrease in bird populations in the British countryside, stating that the following list shows percentage declines of some bird species recorded in the Common Bird Census between 1970 and 1999:

Tree sparrow - 95%
Corn bunting - 88%
Willow tit - 78%
Spotted flycatcher - 77%
Woodcock - 74%
Starling - 71%
Turtle dove - 71%
Song thrush - 56%
Bullfinch - 53%
Skylark - 52%
Cuckoo - 33%

Meanwhile the [EU Drinking Water Directive 98/83/EC](#), and the newly adopted proposal for its replacement, set very low levels, of 0.1 microgrammes per litre, as allowable levels for most individual pesticides, 0.030 microgrammes per litre for aldrin, dieldrin and heptachlor epoxide, and 0.5 microgrammes per litre for 'total pesticides'.

However, there are some signs that water companies, and their customers, face enormous costs in meeting these very strict requirements. For example, Anglian Water has [estimated](#) that it could cost an initial £600 million, with a further £17 million per year, to set up and run treatment simply to deal with metaldehyde from slug pellets, and that this could imply a 21% increase in the cost of water bills to its customers.

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Impacts on Human Health

Michael Deland, who was Chair of the U.S. Council on Environmental Quality from 1989 to 1993, has stated –

“We are now confronting, because of our industrialised society, an entirely different variety and much more insidious and complex form of pollution, namely toxics. We measure pollutants now, not in tons, but in parts per million, trillion or quadrillion. The challenge that we’ve not yet been able to meet adequately is the causal relationship between a part per million, trillion or quadrillion, of a given pollutant, and its effect on our health and that of our kids. That is where a good deal of our research needs to be.”

Regulation has nevertheless tended to rely upon ‘tolerances’ or ‘safe’ levels, as reflected in the EU Drinking Water Directive example given above. However, as Rachel Carson noted in [Silent Spring](#), back in 1963, in effect all that establishing tolerances is doing is authorising contamination of public food supplies with poisonous chemicals so that farmers and processors can enjoy the benefits of cheaper production – then penalising the consumer by raising taxes to maintain a policing agency to make sure that he does not receive a lethal dose. However, as she added drily, doing the policing job properly would require unsustainable levels of taxes, given the present volume and toxicity of agricultural chemicals, so “*in the end the luckless consumer pays his taxes but gets his poisons regardless.*”

The benchmark for assessing what is safe

Human health, and the effects of farm chemicals upon it, should be the standard ultimately relied on. However, we do not seem to be much further forward in determining quite what level of organophosphates, glyphosate, synthetic pyrethroids, nitrates, total pesticides or other farm chemicals it is acceptable to spray on fields, use as treatment on seeds, use at sea on caged fish, find in our rivers, find in our bloodstreams, or pass on to our children.

Those who participated in the negotiations that led to the current EU REACH chemicals Regulation of 2006 may remember that one of the simplest and most effective interventions in those negotiations, in 2003, was when the World Wildlife Fund offered 40 Members of the European Parliament, and some key European Commission officials, including the then Environment Commissioner Margot Wallstrom, [blood tests](#) with chemical analysis. It turned out that her blood showed evidence of 28 chemicals, including Poly Brominated Diphenyl Ethers, PBDE flame retardants, Poly Chlorinated Biphenyls, PCBs, and Organochlorine Pesticides, in particular DDT, which was what Rachel Carson was writing about in the 1960s, and which was banned for most agricultural purposes in 1978, and subject of a total ban on uses in agriculture in 1983. Margot Wallstrom was also a parent, and some reports at the time suggested that breast feeding for six months could give an infant 17% of its lifetime dose of some persistent chemicals.

We are supposed to be guided by the best science in these matters – that is the commitment often given by government. It therefore seems to be relevant and significant that Defra’s own Chief Scientist Ian Boyd [stated](#) in 2017 that the assumption by regulators around the world that it is safe to use pesticides at industrial scale across landscapes is false; that the lack of any limit on the total amount of pesticides used and the virtual absence of monitoring of their effects on the environment means it can take years for the impacts to become apparent.

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The EU Court's neonicotinoid judgements are a significant contribution to the law, and to the debates that ought to be taking place on the wider questions of the use of pesticides and farm chemicals, delivered at a critical time for UK agriculture.

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William Wilson is a specialist environmental, regulatory and nuclear lawyer with over 25 years experience in government, private practice and consultancy. He worked as a senior lawyer at the UK Department of the Environment/DETR/Defra, and helped to build up the environmental and nuclear practices at another major law firm, as well as running his own environmental policy consultancies. William has experience of all aspects of environmental law, including water, waste, air quality and industrial emissions, REACH and chemicals regulation, environmental protection, environmental permitting, litigation, legislative drafting, managing primary legislation, negotiating EU Directives and drafting secondary legislation.

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