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## **Businesses warned they risk unlimited fines if they break environmental laws to save on the cost of compliance**

- Environment Agency cracking down on the perpetrators of environmental crime
- Fly-tippers beware – they could be imprisoned for up to five years

Businesses must ensure that cost-cutting in response to the recession does not lead them to break environmental laws, or they risk unlimited fines and, in the worst cases, even the imprisonment of company directors, warns Angela Morris, a contributor to *Burnett-Hall on Environmental Law*, published by Sweet & Maxwell.

According to the book from Sweet & Maxwell, a Thomson Reuters business (NYSE: TRI, TSX: TRI, LSE: TRIL, NASDAQ: TRIN), legislation has been introduced to allow sentencing courts dealing with the worst cases of environmental crimes to impose unlimited fines and up to five years imprisonment. At the same time the Environment Agency is urging the Crown Courts to make full use of these powers.

Angela Morris comments: “In the current economic climate it is understandable that businesses will be looking to keep a tight reign on expenditure. However, businesses should be aware that the courts will take a very dim view of those breaking environmental laws in order to benefit financially at the expense of their environmental obligations.”

Angela Morris points out that there may be a belief amongst some businesses that the cost of complying with environmental regulations has increased significantly as new regulations have been introduced.

Says Angela Morris: “As environmental regulations become more onerous and possibly more costly, there is a danger that some unscrupulous businesses may begin disregarding them, viewing them as another thorn in their side in the same way that health and safety regulations and employment law are sometimes seen as unnecessary red tape.”

“It may be tempting for more unprincipled businesses to use budgets set aside to cover the cost of compliance to boost profits. However, environmental obligations must be met even in the current economic climate and businesses must ensure that they do not expose themselves to a failure to meet these obligations.”

“The Environment Agency has explicitly said that it is determined to punish offenders. Unless there are very tough penalties in place these more unscrupulous businesses may

be tempted to cut corners in order to reduce the costs of compliance and this is something the Environment Agency seems determined to address.”

## **Even commercial fly tipping can lead to imprisonment**

The Court of Appeal recently ruled that a custodial sentence is appropriate for commercial fly tipping even where the waste is not of a dangerous or offensive nature, and dismissed an appeal brought by James Gerard Kelleher against a 14-month prison sentence for conspiracy to deposit controlled waste unlawfully.

Angela Morris explains: “This means that the officers of a company who try to avoid the high cost of transporting waste materials to an authorised landfill site and thereby dodge the landfill tax could face a custodial sentence if caught.”

“Large profits can be made by those operating businesses collecting waste but if they chose to circumvent their environmental obligations they may find themselves in serious trouble with prosecuting authorities such as the Environment Agency and the Courts. This is particularly so now that the Government has raised the maximum penalty to five years imprisonment for the unlawful deposit of non-hazardous waste, in line with that for waste that does have hazardous properties.”

## **Profits made from breaking environmental laws increasingly attacked by the courts**

As well as custodial sentences Angela Morris points out that the Proceeds of Crime Act is also increasingly being used to penalise environmental crime. Any organisation that has profited by more than £5,000 through breaching environmental regulations is at risk of seeing their profits come under attack in addition to the other penalties available to the courts.

In the largest ever asset seizure related to an environmental conviction a plant hire firm, John Craxford Plant Hire Ltd, was forced to hand over assets worth £1.2 million and pay £85,000 in costs and fines for the illegal burying of unsuitable waste and waste licence and pollution permit breaches.

Angela Morris comments: “Regulators are no longer just going after companies for the cost to the environment but also any profits that businesses have made by breaking the regulations.”

## **Junior employees also risk criminal prosecution**

According to Angela Morris it is not just businesses who are at risk of prosecution. Where it can be shown that the offence is attributable to the neglect of, or consent or connivance by the officers of the company they too will be at risk of prosecution. Even junior employees risk criminal prosecution if they are found to have breached environmental regulations by acting independently of their employers.

Angela Morris explains: “If a company has taken all reasonable steps to ensure compliance with their environmental obligations but an employee has deliberately and deceitfully gone against company policy and instruction, and acted outside the scope of

their employment, the employee could, in the most extreme cases, find they are at risk of criminal prosecution.”

“Such activity will inevitably bring their employer under the spotlight and in such circumstances, prosecuting authorities would need to be satisfied that the company has taken all necessary steps to ensure that their employees are complying with their legal and company environmental policies and regulations. This would have a considerable impact upon whether the company would face prosecution. If the breach was caused by corporate laxity towards environmental regulations the company would be more likely to face prosecution rather than the employee.”

“Environmental regulations do place a heavy burden on businesses but with good reason. There will always be pressures on companies to keep their costs down but companies must avoid the temptation to cut expenditure in areas that could result in environmental damage, or they could find that the courts penalise them harshly” adds Angela Morris.

**ENDS**

#### **Notes to Editors:**

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