

BUSINESSES BEWARE: CRIMINAL LIABILITY LOOMS FOR ENVIRONMENTAL OFFENSES

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There is growing concern among businesses across the country about potential environmental liability, especially criminal liability imposed on individuals. In recent years enforcement provisions in state and federal environmental laws have been strengthened to include the imposition of criminal liability upon environmental offenders. Consequently, individuals and businesses which are subject to environmental regulations may now face stiff fines and jail time if they fail to comply with these laws. Prosecutors may now file felony level charges against persons who knowingly violate certain environmental laws.

Violations Can Lead to Criminal Charges

In April 1991 the State of Minnesota collected a \$2 million dollar penalty from a company for claimed violations of state environmental laws. The penalty, which was the largest ever levied by the state in an environmental case, attracted considerable public and political attention. The case concerned Marvin Windows, the largest employer in northwestern Minnesota. The company pled guilty to one count of illegally dumping hazardous waste and paid a \$15,000 fine. The company's former safety director pled guilty to an additional felony count. After Marvin Windows threatened to take jobs from Minnesota to Tennessee, former Governor Arne Carlson and former Attorney General Hubert H. Humphrey, III engaged in a war of words over the treatment of the company, with the Governor questioning what he perceived to be unduly harsh treatment by the Attorney General's Office, and the Attorney General firing back that the Governor's charges were politically motivated.

In Minnesota the trend toward prosecution of environmental crimes began in the mid-1980s when Attorney General Humphrey urged the Minnesota Legislature to pass tough new environmental crimes laws. Persons who knowingly dump hazardous waste, fail to report a release of hazardous substances or knowingly endanger someone can now be jailed for up to ten years and fined up to \$1 million under Minnesota law. Persons who knowingly violate laws relating to water quality, air quality and solid waste also may face felony level criminal charges and stiff penalties.

Last year the Minnesota Legislature allocated \$1.2 million to form an Environmental Investigations Division in the Attorney General's Office. Two prosecutors and two investigators are now working full-time investigating and prosecuting environmental crimes cases around the state. Staff from several state agencies, including the Department of Natural Resources, Agriculture and Transportation along with the Minnesota Pollution Control Agency have been assigned to an Environmental Crimes Investigation Team and have been charged with coordinating the enforcement of the state's tough new environmental laws.

State and Federal Authorities Are Prosecuting Environmental Crimes.

The State of Minnesota is not alone in placing new emphasis on the prosecution of environmental crimes. Violations of state environmental laws are generally also violations of related federal laws. Federal laws regulating the handling of hazardous waste and the discharge of pollutants into the air and water contain criminal sanctions. However, under federal environmental laws, the fines can be higher and jail sentences can be much longer.

United States Attorneys from the U.S. Department of Justice are now working with U.S. Environmental Protection Agency inspectors, the FBI and other federal agencies to prioritize environmental investigations.

In addition to Minnesota, states throughout the upper Midwest region have dedicated financial resources to support the investigation and prosecution of environmental violations. The Wisconsin Department of Natural Resources has assigned a number of environmental wardens to investigate environmental crimes. In Iowa, a task force comprised of agency staff, investigators and prosecutors is responding to citizen complaints of unauthorized dumping of hazardous wastes and other crimes. In many jurisdictions county or city attorneys have the authority to file criminal charges against violators of environmental laws.

In order to successfully prosecute felony level crimes under state and federal law, the prosecution must generally prove that the offender "knowingly" violated the law. Although thousands of companies throughout the upper Midwest are subject to environmental regulation, federal, state and local authorities will likely resort to criminal charges in a relative small number of cases. As a practical matter, prosecutors probably will exercise their discretion to file felony level criminal charges if they believe there is substantial deception, coupled with conduct that directly impacts the environment. For example, in the Marvin Windows case the state maintained in documents filed with the court that the company had similar violations involving hundreds of drums of waste in 1983. The state also alleged that the business and its employees concealed hundreds of drums from inspectors, falsified shipping papers and burned waste in boilers which were not equipped with the required pollution control equipment.

Even though state and federal authorities are now armed with an arsenal of new laws to fight environmental crimes, the actual number of prosecutions will be limited because of the substantial time and expense involved in pursuing criminal cases. Prior to filing charges, the prosecution must often obtain search warrants, secure statements from witnesses, test and analyze wastes and conduct extensive background research. In light of the complexities involved with these criminal matters, the authorities will likely focus their attention on the most egregious cases. Nevertheless, the impact of a criminal prosecution can be substantial. In addition to facing the prospect of stiff fines and jail time, an individual or business charged with such a crime must pay for its legal defense, deal with adverse publicity and in some cases, fund an expensive clean-up. Even if prosecutors find that the offense does not rise to the level of criminal conduct, an individual or business could still face significant civil penalties and clean-up expense as a result of a civil or administrative action brought by state and federal authorities.

Limited Liability

Given the new emphasis on environmental enforcement, small and medium sized businesses would be well advised to pay close attention to environmental compliance issues. Managers should identify the laws and regulations which apply to their operations. Companies should obtain all required permits and licenses. Businesses which are making good faith efforts to comply with environmental regulations are less likely to be targets for prosecution. One way to assess potential risks and assure compliance is to conduct an environmental audit.

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