

Environmental Offences – applying the definitive guidelines effective from 1 July 2014

Sparks and Sons Ltd is a family-owned skip hire business operating from an industrial park. The company through its managing director, Michael Sparks has pleaded guilty to operating a waste operation outside the terms of an environmental permit and disposing of controlled waste in a manner likely to cause pollution to the environment or harm to human health.

Guideline note

The offender is a limited company and should therefore be sentenced using the guideline for organisations at page 3.

An early guilty plea will normally result in a one-third reduction to the sentence.

The first offence is an offence under regulations 12 and 38 of the Environmental Permitting (England and Wales) Regulations 2010 (EPR 2010)

The second offence is an offence contrary to s33(1)(c) of the Environmental Protection Act 1990 (EPA 1990).

On bonfire night, 5 November 2013, a witness from a neighbouring unit saw that a bonfire had been built in the skip storage area.

Guideline note

Burning the waste on bonfire night could be seen as 'deliberate concealment of illegal nature of activity' which is an aggravating factor (see page 11 of the guideline).

The witness took photographs of the bonfire which show thick black smoke and large tyres, wood, PVC window frames, and oil filters being burned.

Guideline note

The smoke from the bonfire would represent a minor localised adverse affect or damage to air quality which is a category 3 harm factor (see page 5 of the guideline). Any effects on air quality were brief and there was no lasting damage to human health, animals, property, flora or fauna. The costs of any clear up would have been negligible and were in any event borne by the offenders.

The EA officers spoke to Peter Sparks, the operations manager, who admitted that there had been a fire but stated that this had consisted of old wood from their own private dwellings. At a later interview, Peter Sparks was shown the photographs taken by the witness and admitted that the materials were in fact controlled waste that had been removed from the permitted area of their site i.e. the area subject to their environmental permit.

Guideline note

Peter Sparks, a senior manager in the company, was involved in the offending which was an intentional breach of the law. This would place the offending in the deliberate culpability category (see page 5 of the guideline).

The estimated cost of the lawful disposal of the waste was £500.

Guideline note

This indicates an aggravating factor 'offence carried out for financial gain' (see page 11 of the guideline).

The company had previously had a good record for compliance with environmental regulations and has expressed remorse for the breach and cooperated fully with the investigation once the offence had been admitted in interview. The company has a turnover of just over £500,000 and has four full-time employees including the director Michael Sparks, and one part-time employee; it has been operating at a small loss over the last two years.

Overall, this is likely to be a "deliberate" offence in terms of culpability and "category 3" on the harm scale. The size of the company means that it will be sentenced using the table at page 10 for "micro" companies.

Guideline note

Organisations in the "micro" category are defined as those with a turnover or equivalent of not more than £2 million.

The starting point would be a £9,000 fine, with a range of £2,000 to £17,000. There are two relevant aggravating factors in this case (deliberate concealment of illegal nature of activity and offence committed for financial gain). The main mitigating factors are the lack of previous convictions and remorse.

Guideline note

See page 11 of the guideline

The court would then consider whether the starting point removes any economic benefit from the offender; in this case the benefit was around £500, so that condition is met.

Guideline note

See step 5 at page 12 of the guideline.

The court would then consider whether the fine is proportionate to the means of the offender and whether there are any other factors that may warrant adjustment of the fine.

Guideline note

See steps 6 and 7 at pages 12 and 13 of the guideline. The court would need to examine the financial circumstances of the offender in more detail. If the company fails to make the relevant information available the court will 'be entitled to draw reasonable inferences as to the offender's ability to pay' (page 6 of the guideline).

In this case the court might consider that given the financial circumstances of the business and that, with a turnover of around £500,000, it sits towards the lower end of the "micro" category it would be appropriate to decrease the amount of the fine and to order payment in installments to avoid the danger of job losses. The court would then make the appropriate reduction for a guilty plea.