

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

J has pleaded guilty at the magistrates' court to keeping controlled waste in a manner likely to cause pollution to the environment or harm to human health and operating a waste transfer facility without an environmental permit.

Guideline note

As an individual J will be sentenced using the guidelines for individuals (see page 15 of the guideline).

A guilty plea at the first opportunity would entitle J to a one third reduction to his sentence.

The maximum sentence a magistrates' court can impose for these offences is £50,000 fine and/or 6 months' custody.

The first offence is contrary to section 33(1)(c) Environmental Protection Act 1990.

The second offence is contrary to regulations 12 and 38 Environmental Permitting Regulations 2010.

J has been operating a waste disposal business and dumping and burning household and construction waste such as treated wood, plastics and rubble on his land at Apple Lane.

Guideline note

Waste of this type is not classified as hazardous and there was no evidence of any actual harm to human health, but the manner in which the waste was stored did have the potential to cause harm to human health. This would indicate a Category 4 harm factor 'Risk of category 3 harm' namely 'minor adverse effect on human health' etc (see page 17 of the guideline).

This is the second time that J has appeared in court for such offending. Ten months ago he was fined £1000 for similar offences and ordered to remove the waste from his land within six months. This was an order under Regulation 44 of the Environmental Permitting (England & Wales) Regulations 2010 requiring him to take steps to remedy the cause of the offence within a specified period.

Guideline note

This is a statutory aggravating factor which increases the seriousness of the offence (see page 20 of the guideline)

After that earlier conviction he was visited by officers from the Environment Agency (EA) on several occasions and told that he was not complying with the terms of the order and that his activities were still unlawful.

Guideline note

This behaviour is covered by two aggravating factors 'History of non-compliance with warnings by regulator' and 'Breach of any order' (see page 20 of the guideline)

In fact, rather than ceasing his unlawful activities, J had expanded his business and purchased another vehicle to transport waste to his site.

Guideline note

This indicates 'deliberate' culpability (see page 17 of the guideline).

This is an aggravating factor 'Offence committed for financial gain' (see page 20 of the guideline).

By operating outside the law, J was able to undercut legitimate waste operators.

Guideline note

This indicates category 3 harm 'Limited interference with or undermining of other lawful activities or regulatory regime due to offence' (see page 17 of the guideline)

J's land borders a local beauty spot and site of special scientific interest (SSSI).

Guideline note

This is an aggravating factor 'Location of the offence, for example, near environmentally sensitive sites (see page 20 of the guideline).

The waste was clearly visible from the SSSI and thick smoke from the illegal burning of the waste frequently blew across the SSSI.

Guideline note

This represents a Category 3 harm factor 'minor localised adverse effect or damage to air or water quality, amenity value or property' (see page 17 of the guideline)

In J's favour it was pointed out that while the waste sites were unsightly there was no actual harm caused to human or animal health or to the surrounding countryside.

Guideline note

This would be taken into account in assessing the harm category which taking into account all of the factors in this case is likely to be category 3 (see page 17 of the guideline)

It was also pointed out on his behalf that he had poor literacy skills.

Guideline note

In the context of this case J's poor literacy skills are not likely to represent a mitigating factor; he was visited in person by EA officers and told verbally what he needed to do.

The Environment Agency and the Local Authority have removed the illegal waste and disposed of it at a cost of £3000.

Guideline note

The court could consider whether to order J to pay compensation to cover this amount if it is not being recovered in another way (see page 16 of the guideline).

Overall, this is likely to be a "deliberate" offence in terms of culpability and "category 3" on the harm scale. The starting point would be a Band F fine, with a range of a Band E fine / medium level community order to 26 weeks' custody.

Guideline note

See page 19 of the guideline

Overall, given the significant aggravating factors in this case (in particular his recent, relevant previous conviction), it is likely that the custody threshold will have been passed and the court should be looking at the top of the range for these offences. Consequently, the court is likely to be considering custodial sentences of around 5 – 6 months before the reduction for a guilty plea. The court would then consider whether, in the circumstances of the case, the sentence should be suspended.