



Environmental Regulation: A Broad Overview of the Powers of Regulators When Investigating Breaches of Regulatory Duty

by

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Environmental Regulation: Breach and Defence

- **Introduction: Civil or Criminal Enforcement?**
- **What does the regulator want to achieve?**

- 1. To Stop Offending**
 - Tools at its disposal
- 2. To restore and / or remediate**
 - Tools at its disposal
- 3. To bring under Regulatory Control**
 - Tools at its disposal
- 4. To Punish and / or Deter**
 - Tools at its disposal

Factors When Considering Its Approach

The Regulators' Compliance Code:

- 1. Aim to Change the Behaviour of the Offender**
- 2. Aim to eliminate any financial gain or benefit from non-compliance**
- 3. Be Responsive to the Individual Circumstances**
- 4. Be proportionate to the nature of the offence and the harm**
- 5. Aim to restore the harm**
- 6. Aim to deter future non-compliance.**

Civil Action

1. If Civil solution is offered seize it
2. Civil Sanctions:
 - Fixed and Variable Monetary Penalties
 - Compliance Notice
 - Restoration Notices
 - Stop Notice
 - Enforcement Undertakings

Criminal

Change in Nature of the Game – Very Strategic

1. Search

2. Interviews – Under Caution & Compulsion

3. Prosecution –

- Categories of Offences**
- Strict Liability Offences**
- Code for Crown Prosecutors**

Prosecutions

1. Procedure

2. Penalties

- Fine and / or imprisonment
- Prosecution Costs
- Confiscation under Proceeds of Crime Act
- Disqualification of Directors
- Compensation
- Vehicle Seizure

Practical Examples of Regulators Using their Powers:

1. LBB –v- Sharif
2. BBC –v – X
3. Islington BC –v- Y
4. Chichester –v- Z
5. EA –v- Johal

Summary:

- 1. Keep the Regulators On Side**
- 2. Have good Policies in Place**
- 3. Be able to show you comply with Policies**
- 4. Consider Self-Reporting a Breach – will it get discovered anyway?**
- 5. As a general rule seize any opportunity to settle matters on a Civil Basis.**

Corporate Due Diligence:

In every transaction you must consider whether contamination is an issue.

Make specific enquiries of the seller.

Make enquiries of statutory bodies.

Conduct independent site history investigation.

If there is a likelihood the site is contaminated, advise on a full independent site investigation.



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