

Environmental enforcement—looking ahead to 2016

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Corporate Crime analysis: Christopher Badger, barrister at 6 Pump Court Chambers specialising in commercial regulatory investigations and prosecutions, with an emphasis on environmental enforcement, looks ahead to the likely developments in 2016 in the area of environmental enforcement.

How is 2016 shaping up in terms of important cases and legislative developments?

The Department for Environment, Food and Rural Affairs (Defra) is now facing a 15% cut in its budget over the next five years, which will plainly have a significant impact on its operations. This is already a department that has faced some of the deepest departmental cuts since 2010 and has already scaled back its work in the waste arena and lost staff, so any further cuts have the potential to impact significantly on the scale of the work undertaken by Defra and its linked organisations, including the Environment Agency.

In contrast, reform of the Landfill Communities Fund means that £20m of additional landfill tax revenues raised will be allocated to the Environment Agency to address waste crime over the next five years. This is a significant ring-fencing of resources, in part a response to the concerns of industry to perceived failures in the effective enforcement of environmental compliance within the waste industry but also as part of the on-going recognition of the serious economic and social impacts that waste crime can cause.

How will these developments affect your cases and working life?

I anticipate that there will be a degree of selection as to which criminal cases are to be taken by the regulators, tending towards the higher risk cases, with an inclination to respond to cases that present a lower risk to either the environment or the economy being dealt with by alternative means. I do not anticipate that this will result in a reduction in work, but rather a shift in emphasis, depending on the type of case involved.

What would you like to see in 2016?

I would like to see further development of the environmental tribunal. In my view, there is a strong argument for taking steps to enhance a specialist forum that would cover a wide range of environmental issues.

How might the expected developments in 2016 affect your business and clients?

Given the environmental priorities that exist today, as well as increasing pressure on resources, I perceive that there will be greater scope for negotiating and resolving potential conflicts at a much earlier stage in proceedings than may have existed in the past. Given the numerous potential environmental and economic issues, it has never been more important to seek early stage legal advice. The risk that is entailed with failing to address potential issues at a point in time when something effective can be done is significant.

Interviewed by Kate Beaumont.

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