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TEN ENVIRONMENTAL CRIMES EVERY BUSINESS SHOULD KNOW



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Corporate officers and employees typically focus upon the possible *civil* penalties and consequences for violations of environmental laws and regulations. However, corporate officers and employees alike should not lose sight of the potential *criminal* sanctions for environmental violations. Described below are ten federal environmental crimes that corporations and their officers and employees should be aware of in conducting company business. By no means is the list that follow exhaustive; rather this is merely a list of crimes most often raised by prosecutors. Note also that most states have additional analogous state counterparts to many of these crimes, and that concurrent federal and state prosecutions of environmental crimes are typical.

I. Clean Water Act (CWA) Felonies

33 U.S.C. 1319(c)(2) provides that each violation of CWA provisions governing effluent limitations, water quality standards, national standards of performance, toxic and pretreatment effluent standards, records and reporting, discharge of oil or hazardous substances into navigable waters, and disposal of sewage sludge is punishable by a fine of between \$5,000 and \$50,000 a day per day of violation plus up to three (3) years in jail. Moreover, any person who, in knowingly violating the provisions set forth in section 1319(c)(2), also knows that he thereby places another person in imminent danger of death or serious bodily injury, faces a fine of up to \$250,000 and up to fifteen (15) years in jail. 18 U.S.C. 3571 provides for a fine multiplier, e.g., a felony conviction carries a maximum fine for an individual of \$250,000, and for an organization, \$500,000. This provision supersedes the provisions of the environmental statute unless the latter specifically precludes the use of the fine provisions of 18 U.S.C. *U.S. v. Ming Hong, infra*. Additionally, the Federal Sentencing Guidelines apply.

This provision covers discharges of pollutants to “waters of the United States” in violation of a discharge permit and discharges for which no permit has been issued. Covered “waters” include inland waters and off-shore waters. This provision is also applicable to discharges to and filling of regulated wetlands.

II. Hazardous Waste (RCRA) Felonies

42 U.S.C. 6928(d) makes it a felony for any person to knowingly transport, treat, store, or dispose of any hazardous waste without, or in violation of, a permit. Each conviction is punishable by a fine of up to \$50,000 for each day of violation, and imprisonment of up to five (5) years. In addition, as under CWA’s knowing endangerment provision, any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste, and who also knows that he thereby places another person in imminent danger of death or serious bodily harm, is subject to a fine of up to \$250,000 and up to fifteen years in prison, pursuant to section 6928(e). Also, as with the CWA violations, Federal multiplier and Sentencing Guidelines are applicable.

III. Criminal Negligence -- Misdemeanor

The CWA, at 33 U.S.C. 1319(c)(1), provides that any person who negligently violates provisions governing effluent limitations, water quality standards, national standards of performance, toxic and pretreatment effluent standards, records and reporting, discharge of oil or hazardous substances into navigable waters, or disposal of sewage sludge is subject to a fine in an amount between \$2500 and \$25000 per day of violation and up to one (1) year in jail. This is one of the few environmental statutory misdemeanors. See also Clean Air Act, 42 U.S.C. 7413 (c) (4); see also, La. R. S. 30:2076.2.A (water).

IV. Responsible Corporate Officer

Under both RCRA and CWA provisions, a “responsible corporate officer” may be held liable for violations committed by employees over whom they have supervisory power. The United States Supreme Court, in *U.S. v. Park*, 421 U.S. 658 (1975), stated that a corporate officer may be held accountable under the responsible corporate officer (“RCO”) doctrine when he had, “by reasons of his position in the corporation, responsibility and authority either to prevent in the first instance or promptly to correct, the violation complained of, and that he failed to do so.” *Id.* at 673-74. The defendant in *Park* was held responsible for actions of his subordinates, despite the fact that he had delegated decision-making control over the activity in question. Likewise, the Fourth Circuit Court of Appeals, in *U.S. v. Ming Hong*, 242 F.3d 528 (4th Cir. 2001) *cert. denied* (2001), held the defendant criminally liable for illegal pollution discharges, even though he was not officially designated a corporate officer at all (he did have control over company organization, operations and accounts). The court reasoned that the “gravamen of liability as a responsible corporate officer is not one’s corporate title or lack thereof; rather, the pertinent question is whether the defendant bore such a relationship to the corporation that it is appropriate to hold him criminally liable . . .” *Id.* at 531. Whether a particular defendant has sufficient responsibility over illegal activities to be criminally liable is a question of fact to be determined on a case-by-case basis. *See U.S. v. Iverson*, 162 F.3d 1015, 1023 (9th Cir. 1998).

V. Corporate Criminal Liability

All of the major federal environmental statutes define “persons” subject to criminal penalties to include corporations, partnerships and associations. Thus, any of the non-incarceration criminal sanctions to which individuals can be subject can also apply to corporations found liable of violations by virtue of employee actions. Corporations can also be subject to fines, costs, probation, restitution, debarment and other sanctions.

VI. False Statements

Pursuant to 18 U.S.C. 1001, any person that knowingly and willfully falsifies any material fact or makes a materially false or fraudulent statement or representation in any matter within the jurisdiction of the United States federal government may be fined and imprisoned for up to five (5) years. An individual making such false statements to federal regulatory agencies, e.g., the Environmental Protection Agency (EPA), the Coast Guard, or the Army Corps of Engineers, would be subject to prosecution under this statute.

In addition, a person who knowingly omits material information or makes a false material statement or representation in any application, label, manifest, record, report, permit or other document filed in compliance with RCRA is subject to prosecution under 42 U.S.C. 6928(d)(3), and is thereby subject to a fine of up to \$50,000 and up to two (2) years in jail. Similarly, any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan or other document filed in compliance with CWA regulations, or who knowingly falsifies, tampers with or renders inaccurate any monitoring device required under CWA is subject to prosecution under 33 U.S.C. 1319(c)(4); conviction under this statute is punishable by a fine of up to \$10,000 and up to two (2) years in jail.

VII. Failure to Notify

Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or the Superfund Law), 42 U.S.C. 9603, a person who is in charge of a vessel or facility from which a hazardous substance is impermissibly released but who fails to notify the appropriate federal agency as soon as he has knowledge of the release, or who submits false information in his notification to the agency, is subject to a monetary fine pursuant to 18 U.S.C. and the Federal Sentencing Guidelines and up to three (3) years in prison. Such a failure to notify is similarly punishable under the Oil Pollution Act amendments of the Clean Water Act, 33 U.S.C. 1321 (b) (5). These crimes are in addition to any crimes associated with the release or discharge.

VIII. Obstruction of Justice

18 U.S.C. 1512(c) makes it a crime for a person to alter, destroy or conceal a record, document or other object with the intent to impair the object’s integrity or availability for use in an official proceeding (including an environmental enforcement proceeding). More generally, under the same statute, it is illegal to obstruct, influence, or impede an official proceeding in any other way. Obstruction of justice is punishable by a monetary fine pursuant to 18 U.S.C. and the Federal Sentencing Guidelines and up to twenty (20) years in prison.

IX. Aiding and Abetting/Conspiracy

To prove that a defendant aided and abetted the commission of a crime, the government must demonstrate that a substantive offense was committed, that the defendant associated himself with the criminal venture, and that he committed some act which furthered the crime. *See U.S. v. Hansen*, 262 F.3d 1217, 1236 (11th Cir. 2001). Punishment for aiding and abetting depends upon the nature of the underlying offense.

Closely related to aiding and abetting is the crime of conspiracy. To establish a conspiracy charge, the government must prove “(1) the existence of an agreement to achieve an unlawful objective; (2) the defendant’s knowing and voluntary participation in the conspiracy; and (3) the commission of an overt act in furtherance of the conspiracy.” *Id.* at 1246. Each party to a continuing conspiracy may be vicariously liable for criminal offenses committed by his co-conspirators in furtherance of the conspiracy, even if that party did not participate directly in those offenses or lacked knowledge thereof. *See id.* In *Hansen*, the three defendants were convicted of, inter alia, aiding and abetting company employees they supervised to dispose of hazardous wastes, and of conspiring to continue illegal business operations, all in violation of CWA, CERCLA and RCRA. Penalties for conspiracy depend upon the nature of offense furthered by the conspiracy.

X. Misprision of a Felony

Misprision of a felony is committed by a person who, having knowledge of the actual commission of a felony by another, conceals and does not disclose his knowledge as soon as possible to the proper authorities. *See* 18 U.S.C. 4. Misprision of a felony is a misdemeanor punishable by a monetary fine pursuant to 18 U.S.C. and the Federal Sentencing Guidelines, and up to three (3) years in prison. Typically, it is charged in lieu of a more serious offense as part of a plea bargain.

Conclusion

Hopefully, the reader does not ever need to know more than what is described above. However, corporate decision makers and legal counsel should be vigilant in setting appropriate company policies and developing company compliance guidelines and procedures intended to detect potential environmental violations before they occur. Companies should also have in place a plan of action, with appropriate training, in the event criminal issues arise.

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