A harsh environment – Rising penalties for polluters

The Environment Agency has highlighted that in November of last year, Wessex Water offered the largest ever enforcement undertaking, amounting to £975,000.

The undertaking was offered in respect of an environmental offence concerning sewage spills in Dorset. Wessex offered the sum of £975,000 which significantly exceeded £375,000, which was the previous highest contribution by a water company. As fines continue to rise, we should expect to see a corresponding rise in monies being offered via enforcement undertakings. Our experience suggests that clients are becoming more willing to consider offering an enforcement undertaking since they were extended (in England) to cover the environment permitting regime, and thereby increasing the number of offences available for offering an undertaking as a civil sanction. They are attractive, as once they are accepted by the regulator, the offender can no longer be prosecuted for the offence in question. That said, any offer of an undertaking has to be a realistic proposal to put in place appropriate compensatory measures, following a pollution incident.

The Environment Agency has also highlighted that last year more than £2.2 million of proceeds from fines and undertakings were distributed to local charities, which is also interesting as it appears that the Wessex Water undertaking is included in that amount. This illustrates the significance of the Wessex Water undertaking, and it appears that it has now become a major contributor to Environment Agency funded charitable causes!

However, whilst the sum of £2.2 million appears significant, it is almost equalled by the amount levied against Thames Water on 21 December, in respect of an incident concerning the escape of raw sewage. Thames Water were fined £2 million together with £80,000 of costs, for polluting streams and killing a substantial number of fish. Whilst Thames Water were aware of their failings and pleaded guilty, the Judge still highlighted the fact that investigations revealed that the incident was both “foreseeable and avoidable”. The Judge’s comments echoed many of the findings previously reported in respect of Thames Water’s record £20 million fine imposed in 2017 focusing on their failure to effectively implement risk management strategies.

Water and waste companies appear to be at the forefront of convictions and undertakings, and as with other businesses, when faced with a potential prosecution should give immediate thought as to how best to utilise enforcement undertakings and give consideration as to whether they will be accepted. In an era of rising fines, an undertaking may well be the most appropriate option but should only be offered after consultation with your lawyers, insurers and other advisors.

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