

Environmental Law Update - case studies

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A number of developments that business need to be aware of.

Environmental Permitting – There are a number of circumstances in which businesses might need an environmental permit, albeit some exemptions do apply. Recent developments have meant that there are now likely to be new circumstances for which permits may be required relating to businesses storing combustible waste and it is anticipated that this may impact upon around 30,000 businesses as it applies to engines, boilers, furnaces and turbines under 50MW. This is currently under consultation.

The EA's new Fire Prevention Plan (FPP) Guidance, published July 2016, sets out the requirements with which businesses storing combustible waste must meet to be granted an environmental permit.

Waste – Whether waste is really waste depends on the intent of the holder as objectively inferred from the circumstances – NOT just the subjective test. By-products and secondary products may not be waste. Waste can also cease to be waste if it has been subject to a complete recovery operation. There are some changes to landfill tax exemptions that are likely to impact on the construction sector.

Circular Economy – This EC initiative could provide real opportunities for business. In a circular economy the value of products and materials is maintained for as long as possible; waste and resource use are minimised, and resources are kept within the economy when a product has reached the end of its life, to be used again & again to create further value". The first BSI circular economy standard is currently under consultation.

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Nuisance – There are a number of types of nuisance claims which could be brought against businesses, including statutory nuisance, private nuisance and public nuisance. Interestingly, a business can commit a nuisance even if it is complying with planning permission and environmental permits. It is also extremely hard for businesses to demonstrate that they have prescriptive rights to, for example, create a noise or odour simply because they have done so for a number of years during which time residents have moved into the area.

ESOS – Businesses above a certain size are legally obliged to audit their energy use and report their findings to the EA. There is strangely no legal obligation to actually implement any recommendations identified but doing so should be an advantage to business in enabling them to cut costs. The EA have said that the plan to increase enforcement in this area through the use of enforcement notices and civil sanctions.

REACH – There is an upcoming chemical registration deadline on 1 June 2018. Businesses using chemicals need to ensure that they are registered as they otherwise may no longer be available on the European market.

Renewable Heat Initiative - Under this initiative, a tariff can be earned on electricity generated from the biomass element of the feedstock. The take up amongst businesses has however been poor.

Sentencing Guidelines – Specific environmental sentencing guidelines have been in place since 1 July 2014. They prescribe that turnover must now be used as a starting point when imposing sentences. Caps on certain environmental offences have also now been removed. As a result, fines for environmental offences have been increasing, with a £1m fine imposed in January 2016. The use of civil sanctions has also been increasing.

Brexit – Although no-one really know what impact Brexit will have on environmental regulation, it is possible that some legislation, especially around birds and habitats and EU ETS may be amended. The future of some EU environmental initiatives may also be in doubt.