

SENTENCING IN ENVIRONMENTAL PROSECUTIONS

Prison, Fines and Beyond

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SENTENCING OBJECTIVES

- Punishment
- Deterrence
- Restitution To Victims
- Protection and Improvement of the Environment and Human Health

SENTENCING OPTIONS IN U.S.

- Confinement in prison, jail or half-way house
- Fines and Forfeiture
- Restitution/Medical Monitoring
- Probation/Community Service
- Imposition of Environmental Management Systems/Monitor
- Public Apologies
- Supplemental Sentencing

OBTAINING THE RIGHT SENTENCE

- Educate Judge By Stressing Factors That Led To Case Investigation/Prosecution
- Deliberate, Intentional Conduct – Lying, Cheating/Stealing/Money
- Actual or Threatened Harm – Use Experts To Explain/Quantify Harm or Loss
- Put Human Face on Victims If Possible

OBTAINING THE RIGHT SENTENCE (CONT'D)

- Conduct's Impact on Regulatory System
- Stress Defendant's Education, Training Or Position
- Use Same Factors In Seeking High Fines
- Reward Defendants Who Cooperate
- Long Term Educational Effort – More Cases, More Progress

CASE SPECIFIC FACTORS JUSTIFYING PRISON TIME

- Actual Environmental Contamination From Discharges, Releases or Emissions
- Market Value or Protected Status of Wildlife or Plants Taken Illegally And Financial Motivation
- Substantial Likelihood of Death or Serious Bodily Injury or Risk of Disease or Infestation

FACTORS (CON'T.)

- Crime Resulted in Substantial Clean up Costs, Community Evacuation or Utility Disruption
- Conduct Either Violated A Permit or Done Without Required Permit
- Defendant Used Special Skill or Training, Held Position of Trust, or Was Leader of Others in Criminal Activity

SUPPLEMENTAL SENTENCING

- Prison Time and Fines Are Aimed At Punishing The Guilty And Achieving General Deterrence
- Supplemental Sentencing Components Are Specific Activities Aimed At The Environment and Human Health

TYPES OF SUPPLEMENTAL SENTENCES

- Pollution Prevention
- Pollution Reduction
- Environmental Training/Education For Regulated Businesses Or Community
- Funding Environmentally Beneficial Projects Performed By Third Parties

SUPPLEMENTAL SENTENCING CONCERNS

- No Reduction in Jail Time or Who Gets Charged
- Who Identifies and Selects Projects Or Decides Who Gets Money/Favoritism
- Who Monitors For Government How Money Spent By Third Party
- Can't Provide Defendant With Public Relations Spin By Defendant
- Sell The Judge

FINAL RESULT AT END OF CASE

- You Should Be Able To Say Why This Prosecution Both Punished The Guilty and Helped Protect The Environment
- Case Should Contribute To Both the Overall Criminal Enforcement Program And The Regulatory Enforcement Effort
- Combine Prison, Fines and Supplemental Sentencing Achieve These Objectives – Be Creative In Exploring The Law!!