

Prosecuting Environmental Crimes



A training course for South African prosecutors
A joint project of the Department of Environmental Affairs and Tourism, the National
Prosecuting Authority, Justice College, the Environmental Protection Agency and the
Department of Justice in the United States
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	A Memorandum on the Approach to be taken by Environment Agency Prosecutors to Sentencing - Environment Agency of England and Wales

B. Sample charge sheets and plea and sentence agreements

Environment Conservation Act
Charge Sheets
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Air Pollution Prevention Act and Environment Conservation Act
Charge Sheet
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Charge Sheets

C. Case law

Case name	Reference	Topic
S v Andre Christoffel Pretorius and another	A434/2003, CPD (unreported)	Bail
S v Kenneth Marthinus	A570 CPD/2001 (unreported)	Sentence
S v Anthony Jacques Hamilton (2)	A568/2001, CPD (unreported)	Sentence
S v Jannie Dalton Chan Hong	CPD (unreported)	Interpretation of MLRA Regulation 38(3)(b), R1111
S v Louis van Dyk	042/2004, SCA (to be reported)	Sentence/correctional supervision
R v F Howe & Son (Engineers) Ltd	1999 2 All ER	Factors to be taken into account in imposing fines
R v Friskies Petcare UK Ltd	99/5226/W5 (CA)	Sentence
USA v Noble Cunningham	194 F.3 rd 1186; 1999 US App. LEXIS 28401	Transport and disposal of hazardous waste; sentence

LEGISLATION

International Legislation

Name	Number and year
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	3 March 1973

National Legislation

Name	Number and year
Extracts from The Constitution of the Republic of South Africa: Chapter 2 and Schedules 4 and 5	108 of 1996
National Environmental Management Act	107 of 1998
Regulations in terms of NEMA, 1998: control of vehicles in the coastal zone	GN 1399/2001
Guidelines on the implementation of regulations pertaining to the control of vehicles in the coastal zone	GN R1426/2004
Draft Regulations on relating to qualification criteria, training and identification of, and forms to be used by, environmental management inspectors	To be published in July/August 2005
National Environmental Management: Biodiversity Act	10 of 2004
National Environmental Management: Protected Areas Act	57 of 2004
Draft regulations	
National Heritage Resources Act	25 of 1999
Conservation of Agricultural Resources Act	43 of 1983
National Forests Act	84 of 1998
Marine Living Resources Act	18 of 1998
Regulations in terms of the Marine Living Resources Act	GNR1111 in GG19205 of 2 September 1998
Amendments to Regulations published in terms of the Marine Living Resources Act	GN329 in GG27453 of 6 April 2005
Dumping at Sea Control Act	73 of 1980
Marine Pollution (Control and Civil Liability)	6 of 1981
Marine Pollution (Prevention of Pollution from Ships)	2 of 1986
Environment Conservation Act	73 of 1989
Identification of matter as waste (Section 1)	GN 1986/90
Directions in terms of section 20(5)(b) of ECA with regard to the control and management of general communal and general small waste disposal sites (Section 20)	GN 91/2002
The identification under Section 21 of activities which may have a substantial detrimental effect on the environment	R1182/97
Designation of the competent authority who may issue authorisation for the undertaking of identified activities (Sections 22 and 24)	R1184/97
Regulations regarding waste disposal sites (Sections 24 and 28)	R1196/94

Name	Number and year
Regulations in terms of Section 25 - noise control	R154/92
Regulations regarding activities identified under Section 21(1) (Sections 26 and 28)	R1183/97
Health Care Risk Waste, 2004 (Gauteng)	Notice 3035 of 2004
Atmospheric Pollution Prevention Act	45 of 1965
Regulations	
National Environmental Management: Air Quality Act	39 of 2004
National Water Act	36 of 1998
Hazardous Substances Act	15 of 1973
Regulations	

BIOGRAPHIES OF PRESENTERS

BOB ANDERSON is a Senior Trial Attorney with the Environmental Crimes Section of the United States Department of Justice, stationed in Missoula, Montana. For the past 14 years, Bob has prosecuted violations of federal laws which prohibit the unlawful taking and trafficking in protected wildlife. Many of Bob's cases have involved large-scale international smuggling syndicates engaged in live-animal smuggling investigated using long-term undercover techniques and international prosecution methods such as lures and extradition. In 1996, Bob received the Attorney General's Distinguished Service award for his work in helping to apprehend and prosecute an international group of reptile smugglers. Bob is the author of several articles and training manuals on federal wildlife crime and frequently teaches law and criminal procedure to federal and state wildlife agents. Bob is a member of the Interpol Working Group on Wildlife Crime and often speaks at international meetings on the subject of wildlife law enforcement.

ANDRÉ BOUWER heads up the forensic unit of law firm Sonnenberg Hoffmann Galombik in Johannesburg. He was a Senior State Advocate with the Director of Public Prosecutions specialising in commercial crime, after which he joined one of South Africa's leading forensic units at a big four auditing company. In 1997, he was voted Commercial Crime Prosecutor of the Year by the International Association of Financial Crime Investigators. André acted as prosecutor in well-known cases such as those against André Lincoln, Michael Henn, Vloog Theron, Hung Kwang Leung and the "Viewpoint Murder" case. André is a regular speaker on the topic of white-collar crime and corruption. He also lectures on Criminal Law and the Law of Evidence at the University of Pretoria.

MARKUS BURGNER is a Senior Programme Officer with TRAFFIC - an international non-governmental organisation that focuses on the trade in wild plants and animals. He has been based with the East/Southern African regional programme of TRAFFIC for the past seven years and has worked on national, regional and international policy and legislation related to biodiversity conservation. He has also conducted research into and carried out advocacy initiatives on many species and broad resource issues concerning wildlife trade. Markus is a qualified attorney and has a Master's Degree in International Environmental Law. Prior to joining TRAFFIC he completed his articles at the Public Defenders' Office in Johannesburg, where he spent two years dealing with a wide range of criminal offences (but interestingly, never defended anyone accused of committing an environmental crime).

FRANCES CRAIGIE is an environmental lawyer employed as the Deputy Director: Compliance and Enforcement in the Gauteng Department of Agriculture, Conservation and Environment. She is responsible for managing several projects in the Department, including the development of the compliance and enforcement strategy and programme which includes the implementation of the NEMA amendments related to the Environmental Management Inspectors. She provides expert advice on a wide range of regulatory and administrative issues and assists the Department in managing civil and criminal litigation. Frances holds an LLB degree from the University of Cape Town and is an admitted attorney of the High Court of South Africa. Before joining Gauteng government, Frances practised as an attorney in Johannesburg, and thereafter worked

for Alexander Forbes Risk Services as an environmental legal consultant focusing on legal compliance audits, environmental reviews and due diligence investigations with an emphasis on integrating environmental law with technical inputs.

MELISSA FOURIE is an environmental lawyer employed as the Director: Enforcement in the Department of Environmental Affairs and Tourism's Environmental Quality & Protection Branch. Her Directorate is leading the national roll-out of the Environmental Management Inspectorate created by a recent amendment to the National Environmental Management Act, 1998. Melissa holds an LLB degree from the University of Stellenbosch, a Higher Diploma in Tax Law from the University of Cape Town, a Masters Degree in Environment and Development from the London School of Economics and a Certificate in Environmental Law from the University of the Witwatersrand. Before joining the Department of Environmental Affairs and Tourism, Melissa practised as a commercial litigation attorney in Cape Town, and thereafter headed up the Policy & Research Unit South Africa country office of the IUCN World Conservation Union.

MARTIN HARRELL is Associate Regional Counsel for Criminal Enforcement in the Office of Regional Counsel, U.S. Environmental Protection Agency, Region III, Philadelphia, Pa. He has been at EPA for 21 years, handling a wide variety of criminal, civil and administrative litigation, and supervising other EPA attorneys. He recently completed a 15-month full-time assignment as a Special Assistant United States Attorney (SAUSA) in the Eastern District of Pennsylvania prosecuting firearms, drugs and environmental criminals, and now serves as a part-time SAUSA in Philadelphia and the Western District of Virginia. He has taught a course entitled "Environmental Enforcement" since 1994 as an adjunct professor of law at Villanova University School of Law. He has lectured at numerous EPA, Department of Justice, ABA and private practice seminars and conferences, and has taught Eastern European prosecutors, police and environmental regulators about environmental crime four times since 2000. He graduated from the West Virginia University College of Law in 1982.

ANDY LAUTERBACK is a Senior Criminal Enforcement Attorney for the United States Environmental Protection Agency. He also manages the international activities for EPA's Office of Criminal Enforcement, Forensics and Training. Mr. Lauterback is Chairman of Interpol's Environmental Crimes Committee and its Pollution Crimes Working Group. He is a member of the U.S. Department of Justice Environmental Crimes Policy Group and was a member of the U.S. Sentencing Commission's Environmental Crimes Advisory Group. Mr. Lauterback has prosecuted many criminal cases arising under all the major federal environmental statutes. He has also lectured extensively throughout the United States and abroad.

PETER LUKEY is a Civil Engineering Technologist who, after nine years as a contractor, left the construction industry to pursue his environmental interests. At Wits University, Peter completed his BSc Degree majoring in botany and advanced biological science (ecology), as well as co-founding the environmental activist organization Earthlife Africa. Peter served as Earthlife's only National Coordinator in the early days of the organization's development. Following a period of 'committed activism'; Peter took up a position as Environmental Programme Coordinator for the Danish development assistance agency DANCED (The Danish Cooperation for Environment and

Development). At the end of 2000, Peter left Danced, after five years of working on environmental project support in the region, and took up the position of Project Manager for the Department of Environmental Affairs and Tourism's Environmental Protection Support Unit (EPSU). On the 1st of August 2003, Peter became the department's Chief Director: Regulatory Services. On 1 June 2005, he was appointed as Chief Director: Air Quality Management.

CHRISTA MASSYN is a lecturer in the prosecutorial section at Justice College in Pretoria.

ANNA-MART NIEMAN is a prosecutor in the National Prosecuting Authority's Directorate of Special Operations.

W. BRUCE PASFIELD is an assistant section chief in the Environmental Crimes Section, of the Environment and Natural Resources Division, of the United States Department of Justice. He managing one of the section's litigating units and has oversight responsibility for environmental crimes cases in EPA Regions I, III, XIII, and X. Prior to becoming an Assistant Section Chief, Mr. Pasfield was a senior trial attorney in the where he prosecuted pollution crimes under all major environmental statutes. Mr. Pasfield was also a state prosecutor in Pinellas County, Florida. Mr. Pasfield serves as the Department's chairperson for its CFC anti-smuggling initiative and is an expert consultant to the United Nations Environmental Programme on issues related to compliance with Multilateral Environmental Agreements. He helped write and edit portions of DOJ's environmental crimes manual and is a regular instructor at DOJ's environmental crimes basic course. He earned his J.D. degree in 1984 from Vermont Law School, and his B.A. from Gettysburg College. He is admitted to practice in Florida and Maryland.

PHIL SNIJMAN spent the first years of his career as public prosecutor and state advocate with the Directorate of Public Prosecutions. After a short period in private practice, he was appointed as consultant to Marine and Coastal Management, a branch of the Department of Environmental Affairs and Tourism. In this capacity he was involved in streamlining investigations and prosecutions in fisheries offences, providing training and assistance to inspectors, investigators and prosecutors as well as writing amendments to legislation. He was part of the team that set up the first environmental court in South Africa and has been conducting the prosecutions there under delegation from the Director of Public Prosecutions. He has been a speaker at various national and regional conferences on the subject of environmental crime. He is also the Local Resident Legal Advisor for South Africa in the SADC-EU MCS programme. Phil holds the LLB and M Phil (Environmental Management) degrees from the University of Stellenbosch, and is currently studying towards his LLM (Environmental Law) at the University of Cape Town, as well as a National Diploma in Nature Conservation.

CLAIRE TUCKER is a director at Bowman Gilfillan and is the head of the environmental practice area at the firm. She presently practices primarily in regulatory and environmental law and is widely published on these matters. She has worked on a wide range of regulatory matters including drafting of laws and regulations, High Court review applications in respect of decisions on regulatory matters, the interpretation and application of statutes as well as commercial and transactional advice. She practices in

and advises on all environmental issues, particularly, biodiversity and conservation, atmospheric pollution prevention, waste regulation, water, land use planning and environmental impact assessments. She has a particular interest in the socio-economic aspects of the constitutional right to a clean environment. While overseas she worked for two years in London at Leigh Day and Co on plaintiff actions against multinational corporations causing damage to people and environments in developing countries, particularly on the Cape pl Asbestos case and the Thor Chemicals case.