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Law Trends Today

CRIMINAL PROSECUTION FOR ENVIRONMENTAL NONCOMPLIANCE: ARE YOU AT RISK?

By Marti Sharp

There's a new sheriff in town. No longer will violations of Oregon's environmental laws be met with gracious voluntary compliance plans and minimal fines. Rather, Oregon's recently elected attorney general John Kroger promises to make the protection of Oregon's environment one of his "top priorities." By working closely with the Oregon Department of Environmental Quality ("DEQ"), Kroger intends to criminally prosecute corporations, business, and individuals for violations of environmental laws, regulations, permits, and agency directives. Penalties include substantial monetary fines and imprisonment.

In an effort to carry out his promise, Kroger has established an environmental crimes unit staffed with two prosecutors, an investigator, and support personnel dedicated to identifying and prosecuting violations of environmental laws. Kroger is also working with DEQ to aggressively implement the environmental enforcement process and is seeking to increase penalties for certain violations from \$10,000 a day to \$100,000 a day. Jail

time will be imposed where warranted. In fact, Kroger has publicly stated that he will implement tools and techniques that he has successfully used against the Mafia, drug traffickers and companies like Enron to flush out and punish environmental violators of every kind and size.

Environmental violations will be prosecuted under a little known Oregon law that is rarely used—the Oregon Environmental Crimes statute. Significantly, this law addresses violations to the land, air, and water arising out of not only statutory laws and regulations, but non-compliance with permits, rules, and agency orders. Thus, any corporation, business, or individual that has or should have any permit governing land, air or water is subject to the enforcement provisions of the statute and can be assessed significant monetary penalties, and even jail time, for noncompliance with permit conditions. The same is true for any directives, rules, or opinions issued by any agency with environ-

mental oversight of the land, air, or water. Moreover, because the attorney general has complete discretion to determine what environmental violations will be investigated and prosecuted, it is not clear where the focus lies.

It is clear that taking some proactive steps with environmental professionals now may prevent prosecution for environmental violations later. Compliance audits may determine whether you are fulfilling the requirements of any environmental permits or orders and/or whether you need to obtain any permits. A detailed comprehensive management program that implements environmental best practices and tracks any violations and steps taken to address any violations should be updated. In the event that you do not have a management program, you should complete an environmental audit, taking into account industry standards and practices. The results of your environmental audit are privileged under Oregon's

Environmental Crimes statute and cannot be used against you in any civil or administrative proceeding, but can be used in a criminal investigation. Hiring a legal professional to oversee the audit process will afford you further protection.

If you have questions about environmental crimes enforcement or would like to consult about internal environmental procedures, practices, and compliance, contact Marti Sharp at Kell, Alterman & Runstein, LLP to begin a confidential inquiry. Taking the time now to evaluate your company's environmental compliance circumstances rather than being prosecuted later—which could carry substantial monetary fines and even imprisonment—is smart business.



Marti Sharp is an environmental and energy practitioner with Kell, Alterman & Runstein, LLP in Portland, Oregon. Ms. Sharp has over 10 years of experience handling a variety of environmental issues for clients and significantly with defending environmental crimes in this complex and stringent arena. Ms. Sharp can be reached at msharp@kelrun.com or 503.222.3531.