

## “Knowingly Permitting the Offences of Others”

**“It’s their problem, not mine”; the position frequently expressed from a project’s Client when their Principal Contractor, or another contractor in the supply chain, has breached discharge consents, Section 61 licence conditions or otherwise caused pollution. But it is both wrong and a dangerous stance to adopt.**

Whilst the party most closely connected with the offending activity is more likely to face investigation and potential prosecution for causing the environmental harm, many of the key environmental offences also catch those who have “knowingly permitted” the offence to occur. Both companies and individuals can be liable.

The Courts have illustrated on many occasions the ease with which they will conclude a party has “knowingly permitted” the environmental offences of others. Standing by during the obvious commission of an offence by a contractor is, unsurprisingly, caught, as is deliberately turning a blind eye to such breaches. But Clients should also be aware that the Courts will expect to see them react promptly and firmly to prevent the continuation of, for example, an act of pollution or condition breaches if they are to escape a conviction themselves.

Leaving the matter in the sole hands of those on site can therefore come back to bite the Client if it later becomes apparent that the Contractor continued site works to meet a deadline in preference to stopping work immediately, analyzing the problem and remediating the harm caused. It may not be sufficient for the Client to say they assumed the contractor would respond differently.

Similarly, Clients have found themselves convicted of “knowingly permitting” where they have failed to proactively manage a contractor with a poor historical environmental track record. Where, for example, there has been a catalogue of condition breaches or environmental damage, the Courts will expect to see robust steps taken by the Client to prevent or at least reduce the likelihood of further breaches. A failure by the Client to grasp the nettle and impose the need for strict legal compliance could well form the basis of a subsequent prosecution.

Substantial fines, remediation costs and even prison sentences are available to punish those convicted of the “knowingly permitting” offences. Furthermore, the Environment Agency’s Enforcement Policy Statement makes it plain that they should consider the merit of prosecuting individuals, especially those in a senior position who could have been expected to have displayed an attitude which properly recognised the importance of preventing harm to the environment.

Client organisations, in all sectors, should therefore ensure that their staff fully appreciate the risk of liability attaching to them, corporately and individually, and recognise that breaches on their sites should be just as much their concern as the contractor’s.