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PRESS RELEASE

ENVIRONMENT AGENCY FORCED TO DROP CHARGES AGAINST WASTE EXPORT COMPANIES

In a significant case for the UK waste management industry, the Environment Agency (EA) yesterday (22 February 2010) dropped charges against two companies alleged to have shipped contaminated waste paper to the Far East in 2006. This was because the Agency could not prove that the product destined for export was contaminated.

The decision was announced by counsel for the EA at Maidstone Crown Court. It is a very important case for the UK waste management industry as a whole because the regulations governing the export of waste have been enforced without practical guidance being issued by the EA about the level of permissible contamination in exported waste. At one point in the case, the EA asserted that the threshold for prosecution was zero contamination before shifting to an undefined minimum acceptable level.

The EA decision came only one week before the trial of the two companies, APG Atlantic Paper Ltd and Community Waste Ltd, was due to commence. The investigation started in December 2005 when EA officers stopped the export of 10 containers destined for China, Indonesia and Vietnam. The EA claimed that the containers could not be exported as green list waste because they were contaminated. However, the EA yesterday accepted that it could not prove these charges. The defendant companies were therefore found Not Guilty of the charges and a costs order was made in their favour.

The two defendant companies had instructed their own independent expert to examine the detained containers immediately after they were stopped in December 2006. The EA refused to attend the independent examination. The court today remarked on the time and money which could have been saved had this been done.

Philip Serfaty, a director of the companies, commented that: "As a responsible UK exporter, I fully support good regulation aimed at improving standards of waste produced for export. I also support strong enforcement but enforcement must always be fair and in this case it was not." Mr Serfaty also called upon the EA to publish detailed and realistic guidance on how it would enforce the law in the future. It is not yet known whether or when this will be done. In the meantime, all exporters of waste products remain at risk of prosecution until the EA publish a new policy on how the Transfrontier Waste Regulations will be enforced in future.

Specialist criminal and regulatory law firm Corker Binning represented the companies. Peter Binning, partner of Corker Binning, commented that: "It is a shame that it has taken until now for the EA to realise the weaknesses of its own case. The EA failed to follow its own guidance on how inspections should be conducted and the case was being prosecuted on the basis of an ill defined minimum threshold of contamination. Sensible, pragmatic enforcement guidance has been needed from the regulator for a long time and was called for by the courts as long ago as 1997. In this and other cases, the EA has consistently misinterpreted the relevant European Regulation which permits the export of properly sorted recyclables."

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NOTES TO EDITORS

1. The export of waste from the UK is now governed by the Transfrontier Shipment of Waste Regulations 2007. Those regulations now provide the Environment Agency with the power to detain containers for inspection at ports without engaging the assistance of HM Revenue and Customs. At the time of the allegations against APG Atlantic Paper Limited and Community Waste Limited, the Transfrontier Shipment of Waste Regulations 1993 were in force. Those regulations provided for more limited inspection powers requiring the Environment Agency to seek the assistance of HM Revenue and Customs.
2. Under both the old and the new Regulations, there is a defence where a defendant can prove that all reasonable steps were taken and all due diligence exercised to avoid the commission of the offence.
3. The UK legislation is based on the European Regulation, the Waste Shipments Regulation EC1013/2006 (revised from the previous Regulation EC259/93). The Regulation provides for the supervision and control of shipments of waste within and out of the European Union. A traffic light system of waste categories was established by this Regulation distinguishing between green, amber and red listed wastes. Stricter controls apply to exports of product listed in the amber and red lists.
4. In May 1997, the English courts decided the case of R v Environment Agency ex parte Dockgrange. In that case, which concerned the interpretation of the same European Regulation as in this case, the court said: "it is appropriate for the [Environment] Agency, as principal prosecuting authority, to have a policy on the matter; a court is likely to be guided by its expert view." To date no policy dealing with contamination thresholds for exported waste has been published.
5. In recent years the UK waste export business has been very successful. The UK recycled paper sector alone has increased over the last six years from 500,000 tonnes per annum recovery to well over 8.5 million tonnes.

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