

Message from ENPE President Anne Brosnan

Dear Colleagues,

We are pleased to bring you this 16th edition of our ENPE newsletter as 2021 draws to a close and we look forward to a new year. Last month, on 17 November, we held our General Assembly Meeting, once again through 'virtual' means because of the ongoing Covid-related travel restrictions. We are pleased to report a very healthy number of ENPE members were in attendance and we had no serious technical hitches. New ENPE members were welcomed, we rounded up and reported on our activities for 2021 and we discussed our forward look for 2022 hoping with fingers crossed, for some real life 'face to face' events.

In spite of the ongoing global Covid-19 pandemic, ENPE and our members continue to "up the fight" against environmental criminals, and we are pleased to showcase a wide variety of successes from our member organisations in this edition of our newsletter. We hope you enjoy our case reports which include a significant prosecution of water pollution offences and some recent wildlife and waste crimes. We urge you to continue to share your cases with us, and where possible, upload details onto our environmental crimes database, via the ENPE website. We get a lot of feedback from colleagues that these cases are of great interest to prosecutors dealing with similar issues.

We are delighted to recognise that our ENPE Director, Dr Antonio Vercher Noguera, will continue in his role as the President of the Consultative Council of European Prosecutors (CCEP), having been voted in for the second year in succession. Well done Antonio.

We are also pleased to announce that we are moving forward in our discussions with the Commission in relation to further project funding. We hope to be able to put together soon a programme of interesting and worthwhile projects to share with you and in which to invite your participation.

Best wishes for the Christmas and holiday season. We look forward to seeing you in 2022.

Anne Brosnan ENPE President and Shaun Robinson ENPE Project Manager.



ENPE General Assembly meeting 17 November 2021

We welcomed 17 of our ENPE Members and Observers to the annual General Assembly on 17 November 2021. Because of the ongoing travel restrictions being imposed due to the Covid-19 pandemic, this meeting was held remotely using the MS Teams platform and was well received by the members and the Board.

Anne Brosnan chaired the meeting and gave the President's report. This comprised an overview of all ENPE activities and outputs of 2021 as well as a look forward to the next three years through the sharing of an overview of the likely direction and organisation of ENPE going forward, including projects that we have committed to support. We are in the process of applying for funding to enable our activities, including our secretariat, to continue and will keep you informed of progress.

Secretary General, Lars Magnusson, also provided his report, updating members on the development and expansion of the ENPE network over the last 12 months, which has included four new Supporting Members, bringing the total number of members and observers to 45, representing 31 different countries. We are delighted that the network continues to expand and welcome all our recently joined colleagues.

Aisling Kelly, ENPE Treasurer provided a verbal report on our financial activities over the last 12 months, confirming that the network is in good financial health.

ENPE Director voted in for second time as President of CCPE



We are very pleased to report that our ENPE Director and representative for the State Attorney General's Office of Spain, Dr Antonio Vercher Noguera, has been voted in for the second consecutive year as President of the Consultative Council for European Prosecutors (CCPE).

The CCPE is a body reporting to the Committee of Ministers for the of the Council of Europe, and its work is in keeping with the implementation of Recommendation Rec (2000)19 on the Role of Public Prosecution in the Criminal Justice System, with the aim of developing common political and judicial instruments relating to the functioning and professional activities of prosecutors (taken from the CCPE website). It can include providing opinion of other Council of Europe bodies and promotion of the implementation of Rec (2000)19. The Council's work is very relevant to the wider work of ENPE and our members, and we greatly appreciate Antonio's significant involvement in this important organisation.

News from the European Commission



Proposal for a new European Crime Directive

On 15 December 2021, the European Commission adopted a [proposal](#) for a new Environmental Crime Directive.

This ambitious proposal will help ensure more effective combating of environmental crime and will facilitate the work of practitioners on the ground. It will help to increase legal certainty by providing specific and clear descriptions of criminal offences. The proposed provisions on sanctions aim at ensuring their deterrent effect and providing a toolbox to allow tailored responses to individual non-compliant behaviour.

The proposal includes provisions on strengthening the effectiveness of the enforcement chain (including on resources, investigative tools, training, cooperation, strategies and data collection) and the role of citizens and civil society.

Furthermore, the Commission has adopted an [Accompanying Communication](#) on stepping up the fight against environmental crime. It provides the wider context, indicates necessary complementary measures, recognises the role of the enforcement chain and the networks of practitioners, highlights the work of the Forum and announces fostering international cooperation.

Further information is available in the [press release](#), the [QandA](#) document and the [factsheet](#).

The [Guidance](#) on combating environmental crimes and related infringements available, endorsed by the Environmental Compliance and Governance Forum in June 2021, is now available in other languages. On behalf of the Commission, we encourage you and relevant colleagues in your countries to make active use of it.

Environmental Compliance Assurance (ECA) informal Working Group on Sanctioning of Environmental Offences

The ECA Sanctioning of Environmental Offences Working Group invited ENPE to attend its online meeting which took place on 28 October 2021 from 10:00 to 12:30h.

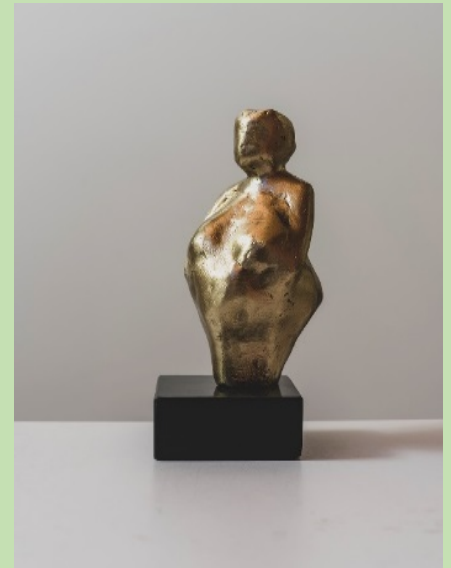
This is an area of considerable importance to our network. Accordingly we were very well represented at the meeting with Anne Brosnan and Rob de Rijck, (ENPE President and Vice-President respectively), attending as nominated correspondents, and several members of the LIFE-ENPE Working Group on Sanctioning, Prosecution and Judicial Practices, including the Working Group's Chair, Prof Carole Billiet of EUFJE, Katerina Weisssova, Lucia Giron, Ksenija Dimec and Sara Boogers, attending also.

The meeting focussed on penalty clauses in EU environmental legislation and an update on the work on the revision of the Environmental Crime Directive, for which ENPE, via a dedicated working group of our own, had provided a detailed submission earlier in the year. We look forward to contributing to this group at its next meeting.

ENPE annual awards - the 'Gaia' statuette

We announced the inauguration of the annual ENPE "Gaia" awards in our last edition of our newsletter (June 2021) and are pleased to update you on the nomination process. The awards, in the form of the Greek Goddess 'Gaia' will be made in recognition of outstanding contribution to fighting environmental crime. The three categories of award have now been agreed and will comprise:

- 1) "Overall contribution in the fight against Environmental Crime", the "main" ENPE Gaia award;
- 2) "Environmental case of the year" and
- 3) "Innovation and/ or excellence in combatting Environmental Crime", an award which will focus on the work of recently qualified prosecutors.



All nominations are made by ENPE members and observers with adjudication to be completed by the Gaia awards judges panel comprising five ENPE members. The awards will be made at our annual conference in May 2022 with winners notified beforehand.

[Acceptance speeches are very welcome but must be limited to 5 minutes!!!]

ENPE outreach

Joint Client Earth & Chinese Supreme People's Procuratorate High-Level Seminar on Public Interest Litigation and the Preventive Principle for Protecting Biodiversity

On 16 December 2021, ENPE president Anne Brosnan participated in this important international event which focussed on 10 landmark biodiversity protection cases from all over the world. The event looked closely at the prosecutors' role in these cases and was jointly organised and hosted by Client Earth and the Chinese SPP, held in Beijing and via Zoom.

The recognition that Biodiversity is the foundation of human survival and development was the central theme of the seminar. The multiple global threats of population growth and human activity, together with the COVID-19 pandemic and climate change were discussed in the context of protecting species and habitats, with courts and prosecutors playing an increasingly important role in this regard.

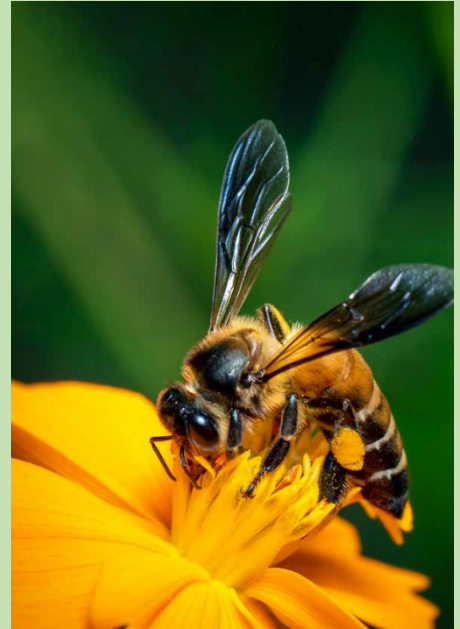


Image taken from 10 Landmark cases for Biodiversity 11 October 2021 (Jiang et al)

The work of China's prosecutors in developing and deploying powerful tools, including public interest and preventative litigation, to address these global challenges was shared with international counterparts from around the world, to promote further collaborative work in this critical area. The meeting focussed on the following themes:

- 1) Procuratorial Public Interest Litigation for Biodiversity Conservation;
- 2) Judicial Pathways for Global Biodiversity Conservation;
- 3) The Preventive Principle in Protecting Nature through Law; and
- 4) Restoration and Punitive Cases for Protecting Nature through Law

For more details, including accessing the 10 landmark biodiversity cases please see:

[10 Landmark Cases for Biodiversity | ClientEarth](#)

Training & capacity building with partner organisations & projects

Aisling Kelly, ENPE Director and Treasurer gave a very-well received presentation to the Ecole Nationale de le Magistrature (French National School of Magistrates), at their training session focussing on environmental crime in July 2021. Aisling provided a summary of a fascinating case of illegal poaching of

large mammals involving co-operative working with Agencies working together across borders in Central Europe.

Howard McCann, a senior lawyer specialising in Transfrontier Shipments of Waste prosecutions based at the Environment Agency, England, has also been involved in providing training on behalf of ENPE at virtual events for delegates from Africa and Asia. The first event, held in early November, was organised by the United Nations Environment Programme and was to train prosecutors and inspectors tackling these crimes in Rwanda. The second was organised and broadcast from Bangkok and was part of the WasteForce project. As with Aisling's, both were very well received.

ENPE represented at the IUCN World Conservation Congress, Marseilles 03-11 September 2021

At the invitation of Justice Antonio Herman Benjamin and Professor Nicholas Bryner of the IUCN World Commission on Environmental Law (WCEL), ENPE President Anne Brosnan participated in this important global event, opened by President Macron (pictured opening the event), held in Marseilles in early September. The congress is convened to “drive action on



biodiversity, nature-based recovery and climate change. Bringing together civil society, indigenous peoples and states, the IUCN Congress will set the global nature conservation agenda at a time when the link between biodiversity and human wellbeing is made increasingly evident by the COVID-19 pandemic.” ([IUCN World Conservation Congress to be held from 3 to 11 September 2021 in Marseille | IUCN](#))

As part of a panel of Speakers from Norway to Burkina Faso, Anne presented at the seminar titled “Challenges in Environmental Compliance and Enforcement” which promoted a dynamic dialogue on developing strategies to secure effective compliance and enforcement of environmental law and policies, as critical elements to address the unprecedented challenges presented by global climate change. [photograph from BBC records]

Interesting Cases

Water company receives record fine for pollution

In England, UK, one of its water and sewerage undertakers, Southern Water Services Ltd was handed a record fine of £90 million in July this year. But for the credit given and reduction in sentence for guilty pleas, the company would have been fined £135 million pounds, after pleading guilty to thousands of illegal discharges of sewage which polluted rivers and coastal waters in Kent, Hampshire and Sussex.

The sentence arises from 51 offences relating to widespread and long-term breaches of environmental law by Southern Water Services Ltd between 2010 and 2015. The offences were found to be caused by deliberate failings, causing major harm (Category 1) to protected areas, conservation sites and oyster beds.

The case, which followed on from the largest criminal investigation in the Environment Agency's 25-year history, saw pollution offences from 16 wastewater treatment works and one storm overflow brought together in one prosecution at Canterbury Crown Court. Whilst there was some attendance by the judge and counsel, the case was heard live on the court's video link platform.

In giving his sentence, the Honourable Mr Justice Jeremy Johnson, a High Court judge said:

"Each of the 51 offences seen in isolation shows a shocking and wholesale disregard for the environment, for the precious and delicate ecosystems along the North Kent and Solent coastlines, for human health, and for the fisheries and other legitimate businesses that depend on the vitality of the coastal waters.

Each offence does not stand in isolation. It is necessary to sentence the company for the totality of the offences to which it has pleaded guilty. But even that does not reflect the defendant's criminality. That is because the offences are aggravated by its previous persistent pollution of the environment over very many years."

Southern Water charges its customers for treating wastewater and is required by permit to properly treat wastewater so as to protect the environment. Instead, the court heard the company admit to causing 6,971 illegal discharges over the offending period (2010-2105), which lasted a total of 61,704 hours, the equivalent of 2,571 days or just over seven years.

The court was told that Southern Water deliberately presented a misleading picture of compliance to the Environment Agency, hindering proper regulation of the company.

The discharges were made into highly sensitive protected areas including numerous conservation sites, causing major environmental harm (Category 1) to shellfish waters.

This negatively impacted businesses and community groups, with discharges into designated shellfish waters causing a long-term deterioration in the shellfish flesh quality – leaving some areas unsuitable for harvesting shellfish for human consumption – resulting in lost business for shellfish producers.

The Environment Agency's successful prosecution secured the largest fine for environmental pollution by a water company to date, which will be paid out of company operating profits – protecting customers from having to pick up the tab for illegal pollution.

Chair of the Environment Agency, Emma Howard Boyd said:

“With nature in crisis, no one should profit from undermining environmental laws. This sentence shows fines for environmental offences are starting to reach the same level as the highest fines for crimes in financial services and that is good. There is growing scrutiny of the environmental performance of companies all over the world, this sends an important message to global investors that England expects businesses to perform to the highest standards.

Like all water companies, Southern Water has a responsibility to operate in accordance with permit conditions and protect against serious pollution. In its deliberate, widespread and repeated offending, it has failed the environment, customers and the system of environmental laws the public puts its trust in. Polluters must pay, the Environment Agency will continue to do everything in its power to ensure that they do.

The Environment Agency has worked closely with Ofwat, the economic regulator, [which imposed a £126 million penalty on SWS in 2019 as a result of the company's regulatory failings over the same period](#). The sentencing at Canterbury Crown Court concerned the separate criminal investigation into permit breaches and environmental harm.”

Prosecution for destruction of Habitat



A luxury housing developer has been ordered to pay more than £100,000 for destroying land that was home to rare hazel dormice. Hampshire Police were first contacted by Fareham Borough Council in 2019 following reports that the site in Swanwick, Hampshire, had been cleared by a large machine. Heavy track marks were evident at the site, and hedgerows and shrubs had been ripped up by the roots and piled around the land, according to the police.

The landowner, Knightsgate (UK) Ltd, had contracted a tree surgeon to carry out the work, even though it had received an ecology report which made it clear that protected species were onsite. There were also planning conditions at the site which included mitigation measures to protect the habitat of the dormice.

The company was charged with damaging or destroying a breeding site or resting place of a wild animal of a European protected species following an investigation by Hampshire Constabulary's Country Watch Team, supported by local ecologists, the local planning authority and charity the People's Trust for Endangered Species.

Knightsgate admitted the offence at a previous court hearing at Portsmouth Magistrates' Court in October 2020. The court found that the company had acted recklessly by failing to properly give instructions to the contractor about clearing the site.

At a hearing at Portsmouth Crown Court in November 2021 the company was handed a £40,000 fine. The court also made a confiscation order of £69,000 – the sum the company would have had to pay had they followed the recommendations of the ecology report.

PC Lynn Owen, from the Country Watch Team, said: “Dormice are a rare and protected species which we are very fortunate to have breeding in Hampshire.

“Their population has been decreasing dramatically in the UK over the last century, and this destruction of their habitat by Knightsgate has caused a devastating blow to the animals.”

Ian White, dormouse officer for People’s Trust for Endangered Species, said: “Hazel dormice are a rare and declining species in England and Wales, and because of this they are a protected species. Their habitats can be managed sympathetically when areas are built on, but all too often their presence is ignored by developers in the pursuit of profit.

“Buildings may come and go but once dormice are lost from these shores, they are lost forever. It is the responsibility of all of us to ensure that does not happen.”

The tree surgeon, 29-year-old James Rolph from the Upham area of Hampshire, was previously sentenced on 23 October 2020 and fined £1,000.

UK Waste firm fined £1.5m for exporting household waste

(from The Guardian newspaper, 30/07/21)

In July 2021, the UK’s largest waste company, Biffa Waste Services Ltd, was fined £1.5m after exporting filthy rubbish marked as waste paper for recycling in India and Indonesia, in actions a judge called “reckless, bordering on deliberate”.



The company was convicted of sending more than 1,000 tonnes of household waste to India and Indonesia, in breach of a ban on sending such waste to developing countries after a two-week trial at Wood Green Crown Court.

Some of the rubbish marked as wastepaper for recycling. [Photograph: Environment Agency]

Approximately 50,000 tins, 40,000 plastic bags, 25,000 items of clothing, 3,000 nappies – and even a frying pan, condoms and a souvenir New York T-shirt were among the items packaged as wastepaper for export to Asia in Biffa's recycling facility in Edmonton, north London, between 2018 and 2019.

The seven-figure fine is the second time in two years the company has been fined for exporting household waste to a non-OECD country.

Investigators who discovered the rogue waste recorded "a strong putrid" smell and an "acidic aroma" after they held sixteen 25-tonne containers at Southampton, but 26 more had already left the port.

Biffa said the prosecution brought by the Environment Agency had not been in the public interest. However, after Friday's sentence, it removed that statement from its website. Instead, Biffa told the Guardian: "We take our responsibility for environmental stewardship very seriously and we accept the court's judgment. We no longer export waste paper outside the OECD and will carefully review our processes to ensure they fully meet the implications of this judgment."

Judge Shane Collery QC, sitting at Wood Green Crown Court, commented that Biffa had shown no contrition. He found the company's previous comments about being picked on by the Environment Agency and no public interest served in being prosecuted a second time as "aggravating and unattractive".

The Environment Agency brought the prosecution against Biffa after uncovering rolling contracts to send vast amounts of waste to India and Indonesia.

The head of waste regulation at the Environment Agency, said: "Biffa shipped banned materials to developing countries without having systems in place to prevent the offences. The Environment Agency will pursue those who blight the lives of overseas communities through illegal exports. This guilty verdict underlines that anyone producing or handling waste must only export material legally and safely for recycling.

The Environment Agency stopped the illegal export of almost 23,000 tonnes of unsuitable waste in 2019-20. We have stepped up increased monitoring of international waste shipments."

During the most recent trial, jurors were told of Biffa's rolling monthly contracts worth a combined £39,500 to move the household waste to India or Indonesia.

The company was convicted of four breaches of regulation 23 of the Transfrontier Shipment of Waste Regulations 2007 between October 2018 and April 2019. In addition to the £1.5m fine, Biffa was ordered to pay costs of £153,827.99, and a proceeds of crime order of £38,388.

In September 2019, Biffa was fined £350,000, with costs of £240,000 and a proceeds of crime order of £9,912, for sending household waste, described as waste paper, to China between May and June 2015.

Britain is a signatory to international agreements to ensure that household and hazardous waste produced here is not exported to developing nations.

Sailesh Mehta, prosecuting for the Environment Agency, told the jury: “We have a moral and legal obligation not to pass on our pollution problems to other countries such as India and Indonesia.”

The Biffa group has a turnover of more than £1bn, and about 100,000 tonnes of waste is exported from its Edmonton site.

Unlawful storage of toxic chemicals & firearms offences

“On 15th September 2020 a Common Buzzard was found dead on open farmland in Undley, Suffolk. Nearby was the carcass of a wood pigeon.

The matter was reported to Natural England, (one of the Agencies in England responsible for investigating wildlife crime) by the finder. The carcasses were found around fifty metres from pheasant rearing pens which were situated on neighbouring farmland.

The birds were collected and sent for forensic testing, where the results showed that the partially plucked pigeon had Bendiocarb residue on its body. The buzzard was discovered to have Bendiocarb residue in its stomach. It was concluded that it was likely the buzzard died after consuming meat from the pigeon.



Suffolk Police and Natural England officers are pictured above searching land at Lakenheath (RSPB)

The persecution of raptors is a national issue and it is known that one of the favoured pesticides for illegally poisoning them is Bendiocarb. The placing of any poisoned bait in the open countryside has been illegal for over 100 years and this dangerous method is indiscriminate, with risks to wildlife, pets and people.

Enquiries identified that the person responsible for the running of the game shoot and managing the pheasant rearing pens was Shane Leech.

As a result of these findings, officers from Suffolk Constabulary, supported by Natural England and the RSPB attended Mr Leech's home address in Lakenheath on Monday 18th January 2021.

When police officers attended, Mr Leech was about to leave for work. During the search of a brick outbuilding directly behind the family bungalow, a half empty 3kg tub of Ficam D was found. Another 3kg tub was found in the same building still in its brown paper postal wrapping.

The active ingredient for Ficam D is Bendiocarb. This is a professional use only pesticide, authorised for internal use to kill ants and wasps. Leech had no professional training in relation to pesticides.

The building was insecure on Police arrival and there were no signs or information to say that insecticide was being stored within. There were around thirty pheasant carcasses laying on the floor of the building, which Mr Leech stated were to be used for human consumption.



Suffolk Police search storeroom where Ficam was found (RSPB)

Parked on the driveway of the address was a Nissan Navara pick up which Mr Leech was the owner. This vehicle was searched and two boxes of .22 ammunition were located within the centre console.

As a result of the breach of licence conditions relating to his firearms certificate, police explained that they wanted to examine Mr Leech's guns whilst at the address.

In a small, unlocked room at the rear of the bungalow which contained Mr Leech's gun cabinets two shotguns were located laying on the floor, by a radiator, in full view of the window. Mr Leech explained that they had been left out to dry overnight. This was also in breach of licence conditions.

Police were advised that Mr Leech stored further guns at his parents' address. Upon attending the parents' address and checking the gun cabinet, a further box of .22 ammunition was found on top of the cabinet. A

check of Mr Leech's firearms and shotgun certificates discovered his shotgun certificate had not been signed.

Mr Leech and the police subsequently travelled to Chalk Farm, Undley. At this location were a number of storage sheds. Within these sheds were found pesticides, veterinary medicines and 3 plant protection products. The buildings were unsuitable to store these products because they were not fire resistant, the straw bales were a fire risk, they were adjacent to gas cylinders and no signage to warn of pesticides. One of the herbicides found in a container labelled "Palio Herbicide" was found to contain metaldehyde which is required to be stored in its original container and with labelling.

There was insufficient evidence to prove that Mr Leech was the person who had put out the poisoned bait or had killed the Common Buzzard.

Mr Leech pleaded to the following offences on 26th August 2021:

1. Contravene Health and Safety Regulations re storage of bendiocarb
2. Contravene Health and Safety Regulations re storage of metaldehyde
3. Fail to comply with requirements of a shotgun certificate (x4)

Mr Leech was sentenced on 8th November 2021 to a 12 month Community Order with 80 hours Unpaid work. He was ordered to pay £105 in prosecution costs and £95 in a Victim Surcharge. The chemicals were also ordered to be forfeited and destroyed.

For more information contact shaun.robinson@environment-agency.gov.uk



Common Buzzard UK. Stock image.

ENPE website crimes database

We continue to encourage submissions for inclusion on the ENPE crimes database. The database is part of the ENPE website <https://www.environmentalprosecutors.eu/> and is building a collection of case law for all three ENPE working group subject areas (wildlife crime, waste crime & air pollution). The database is of a non-operational character and concerned with legal aspects only. Names of defendants and other identifying information are left out. Because the main function of the database is supporting the ENPE network of prosecutors, access to it is not public, but is subject to authorisation by ENPE. Environmental prosecutors in Europe are invited to request an authorisation - please contact Rob de Rijck or Lars Magnusson on r.de.rijck@om.nl or Lars.Magnusson@aklagare.se. Case law, with identifying details omitted and together with the relevant database keywords and a summary in English, can be submitted via the national ENPE contact points.

Contact

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Please do visit our website: www.environmentalprosecutors.eu

ENPE has received funding from the EU LIFE Programme



LIFE14 GIE/UK000043