

DISCHARGE / DEPOSIT OF POLLUTING MATTER

Water (NI) Order 1999

- 7.- (1) Subject to the following provisions of this Part, a person commits an offence if, whether knowingly or otherwise—
- (a) he discharges or deposits any poisonous, noxious or polluting matter so that it enters a waterway or water contained in any underground strata; or
 - (b) he discharges or deposits any matter so that it enters a waterway or water contained in any underground strata and tends either directly or in combination with similar acts (whether his own or those of another) to impede the proper flow of the water of the waterway or strata in a manner leading or likely to lead to pollution or a substantial aggravation of pollution due to other causes or of its consequences.
- (2) Subject to the following provisions of this Part, a person commits an offence if, by any means whatsoever, he makes any discharge of any trade or sewage effluent—
- (a) into a waterway or water contained in any underground strata; or
 - (b) from land, through a pipe, into the sea outside the seaward limits of any waterway.
- (3) On a person's conviction of an offence under paragraph (1), the court by or before which he is convicted may on the application of the Department, of which not less than 10 days' notice has been given to the person charged, make an order directing him to take such measures as the court may consider necessary to remedy or nullify any contravention of paragraph (1).
- (4) A person who fails to comply with an order under paragraph (3) shall be guilty of an offence.
- ...
- (6) Subject to the following provisions of this Part, a person who contravenes the conditions of any [Departmental] consent under Article 7A(3)(a) shall be guilty of an offence.

Maximum Sentence:

Water (NI) Order 1999, Art.7(7)

Indictment: 2 years imprisonment and/or Unlimited Fine

Summary: 3 months imprisonment and/or £20,000 Fine

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Offence committed on non-commercial basis	£2,000 Fine + Compensation Order*	£1,000 Fine to 3 months Custody + Compensation Order**
Offence committed on commercial basis	2 months Custody + Compensation Order*	£10,000 Fine to 3 months Custody + Compensation Order*

* When determining the amount of any Compensation Order the loss or damage resulting from the offence includes costs incurred by the owner or occupier of the land, the Department of the Environment or a District Council in removing the waste and taking other steps to eliminate the consequences of the waste being deposited/disposed on the land. – Article 5C of the 1997 Order.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Quantity and type of pollutant involved 2. Human health, animal health, or flora were adversely affected (especially where a protected species or a site designated for nature conservation) 3. Extensive clean-up, site restoration or animal rehabilitation operations required 4. Pollutants released near housing, children's play areas or schools, livestock, fishing area or environmentally sensitive sites 5. Offence was a deliberate or reckless breach of the law, rather than the result of carelessness 6. Offender failed to respond to advice/caution/warning from the relevant regulatory authority or Department 7. Offender ignored relevant concerns voiced by employees or others 8. Offender's attitude towards the relevant authorities or Department was dismissive or obstructive 9. Other lawful activities were prevented or significantly interfered with 	<ol style="list-style-type: none"> 1. Offender played a relatively minor role, or relatively little personal responsibility, in the commission or the offence 2. Offender genuinely and reasonably lacked awareness or understanding of the regulations specific to the activity in which he was engaged 3. Offence was an isolated lapse 4. Offender's prompt reporting of the offence and ready co-operation with the relative authorities or Department 5. Offender has already made reparations 6. Offender has taken corrective steps to prevent future accidents occurring.

Relevant Cases:

NI Cases:

R v Allingham and Allingham; R v McKenna [2012] NICA 29
R v Braniff [2016] NICA 9

English Cases

R v Thames Valley Utilities [2010] EWCA Crim 202
R v Cemex Cement Ltd [2007] EWCA Crim 1759
R v Anglian Water Services Ltd [2003] EWCA Crim 2243
R v Milford Haven Port Authority [2000] 2 Cr App R(S) 423

R v O'Brien and Enkel [2000] 1 Cr App R(S) 358
R v F Howe and Son (Engineer) Ltd [1999] 2 Cr App R(S) 37
R v Garrett [1997] 1 Cr App R(S) 109

Notes: