

# English summary

Environmental criminal law in practice—a study of how the legislation is applied

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*Published by:*

National Council for Crime Prevention (BRÅ)  
P.O. Box 1386  
SE-111 93 Stockholm, Sweden

*Reference:*

Report 2002:10  
ISSN 1100-6676, ISBN 91-38-31930-6

*Available in Swedish from:*

Fritzes Kundservice  
SE-106 47 Stockholm, Sweden

Over recent decades, criminal law has become the centre of attention in relation to developing methods by which society can influence activities that may cause harm to the environment. Legislative reforms and changes in the way the legislation is applied in practice have been introduced with the objective of increasing the effectiveness of environmental control by means of the criminal law. Public inquiries have suggested that the use of criminal law may be expected to have a greater general preventive effect when activities are criminalised in order to protect the environment than when criminalisations are introduced for other reasons. In addition, the Government has designated environmental crime among the areas to be prioritised by police and prosecutors.

This report examines the question of how the criminal law works in practice as a means of controlling potentially harmful activities. The empirical data are in part comprised of a questionnaire survey of local authority supervisory agencies, county administrative boards, police and prosecutors, and in part on two further questionnaires, the first distributed by the Office of the Prosecutor General to supervisory agencies and prosecutors, and the other distributed to the country's police authorities by the National Police Board.

Societal control by means of criminalisation builds on the notion of general prevention. This is dependent on such conditions as the existence of legal and regulatory acumen at the agencies responsible for applying the law, a certain likelihood that breaches of the law will lead to a sanction, and sanctions that are stiff enough to serve as a deterrent. As regards the issue of regulatory acumen, the majority of officials working with environmental offences at supervisory agencies, or in the police or prosecution services, do appear to have some form of special training in, and relatively long experience of dealing with cases involving environmental crimes. The likelihood that offences will lead to a sanction is dependent to a considerable extent on the likelihood that such offences will be discovered. The fact that environmental crimes depend on the efforts of control agencies for their discovery, in combination with the relatively low frequency of inspections, is likely to mean that the risk of discovery is rather low. The agencies' propensity to report the offences they discover is also of significance for the likelihood that an offence will result in a sanction. The supervisory agencies are the bodies that discover and report environmental crimes. The study showed that officials at these agencies were both better trained and had more experience in the area of environmental work than police and prosecutors, and that they were also judged to have the highest levels of competence in relation to this work. Their propensity to report offences is not always as good as it might be, however, and the propensity to report environmental crimes also varies between different parts of the country. In combination with the fact that only just over one in ten of the reported environmental offences leads to an indictment, this indicates that the likelihood of offences resulting in a sanction is low. Very few individuals end up being convicted of crimes against environmental legislation and sanctions are rarely more serious than relatively mild day-fines. The majority of officials working in the agencies applying the legislation consider the sanctioning of environmental offences to be too lenient.

The supervisory agencies' explanations for why they choose not to report all suspected environmental offences relate for the most part to various characteristics of the judicial control system—amongst other things, the officials feel that offence reports do not lead to adequate countermeasures. In almost as many cases, breaches of the legislation are not reported because the officials consider them to be of a nature that should not be dealt with by means of the criminal law. In relation to the investigation of environmental crimes, the elements deemed most problematic by police and prosecutors are factors of a legal-technical nature and/or the consequences of a lack of the necessary competence at relevant agencies.

The legislation, or formalised justice, constitutes the foundation for the application of a criminal justice approach. Since this is not a mechanical process, other factors, which may be referred to as extra-legal, also play a role in judicial outcomes. Officials working at the agencies applying the legislation themselves regard factors such as the knowledgeability of police and prosecutors in relation to environmental legislation, as well as their propensity to investigate and indict offences and staffing resources at the

supervisory agencies as weak points in relation to attempts to convict those committing environmental offences in the course of commercial activity. It was only among the police that a relatively large proportion considered the formulation of the legislation to constitute one of the four weakest links in this context.

Finally, the report questions whether the decentralisation of environmental crime control, i.e. the key role played by local authority agencies in the control of environmental crime, is compatible with the requirement of equality before the law that must be fulfilled when the criminal law is employed in this way. The report also raises the question of whether the special need for expert personnel to investigate environmental offending in the context of commercial activity, for example, would be better served by means of an inverted form of recruitment. This would take the form of providing additional training for persons with scientific and technical competence in order to enable them to participate in the investigation of suspected offences, rather than providing additional training for police and environmental investigative personnel. In conclusion, the point is made that when criminalisations are introduced without consideration for the level of resources available within the justice system, this may result in a situation where the law is then applied in a non-uniform fashion. This in turn involves a threat to the basic principles of the rule of law and does little to promote the legitimacy of the criminal justice system.

