

## AN OVERVIEW OF STRICT LIABILITY OFFENCES AND CIVIL PENALTIES IN THE UK'S ENVIRONMENTAL LAW

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### **Abstract**

The UK has incorporated the strict liability principle in dealing with the environmental offence in its legislations. However, the principle application has some detrimental impacts. This article aims to discuss strict liability crimes in the UK's environmental legislations and civil penalties in the UK, the detrimental effects of applying its principle and the reasons for supplementing criminal penalties for environmental offences with civil penalties. This will be done through the adoption of a doctrinal legal research method. The incorporation of strict liability principle in the UK's legislations can be found in the Environmental Protection Act 1990, the Water Resources Act 1991, Part 2A of the Environmental Protection Act 1990 and the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No. 675). The detrimental effects of the principle application are the ignorance of *mens rea* element, unfair trial, ineffective environmental damage prevention, and contradictory to release right. The reasons for applying civil penalties of criminal law violation in regard with violating environmental law are this punishment is possible to be imposed on companies, it strengthens another kind of non-criminal sentence sanction, it is a peaceful solution, a polluter may manage by himself to repair the damage, it has no stigma on the polluter and it has wider law enforcement form. There is a dearth of literature looking at the latest UK's legislation incorporating strict liability principle application. This article will fill this literature gap.

*Inggris telah mengatur prinsip pertanggungjawaban tanpa kesalahan (strict liability) dalam kasus pelanggaran undang-undang lingkungan. Akan tetapi pelaksanaan dari prinsip tersebut memiliki beberapa kekurangan. Artikel ini bertujuan membahas strict liability dalam kasus pencemaran lingkungan yang*

*diatur dalam peraturan perundang-undangan di Inggris, kekurangan penerapan prinsip strict liability dan alasan menambahkan sanksi ganti rugi dalam sanksi pidana dalam kasus pelanggaran undang-undang lingkungan di Inggris. Tujuan penelitian diatas akan dijawab dengan menggunakan metode penelitian hukum doktrinal. Prinsip strict liability di Inggris dapat ditemukan dalam EPA 1990, the Water Resources Act 1991, Part 2A of the EPA 1990 dan Peraturan Izin Lingkungan di Inggris dan Wales Tahun 2010 (SI 2010 No. 675). Dampak negatif yang mungkin terjadi seperti pengecualian unsur kesalahan, persidangan yang tidak adil, tidak efektif pencegahan kerusakan lingkungan dan bertentangan dengan hak pembebasan. Adapun alasan ganti kerugian keperdataan adalah bahwa hukuman merupakan sanksi yang mungkin diberikan kepada pelaku yang merupakan badan hukum seperti perusahaan, hukuman tersebut akan memperkuat penerapan sanksi yang bukan pembedaan, menjaga hubungan dengan menemukan solusi, memungkinkan si pelanggar (polluter) untuk mengelola dana sendiri untuk memperbaiki kerusakan lingkungan, menjaga nama baik si pelaku, dan memiliki sifat penegakan hukum yang lebih luas. Masih sedikit penelitian yang mengkaji prinsip strict liability di dalam undang-undang yang terbaru di Inggris. Artikel ini akan fokus kepada pengaturan prinsip strict liability terhadap pencemaran lingkungan dalam undang-undang lingkungan yang terbaru di Inggris.*

**Keywords:** Strict liability, Offences, Civil penalties, Environmental, United Kingdom

## Introduction

There has been a huge change in environmental law development in the United Kingdom (the UK) over the past few years. There have been two reports from the House of Commons Environment Committee of particular note that are toxic waste in February 1989 and the contaminated land in January 1990.<sup>1</sup> The primary legislations in the United Kingdom's environmental law are the Environmental Protection Act (EPA) 1990, the Water Resources Act 1991, the Environment Act 1995, the Town and Country planning Act (TCPA) 1990 and the Pollution Prevention and Control Act 1999.

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<sup>1</sup> Richard H. Burnett-Hall, "Emerging Trends in Environmental Law: Non-Fault Liability: The United Kingdom", in *Environmental Liability*, ed. by Patricia Thomas (London: SJ. Berwin & Co., 1990), p. 149.

Strict liability or liability without any negligence or fault is aimed at preventing the environment from being polluted in many possible ways. This approach would be considered as an effective way in dealing with environmental crimes nowadays because of a significant increase of the crimes. However, strict liability principle has also detrimental effects on criminal environmental offences. The regime of civil penalties in the United Kingdom (the UK) has provided a number of powers to authorities to impose certain or various financial penalties, restoration and stop notices, compliance, 3<sup>rd</sup> party, and enforcement undertakings.<sup>2</sup> This article aims to discuss strict liability offences in the UK environmental legislation, civil penalties in the UK, the detrimental effects of the principle application and the reasons for supplementing criminal penalties for environmental offences with civil penalties in the country.

### **Strict Liability Offences in the UK's Environmental Legislations**

Environmental crimes and their other regulatory offences are frequently considered as not intrinsically crime.<sup>3</sup> Although the fundamental structure of a crime must include *actus reus* or an objective element and *mens rea* or a subjective element.<sup>4</sup> Perception on its lacking of moral blameworthiness for the regulatory offences has been an essential reason for imposing strict liability.<sup>5</sup> As, perhaps, culpability is not such an issue with environmental offences, the courts have a distinct approach to causation to ordinary criminal law.<sup>6</sup> The key reasons for using strict liability are that such imposition will promote the interests of public goal essentially in environmental statutes, deter environmental damage, to ease the prosecution, which increases the deterrent effect and comply with the polluter-pays principle.<sup>7</sup> Strict

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<sup>2</sup> Alistair Mills, "The Environmental Civil Sanctions Regime", *Judicial Review*, vol. 24, no. 1 (2019), p. 1.

<sup>3</sup> Julie Adshead, "Doing Justice to the Environment", *The Journal of Criminal Law*, vol. 77, no. 3 (2013), p. 215.

<sup>4</sup> Jessica Lynn Corsi, "An Argument for Strict Legality in International Criminal Law", *Geo. Journal of International Law*, vol. 49 (2017), p. 1321.

<sup>5</sup> Julie Adshead, "Doing Justice to the...", p. 215.

<sup>6</sup> Julie Adshead, "Doing Justice to the...", p. 215.

<sup>7</sup> Stuart Bell and Donald McGillivray, *Environmental Law* (New York: Oxford University Press, 2008), p. 261.

liability offence is defined as an offence that if one aspect of its *actus reus* has no corresponding fault element to be proved and there is no defense of mistake of fact available in respect of that objective element.<sup>8</sup> In addition, strict liability offence is also defined as an offence containing at least one material substance for which there is not requiring *mens rea* element.<sup>9</sup> It results from its very complexities that appeared in the environmental pollution issue regarding the fault consideration which is the European Commission has started to look into a strict liability.<sup>10</sup> *Mens rea* is a very important element of each crime; however, it can be exempted for some reason considering this mind guilty element necessary.<sup>11</sup> Moreover, Irish Courts prefer to use the term of absolute liability conferring with one-fault elements or more and strict liability to mean as a halfway house method.<sup>12</sup> This approach on a fault element does not require proving its objective element as it is not a part of the inherent offence definition; however, the accused can challenge this by raising a due diligence defense concerning such objective element.<sup>13</sup>

The EPA 1990 has ruled that the environmental polluter must be held liable for damages caused by waste. However, it denied the principles of retroactive and strict liabilities and it still prefers a fault-based approach.<sup>14</sup> On the other hand, the Water Resources Act 1991 has granted authorities to demand the reparation of the polluted sites and to ask liable parties to recover funds if the pollutants or wastes are likely to enter controlled waters, including groundwater.<sup>15</sup> This Act clearly shows its liability is strict by stating that the parties that can be held liable are who knowingly allowed the place of waste in an area

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<sup>8</sup> David Prendergast, "The Constitutionality of Strict Liability in Criminal Law", *Dublin University Law Journal*, vol. 33, (2011), p. 286.

<sup>9</sup> Andrew Ashworth, "Should strict criminal liability be removed from all imprisonable offences?", *Irish Jurist (1966-)*, vol. 45 (2010), p. 3.

<sup>10</sup> Nicola Atkinson, "Strict Liability for Environmental Law: the Deficiencies of the Common Law", *Journal of Environmental Law*, vol.4, no. 1 (1992), p. 106.

<sup>11</sup> David Prendergast, "Strict Liability and the Presumption of Mens Rea after CC v Ireland", *Irish Jurist (1966-)* vol. 46 (2011): p. 214.

<sup>12</sup> David Prendergast, "The Constitutionality...", p. 286.

<sup>13</sup> David Prendergast, "The Constitutionality...", p. 286.

<sup>14</sup> Jane L. Bloom, Mark A. Silberman and Gaines Gwathmey, "Superfund-type liabilities in Europe", *Environmental Claims Journal*, vol. 4, no. 3 (1992), p. 360.

<sup>15</sup> Jane L. Bloom, Mark A. Silberman and Gaines Gwathmey, "Superfund-type...", p. 360.

that it was reasonably likely that they would come to controlled water. Nevertheless, the Circular 2/2006, Part 2A of the Environmental Protection Act 1990 regulates that strict liability approach and retroactive principles are applied towards historic contaminated land in the UK. It seems that the EPA 1990 has a different approach between historic and current contaminated land.<sup>16</sup>

The offence of not specific water pollution provides a good sample of common strict liability environmental laws. The offence is according to Regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No. 675) to contravene regulation 12(1), which provides that “a person must not, except under and to the extent authorized by an environmental permit (a) operate a regulated facility; or (b) cause or knowingly permit a water discharge activity or groundwater activity”.<sup>17</sup> There are two different offences; however, as this ease of prosecuting the ‘causing’ offence, the ‘knowingly permitting’ offence is barely prosecuted. The merely related concern for the judges in the previous offence is that whether the defendant has caused the entry of the polluting substance into the water. The same provisions are to be found in, for instance, provisions of the waste management.<sup>18</sup>

From the above environmental legislation in the UK, it can be seen that strict liability could be legally imposed in favor of certain public interest than a specific personal interest that requires protection.<sup>19</sup> Therefore, it can be understood that strict liability is used to govern potential environmental offenders. Although environment offences are considered as not a real crime, it may cause serious harm and it might have more detrimental effects than other perceived serious criminal offences.<sup>20</sup>

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<sup>16</sup> Mahfud, “United Kingdom and Usa’s Legislations to Clean Historic Contamination”, *Mimbar Hukum-Fakultas Hukum Universitas Gadjab Mada*, vol. 25, no. 1 (2013), p. 163.

<sup>17</sup> Julie Adshead, “Doing Justice to the...”, p. 216.

<sup>18</sup> Julie Adshead, “Doing Justice to the...”, p. 216.

<sup>19</sup> Alan Reed, “Strict Liability and the Reasonable Excuse Defence: R v Unah [2011] EWCA Crim 1837”, *The Journal of Criminal Law*, vol. 76, no. 4 (2012), p. 296.

<sup>20</sup> Alan Reed, “Strict Liability and the...”, p. 296.

## **The Detrimental Effects of Criminal Environmental Offences Being Strict Liability Offences in *Empress Car Company (Abertillery) Ltd. V. National Rivers Authority (1998) case***

Section 85 (1) of the Act states that a person is guilty of contravening the Act if he “causes or knowingly permits any poisonous, noxious or polluting matter to enter any controlled waters”. In *Empress Car Company (Abertillery) Ltd. V. National Rivers Authority (1998)*, The Times 9<sup>th</sup> February, the defendant was convicted of breaching section 85 (1) of the Water Resources Act 1991. Although it would be true to say that a large quantity of oil had escaped from the stranger would have caused tank into the river, the Crown Court decided that the company had also caused it because the liability under section 85(1) is strict.<sup>21</sup> In other words, this section includes responsibility for certain deliberate acts of third parties (by parity of reasoning) and natural events.<sup>22</sup> However, the section cannot be applied in terms of an “extraordinary event” intervenes and negatives the causal effect of the defendant’s conduct, in which case it is open to the court to hold that the defendant did not cause the pollution. Similarly, House of Lords also concluded that the defendant had caused the oil to enter the controlled waters because the appellant had let the tap be unlocked in a situation where the premises were not secure against invasion, where there was the opposition of local people to the company or malicious intervention of the third parties.<sup>23</sup> The House held that such facts would not be something extraordinary events.<sup>24</sup>

There is the fact that it would be useful to prevent environmental damages from polluting by introducing strict liability offences. Besides, even though strict liability offences aim to protect the public good, primarily public health, and safety, environmental protection as

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<sup>21</sup> *Empress Car Company (Abertillery) Ltd. V. National Rivers Authority (1998)*, The Times 9<sup>th</sup> February

<sup>22</sup> *Empress Car Company (Abertillery) Ltd. V. National Rivers Authority (1998)*, The Times 9<sup>th</sup> February

<sup>23</sup> *Empress Car Company (Abertillery) Ltd. V. National Rivers Authority (1998)*, The Times 9<sup>th</sup> February

<sup>24</sup> *Empress Car Company (Abertillery) Ltd. V. National Rivers Authority (1998)*, The Times 9<sup>th</sup> February

well as to justify liability without fault, these offences still have some negative impacts. But, it would also have detrimental effects on its enforcement. C. Abbot states that some comment that strict liability offences is inconsistent with the main principle of criminal law that is morally blameworthy punishment. They focus particularly on the perceived unfairness of such laws in their application to individuals.<sup>25</sup> It results from the crimes that do not require fault at all, or these only might require a little fault which is insufficient for convicting an offender in an ordinary criminal offence. A. Ashworth states, “A person should not be censured (as distinct, perhaps from being held civilly liable) for wrongdoing without proof of choice. This is a fundamental requirement of fairness to defendants. Indeed, it is not only unfair to censure people who are not culpable, but also unfair to punish them for the offence. Moreover, in a criminal trial, the defendant has a right to defend himself, but strict liability does not accept this and this principle limits him to challenge this, to excuse or to justify the conduct by requiring a conviction in all but exceptional circumstances.<sup>26</sup>”

The Crown Court and the Divisional Court in *Empress Car Company (Abertillery) Ltd v. National Rivers Authority* have adopted the strict liability principle. Both the Crown Court and the Divisional Court decided that the defendant is responsible for the pollution although the significant cause had been the third party interference. The courts considered that the defendant had caused the water pollution because the defendant should have predicted the possibility of such interference since the tap was unlocked.<sup>27</sup> A fault in strict liability offences is not compulsory consideration by the courts. The offence of environmental law is interpreted strictly. Therefore, it has caused an unfair proceeding before the courts.

It can be said that it would be useless to deny the accusation that the defendant has caused water pollution because the liability is strict. All efforts conducted by the defendant to challenge the accusation

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<sup>25</sup> Jane Holder and Maria Lee, *Environmental protection, law and policy: Text and materials* (Cambridge: Cambridge University Press, 2007), p. 386.

<sup>26</sup> Andrew Ashworth, *Principles of Criminal Law* (New York: Oxford University Press, 2006), p. 166.

<sup>27</sup> *Empress Car Company (Abertillery) Ltd. v. National Rivers Authority* [1998] Env LR 396, p. 396.

would be defeated easily by the courts, and conviction for causing pollution is inevitable. The courts' decisions would be similar from the Crown Court to the House of Lords. It seems that strict liability offences would have indirectly ignored the principle of the presumption of innocence because of such unfairness of the liability denying all defenses from the defendant.<sup>28</sup> Consequently, the courts would have supposed the defendant guilty although the defendant has not been convicted yet.

Moreover, criminal liability without fault is would be ineffective in preventing environmental damages. It would be possible that the Court of Appeal would overturn a conviction because the evidence of fault is unaccepted because the evidence is not relevant if used by the prosecution on a strict liability charge.<sup>29</sup> A. Ashworth believes that in terms of more serious offences, evidence of fault will be required at the sentencing stage if the courts want to sentence under a basic rule of criminal justice procedure.<sup>30</sup> Therefore, the prosecutor might hesitate to charge the offender who has caused serious environmental pollution due to a lack of evidence of fault. Therefore, the prosecution focuses only on cases where there is a fault.

Furthermore, the imposition of absolute strict liability in section 85 is inappropriate to section 88 of the Act.<sup>31</sup> Section 88 of the Act provides that it is not an offence to discharge any matter into any waters in terms of having consent or authorization from the authorized institution.<sup>32</sup> It seems paradoxical because according to strict liability principle the exemption of section 88 could be classified in criminal offence. Besides, S. Bell and D. McGillivray state that this liability could still indicate emergencies as an offence, for example, water pollution from fire-fighting run-off.<sup>33</sup> S. Bell and D. McGillivray believe that this liability would include explicit defenses and implicit due diligence requirements concerning the use of Best Practicable

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<sup>28</sup> Nicola Atkinson, "Strict Liability for Environmental Damage: The Cambridge Water Company case", *Journal of Environmental Law*, vol. 5, no. 1 (1993), p. 183.

<sup>29</sup> Andrew Ashworth, *Principles of Criminal Law...*, p. 168.

<sup>30</sup> Andrew Ashworth, *Principles of Criminal Law...*, p. 168.

<sup>31</sup> Stuart Bell and Donald McGillivray, *Environmental Law*, p. 263.

<sup>32</sup> The Water Resources Act 1991, s.88.

<sup>33</sup> The Water Resources Act 1991, s.88.

Means (BPM) or Best Available Techniques (BAT).”<sup>34</sup> It would be a problem of determining who must be responsible for due diligence in carrying out the operation in a company, whether it conducted by a company or by the employee. It would be unfair to blame a company for causing water pollution because of its employee’s fault.

### **Civil Penalties in English Law and Reasons for Supplementing Criminal Penalties for Environmental Offences with Civil Penalties**

The legislation that has recently introduced civil penalties into English law is delivered by the proposal for the European Parliament directive and of the Council on the Protection of the Environment Through Criminal Law. This was introduced on 9 February 2007. The regulation was proposed because numerous acts of legislation protecting the environment are not always able to effectively implement the community’s policy on environmental protection. Criminal sanctions are not imposed in all member states for all serious environmental crimes. Therefore, this proposal aims at harmonizing environmental criminal law and limiting the approximation of the national legislation on environmental crime in the member states.

The sanction imposed against the offences must be effective, proportionate and dissuasive, both for a natural and legal person.<sup>35</sup> Apart from that, the penalties or non-compliance penalties may be recovered on the order of a court, as if payable under a court order.<sup>36</sup> Civil penalties introduced in the proposal might be more effective than putting the offenders in the prison or fines in many cases and included the obligation to restore the environment, court supervision, the prohibition on engaging in commercial activities or the publication of court decisions.<sup>37</sup> Such penalties are different from criminal penalties. However, these penalties are still dependent on criminal penalties. In other words, civil penalties in Article 5 are additional

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<sup>34</sup> The Water Resources Act 1991, s.88.

<sup>35</sup> Article 5 and 7 of the proposal for a directive of the European Parliament and of the Council on the protection of the environment through criminal law, this was introduced on 9 February 2007.

<sup>36</sup> Alistair Mills, “The Environmental Civil...”, p. 2.

<sup>37</sup> Article 5 and 7 of the proposal for *a directive of the European Parliament and of the Council on the protection of the environment through criminal law*.

penalties. Thus, these only can be applied if natural persons have been sentenced to prison. Similarly, in Article 6, the additional penalties also depend on fines' conviction earlier although fines could be interpreted as a part of civil penalties and criminal penalties. Fines are naturally a part of criminal sanctions. In my view, although Article 7 provided that fines could be imposed as criminal fine and non-criminal fines, the article does not detail which non-criminal fines. Implicitly, it might be that additional sanctions in section 4 of the Article.<sup>38</sup> It has been claimed that these additional sanctions would be more effective in protecting environmental crimes because polluters directly conduct these with supervision from a legal authority.

Civil penalties regimes have established rules which define activities or substances covered and damage (person, property, the environment), channel liability, establish a standard of care (usually strict liability), provide for liability amounts, allow exonerations, require the maintenance of adequate insurance or other financial security, identify a court or tribunal to receive claims and provide for recognition and enforcement of the judgment.<sup>39</sup> The imposition of civil penalties, namely the fine, in the United Kingdom can be seen from environmental sentencing in England and Wales. N. Parpworth, K. Thompson, and B. Jones state that "The fine has been by far the most common means of sanctioning environmental crimes committed in England and Wales. Recent research carried out by the environmental consultancy firm Environmental Resource Management, on behalf of the Department for the Environment, Food and Rural Affairs (Defra), has confirmed that between 1999 and 2002, environmental offences were normally the subject of fines imposed either in the magistrates' or Crown Courts".<sup>40</sup> Although case and claimed parties characters have affected penalty severity in environmental law offences, preferred judicial policy, covered political context, and institutional actors.<sup>41</sup>

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<sup>38</sup> Article 7 of the proposal for a directive of the European Parliament *of the Council on the protection of the environment through criminal law*.

<sup>39</sup> Philippe Sands, *Principles of International Environmental Law I: Frameworks, standards, and Implementation* (Manchester: Manchester University Press, 1995), p. 652.

<sup>40</sup> N. Parpworth, K. Thompson and B. Jones, "Environmental Offences: Utilising Civil Penalties", *Journal of Planning and Environmental Law* (2005), p. 564.

<sup>41</sup> Cole D. Taratoot, "The Politics of Administrative Law Judge Decision Making at the Environmental Protection Agency in Civil Penalty Cases", *American*

There are several reasons for applying civil penalties on environmental crimes. Firstly, J. Holder and M. Lee believe that there is no alternative sanction such as imprisonment in terms of corporate offenders.<sup>42</sup> In other words only this sanction is possible to apply for this context nowadays because the most common subject of environmental crimes is a corporation. Corporate activities now play a major part in social life; hence these would have more tendencies to have a bad impact on the environment. It is still debatable whether companies can be convicted of offences or could be said to do acts like a human being or not. Indeed, the courts that companies are liable for failing to act and for committing a public nuisance have solved the complicated fact.<sup>43</sup> As John C. Coffee Jr, said that is quoted by J. Holder and M. Lee that one of the major obstacles for environmental law offences is that offenders are often companies that have 'no soul to damn, nobody to kick'.<sup>44</sup> It would be useless to convict a corporation causing environmental pollution by sentencing of prison or other corporal punishments. Thus, the most rational one for such case is a fine because this is purposed to liable corporations not to the employers or the employees.

Secondly, R. Macrory and M. Woods as quoted by J. Holder and M. Lee state that civil penalties could also strengthen the imposition of non-criminal sanctions such as warning letters and enforcement notices. A more threatening non-criminal sanction but not over harsh would be useful as the last choice in terms of warning the non-compliance contravening a license or statutory prohibition. Civil penalties would reduce the intention of the regulators to hold criminal proceedings, in fact; perhaps they do not want to bring this proceeding because of evidential difficulty.<sup>45</sup> The authors also mention that civil penalties provide a more feasible option to either the withdrawal of a licence that causes the regulator has to pay compensation or the regulator has to carry out remedial work under an enforcement notice requiring the regulator to then recover its

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*Politics Research*, vol. 42, no. 1 (2014), p. 116.

<sup>42</sup> Jane Holder and Maria Lee, *Environmental Protection...*, p. 395.

<sup>43</sup> Andrew Ashworth, *Principles of Criminal Law...*, p. 114.

<sup>44</sup> Stuart Bell and Donald McGillivray, *Environmental Law...*, p. 394.

<sup>45</sup> Jane Holder and Maria Lee, *Environmental Protection...*, p. 402.

cost.<sup>46</sup> The penalties provide an effective choice in dealing with environmental crimes. The offenders might be ordered to pay compensation, otherwise, the revocation of a licence would be held by environment authority.<sup>47</sup>

Besides, because civil penalties would make it possible to remove inappropriate prosecution for less serious offences, it might always keep the relationship between the regulator and the regulated. R. Macrory and M. Woods as quoted by J. Holder and M. Lee explain that “It could also be anticipated those potential offenders would be less likely to risk non-compliance based on the knowledge that the regulator would be better equipped to take enforcement action without having to resort to a criminal proceeding.”<sup>48</sup>

Furthermore, R. Macrory and M. Woods as quoted by J. Holder and M. Lee believe that civil penalties that based on the polluter-pays principle would prevent the regulator to use the funds obtained for their own goal. In other word, it aims to guarantee the source of fund for restoring and compensating the damages.<sup>49</sup> Therefore, it leads the polluter by using its penalty funds to recover environmental damage properly managed and open to review (probably by an independent agency). Thus, the improved environmental damage reinstatement could be achieved without resulting in any serious harm of conflict of interest on the part of the regulatory body.<sup>50</sup>

Moreover, civil offences are not going to have criminal records because the purpose of the policy to include environmental offences into civil offences is to keep the offenders’ or companies’ reputation. This is one of the advantages of imposing civil penalties for environmental crimes because the offenders are only punished to pay an amount of money without having to be sentenced to prison. However, the offenders of criminal offences are possible to be punished both fines and imprisonment. Fines would not defame the convicted because the penalties do not indicate that the convicted have committed serious crimes. It seems that civil penalties have

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<sup>46</sup> Jane Holder and Maria Lee, *Environmental Protection...*, p. 402.

<sup>47</sup> Jane Holder and Maria Lee, *Environmental Protection...*, p. 402.

<sup>48</sup> Jane Holder and Maria Lee, *Environmental Protection...*, p. 402.

<sup>49</sup> Tamara Lotner Lev, “Liability for Environmental Damages from the Offshore Petroleum Industry: Strict Liability Justifications and the Judgment-Proof Problem”, *Ecology Law Quarterly*, vol. 43, no. 2 (2016), p. 485.

<sup>50</sup> Jane Holder and Maria Lee, *Environmental Protection...*, p. 402.

converted criminal penalties for environmental offences into quasi-crimes because fines do not really look like real punishment in our community. Fines can also be imposed through the criminal process.

Furthermore, R. Macrory and M. Woods as quoted by J. Holder and M. Lee state that civil penalties are useful to obtain some results, for instances; retribution, social condemnation, special and general deterrence, third parties protection and the compensation or reparation payment especially because they retain a penal element, even if their goal focuses on deterrence.<sup>51</sup> This method would prevent risky behavior from happening and minimize accident costs.<sup>52</sup> Civil penalties would be a very effective way to prevent the environment from being damaged because they do not only protect pollution makers' reputation but also represent people who become victims of environmental crimes. Compensation would be claimed easily through negotiation between Environment Agency that represents the victims and the offenders. Therefore, civil penalties would not only deter environmental offences from recommitting but also satisfy the victims directly in terms of imposing compensation. Besides, it is fairly distributing the societal costs of multiple activities.<sup>53</sup>

However, there are some criticisms of the introduction of civil penalties and the sanction extension to permit environmental offences.<sup>54</sup> Besides, there is a concern over the enforcing institution deciding on the criminal offending and feasible essential sanctions and the fair removal of this element of justice administration from the courts.<sup>55</sup> Moreover, the application of civil penalties will support the idea that such offences are less serious compared to ordinary crimes and indicate that it is the beginning of decriminalizing environmental offences.<sup>56</sup> Furthermore, it would be inappropriate to use such civil penalties approach towards mega pollution involving huge numbers of

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<sup>51</sup> Jane Holder and Maria Lee, *Environmental Protection...*, p. 402.

<sup>52</sup> Tamara Lotner Lev, "Liability for Environmental...", p. 485.

<sup>53</sup> Tamara Lotner Lev, "Liability for Environmental...", p. 485.

<sup>54</sup> James Maurici and Richard Macrory, "Rethinking regulatory sanctions—Regulatory Enforcement and Sanctions Act 2008—An exchange of letters", *Environmental law & management*, vol. 21, no. 4 (2009), p. 183.

<sup>55</sup> James Maurici and Richard Macrory, "Rethinking regulatory sanctions...", p. 227.

<sup>56</sup> James Maurici and Richard Macrory, "Rethinking regulatory sanctions...", p. 227.

polluters and/or plaintiffs.<sup>57</sup> It perhaps would be better that the UK government addresses the environmental pollution through Environmental funds in such case, as it would be more appropriate.

## Conclusion

In short, the UK has incorporated strict criminal liability principle regarding the environmental offences into its legislations-the EPA 1990, the Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No. 675) and has supplemented civil penalties as a part of criminal sanction concerning the environmental law offences. Civil penalties introduced on the proposal on 9 February 2007 would be more effective than imprisonment and fines because the proposal introduces new approaches, namely, obligation to reinstate the environment, placement under judicial supervision, the prohibition of commercial activities and publication of the judicial decision. The imposition of strict liability on environmental crimes would have detrimental effects. Such effects are exclusion of morally blameworthy, unfair proceeding, ineffective prevention of environmental damages and contrary to permitting discharge rights. There are several reasons for applying civil penalties to criminal penalties for environmental offences. The reasons would be that the penalties are the most possible sanction for corporate offenders; such penalties would enhance the imposition of non-criminal sanctions, keep the relationship in finding the solution, allow the polluter to manage its fund in recovering environment damages, keep the polluter reputation, and have a wider scope of law enforcement.

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<sup>57</sup> Neil Hawke and Pamela Hargreaves, "Environmental Compensation Schemes: experience and prospects", *Environmental Law Review*, vol. 5, no. 1 (2003), p. 10.

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