

LOCAL AUTHORITY AIR POLLUTION CONTROL ENFORCEMENT POLICY

1.0 Objectives

- 1.1 It is the Council's objective to strive to ensure that prescribed processes authorised under Part 1 of the Environmental Protection Act 1990 and permitted installations controlled under the Pollution Prevention and Control Act 1999 comply with the conditions recommended through guidance notes produced by Central Government and laid down in each specific authorisation and permit. This is also to ensure that emission limits are not exceeded for the pollutants specified in the guidance for each process.
- 1.2 In meeting this objective, the Council's enforcement action (verbal warnings, written warnings, statutory notices and prosecutions) will be primarily based on an assessment of the process's and installation's compliance with the conditions laid down within their authorisation and permit and the implications of this for public health and environmental protection. This Local Authority Air Pollution Control Enforcement Policy has to be read in conjunction with the Council's General Enforcement Policy for Public Health and Licensing.

2.0 Guidance

- 2.1 This Council supports the guidance produced by Central Government in the form of Process Guidance Notes (PG Notes), General Guidance Notes, Air Quality Technical Guidance Notes, Sector Guidance Notes and any associated guidance produced by Central Government.

3.0 Implementation of the Policy

- 3.1 All authorised officers will fully acquaint themselves with this document and should have regard to it when making enforcement decisions. Any departure from the policy must be exceptional, capable of justification and should have been considered by at least two of the following officers (unless it is considered that there is significant risk to the public in delaying the decision):-

Head of Public health and Licensing (HPhL)
Deputy Chief Environmental Health Officer (DCEHO)
Principal Environmental Health Officer (Pollution) (PEHO) (Pollution)

4.0 Training

- 4.1 The PEHO (Pollution) is responsible for carrying out or arranging training for staff in the Public Health and Licensing Department in matters relevant to this policy. This includes the individual training of new staff and the ongoing training of existing staff, as the need arises.

5.0 Decision Making - Proceedings

- 5.1 The power to institute, prosecute or terminate proceedings is delegated to the Council Secretary and Solicitor, in consultation with the Head of Public Health and Licensing. (Part 3F, Para. 4.2(a), Council Constitution).
- 5.2 Any officer intending to recommend a prosecution for a contravention of the process's authorisation or the installations permit must consult with the PEHO (Pollution) in the first instance. If the proposal is being initiated by the PEHO (Pollution), then the PEHO (Pollution) will consult with the DCEHO or the HPHL before taking the matter further.
- 5.3 If following this consultation, it is proposed to recommend prosecution; the officer initiating the action will contact the Head of Legal Services and arrange for a consultation with a solicitor.
- 5.4 If prosecution is still the chosen option, the officer initiating the action will complete the proforma requesting the Head of Legal Services to authorise the institution of proceedings.

THE PROFORMA MUST BE SIGNED BY THE HEAD OF PUBLIC HEALTH AND LICENSING.

6.0 Enforcement Options

- 6.1 In considering enforcement options, officers will ensure, in the interests of balanced, consistent, proportionate and fair enforcement that the guidance contained in the General Guidance Manual on Policy and Procedures for A2 and B Installations or the relevant Process Guidance Note or the Sector Guidance Note is taken into account and followed where appropriate.
- 6.2 In deciding which enforcement option to adopt, officers will have regard to the following criteria before making a decision: -
 - seriousness of the offence
 - the past history of the business
 - confidence in the management of the process
 - the consequences of non-compliance
 - the likely effectiveness of various enforcement options
 - whether the offence will continue to be committed without enforcement action

The above list is not exhaustive and other factors may be taken into account in the circumstances of a particular case.

- 6.3 The options for action are: -

- no action
- informal action (verbally or through a letter)
- statutory notice(s)
- formal caution
- prosecution

The Council asserts its right to decide on the form of action to be taken in any particular case, notwithstanding the relevant guidance.

7.00 Informal Action

- 7.1 This includes offering advice, verbal warnings, request for action and the use of letters.
- 7.2 Examples of circumstances in which it is appropriate to use informal action are where: -
- the act or omission is not serious enough to warrant formal action, or
 - from the company's past history it can be reasonably expected that informal action will achieve compliance, or
 - confidence in the individual / company's management involved is high, or
 - Informal action will be more effective than a formal approach.
- 7.3 When adopting a formal approach to secure compliance with legislation, officers must ensure that any documentation issued: -
- contains all the information necessary for the recipient to understand what work is required and why it is necessary; and
 - indicates the regulation or conditions contravened, measures which will enable compliance with the legal compliance and that other means of achieving the same effect may be chosen; and
 - indicates the timescale (with the proprietor) within which the required work must be completed, and
 - Clearly indicates recommendations of good practice for the process involved as separate from the legal requirements.

8.0 Statutory Notices

8.1 Enforcement Notice.

- 8.1.1 An Enforcement Notice may be issued if the Council is of the opinion that a person carrying on a prescribed process or permitted installation is contravening or is likely to contravene any condition of his authorisation or permit.
- 8.1.2 An Enforcement Notice may be issued to reinforce an existing condition within an authorisation or permit, or to spell out a matter, which is not covered by a specific condition within an authorisation or permit.
- 8.1.3 An Enforcement Notice once served can also act as a trigger for requirements within Section 24 of the Environmental Protection Act 1990 to enable the Council to take proceedings in the High Court for the purpose of securing compliance with the notice.
- 8.1.4 In deciding whether to serve an Enforcement Notice regard should be had to the guidance produced concerning the specific process.
- 8.1.5 An Enforcement Notice should not be used for minor technical contraventions, especially where informal action i.e. the use of a letter to advise the process operator may suffice. Regard should be had to the history of the running of the process and the business's previous history of compliance.
- 8.1.6 The notice should be signed in accordance with the Council's Constitution.

- 8.1.7 Failure to comply with an Enforcement Notice will generally result in Court proceedings. Before issuing an Enforcement Notice, officers must have sufficient evidence to justify the notice and to have discussed the areas of non-compliance with the PEHO, DCEHO or HPHL prior to the notice being prepared.

Prohibition Notice

- 8.1.8 A Prohibition Notice must be served where the Council considers that there is an imminent risk of serious pollution of the environment, regardless of whether there has been a breach of the conditions of the authorisation for that process. This is an absolute duty under the Environmental Protection Act 1990.

Before a Prohibition Notice is served, the officer dealing with the process should discuss the evidence with either the PEHO (Pollution) or DCEHO and the HPHL.

The Prohibition Notice should be signed in accordance with the Council's Constitution.

8.2 Revocation Notice

- 8.2.1 The Council may revoke an authorisation or permit by written notice issued to the person who holds the authorisation or permit. Circumstances where this notice may be used are as follows: -

- Where the Council have reason to believe that the process for which the authorisation is in force has not been carried on during the last 12 months, or
- Where exhaustive use of other enforcement tools has failed to protect the environment properly.

- 8.2.2 A Revocation Notice should be served having regard to the requirements of the Environmental Protection Act 1990 and the Pollution Prevention and Control Act 1999 and the associated guidance.

- 8.2.3 A Revocation Notice should be treated as an option of last resort. The circumstances of the premises should be discussed with either the PEHO (Pollution) or the DCEHO and the HPHL before service of such a notice is contemplated.

- 8.2.4 A Revocation Notice should be signed in accordance with the Council's Constitution.

8.3 Variation Notice

- 8.3.1 The Council may vary an existing authorisation or permit if it is considered during an inspection that the conditions attached to the authorisation or permit do not meet the requirements of Section 7 of the Environmental Protection Act 1990, specifically the requirement relating to BATNEEC (Best Available Technology Not Entailing Excessive Cost).

- 8.3.2 Before a Variation Notice is issued, the circumstances relating to the process should be discussed with either the PEHO (Pollution) or DCEHO and confirmation given that the Variation Notice is to be proceeded with.

- 8.3.3 A Variation Notice should be signed in accordance with the Council's Constitution.
- 8.3.4 A process operator can also apply for the authorisation or permit to be varied. This will usually be as a result of changes in the process or the installation of new equipment. Requests should be in writing. The officer dealing with the process should visit and assess what changes are required to the conditions attached to the authorisation or permit. These changes should be agreed with the process operator and with either the PEHO (Pollution) or the DCEHO before the Variation Notice is served, together with a copy of the varied authorisation or permit.

8.4 Suspension Notice

- 8.4.1 The Council must serve a Suspension Notice where the operation of an installation involves an imminent risk of serious pollution (Regulation 25, Pollution Prevention and Control (England and Wales) Regulations 2000).
- 8.4.2 The need to serve a Suspension Notice should be discussed with either the PEHO (Pollution) or the DCEHO and the HPHL before such a notice is contemplated.
- 8.4.3 A Suspension Notice shall be signed in accordance with the Council's Constitution.

9.0 **Prosecution**

- 9.1 In general, prosecution will be restricted to those persons who blatantly disregard the law, refuse to achieve the requirements of the Environmental Protection Act 1990, the Pollution Prevention Control Act 1999 and the associated regulations and guidance and who create an imminent or actual risk to the environment.
- 9.2 The circumstances which are likely to warrant prosecution will be characterised by one or more of the following: -
- a) where the alleged offence involves a flagrant breach of the law such that public health, safety or well being or the environment is put at risk, or
 - b) where there has been a failure to comply with conditions or permit of the authorisation of the specific process or installation, or
 - c) where a process or installation operator has not applied for an authorisation or permit, even though his process or installation comes within the purview of the relevant legislation, or
 - d) where the offence involves a failure to comply in full or part with the requirements of a statutory notice, or
 - e) Where there is a history of similar offences for that specific process or installation.

The above list is not exhaustive and other factors may arise in individual cases.

- 9.4 To enable a prosecution to proceed, the HPHL and Council Secretary and Solicitor must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an

identifiable person or company. There must be a realistic prospect of conviction.

- 9.5 In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, the officers must make a positive decision, based on relevant criteria that it is in the public's interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which should be considered, including relevant public interest criteria. A copy of this document has been placed in Public Health and Licensing Department General File EH/67
- 9.6 When deciding whether to prosecute, the HPHL and Council Secretary and Solicitor should have regard to the guidance contained in Code of Practice No.2: Legal Matters - Paragraphs 17-19. The factors to be considered may include: -
- (a) The seriousness of the offence: -
- The risk or harm to public health,
 - Identifiable victims.
 - Failure to comply with a statutory notice served for a significant breach of legislation,
 - Disregard of public health for financial reward.
- (b) The previous history of the party concerned: -
- Offences following a history of similar offences,
 - Failure to respond positively to past warnings,
 - Failure to comply with statutory notices.
- (c) The ability of any important witnesses and their willingness to cooperate
- (d) The willingness of the party to prevent a recurrence of the problem
- (e) The probable public benefit of a prosecution and the importance of the case - e.g. whether it might establish a precedent: -
- Advice on public interest is contained in the Code for Crown Prosecutors (see Paragraph 9.5 above).
- (f) Whether any other action, such as issuing a formal caution in accordance with Home Office Circular 18/1994 (see Public Health and Licensing Department - General File EH/67), or an Enforcement, Variation or Suspension Notice or imposing a prohibition, would be more appropriate or effective. (It is possible in exceptional circumstances to prosecute as well as issue a notice; failure to comply with a notice would be an additional offence): -
- See Section 10 of this document with regard to Formal Cautions
- (g) Any explanation offered by the company or suspected offender: -
- Suspected offenders should always be invited to an interview and given an opportunity to offer an explanation before prosecution decisions are finalised.

9.7 The guidance in Paragraph 9.6 is not to be interpreted as rigid constraints. For example, it may be appropriate to prosecute a first time offender for a serious breach of environmental protection legislation. The final decision on whether a prosecution proceeds will always rest with the Council.

9.8 Once a decision to prosecute has been taken, the officer initiating the action must refer the matter to the Council Secretary and Solicitor without undue delay.

10. FORMAL CAUTIONS

10.1 Before deciding whether a prosecution should be taken, the officers concerned will consider whether other action, such as issuing a formal caution in accordance with Home Office Circular 18/1994, would be more appropriate or effective.

10.2 Guidance on the use of the Formal Caution procedure is contained in general file EH/67.

10.3 The purpose of the formal caution is: -

- To deal quickly and simply with less serious offences,
- To divert less serious offences away from the Courts,
- To reduce the chances of repeat offences.

10.4 The significance of a formal caution, the fact that a record will be kept and may be cited in court if the offender is subsequently found guilty of an offence and that a previous formal caution may influence the decision to prosecute in a future case must all be explained to the suspected offender. The following conditions must be fulfilled before a formal caution is administered: -

- There must be sufficient evidence of the offence to give a realistic prospect of conviction, and
- The suspected offender must admit the offence, and
- The suspected offender must understand the significance of a formal caution and give an informed consent to the caution, and
- if aged under 14, the offender must understand that what he / she did was seriously wrong and in such circumstances the caution must be issued in the presence of the minor's parents or guardian

10.5 Formal cautions may be issued by the following officers only: -

Chief Executive
Council Secretary and Solicitor
Head of Public Health and Licensing

10.6 Where a person declines the offer of a formal caution, consideration must be given to taking alternative action. Whilst probable, it is not inevitable that a prosecution will follow. A decision to issue a written warning may still be taken.

11.0 **Policy Review**

11.1 The policy will be reviewed at least annually by the Head of Public Health and Licensing. Views on the policy and its implementation will be sought to ensure it continues to meet the principles of good enforcement.

11.2 This Policy was adopted by the Council at the meeting of the Cabinet held on 31st March 2006.