

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO HEALTH & HOUSING COMMITTEE

Agenda Item No. 5

meeting date: THURSDAY, 19 JANUARY 2016
title: ENVIRONMENTAL PERMITTING ENFORCEMENT POLICY
submitted by: CHIEF EXECUTIVE
principal author: HEATHER COAR – HEAD OF ENVIRONMENTAL HEALTH SERVICES

1 PURPOSE

- 1.1 The purpose of this report is to introduce the Environmental Permitting Enforcement Policy for use on enforcement when industrial installations are required.
- 1.2 Relevance to the Council's ambitions and priorities:
 - Community Objectives – To make people's lives safer and healthier.
 - Corporate Priorities – To promote healthier environmental and lifestyle.
 - Other Considerations – The approval of this document is to provide a reference enforcement document for transparency and consistent IPPC enforcement.

2 BACKGROUND

- 2.1 The Environmental Permitting (England and Wales) Regulations 2010, require an environmental permit to be held to operate a regulated facility. Recently, these regulations have been substantially amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2013 to apply the Industrial Emissions Directive 2010/75/EU.
- 2.2 Operators of prescribed activities must apply to the regulated authority ie Ribble Valley Borough Council for a permit to operate activities. It is an offence to operate without a permit. An environmental permit will contain conditions that aim to minimise pollution for the activities, which may include monitoring emissions, using abatement methods, maintaining equipment, handling of materials and keeping records.
- 2.3 Permitting inspections are regularly inspected, based on the risk assessment system and enforcement action may be taken if there is a breach in conditions.
- 2.4 It is the aim of Ribble Valley Borough Council's Environmental Services Department to improve the health, safety and welfare of the borough's residents, visitors and business community, and to protect and improve the quality of our environment from the effects of pollution.
- 2.5 In relation to the EPR Regulations, the environmental protection function of the Environmental Health Services Department supports this in the following ways:
 - Undertaking inspections and monitoring.
 - Responding to complaints.
 - Providing advice.
 - Raising awareness.

- Enforcing legislation as required.
- 2.6 The Environmental Protection Section of the Environmental Health Services Department will endeavour to ensure that the operators of all installations adhere to the standards of control as detailed in their permit, and that the installation is operated using best available techniques to prevent or minimise the release of pollution to the environment.
- 3 ISSUES
- 3.1 The Environmental Permitting (England and Wales) Regulations 2010 (EP Regs) require potentially polluting industrial activities to operate under the conditions of the permit.
- 3.2 Permits are issued and regulated by the Local Authority. The aim of the permit is to ensure best practice and protection of the environment.
- 3.3 From time to time the local authority is required to use enforcement action to ensure compliance with the permit and legislation so that the environment and public health is not adversely affected.
- 3.4 The purpose of this policy is to ensure effective compliance with legislation, having regard where necessary to the type and severity of any non-compliance and the effect it would have on the public and the environment.
- 3.5 Ribble Valley Borough Council will assist operators of installations in meeting their legal obligations under the regulations without unnecessary expense, whilst taking firm enforcement action, including prosecution of those who flout the law or act irresponsibly. Enforcement also includes providing advice and assisting with compliance as well as formal enforcement action.
- 3.6 This policy is being recommended so that the Council's stance on enforcement matters is made clear to ensure a consistent approach to regulation is taken. It is to reflect changes in legislation and cause of practice and to raise awareness of enforcement of installations regulated under the Environmental Permitting Regulations.
- 4 RISK ASSESSMENT
- 4.1 The approval of this report may have the following implications:
- Resources – No implications identified.
 - Technical, Environmental and Legal – The policy enables operators an agreed means of enforcement across the borough.
 - Political – No implications identified.
 - Reputation – No implications identified.
 - Equality & Diversity – No implications identified.

5 RECOMMENDED THAT COMMITTEE

5.1 Approve the Environmental Permitting Enforcement Policy.

HEATHER COAR
HEAD OF ENVIRONMENTAL HEALTH SERVICES

MARSHAL SCOTT
CHIEF EXECUTIVE

BACKGROUND PAPERS

(If any)

For further information please ask for Heather Coar, extension 4466.

REF: HC/EL/H&H/19011703



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

ENVIRONMENTAL PERMITTING ENFORCEMENT POLICY

1 Introduction

- 1.1 The Environmental Permitting (England and Wales) Regulations 2010 (As Amended) (EP Regulations) require potentially polluting industrial activities to operate under the conditions of a permit. A permit is issued and regulated by the Council and is designed to ensure best practice within that specific industry and protection for the environment.
- 1.2 The Council believes that prevention is better than cure and we aim to actively work with businesses and organisations to assist with compliance. However, we will take firm and decisive action including prosecution where appropriate and will prioritise enforcement action to remedy the worst situations that have the greatest impact or potential impact.
- 1.3 The term 'enforcement' includes inspection, investigation, intelligence and education. The Council will aim to secure efficient and effective compliance with the EP Regulations whilst minimising the burden to both the Council and the operators of regulated installations.
- 1.4 This policy will apply to all aspects of the Environmental Permitting service, including permit applications, variations, transfers, inspections and compliance with permit conditions and complaints from members of the public about regulated activities. Enforcement decisions will be taken in accordance with this policy and also in accordance with the Environmental Health Enforcement Strategy and Policy.

2 Prevention and Minimisation of Pollution

- 2.1 The Council will provide advice and assistance to operators to ensure that they understand their responsibilities in how to comply with the EP Regulations and not be unnecessarily exposed to the possibility of formal action.
- 2.2 The Council will engage in pre-application discussions, where necessary, to help guide industry from making unnecessary or incomplete applications which would be a waste of resources to both the operator and the Council. The Council will help explain the legislation, guidance and procedures applicable to regulation of the relevant industrial sector. The Council does not provide a consultancy service and will advise the operator when specialist advice or assessment should be obtained from external sources.
- 2.3 Where information becomes available to the Council that an operator is likely to breach, or is breaching, one or more permit conditions or any aspect of the EP Regulations then the Council will inform the operator in writing. The Council will inform the operator of the likely consequences of non-compliance and will provide advice on the steps required to achieve compliance.

3 Delegation of Officers

- 3.1 In respect of EP Regulations enforcement the Council has delegated power to make decisions to officers of the Council as follows:
 - Chief Executive and/or Head of Service – appointment of suitably qualified and experienced persons to act as authorised officers to carry out the functions under EP Regulations in accordance with the relevant statutory provisions, general guidance and process guidance notes.
 - Council Solicitor – to institute and prosecute on behalf of the Council proceedings in respect of any offence, including those under EP Regulations which the Council is authorised to enforce.

- Authorised Officers – as authorised according to their individual qualifications and experience the exercise of the powers contained within Section 36 (Enforcement Notices) and Section 60 (Provision of Information).

3.2 Any enforcement decision which may be required and does not fall within the limits of this policy shall be taken by the Head of Environmental Health Services in consultation with the Chief Executive.

4 Applications

4.1 The Council will process applications in accordance with the timescales set out in Schedule 5 of the EP Regulations.

4.2 The Council will provide an application pack containing the following information:

- General advice note on the EP Regulations
- Application Form
- List of current fees and charges
- Leaflet “EPR – A Concise Guide for new Applicants”

4.3 The Council will inspect the installation on one or more occasions, as deemed necessary, as part of the application process.

4.4 The Council will provide the operator with a draft permit as part of the consultation process to allow the operator chance to view and comment on the conditions to be imposed.

4.5 The Council may request further information from the operator by serving an Information Notice.

4.6 The Council will issue permits with conditions that are clear, relevant, enforceable and workable.

4.7 The Council will base conditions on the Secretary of State’s Process Guidance Note (PG Note) most relevant to the activity. The Council may base conditions on one or more PG Notes if deemed appropriate.

4.8 The operator will be liable for annual subsistence fees (pro rata) once the permit has been issued.

5 Payment of Fees

5.1 Operators are required by the EP Regulations to pay fees and charges in accordance with the LAPPC and LA-IPPC Fees and Charges Scheme (the Charging Scheme) issued by Defra. Failure to pay the relevant fees and charges may lead to enforcement action.

5.2 The Council will send an invoice to the operator on or around 1st April each year. Failure to pay the invoice within eight weeks of receipt will incur an additional fee of £50, known as the ‘Late Payment Charge’, in accordance with the Charging Scheme.

5.3 If the operator fails to pay the subsistence charge then the Council may issue the operator with a Revocation Notice (see section 14), against which there is no right of appeal.

6 Inspections

- 6.1 The Council will inspect an installation in order to assess compliance with the permit conditions and EP Regulations.
- 6.2 Where information becomes available to the Council that an operator is likely to breach, or is breaching, one or more permit conditions or any aspect of the EP Regulations then the Council will inform the operator in writing. The Council will inform the operator of the likely consequences of non-compliance and will provide advice on how to achieve compliance.
- 6.3 The Council will inspect a permitted installation on a basis consistent with the Defra Risk Method for LAPPC (Part B) and LA-IPPC (Part A2) installations. This means that an installation with a poor history of compliance will receive more frequent inspections as they pose a greater risk to the environment.
- 6.4 The Council may carry out inspections at a frequency greater than specified in the Risk Method at any time.
- 6.5 The Council will seek to arrange an appointment with an appointed representative of the installation at a mutually convenient time wherever possible.
- 6.6 The Council may arrive unannounced at any time during operational hours in the event of an emergency, such as a serious risk of pollution in the opinion of the Council, or following a complaint received by the Council.
- 6.7 Statutory Powers of Entry may be exercised at any time.
- 6.8 The Council may take samples and photographs and can ask questions of operators, owners, management or other members of staff, inspect records, seize goods and documents.
- 6.9 Obstruction of any of these actions is an offence and the Council will refer these matters to the legal department.

7 Unregulated Installations

- 7.1 The Council will actively seek operators of unregulated activities in order to ensure compliance with the EP Regulations.
- 7.2 If the Council finds, or is made aware of, an operator of an installation that does not hold a valid environmental permit and is required to do so by the EP Regulations, whether knowingly or not, then we will write to the operator and request they make an application for a permit.
- 7.3 The Council may request information by formal notice (see section 13) at any time.
- 7.4 If the operator refuses either to provide the requested information, or to apply for a permit, then the Council will refer the matter to the legal department for prosecution.
- 7.5 The submission of requested information or a permit application does not preclude the Council from taking additional formal action against the operator.
- 7.6 If the unregulated installation is found to be causing harm to health or the environment then the Council will notify the operator that an offence has been committed. The operator will be requested to cease the operation until a permit application has been received from the operator and determined by the Council.

7.7 If the operator fails to comply with section 7.6 then the Council will refer the matter to the legal department for prosecution.

8 Public Complaints

8.1 The Council will investigate all complaints, including anonymous complaints, about permitted installations.

8.2 The Council will contact the complainant within 24 hours of receipt of the complaint, or the next working day if the complaint is received at weekends.

8.3 The Council will inform the operator within 3 working days following receipt of the complaint. The Council may telephone, email, fax, write or visit in person, depending on the nature and urgency of the complaint.

9 Public Registers

9.1 The Council will place on the Public Register any information relating to enforcement matters, including Notices, Warning Letters, convictions, formal cautions, monitoring data obtained by the Council, information supplied by the operator in compliance with a permit condition, and any report published by the Council relating to the assessment of environmental consequences of the operation of the installation.

9.2 Information which is deemed to be commercially confidential will not be placed on the public register providing the operator has supplied clear justification for each item and the Council has made a formal determination on whether the information is commercially confidential.

9.3 Information which is deemed to be contrary to the interests of national security will not be placed on the public register providing the operator has applied to the Secretary of State and requested a determination and also notified the Council of the request. The Secretary of State may direct the Council as to what information, in any, to exclude from the register.

9.4 The public register for Ribble Valley Borough Council is freely available to view during normal office hours at the following address:

Ribble Valley Borough Council
Council Offices
Church Walk
CLITHEROE
Lancashire BB7 2RA

Monday to Friday 8.45am to 5.00pm

Charges for photocopies will apply at the Council's standard rates.

10 Enforcement Options

10.1 In order to achieve and maintain consistency, decisions about enforcement action will be taken having regard to the following legislation and guidance:

- Environmental Permitting (England and Wales) Regulations 2010 (As Amended);
- Defra Environmental Permitting General Guidance Manual on Policy and Procedures for A2 and B Installations;

- Secretary of State's Process Guidance Notes;
- Regulators' Compliance Code;
- Code for Crown Prosecutors;

10.2 The choices for action are as follows:-

- to take no action
- to take informal action
- to use warning letters
- to use statutory notices (Information Requests, Enforcement, Suspension, Revocation)
- to use local authority powers to prevent or remedy pollution
- to use simple cautions
- to prosecute

10.3 In all cases where information is offered, either verbal or written, there will be a clear distinction between matters necessary to meet legal requirements and those which are recommended as good practice.

10.4 The circumstances under which the various enforcement actions may be taken are described in the following sections of the policy.

11 Informal Action

11.1 Informal action includes verbal advice or requests for action and the use of letters.

11.2 Informal action will be considered where:-

- circumstances do not warrant formal action;
- confidence in the operator of the business is high;
- it is expected that informal action will achieve compliance.

11.3 When verbal advice is given it will, if requested, be confirmed in writing.

12 Warning Letters

12.1 Where a permit condition is contravened, the Council may give a written warning to the operator to stop the contravention.

12.2 These warnings will make clear that continued breach of the condition may result in prosecution, and the penalties that the court can impose will be included in the warning.

12.3 Any warning letter will also state how an operator may complain through the Council's complaints procedure.

12.4 The number of warnings made by the Council to the operator will vary depending on the seriousness of the situation and the decision to prosecute can be made at any time, having regard to the Risk Rating of the installation and history of non-compliance.

13 Statutory Notices – Information Requests

13.1 The Council may serve an Information Request Notice on an operator or any other person in order to obtain information relevant to the enforcement of the EP Regulations.

- 13.2 The Notice will specify the information required to enable the Council to regulate installations as required by the EP Regulations.
- 13.3 The Notice will specify a timescale for provision of the information.
- 13.4 Failure to comply with an Information Request is an offence and the Council will refer all non-compliances to the legal department for prosecution.

14 Statutory Notices – Enforcement

- 14.1 If an operator fails to put right, has contravened, is contravening, or is likely to contravene any permit conditions then the Council may serve an Enforcement Notice. Service of Enforcement Notices will be considered when:-
- standards are generally poor with significant contravention of legislation or little management awareness of legal requirements but where suspension or prosecution is not appropriate;
 - there is little confidence that the owner will respond to informal approach;
 - the consequences of non-compliance could pose a risk of pollution, or if pollution has occurred and clean-up is required.
- 14.2 Enforcement Notices will specify time limits for compliance which will, where possible, be agreed with operator.
- 14.3 Failure to comply with the Notice within the specified time limit will result in prosecution or commencement of proceedings in the High Court, depending on whether it is in the public interest.

15 Statutory Notices – Suspension

- 15.1 Suspension Notices will only be considered when in the Council's opinion the operation of an installation involves a risk of serious pollution.
- 15.2 A suspension notice can be served in full on the entire regulated facility or in part, known as a 'partial suspension notice', whether or not the operator has breached a permit condition.
- 15.3 The suspension notice ceases to authorise the operation of either the entire regulated facility or, in the case of a partial suspension notice, those activities specified in the notice.
- 15.4 The suspension notice will state the following:
- The Council's view that the operation of the installation involves a risk of serious pollution;
 - The risk of serious pollution involved, the steps to be taken to remove the risk and the period within which they must be taken;
 - That the permit ceases to have effect to the extent specified in the notice until the notice is withdrawn; and
 - If in the case of a partial suspension, state any steps that must be taken in relation to that activity on top of those already required by the permit.

- 15.5 If the operator takes the remedial steps required by the notice then the Council will withdraw the notice. The Council may withdraw the notice at any time.
- 15.6 If the operator continues to operate the regulated facility or the part thereof which has been suspended, the notice will have been breached.

16 Revocation Notices

- 16.1 Revocation Notices are served as a last resort when exhaustive use of other enforcement tools has failed to protect the environment properly.
- 16.2 The Council may revoke a permit by written notice at any time, in whole or in part, by serving a Revocation Notice.
- 16.3 The Council may revoke a permit for non-payment of the annual subsistence charge. There is no right of appeal against revocation notices served for this reason.
- 16.4 After a revocation notice is served, the permit then ceases to authorise the operation of the installation, or an activity within it, depending upon what is specified in the notice.
- 16.5 A Revocation Notice will specify:
- the reasons for the revocation;
 - the extent to which a permit is being revoked;
 - any variations being made to existing permit conditions; and
 - the date on which the revocation will take effect, which will not be less than 20 working days from the date the notice is served.
- 16.6 The Council may withdraw the Revocation Notice before it comes into effect.

17 Power of Local Authority to Prevent or Remedy Pollution

- 17.1 The Council may organise the clean-up of pollution under the following scenarios:
1. As an alternative to a suspension notice, if in the Council's opinion, the operation of a regulated facility involves the risk of serious pollution the Council may arrange for steps to be taken at the operator's expense for the risk to be removed.
 2. If an operator commits any offences a), b) or c) summarised in Table 1: Offences and Penalties below, which causes pollution the Council may arrange for steps to be taken to remedy the pollution at the operator's expense. In this case the Council will give the operator at least 5 working days advance notice in writing of the steps the Council intends to take.
- 17.2 Any action taken by the Council under these circumstances will result in recovery of all Council costs.

18 Prosecution

- 18.1 Prosecution will be considered where there has been a serious breach of EP Regulations legislation or when a formal Notice will not, in the Council's opinion, have the desired effect.

18.2 The decision to refer matters to the Council's Solicitor for prosecution will be taken by the Environmental Health Manager who will consider all relevant evidence and information and in accordance with this Policy and also the general Environmental Health Service Enforcement Strategy and Policy.

18.3 Where decisions are taken about whether to prosecute the following will be taken into account:

- the gravity of the offence;
- the general record and approach of the offender;
- whether the evidence available provides a realistic prospect of conviction;
- whether there has been a blatant disregard for the law or reckless disregard for the environment; and
- whether the offence causes public alarm and it is desirable to produce a public affect which reassures the public and deters other offenders.

18.4 The Council will provide factual reports of successful prosecutions to the media in order to raise awareness of environmental crimes.

19 Simple Caution

19.1 A Simple Caution is an option which officers may consider using Home Officer Circular 016/2008. Simple Cautions are an alternative to a prosecution that may be considered where circumstances described in section 7.14 – 7.21 of the Environmental Health Enforcement Strategy and Policy exist.

20 Serving of Notices

20.1 The Council is required under EP Regulation 10(2) to serve all notices in writing.

20.2 The Council will serve, or give, the notice to a person by leaving it at his proper address or sending it to him by post or electronic means at that address.

20.3 In the case of a body corporate, the notice will be served on the secretary or clerk. In the case of a partnership, it will be served or given to a partner or person having control or management of the partnership business.

20.4 The Council will serve the notice to an alternative address if the person to be served requests this.

21 Offences and Penalties

21.1 EP Regulation 38 lists the offences under the EP Regulations. They are summarised in Table 1.

Table 1: Offences and Penalties

Offence	Crown Court Penalty	Magistrates Court Penalty
Operating an installation without a permit	Unlimited fine and/or up to 5 years imprisonment	Maximum £50,000 fine and/or up to 12 months imprisonment
Failure to comply with or contravene a permit condition		
Failure to comply with the requirements of an enforcement or suspension notice		
Failure to supply, without reasonable excuse, information sought under a regulation 60(2) information notice	Unlimited fine and/or up to 2 years imprisonment	The statutory maximum fine (£5,000 currently)
Making false or misleading statements		
Making false entries in any record		
Forgery and deception in relation to documents		

22 Policy Review

- 22.1 The implications and effectiveness of this Policy will be regularly monitored.
- 22.2 This Policy will be reviewed annually by the EHO (Pollution and Commercial) with the Head of Environmental Health to reflect changes from internal monitoring, by legislation or by guidance from the Central Government Agencies. Views on the policy and its implementation will be sought to ensure it continues to meet the principles of good enforcement.

23 Complaints about the service

- 23.1 When a customer who has requested the services of the Environmental Health team is not satisfied with the service that has been delivered, the Council's formal complaints procedure will be followed.

24 Access to the Policy

- 24.1 The Environmental Permitting Enforcement Policy is available on the Council's web site: www.ribblevalley.gov.uk.