

Belfast City Council

Enforcement Policy for Local Authority Air Pollution Control Under the Pollution Prevention and Control Regulations (NI) 2003

Statement of Policy

Introduction.

- 1.1** One of the stated objectives of Belfast City Council is to improve the quality of life, now and for future generations by creating a cleaner, more attractive, safer and healthier city, with a strong economy.
- 1.2** One of the means to achieve this objective is the enforcement of the Council's powers to control air pollution from prescribed installations under the Pollution Prevention and Control Regulations (NI) 2003.
- 1.3** The object of this document is to detail for the operators of such installations, the decision framework applicable in deciding which enforcement powers, if any, will be used to enforce the requirements of the legislation.

2. Principals of Enforcement

- 2.1** Belfast City Council (herein afterwards designated as the Council) will seek to carry out its powers and duties under the legislation efficiently and effectively, and in a way which is open, clear and helpful to business and industry.
- 2.2** The Council will endeavour to ensure that businesses in its area are fully aware of and understand their responsibilities under the legislation and will in all communications distinguish between advice and legal requirements.
- 2.3** The Council will endeavour to ensure that businesses do not unnecessarily expose themselves to enforcement action through lack of information or understanding, and that formal enforcement action does not come as a surprise.
- 2.4** The Council will endeavour to discuss fully with business any compliance failures or difficulties, and undertakes to give full consideration to the views of business before exercising any of the enforcement powers available to it.
- 2.5** The Council affirms its commitment to achieving consistent, balanced and fair enforcement of the provisions of the legislation. To achieve this, regard will be had to the legislation, General and Specific Process Guidance Notes and other relevant guidance from the Northern Ireland Environment Agency (NIEA).
- 2.6** The Council will ensure that all authorised officers are fully acquainted with the requirements of this policy.

2.7 The Council will endeavour to ensure that adequate resources are available to implement and enforce its responsibilities fairly and consistently and where resources need to be targeted then this will be done as far as is reasonably practicable according to the known or perceived environmental risks and hazards. The Council will ensure that the BAT principle for PPC installations is correctly interpreted, having regard to national guidance, in order to ensure that unreasonable financial and technical demands are not placed on any business sector.

2.8 In coming to any decision as to which is the appropriate form of action regard will be had to this policy document, and in particular the following criteria –

- The seriousness of the offence
- The degree of risk imposed
- The attitude and past performance of the offender
- Confidence in management and the robustness of the systems in place to ensure future compliance
- The likely effectiveness of the various enforcement options
- The consequences of non compliance
- The public interest

2.9 The ultimate sanction of prosecution will normally only be contemplated if the Council is satisfied that it has taken all reasonable steps to secure compliance by other means, or where –

- There is a risk of serious pollution of the environment or harm to health
- There is a significant disregard of responsibilities under the relevant Environmental Protection legislation
- The offence is of such gravity that other forms of action are inappropriate

The Council will seek to achieve the above objectives by means of the decision framework described below, which describes the enforcement action considered appropriate in the circumstances described. Departure from the decision framework will only be made in exceptional circumstances and following discussion with an appropriate senior officer.

Decision Framework

1. Promoting awareness of the requirements of the Legislation

1.1 The Council will seek out businesses operating Prescribed Installations under Regulation 10 of the Pollution Prevention and Control Regulations (NI) 2003.

Where a company is suspected of operating, whether knowingly or not, an Installation which requires a Permit, the Council will make the company aware of the fact and, depending on the circumstances, request relevant information either informally, or by formal notice (see 10) and, dependent on the information received, write to the company and invite them to make an application, within 14 days or such longer time as agreed.

The Company will then be given information and advice as to the legal requirements, technical guidance, the potential effects of emissions on the environment and the need to adopt BAT.

2. Processing Applications

2.1 All applicants approaching, or approached by, the Council will be given advice and guidance on making an application, together with the opportunity to discuss a draft application prior to submission. Applications will only be “duly made” if they satisfy certain minimum requirements. In the case of an existing installation each application will be followed by a formal site inspection to view the whole process.

The Council may request further information prior to the determination of the application by serving a notice under Regulation 29(2) of the PPC Regs (NI) 2003.

The council will consider all requests for information to be classified as commercially confidential in accordance with the requirements of the legislation.

2.2 The Council will determine all applications within the determination period laid down by the Secretary of State.

The Council will endeavour to decide applications within 6 months in relation to both new or existing installations. The only exception is for applications for new waste oil burners under 0.4MW which operate using waste oil generated by the applicant from his other activities on the same site, in which case a 2 month period applies. If either party requires an extension the determination period this can be done by agreement in writing.

Applications will only be refused if it appears to the Council that the installation will not meet the required standards or where the operator has failed to comply with any requests for supplementary information or where the application has been superseded.

2.3 The Council will issue permits with conditions that are workable, relevant to air pollution control, clear and enforceable.

2.4 All permits will be initially issued in draft form and the operator will be given up to 10 working days to query the suitability or meaning of the conditions.

The Council will respond to operator’s concerns on draft conditions within 5 working days, and will make every effort to resolve those concerns, including consultation with NIEA, and other relevant bodies, where appropriate.

The conditions will be drafted taking account of the Process Guidance Note(s) most aptly fitting the process and the way it is operated.

Permits will be accompanied by clear guidance on the operator’s right of appeal to the Northern Ireland Environment Agency.

2.5 Permit conditions will make operators aware of what actions they are required to carry out, either with immediate effect or at some future date.

Conditions may either come immediately into force or may require the operator to undertake or commence specific actions at some time in the future.

3. Compliance Monitoring

- 3.1** The Council's inspector will make regular routine site visits to inspect processes and discuss any matters arising with the operator

The Council's inspector will carry out an assessment to determine how many routine site visits are required for each particular installation. Visits will usually be made following prior appointment with the operator.

The inspector may wish to inspect the whole of the process operation or certain aspects of particular interest on that occasion.

- 3.2** The Council's inspector shall make such random inspections of installations as deemed necessary, and at such times as are considered appropriate. The Council's inspector will, from time to time, carry out observations and inspections, and make such records as considered necessary to assess the operator's performance in complying with permit conditions and any adverse affects on the amenity of the neighbourhood.
- 3.3** The Council will respond to complaints relating to the operation of the installation. In most cases the operator will be made aware of the complaint(s) at the earliest opportunity although the identity of the complainant(s) may not be disclosed.
- 3.4** Where the Council is of the opinion, by virtue of a site visit, inspection or complaint, that an unauthorised emission is arising from an installation the operator will be required to investigate, locate and remedy the cause.

The Council will normally, initially, inform the operator orally, on site or by telephone, of its opinion and require immediate action to be taken to remedy the problem.

The Council will then consider whether or not there has been any breach of the permit conditions, whether the problem has arisen from an unseen accident or cause, and whether any variations to the authorisation conditions are required.

- 3.5** If in an inspector's opinion, a prescribed installation is being carried on in such a manner as to involve an imminent risk of serious pollution of the environment, then the Council's inspector has powers to enter premises at any time under Regulation 27(3) of the PPC Regs.

If an imminent risk of serious pollution is perceived the Council's inspector will enter the site and make any necessary investigations. These investigations may include the interviewing of any Director, Manager or employee, the taking of photographs, seizure of articles or the examination of plant, equipment or records and may result in formal action being taken (see 7, 8, 9, 10 and 11).

4. Communication

- 4.1** The Council will endeavour to communicate any changes in legislation or guidance to all operators as required.

The NIEA will from time to time, amend legislation and/or guidance notes and the Council recognises the importance of communicating such changes to operators at the earliest opportunity.

- 4.2** The Council will endeavour to communicate information relating to new technologies in abatement or monitoring equipment.

Whilst respecting commercially sensitive information relating to individual operators, the existence of newly developed techniques that represent BAT for particular industry sectors, developed either by individual operators or commercial suppliers, will be made known to operators in that sector.

The Council will not, however, recommend as a matter of preference any particular commercial supplier or product but will expect to investigate the appropriateness of all available technologies in achieving the BAT objective.

- 4.3** In all communications the Council will endeavour, so far as is possible, to be clear, concise and unambiguous so that the recipients are in no doubt as to the meaning and clearly understand what action, if any is required.

5. Payment of Fees

- 5.1** No application for a permit will be considered without the payment in advance of the appropriate fee. Any application received without the appropriate fee (set annually by NIEA) will be returned to the applicant as not being duly made.
- 5.2** The Council will by written letter and invoice, request payment in respect of the Annual Subsistence Fee. Operators are required to pay this charge on the 1st April each year. Failure to pay may result in revocation of the permit (see 9.1).
- 5.3** The Council will not consider issuing a variation notice under Regulation 17 of the PPC Regs. In respect of a substantial change to the installation unless written notification has been received and the appropriate fee has been paid.

Where the Council considers an application for a change in the installation to be a substantial change, the Council will notify the operator in writing and request payment of the requisite fee and advertisement of the proposed change.

6. Working Relationships

- 6.1** The Council will so far as is possible for an enforcing authority, endeavour to foster a good working relationship with operators.

The Council recognises the practical and financial implications of the legislation on operators and the need for a spirit of co-operation to enable operators to develop a sensible business strategy for the achievement of BAT.

- 6.2** As part of the envisaged good working relationship, the Council will seek to remedy technical or minor infringements without resorting to formal or legal action.

In the event of an operator failing to comply with permit conditions the Council will consider how best to proceed. Normally the response will be by informal letter but in cases where operators have a poor history of complying with informal requests, or where the contravention(s) is (are) deemed to be of a more serious nature, more formal action may be taken.

Where informal letters are used they will state which conditions have been contravened and how. The letter will inform the operator that legal proceedings may be instituted if the operator fails to ensure compliance with the stated

conditions within the time limit specified. Where possible the time limit will be agreed with the operator.

Such informal enforcement relies on goodwill and co-operation but operators will be reminded of the consequences of failing to secure compliance which could result in enforcement, prohibition, revocation or prosecution (see 7, 8, 9, 10 and 11). Operators should be aware that legal proceedings may result if permit conditions are blatantly disregarded.

7. Enforcement Notices

7.1 The Council will exercise its powers under Regulation 24 of the PPC Regs. by serving formal enforcement notices where necessary.

Whilst wishing to foster a good working relationship operators should be in no doubt that if the appropriate response to the Council's informal approach is not forthcoming, then the Council will either issue formal enforcement notices, or institute such legal proceedings as deemed appropriate.

In some cases enforcement notices may be served in place of informal letters. This is likely to occur when the permit contravention(s) are considered to be :-

- particularly serious, or
- when there have been multiple contraventions, or
- when there is a past history of poor compliance following informal approaches by the Council.

Enforcement notices will normally be accompanied by an explanatory letter stating why such action has been taken and will be comprised of a legal notice and detailed schedule.

Enforcement Notices will, in accordance with the relevant legislation, specify what, in the opinion of the Council is constituting the breach, what is required to rectify the situation and the timescale within which it should be achieved.

The decision to issue an enforcement notice should be seen by the operator as a final warning that further lack of appropriate response will result in prosecution (see 11). The decision to issue a notice will only be taken on the basis of evidence collected by a Council inspector.

8. Suspension Notice

8.1. The Council will exercise its powers under Regulation 25 of the PPC Regs.(Suspension Notice) by serving the relevant notice, on part or all of a installation where the inspector is satisfied that there is an actual or imminent risk of serious pollution of the environment.

The use of Suspension Notices is considered by the Council to be an emergency measure to prevent serious pollution occurring or continuing, and to promote immediate remedial action by the operator. It need not relate to a breach of permit conditions. The relevant notice will take immediate effect and stop the operation of part, or all of the process until such time as the Council is satisfied that the risk has been abated. Such notices will normally be served by hand, on the most senior representative of the operator on site at the time and a copy will be served on the Company Secretary or Director by post.

The Council's inspector will take such steps as are deemed necessary to ensure immediate effect of the notice by visiting the site and if necessary, exercising powers under Regulation 27(3) of the PPC Regs. The operator will be made fully aware, both in the notice and orally, of the reasons for the notice being served and the steps required to remedy the situation.

The operator should note that failure to comply with a suspension notice will normally result in Prosecution (see 11) and the Council may apply to the Courts for an injunction enforcing the terms of the notice.

9 Revocation Notices

9.1 The Council may exercise its powers under Regulation 21 and 22 of the PPC Regs. By serving a notice revoking the Permit and rendering the continued operation of the process unlawful.

Where an operator, after being served with a reminder, fails to pay the annual subsistence fee the Council may issue a revocation notice under Regulation 22(8) against which there is no right of appeal.

Where it is believed that an installation has not been operated for a period of 12 months, the Council may issue a revocation notice. The operator would in this case have a right of appeal (see 12).

The Council may also revoke a permit in other appropriate cases. This could happen when an operator makes a change to a permitted installation which has the effect of exempting that premises from control.

10 Requesting Information

10.1 The Council will exercise its powers under Regulation 29(2) of the PPC Regs. By serving formal notices requesting information to be provided where it considers it has reasonable grounds for doing so.

Where the Council suspects, for whatever reason, that a prescribed installation may be being carried out at any premises, a formal notice may be served in circumstances where information is required to determine whether or not the process requires a permit.

It will specify what information is required, the form it is required in and the timescale within which it is required. If on the basis of the information supplied, the process is deemed to require permitting the operator will be advised accordingly and invited to make an application (see 1). The operator should note that failure to comply with such a notice may result in prosecution (see 11).

11 Prosecution

11.1 The Council may exercise its powers to prosecute offenders by virtue of Regulation 33 of the PPC Regs. Where there is a contravention of the legal requirements of the legislation.

Where informal or formal action has failed to secure the appropriate response of an operator of a permitted installation, or the operator has shown a significant disregard for the legal requirements of the legislation, or any permit condition, then

the Council will consider prosecution. In such cases regard will be had to the following factors –

- The seriousness of the offence
- The degree of risk imposed
- The attitude and past performance of the offender
- The robustness of the systems in place to ensure compliance
- The public interest

Where it is considered that prosecution would probably be successful but, taking into account the above factors it is considered to be inappropriate, the Home Office's Formal Caution Procedure (Circular HO 59/1990) may be adopted, subject to the operator admitting the offence, in writing and agreeing to be cautioned. Such a caution would be registered against the operator and may be cited in any subsequent legal proceedings.

Persons found operating prescribed installations without a permit after the date by which all similar installations should have been permitted will normally be prosecuted regardless of the above factors.

12 Appeals

12.1 The Council will advise operators on the procedures for making an appeal under Regulation 28 of the PPC Regs.

Where an operator is considering an appeal, the Council would wish to enter into meaningful discussions to endeavour to resolve the matter to mutual satisfaction.

When the operator wishes to proceed with the appeal the Council will give advice on the correct procedure to be adopted. In order to minimise costs, the Council will normally agree to the appeal being considered by the NIEA on the basis of written submissions. However, where an appeal relates to matters of public concern, the Council may request a public hearing.

13 Further Information

For further information on Industrial Pollution Control in Belfast, or to comment on this Policy Document please contact :-

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14 Glossary of Terms

PPC Regs.	The Pollution Prevention and Control Regulations (NI) 2003
Permit	A document issued by the Council authorising the carrying on of an installation, subject to conditions, under Regulation 10 of the PPC Regs.
Council	Belfast City Council (The Enforcing Authority)
BAT	Best Available Techniques – the main basis for determining standards under the PPC Regs.
Existing Installation	An installation put into operation before the relevant date for that installation,
New Installation	An installation put into operation on or after the relevant date for that installation,
Offences	Regulation 33(1) of the PPC Regs. Defines Offences under the Regulations and sub-sections (2), (3) and (4) set out the maximum punishment for such offences (offenders can be liable to a maximum fine of £30,000 and to imprisonment for up to 5 years for each offence).
Operator	The person or company carrying on or having control over a prescribed process/installation.
Process Guidance Note	Guidance issued by the Department of the Environment (NI) from 2008 Northern Ireland Environment Agency Giving guidance on emission limits, monitoring, materials handling and good housekeeping practices.

