Cyfoeth Naturiol Cymru
Natural Resources Wales

Enforcement and Prosecution Policy

December 2012

Noddir gan Lywodraeth Cymru
Sponsored by Welsh Government

© Crown Copyright 2012

Natural Resources Wales
Enforcement and Prosecution Policy

Introduction

Background

From 1st April 2013 the Natural Resources Body for Wales took the combined functions of the Countryside Council for Wales, and the welsh devolved functions of the Environment Agency in Wales and the Forestry Commission in Wales.

This policy supersedes all previous enforcement policy documents of these legacy bodies in Wales and is the first enforcement policy statement covering the new organisation in Wales.

This policy also applies to ongoing investigations which were commenced by the Environment Agency in Wales, the Forestry Commission in Wales and the Countryside Council for Wales prior to 1st April 2013.

Audience

All employees, in particular legal and operational staff.

Our aim

Our aim is deliver the best possible environmental, social and economic outcomes for people and communities in Wales both now and in the future. We will achieve this through education, by providing advice and by regulating activities. Provision of clear advice and guidance will be our main approach to secure compliance but securing compliance with legal requirements, by using enforcement powers including civil sanctions and prosecution, is an important part of achieving this aim.

Our functions

Our functions are extensive. They include the management of Wales's forests and woodlands, pollution control, waste regulation, the management of water resources, flood and coastal risk management, fisheries, navigation and the safeguarding of protected sites and species. We regulate a range of activities, from recreational pursuits and the control of plant diseases, to the protection of rare species and the control of emissions from complex industrial processes.

Working with others

Our staff work with local government and other regulators on matters such as planning, air pollution, public health and occupational safety to ensure coherent regulation. They also work with many conservation bodies, voluntary groups and non governmental organisations in order to achieve common goals. Where we and another enforcement body both have the power to take enforcement action, we will liaise with that other body to ensure we take a co-ordinated, effective and consistent approach, and to ensure that any action we take is appropriate for the offence.

Our general approach

We regard prevention as better than cure. Our general approach is to engage with landowners and business to educate and enable compliance or prevent harm. We offer information and advice to those we regulate and

seek to avoid bureaucracy or excessive cost. We encourage individuals and businesses to put the environment first and to integrate good environmental practices into normal working methods. We will give proper consideration to the value of economic progress.

Our approach to non compliance

If an operator or individual is not complying, we normally provide advice and guidance to help them do so. Where appropriate, we agree solutions and timescales for making any improvements. We try to match our response to the circumstances. The use of formal enforcement powers and sanctions may also be necessary.

Principles

This policy sets out the general principles we follow in relation to enforcement and sanctioning. It is to be used in conjunction with the more detailed Guidance on Enforcement and Sanctions and any published Regulatory Position Statements Natural Resources Wales may chose to adopt. We will also make appropriate information available on our use of sanctions.

Our approach to enforcement

Definition

For the purpose of this statement, enforcement means any action we take where we suspect an offence has occurred or in some cases is about to occur. This may range from providing advice and guidance, serving notices through to prosecution, or any combination that best achieves the desired outcome.

In some cases, under the Environmental Damage Regulations 2009, enforcement action may be required in the absence of any suspected offence, but in most cases an activity that leads to 'environmental damage' under the Regulations will also constitute an offence under environmental legislation.

Use of sanctions

Within this overall approach, where an offence has been committed and the delivery of advice and guidance has not or will not achieve the necessary outcome, we will normally consider issuing some form of sanction as well as taking any other preventative or remedial action necessary to protect the environment or people. We aim to use civil and criminal sanctions in a manner that is appropriate to the offence, as described in our Guidance on Enforcement and Sanctions.

Enforcement options

The options we have available include:

- providing advice and guidance
- issuing a warning;
- statutory enforcement notices and works notices;
- prohibition notices;
- suspension or revocation of environmental permits variation of permit

conditions;
- injunctions;
- carrying out remedial works;
- civil sanctions;
- other civil and financial sanctions including Fixed Penalty Notices;
- issuing a formal caution;
- prosecution and orders ancillary to prosecution; and
- sanctions used in combination.

We believe that publishing information on our enforcement activities, where appropriate, raises awareness of the need to comply.

We issue press releases and other publicity relating to offences and offenders, proportionate to the sanction.

Cost recovery

Where the law allows, we will always seek to recover the costs of investigation and enforcement proceedings. Where we incurred costs, for example where we have carried out remedial works, we will seek to recover the full costs incurred from those responsible in accordance with the 'polluter pays' principle.

Penalty principles

We expect full voluntary compliance with relevant legislative requirements and permit provisions. When considering the appropriate course of action to ensure compliance we aim to follow the Macrory Penalty Principles which are set out in the Regulators' Compliance Code. These state that enforcement and sanctions should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

Principles of regulation and enforcement

Regulators Compliance Code

We must take account of the provisions in the Regulators' Compliance Code when devising and implementing regulatory policies and systems. However those provisions do not apply directly to individual cases.

The requirements of the Code do not apply in certain situations, for example:

- where it is necessary to respond immediately to either prevent or respond to a serious breach or incident;
- where following the provisions would defeat the purpose of the

proposed enforcement action; and

- where there are reasonable grounds to suspect that a serious criminal offence has been committed, in particular where such offending would have a damaging effect on legitimate business and desirable regulatory outcomes.

Principles of firm but fair regulation

We believe in firm but fair regulation. Underlying our commitment to firm but fair regulation are the principles of:

- proportionality in the application of the law and in securing compliance;
- consistency of approach;
- transparency about how we operate and what those we regulate may expect from us;
- targeting of enforcement action; and
- accountability for the enforcement action we have taken.

Proportionality

Concept

In general, the concept of proportionality is included in much of the regulatory system by balancing action to protect the environment against the risks and costs of such action.

Balancing our response to the risk

Some incidents or breaches of regulatory requirements cause, or have the potential to cause, serious environmental damage. Others may interfere with people's enjoyment or rights, or our ability to carry out our activities. Our first response will be to prevent harm to people and the environment from occurring or continuing. Any enforcement action we take will be proportionate to the risks posed to people and the environment and also to the seriousness of the breach of the law and its impact on legitimate business.

Consistency

Approach

Consistency means taking a similar approach in similar circumstances to achieve similar ends. We aim to be consistent in the advice we give, how we respond to pollution and other incidents, use powers, and decide whether to prosecute and what sanction might be appropriate.

Discretion

However, we recognise that consistency does not mean simple uniformity. Officers need to take account of many variables: the scale of environmental impact; the attitude and actions of individuals and managers of businesses;

and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement and our officers need to be able to exercise discretion. We will continue to develop arrangements to promote consistency, including effective ways to liaise with other enforcing authorities.

Transparency

Approach

Transparency is important in maintaining public confidence in our ability to regulate. It means helping regulated entities and others to understand what is expected of them and what they should expect from us. It also means making clear why an officer intends to take, or has taken, enforcement action. Our Guidance on Enforcement and Sanctions provides transparency on how we will approach and deal with offences.

How we do this

Transparency is integral to an officer's role and we will continue to train our staff and to develop our procedures to ensure that:

- where remedial action is required, we clearly explain why the action is necessary and when it must be carried out, making a distinction between best practice advice and legal requirements;
- we provide the opportunity to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example to protect the environment or to prevent evidence being destroyed;
- where we require an operator to take urgent action, we will provide a written explanation of the reasons for this as soon as possible after the event; and
- we will provide a written explanation of any rights of appeal against formal enforcement action at the time the action is taken.

Targeting

Focus

Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to or create the risk of serious environmental damage, where the risks are least well controlled, or against deliberate or organised crime. We will focus action on lawbreakers or those directly responsible for the risk and/or those who are best placed to control it.

Risk based approach

Our risk-based approach allows us to prioritise our inspection activity. This includes categorisation of non-compliances at permitted sites and categorisation of other incidents based on an assessment of risk to and actual impact on the environment. We will give high priority to investigations that involve organised crime, overtly criminal activity, substantial profit, threats of violence or other aggravating factors.

Regulated industry	In the case of regulated industries, management actions are important. Repeated incidents or a series of related breaches of regulatory requirements may indicate an unwillingness to change behaviour, or an inability to achieve sufficient control. These may require a review of the regulatory requirements, the ability of the operator to run the site and/or additional investment. We recognise that a poorly-managed relatively low hazard site or activity, can present a greater risk to the environment than a higher hazard site or activity, where proper control measures are in place.

Accountability

Responsibility and consultation	Accountability means that we take responsibility for our decisions and will justify them where appropriate. Our notices and enforcement and sanctioning paperwork include relevant information on how to appeal and complain. We will consult on changes to this statement and the supporting Guidance on Enforcement and Sanctions.
Working with Government	We will support periodic Government reviews of our regulatory and enforcement activities and we will report on our enforcement and sanctioning activities as required by legislation.