

# WEST LINDSEY DISTRICT COUNCIL

## LOCAL AUTHORITY AIR POLLUTION CONTROL AND DECISION FRAMEWORK

### ENVIRONMENTAL PROTECTION ACT 1990 PART 1 THE POLLUTION PREVENTION AND CONTROL ACT 1999 ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2016

#### **1 PROMOTING AWARENESS OF THE REQUIREMENTS OF THE ACT**

- 1.1 The Authority will seek out, by all reasonable means, businesses operating Prescribed Processes without the required Environment Permit under Regulation 12 and Schedule 5 of the Environmental Permitting (England and Wales) Regulations 2016.

Where a company is suspected of operating, whether knowingly or not, a Process which requires Permitting, the Authority will make that company aware of the fact, request relevant information 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 other longer time as is agreed.

The company will 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 The Authority will only determine Duly Made applications that satisfy the formal requirements, and which are supported by sufficient additional information as may be requested.

All applicants approaching, or approached by, the Authority will be given advice and guidance on making an application, together with the opportunity to discuss a draft application prior to submission. In the case of an existing process each application will be followed by a formal site inspection to view the whole process.

Further information may be requested prior to the determination of the application by the Authority serving a notice under Regulation 60 and paragraph 4, Schedule 5.

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

The determination period for 'Existing' processes is currently 12 months and for 'New' processes is 4 months. If either party requires an extension to the determination period, this can be done by agreement in writing.

- 2.3 The Authority will issue Environmental Permits with conditions that are clear, concise and enforceable.

All Environmental Permits will be initially issued in draft form and the operator will be given 21 days to query the suitability or meaning of the conditions.

The Authority will respond to operators' concerns on draft conditions within 14 days, and will make every effort to resolve those concerns, including by means of consultation with DEFRA, LAU and other relevant bodies.

The conditions will be drafted taking full account of the Secretary of State's Process Guidance Notes (PG), BREF, Sector Guidance Notes (SG) most aptly fitting the process and the way it is operated. Where a process needs to be permitted by virtue of the definitions given under the Regulations, but no appropriate guidance note exists, discussions will be held with the operator as to the most appropriate note(s) to use with, where necessary, advice from the LAU.

Environmental Permits will be accompanied by clear guidance on the operator's right of appeal to the Secretary of State.

Where a company is operating a Prescribed Process and, in doing so, is causing justifiable complaints from neighbours, the operator will be required to upgrade to the full BAT standard within a shorter timescale than that prescribed within the appropriate Process Guidance Note.

- 2.4 Environmental Permits 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 Authority's inspector will make regular routine site visits to inspect processes and discuss any matters arising with the operator.

The Authority's inspector will carry out a risk assessment to determine how many routine site visits are required for each particular process. 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 Authority's inspector will make such random inspections of processes as deemed necessary, and at such times as are considered appropriate.

The Authority'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 Environmental Permit conditions and any potential adverse effects on the amenity of the neighbourhood.

- 3.3 The Authority will respond to complaints arising from neighbours of the site, or other concerned parties, relating to the operation of a process.

All complaints concerning emissions to the air from a prescribed process will be investigated using all reasonable resources to confirm whether there is a genuine cause for complaint and that the source of the emission is, or is likely to be arising from the process site.

- 3.4 Where the Authority is of the opinion, by virtue of a site visit, inspection or complaint, that an unauthorised emission may be arising from a process the operator will be required to investigate, locate and remedy the cause, where appropriate.

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

The Authority will then consider whether or not there has been any breach of the Environmental Permit conditions, whether the problem has arisen from an unforeseen accident or cause, and whether any variations or additions to the Environmental Permit conditions are required.

- 3.5 If necessary, in light of a real or perceived serious risk to the environment, the Authority's inspector will enter premises at any time and may exercise his powers under Schedule 3, para.2, of the Act.

If serious harm to the environment is perceived by the Authority's inspector, the Authority's inspector will enter the site and, if necessary, take appropriate steps to stop all or part of the process pending investigation. The inspector's 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.

## **4 COMMUNICATION**

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

DEFRA will, from time to time, amend legislation and/or guidance notes and the Authority recognises the importance of communicating such changes to operators at the earliest opportunity. It should be noted, however, that it is the operator's responsibility to ensure that BAT is employed in the operation of the process.

- 4.2 The Authority 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 other operators in that sector.

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

- 4.3 All communications from the Authority will be clear, concise and unambiguous.

Whether a communication is by way of advice, informal notification or legal notice the Authority will endeavour to use, so far as is possible, plain English to ensure 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 an Environmental Permit will be considered without the payment in advance of the appropriate fee.

Any application received without the appropriate fee (set annually by the DEFRA) will be deemed as not being duly made and the applicant will be advised accordingly.

- 5.2 The Authority will request payment in respect of the annual Subsistence Fee by no later than 1st April each year.
- 5.3 The Authority will not consider issuing a variation notice under Regulation 20 in respect of a substantial change to the process unless the appropriate fee has been paid.

Where an operator notifies the Authority of a change to the process, which is considered to be a substantial change, the Authority will notify the operator accordingly and request the requisite fee and advertisement of the proposed change.

## **6 WORKING RELATIONSHIPS**

- 6.1 The Authority will, so far as is possible for an Enforcing Authority, endeavour to foster a good working relationship with operators.

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

- 6.2 The Authority will, in the majority of cases, inform operators informally, in writing, of actual or potential breaches of a minor nature of Environmental Permit conditions or other requirements.

As part of the envisaged good working relationship, the Authority will seek to remedy technical or minor infringements without resorting to formal or legal action and will seek the co-operation of the operator in writing.

In the event of an operator failing to comply with Environmental Permit conditions the Authority will bring this to the operator's attention by means of an informal letter. This 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).

## **7 ENFORCEMENT NOTICES**

- 7.1 The Authority will exercise its powers under Regulation 36 by serving formal Enforcement Notices for serious or continued breach of Environmental Permit conditions or other legal requirements.

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

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 Regulations, specify what, in the opinion of the Authority constitutes a 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 the Authority's inspector.

## **8 SUSPENSION NOTICES**

- 8.1 The Authority will exercise its powers under Regulation 37 by serving Suspension Notice on part or all of a process, where the inspector is satisfied that there is an actual or imminent risk of serious pollution of the environment.

The use of Suspension Notice is considered by the Authority 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.

A Suspension Notice will take immediate effect and stop the operation of part, or all of the process, until such time as the Authority 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 Authority'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 Schedule 3 Para. 2, of the Environmental Protection Act 1990. The operator will be made fully aware, both in the notice and verbally, 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 may result in prosecution (see 11).

## **9 REVOCATION NOTICES**

- 9.1 The Authority will exercise its powers under Regulation 22 by serving a notice revoking the Environmental 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 Authority may issue a Revocation Notice under Regulation 65 of the Act against which there is no right of appeal.

## **10 REQUESTING INFORMATION**

- 10.1 The Authority will exercise its powers under Regulation 60 and paragraph 4, Schedule 5 by serving formal notices requesting information to be provided where it considers it has reasonable grounds for doing so.

Where the Authority suspects, for whatever reason, that a prescribed process may be being carried out at any premises, a formal notice may be served. The notice will require information to determine whether or not the process requires permitting.

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 an Environmental Permit 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 Authority may exercise its powers to prosecute offenders under Regulation 38 where there is a contravention of the legal requirements of the Environmental Permitting (England and Wales) Regulations 2016.

Where informal or formal action have failed to secure the appropriate response of an operator, or the operator has shown a blatant disregard for the legal requirements of the regulations, then the Authority will consider prosecution, taking into account the following factors:-

- (i) the gravity of the offence
- (ii) the attitude and past performance of the offender
- (iii) the robustness of the systems in place to ensure compliance
- (iv) 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 Formal Caution Procedure (HO. Circular 18/1994) will 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.

## 12 **APPEALS**

12.1 The Authority will advise operators on the procedures for making an appeal under Regulation 31 and Schedule 6 of the Environmental Permitting (England and Wales) Regulations 2016.

Where an operator is considering an appeal, the Authority would wish to enter into meaningful discussions to endeavour to resolve the matter to mutual satisfaction with, where necessary, advice from the LAU.

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

## 13 **STATUTORY NUISANCE**

13.1 The Authority will use its powers under Part III of the Act in relation to Statutory Noise Nuisances arising from a process but not related to emissions of prescribed substances.

The provisions of Part I of the Act do not relate to noise nuisance which, whilst arising from the operation of the process, does not constitute an emission of a prescribed substance. Excessive noise can constitute a Statutory Nuisance and render the operator liable to enforcement action by way of an Abatement Notice.

Initially a duly authorised officer of the Authority will make the operator aware of the problem and informally request steps to be taken to remedy the problem by the adoption of Best Practicable Means.

Abatement Notices will be served if informal requests fail to secure an appropriate response, which will specify the action to be taken and the timescale within which it is to be achieved. Failure to comply with the notice will render the operator liable to prosecution under Section 80 of the Act.

## 14 GLOSSARY OF TERMS

<b>Prescribed Processes</b>	An activity listed in Part 2 of Schedule 1 to the Environmental Permitting Regulations which will form part of an EP installation or be a mobile plant
<b>Air</b>	Includes air within buildings and air within any other natural or man-made structures above and below ground (section 1(2) of the PPC Act 1999)
<b>Appeal</b>	The opportunity provided for the operator to dispute certain actions or decisions by the local authority, by appealing to the Secretary of State/Welsh Ministers
<b>Application</b>	A submission made by an operator to a local authority to seek the grant of a permit
<b>BAT</b>	The main basis for determining standards under the EP Regulations, and defined as the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for ELVs designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole.
<b>BREF Notes</b>	BAT Reference Notes published by the European Commission which follow from an exchange of information on BAT between the Member states.
<b>Determination</b>	The process by which a local authority decides whether or not to grant the request sought by an operator in an application, for example by issuing a permit with appropriate conditions or by refusing the permit.
<b>Defra</b>	Department for Environment, Food and Rural Affairs
<b>Duly-made</b>	A condition that an application must satisfy by being sufficiently complete in a legal sense before determination is possible.
<b>Emission</b>	For Part A installations, the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources into the air, water and land. For Part B installations, the direct release of substances or heat from individual or diffuse sources into the air (EP regulation 2(1)) which also defines emissions in relation to mobile plant
<b>Enforcement notice</b>	A notice served by a local authority to enforce compliance with the permit conditions or require remediation of any harm following a breach of any condition (EP regulation 36)
<b>EPA 1990 Pt I</b>	Part I of the Environmental Protection Act 1990

<b>EP Regulations (EPR)</b>	The Environmental Permitting (England and Wales) Regulations 2016, statutory instrument (SI) number <u>2016/1154</u>
<b>Fees and charges</b>	Amounts required to be paid by operators of Part A2 and B installations to local authorities in accordance with any charging scheme made by the Secretary of State/Welsh Ministers under EP regulation 65
<b>Further information notice (FIN)</b>	A notice issued under paragraph 4 of Schedule 5 to the EP Regulations asking for more information to be provided at application stage
<b>IED – Industrial Emissions Directive</b>	The <u>Industrial Emissions Directive</u> must be transposed into UK law by 7 January 2013. It combines the IPPC, SED, WID, large combustion plants, and titanium dioxide directives.
<b>Installation</b>	A stationary technical unit where one or more activities listed in Part 2 of Schedule 1 to the EP Regulations are carried out and any other location on the same site where any other directly-associated activities are carried out. and any activities that are technically linked. The terms ‘regulated facility’ and ‘installation’ are, in effect, interchangeable for A(2) and B activities
<b>IPPC</b>	Integrated Pollution Prevention and Control – a general term used to describe the Regulatory regime applied to Part A installations under the PPC Regulations which give effect to the IPPC Directive
<b>LA-IPPC</b>	Local authority IPPC – a general term for the Part A2 regime which regulates the full range of IPPC impacts from installations listed under “Part A(2) in Part 2 of Schedule 1 to the EP Regulations
<b>LAPC</b>	Local Air Pollution Control – a regime introduced under Part I of the EPA 1990 alongside IPC, and carried over (with some modifications) to co-exist alongside IPPC as implemented under the PPC Regulations
<b>LAPPC</b>	Local authority pollution prevention and control - a general term for the Part B regime which regulates only emissions to air from installations carrying on activities listed in Part 2 of Schedule 1 to the EP Regulations
<b>Local authority (LA)</b>	In relation to <u>Part B</u> activities and installations, ‘in relation to <u>Part A2</u> activities and installations, it means all of the above with the exception of port health authorities (EP regulation 6.)
<b>Local Authority Unit (LAU)</b>	This is a small unit located in the Environment Agency, but including technical input from the Scottish Environment Protection Agency. It is dedicated to providing technical advice to Defra and WAG in support of LA-IPPC and LAPPC, and prepares the sector and process guidance notes in line with Defra/WAG policy.
<b>Operator</b>	The person who has control over the operation of the installation/regulated facility (EP regulation 7)
<b>Permit</b>	A permit granted under EP regulation 13 by a local authority allowing the operation of an installation subject to certain conditions
<b>Pollution</b>	Any emission as a result of human activity which may be harmful to human health or the quality of the environment, cause offence to any human senses, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment (EP regulation 2(1))



<b>PPC Act (PPCA)</b>	The <u>Pollution Prevention and Control Act 1999</u> , under which the PPC Regulations and the EP Regulations are made
<b>The PPC Regulations</b>	The Pollution Prevention and Control (England and Wales) Regulations 2000 (SI 2000/1973), as amended several times.
<b>Revocation notice</b>	A notice served by the regulator under EP regulation 22 revoking all or part of a permit
<b>Substantial change</b>	<p><b>Substantial change to all installations (Article 3(9) and 63) of Industrial Emissions Directive 2010/75/EC</b></p> <p><b>‘Substantial change’</b> means a change in the nature or functioning, or an extension, of an installation which may have significant negative effects on human health or the environment.</p> <p><b>Re-verify compliance:</b> following a substantial change, compliance must be re-verified</p> <p><b>Substantial change to existing installations</b></p> <p><b>‘Existing installation’</b> means an installation in operation on 29 March 1999 or which was granted a permit before 1 April 2001 or the operator of which submitted a complete application for a permit before 1 April 2001, provided that that installation was put in operation no later than 1 April 2002:</p> <p><b>‘Substantial change’ additional meaning - a change</b> of the maximum mass input of organic solvents by an <b>existing installation</b> averaged over 1 day, where the installation is operated at its design output under conditions other than start-up and shut-down operations and maintenance of equipment, shall be considered as <b>substantial</b> if it leads to an increase of emissions of volatile organic compounds of more than:</p> <p>a) 25 % for an installation carrying out activities with a solvent consumption of less than 15 tonnes per year;</p> <p>b) 10 % for all other installations</p>
<b>Suspension notice</b>	A notice served by a local authority under EP regulation 37 which results in a permit ceasing to authorise the operation of the entire installation or specified activities, until remedial action has been taken against a risk of serious pollution
<b>Variation notice</b>	A notice served by a local authority under EP regulation 20 varying the conditions or other provisions of a permit