



## Enforcement and sanctions statement

Policy 1429\_10 (previously EAS/8001/1/1), Version 3.

Statement authorisation: Legal Services Director (Policy sponsor)

We are the Environment Agency. We protect and improve the environment and make it a better place for people and wildlife.

We operate at the place where environmental change has its greatest impact on people's lives. We reduce the risks to people and properties from flooding; make sure there is enough water for people and wildlife; protect and improve air, land and water quality and apply the environmental standards within which industry can operate.

Acting to reduce climate change and helping people and wildlife adapt to its consequences are at the heart of all that we do.

We cannot do this alone. We work closely with a wide range of partners including government, business, local authorities, other agencies, civil society groups and the communities we serve.

Published by:

Environment Agency  
Horizon house, Deanery Road,  
Bristol BS1 5AA  
Email: [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)  
[www.gov.uk/environment-agency](http://www.gov.uk/environment-agency)

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# Foreword

This document explains our position on Enforcement and Sanctions. You must read it together with the:

- Enforcement and Sanctions – Guidance;
- Offence Response Options.

This will give you a complete explanation of our approach to enforcement and sanctioning.

This document is out of date and was withdrawn on 11/04/2018

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# 1. Introduction

This statement supersedes the Enforcement and Prosecution Policy issue date July 2008, reference EAS/8001/1, to include the application of civil sanctions and an outcome focussed approach to enforcement.

Our aim is to provide a better environment for England 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 are extensive. They include pollution control, waste regulation, the management of water resources, flood and coastal risk management, fisheries, conservation and navigation. We regulate a range of activities, from recreational pursuits to complicated industrial processes.

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.

We regard prevention as better than cure. Our general approach is to engage with business to educate and enable compliance. 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.

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.

This statement sets out the general principles we follow in relation to enforcement and sanctioning. It is to be used in conjunction with the more detailed [Enforcement and Sanctions Guidance](#) and our published Regulatory Position Statements. We will also make appropriate information available on our use of sanctions.

This document is out of date and was withdrawn on 11/04/2018

## 2. Our approach to enforcement

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.

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 [Enforcement and Sanctions Guidance](#).

The formal options we have available include:

- 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.

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.

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 Magness Penalty Principles. 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.

# 3. Principles of regulation and enforcement

We must take account of the provisions in the Regulators' Code when devising and implementing regulatory policies and systems.

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

- where we can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach;
- where following the provisions would defeat the purpose of the proposed enforcement action.

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.

## 3.1. Proportionality

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.

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.

## 3.2. Consistency

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.

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.

## 3.3. Transparency

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 [Enforcement and Sanctions Guidance](#) provides transparency on how we will approach and deal with offences.

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.

### 3.4. Targeting

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.

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.

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 relatively low hazard site or a poorly managed activity has potential for greater risk to the environment than a higher hazard site or activity where proper control measures are in place.

### 3.5. Accountability

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 [Enforcement and Sanctions Guidance](#).

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.



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