

Environment, Health, Recycling & Safety  
South Norfolk Council

By e-mail

rea 2A  
Nobel House  
17 Smith Square  
London  
SW1P 3JR  
Telephone: [REDACTED]  
E-mail: [REDACTED]

Date: 24<sup>th</sup> June 2009

Dear [REDACTED]

**Re: Application for consent under section 79(10) of the Environmental Protection Act 1990 by South Norfolk Council to institute summary proceedings against**

We understand that South Norfolk Council ("the Council") wish to institute summary proceedings against

[REDACTED] in respect of an alleged on-going odour nuisance. Your application to the Secretary of State for Defra for consent is made under section 79(10) of the Environmental Protection Act 1990 ("EPA 1990").

It is also our understanding that an abatement notice has not been issued for the alleged on-going odour nuisance mentioned above.

It is Defra's current view that the term 'summary proceedings' in section 79(10) of the EPA 1990 (in the absence of any definition of this term within the legislation) means proceedings taking place for an offence under section 80(4). This would therefore mean that a local authority would not need consent from the Secretary of State to serve an abatement notice or actions leading to the serving of a notice. Defra recognise however, that there may be alternative interpretations of the term 'summary proceedings' and I should emphasize that Defra's view is an interpretation of the law and is by no means final.

Should you request Secretary of State consent to enforce an abatement notice, we would consider an application. All such requests will be dealt with on a case by case basis.

I hope that you find this useful. If you need any further clarification, please do not hesitate to contact me.

Yours sincerely,



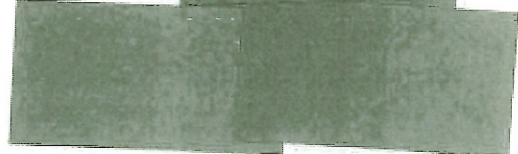
Policy Advisor – Local Environmental Protection



Bath & North East Somerset Council

By e-mail

Area 2A  
Nobel House  
17 Smith Square  
London  
SW1P 3JR  
Telephone:  
E-mail:



Date: 18th June 2009

Dear



**Statutory Nuisance and Waste Management Operations Regulated under the Environmental Permitting Regulations 2007**

I refer to your letter dated 11 March 2009, my sincere apologies for the delayed response.

The following is Defra's view of the law relating to statutory nuisance in the context of operations that:-

- have or should have a waste environmental permit; or
- are or should be registered as an exempt waste operation,

under the Environmental Permitting (England and Wales) Regulations 2007 (EPR 2007). However, definitive interpretation of the law is a matter for the courts, and third parties should seek their own legal advice on how the law applies to their particular circumstances.

**Part III, Environmental Protection Act 1990**

Under Section 79 of the Environmental Protection Act 1990 (EPA 1990) local authorities have a duty to:

- regularly inspect their areas to detect any statutory nuisances; and
- take reasonable steps to investigate any complaint of statutory nuisance made by a resident.

These obligations for local authorities in relation to statutory nuisance remain, regardless of whether the premises from which the nuisance is emanating is subject to regulation under the EPR 2007.



Where a local authority detects a statutory nuisance from or receives a complaint about a permitted facility or waste operation, Defra would encourage the local authority to draw this to the attention of the Environment Agency in order to decide what further action needs to be taken.

### **Section 79(10), EPA 1990**

A local authority, when discharging its duties under Part III of the Act, needs to consider the provisions of section 79(10). It details the circumstances under which the Secretary of State's consent would be required before a local authority could institute summary proceedings for statutory nuisance. Section 79(10), as amended, states:

*'A local authority shall not without the consent of the Secretary of State institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d), (e), (fb) or (g) and, in relation to Scotland, paragraph (ga) of subsection (1) above if proceedings in respect thereof might be instituted under Part I or under regulations under section 2 of the Pollution Prevention and Control Act 1999.'*

Defra's current view of the term 'summary proceedings' (in the absence of any interpretation within the EPA 1990) is that this means proceedings for an offence under section 80(4). This would therefore mean that a local authority would not need consent from the Secretary of State to serve an abatement notice or preceding actions leading to the service of the notice. Defra recognise however, that there are alternative policy or legal interpretations of the term.

### **Environmental Permitting (England and Wales) Regulations 2007**

The EPR 2007 were made under section 2 of the Pollution Prevention and Control Act 1999 (and are therefore caught under section 79(10), EPA 1990). In April 2008 the EPR 2007 came into force and brought the licensing and registration of waste operations under the environmental permitting regime.

The change therefore resulted in all local authorities requiring the Secretary of State's consent to institute summary proceedings for certain statutory nuisances against waste operations that require a permit or a registered exemption.

### **Secretary of State's Consent under s79(10)**

A local authority will require the Secretary of State's consent to bring summary proceedings for an offence under section 80 of the Act against a permitted operation, a registered exempt waste operation or an operation that should be permitted or registered in the following circumstances:

- a) the statutory nuisance is listed in section 79(10), EPA 1990:
  - smoke emitted from premises so as to be prejudicial to health or a nuisance;
  - any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
  - any accumulation or deposit which is prejudicial to health or a nuisance;
  - artificial light emitted from premises so as to be prejudicial to health or a nuisance; or



and;

- noise emitted from premises so as to be prejudicial to health or a nuisance;

b) proceedings might be instituted under Part I of the EPA 1990 or under the EPR 2007.

In the context of waste operations, paragraph (b) is relevant where:

- the operation requires an environmental permit or should be registered as an exempt waste operation;
- the operation is registered as an exempt waste operation;
- the site is permitted and the environmental permit includes provision for the occurrence of the nuisance to be a breach of the permit conditions, including for the operator to comply with Article 4 of the Waste Framework Directive (2006/12/EC)<sup>1</sup> (in respect of noise and odours, and in respect of the other nuisances i.e. smoke, dust, steam, accumulation or deposit, or artificial light, in so far as they endanger human health or use processes or methods which could harm the environment).

There is no prescribed process for seeking the Secretary of State's consent under section 79(10). If a local authority wishes to institute summary proceedings and requires the Secretary of State's consent, then they should write to him providing details of the case and stating the reasons why they are making the application.

Should you require any further information please feel free to contact me at the above address.

Yours sincerely,



Policy Advisor – Local Environmental Protection

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<sup>1</sup> **Article 4**

1. Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

- (a) without risk to water, air or soil, or to plants or animals;
- (b) without causing a nuisance through noise or odours;
- (c) without adversely affecting the countryside or places of special interest.

2. Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.



**Sent by e-mail**

3<sup>rd</sup> April 2009

Dear 

**STATUTORY NUISANCE AND WASTE & ENVIRONMENTAL PERMITTING REGULATIONS**

Further to your enquiries on the above subject and following consultation between Defra officials and Defra lawyers, I enclose Defra's understanding of where the law stands on statutory nuisance in the context of premises that have a waste or environmental permit. I would like to make it clear that the following is Defra's interpretation of the law and is in no way definitive. In addition as you are probably aware, it is up to third parties to seek their own legal advice.

There are obligations for Local Authorities in relation to statutory nuisance, regardless of whether the premises from which the nuisance is emanating is covered by waste or environmental permitting regulations.

Local Authorities have a duty to:

- regularly inspect their areas to detect any statutory nuisances; and
- take reasonable steps to investigate any complaint of statutory nuisance made by a resident.

Where a Local Authority detects a nuisance from a permitted site or process, or receives a complaint regarding such a site, we believe that referral to the regulator for further action should take place. A local authority will not require the Secretary of State's consent to bring proceedings for an offence under section 80 of the Environmental Protection Act 1990 ('the Act') regarding a permitted site or exempt waste operation where a nuisance stated in section 79(10) of the Act is not covered by the relevant permit.

However, a local authority will require the Secretary of State's consent to bring summary proceedings for an offence under section 80 of the Act against a permitted site or exempt waste operation in the following circumstances:

a) The statutory nuisance is:

- smoke emitted from premises,
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises;
- any accumulation or deposit;
- artificial light emitted from premises; or
- noise emitted from premises

and:

- b) Proceedings might be instituted under the Environmental Permitting Regulations 2007.

In the context of environmental permits and exempt waste operations, paragraph (b) is relevant where:

- the environmental permit includes provision for the occurrence of the nuisance to be a breach of the permit conditions;
- the environmental permit for a waste site or exempt waste operation includes conditions or provisions requiring the operator to comply with Article 4 of the Waste Framework Directive (in respect of noise and odours, and in respect of the other nuisances i.e. smoke, dust, steam, accumulation or deposit, or artificial light, in so far as they endanger human health or uses processes or methods which could harm the environment).

There is no prescribed process for seeking the Secretary of State's consent under section 79(10). If you wish to bring action and require the Secretary of State's consent, then you should write to him stating the reasons why you are making the application at the following address:

Rt Hon Hilary Benn MP  
Defra  
Nobel House  
17 Smith Square  
London  
SW1P 3JR

All such processes are judged on a case by case basis.

Yours sincerely,

