

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE
PUBLIC PROTECTION COMMITTEE**

Date 2nd December 2013

REPORT TITLE Environmental Protection Act 1990 Part II & Waste (England and Wales) Regulations 2011
Failure to furnish waste transfer notes on request – Mr M.P.

Submitted by: (Environmental Protection Team Manager – Darren Walters)

Portfolio: Environmental Health

Ward(s) affected: All

Purpose of the Report

To seek authority from the Committee to instigate prosecution proceedings for the breach of the Waste England and Wales Regulations 2011 in respect of the failure to produce evidence of waste transfer notes on demand to the Waste Collection Authority within 7 days.

Recommendations

1. Subject to Legal Services being satisfied with the evidence to instigate prosecution proceedings against Mr M.P for the offences outlined in this report
2. To receive a further report detailing the outcome of proceedings.

Reasons

To rectify non compliance and to change behaviour to ensure future compliance with the requirements to document and keep and produce waste transfer notes and to raise awareness amongst business' in the Borough concerning the same.

1. **Background**

- 1.1. Under the provisions of the Waste (England & Wales) Regulations 2011, which came into force on the 1st October 2012, all businesses which generate “controlled waste” are required to keep waste transfer notes for a period of 2 years from when the waste was produced and disposed of. These help to demonstrate that the waste producer is complying with the Waste Duty of Care provisions under section 34 of the Environmental Protection Act 1990. These regulations repealed The Environmental Protection (Duty of Care) Regulations 1991 which contained a similar provision and thus all businesses have been under an obligation to keep waste transfer notes since 1991.
- 1.2. There are 2 types of waste transfer note:
 - a single waste transfer note
 - a season ticket waste transfer note - covers multiple transfers over a 12 month period

Season ticket waste transfer note are applicable if the following don't change:

- the type of waste
- the site where the waste came from
- the producer, carrier and waste facility.

- 1.3. Waste transfer notes are required to contain prescribed information. An example of a waste transfer note containing the legally required information is shown in Appendix 1.
- 1.4. Officers from both the Environment Agency and a Waste Collection Authority (Newcastle under Lyme B.C. is a Waste Collection Authority) can require a business to furnish copies of waste transfer notes within a period of 7 days.
- 1.5. Under the provisions of section 34(6) of the Environmental Protection Act 1990 it is a criminal offence to fail to comply with regulations relating to the retention and furnishing of documents or copies of document is a criminal offence to fail to produce waste documents within the required period. On conviction an offender may be liable for a fine of up to £5,000 in the magistrates' court and on indictment an unlimited fine may be imposed.
- 1.6. Section 45 of the Clean Neighbourhoods and Environment Act 2005 provides an alternative to prosecution, by allowing either the Environment Agency or Waste Collection Authority to serve a Fixed Penalty Notice on anyone who has failed to furnish the required waste transfer notices. The fixed penalty currently stands at £300 and this must be paid within 14 days to discharge the liability for conviction.

2. Issues

- 2.1. In July 2013, Officers from the Environmental Protection Team received a complaint alleging that a business operating in the Borough had been burning waste and that this was affecting the complainant.
- 2.2. A visit to the business identified that materials had been burnt, however at the time it could not be established if the materials which had been burnt were either commercial or domestic waste. This business is concerned with the operation of a number of food related businesses.
- 2.3. The investigating officer subsequently formally requested the production of waste transfer for all the business activities notes within a period of 7 days. These notes were not forthcoming and the business operator failed to make any contact with the case officer to discuss the matter.
- 2.4. Subsequently, a fixed penalty notice was issued allowing the business operator to discharge his liability for the offence of failing to furnish waste transfer notes on request. Once again, the business operator failed to make any contact with the case officer and the fixed penalty notice was not paid.
- 2.5. The business operator was subsequently invited to attend a formal interview under caution on two occasions with the intention of clarifying how his business waste was being disposed of. Once again, the business operator failed to make any contact with the case officer.
- 2.6. The Environmental Division recognises that some business's may not fully understand their legal obligations and it takes appropriate steps to secure compliance with the appropriate legislative requirements in line with the principles of Better Regulation and in particular the statutory Regulators Compliance Code.

- 2.7. Prior to considering further enforcement action, the business operator was again approached and was requested to provide the waste transfer notes within a further 7 day period. An example waste transfer notice was also provided to facilitate understanding and the requirements were confirmed in writing. Once again the business operator failed to make any contact with the case officer and to date has not made any attempt to provide evidence that his waste is being disposed of in the correct and legal manner by producing the required Waste Transfer Notes.
- 2.8. Subsequently a formal case history review was undertaken. It has been identified that the business had been written to on at least two occasions concerning the requirements to keep and produce documentary evidence of waste transfers.

3. Options Considered

- 3.1. A formal enforcement review has been undertaken to determine the most appropriate way forward. This has considered all the available evidence concerning this matter and taken account of the nature of the offence, previous compliance history and advice and guidance which has been given.
- 3.2. The following enforcement options have been considered:
 - **Informal action / advice**
Past compliance history has been reviewed with the business operator having been given advice and guidance on a number of occasions. It has been identified that the business had been written to on at least two occasions concerning the requirements to keep and produce documentary evidence of waste transfers. It is clear that the business has not heeded the advice.
 - **Formal Caution**
In cases where an offence has been admitted by the offender prior to prosecution proceedings being considered and the evidence supports a prosecution this option is available subject to a public interest test. This option is not available in this particular case.
 - **Prosecution**
Where there is a flagrant breach or persistent ongoing breach of legislation and it is considered to be in the public interest to initiate prosecution proceedings this is considered to be a meaningful sanction. In this particular case it can be argued that this is appropriate and proportionate to the nature of the offence when considered in light of past compliance history and advice.

5. Reasons for Preferred Solution

- 5.1. The action proposed is considered to be proportionate to the nature of the offence and the apparent failure to heed informal advice and guidance and reluctance to engage with your officers.
- 5.2. Such action is also in accordance with the Environmental Protection Enforcement Policy and government policy regarding environmental crime enforcement and the Governments Better Regulation agenda.

6. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

6.1 The proposed action is achieves the following priorities within the Sustainable Community Strategy and the Council's corporate priorities:

- creating a cleaner, safer and sustainable Borough
- creating a Borough of opportunity

7. **Legal and Statutory Implications**

7.1 The Environmental Protection Act 1990 provides a discretionary power to the Council to take the action proposed and creates the offence.

8. **Equality Impact Assessment**

8.1. The Environmental Protection Enforcement Policy has been equality impact screened and the recommendations outlined in this report are made in accordance with this policy.

9. **Financial and Resource Implications**

9.1. In the event that a successful prosecution is obtained, an application for the full costs incurred by the Council in investigating the matter and taking legal action will be made to the Court. It will be for the Court to consider this application when passing sentence and it may be possible that full costs may not be awarded to the Council.

10. **Major Risks**

10.1. None foreseen.

11. **Sustainability and Climate Change Implications**

None

12. **Key Decision Information**

This is not a key decision as defined in the Council's Constitution and the item is not included in the Cabinet's Forward Plan for the period in which the meeting is to take place.

13. **Earlier Cabinet/Committee Resolutions**

None

14. **List of Appendices**

Appendix 1 – Example Waste Transfer Note

15. **Background Papers**

Environmental Protection Enforcement Policy - http://svint/utilities_page.asp?id=SX72E6-A7802EA8

Example Waste Transfer Note**Duty of care: waste transfer note** Keep this page and copy it for future use. Please write as clearly as possible.**Section A – Description of waste****A1 Description of the waste being transferred**

List of Waste Regulations code(s)

A2 How is the waste contained?Loose Sacks Skip Drum Other

A3 How much waste? For example, number of sacks, weight

Section B – Current holder of the waste – TransferorBy signing in Section D below I confirm that I have fulfilled my duty to apply the waste hierarchy as required by Regulation 12 of the Waste (England and Wales) Regulations 2011 Yes **B1 Full name**

Company name and address

Postcode SIC code (2007) **B3 Are you:**The producer of the waste? The importer of the waste? The local authority? The holder of an environmental permit? Permit number Issued by Registered waste exemption? Details, including registration number **B2 Name of your unitary authority or council**

A registered waste carrier, broker or dealer? Registration number Details (are you a carrier, broker or dealer?)

Section C – Person collecting the waste – Transferee**C1 Full name**

Company name and address

Postcode **C3 Are you:**The holder of an environmental permit? Permit number Issued by Registered waste exemption? Details, including registration number

A registered waste carrier, broker or dealer? Registration number Details (are you a carrier, broker or dealer?)

Section D – The transfer**D1 Address of transfer or collection point**

Postcode **D2 Broker or dealer who arranged this transfer (if applicable)**

Date of transfer (DD/MM/YYYY) Postcode Registration number Time(s) Transferor's signature Transferee's signature Name Name Representing Representing