

# **Joint enforcement policy for the management of Household Waste Recycling Sites (HWRS) in East Sussex and Brighton and Hove**



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Version 1, agreed: August 2012

Review period: 2 yearly. Updates: as changes to policy or arrangements agreed

## **Background**

East Sussex County Council (ESCC), Brighton and Hove City Council (BHCC) and Veolia Environmental Services Ltd (Veolia) have all signed a long term PFI contract, the Integrated Waste Management Services Contract (IWMSC).

ESCC and BHCC have a statutory requirement to provide Household Waste Recycling Sites (HWRS) for residents to deposit their own household waste, which is set out in the Environment Protection Act 1990 (EPA 1990 - part 2, 51 1b). One aspect of the contract is the management of the 14 HWRS across the two authorities.

This policy sets out the main responsibilities and agreement between the relevant authorities in the management of enforcement issues. Due to the nature of the sites enforcement issues include:

- trade waste – where a person deposits, or attempts to deposit, trade waste at the site
- flytipping – where a person illegally dumps waste near or on the site
- staff abuse – where a member of staff is subjected to harassment or physical harm by a site user
- site policy abuse – where a person disregards site management policy

This document sets out the principle of enforcement as agreed by ESCC (Stephen Potter – Waste Team Manager), BHCC (Jan Jonker – Head of Contracts and Strategy) and Veolia (Martin Benson – HWRS Manager) in August 2012.

## **Enforcement responsibilities**

Due to the different legislation in place Veolia, ESCC and BHCC will work together to enable successful action.

- Trade and flytipping abuse: relates to the [Environment Protection Act 1990](#) and therefore enforcement action will be taken by the local authority, with Veolia collating and storing original evidence. These will be held in a safe and secure manner and in full accordance with the Data Protection Act and Freedom of Information Act.
- Staff abuse and site policy abuse: Veolia will take enforcement action as employer or site operator. Where the staff are employees of the local authority they should continue to report all health and safety issues as normal to their employers.

A more accurate breakdown of who will take what action has been agreed between ESCC, BHCC and Veolia. There are some minor differences due to the status and internal processes of the two local authorities.

## **Enforcement options**

Where action is required a formal decision may need to be made on a case-by-case basis to ensure that public interest is accounted for as well as having evidence to take action. In all cases the priority will be to resolve the situation, rectify any problems and recoup any losses to the council. Options of enforcement range from:

1. Issue a warning letter setting out the concerns of the organisation, and the relevant legislation/policies. The letter may also request either an explanation or apology for the behaviour, or state that no reply will result in action being taken.
2. Debt recovery. This action can be taken where the cost of waste removal remains unpaid by the offender and may be preferable to prosecution. In all cases it will be important to ensure that proof of disposal is clear.
3. Restricting access; this could range from restriction of the site/time/day of access to a time limited ban from all sites
4. Legal action: Caution, Injunction, Anti-Social Behaviour Order, Prosecution.

## Legal framework

This section sets out the legal framework. A more detailed breakdown of the procedures in place has been agreed between ESCC, BHCC and Veolia. Where action is required a formal decision may need to be made on a case-by-case basis to ensure that public interest is accounted for as well as having evidence to take action.

### Trade Waste Abuse

All the sites have Environmental Permits issued by the Environment Agency, which do not allow the receipt of trade waste. To support this the IWMSC states that Veolia are responsible for managing the HWRS, and for ensuring trade waste is not deposited at the site (IWMSC Schedule 4, part 5, 3.3.3c).

In addition to the above the business rates paid by traders do not cover their waste disposal costs, and it is inappropriate for the authority to allow council tax payers money to cover this expense.

Trade waste abuse will most commonly come in the form of a trader trying to access the site and leave their waste (either knowingly breaking the regulation or not). However, it is also inevitable that in some cases trade waste will be identified on-site after the event. Veolia, ESCC and BHCC will work together to ensure trade waste is not accepted at the site wherever possible.

The deposit of trade waste at a HWRS is deemed illegal under sections 33 and 34 of the EPA 1990<sup>1</sup>. In summary:

#### ➤ Section 33 – waste on land

Offence: it is illegal for any person to deposit controlled waste, knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless an environmental permit is in force and the deposit is in accordance with the permit. Controlled waste is any household, commercial or industrial waste (section 33.1).

Vehicle: Where the waste is fly-tipped from a vehicle, the person controlling or owning the vehicle is treated as knowingly causing the offence (section 33.5).

Defence: these include where all reasonable precautions and due diligence was taken to avoid the offence, or the act was necessitated by an emergency in order to avoid a danger to the public (section 33.7).

Penalty:

- Summary – imprisonment up to 12 months and/or fine up to £50,000
- Indictment – imprisonment up to 5 years and/or unlimited fine.

#### ➤ Section 34 – duty of care

Offence: a waste holder has a statutory duty of care with regard to waste. A waste holder is any person who:

- imports, produces, carries, keeps, treats or disposes of controlled waste; or
- as a broker, has control of such waste.

It is an offence for a waste holder to fail to take all reasonable measures to prevent:

- Another person from committing an offence under section 33.
- Prevent the escape of the waste from his, or another person's, control.
- Fail to ensure the waste is transferred to an authorised person or to any person for authorised transport and to fail to ensure that person is provided with a written description of the waste. (Section 34(1)(a)-(c))

Penalty:

- Summary - a fine of up to £5000

- Indictment- unlimited fine

Householders also have a duty of care to check that anyone they use to take away and dispose of their domestic waste is registered. Householders are not required to supply duty of care documentation, such as a waste transfer note, but they could face a maximum fine of £5,000 if they fail to take reasonable measures to ensure their domestic waste is handled by an authorised waste carrier. It is for the court to determine whether or not "reasonable measures" were taken in a particular case (section 34(2)).

### Flytipping

As the HWRS receive waste they are sometimes subject to incidents where waste is deposited locally, but not on-site or in the containers (i.e. at the site entrance or on the access road). This may or may not be within operating hours (e.g. due to being turned away or the site being closed to change a container).

The deposit of waste not in accordance with the licence (i.e. trade or flytipped) is illegal under section 33 and 34 of the EPA 1990<sup>1</sup>. See trade abuse legal framework for detail.

In trade waste and flytip instances the local authority will take the agreed action, with Veolia collating and storing original evidence.

In all cases the priority will be to resolve the situation, rectify any problems and recoup any losses to the council.

### Staff and Site Policy Abuse

The HWRS across the two authorities have on-site staff, employed either directly by Veolia or under a short term contract (usually three years), who are responsible for the smooth and successful operation of the sites. Other staff that could be on-site include:

- ESCC/BHCC officers visiting the site (usually for monitoring but also for meetings)
- Veolia management staff to monitor the sites and manage the staff on-site
- Veolia haulage staff changing containers.

Staff Abuse: all staff are expected to be able to work in safe conditions and experience no harassment or physical abuse. Harassment is unwanted or unjustified behaviour which affects the dignity of anyone in the workplace, and which the recipient finds threatening, demeaning or offensive.

Site Policy Abuse: to operate the site safely and efficiently Veolia have site management policies in place, e.g. site visitors are not allowed to climb into containers. BHCC and ESCC are aware of these policies and support them, while signage on-site ensures site user awareness. Not adhering to these policies (i.e. following designated walkways or entering containers) can cause a hazard to site users.

The safety of staff is paramount and the first action will be to take any health and safety actions as necessary (i.e. administer first aid, call the police, complete an incident book entry).

Employers have a responsibility to ensure their staff have a safe place and system of work and are not harassed:

- Health and Safety at Work etc Act 1974 section 2
- The Management of Health and Safety at Work Regulations 1999 section 14
- Equalities Act 2010 section 26.
- Protection from Harassment Act 1997

In all cases except Anti-Social Behaviour Orders Veolia will take the agreed action as site operators. They will liaise with the Police where appropriate as they may choose to take a prosecution.

If the Police do not act and/or no protective orders are put in place by them, consideration should be given to seeking other routes for protection. This could be a warning or, if necessary, a ban from the site. This will be applied for and issued by Veolia as operators of site, and if not complied with, enforced by civil action for an injunction as site operators or by the local authority applying for an Anti Social Behaviour Order. An Injunction may be obtained in a number of ways, including trespass to land where they have been banned or where a warning has been given (verbally or by writing) that breaching rules will lead to them being banned. Before any formal action is taken agreement will be sought with the local authority and all other steps will have been taken. The final decision will sit with the local authorities, will never be taken lightly and may not be permanent.

## **Evidence management**

With the prospect of prosecution in mind evidence must be managed appropriately. Where any formal record is taken by Veolia (such as CCTV or ANPR records, still photos or trade incident reports) they will:

- Be noted and held in a safe and secure manner in full accordance with the Data Protection Act and Freedom of Information Act.
- Be copied, labelled and the original stored in a locked container or room at one of Veolia's offices. The copy will be handed to the Waste Senior Technical Officer at ESCC or the Contract and Projects Team at BHCC by Veolia's HWRS Manager.
- Be accompanied by a statement detailing who has created the exhibit, why and how. This will include a brief description of the officer's responsibilities in relation to the exhibit.

Each organisation is responsible for ensuring their internal controls and processes are up to date and that staff are fully trained.

It is imperative that the appropriate steps are taken to enable prosecution at a later date if necessary.

## Reporting and monitoring

Bi-monthly HWRS Operational Progress meetings are held between Veolia and the Waste Contract Manager. At these meetings any enforcement action will be discussed.

In all cases where a letter has been issued a comprehensive summary will be held (and, if by Veolia, can be requested by the relevant local authority on an ad-hoc basis). This will ensure transparency of operations and enable the relevant local authority to investigate if any complaints are received. The summary will include electronic copies of correspondence relating to the case.

## Complaints

As site operators all complaints will be handled by Veolia, who can be contacted via:

Veolia's Customer Helpline on 08453 550 550.

Customer Services, Veolia Environmental Services Plc, Newhaven Energy Recovery Facility  
North Quay Road, Newhaven, East Sussex, BN9 0AB  
or email at [info.southdowns@veolia.co.uk](mailto:info.southdowns@veolia.co.uk)

Where someone wishes to complain about Veolia managements' conduct, the relevant local authority should be contacted:

Waste Contract Officer 01273 481981 West E, County Hall, St Anne's Crescent, Lewes, BN7 1UE <a href="mailto:Laura.tafa@eastsussex.gov.uk">Laura.tafa@eastsussex.gov.uk</a>	Contracts & Projects Team, City Infrastructure 01273 292929 Hollingdean Depot, Upper Hollingdean Road, Brighton, BN1 7GA <a href="mailto:Contractscityservices@brighton-hove.gov.uk">Contractscityservices@brighton-hove.gov.uk</a>
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