

NIEA Enforcement Policy

Comments by

Northern Ireland Environment Link

13 August 2010

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 58 Full Members represent over 90,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

These comments are agreed by Members, but some members may be providing independent comments as well. If you would like to discuss these comments further we would be delighted to do so.

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NIEL heartily welcomes the production of the enforcement policy as providing a clear statement of intent. Enforcement of environmental legislation is imperative if people are to take environmental protection seriously, realise the cost of environmental crime and ensure that when damage is done intentionally that the full cost of the damage plus restoration costs are borne by the person or company which has caused that damage (Polluter Pays Principle). Publicity of the enforcement is also essential if the general public is to realise how significant environmental crime can be and the costs of it, and for other companies or individuals to recognise that the costs of ignoring or wilfully contravening environmental legislation is far greater than the costs of complying.

It is important that all environmental crime is treated in a similar manner; whether a building is being destroyed, a protected designated site damaged or illegal dumping the perpetrator must know that he will be caught and the costs of the illegal activity will be substantially more than any alternative costs for doing the 'right' thing.

Comments below relate to specific paragraphs in the document.

3. Enforcement is an essential component of the full 'toolkit' of measures to ensure good environmental performance, along with education and information, fiscal incentives or disincentives and underpinning legislation and regulation. All are required to deliver good environmental performance.

5. Working with other bodies to ensure coordinated enforcement is essential, but difficult to achieve with current government structures. There may be cases where breaches of environmental legislation are being carried out at the same time as other lawbreaking, and tackling them in a coordinated fashion is more likely to bring success.

10. We support the presumption in favour of enforcement; environmental law must not be seen as a 'victimless' or 'easy to get away with' crime by either perpetrators or the public.

12. and 16. We support strongly the emphasis on Polluter Pays and Proportionality, and agree that the 'intent' (para 28) test is useful. While intent can be hard to prove, it must be taken into account when determining the severity of the prosecution (fine and prison) but may not be relevant to costs – Polluter Pays applies to intentional and accidental breaches. We also believe that it is crucial for the public to see NIEA environmental enforcement as something which they support; this requires effective promotion of the dangers of environmental damage and means to encourage the public to be involved in countering pollution in their neighbourhoods. Not only is this essential to ensure the change in behaviour and attitudes required to stop environmental crime, it is also a cost effective means of increasing the number of 'unofficial observers' who can identify and report problems. This requires a system for following up on complaints by the public, but ensuring that their complaints can be anonymous.

13. We support the reliance on risk based and severity as prime criteria for enforcement. However it is important that the public are involved in the process and that when they report an incident it is seen to be followed up, otherwise people will be less supportive. There is an important additional area which must be considered; there are times when enforcement of regulations is actually counterproductive to environmental good. The best example of this is emphasis on detailed 'definitions of waste' which interfere with reuse and recycling of materials. In these instances it is important that 'enforcement', or any concentration on such counter-intuitive and counter-productive measures, is avoided.

14. Consistency is important, but should not allow people to 'get away' with continuing breaches simply because they were not prosecuted in the past due to lack of resources, evidence, etc. Legislation is much more comprehensive now and allows far less damaging behaviour; 'I've always done it that way' is not an acceptable reason for causing environmental damage.

15. and 21. While it may sometimes not be possible to implement full 'polluter pays' this should be the goal in all instances. The most significant cost is likely to be restitution or reinstatement costs, which can often dwarf fines or court costs; this requires specific mention as it is the primary cost which will ensure compliance (costs less to comply than the risk of being caught).

23. The Agency must have legal powers to halt damage as soon as it is made aware that it is happening, similar to Stop Notices for historic buildings. This can be just as important for damage to natural sites as it is for buildings.

25. Magistrates and other court officials require training to understand how important environmental crime is and to recognise its significance in the penalties they ascribe for breaches.

31. This terminology is weak 'where possible' needs to be replaced with something considerably stronger; such as 'only rarely will full restitution and court costs not be sought'.