

IPPC AND NOISE – AN ENVIRONMENTAL HEALTH OFFICER’S PERSPECTIVE

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1 INTRODUCTION

This paper presents the views of two Environmental Health Officers, who have had experience of the current regime of Integrated Pollution Control (IPC), on the inclusion of noise as a emission controlled by the new Integrated Pollution Prevention and Control (IPPC) system. It should be noted that the opinions expressed in the paper are personal to the authors and do not necessarily represent the views or policy of either Suffolk Coastal District Council or the Chartered Institute of Environmental Health.

It is not intended to argue the rights or wrongs of noise being included as a controlled emission, the Directive has required its inclusion and the task ahead is to manage to the process within the legislative framework provided. Consequently, the paper examines the proposals made by the Environment Agency for liaison with Local Authorities, some concerns at these arrangements and makes recommendations that may assist in their implementation.

2 PART A PREMISES AND THE EHO

2.1 Current position

At present the Local Authority for the geographic area in question deals with noise emission issues from Part A premises, which are the responsibility of the Environment Agency for IPPC purposes. There are two primary control systems in this respect, the first being the nuisance provisions of the Environmental Protection Act 1990¹ and the second being the use of planning conditions where new development takes place. It would be fair to say that whilst these systems do provide mechanisms for both responsive and pro-active control, they are by no means perfect.

Where enforcement using the Environmental Protection Act is involved, intervention by the Local Authority will not usually occur until complaints are received. By this time it may be too late to take truly effective action, and it will certainly be much less efficient than designing with noise in mind in the first instance. Statutory nuisance action also does not, in the absence of complaints, adequately address the situation where noise emissions gradually increase over time. As has been clearly stated in Horizontal Guidance Note H3², whilst complaints may be an indicator of potential or actual problems, their absence does not necessarily indicate that the acoustic climate in that environment is satisfactory. Action is also limited by the need consider ‘best practicable means’, which does not represent as high a standard as ‘loss of amenity’ in the context of the Town and Country Planning Act³ or ‘best available techniques’ where IPPC applies.

In addition, there has so far been no requirement for operators of these premises to explicitly consider noise when installing or modifying equipment, buildings or systems to achieve other IPPC aims (except where planning consent is required). Unless the operators of the premises have had significant previous experience of noise issues, this presents the considerable risk that modifications of this nature may result in intervention by the EHO, potentially requiring the

replacement of newly installed equipment, a situation that anyone would regard as deeply unsatisfactory. The authors have had practical experience of Part B premises, subject to Local Authority control, that have carried out works to meet the requirements of IPPC and have by doing so caused noise nuisance.

The foregoing effectively constitutes crisis management, and whilst legislation such as the nuisance provisions is an essential part of any regulatory system, it is an unsuitable tool for achieving long term strategic objectives. It is such objectives, covering a range of emissions to the environment, that IPPC aims to address and the inclusion of noise within that regime should help to prevent crisis management from being necessary.

A more pro-active approach to noise management from Part A premises is currently possible where planning consent is required for the works, as the Town and Country Planning Act allows the local authority to include conditions on such a consent. There are, however, serious limitations imposed by the planning system that militate against the system being truly effective. The first of these is that any conditions included on a planning consent can only relate to the development itself, which may constitute a relatively minor part of large existing premises. Whilst it may be possible to ensure that particular development does not contribute to a rise in noise emissions from the site, there are few opportunities to achieve an overall improvement in noise levels unless the development involves replacement of an existing, noisy installation.

Secondly, it should also be borne in mind that the planning system is a “one shot” system, and once the consent has been granted it is extremely difficult to revisit it if the conditions that are imposed do not have the desired effect. In particular, it may be difficult to correct errors and oversights in planning consents and conditions, and such errors are by no means unknown.

Finally, it must be recognised that there will inevitably be within any area businesses that have the benefit of planning consent or established use, where there are no pre-existing conditions related to noise. It is not possible to retrospectively apply such conditions within the present planning system.

2.2 Post-IPPC

The introduction of noise controls to the IPPC system will have a significant impact on the involvement of Environmental Health Departments with premises subject to permits, as once such a permit has been granted the premises are immune to statutory nuisance action. In itself, this does not appear to present any significant difficulties, as the principle is that compliance with the conditions of the permit should mean that nuisances will not occur. However, in reality there will inevitably be circumstances where the Local Authority will receive noise complaints relating to Part A premises. In these circumstances it is essential that both the Agency and the Council are able to respond in a coordinated fashion that not only effectively resolves the noise issue in a timely fashion but also addresses the concerns of complainants.

Where a complaint that is usually the responsibility of the local authority is in fact the province of another organisation, communication and responsiveness becomes critically important if the situation is not to arise where both bodies are putting the same level of resources into dealing with the same issue. Noise is traditionally associated with the local environmental health department and it is inevitable that virtually all complaints of noise from Part A premises will be first made to the local authority.

It is therefore vital that detailed local arrangements are made to ensure that proper liaison and transfer of information takes place. The Agency and the Local Government Association have jointly produced a document entitled “Working Better Together”⁴ which aims to address these issues, but the experience of the authors is that it would appear the detail of this has yet to be effectively disseminated to all concerned, particularly at grass roots level.

As statutory consultees the local authorities will also have a very significant role to play in the permit application process and this is clearly recognised in the horizontal guidance. It is possible that this will have resource implications for authorities that have significant numbers of Part A processes within their area. However, it is hoped that this would be offset by a reduction in the number of complaints associated with the relevant premises. The authors have evidence to indicate that this is certainly the case where similar resources are put into the planning process, resulting in a gradual reduction in the number of complaints regarding industrial and commercial premises.

It is hoped that the conditions attached to IPPC permits do, in fact, meet the requirements of BAT and thereby provide a commensurate level of protection for the public. Where there are failures in this process – as there inevitably will – it is equally important that the Agency take due regard of information and advice fed back from the local authority to ensure that conditions are amended appropriately.

2.3 Potential obstacles

Whilst the general view of the authors is that the inclusion of noise in the IPPC regime has the potential to be an invaluable tool in the long term management of noise emissions from industrial premises, there are a number of concerns regarding the practicalities of the system.

Concern has been expressed that at present the Agency may lack sufficient internal expertise in noise to carry out its function to the standard that they would wish. The type of premises that fall within the definition of Part A industries are generally large, diverse and complex, which may present very serious difficulties in assessing noise emissions from the site. This situation will inevitably result in operators submitting applications accompanied by noise reports that are equally large, diverse and complex. The authors have had considerable experience in assessing reports of this nature, usually those that accompany planning applications, and can testify to the expertise, experience and resources needed to carry out this task satisfactorily.

However, the assessment process goes further in the case of IPPC as it is then necessary for the Agency to determine if BAT is being used to control noise emissions, and this is regarded by the authors as a task that will be particularly problematic unless considerable expertise is available. It is understood that the Agency is in the process of training relevant staff in basic acoustics and whilst this is without doubt to be applauded, it may still be appropriate to utilise external specialist resources in the interim period until Agency staff reach the requisite skills level.

As has already been stated, the formal protocol for cooperation between the Agency and local authorities does not appear to have filtered down to grass roots level and it is essential that efforts should be made by both parties to ensure that this does happen. Without a wholehearted commitment to cooperative working and good communication from all involved in the process, the system will not operate efficiently. It is the view of the authors that historically the level of contact between the Agency and local authorities has been limited and relatively unsatisfactory, and although this has improved of late, efforts must be made by all parties to establish better communication and understanding.

There is also concern at the Agencies ability to respond to complaints where instances of noise nuisance occur. Where breaches of permits occur that result in excessive noise emissions being produced it is possible that this will generate large numbers of individual complaints and, as most local authorities will testify, this situation requires considerable resources and skills to handle efficiently. Noise complaints in particular are, in the authors' experience, capable of resulting in very large numbers of individual complainants, possibly more so than other nuisance related issues. Environmental Health Departments are highly experienced at dealing with problems of this nature as much of their work involves responding to complaints. The responsibilities of the Agency are primarily pro-active and programmed and it is essential that systems be put into place and staff to efficiently deal with these eventualities. Again, much can be achieved through effective communication with the local authority and it is suggested that responding to major incidents of

noise nuisance should be the subject of an explicit, detailed arrangement between local Agency staff and the relevant Council.

A major part of the system of liaison with local authorities is the provision of consultation information where an application for a permit is received. Whilst the majority of the information requested on the pro-forma shown in the guidance should present few difficulties to provide, the request for details of complaints may prove to be more problematical. Local authorities are bound to keep complainants details confidential and there have a number of incidents in recent years that the authors have had experience of, where third parties have become aware of the identity of complainants. Although this was not by virtue of action or omissions on the part of Council officers, this has resulted in the complainants becoming highly aggrieved. Due to this type of incident, many local authorities have become extremely cautious about revealing any details of complaints that may result in identification of the complainants. This includes revealing postcodes or similar level of detail.

Whilst it is appreciated that the Agency forms a statutory body, and this may mean that there are legal provisions for the interchange of information of this type, it cannot be over-emphasised that such data is extremely sensitive. It is critical that there is in place a system to ensure that such details are not made public in any way, shape or form that may result in identification of complainants.

2.4 Advantages of IPPC noise control

Local Authorities face an ever-increasing number of noise complaints each year and at least a proportion of these arise from premises that will be brought within the IPPC system. The inclusion of noise as a controlled emission will therefore go some way towards reducing this burden as well as assisting in a progressive improvement in environmental noise levels. However, it is accepted that this is entirely dependent upon the number of businesses within an area that are subject to IPPC.

In this context IPPC has one very significant advantage over planning conditions in that it is possible to revise permit conditions in the light of experience or technological development. Where a planning consent is concerned, the imposition of conditions is effectively a once-only business where errors or omissions remain to haunt local authorities for the lifetime of the premises.

It is also inevitable that the IPPC process will raise the awareness of operators in respect of noise as an environmental emission issue and this can only be regarded as advantageous to all concerned. It can be extremely frustrating for both businesses and enforcement authorities when it becomes necessary to either carry out additional works to newly installed equipment, or even completely replace it simply because the acoustic implications of the works were not considered at the outset. In principle, this simply should not happen where premises are subject to an IPPC permit.

Because operators will be required to submit applications accompanied by a detailed study of noise emissions from the site, this should bring about a structured, risk based approach to noise management, rather than the ad hoc, reactionary situation that has often prevailed in the past.

3 RECOMMENDATIONS

Efforts must be made to ensure that the basic principles of interagency cooperation are made clear to all parties concerned, especially those with day to day responsibility for managing the impacts of IPPC sites.

Early involvement of the environmental health officer in the application process is essential, and this should be at the pre-application stage to take best advantage of both local knowledge and specific

acoustics skills. Although the guidance recommends this take place, there is some evidence that it is not occurring.

Consideration should be given to engaging specialist external resources to assist with the assessment of applications until such time as the Agency has sufficient in-house capability to undertake this effectively.

Prior to the issue of a permit, we would strongly recommend that the advice of the local authority be sought on the suitability and enforceability of the proposed conditions.

Explicit and detailed contingency plans should be drawn up to deal with incidents of condition breaches or nuisance where both the Agency and the local authority are fielding complaints, to avoid conflicting information being distributed or duplication of effort.

The results of investigations of complaints by either the Agency or the local authority should be effectively fed back into the IPPC permit review process.

4 IN CONCLUSION

There is no doubt in the minds of the authors that the implementation of a system such as IPPC will result in significant gains for the environment surrounding premises subject to permits, as well as global improvements due to reduction in more widely dispersed emissions. However, it must be recognised that in the case of noise emissions, only a relatively small proportion of industrial and commercial premises in any area will be subject to IPPC control, and this begs the question of how effective such a system can be in strategic noise control. Many of these businesses will be located in areas where there are other premises in the vicinity producing far higher levels of noise emissions which are not subject to such stringent control. It is inevitable that operators will question the rationale of noise being included in IPPC in these circumstances.

It is clear that the success or otherwise of the IPPC noise regimen, so far as local authority officers are concerned, will depend heavily on the adequacy and efficiency of local liaison arrangements and the level of expertise available to the Agency in the assessment of applications. Hopefully, the issues raised in this paper will be of some assistance in this respect.

5 REFERENCES

1. Environmental Protection Act 1990, The Stationary Office ISBN 0 10 544390 5.
2. IPPC Guidance Note H3, Part 1. Horizontal Guidance for Noise – “Regulation and Permitting”. Environment Agency
3. Town and Country Planning Act 1990, The Stationary Office ISBN 0 10 540890 5
4. “Working Better Together” Environment Agency and Local Government Association July 2000 ISBN 1 84049 191 4