ENVIRONMENT AGENCY NOISE REGULATION

J Tofts Environment Agency

1 INTRODUCTION

The Environment Agency regulates pollution, including noise, from 'A1 installations' (large industries and waste sites). These industries are required to comply with the conditions presented in their environmental permit. With regards to noise, the standard permit condition states:

> *Emissions from the activities shall be free from noise and vibration at levels likely to cause pollution outside the site, as perceived by an authorised officer of the Environment Agency, unless the operator has used appropriate measures, including, but not limited to, those specified in any approved noise and vibration management plan to prevent or where that is not practicable to minimise the noise and vibration.*

This paper will explore how this permit condition is regulated by the Environment Agency, including the use of 'appropriate measures', noise management plans, and the requirement to prevent or minimise noise.

2 THE PERMIT CONDITION

2.1 Noise…as perceived

The first critical element of this permit condition is that it requires the perception of noise, not the measurement of sound. Although measurements (typically made to BS 4142[1]) are often used as supporting evidence, Environment Agency officers can simply perceive there to be a pollution, in a similar way to how Environmental Health officers can perceive a statutory nuisance.

It is also important to clarify that the permit condition requires the presence of a noise pollution to have been perceived by an Environment Agency Officer, but has no requirement for it to be personally and directly observed by that Officer. This allows the Environment Agency to enforce this condition via third party noise impact assessments and measurements rather than solely via direct and personal observation.

This wording also allows flexibility for noise pollution events that don't fit measurement standards or methods, or where direct measurement is not practicable, and can allow for the use of soundscape assessments.

2.2 Likely to cause pollution

The Environment Agency permit uses the term 'pollution' (rather than 'nuisance'), and standardizes the scale of pollution events using a 'common incident classification system' that covers any potential pollutant:

> *Category 1 – major, serious, persistent and/or extensive impact or effect on the environment, people and/or property or on our operations*
>
> *Category 2 – significant impact or effect on the environment, people and/or property or on our operations*

Category 3 – minor or minimal impact or effect on the environment, people and/or property or on our operations

Category 4 – substantiated incident with no impact.

This is dissimilar from nuisance, which is binary (presence/absence), and also allows for a scaled regulatory response to a scaled level of pollution. The four descriptors (major, significant, minor and 'no impact') also have parallels with both BS 4142 and the Noise Policy Statement for England[2].

Although the number of complaints (or the level of annoyance) may be a useful indicator of the severity or extent of a pollution incident, the Environment Agency does not use public opinion alone as evidence of a permit breach.

2.3 Outside the site

There is no limitation as to the location or type of receptor so long as it is outside of the site. Our guidance[3] accommodates residences, non-human receptors (habitats), workplaces, public events and public areas. Although non-residential receptors may not benefit from supporting measurement methodologies (such as BS 4142), the impact can be assessed using other impact descriptors (such as workplace disruption). The impact on habitats is currently assessed using habitat disruption, but new research is helping standardise and improve the assessment of noise impact on habitats[4].

2.4 Appropriate measures

The defence that an operator can present to the Environment Agency is that they have used appropriate measures to control their noise pollution. The term 'appropriate' requires that the control measures should be appropriately scaled to the severity of the pollution. There is no fixed requirement for what constitutes 'appropriate measures' although example control measures can be found in sector BREF[5] guidance, and they should be focused on the dominant source of the noise pollution.

Appropriate measures for noise are typically considered to be equivalent to Best Available Technique (for the purposes of the PPC regulations[6]).

2.5 Noise management plan

How the operator plans to control their noise pollution should be set out in a noise management plan. However, having a noise management plan that has been accepted by the Environment Agency, or even following that plan, does not grant an absolute defence to causing a noise pollution. It is the use of appropriate control measures that is the defence, not the noise management plan itself.

A good noise management plan should present quantifiable control measures that target the dominant noise pollution sources found in a noise impact assessment.

Some Environment Agency permits have a second element to the noise condition that reads:

The operator shall:

a) if notified by the Environment Agency that the activities are giving rise to pollution outside the site due to noise and vibration, submit to the Environment Agency for approval within the period specified, a noise and vibration management plan which identifies and minimises the risks of pollution from noise and vibration;

b) implement the approved noise and vibration management plan, from the date of approval, unless otherwise agreed in writing by the Environment Agency.

This additional permit condition doesn't change the requirement to use appropriate measures, and simply clarifies how the Environment Agency can request improvements to a noise management plan if it is considered to be sub-standard. If this additional condition is not present, then an improved noise management plan can be required via an enforcement notice.

2.6 Prevent or minimise

One of the critical differences between environmental permits and other regulatory regimes (such as planning or nuisance) is the requirement to prevent, or where that is not possible, to minimise noise.

Environmental permits have no single acceptable level or limit above which is bad, and below which is good. Instead, the operator should be seeking to stop all possible noise, and if it has been demonstrated that stopping all noise is not possible, then there should be a demonstration that the noise pollution has or will be minimised. This is commensurate with the third aim of the Noise Policy Statement for England:

Where possible, contribute to an improvement of health and quality of life.

This requirement to prevent or minimise noise follows the pollution scale presented in Section 2.2 (above). Rather than there being a single acceptable level, there is a sliding scale of pollution, that requires a balanced (i.e., 'appropriate') control measure, and failure to use that control measure results in an appropriately scaled enforcement response.

This requirement is commonly perceived to be at odds with the fixed numeric noise limits often found in planning permissions. This issue is clarified in the National Planning Policy Framework[7], which explains that the planning regime is focused on appropriate land use, whereas environmental permits are focused on pollution control:

188 The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

3 PERMIT COMPLIANCE

If the operation is causing a noise pollution that is not being prevented or minimised by appropriate control measures, then the operator is not in compliance with their environmental permit, which is an offence under the Environmental Permitting Regulations[8]. The Environment Agency then has a range of sanctions available[9] that are scaled to the severity of the pollution:

- Warning letter
- Formal caution
- Prosecution

When considering the enforcement options available, there is also a requirement to consider that ongoing amenity pollution (odour, dust, noise etc.) has a potential to have an escalating impact, and therefore has an escalated level of non-compliance[10].

These sanctions target the operator rather than the pollution, and it is often preferential to target the source of the pollution by using enforcement notices (such as requiring improved noise control within a fixed timescale). In addition to direct sanctions and enforcement, operators are also required to pay annual fees to the Environment Agency that are partly based on the number and severity of any non-compliances.

Permit compliance is achieved when either there is no noise, or when the scale of the noise pollution is matched by the scale of the control measures being used. Once this level of noise control has been achieved, if there is still a serious level of pollution, the Environment Agency has the following options:

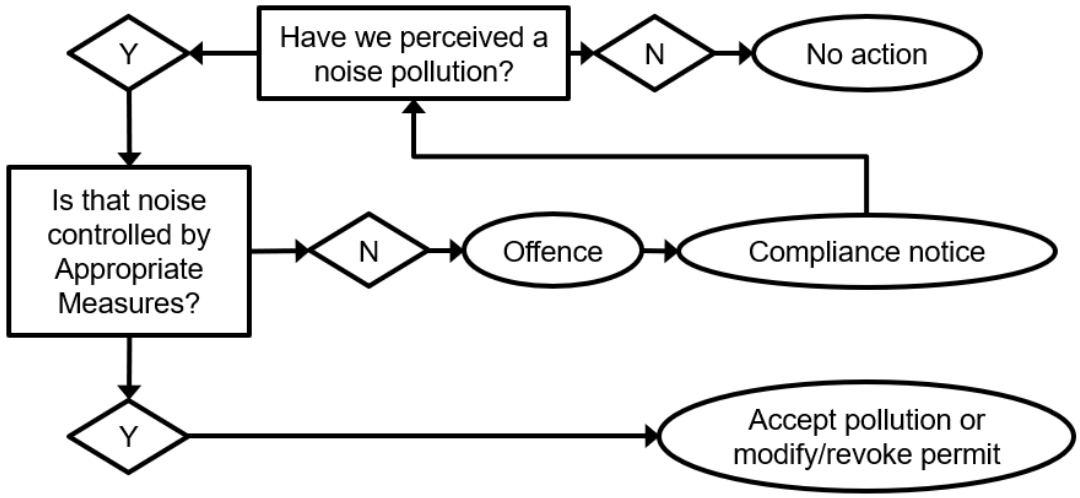
- Accept the pollution as it is (considering the impact on the community together with the socio-economic value of the industry).
- Modify the permit to reduce the pollution (such as a tonnage reduction)
- Fully revoke the permit.

These options must take into account the Noise Policy Statement for England, and in particular the aim of avoiding significant adverse impacts on health and quality of life within the context of sustainable development.

4 SUMMARY

A summary flowchart for permit compliance is presented in Figure 1:

Figure 1: Permit compliance flowchart



5 REFERENCES

1 BS 4142:2014+A1:2019, Methods for rating and assessing industrial and commercial sound, British Standard Institution, 2019

2 Noise policy statement for England https://www.gov.uk/government/publications/noise-policy-statement-for-england

3 Noise and vibration management: environmental permits https://www.gov.uk/government/publications/noise-and-vibration-management-environmental-permits/noise-and-vibration-management-environmental-permits

4 D. Waddington, M Wood, W Davies and R Young., 'Habitats: Managing the ecological impacts of noise on wildlife habitats for sustainable development', InterNoise22, Pages 5002-5992, pp. 5247-5251(5), 2022

5 BAT reference documents https://eippcb.jrc.ec.europa.eu/reference

6 Pollution Prevention and Control (England and Wales) Regulations, 2000 https://www.legislation.gov.uk/uksi/2000/1973/contents/made

7 National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 2021. https://www.gov.uk/government/publications/national-planning-policy-framework--2

8 The Environmental Permitting (England and Wales) Regulations 2016 https://www.legislation.gov.uk/uksi/2016/1154/contents/made

9 Environment Agency enforcement and sanctions policy. https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/environment-agency-enforcement-and-sanctions-policy#outcome-focused-enforcement

10 Waste operations and installations: assessing and scoring environmental permit compliance https://www.gov.uk/government/publications/assessing-and-scoring-environmental-permit-compliance/assessing-and-scoring-environmental-permit-compliance