

Trade Effluent Enforcement Policy

Introduction

This policy sets out the principles that Wessex Water Services Limited (Wessex Water) will follow when considering enforcement against trade effluent customers who are in breach of their trade effluent consents. The aim of this policy is to provide trade effluent customers with transparency, ensuring a consistent and fair approach to enforcement.

What is Trade Effluent?

Under the Water Industry Act 1991 (the Act) any wastewater produced on trade premises (and in pursuit of a trade or business) which is discharged into the public sewer is defined as trade effluent. This includes the manufacture or processing of materials such as chemicals, metals, food and drink and a car wash or launderette. This does not include domestic sewage produced as a result of domestic usage such as washing food and drink or using the toilet. In order to discharge trade effluent from trade premises to the public sewer, it is a legal requirement to obtain consent from Wessex Water.

Enforcement Powers

Illegal discharges of trade effluent pose a potential threat to Wessex Water assets and operations, to the health and safety of both staff and the general public and may also cause harm to the environment.

Wessex Water is a statutory water and sewerage undertaker and is under a duty to comply with its duties under the Act in relation to the collection, treatment and disposal of wastewater. The Act also gives Wessex Water extensive powers of enforcement including the ability to prosecute for the protection of its assets, the environment, the health and safety of its employees and the public, or the protection of drinking water supplies.

The Act imposes a duty on sewerage undertakers such as Wessex Water to “effectually deal with by means of sewage disposal works or otherwise, the contents of public sewers” (**section 94**).

The Act sets out restrictions on the use of public sewers and it is an offence to discharge into any public sewer or drain connected to the public sewer any matter likely to injure the sewer or interfere with or affect the treatment of the contents of the sewer.

Any customer intending to dispose of trade effluent will require the consent of Wessex Water for any discharge of trade effluent to the public sewer and any discharge without consent is a criminal offence (**section 118**).

Wessex Water has the power to impose conditions in a consent relating to the quantity, rate, nature or composition of the effluent (**section 121**).

If a condition imposed in a consent under the Act is contravened, then the occupier of the premises will be guilty of a criminal offence (**section 121(5)**).

The purpose of enforcement is to ensure that preventative or remedial action is taken to secure compliance with the law. The need for enforcement may arise from any unconsented

activity, breach of consent conditions or some other illegal activity. Wessex Water expects full compliance with relevant legislative requirements and consents and will use its enforcement powers where necessary to ensure that those who fail to comply are held to account. Where a criminal offence has been committed Wessex Water will consider a number of enforcement options including issuing a warning, administering a caution and prosecution.

Cost Recovery

Wessex Water reserves the right to recover any cost incurred following a breach.

Principles of Enforcement

Wessex Water has a policy of firm but fair enforcement. The underlying principles of this policy are:

- Proportionality and consistency in the application of the law and in securing compliance.
- Transparency about how Wessex Water operates.
- Accountability.

Proportionality and Consistency

Not all discharges which fail a consent will have a significant impact on the receiving Water Recycling Centre (WRC) or pose a threat to the health and safety of employees, the public or the environment. The enforcement action taken by Wessex Water will be consistent, proportionate to the risks posed and to the seriousness of any breach of the law including actual or potential harm arising from a breach of the law. Wessex will also consider the customers track record.

Transparency

Transparency is important so that those being regulated understand what is expected of them and what they should expect from Wessex Water. It also means making clear why Wessex Water intends to take enforcement action. Wessex Water staff are trained to ensure that:

- Where remedial action is required, it is clearly explained why the action is necessary and when it must be carried out.
- The customer is given the opportunity to discuss what is required to comply with the law.
- Where urgent action is required a written explanation of the reasons is provided as soon as possible.

Accountability

Wessex Water is accountable to the public for its actions and therefore must have policies and standards against which it can be monitored.

Escalating Enforcement

Wessex Water has three stages for escalating enforcement. Where there is a breach by a trade effluent customer Wessex Water will apply this approach. Wessex Water reserves the right to commence prosecution proceedings at any stage in the event of a serious breach and/or where a discharge causes detrimental effect to Wessex Water systems and/or the environment. Factors which may be taken into account in deciding whether it is appropriate to escalate include:

- Past compliance record.
- Existence of a good system for managing risk.
- Willingness to co-operate.
- Continuing breaches.
- Risk of damage to the environment.

Enforcement Process

Stage 1

When a trade effluent sample is found to exceed one or more consent limits a non-compliance letter will usually be sent to the customer. This letter will include details of the sample results and non-compliance and will request that the customer investigates and responds within 10 business days setting out:

- Reason for non-compliance.
- Steps taken to resolve the issue.
- Proposed steps and timescales to prevent reoccurrence.

The letter will contain a warning that if the customer fails to take any action the matter may be escalated to Stage 2, as detailed below.

If Wessex Water considers that sufficient steps have been taken the matter will be closed. If the customer repeatedly breaches consent limits or conditions Wessex Water may consider escalating such repeat non-compliance to stage 2.

If the customer is subject to ongoing enforcement action, Wessex Water may consider any further breaches of consent limits or conditions as part of that case.

Stage 2

Wessex Water may escalate a case to Stage 2 of the enforcement process including in the following cases:

- No adequate response is received to a non-compliance letter within the timescale given.
- Insufficient steps have been taken to resolve the non-compliance and prevent reoccurrence.
- Failure to undertake steps and timescales agreed in Stage 1.
- Repeat non-compliance.

Wessex Water may invite the customer to a Formal Meeting and/or request a Formal Action Plan, under Stage 2. This stage will involve discussion and agreement of the necessary corrective and preventative actions to achieve compliance within an agreed period. This allows for Wessex Water's Trade Effluent team to track the progression of these actions and receive regular updates.

If an action plan is not agreed or remedial steps not completed within the agreed period, or an action plan or remedial steps are unsuccessful in achieving compliance, then Wessex Water may escalate to stage 3.

Stage 3

Wessex Water may escalate to Stage 3 of the enforcement process in the following cases:

- In the event of a serious breach or repeat breaches, and/or where the discharge causes detrimental effect to Wessex Water systems and/or the environment, Wessex Water may prosecute using its powers under the Act.
- Failure to agree an Action Plan under Stage 2.
- Failure to complete agreed Action Plan under Stage 2.
- Failure to achieve compliance through the action taken under Stage 2 as action plan was unsuccessful.

Stage 3 involves escalation to the Wessex Water Enforcement Panel and Wessex Water Legal team to decide on the appropriate and proportionate enforcement action. There are 3 levels of enforcement action, depending on the severity and potential or actual risk posed by the non-compliance:

Formal Warning

A written formal warning is a notification that the Wessex Water believes that an offence has been committed. Where Wessex Water gives a formal warning, no further action will be taken in respect of the relevant offence, however a written formal warning will be recorded and may be referred to in subsequent enforcement proceedings.

Formal Caution

A caution is the written acceptance by an offender that they have committed an offence. If the offender accepts the caution Wessex Water will take no further enforcement action in respect of that offence. Where a caution has been accepted this may be referred to in subsequent enforcement proceedings and in event of prosecution may be brought to the attention of the Court.

Prosecution

Wessex Water can pursue a criminal prosecution for relevant trade effluent offences under the Act. The use of the criminal process is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It may be appropriate to use prosecution in conjunction with other remedies available e.g civil remedies where an incident has caused damage or a serious interruption in the carrying out of Wessex Water's statutory functions. A prosecution will not be commenced unless Wessex Water is satisfied that there is admissible and reliable evidence that the offence has been committed, that there is a realistic prospect of conviction and that it is in the public interest for Wessex Water to prosecute.

Wessex Water recognises that prosecution is a serious matter that should only be taken after full consideration of the implications and consequences of the offence. Wessex Water will consider the following factors in deciding whether or not to prosecute:

- Incidents or breaches which have significant consequences, or which have the potential for such consequences e.g. environmental harm or where Wessex Water is itself at risk of enforcement action.
- Carrying out operations without a relevant consent.
- Continued breaches of regulatory requirements in relation to the same consent or site.
- Failure to comply or to comply adequately with formal remedial requirements.

Companies and Individuals

Criminal proceedings will be taken against those persons responsible for the offence.

Penalties

The existing law gives the Courts considerable scope to punish offenders and to deter others. Unlimited fines and in some cases, imprisonment may be imposed by the Courts. Wessex Water will, when appropriate, inform the Courts of the gravity of some offences and will encourage them to make full use of their powers. Examples of penalties available to the courts for certain offences are:

- **Magistrates Court:** an unlimited fine.
- **Crown Court:** up to 2 years imprisonment and/or an unlimited fine.