

## CONSULTATION ON THE DRAFT CODE OF PRACTICE AND LOCAL AUTHORITY GUIDE ON ODOUR NUISANCE FROM SEWAGE WORKS

### 1 SUMMARY

- 1.1 The Department for Environment, Food and Rural Affairs (DEFRA) have issued a Consultative paper entitled “A Draft Code of Practice and Local Authority Guide on Odour Nuisance from Sewage Works”. Written responses are invited by 4 April 2005.
- 1.2 A copy of the full document has been placed in the Members’ Library.

### 2 INTRODUCTION

- 2.1 Members will recall that in the early part of 2003, DEFRA consulted on four options for the statutory control of odours and other nuisances from sewage treatment works:

**Option 1:** No legislative change, proposed code of practice for the industry.

**Option 2:** Extension of the Statutory Nuisance regime to include odours and other nuisances from sewage treatment works.

**Option 3:** Local Air Pollution Prevention and Control.

**Option 4:** Extension of the Integrated Pollution Prevention Control Scheme.

- 2.2 The Environment Overview & Scrutiny Committee held on 27 March 2003 resolved that DEFRA be advised, “This Council supports Option 2 of the consultative document. The development of a ‘voluntary code of practice’ is also seen as a benefit that would assist in consistent operation and enforcement” (Min 162/03).
- 2.3 The High Court has now ruled that sewage treatment works are “premises” under section 79 of the Environmental Protection Act 1990 and therefore odour from sewage treatment works can be controlled under the statutory nuisance regime. The Government has therefore seen no need to amend the existing statutory nuisance legislation in this respect.
- 2.4 Following lengthy discussions with the water companies and others that would be affected, DEFRA have now produced a draft code of practice and local authority guide on odour nuisances from sewage treatment works for consultation.

### **3 CONSULTATION PAPER**

- 3.1 DEFRA recognises that odour from sewage treatment works, where it occurs, can be a significant issue which can cause distress to people close by and that there is a need to enhance the procedures for odour control for both operators and enforcement agencies. On the one hand, it is unrealistic to expect an entirely odour-free sewage treatment works, and resolution cannot usually be achieved within a short timescale without significant investment. On the other hand, there are steps that operators of sewage treatment works can take to minimise odours, and that local authorities can undertake to investigate, assess and seek to resolve odour problems.
- 3.2 The consultation paper seeks comments on proposals to:
- Provide a framework for local authority Environmental Health Officers to investigate, assess and resolve complaints of odour from sewage treatment works, so that “Best Practicable Means” are in place (the use of “Best Practicable Means” is a defence under statutory nuisance law);
  - Provide technical guidance to local authorities on the practicalities of investigating and assessing odour from sewage treatment works by outlining technical and management controls that are appropriate for the control of odour, and explaining measures to prevent, stop or minimise odour problems.

### **4 DRAFT CODE OF PRACTICE**

- 4.1 This is a voluntary code of practice whose purpose is to inform both operators and regulatory agencies of the Best Practicable Means of administering the existing legislation.
- 4.2 The draft code of practice gives a background to odour nuisance from sewage treatment works and guidance on the assessment and control of odours from such works.

### **5 DRAFT LOCAL AUTHORITY GUIDE**

- 5.1 This provides extensive voluntary guidance to local authorities on the identification and control of odours from sewage treatment works.

### **6 OFFICER COMMENTS**

- 6.1 It is disappointing that what had been anticipated would be specific guidance to the industry on the best practicable means of operating treatment works, materialises as primarily a guidance document to Environmental Health Officers on assessing odours. DEFRA have announced that they are currently collaborating with UK Waste Industry Research Ltd on “Best Practicable Means” guidance aimed primarily at the water industry. The

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results of this collaboration should be used to update the code of practice as soon as it becomes available.

- 6.2 The code of practice should clearly state on its front page that it is intended for the guidance of both Environmental Health Officers and the Industry.
- 6.3 The code of practice should be Statutory Guidance to the industry.
- 6.4 The guidance to the industry regarding the use of Odour Management Plans should be reinforced and given greater prominence within the code of practice.
- 6.5 The need for nationally recognised objective standards for odour assessment has not been addressed within the local authority guide.

## **7 LEGAL IMPLICATIONS**

- 7.1 Case law now provides that sewage treatment works are premises for the purposes of the Environmental Protection Act 1990 and therefore odours from sewage treatment works can be controlled under the statutory nuisance regime. It is uncertain whether the industry is minded to further test this important decision in the courts.

## **8 RECOMMENDATION**

- 8.1 It is proposed that the Committee **RESOLVES**

That, subject to comments from Members, this report forms the basis of the Council's response to the consultation on the Draft Code of Practice and Local Authority Guide on Odour Nuisance from Sewage Treatment Works.

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### **Background Papers:-**

DEFRA consultation paper Consultation on the Draft Code of Practice on Odour from Sewage Treatment Works and Accompanying Local Authority Guidance

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