

INTERNAL AUDIT REPORT

FROM: Audit and Risk Manager **SUBJECT:** Statutory Monitoring Functions

TO: Head of Community Protection **DATE:** 13 September 2021

C.C. Chief Executive
Deputy Chief Executive (TP)
Head of Finance
Environmental Health and
Licensing Manager
Environmental Protection Team
Leader
Portfolio Holder (Cllr Falp)

1 **Introduction**

- 1.1 In accordance with the Audit Plan for 2021/22, an examination of the above subject area has recently been completed by Ian Davy, Principal Internal Auditor, and this report presents the findings and conclusions for information and, where appropriate, action.
- 1.2 Wherever possible, findings have been discussed with the staff involved in the procedures examined and their views are incorporated, where appropriate, into the report. My thanks are extended to all concerned for the help and cooperation received during the audit.
- 1.3 Due to the ongoing impact of COVID-19 and current working practices, a slightly different approach has been taken to complete the audit with staff generally being interviewed via MS Teams, email and phone.

2 **Background**

- 2.1 The audit previously covered Environmental Protection Functions but has been split between Statutory Monitoring Functions and Nuisance & Other Protection Duties.
- 2.2 The specific areas to be covered under this audit were Air Quality Monitoring, Environmental Permits and Contaminated Land.

3 **Objectives of the Audit and Coverage of Risks**

- 3.1 The audit was undertaken to test the management and financial controls in place. This was achieved through a 'risk-based audit' approach whereby key risks are identified and then processes are assessed to provide assurance that the risks are being managed effectively. This approach has only been in place

since the start of this financial year following an external review of the function.

3.2 In terms of scope, the audit covered the following risks:

- Insufficient budget to enable statutory functions to be undertaken
- Permit fees due are not received
- Procurement of consultant / appointment of staff member (value for money)
- Failure to undertake statutory functions in line with the Environmental Protection Act (1990) and associated legislation
- Failure to identify legislative changes
- Air quality is not managed leading to adverse press coverage
- Failure to improve air pollution (NO₂) levels
- Missed reporting deadlines for the Annual Status Report leading to being named and shamed
- Failure to maintain contaminated land database
- Staff are asked to issue permits or not take enforcement action when issues are identified
- Failure to take enforcement action against the Council in relation to the Council's failure to comply with their environmental permit held by the Crematorium
- Lone working
- Working at height
- Staff abused when undertaking site visits
- Reliance placed on inappropriate information provided by others (e.g. contaminated land data supplied)
- Breakdown of affiliated AURN monitoring station (Hamilton Terrace).

3.3 These were drawn from a combination of risks identified in the Significant Business Risk Register, the departmental risk register, and discussion between the Internal Auditor and the Environmental Protection Team Leader (EPTL).

3.4 These risks, if realised, would be detrimental to the Council with regards to meeting the following corporate objectives, as set out in the Fit for the Future Strategy:

- External – People strand re Health, Homes & Communities
- External – Services strand re Green, Clean & Safe.

3.5 Specifically, without appropriate monitoring and management of different types of pollution there may be an impact on health for all residents and visitors and air quality may be adversely affected.

4 Findings

4.1 Recommendations from Previous Reports

4.1.1 There were no recommendations raised in the last audit of Environmental Protection Functions, so this section is not relevant.

4.2 **Financial Risks**

4.2.1 **Insufficient budget to enable statutory functions to be undertaken.**

The Environmental Health & Licensing Manager (EHLM), who has recently taken over responsibility for the relevant budgets, advised that the Head of Community Protection (HCP) hosts monthly budget meetings with the Finance Support Officer (FSO) coordinating. Budget managers attend as and when required with records of the actions arising from those meetings, in terms of any 'issues' being noted.

Due to the level of detail in the notes and the fact that the EHLM has only recently taken on responsibility for the budgets, no detailed testing was thought to be warranted to look at budget variances.

However, as at the time of the previous audit, it was noted that some of the relevant income (re environmental permit fees) still sits under a different budget code (Community Safety), which is the responsibility of a different budget manager, although the EHLM advised that she has access to all relevant budgets. This 'issue' was flagged with the team that are implementing the new finance system so that they can build the coding structure accordingly.

4.2.2 **Permit fees due are not received.**

The (relevant) Senior Environmental Health Officer (SEHO) advised that there is a list of all relevant environmental permits on the Council's website. Whilst there is a specific page on the website relating to environmental permits, the list is actually held within another section of the website (industrial emissions which is linked from the air pollution pages).

Advisory

Review the relevant pages of the website to allow for appropriate positioning of the associated pages or the inclusion of links.

He also provides a list of permits, along with the relevant fees to be charged, to the FSO on an annual basis.

The fees to be charged are set nationally, with the relevant fees being those set for 2017. However, the link included on the 'industrial emissions' page of the website links to the fees that are relevant to the permits issued by the Environment Agency (which is out of date as a new scale is now in place) as opposed to those issued by the Council.

Recommendation

Ensure that the website links to the appropriate set of fees.

Upon comparison of the two lists (i.e. the one on the website and the one provided to the FSO for fees), it was noted that there were a number of discrepancies. Some surrendered or revoked permits that were included on the fee list remained on the website (seven instances), whereas others didn't

(five instances). There were also two permits on the website list that were not included on the fee list.

The SEHO advised that one of these (permit 42 re Transco) now fell under the Environment Agency. The other was a new permit that had not come into force when the fee list had been drawn up (permit 81 re UKBIC).

Recommendation

Ensure that there is a consistent approach to the removal of environmental permits from the list held on the website where permits have been revoked or surrendered.

Testing was undertaken to ensure that invoices for the 'live' environmental permits had been raised appropriately (i.e. timely, to the correct debtor and for the correct amount) and that the invoices had been paid. This test proved satisfactory.

4.2.3 Procurement of consultant / appointment of staff member.

The EPTL advised that the procurement of the contract with Bureau Veritas for the submission of the Annual Status Report (ASR) was discussed with the Procurement Business Partner. He confirmed that a single quote process was appropriate, given the value of the contract.

Whilst searching for the contract details on the contract register, two other 'air quality' related contracts were identified.

One, for Air Quality Data, is with another local authority (Staffordshire County Council) and, as such, there is no requirement for a formal procurement process to be followed for this agreement.

The other is for Air Quality Monitoring and an exemption from tendering had been agreed in this instance due to the impact of COVID, with an extension being agreed to the existing contract in place with WeCare4Air.

In order to ensure that the Council will not be reliant on a consultant for the production and submission of the ASR in future, attempts are being made to appoint an Air Quality Officer. An advert is due to be placed shortly for this post, with the expectation being that interviews are held within six weeks and somebody being in post from September / October.

4.3 Legal and Regulatory Risks

4.3.1 Failure to undertake statutory functions in line with the Environmental Protection Act (1990) and associated legislation.

The EPTL advised that Environmental Health Officers within the team are required to complete training to maintain their CPD hours although this can be broad and not service specific.

Staff receive regular training although the training run tends to be optional as opposed to mandatory as certain staff deal with specialist areas so the training may not always be relevant for all staff.

If any specific training needs are identified, this would be covered during appraisals and recorded on the performance development plans as appropriate.

The EPTL also highlighted that, whenever training was attended, there was an expectation that any relevant notes / training material provided or areas of good practice would be disseminated at the next team meeting. However, this could not be evidenced as the meetings are not minuted.

Advisory

Team meeting minutes could be taken to provide a relevant record of topics discussed.

The training material provided is not currently stored in a shared directory. However, the EPTL thought that this was a good idea when raised and noted this for action.

In terms of 'staff availability' affecting service delivery, the EPTL suggested that there would potentially be restrictions on services or amended timescales but, fortunately, there had not been many vacancies etc. that have affected the provision of statutory services.

She did highlight one instance where a member of staff was to be 'diverted' onto a specific piece of work and consideration had been given to back-filling his role, but this was not ultimately undertaken as the main body of the work was completed before the role could be filled.

4.3.2 Failure to identify legislative changes.

The EPTL advised that a number of relevant staff are members of the Chartered Institute of Environmental Health so would receive relevant updates as part of their communications. The Council also participates in different 'networks' of local authorities who share updates, good practice and submit responses to any Government consultation etc.

If there are any formal changes, the notification would tend to go to the HCP and / or to the Environmental Health & Licensing Section Manager who would then cascade the information to relevant staff.

The EPTL highlighted that the main area of legislation at the moment that is due to be introduced is the new Environment Bill that is currently progressing through the House of Lords.

4.4 **Reputational Risks**

4.4.1. **Air quality is not managed leading to adverse press coverage.**

The Environmental Protection Technical Officer (EPTO) advised that there are three automatic monitoring stations across the district and a number of diffusion tubes. Two of the automatic stations are part of the DEFRA national network of sites, with the data being available in real time from their website, with one of these being 'adopted' from the Council.

The diffusion tubes (for monitoring levels of Nitrogen Dioxide) are not as accurate but are more affordable and are portable. These are changed on a monthly basis, with the tubes sent to a lab (Staffordshire County Council) for the data to be extracted.

The data is analysed for the year to see if 'targets' are being met, with the data being included in the ASR as required which highlights where any figures exceed the concentrations included in the Air Quality Regulations 1997.

The EPTO advised that the diffusion tubes can be relocated if required (e.g. if a member of the public raised concerns about a specific site) although she suggested that none had been moved for a couple of years. Details of changes of location are recorded on the raw data spreadsheet and would also be reflected in the ASR.

Consultation would also be undertaken in relation to new developments with responses from the relevant SEHOs, although developers would be pointed towards the Air Quality Supplementary Planning Document (SPD) that they are required to follow. The EPTO suggested that no monitoring has changed to date in relation to the new developments although this has been discussed.

4.4.2 **Failure to improve air pollution (NO2) levels.**

The EPTO advised that the work with Warwickshire County Council (WCC) in terms of traffic congestion is documented as part of the actions included in the Air Quality Action Plan (AQAP). There are seven actions included in the AQAP, with each one broken down into a number of proposed measures (34 in total). Each of these measures has a lead agency assigned to it, with any highways-related measures being the responsibility of WCC.

An annual monitoring meeting is held between staff from the Council and WCC, with the information they provide being used to inform the details in the ASR.

The Council also participates in the Coventry & Warwickshire Air Quality Alliance, with the EPTL normally representing the Council.

The ASR is published on the Council's website and is, therefore, available to all interested parties (including Members). The ASR for 2019 (covering the 2018 reporting year) had been reported to the Health Scrutiny Sub-Committee and it was envisaged that the 2020 report (covering 2019) would also be presented to them, but the Committee was disbanded. Instead it was discussed at the Health and Community Protection Programme Advisory

Board (PAB) and circulated to members of the Overview & Scrutiny Committee (O&S) although it was not formally reported to a meeting of O&S as none of the members asked for it to be added to the work programme.

The HCP advised that the 2021 report (covering 2020) will be circulated to members of the Community Protection PAB and O&S. The members can ask for the report to be discussed if they wish.

4.4.3 **Missed reporting deadlines for the Annual Status Report leading to being named and shamed.**

As suggested above, the Council currently has a contract with Bureau Veritas for the provision of the ASR. Upon review, it was confirmed that the contract is detailed appropriately in terms of the responsibility for the production of the report, including the deadlines for submission.

The EPTL confirmed that additional time for submission had been allowed by DEFRA due to the impact of COVID and that Bureau Veritas had submitted the report on our behalf.

4.4.4 **Failure to maintain contaminated land database.**

The guidance issued in relation to Part IIA of the Environmental Protection Act 1990 highlights that Local Authorities have a duty to inspect their area in order to identify contaminated land that might pose a risk of harm. The Council has a Contaminated Land Inspection Strategy in place that sets out how this duty was to be discharged which was last updated in 2015.

Advisory

Whilst the guidance under which the strategy sits is still in force, the Contaminated Land Inspection Strategy could be refreshed to ensure it references the correct Council strategies etc.

The relevant SEHO provided a copy of the investigation spreadsheet that summarises the risk scores for the identified land. Upon review, it was noted that the latest date included on the spreadsheet was 2015. The EPTO confirmed that this was the latest relevant update.

Other sites may also be identified as part of the planning process. Documentation relating to these sites is saved on the network, although the SEHO suggested that this hasn't been updated properly for a while so work is needed to catch up and then ensure that it is properly maintained.

He highlighted that one of the issues related to this is getting the relevant 'layer' updated on the GGP / GIS system as it is quite time consuming to get the relevant site plotted on the system. He advised that this is a known issue that has been flagged with management prior to the audit but it would need time and a better system. The EPTL confirmed that steps were now being taken to address the issue with a specific member of staff being tasked with tackling the backlog.

As it had been flagged that the details were not fully up to date but the issue was known, no testing was considered necessary.

4.5 **Fraud Risks**

4.5.1 **Staff are asked to issue permits or not take enforcement action when issues are identified.**

The HCP advised that she is the only person who can sign off a permit and, as part of that process, she would have oversight of the case details to confirm that it was appropriate.

In terms of enforcement action, she highlighted that the Council has, in some of the reviewed areas of work, a duty to take action (as opposed to the 'discretionary' power to take action). Case reviews are undertaken as part of one-to-ones with staff to ensure that the case had been appropriately dealt with. The EPTL provided examples of the emails sent where specific cases or pieces of work were being discussed as part of the one-to-ones.

4.5.2 **Failure to take enforcement action against the Council in relation to the Council's failure to comply with their environmental permit held by the Crematorium.**

The relevant SEHO advised that the idea of getting another local authority to undertake reviews of emissions at the crematorium is something that has been discussed.

He suggested that the main issue is that if a team from another council undertook the review, they have no authority and could not enforce any actions that needed to be taken.

The HCP confirmed that it is intended that an independent review from another local authority will be implemented, but she has not yet been able to reach an agreement with another council.

She also confirmed that it would still be up to the Council to take any enforcement action, unless 'cross-authorisation' could be agreed. However, the inspection and evaluation of the premises would be independent and documented.

Recommendation

The Council should investigate entering into an arrangement with another local authority that operates a crematorium to perform joint visits to ensure that there is appropriate 'oversight' of the inspections undertaken.

4.6 **Health and Safety Risks**

4.6.1 **Lone working.**

The EPTL advised that staff have been issued with the new SoloProtect ID which sits on the ID badge lanyards. She also highlighted that officers are

aware of the lone working policy and that there is regular reinforcement of the policy. There was also due to be a presentation to staff by the Council's Internal Health & Safety Officer.

She highlighted that staff were aware to contact her to check back in when they were working out of hours and that she would chase if she hadn't heard.

Various risk assessments are on AssessNet for lone working, including updated ones specifically relating to COVID.

4.6.2 **Working at height.**

The EPTL advised that the only 'working at height' would be in relation to the air quality monitoring. The EPTO advised that this mainly related to the NOx tubes although they were not very far above head height.

When ladders / step stools were required, there would be two staff there but the main monthly changes of the tubes would be undertaken using grab sticks, so working at height was very limited.

Risk assessments were found to be in place on AssessNet for the changing of NOx tubes as well as the monitoring stations at Hamilton Terrace and Rugby Road, with all of these covering working at height.

4.6.3 **Staff abused when undertaking site visits.**

The EPTL advised that all staff have access to the staff alert list and highlighted that some cases would be 'red flagged' on CIVICA APP so that staff were aware of potential issues.

The generic (pre-COVID) risk assessment on AssessNet was found to make reference to the need for consulting the staff alert list prior to undertaking site visits.

4.7 **Other Risks**

4.7.1 **Reliance placed on inappropriate information provided by others (e.g. contaminated land data supplied).**

The relevant SEHO advised that, as the contaminated land 'record' is not fully up to date (see above), they will always err on the side of caution when responding to planning enquiries etc., highlighting that there may still be a possible risk as opposed to saying that the site is safe.

In terms of checking against other sources of information, there will be a certain amount of local knowledge used as well as making use of Google etc. to see if there is anything in the history of the site.

4.7.2 **Breakdown of affiliated AURN monitoring station (Hamilton Terrace).**

The EPTO advised that the monitoring station is visited every four weeks to be calibrated. There is also a 'support' contract for servicing the station twice yearly which is also available for call outs in case of breakdowns.

DEFRA or the contractor may notice that data is wrong or is not being received. Council staff will then go to check if there is a specific issue and can call out the contractor.

5 **Conclusions**

5.1 Following our review, in overall terms we are able to give a SUBSTANTIAL degree of assurance that the systems and controls in place in respect of Statutory Monitoring Functions are appropriate and are working effectively to help mitigate and control the identified risks.

5.2 The assurance bands are shown below:

Level of Assurance	Definition
Substantial Assurance	There is a sound system of control in place and compliance with the key controls.
Moderate Assurance	Whilst the system of control is broadly satisfactory, some controls are weak or non-existent and there is non-compliance with several controls.
Limited Assurance	The system of control is generally weak and there is non-compliance with controls that do exist.

5.3 The issues that require further action are summarised below:

- The Council's website does not link to the correct scale of fees for environmental permits.
- There is a lack of consistency on the website in relation to whether surrendered or revoked environmental permits remain on the available list.
- There is no independent oversight of the work performed in relation to environmental permit inspections at the Council's own premises (i.e. Mid Warwickshire Crematorium).

5.4 Further, more minor, 'issues' were identified where advisory notes have been reported. In these instances, no formal recommendations are thought to be warranted and addressing these issues are discretionary on the part of the service.

6 **Management Action**

6.1 The recommendations arising above are reproduced in the attached Action Plan (Appendix A) for management attention.

Richard Barr
Audit and Risk Manager

Action Plan

Internal Audit of Statutory Monitoring Functions – September 2021

Report Ref.	Risk Area	Recommendation	Rating*	Responsible Officer(s)	Management Response	Target Date
4.2.2	Financial Risks - Permit fees due are not received.	Ensure that the website links to the appropriate set of fees.	Low	Environmental Protection Team Leader	Environmental Protection Team Leader to arrange that this is set up with the Website Service Manager.	30 th November 2021
4.2.2	Financial Risks - Permit fees due are not received.	Ensure that there is a consistent approach to the removal of environmental permits from the list held on the website where permits have been revoked or surrendered.	Low	Environmental Protection Team Leader	Environmental Protection Team Leader to advise the Senior Environmental Health Officer of this requirement and monitor through routine 1-2-1's.	31 st March 2022
4.5.2	Fraud Risks - Failure to take enforcement action against the Council in relation to the Council's failure to comply with their environmental permit held by the Crematorium.	The Council should investigate entering into an arrangement with another local authority that operates a crematorium to perform joint visits to ensure that there is appropriate 'oversight' of the inspections undertaken.	Low	Environmental Protection Team Leader	Discussed with line manager the option to liaise with counterpart in Rugby who have agreed to provide 'peer review' by way of a reciprocal arrangement.	31 st January 2022

* The ratings refer to how the recommendation affects the overall risk and are defined as follows:

High: Issue of significant importance requiring urgent attention.
Medium: Issue of moderate importance requiring prompt attention.
Low: Issue of minor importance requiring attention.