

From: Peter Silverman
Sent: 10 November 2016 12:39
To: Nick Harris - Ops. Dir. Highways England
Cc: Kevin Hollinrake MP
Subject: Prosecuting under EPA S34

Nick,

This is one of the topics we agreed to review at our meeting last week. The purpose of this e-mail is to bring you up to date on this issue which has been the subject of a protracted correspondence between myself, Kevin Hollinrake MP and HE over the last year or two.

What is the problem?

[Please have a look at this video.](#) Spillages from these inadequately covered bulk waste transporters, and from skip lorries, are a major sources of litter on the main carriageway verges and central reservations of our motorways and trunk roads. **In fact I believe they account for most of the litter on these sections.**

What is the appropriate legal remedy?

[Section 34 of the Environmental Protection Act 1990](#) imposes a duty on anyone who carries controlled waste to prevent its escape from their control.

In 2004, following a complaint from me, the Environment Agency brought a prosecution under this section against the operator of a skip lorry which allowed some of its load to escape onto the highway. They were required to pay a fine of £5,000 and a further £15,000 in costs. [Details can be seen here.](#)

In contrast, in 2014 the Highways Agency dealt with a case involving a large bulk waste lorry shedding "*large amounts of litter and plastic*" onto the M32. Their contractor wrote to the company warning them that, had a police officer observed this occurring, they may have issued the driver with a £60 fixed penalty. [Details can be seen here.](#)

Who can prosecute under EPA S34?

Under the English Common Law system the principle of individual prosecution by the private citizen (this includes organizations) was always paramount. This position has been gradually amended by Parliament most recently by the Prosecution of Offences Act 1985. Section 3 of that Act lists the circumstances in which the Director of Public Prosecutions has to initiate, or take over, prosecutions. ***Section 6(1) however makes it clear that in other circumstances (such as with EPA offences) anyone can still institute a prosecution.***

This is why you will not find in the EPA a list of bodies who can prosecute under S34.

This should not be confused with the power to issue Fixed Penalty Notices in lieu of a prosecution. FPN powers are always restricted to certain bodies. In the case of those issued

under EPA S34A for example they are restricted to “enforcement authorities” namely the Environment Agency and waste collection authorities (i.e. local authorities).

Are there parallels elsewhere?

The [RSPCA routinely prosecute](#) offences under the Animal Welfare Act.

What was HE’s last word on the subject?

On 22nd July Michael Pease asked HE if they could prosecute under the EPA. He was told that only the Police and Local Highway Authorities can prosecute under the EPA, Highways England do not, he was told, have the same powers. [Link to correspondence](#). This is wrong.

Why HE should prosecute

Highways England have a [duty under EPA S89](#) to ensure, so far as is practicable, that they keep the motorways, and some of the trunk roads on their network, clear of litter and refuse. It therefore behoves you to take all practical steps to fulfill this duty including the prosecution of the operator of the vehicle shown in the video referred to above.

Your mobile traffic officers could use dash-cams to gather evidence.

I do not think it will take that many £20,000 hits for this industry to get the message about securing their loads.

Less litter spilling onto the verges will mean it will be less costly to pick-up.

You would be fulfilling your strategic objective of reducing litter at source.

Questions

Do you accept that HE can, if it so chose, prosecute under EPA S34 the operators of bulk waste transporters who allow waste to escape onto the highway?

Will you now do so?

Nick, I hope this is of help.

Peter Silverman

www.cleanhighways.co.uk

01895 625770

View our 2 minute video [Duty to keep highways clear of litter](#)