



**Black Drain**  
Drainage Board

## **FLY TIPPING & ILLEGAL DUMPING POLICY**

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## **1. Executive Summary**

- 1.1. Fly-tipping is a criminal offence that as well as being unsightly can cause serious damage to the land or aquatic environment. This policy sets out the procedures the Board will follow in respect of unlawfully dumped waste that impacts Board maintained watercourses and the actions the Board will take upon discovering fly-tipped material.
- 1.2. This policy is in response to the extraordinary number and scale of fly-tipping incidents in the Danvm Internal Drainage District where it coincides with the Doncaster Metropolitan District.
- 1.3. This policy takes a precautionary approach to ensure the Board is acting within the law.
- 1.4. The Board is currently in the process of seeking legal opinion<sup>1</sup> on its powers under the Land Drainage Act 1991 and its duties under relevant Environmental Legislation. The result of this legal opinion may change this policy and therefore the Board give the CEO (in consultation with the Chair) delegated powers to make any necessary changes to this policy based on its outcomes.

## **2. Fly-tipping and the Law**

- 2.1. For the purposes of this policy the term “fly-tipping” will be used commonly, this term and “illegal dumping” is sometimes used to differentiate between the roles of the Environment Agency and local authority, respectively.
- 2.2. Fly-tipping is the illegal deposit of liquid or solid waste on land or water. By fly-tipping on land the main relevant legislation is:
  - Section 33 of the Environmental Protection Act 1990.
  - Regulations 12 and 38 of the Environmental Permitting (England and Wales) Regulations 2010.
- 2.3. By fly-tipping in a watercourse that is a controlled water the main relevant legislation is:
  - Section 161 Water Resources Act 1991.
  - Section 25 Land Drainage Act 1991.
  - Byelaw 7 of the Black Drain Drainage Board (Conferred by S66 Land Drainage Act 1991).

## **3. Ownership of Watercourses**

- 3.1. Watercourses are owned by the person that owns property adjacent to its bank and up to its centreline. This is regardless of any official title, due to the rebuttable Ad Medium Filum (up to the middle line) assumption. These persons, having control of such a watercourse are known as Riparian Owners (owners of the riverbank).

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<sup>1</sup> The opinion of legal expert in a given subject, likely to be a Barrister.

- 3.2. Where a property is adjacent to a public highway and where the highway authority does not own the subsoil (which is the most likely case) then the rebuttable Ad Medium Filum presumption may also apply up to the centreline of the highway. This means the adjacent landowner owns the subsoil under that part of the highway.
- 3.3. In simple terms, and in most cases, where a watercourse runs along the edge of a highway, it is assumed the adjacent landowner is also the owner of both banks and channel of that watercourse.
- 3.4. In respect of this policy, the Riparian Owner has a duty to ensure there is no impediment to flow in a watercourse and is required to take action to mitigate the effects on any impediments (“Remedial works”), failure to do so may result in the Drainage Board serving notice on the Riparian Owner requiring them to undertake Remedial Works.
- 3.5. If the Riparian Owner does not carry out Remedial Works the Board may carry out the works and recharge the cost in doing so to the landowner, which in the case of fly-tipping may result in any costs incurred by the Board in managing waste (If required to do so).
- 3.6. Except for watercourses on land the Board owns, the Board have no duties whatsoever to carry out maintenance works. On an annual basis the Board may decide to raise funds from local taxpayers or make hypothecated charges to carry out work on certain watercourses in a coordinated way for the wider public benefit, however the Board may withdraw from any planned maintenance at any time.
- 3.7. Should a watercourse that is normally maintained by the Board become unmanageable due to persistent fly-tipping issues the Board may withdraw its maintenance activities here.

#### **4. The Drainage Board**

- 4.1. Provided the Board do not disturb waste<sup>2</sup>, are not the producers of waste and do not own the land on which waste is tipped, they have no specific statutory duties in respect of fly-tipping.
- 4.2. Under Section 15 of the Land Drainage Act 1991 the Board may without making payment for it, appropriate and dispose of any matter removed in the course of the carrying out of any work for widening, deepening or dredging any ordinary watercourse; and deposit any matter so removed on the banks of such a watercourse, or on such width of land adjoining such a watercourse as is sufficient to enable the matter to be removed and deposited by mechanical means in one operation.
- 4.3. The relevant part of the Land Drainage Act refers only to “matter” and is silent on “waste”. The Board is currently seeking legal opinion to clarify any additional duties that it is required to perform should waste be deposited on the bank of the watercourse and shall update this policy when this opinion is received.

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<sup>2</sup> Subject to outcome of legal opinion

4.4. The Board may use its permissive powers to serve notice on the occupier of relevant land to remove waste from a watercourse where the waste is causing an impediment to flow, or its presence is contrary to local land drainage bylaws. If the occupier fails to carry out works, the Board may do so and recover its costs from the occupier.

4.5. The Board will not normally dispose of waste generated by others unless it is statutorily obligated to do so.

## **5. The Environment Agency**

5.1. The Environment Agency may investigate and undertake enforcement action for incidents of fly-tipping including:

- Larger incidents (more than 20 tonnes, 20m<sup>3</sup> or a tipper load)
- Organized (linked to criminal business practices)
- Hazardous (waste over 75l which have the potential to damage the environment)
- Where there is pollution of a watercourse

5.2. The Environment Agency may arrange for the removal and disposal of the waste.

## **6. The Council**

6.1. The Council may investigate Larger Incidents if there is a local agreement in place.

6.2. The Council is responsible for clearing waste illegally dumped on relevant land which includes land where ALL the following apply:

- Is open to the air on at least one side.
- Is under the Council's direct control.
- Is publicly accessible (with or without payment).

6.3. The Council is responsible for keeping the highway clean and clear of litter etc in so far as is reasonably practicable.

6.4. A rebuttable presumption might be made that regardless of land ownership, and for the purposes of the Council's responsibilities, the highway may extend to include land up to the beginning of the adjacent freeholder's land i.e., up to the fence or hedge-line of the neighbouring property or other land.

6.5. The Highway Authority may carry out research that shows that the highway does not extend to or extends beyond the presumed boundary. Unless a watercourse is specifically mentioned in the research e.g., in enclosure awards, a watercourse within land that is shown within the highway extent may form part of the highway for the purposes of the relevant legislation.

## **7. Fly-tipping Procedure**

- 7.1. Upon becoming aware of material in a watercourse that the Board reasonably determines to have been dumped because of unlawful fly-tipping, the Board's officers will follow the procedure set out in the flowchart below.

## **8. Conclusion**

- 8.1. The Board already has significant financial challenges in carrying out its statutory role as a land drainage and flood risk management authority in ensuring a large part of the region remains sustainable. The Board is not funded to deal with the consequences of fly-tipping and do not receive any central government revenue funding, being entirely reliant on local taxation.
- 8.2. The occupiers of land where fly-tipping has occurred are **victims of crime** who are burdened with the costs of dealing with a criminal act, where possible the fly-tipping procedure seeks to avoid serving notice on these occupiers of land under S25 of the Land Drainage Act 1991 by exploring other avenues and working with other authorities before taking such action.
- 8.3. The Board has a strong desire to work in partnership with the relevant waste or principal litter authorities to assist them in dealing with waste incidents and will offer them help in carrying out their duties where it is reasonably practical to do so and where such assistance does not unduly impact the Boards normal operations.

# Fly-tipping Incident in Board Maintained Watercourse

## Procedure

