

Waste & Resource Efficiency Division  
Department for Natural Resources  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

Tuesday, 05 May 2015

Dear Sir or Madam

**Response to the Consultation on proposals to enhance enforcement powers at regulated facilities and call for evidence on other measures to tackle waste crime and entrenched poor performance in the waste management industry.**

We have received a copy of the above draft for comment as part of your consultation process.

The Chartered Institution of Wastes Management (CIWM) is the professional body which represents over 6,300 waste and resources management professionals, predominantly in the UK but also overseas. The CIWM sets the professional standards for individuals working in the waste and resources management industry and has various grades of membership determined by education, qualification and experience.

CIWM is recognised as the foremost professional body representing the complete spectrum of the waste and resources management industry. This gives the Institution the widest possible view and, perhaps more pertinently, an objective rather than partial view, given that our goal is for improvement in the management of all wastes and resources.

The Cymru Wales Centre Council of the Chartered Institution of Wastes Management welcomes the opportunity of contributing to the Consultation on proposals to enhance enforcement powers at regulated facilities and call for evidence on other measures to tackle waste crime and entrenched poor performance in the waste management industry.

In relation to the current Consultation document, our points are provided as responses to the specific questions raised, in relation to the information received, as follows below and in the next pages.

**Part 1.**

We note the fact that the levels of compliance with waste management permits in Wales is lower than that in England and hope that this situation will improve, but, it will require Natural Resources Wales and Welsh Government to work together to achieve this. If the issue relates to Natural Resources Wales having inadequate resources to deliver the level of regulation required to improve the situation, Welsh Government should look into this matter with a degree of urgency and seek to put in place sufficient ring fenced funding to enable improvement in this matter. Improvements in the level of compliance with permit conditions clearly is needed to enable the development of a higher performing waste industry in Wales and a more level playing field for legitimate operators so that they are not undercut by operators of facilities that do not comply with the conditions within their permits.

We also note that there are a number of illegal sites operating in Wales that have been identified by Natural Resources Wales and that illegal waste operations can be difficult to close and that when closed



the perpetrators may initiate further illegal operations in a different location. We also note that in England as a result of work done with Defra there is now a joint Defra EA Waste Crime Action Plan launched in September 2014 and that as a result of this the EA has taken further action to tackle waste crime that is not happening in Wales, such as the proposed significant increases in the annual subsistence charges for the poorest performing permitted facilities and an increased charge for the first year to enable greater assessment of operational practices. We would suggest Welsh Government should work with Natural Resources Wales to identify how the regulatory situation on Wales could be improved and where both government and regulator could take action to facilitate improvements and that whatever actions are identified then these should be implemented. We also note that in England regulators appear to have access to a greater range of civil sanctions enforcement powers than are available in Wales, there really should be equality in the availability of regulators to access legal powers across England and Wales.

We agree with the reasons expressed in paragraphs 9.17 to 9.19 as to why these powers need to be introduced.

**Q.1- Do you agree with the proposals, A to F? Please provide any additional comments to support your answer against each proposal and, if possible outline any additional measures needed to underpin them?**

We agree with the proposals A to F provided that the powers are used proportionately and that officers are trained in the use of these powers and that the use of the powers is used consistently across all of the Natural Resources Wales' operational areas. We note, however, that the powers outlined in C for regulators to lock the gates of a facility may not be sufficient to stop the determined operator, the use of bolt croppers would reduce the effectiveness of a padlock installed by the regulator instantly. We also have some concerns that where a strategic site has a poor operational compliance record the closure of this facility may have wider impacts, however, this should not impede the regulator from taking necessary action, but governments might wish to seek additional powers that might facilitate better compliance. For example, where a facility that has a poor compliance record is also used by a local authority, whether there might be some further action that could be taken via the local authority to initiate improved compliance before action is taken to close the facility by the regulator. It would be in the interests of both the regulator and the local authority for the compliance situation to be improved and the site not to be closed as a result of continued poor compliance, in some instances the facilities have received government funding to facilitate their initial development.

We note that the planning inspectorate is the body to whom appeals under the Environment Protection Regulations are heard, surely there should be a more specialist body to whom such appeals should be directed, the planning inspectorate deals with planning law specifically and are specialists in this complex area of legislation but cannot necessarily be regarded as specialists in the application of Environmental Permits and related legislative matters. We understand that there is an Environmental Tribunal established under the civil sanctions legislation which might be a better route for such appeals to be dealt with.

**Q.2- Do you have any views on whether there are unforeseen costs or benefits to legitimate operators, the regulators or any other organisation that may result from any of the proposals A-F?**

We haven't got any views or evidences at this moment in time on whether they are unforeseen costs or benefits to legitimate operators, the regulators or any other organisation that may result from any of the proposals A-F.



## Part 2

### Fixed penalty notices for fly-tipping

#### **Q.1- Would the introduction of fixed penalty notices for the offence of fly-tipping help tackle the problem?**

We agree with this proposal and think that the introduction of fixed penalty notices for the offence of fly-tipping would help tackle the problem.

#### **Q.2- What are the advantages of the use of fixed penalty notices for fly-tipping?**

This avoids the costs associated with taking actions through the courts, whilst the penalty is more immediate and less time and manpower is wasted. Fixed penalty notices can also boost the moral and efficiency of enforcement officers whose work is difficult and frustrating when time and efforts are put into building a case that may not succeed in court. The paid fixed penalties could finance investigations for bigger fly-tipping offences to be taken to court.

#### **Q.3- What are the disadvantages of the use of fixed penalty notices for fly-tipping?**

There needs to be assurance that similar levels of evidence would be required to that required in court to ensure that the authorities undertake a proper investigation.

#### **Q.4- If a proposal was made to introduce fixed penalty notices for fly-tipping, how much should the fixed penalty be set at to act as a sufficient deterrent?**

The level of fine needs to be at least equivalent to the savings made by not disposing of the material through legitimate routes in the case of an offence by a business. In the case of a householder committing the offence, the level of fine needs to be at least equivalent to the amount of fixed penalty notices for littering/dog fouling/graffiti/ fly-posting.

For both a business and a householder having fly-tipped the waste the fine needs to be dependent on the type and quantity of the materials involved and also to be seen as a deterrent. The cost of cleaning up the fly-tipped material/ the polluter pays principle could also be taken into consideration when setting the fine. When/if used in stories for local and national newspapers, this would raise awareness of the cost of flytipping to the tax-payers.

However, there will still be cases where it is not possible to identify the culprit.

#### **Q.5- Do you have any views on the possible cost or benefits of issuing fixed penalty notices?**

Actions to improve landowner awareness of potential liabilities for waste

#### **Q.6- Please provide evidence including examples of the extent to which waste is being abandoned and landowners are being left to tackle waste or pollution caused by current or former tenants.**

We have no evidence to provide at this point in time.



**Q.7- Do you have any proposals on the best way to educate and increase awareness amongst landowners of their potential liabilities?**

Welsh Government could use their mechanisms for disseminating information to landowners. Inviting landowners to awareness workshops delivered across Wales could be a way forward.

**Q.8 - What more can be done through the lease arrangements with tenants to prevent or mitigate the potential liability of landowners?**

Standard clauses for inclusion in lease documents where land is proposed to be used for waste management activities and these could then be disseminated through the legal profession.

**Q.9- Would you like to see operators provide evidence to the regulators of their landowner's awareness and consent to the proposed waste activity as part of the permit application process?**

Yes.

**Q.10- Do you have any views on the ability of liquidators to disclaim environmental permits as 'onerous property' in England and Wales?**

This process of disclaiming environmental permits as onerous property should be stopped in England and Wales – this would require changes to the relevant legal regimes.

**Operator competence****Q.11- What are your views on amending legislation to formally require operators of regulated waste management facilities to be competent in respect of: (a) technical competence (b) financial provision and (c) operator performance?**

The requirement for an operator of a permitted facility to be technically competent to do so should be explicit in the legislation and the requirement needs to be that the technically competent person needs to be in a position where he/she can put in place any necessary expenditure or changes to operational practice that are required to comply with conditions in the environmental permit.

**Q.12- If a proposal were put forward to enshrine the components of the test in legislation, should the legislation apply to just waste management activities or some or all other types of regulated facility?**

We are not in a position to answer this question.

**Q.13- Would it be appropriate for operator competence to be re-assessed if a company changed its directors, company secretary or similar managers?**

Yes if the legislative requirement is introduced to include operator competence to apply at that level within the company but it is of greater importance that the manager of the facility on the ground is required to hold the technical competence. There is a tendency within the industry for facility operators



to purchase technical competence through consultants providing this as a service, however in these cases the technically competent person is unable to give effect to what is required on site for compliance with the permit. The way in which this legislative requirement is put in place needs to ensure that the technically competent person is in a position to be able to authorise expenditure or change operational practices on the site in order to secure compliance with permit conditions or conditions of an exemption.

**Q.14- If proposals to assess operator competence on a change to directors etc were put forward, would it be appropriate to apply that requirement to all companies?**

We are not in a position to answer this question.

**Q.15- If an operator competence test were to be enshrined in legislation, in what way might that be done? Examples might include the inclusion of an operator competence requirement in permit conditions, the creation of a specific new offence for failure to maintain operator competence or the extension of existing suspension and revocation powers to breach of the operator competence test.**

We would support all of the suggested mechanisms.

**Q.16- What are the arguments for applying technical competence to all types of permitted waste management facility, through one of the two currently approved schemes?**

There is no reason to restrict the mechanism for operators to obtain their technical competence through only one of the two existing schemes, either of these schemes should be available for operators to use but the records of who has technical competence should be available as a matter of public record to any person that seeks the information.

**Q.17- What are the arguments against applying technical competence to all types of permitted waste management facility, through one of the two currently approved schemes?**

All types of permitted waste activities should be managed by technically competent people including those operating under an exemption to the requirement to hold an environmental permit.

**Q.18- If this was proposed, would it pose a difficulty for any particular part of the waste industry?**

There would need to be transition arrangements to enable operators who are not currently required to hold technical competence to obtain the necessary certification at the right levels within the organisation.

**Q.19- Please provide views on the ways in which the regulators are made certain of the name(s) of the technically competent manager(s) at permitted sites.**

It is important that regulators are able to check who is the technically competent manager at any facility it is also important that this information is available to any person as a matter of public record. This should also extend to operators of facilities operating under an exemption to the requirement to hold an environmental permit.



**Q.20- Please provide views on how those providing technically competent management at a site should be held to account for the standards of performance.**

The technically competent manager should be personally liable for failure of the site in terms of compliance with the permit conditions of the site through prosecution of that person in relation to persistent compliance failure. If a person is the nominated technically competent person and qualified through certification it should be open to the regulator to seek the removal of that person's certification as a technically competent manager by the relevant certification body.

**Q.21- Please provide views on the amount of time those responsible for managing the site should be present and what factors should determine that period.**

The technically competent manager should be present at a permitted facility for at least one whole day during the week and where there are issues with permit compliance the level of time required should be extended to ensure that compliance with permit conditions is secured. The technically competent manager's role should include ensuring that all operational staff are trained appropriately for the required tasks and to monitor whether the staff are performing as required and understand why the tasks are required. The technically competent manager should be in a position to be able to authorise expenditure or change operational practices on the site in order to secure compliance with permit conditions or conditions of an exemption. If the technically competent manager is unable to ensure that the operatives of the facility are not adequately trained and can deliver the tasks required in a way as to effect compliance with the site permit or are unable to authorise the necessary expenditure required they should not be considered as technically competent managers in legal terms.

**Financial provision****Q.22- Should financial provision for some or all permitted waste operations be reintroduced on a site-specific basis linked to the type of activity and the type of wastes received?**

Yes, financial provision should be required for all types of permitted waste activities as all types of waste activities could become a cost to the public purse in the event of company financial insolvency or difficulties and if finance was put aside to cover the costs of removal of the wastes that have been deposited at the site it would assist with the costs to the public purse or landowners in such cases.

**Q.23- If so, should the amount of the financial provision be linked not only to returning the land to a satisfactory state to meet permit surrender requirements but also to foreseeable clear-up costs resulting from a breach of a permit or after an environmental accident?**

Yes, the amount of financial provision should take account of all of the issues outlined.

**Q.24- For landfill sites, should the scope of financial provision be extended to cover operational costs that are incurred during the period when waste is accepted for disposal and/or after waste disposal has ceased?**

Yes the financial provision should cover all operational costs during the period that waste is accepted for disposal and after disposal has ceased.



**Q.25- What is the best mechanism or combination of mechanisms for waste operators to make and maintain financial provision for their sites so that they are secure and available to fulfil permit obligations and deal with the consequences of breaches of the permit or environmental accidents?**

Bonds with arrangements to enable regulators to access the funds when required, Escrow accounts and insurance appear to be potential options that could be viable. Business plans assessment does not appear to produce the necessary safeguards.

**Q.26- If required to make financial provision, what would be the likely costs of making financial provision and the impact on waste operators of different sizes?**

There would be costs and for small businesses this could be difficult and there might be potential to linkage between operator performance and the costs of maintenance of the financial provision. If a good compliance record for example could reduce the insurance costs then this might be a way in which good operators could limit their costs in relation to insurance cover but the insurance product needs to be available.

### Operator Performance

**Q.27- If you support amending legislation to require operators of waste management facilities to demonstrate operator competence, are changes needed to the particular aspects of past performance, including spent convictions, that should be taken into consideration in determining an application for a permit?**

We would support amending the legislation to require operators of waste management facilities to demonstrate their record of compliance with permits in the past and any record of convictions or spent convictions and for this information to be taken into consideration when the regulator considers an application for a permit or variation of a permit.

### Management Systems

**Q.28- Should the requirement for operators' site management plans be embodied in legislation or are they and their content best left to the regulators to determine?**

The requirement for operators' site management plans should be enshrined in legislation.

### Options to address abandoned or orphaned waste management sites

**Q.29- Does the Government need to make a scheme to cover the full costs of clearing and remediating abandoned or orphaned sites mandatory so that they do not rely on the public purse or would a voluntary approach work?**

With respect to establishing a fund or scheme to cover the full costs of clearing and remediating abandoned or orphaned sites this should be a function of government and could be a sensible use of the tax receipts from landfill tax and any other similar taxes levied by governments on waste



management operations. The proportion of tax receipts from landfill tax and any other taxes levied on waste management that may be required to establish such a fund need to be proportionate to the level of costs anticipated to cover the necessary works at known orphaned sites and sites at risk of falling into this category.

**Q.30- Should joining such a scheme be an alternative to, or additional to site-specific financial provision?**

Such a scheme would be a failsafe provision to draw on in the event of the required financial provisions fail to deliver the necessary funds or where no such provision is in place.

**Q.31- If you think such a scheme is desirable, please provide your views on how it should be funded and administered, including how decisions on the need to draw from it would be made?**

Such a scheme would be desirable, it could be funded from landfill tax receipts and the receipts from any other taxes levied on waste management by governments. These taxes were introduced to affect the decisions of waste producers and waste managers to drive wastes away from environmentally undesirable waste management options and have been effective in reducing the reliance on landfill in the UK. The use of a proportion of the receipts from these taxes to support a scheme to ensure the clean-up and remediation of orphaned or abandoned waste management facilities would in effect be scheme co-funded by governments and the waste industry and would be a suitable use for such tax receipts.

Decisions to draw on the scheme would need to be made through government or a government appointed body to manage such a scheme. Application to the scheme for funding remediation of abandoned or orphaned waste management facilities could be made by the landowner, local authority or regulator, but would need to be accompanied by a statement of the financial costs of the remediation, the environmental benefits that would accrue from such works and the reasons why the body or person is not in a position to fund the works themselves.

**Q.32- Do you have any evidence or views on what level of funding would be required for such a scheme so as to be proportionate to the risk?**

The level of funding would be dependent on the number and type of facilities that fall into the abandoned or orphaned categories and the anticipated costs of remediation of each type of facility. Governments would need to assess this before establishing such a scheme.

**Q.33- Do you have any evidence or views of the costs and impacts incurred by the public sector, businesses or landowners in cleaning up and remediating land or premises which have been used for waste management operations and then abandoned?**

We have no direct evidence to bring into this question but are aware of cases where the landowner is a government body and is having difficulties in funding the remediation of an abandoned composting facility in south east Wales, but government in Wales is aware of the facts in this case.





## Powers to recharge for pollution works

### **Q.34- Do you have evidence of pollution caused by the deposit of waste on land by waste operations or abandoned waste that might merit powers to remediate?**

We have no available evidence to provide.

### **Q.35- What are your views on widening the scope of the regulators powers to recover the costs of investigations and remedial works undertaken to prevent or remedy pollution caused by the deposit of waste on land?**

This may be beneficial for regulators but the use of such powers would need to be proportionate to the pollution caused.

## Exemptions from environmental permitting

### **Q.36- Do you have any evidence of the extent of waste crime and poor performance from those operating under registered exemptions from environmental permitting?**

There is no available evidence generally on the scale of poor performance of those operators who operate under exemptions, this is largely due to the fact that Natural Resources Wales does not regularly inspect these facilities or inspect them at all.

### **Q.37- Is there a need to tighten up the process for the registration of exempt waste operations? If so, what steps would you wish to see introduced into the registration process?**

The registration process does need to be tightened up for some exemptions to include some form of assessment of operator competence; the submission of operating procedures on registration; confirmation of consent from a landowner; and for some types of exemption introduction of charges to increase assessment prior to registration compliance assessment and inspection. The range of available exemptions needs to be reviewed to assess which exemptions should be changed to introduce tighter controls on registration.

### **Q.38- Would you wish to limit the scope of the activities that are exempt from the need for an environmental permit? If so, which exemptions would you want to see further restricted and why?**

The scope of some exemptions may need to be reduced and this should form part of the review suggested in the response to Q37.

Should you have any query with regards to our response, please do not hesitate to contact us.

Kind regards

**Celine Anouilh**  
**CIWM Regional Development Officer for Wales**

