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Ysgrifennydd y Cabinet dros yr Amgylchedd a Materion Gwledig
Cabinet Secretary for Environment and Rural Affairs



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-05-759
Ein cyf/Our ref LG/01042/17

Mike Hedges AM
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Dear Mike

Thank you for your letter of 2 June regarding Petition P-05-753 on strengthening the legislative and regulatory framework surrounding waste wood processing facilities.

I have responded to the follow up points in turn.

Point 1 – Natural Resources Wales (NRW) regulate and take enforcement action based on the risk posed by the operation. When a site is non-compliant they work to bring them back into compliance and can take action based on the risk in line with their Enforcement & Sanctions Guidance.

In my earlier response of 23 April, I referred to the need to consider all facts and implications when considering permit revocation because of the possible consequences of removing a permit. It goes without saying environmental legislation and guidance is there for a purpose and there was no suggestion consideration of all the facts and implications should compromise the ability to be an effective regulator.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Regarding the specific point about the variation of the permit to incorporate the level of throughput, NRW have advised modern permits state a maximum allowable throughput. However this does not mean such a volume is permissible (in reality, it is usually much lower), permitted volumes are controlled in practice by permit conditions which require operations to be carried out in accordance with the operators Environmental Management System (EMS) and documents detailing their operational techniques. These documents are submitted by the operator and agreed by NRW, they set out the method of operation, what volume can be safely managed on site given the size of site, the infrastructure, type of waste, equipment/staff, the location of sensitive receptors etc. Enforcement action can be taken if NRW feel the operational documents are ineffective or do not reflect the site operation. In the case of the variation to throughput there was also an increase to the size of site which was taken into account as a part of the determination process. Discussion on the variation between NRW and South Wales Wood Recycling Ltd (SWWR) started in April 2016, some five months prior to the fire and the variation application went through the usual rigorous determination process prior to the variation being granted.

Point 2 – The environmental permit does not have a prescriptive condition stipulating the maximum height of stockpiled waste, control of stockpiled waste comes from enforcing the sites EMS which contains the limits set by the planning conditions. NRW have regulated the site through the operators' EMS and operational documents, they have also worked with the operator to put a drainage management plan in place and with the Fire and Rescue Service to improve the fire control measures including having a fire tender on site. Other action includes an enforcement notice to prevent pollution of a local watercourse and close working with Bridgend County Borough Council to control cross-cutting issues such as noise and dust.

Point 3 - I previously advised the Sentencing Council provided guidelines in 2014 to the criminal courts on the sentencing of environmental offences. The Office of the Sentencing Council recently assessed the impact of this guidance. It is difficult to conclude definitively, although, this initial assessment suggests the guidelines appear to have had the anticipated effect with some organisations having received higher fines since the guidelines came into force. The report is available at <http://www.sentencingcouncil.org.uk/publications/item/environmental-offences-assessment-of-guideline/>

Point 4 - As previously advised, waste offences can carry the possibility of an unlimited fine, however, specific fines and costs are determined by the Courts. NRW can also use other enforcement powers which serve as both a deterrent and punishment. For more serious cases of illegal activity, action can be brought under the Proceeds of Crime Act 2002 to recover money made illegally. The Anti-social, Crime and Policing Act 2014 also contain provisions in relation to environmental offenders. Furthermore, the Environmental Permitting regime contains provisions to refuse an environmental permit if the regulator considers the applicant would not operate the permit in accordance with the environmental permit. This also acts as a deterrent as it gives the regulator a power to prevent individuals and companies from holding a permit based on past performance. NRW have recently used these powers to refuse a permit application made by SWWR to run a site at Baglan Energy Park near Port Talbot.

Point 5 – No evidence of a link between recycling targets and operational difficulties at sites has been provided. Waste wood is not a crucial waste stream for Local Authorities (LA's) to meet their targets it currently contributes around 4% towards LA targets. The majority of waste wood produced in Wales and the majority of wood waste managed at reprocessing sites in Wales comes from a combination of the construction and demolition sectors and English LA's, which are not subject to Welsh Government's statutory targets. Furthermore, waste wood can only be counted towards LA targets if and when it is recycled. Stockpiled wood waste and wood wastes sent for incineration do not count towards the targets.

NRW has the duty to regulate sites in accordance with the law. If they believe a site is not able to come back into compliance and poses a risk to the environment or health, they will take appropriate enforcement action. Any waste producer, including LA's, using waste management facilities should actively manage their contracts to ensure compliance and have contingencies built into any contracts should a site cease operating.

Regards
Lesley

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