

Mike Hedges Chair of Climate Change, Rural
Affairs and Environment Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

15 March 2018

Dear Mr Hedges,

Tackling fires at recycling sites

Thank you for your letter on the 12th February. I am pleased to have the opportunity to respond and share our views.

I welcome the Climate Change, Rural Affairs and Environment committee's interest in the important and problematic issue of regulation of non-compliant & illegal waste sites. We are also concerned about the impact that these sites have on people, the environment and the economy including the reputation of the waste sector and legitimate waste business. We are committed to working with Welsh Government, Local Government and the Fire & Rescue Services in Wales to tackle the problems caused by poor compliance and illegal waste sites.

As reported by the BBC, we respond to many reported incidents of fires at waste sites, these range in scale, nature and cause. In response to significant incidents we prioritised work to ensure that our regulatory approach to poor performing, illegal sites and sites posing high fire risk is robust. This included,

- Using additional Welsh Government funding in 2016/17 to second an officer from the South Wales Fire & Rescue service to work with us to help develop review and revise our Fire Prevention and Mitigation Plan Guidance for permitted waste sites.
- We have provided training for our regulatory officers, Fire & Rescue officers and waste operators to embed this guidance.
- We are progressing with a programme to include a permit condition to require operators of specific sites to develop a Fire Prevention and Mitigation Plan which provides a stronger basis for tackling compliance issues. This programme is being targeted at sites posing a high fire risk.

- We have had a further two officers from the fire and rescue services seconded to support continued delivery of a prioritised operational work programme. One of these officers has now returned to his substantive post with South Wales Fire & Rescue Service but the other officer from North Wales Fire & Rescue Service will continue with us until the end of this month.

Our Regulatory Approach

Natural Resources Wales is responsible for providing a risk-based approach to regulation of the waste industry to ensure the sustainable management of our natural resources for human and environmental well-being. We seek to achieve this directly through delivery of our regulatory duties, using powers and tools available as set out in legislation; and indirectly through wider interventions such as raising awareness with waste producers to ensure they are taking steps to segregate, classify and manage their waste responsibly.

The responsibility for complying with relevant legislation and permit conditions lies with the waste operator and they are ultimately in control and responsible for what happens on site. By applying for a permit, they have made a commitment to operate lawfully and in line with the conditions within it.

Most of the waste industry operates responsibly, but there is a part of the industry that fails to meet the required standards or operates outside the law. At the end of 2016 there were 570 operational permitted waste sites, of which 5% were assessed to be poor performing. Non-compliant, poor performing or illegal sites can impact on the environment, communities, reputation of a sector and legitimate waste business. Significant extra regulatory effort is required to monitor compliance and improve performance at poor performing sites. These sites also pose a greater risk of incidents and can consume a large amount of the collective resources of Welsh public bodies.

Our initial regulatory approach is to work with legitimate operators to bring them into compliance. This approach reflects our wider duty to follow the Regulators' Code and is reflected in our organisation's Regulatory Principles which are available on our website (<https://naturalresources.wales/about-us/what-we-do/how-we-regulate-you/regulatory-principles/>). Where operators fail to take adequate steps we then seek to use our other powers, though our use of powers must be proportionate, justified and based on sound evidence. We recognise that there are some operators that will make some short-term progress to demonstrate a shift to compliance, for example with meeting the requirements of enforcement notices served, but then demonstrate further non-compliances in the same or different areas of their activities. We recognise this issue and are seeking to better address this through the effective use of our existing and recently enhanced powers.

Regulatory Framework

We provided our views to the Cabinet Secretary and continue to explore, with Welsh Government officials, additional regulatory approaches, powers and funding that we believe would improve our ability to undertake waste regulation effectively and encourage the Sustainable Management of Natural Resources.

Some of the significant areas of regulatory reform highlighted have already moved forward including the recent changes to the Environmental Permitting Regulations. This has improved our ability to take action against waste operators who pose a fire risk, for example, by suspending the inputs of combustible material. We have also taken steps to ensure that we are refusing permit applications of operators that have failed to demonstrate their competence. Two waste permits have been refused since 2017. Further amendments are expected during the next few months, which will enable NRW to prohibit all access to premises that pose a high risk of pollution or of fire, and to require the removal of waste at abandoned sites.

We are also exploring opportunities with Welsh Government to strengthen the 'Operator Competence' requirements for those within the waste industry. A joint Welsh Government/DEFRA public consultation was published on the 15th January 2018 which lays out these proposals. By reducing opportunities for poor operators to enter and operate within the industry, we can tackle the risk of poor site management and the associated pollution risks. The consultation also includes proposals to revise the system of waste Exemptions have been put forward, which we expect will reduce the risk of fire posed by waste handled at Exempt sites.

Waste – big picture

We support Wales's ambition to create a circular economy that moves away from the current linear model, where materials are fed in to the economy at the start and discarded at the end. Wales is the only UK country to have introduced statutory local authority recovery targets for waste recycling and, collectively the LA's achieved the 58% in 2015/16. Whilst Wales is performing well against Welsh Government's Towards Zero Waste aspirations and increasing recycling rates is important, it is essential that mechanisms and drivers are put in place to encourage prevention and re-use of waste as recognised by Welsh Government's waste prevention programme.

To give you an idea of scale, over 10 million tonnes of waste was received at permitted waste facilities in Wales in 2016. Responding to changes in waste policy means that waste flows have become more complicated as waste is no longer simply discarded to landfill. Waste remains longer in the management process requiring more complex sorting, treatment and reprocessing. The value of that waste is often set at point of entry into a site, not output, and coupled with an absence of robust markets for secondary outputs or

fluctuation in those markets. It can create an incentive for stockpiling. This leads to an increased risk of fire or creates opportunities for illegal disposal.

Waste Crime is increasingly being associated with organised criminal gangs, who may also be engaged in other forms of illegality. It takes business income away and diverts materials away from recycling, moving material down the waste hierarchy and damaging efforts to create a circular economy. It also takes business income away from legitimate waste and annual cost to Wales.

We commissioned experts to undertake a waste crime review, this estimates that criminal activities and the impact on the Welsh economy was between £15.2 – 32.4 million in 2015/16, through undercutting legitimate waste businesses, reducing tax take and imposing costs on those who have to clear up after waste criminals.

We will continue to undertake our risk based regulation and focus the resources available to us on those who operate below a level of compliance, but recognise that our regulation will not be effective in isolation. It will take concerted action from all those involved in the waste chain; producers, collectors, carriers and waste management operators, to create an environment where compliant businesses can flourish on a level playing field. In broad terms, people, businesses and public bodies must improve and strengthen, where possible, their current arrangements to prevent waste and to manage their waste when it arises they know where their waste is going and that it is managed appropriately.

NRW additional resources

Our compliance monitoring of permitted facilities is funded through fees & charges on a cost recovery basis. As mentioned above, significant extra regulatory effort is required to monitor compliance and improve performance at poor performing sites. Following Cabinet Secretary approval, our charging scheme was amended in 2017 to provide a mechanism for improved cost recovery of compliance monitoring at poor performing sites.

However, our enforcement response on permitted facilities and action against illegal sites is funded through Grant in Aid, not fees & charges. Grant in Aid is under pressure across the public sector and this limits our ability to tackle all waste crime. Modelling by the Environmental Services Association shows that, each pound spent on enforcement is likely to yield a return of as much as £5.60. Of this £3.20 would be received directly by government in taxes.

As waste crime is an international issue we work closely with our colleagues in partner organisations, particularly across the UK and Ireland, to share intelligence, experience and good practice. We have ambitions to implement learning from the other regulatory agencies and increase our capability to tackle waste crime.

We recognise that enforcement action is retrospective and does not always achieve the outcome we are seeking in an effective way; we would like to build on the intelligence and information available to us and act proactively. We would also like to be able consider a different approach and employ disruption tactics working with partners to deter criminals from continuing to undertake illegal activity. These have proven to be effective additional measures that have been put in place in England following an additional significant investment to 2020 by the UK Government. We recognise though that additional funding will be needed to increase our action in these areas. In 2016, we requested additional resources (£1.5m to 2m) over 3-5 years to enable us to tackle waste crime and effectively monitor compliance and enforce at poor performing sites.

So far we have received £200k additional GiA in 2016-17, which we used to improve our approach towards fire prevention & mitigation as described at the start of this letter. We also commissioned the waste crime review which has several recommendations that we are as yet unable to take forward without the additional funding requested. In response to a recent offer from Welsh Government to explore funding to clear any abandoned waste sites that pose an immediate and significant risk, we understand the Minister has approved funding for work at 2 sites costing in the region of £300k.

We are concerned that the improvements to legislation, powers and our regulatory approach, will have limited effect if we do not have further resources. We continue to work with Welsh Government officials to provide the evidence base to support the request for additional funding for tackling waste crime in Wales, over a 3 – 5 year basis.

I trust that this response provides you with information on how we continue to work to improve our regulatory approach and our commitment to tackle issues in the waste sector but please let us know if you require any additional information.

Your sincerely,

A handwritten signature in black ink, appearing to read 'Clare Pillman', with a horizontal line underneath.

Clare Pillman
Prif Weithredwr, Cyfoeth Naturiol Cymru
Chief Executive, Natural Resources Wales