

The Welsh Assembly Government's response to the report of the National Assembly Audit Committee's report on Environment Agency Wales: Regulation of waste Management: Committee Report (2) 01-05

The Welsh Assembly Government is grateful for the report. We welcome the findings, and following consultation with Environment Agency Wales on those recommendations which refer to the Agency, we offer the following response to the twelve recommendations in the report

- 1 In future, when there is new legislation or when legislation is updated, the Assembly Government seeks to ensure that all relevant powers are devolved to the Assembly**

Accepted. This is existing practice.

- 2 The Assembly Government continues to encourage recycling and diversion of municipal waste away from landfill, but also focuses its efforts on reducing the 24 million tonnes of waste generated by other waste streams, particularly agricultural waste**

Accepted. The main focus has to be on municipal waste as there are specific targets in relation to this waste stream within the EC Landfill Directive. Failure to meet these could give rise to infraction proceedings. In addition, recycling and recovery rates for other waste streams, such as industrial waste, are already significantly higher than municipal waste.

Agricultural waste is currently excluded from national waste management controls. However, Defra is currently consulting jointly with the Assembly Government on the Regulations necessary to apply waste management controls to agricultural waste. The purpose of these controls is to ensure that waste is managed in ways which protect the environment and human health, and the long-term objectives are to reduce and recover as much agricultural waste as possible.

The review of the Waste Strategy in 2007 will provide the opportunity to reflect on progress and to focus on any further waste streams that are identified as being managed less sustainably. A consultation on the revised strategy is planned for October 2007.

- 3 Regional waste plans are revised in order to indicate the types of locations where regional facilities could be situated. We further recommend that the Assembly Government issues direction to local authorities to ensure that Unitary/Local Development Plans identify potential sites for waste management activities**

Partially Accepted. The Assembly Government accepts the need for Regional Waste Plans to be revised to indicate types of location where regional facilities could be situated, as the Committee recommends.

The Regional Waste Plans already provide some guidance on site requirements and typical locations for certain types of waste facilities. The next phase of this work is to review the plans by monitoring and updating the information to support the provision of the network of waste management facilities that is needed to meet the targets in the Wales Waste Strategy “Wise about Waste. In addition, Geographic Information Systems (GIS) waste mapping research is being undertaken which will help inform the process further by defining areas of search for suitable waste facilities.

The use of the Assembly’s powers to issue Directions to modify a plan, or call-in all or part of a plan, remains an option but the Welsh Assembly Government would only wish to rely on these as a last resort. We believe the most productive way forward would be to work closely with a local authority throughout the preparation of local plans to ensure that any issues are identified and resolved as early as possible in the planning process.

4 The Assembly Government and the Agency give consideration to identifying how the obstacle of inadequate data on site capacity might be overcome

Accepted.

Current arrangements on site capacity data are :

Technical Advice Note (TAN) 21 Waste requires Unitary Development Plans (UDPs) to make explicit the capacity of the area to deal with waste and make an assessment of their own waste arisings, with reference to Environment Agency Wales data. UDPs must therefore demonstrate that there is adequate provision for waste management facilities to meet the targets in European Union Directives.

The review of the Regional Waste Plans requires:

- an annual assessment of the land use implications for each local authority’s forward planning so as to accommodate the proposed allocation of future waste management capacity for each waste type to each local planning authority;
- an annual statement on the land use planning policies in development plans that are under preparation in the region to implement and meet the requirements of the Regional Waste Plans to make adequate provision for the infrastructure necessary to implement the Wales Waste Strategy targets.

The Assembly Government recognises the need to assess the data available and to address gaps in data provision. The Assembly Government will work closely with the Agency to agree how the provision of better data will be achieved.

The Welsh Assembly Government and the Environment Agency have recently responded to a Defra consultation on the development and implementation of a three-year strategy to improve data across all waste streams in the UK. The results of this consultation should be published next month.

5 As part of the Assembly Government's waste awareness campaign, it considers how it might better educate and engage the public on waste disposal options;

Accepted. The Assembly Government recognises that the Welsh public have a vital role to play if Wales as a whole is to manage its waste sustainably. The Waste Awareness Wales media campaign commenced in November 04 and the first phase of this campaign about awareness raising will run until the end of March. An evaluation report on the impact of this first phase should be available by the end of June. The second phase is already planned and will commence in May. It will be more action-orientated, e.g. by focussing on what items can be recycled and what the public can do to engage in the process.

6 The Assembly Government, with the assistance of the Agency, give due consideration to the findings of the research project on health and ensure that health is made an essential consideration of the planning process in relation to waste facilities and other developments which could have a potential effect on the environment and human health

Accepted. Health is already a material consideration in the planning process. The findings of the research project which examines health issues in relation to the planning system is currently being considered by the Welsh Assembly Government. This will contribute to the development of draft guidance for consultation later this year, which will also take account of the Assembly Government's publication "Improving Health and Reducing Inequalities: A practical guide to Health Impact Assessments".

Environment Agency Wales will continue to advise and support the Assembly Government in relation to health issues at waste facilities and to develop its relationships with health practitioners and the users of their advice. This will include the Assembly funded project for sharing health related data and information (aimed at providing health professionals with consistently structured, concise and appropriate information).

7 The Agency and the Assembly Government regularly update businesses involved in the production and management of hazardous waste on the current situation in regard to hazardous waste disposal in Wales

Accepted.

The hazardous waste disposal regime in Wales is undergoing significant

change in the short to medium term as a result of new regulations coming into force. The ban on the co-disposal of hazardous and non-hazardous waste took effect in July 2004 and the Waste Acceptance Criteria and the revised Hazardous Waste (Wales) Regulations will come into force in July 2005. The Assembly Government recognises its responsibility lies in relation to making businesses aware of the new regulatory regime. We have worked closely with the Agency to ensure that Welsh businesses are well informed about the implications of the Landfill Directive which took effect last July and will continue to work closely with them to ensure that the increase in the number of substances which will be classed as hazardous waste substances is clearly communicated.

Environment Agency Wales regularly updates the Wales Hazardous Waste Forum with information regarding disposal options for hazardous waste. On behalf of the Assembly Government the Agency has also written to all known producers of Hazardous Waste and all registered carriers of waste in Wales.

The Agency makes information about Hazardous Waste Landfill sites freely available. This should continue to assist businesses in Wales that seek information regarding sites in England.

The Environment Agency, in conjunction with the Assembly Government and Defra, is planning further information campaigns across England and Wales, to highlight the implementation of the new regulatory regime.

8 In carrying out its licensing and permitting functions the Agency keeps in view the risk of protracted public consultations leading to exorbitant costs being placed on the operator and thus increasing the risk of charges acting as a disincentive to opening much needed waste disposal and treatment facilities

Not Accepted.

Environment Agency Wales is concerned that this recommendation is based upon a factual misunderstanding. Substantial and unusual costs associated with extended public consultations have not previously been passed on to applicants and it is not proposed to do so.

The Agency has noted the Committee's concern regarding cost to applicants. As stated in evidence to the committee, the Agency does not accept that the typical application fees sought by the Agency will act as a significant economic disincentive to the opening of new facilities by waste operators.

The Agency wishes to see the normal cost of processing applications reflected in the application fees charged. This ensures that the Agency is funded to carry out appropriate scrutiny of applications, and the cost is borne by the potential polluter rather than the public purse.

The normal cost of processing may include some public consultation, particularly where driven by the public participation directive. It is recognised

that in some very contentious applications, extra costs of public consultation will be borne by the Agency from its grant in aid.

- 9 Environment Agency Wales carries out a detailed review of its exemptions register and earmarks those activities which are of greatest risk to the environment and ensure that they are afforded proportionate regulatory control both before and after the new regulations take effect**

Accepted

Environment Agency Wales is keen to ensure that its public register of exempt activities is up to date and accurate. However the Agency has a statutory duty to enter details into the register of every exempt activity it discovers or of which it is notified.

Following specific funding from the Assembly Government in 2004/05 Environment Agency Wales has planned visits to some 500 sites where higher risk exempt activities are registered.

New regulations, which are anticipated for implementation in July 2005, will increase controls for several exempt activities that pose a high environmental risk. They will include the facility to charge for the registration and renewal of the exemption, so that the Agency will have funding to regulate the activities. Old registrations for these activities will expire such that only current activities remain registered.

- 10 The Assembly Government ensures that all local authorities register and use the *Flycapture* system without further delay**

Accepted. There are now only 2 local authorities in Wales who have not yet registered with Flycapture and one further authority which is not yet using the system to report figures. The Assembly Government is working closely with these remaining authorities to tackle any difficulties they have encountered with the Flycapture system.

- 11 The Assembly Government and Environment Agency Wales consider whether distribution of the leaflets through local authorities is the most effective method of educating businesses on the waste duty of care system and consider other methods of raising awareness**

Accepted. The Welsh Assembly Government has reviewed the distribution of the leaflet and accepts that relatively few businesses cite it as their main source of information. However, it is an effective method of reaching all businesses in Wales and inclusion of the leaflet within the Business Rates letter remains an effective, and cost effective method of ensuring that all businesses in Wales,

including SMEs are reached.

With the support of the Assembly Government, the Environment Agency will continue to provide guidance and information resources to businesses. One such measure is 'NetRegs', an internet based system which explains in plain language the legal environmental obligations for small and medium sized businesses and suggest practical steps to achieve compliance.

12 The Agency and the Assembly Government undertake a review of environmental sentencing in Wales and seek to influence the appropriate bodies in Westminster. We also recommend that the Agency develops the 'Costing the Earth' toolkit in a Welsh context to raise awareness of environmental crime with Welsh magistrates and the judiciary.

Accepted. Following the Audit Committee's work in this area, the Assembly Government has looked into what information is currently available. DEFRA commissioned a report on 'Trends in Environmental Sentencing in England and Wales' which was published in November 2003. The Assembly Government would not wish to duplicate this work. However, we will work closely with DEFRA on their continuing work on environmental justice issues.

The Assembly Government also welcomes the Sentencing Guidelines Council's plan to look specifically at environmental crimes in 2006.

Environment Agency Wales has produced an information pack for Magistrates, which includes information from "Costing the Earth" and details of environmental offences that the Agency prosecutes. The pack also contains the Sentencing Advisory Panel's advice to the Court of Appeal on environmental offences together with guidance for magistrates on sentencing for environmental offences from The Magistrates Association.

Environment Agency Wales will continue to contact the Magistrates Courts to offer awareness training and packs will be provided to magistrates when training is provided or when requests are received from courts.