



Eich cyf/Your ref P-05-753
Ein cyf/Our ref LG/00641/17

Mike Hedges AM
Chair - Petitions Committee

government.committee.business@wales.gsi.gov.uk

23 April 2017

Dear Mike

Thank you for your letter of 27 March regarding the petition received from Alexander Williams about strengthening the legislative and regulatory framework surrounding waste wood processing facilities.

I will respond to each of the points made in the petition below:-

- 1) *Direct Natural Resources Wales to immediately revoke the environmental permit of South Wales Wood Recycling Ltd following a fire at their site in Hoel-y-Cyw, pending the conclusion of the investigation into the cause of the fire, to ensure the site is in full compliance with its operating controls before it is allowed to recommence operations.*

The Police and Fire and Rescue Service investigation into the cause of the fire at Hoel-y-Cyw has been completed, it was inconclusive and unable to identify the cause of the fire. As regards revoking a permit this would mean the permit ceases and operations would not be able to recommence on site. The operator would be required to make a new permit application if they wished to recommence operations.

Natural Resources Wales (NRW) is the statutory decision maker responsible for regulating waste sites they are best placed to determine the appropriate regulatory action at a site. NRW considers regulatory action in line with their published Enforcement and Prosecution Policy and the Regulators Code. All the facts and implications need to be considered before revoking a permit including the consequences any action could have on a company's ability to operate and whether revoking the permit could result in a worse outcome such as company liquidation and the site and waste being abandoned. In deciding what action to take the regulator will assess the risk posed by a site and may work with an operator to bring them into compliance whilst allowing them to operate.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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.

The Welsh Ministers have a power to direct the regulator in the exercise of their functions. The purpose of this direction-making power is to enable the Welsh Ministers to direct specific action to be taken where the Welsh Ministers consider it is appropriate in the circumstance not to leave the decision with NRW. The issues raised at South Wales Wood Recycling Ltd (SWWR) are regular regulatory/operational decisions. They are of local rather than regional or national significance and I am confident NRW, as the regulator will take whatever action is necessary to safeguard the environment and protect the local communities. I therefore do not feel it is necessary to direct NRW to revoke the permit.

- 2) *Direct Natural Resources Wales, local authorities and other relevant public bodies to use their existing powers and duties to take effective and efficient enforcement action where necessary.*

A number of actions have been undertaken since the fire at SWWR in Heol-y-Cyw last year. In January 2017 NRW served a notice requiring SWWR to remove all fire damaged waste material deposited outside the permitted area at the site. This notice has to be complied with by 30 March 2018. NRW are continuing to assess whether management of the site contributed to the fire and investigating any potential breaches of the permit. They are reviewing the evidence and considering whether further action is appropriate.

- 3) *Strengthen the legislative and regulatory framework where required to enable relevant public bodies to undertake more efficient and effective enforcement action (including monitoring), and enable them to prosecute and impose stronger financial penalties on companies and individual company directors who breach their operational controls such as planning conditions or terms of their operational licences and environmental permits.*

In my response to the short debate on 5 October 2016 on the SWWR fire, I set out a number of actions which I am taking forward to strengthen NRW's powers to take more effective action on waste crime. In October 2015, we introduced powers to make it easier for NRW to suspend permits, remove the risk of pollution and to obtain an injunction to enforce compliance with enforcement notices.

I intend to introduce further new powers this year which will enable NRW where appropriate to prohibit access to a site to prevent more waste coming in and to make those who unlawfully keep or allow waste to be kept on their land responsible for removal of the waste. I will also be consulting this Summer on proposals for strengthening the operator competence requirements which operators will be required to demonstrate before a permit is granted and during their operations. This will give NRW stronger grounds on which to refuse permit applications if operators fail to demonstrate financial and technical competence. The second proposal will look at the abuse of the waste exemption regime which allows recovery activities to operate without the need for a permit. Proposals in the Welsh Government's Landfill Disposal Bill to require those prosecuted for the illegal disposal of waste to pay tax on the waste will also act as a further deterrent against illegal deposits.

Regarding the suggestion of imposing stronger financial penalties, the principal criminal offences in relation to waste operations already carry an unlimited fine. It is therefore not possible to increase these financial penalties. Furthermore in the interests of justice the Courts have a wide discretion in terms of sentencing for criminal offences. Guidelines from the Sentencing Council were revised in 2014 to help criminal courts on their sentencing of environmental offences. As the Judicial System is not devolved there are significant constitutional, legal and practical obstacles in limiting this discretion.

- 4) *Review existing legislation to allow the public, Fire and Rescue Services and other public bodies to recoup the costs of dealing with incidents, such as the recent fire at South Wales Wood Recycling Ltd, if the cause of the fire is found to be as a result of the company's negligence, criminal action or breaches of other regulations, conditions or permissions.*

The fire service already has powers under the Fire Safety Order 2005 to deal with businesses which neglect their fire safety responsibilities. These can include prosecution in the most serious cases. The Fire and Rescue Services Act 2004 also allows Fire and Rescue Authorities to charge for some services, however the Act prohibits authorities from charging for firefighting (except in certain circumstances such as fighting fires on board ships at sea or offshore installations). Introducing charges where the cause of a fire is found to be as a result of negligence would be a significant change, many fires are started by negligence; for example, leaving cookers unattended, overloading electrical circuits or smoking in bed. If businesses were to be charged, there would be no reason not to charge house-holders as well which could call into question the nature of the fire service. The use of the existing powers is a better approach than levying charges for a firefighting response and it does not depend on a fire actually breaking out.

- 5) *Review environmental protection rules and provide guidance to local authorities to ensure all waste wood processing facilities are not located in close proximity to residential premises, sites of special scientific interest or sites of importance for nature conservation.*

Guidance to local authorities is set out in the Planning Policy Wales Technical Advice Note (TAN 21) and in Technical Advice Note 5. These documents set out Wales's national planning policies in relation to waste and protecting the natural and built environment which together with a waste technical guide have been prepared to enhance understanding of waste technologies amongst planners.

National planning policy is clear on the important role of the land use planning system in facilitating sustainable waste management. The policy provides a framework for decision making, recognising the social and economic benefits which can be realised from the management of waste as a resource to meet the needs of society and businesses, whilst at the same time minimising adverse environmental impacts, avoiding risks to human health and protecting the amenity of residents.

The policy also states the impact of proposals for waste management facilities on the amenity of local people and the environment, including designated sites such as SSSI's and built heritage, must be adequately assessed to determine whether a planning application is acceptable, and, if adverse impacts on amenity or the environment cannot be mitigated, planning permission should be refused.

I have asked the Planning Officer's Society for Wales and NRW to work together to prepare best practice guidance on the interface between planning and environmental permitting regimes. This guidance will help provide greater clarity around responsibilities on local authorities and NRW in monitoring and taking action on waste operations.

- 6) *Undertake a comprehensive assessment on the long-term health implications of the inhalation of wood dust caused by the processing of waste wood and undertake an ongoing assessment of the dust deposits at wood processing facilities.*

The Health and Safety Executive has undertaken research on the health impacts of wood dust and particulate matter, advice on working with wood is available on the Health and Safety Executive website <http://www.hse.gov.uk/cosHH/industry/woodworking.htm> Defra also produced guidance for the working of timber and manufacture of wood-based products <http://webarchive.nationalarchives.gov.uk/20141106091809/http://www.defra.gov.uk/industrial-emissions/files/06092012-pgn-602.pdf>

Some wood processing activities require an environmental permit to control emissions and public health impact. Regulation and enforcement of control measures to prevent off-site impacts and compliance with operating permits should be a sufficient health protection measure. Planning conditions also assist in controlling emissions and impacts upon local amenity. Those processes which operate below permitting thresholds are still subject to statutory nuisance legislation (to investigate and mitigate any off-site impacts) which is enforced by Local Authority Environmental Health Departments. Where individuals consider their health is being affected by a site, they should raise this with the local authority environmental health department to investigate.

Regards
Lesley

Lesley Griffiths AC/AM

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