

Petition P-05-753: Strengthening the Legislative and Regulatory Framework Surrounding Waste Wood Processing Facilities

Y Pwyllgor Deisebau | 23 Mai 2017
Petitions Committee | 23 May 2017

Research Briefing:

Petition number: [P-05-753](#)

Petition title: Strengthening the Legislative and Regulatory Framework Surrounding Waste Wood Processing Facilities

Petition text:

We, the undersigned, call on the National Assembly for Wales to urge the Welsh Government to:

Direct Natural Resources Wales, local authorities and other relevant public bodies to work together to use their existing powers and duties to take effective and efficient enforcement action within the recycling industry.

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.

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.

Review environmental protection rules and provide guidance to local authorities to ensure that 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.

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.

Wood recycling industry

Over recent years, the amount of waste wood being recycled has risen. The [Wood Recyclers Association \(WRA\)](#) estimates that the UK generates an estimated 4.5 million tonnes of waste wood a year. In 2011 60% of that was recycled, a rise from less than 25% in 1996. The WRA expects further increases. Uses for recycled waste wood include traditional feedstock for the panel board industry (which accounts for the majority of recycled wood), animal bedding, equestrian and landscaping surfaces, play areas and filter beds.

This briefing provides a background to waste wood recycling regulatory frameworks with links to relevant legislation. It includes information on EU legislation, permitting, Natural Resources Wales (NRW) enforcement and penalties, planning, fire safety measures, details of the South Wales Wood Recycling Ltd fire incidents, code of practice and health implications. It also outlines National Assembly for Wales and Welsh Government action.

EU Legislation

The [EU Waste Framework Directive](#) provides the legislative framework for the collection, transport, recovery and disposal of waste. The Directive requires all Member States to take the necessary measures to ensure waste is recovered or disposed of without endangering human health or causing harm to the environment and includes permitting, registration and inspection requirements.

Permitting

To operate a wood waste recycling facility, a company will usually require an [environmental permit](#) under the [Environmental Permitting \(England and Wales\) Regulations 2010](#). The operator must follow all the conditions of the permit which can be either standard or bespoke. Breaching these conditions is against the law.

The permit has the principal objective of preventing harm to human health and the environment. For example permitted activities, under [standard rules](#), must not be carried out within 500 metres of sites of conservation importance e.g. a European Site, Ramsar site or a Site of Special Scientific Interest (SSSI) or 200 meters of a workplace or residential dwelling. Conditions include controls on the types and quantities of waste that can be handled, the height and spacing of stockpiles and fire precautions to minimise risk of fire.

NRW have produced [Regulatory Guidance Notes](#), [Horizontal Guidance](#), the [Environmental Management System Toolkits](#) and [further guidance](#) to support compliance with environmental permits.

Enforcement and penalties

NRW carry out assessments, inspections and attend incidents to assess compliance with permits.

NRW's [Enforcement and Prosecution Policy \(DOC 103KB\)](#) outlines action NRW can take where they suspect an offence has occurred or is soon to occur. This enforcement ranges from providing advice and guidance, to serving notices, through to prosecution. NRW also has the ability to vary or revoke an environmental permit. Welsh Ministers have the power to direct the regulator (NRW in this case) in the exercise of their functions, for example if the matter is of regional or national significance.

Where laws allow, NRW will seek the recovery of the costs of investigation and enforcement proceedings. Where NRW incurs costs, for example through remedial works, it will seek to recover the full costs incurred from those responsible in accordance with the 'polluter pays principle'.

In terms of financial penalties, the principal criminal offences in relation to waste operations carry an unlimited fine under the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) and courts have a wide discretion. [Guidelines from the Sentencing Council \(PDF 191.10KB\)](#) were revised in 2014 to help criminal courts on their sentencing of environmental offences. The Judicial System is not devolved.

When NRW is considering the appropriate course of action to ensure compliance it follows the Macrory Penalty Principles which are set out in the [Regulator's Compliance Code](#). These state that enforcement sanctions should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

NRW has produced [Guidance on Enforcement and Sanctions \(DOC 611KB\)](#) providing further information.

The [Regulatory Enforcement and Sanctions Act 2008](#) aims to improve the work of regulators by rationalizing inspection and enforcement while maintaining compliance. It sets out a range of civil sanctions for regulatory non-compliance to be used as an alternative to criminal prosecution. The civil sanctions introduced under the Act include:

- a Fixed Monetary Penalty;
- Discretionary Requirements including:

- a Variable Monetary Penalty;
- a Compliance Notice; and
- a Restoration Notice.
- an Enforcement Undertaking; and
- a Stop Notice.

Planning

A wood recycling company may need planning permission before carrying out developments under the [Town and Country Planning Act \(1990\)](#). The local planning authority may grant permission subject to conditions, for example, restricting what can be done on the premises.

A planning breach in itself is not illegal and the council will often permit a retrospective application where planning permission has not been sought. However, if the breach involves a previously rejected development (or the retrospective application fails) the local authority can issue an enforcement notice.

Guidance to local authorities is set out in [Technical Advice Note](#) (TAN) 21 and TAN 5. They set out Wales national planning policies in relation to waste and protecting the natural and built environment.

Fires at wood recycling sites

Fire safety is a significant regulatory consideration as recently a number of [fires](#) have occurred at sites involved in the storage, treatment and handling of wood and wood based products in Wales.

NRW's remit includes environmental risks from fires at waste management sites.

The Local Fire and Rescue Authority (FRA) is responsible for enforcing general fire safety under the [Regulatory Reform \(Fire Safety\) Order 2005](#).

The Health and Safety Executive (HSE) is responsible for specific risks and legislation such as the [Dangerous Substances and Explosive Atmospheres Regulations 2002](#).

Assessment and plans

Guidance has been produced, and recently revised (April 2017), by the Waste Industry Safety and Health Forum (WISH) [Reducing fire risk at waste management sites \(PDF: 3.49MB\)](#) to help operators and other duty holders to control fire risks.

Companies must carry out an assessment of fire risks at each site, and based on this assessment put in place appropriate controls and measures. General guidance on fire risk assessments and plans is available on the [gov.uk website](#). Broadly a fire risk assessment involves:

- identifying where on a site there are combustible and/or flammable materials;
- identifying where on a site there are potential ignition sources; and
- from the above information put in place a plan of controls and measures aimed at reducing the risk of a fire occurring and the impact should a fire occur.

It is also recommended that a fire risk plan includes discussion with the local Fire and Rescue Service (FRS) about their likely firefighting strategy for the site.

South Wales Wood Recycling Ltd fires

In November 2016 [South Wales Wood Recycling Ltd](#) was [fined](#) £20,000 following two fires at separate sites. A woodchip fire broke out in [Alexandra Docks, Newport, in November 2015](#), and another in [Maesteg, Bridgend in March 2016](#).

South Wales Wood Recycling Ltd was fined for:

- failure to comply with/contravention of the requirements of an environmental permit condition (Newport). The company's permit specified the piles should not exceed 7,500 tonnes and be split into two piles of no more than 7 meters in height with a fire break between them. The company was found guilty of exceeding these limits. For example, the company had an estimated 20,000 tonnes of woodchip waste onsite awaiting recovery; and
- keeping controlled waste, namely woodchip, in a manner likely to cause pollution or harm to human health (Newport and Maesteg).

Previous to the incidents, NRW had taken action. At the Newport site NRW had served an enforcement notice in November 2015 on the operators to tackle the stockpile and reduce the risk of fire.

In [September 2016](#), a third fire broke out at a South Wales Wood Recycling Ltd site in Heol-y-Cyw, Bridgend.

In January 2017 NRW served a notice requiring South Wales Wood Recycling Ltd to remove all fire damaged waste material deposited outside the permitted area at the Heol-y-Cyw site. This notice must be complied with by 30 March 2018.

In February 2017, NRW [refused](#) an environmental permit application from South Wales Wood Recycling Ltd for a waste storage and treatment facility in south west Wales.

Health implications of the inhalation of wood dust

Wood recycling involves loading waste wood into a chipping machine by shovel or grabber then transferring the chipped wood by shovel or conveyor. This produces wood dust and employee exposure levels can potentially be high. This is a particular problem during the regular cleaning and maintenance of machinery which often involves compressed air.

The HSE has commissioned a [report \(PDF 781.37KB\)](#) to assess the extent of the health risk from this exposure to wood dust. The HSE states that to reduce the risks to employees' health from exposure to wood dust, recycling companies should:

- have a suitable COSHH assessment of their employees' exposure to wood dust;
- control dust at source by the use of water suppression and extraction;
- ensure plant and equipment is properly maintained to control dust leaks etc.;
- have high-level health surveillance in place; and
- ensure employees who clean and maintain machinery are not excessively exposed to wood dust by:
 - providing them with suitable respiratory protective equipment that they have been trained to use and face fitted for; and
 - providing industrial vacuums for cleaning plant and machinery, rather than using compressed air, when it is practicable to do so.

Defra has also produced [guidance \(PDF: 487.28KB\)](#) for the working of timber and manufacture of wood-based products.

Wood recycling code of practice

As a result of the growth in the industry, the Wood Recyclers Association (WRA) has developed a [Wood Recycling Code of Practice \(PDF: 175.27KB\)](#) to enable responsible wood recycling operations. Signing up to a code is voluntary rather than a legal requirement, though some trade bodies make code participation a requirement of membership. The code is said to provide 'a system of certification for management systems for environmental, health, safety and quality issues at reasonable cost'.

National Assembly for Wales action

The National Assembly for Wales held a short debate on 5 October 2016 on [The Safety, Storage and Disposal of Biomass and Contaminated Wood Products by South Wales Wood Recycling](#). Huw Irranca DaviesAM, made seven specific suggestions:

Firstly, let's set up a small, time-constrained task and finish group to review the legislative and regulatory framework for licensing and planning controls of waste and recycling operations, and look at the scope for extending the framework of criminal law in this area.

Second: seek to strengthen significantly the financial penalties on breaches of planning and environmental permits, which are currently so insignificant, frankly, that they're often regarded as puny and petty by the offenders. The higher end of penalties for those who wilfully or repeatedly offend should cause extreme financial and personal embarrassment to individual company directors as well as owners or shareholders.

Third: explore ways of putting sanctions directly against named company directors and owners, including the possibility of suspending or banning individuals guilty of repeat or serious offences from holding any positions in related industry sectors—name and shame for a first or lower offence, but bar them from holding such positions for serious or repeat offences.

Fourth: bring forward proposals for streamlining and improving the co-ordination of investigations between organisations such as enforcement agencies and planning authorities. The better sharing of intelligence data and legal expertise will help balance the scales of justice.

Five: develop new ways to entirely remove parts of this process from legal and judicial proceedings, which are costly for the taxpayer and time-consuming for enforcement agencies, frustrating for residents and others affected by ongoing issues...

Six: extend stop notices and other enforcement powers to cover existing consents, not just new offences and new developments, so that stop notices and other sanctions can be enforced on existing operations where they contravene the permitting or the planning conditions.

And seven: examine the scope for extending criminal law to cover new areas covered currently by planning and environmental law, such as serious risk to amenity, and allow local authorities to determine what is constituted by that serious risk. This would allow the Proceeds of Crime Act 2002 to be applied to breaches, so that profits made by criminal behaviour could be sequestered to the public.

Caroline Jones AM and Suzy Davies AM supported this statement.

Welsh Government action

The Petitions Committee wrote to the Cabinet Secretary for Environment and Rural Affairs, Lesley Griffiths, regarding the petition. [Her response](#) includes an update on the Welsh Government and NRW's action in this area which includes the following:

- NRW as the statutory decision maker will not be directed by Welsh Ministers in any decision to revoke a permit from South Wales Wood Recycling Ltd as the Welsh Government view the matter as local rather than of regional or national significance;
- NRW are continuing to assess whether management of the South Wales Wood Recycling Ltd site in Heol-y-Cyw contributed to the fire and are investigating any potential breaches of the permit. They are reviewing the evidence and considering whether further action is appropriate;
- the [Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 3\) Regulations 2015](#) were introduced to strengthen NRW's powers under the environmental permitting regime as part of Welsh Government's efforts to [tackle waste crime](#). This includes making it easier for NRW to suspend permits, remove the risk of pollution and obtain an injunction to enforce compliance with enforcement notices;
- the Welsh Government intends to introduce further powers this year which will enable NRW 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 its removal;

- the Welsh Government are planning to consult 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;
- a further 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 Tax Bill](#) require those prosecuted for the illegal disposal of waste to pay tax on the waste;
- in response to the petition's proposal for public bodies to recoup the costs if a fire is found to be a result of negligence, the Welsh Government state that the use of existing powers is a better approach than levying charges stating that if businesses were charged there would be no reason not to charge house-holders;
- the Welsh Government has 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;
- in terms of health impacts, the Cabinet Secretary points to environmental permits required for some wood processing activities to control emissions and public health impacts. She states that regulation and enforcement of control measures to prevent off-site impacts and compliance with operating permits should be a sufficient health protection measure. She also states that planning conditions assist in controlling emissions and impacts upon local amenity, and that processes which operate below permitting thresholds are still subject to statutory nuisance legislation.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.