

## The role of the Environment Agency and the Scottish Environmental Protection Agency in waste incinerators: Briefing

**Question** – How does SEPA’s approach to planning decisions for incinerators differ from the Environment Agency’s?

**Answer** – It has been difficult to pin down precisely what might be at the heart of perceived differences between ourselves and SEPA because of the breadth and complexity of our respective roles (planning, permitting and waste strategy) and because of the detailed differences in our legislative and policy regimes. Whilst the question is aimed squarely at the planning realm, an important interface exists between the two regimes which render them inextricably linked. As such we have had to draw out details across the piece in order to explain differences at planning stage. We have sought to draw out the key suspects below, and have provided a more detailed explanation in an appendix.

Perceived differences in approach between the Environment Agency and SEPA are likely to be caused by four main factors. Firstly, up until around 2010 SEPA played a coordination role in delivering the Scottish National Waste Strategy. In that previous role, SEPA would comment on the ‘need’ for new facilities. In cases where evidence suggested there was sufficient capacity for waste management already, SEPA would advise the council of this and may suggest that a new facility was unnecessary. SEPA no longer have this role and, like us, do not comment publically on the adequacy of the waste infrastructure network.

Secondly, there are legislative differences in that the Pollution Prevention and Control (Scotland) Regulations 2012 require that SEPA, in issuing any permit, include conditions which ensure that on or after 1st January 2014, no separately collected waste capable of being recycled is incinerated or co-incinerated, and that non-ferrous metals and hard plastics are precluded from incineration. The Environmental Permitting (England and Wales) Regulations 2016 do not contain equivalent policies.

Thirdly, there are key policy differences to the management of waste in the respective nations. Scottish policy requires separate collection of waste, including food waste. This applies not only to local authorities and collectors but to producers as well – businesses have to present their waste separately for collection. In England, while there is a duty on collectors and local authorities to separately collect paper and cardboard, metal, plastic and glass, there is no equivalent duty for food waste. Scottish policy also sets a 2025 target recycling rate of 70% which applies to all waste types, sets a 2025 target for limiting waste to landfill to 5%, and restricts inputs to all energy from waste incinerators (see above).

Finally, EA and SEPA publish separate guidance to developers about the level of information that should be submitted at planning application stage to inform our advice about permitability. SEPA’s [guidance](#) is prescriptive about what information is needed in support of any incinerator application, whereas our [guidance](#) relies more on the specifics of the case, the sensitivity of the receiving environment and the judgement of the area regulatory officers involved – more of a risk based approach. In addition, SEPA cannot issue a permit unless any necessary planning permission is in place. There is no such requirement in England. These differences, combined with the regulatory and policy differences outlined above, may mean that SEPA demand more information at planning stage.

## Appendix

### Our role in waste planning

**SEPA** - Up until around 2010 SEPA played a coordination role in delivering the Scottish National Waste Strategy, working with local government to plan for waste infrastructure on a regional basis. In that previous role they used to make comments about the 'need' for new facilities in the context of regional plans. If the evidence suggested there was sufficient capacity for waste management already, they would advise the decision-making council of this and suggest any new facility could be unnecessary. Responsibility for the Scottish National Waste Strategy ([Zero Waste Plan](#)) now sits with the devolved Scottish Government, with infrastructure planning based on the national rather than regional need. If evidence suggests there is no need for further facilities on a national basis, the Scottish Government can review and amend planning policy as required.

**Environment Agency** - Determining the location and type of new waste infrastructure is principally a matter for local authorities. Development plans set the framework for development in a local authority area, including what new waste infrastructure is needed and where it should go. In turn these plans help the authority determine planning applications. We advise local authorities on waste development plans through our role as a planning consultee. The waste data and information we acquire through our regulatory role is made freely available. We also produce tools for others to use to assess the environmental impact of different waste management/development scenarios and environmental infrastructure models to support housing growth. These help government assess the adequacy of the overall network of waste facilities.

We do not comment publically on the adequacy of the waste infrastructure network, or the mix of technologies required to meet objectives, or targets, for sustainable waste management at any spatial level. That is for local and national government to do. However, where there is evidence that a lack of sufficient facilities may be having negative environmental impacts, for example illegal dumping, we may provide advice to local authorities privately.

### Our role at planning stage

The Environment Agency and SEPA are both statutory consultees on all types and sizes of waste incinerator on the basis that they constitute Environmental Impact Assessment (EIA) development under our respective 2017 EIA Regulations ([England](#) and [Scotland](#)).

Our planning responses will highlight the need for a relevant Environmental Permit (if one hasn't already been granted) and will highlight any potential showstoppers which may prevent us from issuing a permit. Such instances may include the proposal being located in Air Quality Management Areas or in areas where groundwater is particularly sensitive and used for human consumption (such as Source Protection Zone 1). In other cases there may be other sensitivities or complexities which may not constitute showstoppers but which warrant further investigation and parallel tracking. We will also attempt to explain, insofar as it's possible to, the scope of considerations for any necessary permit, so the decision maker (and applicant) is clear on what will be controlled through the permit (if one is obtained).

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Our Operational Instruction also acknowledges that where planning and permitting are not parallel tracked (the norm), area regulatory teams 'will only be able to provide limited technical permitting advice', in part to ensure we do not pre-determine the permit (leaving us vulnerable to successful legal challenge) and because area regulatory teams, NPS and specialist teams like the Air Quality Management Assessment Unit are predominantly funded through permit fees.

We may also comment on flood risk, land contamination, construction pollution and other environmental matters on a risk prioritised basis. We may raise objections at planning stage if the evidence suggests the development could be steered away from flood risk areas, if it cannot be made safe from flooding, or if it may increase flood risk elsewhere. We may also raise objections if the development poses an unacceptable risk to the water environment, either through its impact on historic land contamination or through construction or operational phase pollution.

In the majority of cases we are unlikely to object at planning application stage, subject to the inclusion of conditions on any permission granted, to secure mitigation measures to protect people and the environment. The National Planning Policy Framework (NPPF) is clear that the planning system should not duplicate the controls of other regulatory regimes, so we will only recommend the inclusion of planning conditions for things we can't control through the permit. That does not mean to say that the residual impacts of matters controlled through the permit cannot be material planning considerations. Such impacts *are* relevant to whether the proposal represents an acceptable use of the land and they can legitimately have a bearing on any planning decision.

### **Our role at permitting stage**

In England and Wales, waste incinerators need a permit to operate under the Environmental Permitting Regulations 2010 (as amended). The regulator of such facilities depends on the scale and nature of the plant as set out in this [flow diagram](#). Smaller plants are generally regulated by the Local Authority, with the Environment Agency regulating the larger plants.

Where a bespoke Environmental Permit is required, we have a duty to consult the public in advance of permit determination and must have regard to any representations received. We must be cautious of saying anything at planning application stage which may be seen to pre-empt or prejudice the permit determination process.

In Scotland, energy from waste plants are regulated under the [Pollution Prevention and Control \(Scotland\) \(PPC\) Regulations 2012](#), which includes the controls required under the [European Waste Incineration Directive \(WID\)](#). SEPA is the regulator, irrespective of the type and scale of waste incinerator.

### **Parallel tracking**

Waste incinerators need both planning permission and an Environmental Permit before they can be operated. The norm is for developers to apply for planning permission first, before moving onto the permit application, but there is nothing stopping them from applying for the permit first. Having a relevant planning permission is not a prerequisite for a permit.

We encourage the parallel tracking of planning and permit applications, particularly in complex or contentious cases – although we cannot require it. Such an approach can help to identify and resolve issues which may be shared between the two processes. The aim is to avoid situations where the controls of one regime prevent a facility from being built or operated. The most common example of this is a planning permission which restricts stack height for aesthetic reasons, with a permit then requiring a higher stack to ensure suitable air dispersion. If such an issue isn't identified until a planning permission has already been

granted, the developer would need to start again and apply for a new permission – with inevitable costs and delays.

### **Habitats Regulations**

In some cases, proposed incinerators may fall under the habitats regulations on the basis of a likely significant effect on a European designated site. In such cases, both the Waste Planning Authority (WPA) and ourselves will be acting as competent authorities under those regulations. In such cases we endeavour to coordinate with the WPA and with Natural England, in accordance with the relevant [guidance](#). The guidance aims to simplify the assessment process and to save time and costs for both the applicant and the competent authorities.

### **Regulatory control and enforcement**

We have recorded **2 cautions, 12 prosecutions and 11 enforcement notices** in respect of 'incinerators' between 2000 and the present. These numbers include both the operation of permitted incineration installations contrary to permit conditions (8 cases) and the operation of illegal small scale 'incinerators' on waste facilities (17 cases), for example on waste treatment sites. The latter figure is largely irrelevant to the regulation of commercial incinerators.

Between December 2012 and the present we have also served 7 Notices (over 2 incidents) and 16 Warning Letters (over 10 incidents).

SEPA have taken some enforcement action, including the revocation of a PPC Permit for "consistently failing to meet any reasonable expectation of environmental performance". Further details can be found [here](#).