

Fight Or Fly-Tip

As part of the CIWM's Fighting Waste Crime campaign, **John Galvin MBE** provides the first of a two-part perspective on the problem of waste crime and entrenched poor performance, and what is currently being done to tackle it

The diversion of waste from landfill, and the use of waste as a resource, underpinned by the waste hierarchy and recovery and recycling targets is changing the nature and increasing the cost of waste management, and with it the incentive to avoid those costs at all stages in the waste management chain.

Waste crime is not new, but it is changing, and the rewards are making it more attractive to criminals as it is relatively easy to get into and is more profitable and less risky than other forms of crime. For some, therefore, it's worth accepting the risk of being caught and fined as an occupational hazard. As a result we have to face the challenge of those who operate completely outside the system by fly-tipping or operating illegal sites.

More worrying are those who operate within the "resources industry" but deliberately misdescribe waste, either to evade paying landfill tax or to disguise it as non-waste and illegally export it. Some of these operators use their regulated status as a veil of legitimacy for criminal activity, or to persistently operate to poor standards and/or stockpile waste in order to maximise short-term income and leave an unwanted legacy for landowners or the public sector.

Waste management is subject to a range of regulatory controls from

its production, through transport and subsequent recovery or disposal, with the principal aim of protecting human health and the environment. While waste crime cannot directly be attributed to the *amount* of regulation, *better* regulation and outright deregulation has coincided with the growth of waste crime and created a climate that has helped it to flourish.

We therefore need to better monitor whether the regulatory controls and our compliance and enforcement efforts remain fit for purpose in a world of more volatile domestic and international markets, where waste crime is as much an economic concern as an environmental one, if it undermines the good name of the rest of the industry and limits its confidence to invest and innovate.

We need to strike the right balance between reducing unnecessary burdens, with firm and fair regulation that sets a standard below which, will not be tolerated. This task cannot fall solely to the regulator – the Environment Agency (EA) in England – although it has the key role. It needs a collaborative approach between governments, regulators and industry across the UK and abroad to bring about a range of interventions to reduce the problem.

At the simplest level, littering and fly-tipping are manifestations of the

"don't care" attitude of a significant minority. Recorded fly-tipping has increased for the second year in a row, following years of steady decline, although better use of technology to record individual incidents may be accounting for some of this rise?¹ The attitudes behind casual fly-tipping and littering reinforce the need for change, education and political commitment if we are to reverse this trend, never mind address more serious environmental issues such as climate change.

While there is limited available data, there has been a steady decline in inspections and other compliance efforts at waste sites over many years, as part of a more proportionate and risk-based approach to regulation. Of course, the quality of inspections is as important as the frequency.

Where good – or improving – performance justifies it, reducing inspection is indeed the right approach; but where it is done simply to reduce costs on regulated businesses, irrespective of performance and evidence of harm, it is wrong. It is ironic that this trend was going on at the same time as the legitimate regulated community was increasingly calling for greater protection.

The removal of the "fit and proper person test" from legislation under the 2007 environmental permitting regime, (in the name of better regulation) was a



retrograde step that helped open up the market to less scrupulous operators. Some industry sectors have expressed concern about the lack of compliance effort and enforcement, particularly around technical competence and that, as a result, it is being devalued.

EA figures, however, indicate a steady increase since 2011 in the number of permits being revoked (35-40 in 2014), including on the grounds of failure to provide technically competent management in accordance with one of the two approved schemes.

A few years ago I estimated that there was one illegal site for roughly every seven or eight permitted sites, and the number of illegal waste sites has been steadily rising. At the end of 2011/12 the EA had 1,011 operational illegal waste sites on its books. In 2012/13 it prioritised combatting illegal sites and calculated that it was stopping an illegal site every 90 minutes... by the end of 2012/13 that number had fallen to 820, then to 556 by the end of 2013/14, but it crept up again to 598 by the end of 2014/15.

New sites pop up almost as fast as the EA can close them, so we must supplement enforcement effort with a combination of additional interventions to prevent these operators from getting hold of our waste.

Waste crime (including fly-tipping, illegal waste sites and tax evasion) has been estimated to cost the UK economy £568m per annum, and this doesn't even include poor performance and fraud in the producer responsibility systems.² The EA's own report estimated that waste crime diverts as much as £1bn from the UK economy and HM Treasury.³ These figures are on a par with the cost of metal theft at its height, yet they have not resulted in the same national outcry, probably because the public at large (as opposed to those local communities that have suffered) do not fully experience or recognise the impact.

It has taken a number of serious waste fires, such as the ones at the former Waste4Fuel site in Bromley and Averages in Swindon, to raise wider awareness not only about the pollution and health risks, but also the concerns about how regulated sites are able to stockpile excess quantities of waste for prolonged periods, and the seeming inability of the EA to stop it. In June 2013, trade groups and professionals voiced their concerns



about the need to protect funding to tackle waste crime to Defra ministers.

The Waste4Fuel site, which has cost the London Fire & Rescue Service alone around £1m to monitor so far, is not unique. There are many other examples of fires or abandoned waste stockpiles at ports and waste being disguised in one form or another. It is the sheer size and scale of such incidents and the seeming ease with which they have come about – the extent of which we have rarely seen before – as well as the impact on the legitimate industry in the form of soaring insurance premiums, that rightly led to recognition of the need to act.

Tackling Waste Crime

RECOGNITION OF waste crime and the loss of landfill tax and other revenue led to £5m additional Government funding to the EA in the 2014 Budget. This was followed in the 2015 Budget with a further £4.3m, and £20m additional funding is being provided over the next five years as a result of reforms to the Landfill Communities Fund and will supplement Defra grant-in-aid to help the EA continue to maintain increased enforcement action, focusing on illegal sites, deliberate mis-description of waste and using its intelligence-led approach to check shipping containers for illegal waste exports.⁴

The coalition Government response to the concerns was published in a letter to trade associations and waste professionals on 1 September 2014.⁵ This set out a joint Defra/EA Waste Crime Action Plan (WCAP) for England that included a

comprehensive range of measures being taken around four themes:

- speedy and tough enforcement action
- greater intelligence sharing
- making the polluter pay
- making better use of regulatory controls

A number of the WCAP measures were taken forward in the Defra and Welsh Government consultation on enhanced enforcement powers and called for evidence on other measures to tackle waste crime and entrenched poor performance in the waste management industry.⁶

The Government response indicated widespread support for most of the measures proposed.⁷ As a result, four of six enhanced enforcement measures have already come into force (in October 2015) and the remaining two are scheduled to be introduced this year.⁸

Alongside these is the commitment to introduce fixed penalty notices (FPNs) for fly-tipping, which will give local authorities another option for dealing with localised small-scale fly-tipping. FPNs will not stop fly-tipping, but they may help reduce it, if their use increases the deterrent effect?

However, I consider the above steps and proposed measures to be secondary to the benefits to be derived from using the current legislation to increase compliance and inspection efforts, coupled with a speedier and tougher approach to enforcement against those who persistently fail to comply or who cause harm.

There are over 11,000 permitted waste operations in England. While only about 4.1 percent of these are classified as poor performers (bands DEF under the Opra system⁹) the number of poorly performing sites increased from 401 in 2012 to 584 in 2014.¹⁰ There are likely to be a number of factors contributing to this statistic, such as the steady rise in the number of waste facilities perhaps operated by less than scrupulous companies; a more rigorous approach by the EA to recording non-compliance; and failure by some operators to meet more demanding permitting requirements, in respect of the storage of combustible waste to reduce the potential for waste fires, for example.

Of the 584 poorly performing sites, 217 have been poor performers for more than two years. There were also 189 serious pollution incidents at permitted waste sites in 2014/15 (down from 204 in 2013/14). However, 77 percent of these incidents were at sites categorised as "poor performing", which adds strong weight to the argument for regarding poor performance in the same light as those operating outside the system.

There is anecdotal evidence of a tougher approach by the EA, using its so-called "T-Junction" conversations with poor performers to determine whether they are "coming on board" or will risk facing tougher sanctions. This is the right way to go if it differentiates between those who sometimes get things wrong and are making the effort to correct matters; and those who deliberately procrastinate and clearly have no intention of doing the right thing. This approach may make matters seem worse before they get better, if recalcitrant operators act out of desperation.

A joint programme between the EA and the London Fire & Rescue Service, to reduce the risk of waste fires, indicates that of 76 sites categorised as high or medium risk in November 2014 in London, 52 of these were, as at October 2015, considered to be low risk.¹¹

This is all good stuff, but it doesn't stop committed criminals. They will only respond to hefty punishment and loss of income from their business. Changes to legislation on penalties for offences, and the Sentencing Council guideline to the courts for environmental offences, mean that the fines that can be meted out by the courts can be significant – when coupled with the removal of offenders' assets under the Proceeds of Crime Act – and can have the desired deterrent effect.¹²

However, it is too early to say whether these changes are having an impact on waste criminals. There were 37 prosecutions of waste companies linked to poor performance in 2013 and a further 152 prosecutions against businesses and individuals for illegal waste activities with fines totalling £660,000 according to EA figures.¹³ Similarly we don't yet know whether the enhanced powers to seize vehicles of those suspected of

waste crime are impacting on rogue operators.¹⁴

Our knowledge of the extent of waste crime is limited, and based only on best estimates, which makes it difficult to identify the direction of travel. So we need to closely monitor key indicators of performance, compliance, pollution etc to help inform us about whether our enforcement effort is targeting the right people and reducing crime, or just "shifting it about a bit". ■

In part two John will examine how we should move from an enforcement-led approach towards prevention, and developing the regulatory regime



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John Galvin MBE is a Chartered Waste Manager and has just retired from Defra, where he led on waste regulation and crime. John's career spans over 33 years in waste regulation and enforcement with the Environment Agency and its predecessor bodies in London and the last 10 years in Government. At Defra John led on many areas of waste regulation that included the major overhaul of waste exemptions in 2010 and he was chairman of the National Fly-Tipping Prevention Group. He was the architect of the Defra/ Environment Agency Waste Crime Action Plan and was project lead and principal author of the Defra/ Welsh Government consultation and call for evidence on measures to tackle waste crime and entrenched poor performance.

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