

# "Sticking" With Duty Of Care



**Alan Holmes** leads on Duty of Care at the Environment Agency. Whilst pleased to see growing support and commitment to the cause, he outlines what more could be done to bring what he sees as the industry's "glue" to people's attention, asking if it's really fit for purpose in its current state?

**C**IWM is to be congratulated for announcing its £50,000 contribution to the "Right Waste, Right Place" campaign in the last month, which aims to raise business awareness of the Duty of Care. CIWM and ESA rightly highlight the links between non-compliance/poor performance and illegal waste activity with the Duty of Care.

Duty of Care was a very imaginative piece of legislative engineering back in the late 1980s, designed for a very different and less complicated waste management industry. However, that industry has changed dramatically over the past 25 years; no longer do we have, nor should we have, the disposal to landfill mentality, so all holders in the waste chain need to think differently, and Duty of Care needs to be central to that new paradigm. So can it still be effective?

Duty of Care is at the heart of the management of waste. My colleagues continually hear me referring to it as the "glue" that holds everything together. If everyone that holds a waste at anytime complied with their obligations then there should be nothing to go wrong in the waste stream. The role and extent of these obligations and where responsibilities begin and end is sometimes not clear, particularly in a much more complex waste chain. When we look today at the passage of waste to final recovery or disposal, it seems that there are more stages involved, meaning more people involved, and perhaps more opportunity for things to go wrong.

Source separation, recycling targets, quality protocols, circular economy, producer responsibility... are all phrases that impact on what happens to waste and where it goes. The techniques for recovering and recycling waste as resources are vastly different. The waste that is generated is also different, with more WEEE and plastics being generated for reuse and recycling, for example. Exports were not really on the horizon back in 1990; today exports are often a key part

of waste recycling.

Permitting also is very different, with many waste activities now registered as exempt. Exempt activities, largely dependent on the waste types and quantities, can be operating legally one day and not the next. The Duty of Care, from the outset, was intended to be self-policing so, in this fast changing and evermore complex regulatory landscape, how can waste producers and other holders ensure they are complying with their obligations and check up on one another?

## An Updated Code Of Practice

THE PUBLICATION last month of an updated Code of Practice gives us all an opportunity to re-focus. The Code of Practice remains statutory guidance and, although much slimmer than the previous version of 20 years ago, does highlight the five principle obligations and reminds us that some of those obligations apply to everyone in the waste chain, from cradle to grave.

The obligations require that all in the waste chain take "reasonable" steps to ensure waste is not deposited unlawfully or cause harm, ie a site has a permit or exemption; to prevent a breach of said permit (or exemption); prevent escape (from anyone's control); ensure waste is only transferred to an authorised person; and waste is accurately described.

So much depends on our understanding of what is "reasonable"; where do your obligations for the waste start and end? I am not sure that after 25 years we understand what "reasonable" means, although that is not confined to waste management, of course. I won't delve into all these obligations, but is continuing to send waste to a site that clearly is not meeting permit (or exemption) conditions "reasonable"? I hope you agree that it clearly is not, but where does self-policing come in?

There are therefore opportunities for the waste



industry and business sectors to develop thoughts on these aspects by producing supporting technical and best practice guidance. The "Right Waste, Right Place" campaign could be an important catalyst for this.

However, in tackling waste crime and poor performance we must look upstream. Increasingly the Environment Agency is looking toward making upstream interventions, such as at waste producers, to help address poor performance at the waste sites those waste producers might use. The regulator – and this includes local councils – must also consider the role Duty of Care can play in improving performance of waste holders from cradle to grave, and take enforcement action where appropriate. Duty of Care legislation has teeth, but is sometimes wrongly thought of as merely a “paperwork offence”. A role for the regulators and the courts there then!

It would be wrong to focus regulatory attention on the 4m waste producers that are very small, or situated within domestic premises. How should these businesses be influenced (I hesitate to use “regulated”) to do the right thing? Should this be left to waste contractors or to local councils, who largely remove waste from these businesses?

The waste industry needs to consider the key role and influence of waste brokers and carriers in the waste chain, and how technical competence could be applied. Why should it be good enough to focus technical competence just around waste managers, whilst even today many people act in the capacity of waste broker without realising it? Brokers are often a critical link in the future correct management of waste, yet we register them without checking their understanding of waste legislation and the Duty of Care.

### Get Involved

CIWM IS planning a number of activities during 2016, including open meetings and webinars, giving much needed focus on technical competence. I would go further and suggest that



this focus needs to be directed toward waste brokers (and dealers), as well as carriers, as it is they who not only arrange for the collection of waste from producers but also have the opportunity to influence them into thinking of the waste they produce more as a valuable resource, simply than something just to be disposed of and forgotten about.

For Duty of Care to deliver in the 21st century, we all have a role in demonstrating to waste producers that there are opportunities to do something different with their waste that can possibly reduce costs and help deliver better environmental outcomes.

CIWM, ESA and others deliver training, as well as producing awareness raising materials, but they face a challenge as, in times of constrained finances, training is often one of the first things to be cut. If we are serious about tackling environmental crime then we need to ensure that everyone in the waste chain knows what they are supposed to be doing. We can help do this by supporting Duty of Care and the Code of Practice, rather than paying lip service to it. We can make waste producers more aware of their responsibilities and refocus technical competence to include waste carriers and brokers.

So is Duty of Care fit for the 21st century? I'll leave that for you to ponder... I remain convinced that it is the “glue”, but it needs to use its teeth and each and everyone of us has a role to play in ensuring that it does. ■



### The Author

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