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**Friends of
the Earth**

Report

The regulation of Northern Ireland's Waste Industry: private sector and comparative perspectives

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Executive Summary

This report was commissioned by Friends of the Earth (Northern Ireland) to help inform its submission to the ongoing independent review of environmental governance and regulation in Northern Ireland. The study focuses on the regulation of the waste industry by Environment and Heritage Service (EHS), a government agency within the Department of the Environment Northern Ireland (DOE). It examines the views of senior executives from many of Northern Ireland's leading waste companies, and also draws on available data to provide a comparative analysis of the performance of EHS and the Scottish Environmental Protection Agency (SEPA) with regard to waste regulation.

The single issue of greatest concern for the private sector respondents was the perceived inability of EHS to act effectively against illegal and so-called 'cowboy' operators. In addition to the potential impact on the environment of these illegal operators, many respondents expressed concern about market distortion and the consequent negative impact on their businesses.

Private sector respondents also expressed concern about delays in obtaining planning permission and licensing documentation, and a few firms felt that EHS was not robust enough in pursuing its monitoring and enforcement role. A site belonging to one company had only been visited by EHS inspectors twice in the previous four years, while another had only been inspected twice in the previous three years.

There was little strong support for the introduction of an independent environmental regulator among private sector respondents. However, many said they would welcome any moves by government to provide EHS with more staff, greater expertise, and sufficient resources.

The comparative analysis of EHS and SEPA revealed a striking difference in their ability to access and communicate information effectively. While SEPA was able to respond to questions submitted in connection with this study in an efficient and reasonably comprehensive manner, EHS took longer to respond to questions. Moreover, it was unable to answer questions as basic as 'How many landfill sites are there in Northern Ireland?' and 'How many are operated by a private individual or company?' Much of the information pertaining to Great Britain which EHS was unable to supply with regard to Northern Ireland is available on the websites of SEPA and its counterpart in England and Wales, the Environment Agency (EA).

Although presented in a user-friendly style, EHS website contained much less information relating to waste regulation than SEPA's site. Crucially, SEPA publishes the criteria it uses to assess the frequency of its inspection visits to each waste disposal or treatment site. EHS does not do this at present.

The comparative analysis also found that EHS was lagging behind both EA and SEPA in its implementation of a new permitting process for landfill sites which is being introduced to comply with European Union directives. However, indicative evidence suggested that EHS was taking a larger proportion of illegal waste cases to court than SEPA.¹

While many private sector respondents suspected that lack of resources was one the main factors behind the shortcomings they identified, a comparison of available budgetary information for EHS and SEPA suggested that EHS is, on a per capita basis, more generously funded with regard to its waste regulation activities.

¹ This analysis was limited to SEPA's Edinburgh area office in the case of SEPA.

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The report concludes that the creation of an independent environmental regulator for Northern Ireland would result in a higher level of transparency and accountability than currently exists within EHS. That, in turn, would be likely to lead to better information management, greater awareness among the public and the waste industry of EHS (or a renamed successor body) and its activities, and more effective implementation of the legislation and government policy relating to waste regulation.

Introduction

This report was commissioned by Friends of the Earth (Northern Ireland) to help inform its submission to the ongoing independent review of environmental governance and regulation in Northern Ireland. The study focuses on the regulation of the waste industry. In Northern Ireland, the regulation of waste disposal, processing and storage is the responsibility of the Environment and Heritage Service (EHS), a government agency within the Department of the Environment Northern Ireland (DOE).

EHS has been heavily criticised for its failure to develop and implement effectively a waste management strategy, and for significant shortcomings in its regulation of the waste industry in Northern Ireland. Within the past year, critical reports on Northern Ireland's waste management strategy were published by both the Northern Ireland Audit Office (NIAO) and the House of Commons Public Accounts Committee (PAC).² However, neither of these reports examined the private sector's experience of being regulated by EHS, nor did they compare the performance of EHS with either the Environment Agency (EA) in England and Wales, or the Scottish Environmental Protection Agency (SEPA). Friends of the Earth felt it would be interesting to find out how private waste companies view EHS, and whether or not they would welcome an independent regulator similar to EA, SEPA or the Environmental Protection Agency (EPA) in the Republic of Ireland. Friends of the Earth also felt it would be useful to compare some aspects of EHS's performance on waste regulation with the other agencies. For this latter aspect of the study, some private sector interviewees were able to relate their comparative experience of being regulated by EHS and by one of the environmental protection agencies in Great Britain or the Republic. In addition, comparative data were sought from SEPA and EHS relating to a number of issues.

This report begins by briefly outlining some of the key recent developments relating to waste management in Northern Ireland. Following a summary of the study's objectives and the research design, the report presents the main issues of concern identified by private sector interviewees. It then goes on to draw on data available on EHS and SEPA websites, and provided by each respective organisation in response to queries, to compare, as far as possible, key aspects of the performance of both organisations. The final section of the report summarises the key findings of the study, and presents some recommendations for future action and research.

Background

Most UK legislation relating to waste management derives from a series of European Union directives. EHS has been criticised by both the NIAO and the House of Commons PAC for failing to transpose these directives into domestic legislation in a timely manner. The NIAO highlights the fact that Government only transposed aspects of the Waste Framework Directive relating to waste management licensing in 2003, approximately ten years after it was introduced in the rest of the UK.³

² Northern Ireland Audit Office *Northern Ireland's Waste Management Strategy*, HC 88, Session 2005-06. 23 June 2005. Available at:

<http://www.niauditoffice.gov.uk/pubs/onereport.asp?arc=True&id=171&dm=0&dy=0>

Public Accounts Committee *Thirty-first report*, 13th February 2006. Available at:

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmpubacc/741/74102.htm>

³ NIAO, *op. cit.*, p.11.

The backlog of European Union (EU) environmental directives awaiting transposition in Northern Ireland has now been eradicated.⁴

In 2000, the DOE published its first waste management strategy. In November 2003, EHS took over responsibility for the regulation of the waste industry from Northern Ireland's 26 district councils. The following year, a government advisory group – the Waste Management Advisory Board for Northern Ireland – criticised many aspects of the DOE's Waste Management Strategy and its implementation, and said that Government needed to provide more resources in order to deliver it effectively. It also recommended that Government should set up an independent environmental protection agency.⁵ As noted above, there was further strong criticism in subsequent reports from the NIAO and the PAC. The latter urged Government to set up an independent environmental agency without further delay, once the review of environmental governance was completed. Earlier this year (March 2006), Government published a new waste management strategy.⁶ This was designed to address many of the concerns which had been expressed by the Waste Management Advisory Board, the NIAO and the PAC.

Study objectives and research design

However, to date, the waste companies which are subject to regulation by EHS have been given little opportunity to voice their views on the current situation and on the desirability of an independent agency. Moreover, no research has been undertaken to examine how the performance of EHS on waste regulation compares with other parts of the UK or with the Republic of Ireland. This study goes some way to filling this gap in information. The study's objectives were as follows:

- To ascertain the views of companies and individuals within the private sector waste industry on the following:
 - The quality of waste regulation in Northern Ireland
 - The specific strengths and weaknesses of the current system
 - The desirability or otherwise of an independent environmental regulator for Northern Ireland
 - Measures which would improve the current system of regulation
 - How the performance of EHS compares with other waste regulation bodies
- To undertake an analysis of available data to assess the comparative performance of EHS and SEPA with regard to waste regulation

SEPA was chosen for the purposes of the comparative analysis because it operates on a smaller scale than EA, which covers the whole of England and Wales. The data analysed included both information and statistics published on the websites of SEPA and EHS, and information provided by both organisations in response to questions.

⁴ Public Accounts Committee, *op. cit.*, 'Conclusions and recommendations', point 1.

⁵ Waste Management Advisory Board for Northern Ireland *Northern Ireland Waste Management Strategy Review Report*, June 2004, Belfast: EHS. Available at:

<http://www.ehsni.gov.uk/pubs/publications/WasteManagementStrategyReview.pdf>

⁶ EHS (2006) *Towards Resource Management: The Northern Ireland Waste Management Strategy 2006-2020* (Belfast: EHS). Available at: <http://www.ehsni.gov.uk/pubs/publications/wms.17.pdf>

The views of the private sector were sought through a series of semi-structured telephone interviews⁷. 'Snowball sampling' was used to identify possible respondents; this technique consists of identifying an initial group of respondents who are then used to refer a researcher on to further possible respondents. Although this method does not conform to the rigorous principles of random and representative sampling, it is acknowledged by researchers as a useful way of gathering data from groups which might not prove accessible through more conventional means.

Interviews were carried out with senior executives from 11 waste companies. These included many of the largest and best-known firms in the waste industry in Northern Ireland. Interviews were also undertaken with two independent waste industry consultants, a representative of the Irish Waste Management Association, a freelance journalist with a special interest in the waste industry, and a representative of Arc 21, one of three regional groupings which co-ordinates the waste management activities of local councils in Northern Ireland. Most of the private sector respondents requested anonymity. In many cases, they said they were concerned that they might be treated more harshly by EHS if they were seen to criticise the agency. Some respondents were also concerned that complaints about illegal waste operators might attract retaliation from those operators or their associates.

The view from the private sector

Illegal operators

The single issue of greatest concern for the private sector respondents was the perceived inability of EHS to act effectively against illegal and so-called 'cowboy' operators; that is, those operators who do not have the correct planning permission and licences and/or flout the legislation and regulations governing the waste industry in Northern Ireland. This concern was shared by 8 of the 11 waste company executives. In addition to the potential impact on the environment of these illegal operators, many respondents expressed concern about market distortion and the consequent negative impact on their businesses. The DOE has estimated that illegal site operators are each making, on average, profits of £1m a year.⁸

A senior executive at one firm said her company was facing unfair competition from a waste operator which had no planning permission and no waste management licence, yet was running a high-profile operation:

It's incredible. He gives the impression of running a *bona fide* operation. He has 50 lorries up at his site. You even see his skips outside government buildings. Yet the guy has no planning permission and no licence.

I remember we went to a one major client of ours and they mentioned their interest in [the illegal operator]. They couldn't believe it when we told them that he didn't have either planning permission or a licence. They'd been really impressed by the professional image projected by his company. But when they went back and asked him to produce the paperwork, he couldn't.

I've been tortured complaining [to EHS and DOE's Planning Service] about him, but they refuse to do anything. They say he was originally refused planning permission, but that he

⁷ In two instances, face-to-face interviews were carried out at the request of the interviewees.

⁸ PAC, *op. cit.*, p. 5.

now has an application in for both planning permission and a licence. They claim this means it's all a grey area and there's nothing they can do.

In another case, a senior executive from a specialist waste company said that it had been facing unfair competition from the cross-border activities of an illegal operator (details of the product have been omitted as it could identify the company in question):

This guy was taking [the product] to illegal dumps in Cavan and Louth. Two county councils closed down the dumps – but he would just move somewhere else. But, although EHS was made aware by numerous individuals that this person was transporting [the product] illegally, they did absolutely nothing.

The legitimate company in this case asserted it had lost a great deal of business to this particular operator and others like him.

Similar concerns were expressed by a senior scientist at another company:

EHS tends to focus on the big companies because they're easy targets. But, in our experience, with the smaller companies and individual operators, if they're not doing things properly, they just get overlooked.

Local authorities

In the Republic, many private waste companies are also very concerned about what they see as a bias by the country's waste regulator, the Environmental Protection Agency, towards local authorities.⁹ Similar concerns with regard to EHS in Northern Ireland were only expressed by two of the private sector respondents for this study. However, the examples they gave contain specific allegations of sufficient severity to warrant attention. Moreover, the respondents in question represent two of the best-known waste companies in Northern Ireland.

The managing director of one company, based in Belfast, told the author:

I could drive in any direction for half an hour from here and show you a local authority site which is breaching a significant number of licence conditions....There are a number of local authority landfill sites that are death traps.

He alleged that one local authority site in Northern Ireland contained a massive lagoon, despite the fact that the licence for the site specifically stated that it should not have a lagoon. He claimed that the lagoon was a potential deathtrap because toxic leachates could run into it. However, for the local authority in question, it was cheaper to leave the lagoon than to remove the liquid from the site.

If that was a private site, it would be closed... There's one rule for local authorities, and one rule for private operators.

A senior executive from the second company alleged that a major local authority landfill site did not cover its waste properly:

The senior operations manager [for the site] told me that, when it's windy, the waste blows onto ... [nearby water. Later] they send litter-pickers to go out and pick up the waste Yet,

⁹ This point was made by Eric O'Donovan, Secretary, Irish Waste Management Association in an interview with the author. The Association represents the views of private sector waste operators in the Republic.

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when it's windy, our site [his company's] is covered up and closes. We don't accept waste. That's what should happen.¹⁰

However, John Quinn, Chief Executive of Arc 21, a waste management organisation which represents 11 local councils, strongly denied that local authorities received favourable treatment by EHS. "I think the reverse is true," he stated.

Bureaucratic delays

Another issue of concern was the amount of time it could take to obtain the planning permission and licensing documentation needed to be able to operate legally. Five companies had experienced frustrating delays of this nature. In one case, the company in question had begun treating a particular waste product in a way which did not comply with current legislation, simply because it was taking so long to obtain a licence and planning permission in order to comply with the legal requirements. A senior executive from the company commented:

It's very frustrating really. You fill in a form – which takes considerable time in itself. Then a government department sits on it for months.

The company had been waiting for the licence for 15 months. However, it admitted it did not realise that planning permission was also required and that this had slowed down the process. Moreover, it would appear that EHS had made a policy decision to delay full enforcement of the legislation in question because the necessary infrastructure to enable compliance does not yet exist in Northern Ireland.

The licensing regime for landfill sites is in the process of changing throughout the UK in order to comply with the EU Integrated Pollution Prevention and Control Directive and the Landfill Directive. Under the new system, landfill sites are required to have Pollution Prevention and Control permits. These ensure that landfill sites are run to much higher environmental standards than was the case previously. In Northern Ireland, there have been delays in introducing such permits.

A senior executive with one major waste company said it was still operating with an old waste management licence which dated back to 1983 and was just five pages long. The terms of the licence included no stipulations regarding environmental criteria. Despite the fact that it had submitted a Site Conditioning Plan (the first stage in the PPC permitting process) by the required deadline of February 2004, it had still not heard back from EHS in March 2006. Moreover, EHS had told this particular company that it was regarded as having a high risk site which would be one of the first to be dealt with under the new regime. While this delay was obviously resulting in a negative impact on the environment, the firm in question was benefiting financially; the company estimated it would need to invest between £20,000 and £50,000 to upgrade its equipment to the standards required by the PPC permit process, once it was eventually required to do so by EHS.

However, another firm was very frustrated because it had been waiting for six months for a PPC permit so that it could open a new landfill site. A company executive said:

We feel it's an unreasonable amount of time to have to wait. 90 days should be enough. That's the length of time EHS was promising that such applications could be turned round in.

¹⁰ Details have been omitted from this quote to protect anonymity.

The same company also had an existing landfill site which was near the end of its life as it was almost full. It was still operating under its old local authority licence, despite the fact EHS told the company three years ago that it would be reviewing the licence. “We’ve heard nothing since then,” said the company’s representative.

Frustration at delays in obtaining licences and permits is not restricted to the private sector. John Quinn, of Arc 21, said that local councils, which currently outsource recycling work, would like to set up their own recycling facilities and also upgrade their existing waste facilities to comply with EU requirements. But they were being held up by the very lengthy time it was taking to process applications for new waste management licences and the new PPC permits:

We have very big problems with the way EHS is run. Currently, their big focus is on unauthorised dumping. But a lot of other things aren’t getting the attention they need. I think there needs to be a lot more resources.... Although staffing levels in EHS have expanded dramatically, they still don’t have sufficient staff for licensing and permitting. This has a potential impact on the development of our infrastructure in Northern Ireland. You can’t operate without a permit. We’re anxious to get the new infrastructure in place so that we can deal with the [waste management] targets which we’ve been set.

Mr Quinn also said that, under the new Integrated Pollution Prevention and Control regulations, many local authority landfill sites would have to close because they did not meet the new standards and it would be too costly to upgrade them. Some of these closures were being delayed by the tardiness of the PPC permitting process.

Monitoring, enforcement and advice

A few firms felt that the EHS was not robust enough in pursuing its monitoring and enforcement role. There was certainly evidence of a somewhat laid-back attitude to inspection by the EHS in some instances as detailed below in data taken from the interviews:

- Company A’s main site had only been visited by EHS twice in the previous four years. The company maintained that the inspectors had never suggested any improvements nor outlined any of the requirements with which the firm should have been complying. “Any changes we’ve made have been on our own initiative,” said a company executive.
- Company B’s main site had received just two visits from EHS inspectors within the previous three years. Moreover, both visits had been initiated by his company.
- While Belfast City Council had inspected Company C’s site on a weekly basis when it was responsible for inspection, EHS only visited twice a year.
- Company D also said it was visited on a weekly basis by Belfast City Council, but had only been visited once or twice a year by EHS since it took over responsibility for inspection. Moreover, none of EHS visits had been unannounced.

One respondent observed:

We have very high standards, so we’ve nothing to fear from frequent visits. Our competitors, who don’t give a toss about the regulations, aren’t being monitored anything like as closely as they should be.

He also felt the inspections were insufficiently thorough because EHS staff lacked the necessary expertise and experience:

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I think they recognise that. They're on a very steep learning curve at the moment. Very few EHS personnel have ever worked on a landfill site.

However, some firms were very satisfied with the current inspection regime. One company reported that EHS inspectors visited every two months, sometimes on an unannounced basis. These inspections were very thorough. Although the representative of this company knew of waste companies in Great Britain whose sites were inspected on a fortnightly basis, he did not feel such a high frequency of visits was necessary. Views on the optimum frequency for visits varied. Two further respondents felt inspections should take place on a monthly basis, while another said they should happen on a quarterly basis.

One executive with extensive experience of both Northern Ireland and Scotland said that SEPA often made very frequent visits to sites. These were a mixture of planned and unscheduled inspections. Landfill sites could be visited as frequently as twice a week in order to monitor closely the material going into those sites. This businessperson also contrasted EHS unfavourably with SEPA in terms of its helpfulness:

I've always found EHS to be quite unapproachable and difficult to deal with. They're pedantic and intransigent. By contrast, we've found SEPA very approachable. It may be a resources issues. Maybe the people you speak to at SEPA have time to talk.

David Wilson, a Director of Irish Polymers, said the Irish Environmental Protection Agency (EPA) was far tougher in its approach than EHS. "We get calls from companies in the Republic fairly regularly," he said. "They'll say they have EPA inspectors on site and they need certain paperwork faxed urgently." However, he also had high praise for EHS's waste export accreditation staff who, he said, had been very helpful and thorough in their dealings with his company.

Yet there were complaints from some companies about what they saw as the unhelpful and unapproachable attitude of some staff at EHS. One executive said:

There are a lot of grey areas [regarding legislation] where you find it difficult to get EHS to give you their take on it. But they'll happily pay you a visit and tell you you're not complying with the legislation.

He felt EHS should be prepared to offer more specific advice to companies. Another respondent was very angry because EHS spent 18 months carrying out an investigation into his firm which was then dropped with no explanation:

There was an impact on our reputation because the industry knew that an investigation into our company was going on.... If the investigation had taken two or three months, then fine. But to take eighteen months – that's completely unacceptable.

Registration of carriers of waste

A few companies also felt that the system of registration for carriers of waste was too lax. One, David Wilson of Irish Polymers, said:

You can buy a licence for £60 [the current fee in Northern Ireland is actually £120] and that's it. There appears to be no enforcement and no real purpose to it [the requirement to register as

a carrier]. There is no sense that there's any need to display any competence in order to get the licence...The transportation of waste should be treated as a serious issue.

An independent regulator for Northern Ireland?

Most of the private sector interviewees were either against the idea of an independent environmental regulator or had no strong view on the issue. Few firmly supported the idea. One executive, with experience of Great Britain, said that, when SEPA was first created, it faced a lengthy and sometimes painful learning curve which lasted for about five years.

When they [SEPA] first came in, they were a disaster – as was the Environment Agency in England. It took SEPA five years to find its feet.

This interviewee maintained that the problems at SEPA were due to three key factors: staff from different bodies were put together and were not used to working with each other, staff lacked the right technical expertise, and there was a lack of sufficient resources. As this respondent observed, “Changing something doesn't necessarily make it any better.”

However, a few respondents supported the idea of an independent regulator. One said:

An independent regulator would be accountable and auditable. The Environment Agency are far more proactive and far more consultative in their approach than the high and mighty EHS.

There was much wider support among the respondents for any moves by government to provide the EHS with more staff, greater expertise, and sufficient resources.

The EHS and SEPA: a comparative analysis

Transparency and accountability

One of the arguments which proponents have voiced in favour of an independent environmental protection agency for Northern Ireland is that it would operate in a more transparent way. In the course of this study, several requests were made to both EHS and SEPA for similar information. Although EHS generally (although not always) managed to provide a response within 20 working days, SEPA responded much more rapidly to requests for information.¹¹ All questions to SEPA were answered within two weeks, and sometimes much more quickly. Moreover, a member of staff at SEPA initially offered to provide further clarification by telephone and, when contacted by telephone, was most helpful. Although requests were made to EHS to provide someone who could provide further clarification by telephone, these requests were not responded to.

However, of particular concern was the fact that EHS refused to answer a series of questions concerning the number of landfill sites in Northern Ireland and the situation regarding the PPC permitting process. These included questions as simple as “How many landfill sites are there in Northern Ireland?” and “How many are operated by a private individual or company?” Much of the requested information pertaining to England, Wales and Scotland is available on the websites of the

¹¹ 20 working days is the maximum time permitted for a response to a request for information under the Environmental Information Regulations 2004.

EA and SEPA. SEPA was able to supply further broad statistics and information relating to the PPC permitting process in a telephone conversation. EHS, however, described the query as “manifestly unreasonable” and stated:

...the information requested is extensive and of a specialist nature. Currently the Department has one member of staff with the expertise to answer the request. This member of staff is currently engaged in important and deadlined work relating to European directives. It would not be in the public interest to divert staff from this work for the considerable period of time required to answer your request. The Department believes, therefore, that the public interest in maintaining the exception [to the legal right to such information] outweighs the public interest in disclosure.¹²

The full list of questions to which the DOE refused to respond is appended to this report. The fact that the DOE is unable to quickly access this information suggests serious shortcomings in the systems it is using to collate, organise and maintain its information systems. These failures must be impacting significantly on the efficiency of EHS waste regulation in general and its implementation of the PPC permitting process in particular.

Budgets

As noted above, many private sector respondents suspected that lack of resources was one of the main factors behind the various shortcomings they identified. However, a comparison of available budgetary information relating to EHS and SEPA does not bear this out. The comparative figures suggest that EHS is generously resourced compared to SEPA.

In 2004-5, SEPA spent a total of £5.5m on its waste regulatory activities.¹³ Its projected budget for 2006-7 is likely to be approximately £6m. This includes an additional £500,000 towards the processing of PPC landfill applications. In the same financial year, EHS was allocated a budget of almost £19m, although it spent only £16.2m. While SEPA does not make grants to local councils, EHS spent £10.6m on local council grants. Thus, its actual expenditure on waste-related activities other than council grants for 2004-5 was £5.6m. Excluding grants to local councils, EHS's actual waste-related expenditure in 2005-6 was once again £5.6m, while its budget for 2006-7 for these activities is rising to £7.6m.¹⁴

It would seem, therefore, that EHS has similar budget to SEPA for activities related to waste regulation, even though it is responsible for a territory with a population of just one third that of Scotland's.¹⁵ On this basis, it seems unlikely that a lack of resources explains any of the shortcomings documented above, although it must be borne in mind that it appears EHS has had to devote proportionately more staff resources to prosecution than has SEPA (see below).

¹² Correspondence from the EHS to the author, 25th April 2006. All figures relating to budgets and expenditure have been rounded up or down to the nearest £0.1m.

¹³ SEPA's accounts for 2005-6 were still being finalised at the time of writing.

¹⁴ The 2005-6 figure is provisional.

¹⁵ Figures taken from 2001 Census. Scotland's population is approximately 5.1 million while Northern Ireland's is 1.7 million.

PPC permits

As noted earlier, in order to comply with the requirements of the EU Integrated Pollution Prevention and Control Directive and the Landfill Directive, legislation has been introduced throughout the UK which requires landfills to meet the standards stipulated in these directives. However, EHS is lagging behind both the EA and SEPA in its implementation of these directives.

Table 1: comparative information on the PPC permitting process			
	Environment Agency	SEPA	EHS
Deadline for submission of SCPs for existing landfill sites	June 2002	July 2002	February 2004
Period during which operators required to submit PPC permit applications ¹⁶	June 2003 ¹⁷ – May 2006	March 2003 - March 2007	June 2006 ¹⁸ - March 2007
Number of sites closed involuntarily because SCPs judged to be inadequate/evident site could not meet required standard	6	2 (closure notices have been served)	Information not available

The new legislation requires operators of landfill sites to have a Pollution Prevention and Control (PPC) permit for their site. This applies to both existing and new sites. In each territory, operators of existing sites were first asked to submit a Site (or Landfill) Conditioning Plan (SCP). The three relevant agencies – the EA, SEPA and EHS – then make an assessment, on the basis of these Plans, as to whether there is a realistic prospect of the site meeting the new standards. If not, each respective agency must require the closure of that site as soon as possible. If the site is thought to be operating at or capable of meeting the new standards, the information in the SCP is used to set a deadline for submission of a PPC permit application. This decision involves assessing the degree of environmental risk posed by the site; those with the highest level of risk must be dealt with first.

As can be seen from Table 1, EHS's deadline for the submission of SCPs was eighteen months later than the deadlines set by the EA and SEPA. Moreover, while the EA and SEPA embarked on the processing of PPC permit applications within a year of the SCP deadline, there has been a gap of more than two years since the SCP deadline in the case of EHS. As can be seen, EHS is setting its final deadline for low-risk PPC permit applications in March 2007 which is the same end-point as SEPA. It thus appears to be aiming to process applications far more quickly than the EA and SEPA which have phased the process over a period of three to four years. There must be some doubt as to whether this ambitious timetable can be adhered to.

Indeed, the deadlines which have been set will not meet the timetable stipulated in the relevant legislation. The Landfill Regulations (2003) Northern Ireland require that sites which are obliged to have PPC permits should have been granted them by 31st March 2007.¹⁹

¹⁶ In each case, the final date relates to the deadline for applications relating to the sites posing the lowest risk. Earlier deadlines within the stated period were set for higher risk sites.

¹⁷ The deadline for applications for the sites posing the greatest risk fell in June 2003.

¹⁸ The deadline for applications for the sites posing the greatest risk falls in June 2006.

¹⁹ Statutory Rule 2003, No 46, *The Landfill Regulations (2003) Northern Ireland*. Explanatory note. Available at: <http://www.opsi.gov.uk/Sr/sr2003/20030496.htm#7> Landfills must have PPC permits by this date if they receive more than 10 tonnes of waste in any day or have a total capacity of more than 25,000 tonnes, except where they

The PPC permitting process is of great significance as it is likely to lead to the closure of many landfill sites in Northern Ireland. In Scotland, 147 of the 257 landfill sites are closing down as a consequence of the landfill regulations. As can be seen from Table 1, SEPA is only having to enforce the involuntary closure of two of those sites. A third of the sites which are closing down are run by local authorities and, in these cases, the councils have decided it would not be economic to upgrade the site to the required standard. Most of the other sites would have been coming naturally to the end of their life by Scotland's deadline for holding a PPC permit (November 2007) or have closed already.

Overall, the number of landfill sites in Scotland will be reduced by more than 50 per cent as a result of the introduction of the PPC permit system. SEPA is anxious to stress that this will not mean a 50 per cent reduction in landfill capacity, as there are a small number of very large commercial landfill sites and many medium-size sites which will meet their obligations under the new system. However, the system will undoubtedly have a considerable impact on Scotland's overall landfill capacity and on the structure of the country's waste industry.

There seems little doubt that there will be similar changes in Northern Ireland.²⁰ However, EHS was not able to provide – and says it cannot easily access – any information on the number and type of landfill sites which will be closing under the PPC process. This seems extraordinary considering that its deadline for the submission of SCPs was February 2004.

Both the NIAO and the PAC criticised EHS for its lack of reliable data on waste streams which was creating difficulty for effective planning and monitoring. EHS's inability to access information on the PPC permitting system which it is supposed to be running suggests that its information management problems are widespread. Certainly, it is hard to see how it can effectively plan for a reduction in landfill capacity when, two years after it should have received all the necessary information, it has no idea how many sites, and what type of sites, are likely to close under the new system.

Approaches to enforcement and inspection

As noted above, some private sector respondents felt that EHS was insufficiently rigorous in its approach to enforcement and inspection. One respondent compared EHS unfavourably to SEPA in this regard. At the same time, some respondents also perceived EHS as unapproachable and unhelpful.

It lay outside the remit of this study to test out the approachability and helpfulness of the staff of EHS and SEPA beyond making enquiries which related specifically to this study. However, a comparative analysis was undertaken of the availability and accessibility of guidance and information on the websites of both organisations.

SEPA's website contains far more information and documentation relating to waste regulation than does EHS site. Information is accessed more easily via the website's search facility or via links than is the case with EHS website. However, EHS website is more user-friendly; SEPA website provides information under useful headings, but as a collection of links with no explanatory text. EHS website does provide explanatory text which provides a context for the links which are available.

take only inert waste. While the above legislation also sets a later deadline of 16th July 2009 for a separate category of landfill, the legislation refers to a categorisation of landfill site in *The Pollution Prevention and Control Regulations (Northern Ireland) Regulations* which simply reads 'Nil'. The latter regulations are available at: <http://www.opsi.gov.uk/sr/sr2003/20030046.htm#sch1>

²⁰ See EHS (2003) *Interim Needs for Landfill Capacity 2003 – 2007* (Belfast: EHS), pp. 31-2. This predicted that the implementation of the Landfill Directive would result in the closure of many council-run and private sector landfill sites, and would have a significant impact on overall landfill capacity. However, in the absence of the information which the EHS now has in the completed SCP forms, it was unable to make any specific predictions.

Table 2 provides some comparative examples of the availability of guidance for waste operators.

As noted in Table 2, SEPA publishes the criteria it uses to assess the frequency of its inspection visits to each waste disposal or treatment site. Where a site is very well-run and there is judged to be no risk of pollution, it may only receive one inspection visit a year. On the other hand, high-risk sites which are not well-run could receive visits on a weekly basis.²¹ The availability of such detailed criteria and procedures – relating to all sites which can be a source of pollution and not only waste sites – is obviously of immense value to site operators. They know exactly what to expect and can be assured the systems are in place to enable each site to be dealt with in an equitable and fair manner. If EHS was to publish such criteria for its own inspection procedures relating to waste sites, not only would the move help to ensure that site operators were treated fairly and consistently, but it might well help to dispel the current perception that smaller and illegal operators are allowed to ‘get away with it’. Moreover, such criteria would also help to ensure that the resources available for monitoring and enforcement were deployed in the most effective and efficient way possible.

²¹ SEPA *Risk Assessment Manual* Available at: <http://www.sepa.org.uk/pdf/guidance/enriskmanual/enriskmanual.pdf> This manual is currently being reviewed by SEPA.

Table 2: comparative examples of guidance available on each agency's website		
Type of guidance	SEPA	EHS
Information on frequency of inspections and criteria used for decisions on frequency	<i>Risk Assessment Manual</i> – outlines in detail criteria for assessing frequency of inspections and stipulates number of annual inspections depending on that evaluation	No available information
Information on enforcement policy	<i>Policy Statement on Enforcement</i> – leaflet, also available on the website. Includes information on penalties.	<i>Enforcement and Prosecution Policy for Environmental Protection</i> (available via Google search engine, but not the EHS website's own search facility)
Information on how the agency is interpreting the EU End-of-Life Vehicles Directive (relating to cars which are being 'scrapped')	<i>Guidance on the Standards and Storage of End-of-Life Vehicles</i> – produced jointly by SEPA and the Environment Agency	Very brief summary. A link to guidance on depolluting end-of-life vehicles did not work at the time of writing this report.
Guidance on the procedure for closing landfill sites under the Landfill Directive	<i>Interim SEPA Technical Guidance Note Closure Procedure for Landfill Sites currently operating under Waste Management Licences</i>	No guidance available
Disposal and treatment of agricultural waste	<i>Agricultural Waste Leaflet</i> , also on website, which provides guidance on the disposal, treatment and storage of agricultural waste	<i>Waste Management Regulations (NI) 2005 Leaflet</i> , also on the website of the Department of Agriculture and Rural Development, but not the EHS website. Contains briefer guidance than the SEPA document.

Prosecutions and fines

Although most of the private sector respondents in this study felt that EHS was not taking sufficient action against illegal operators, indicative comparative data for EHS and SEPA suggest that EHS has been initiating far more prosecutions on a pro rata basis. The number of incident reports and prosecutions was compared for EHS and for the Edinburgh area office of SEPA (which covers much of the Lothian area as well as Edinburgh). The latter covers an area comprising approximately 1.2m people, compared to Northern Ireland's population of 1.7m. Obviously, the number of legal and illegal waste sites would be a more useful point of comparative reference, but that information is not available with respect to Northern Ireland.

In the years 2004 and 2005, EHS brought to court, through the Public Prosecution Service for Northern Ireland, 82 cases which resulted in successful prosecutions and one case which resulted in acquittal. During this period, EHS's Waste Management and Contaminated Land's Licensing and Authorisations Unit dealt with 2,576 incident reports. In Scotland, SEPA refers such cases to the Procurator Fiscal and does not keep a record of the cases it refers. However, its records show that, during 2004 and 2005, there were seven court cases in the area covered by SEPA's Edinburgh office relating to waste offences. Each of these resulted in a conviction and a fine ranging from £100 to £4,000. During the same period, SEPA's Edinburgh office received 1,339 complaints relating to alleged illegal waste activities.

Using the respective population sizes as an approximate guide, EHS dealt with a comparatively greater number of what it terms 'incident reports'; had it been receiving incident reports at the same level as SEPA's Edinburgh office, it would have received approximately 1,900 such reports during this period.²² However, although an exact comparison cannot be made, it would appear that EHS is taking a much higher proportion of cases to court than SEPA's Edinburgh office. This may reflect a greater willingness to prosecute or it may simply reflect a much greater level of illegal activity in Northern Ireland. Nevertheless, the figures do contradict the perception that EHS is unwilling to act against illegal operators.

However, based on the quantity and content of the news releases published on the websites of SEPA and EHS, it would appear that SEPA has been producing news releases on illegal waste court cases more frequently than EHS. EHS could help to counter the view that it is not doing enough to target illegal operators by putting resources into obtaining media coverage of a larger proportion of the cases it brings to court.²³

As EHS was unable to provide information on the fines imposed in each of its successful prosecution cases, it was not possible to compare the level of fines which were imposed by the courts in Northern Ireland and in Scotland.²⁴ However, the information available through news releases suggests broad comparability.

Waste carrier registration

In light of the concern expressed by a few of the private sector survey respondents with regard to waste carrier registration, both EHS and SEPA were asked what checks were made. The responses from both bodies suggest that it is extremely easy to obtain such registration. SEPA supplied the following statement:

SEPA will register those seeking to be carriers of controlled waste unless they are known to have convictions for certain environmental offences specified in legislation. In such circumstances an assessment of the number of [sic] seriousness of the offences is made before deciding whether to accept registration.²⁵

²² It was not possible, within the timescale of the study, to ascertain whether the EHS's categorisation of an 'incident report' is the same as SEPA's categorisation of a 'complaint'. However, the statistics were produced by each respective body in response to a question which was worded in the same way in each case i.e. 'On how many occasions did a member of the public make an allegation or express concern to [the body in question] about alleged illegal waste activities in Northern Ireland?'

²³ The EHS has told Friends of the Earth Northern Ireland that it is now the policy of the EHS to produce news releases on all court cases.

²⁴ Information was sought from the Northern Ireland Court Service in this regard. However, its response was not forthcoming at the time of writing this report.

²⁵ Correspondence from SEPA to the author, 27th April 2006.

EHS does, at least, make some checks. It provided this statement:

I can confirm that checks are undertaken through the Companies Registry to ensure the application details are correct. This involves a check on the applicant's company registration details. Spot-checks are also carried out entailing liaison with the Enforcement team within EHS Land and Resource Management Unit to ensure no prosecutions have been recorded against any applicant. In addition to these processes a random ten per cent of the applications received during each month are checked against EHS incidents database to ensure that no complaints have been reported about the applicant.²⁶

Thus, given that SEPA's only criteria relates to those "known to have convictions" and that EHS relies on "spot-checks" on applicants' past prosecutions, an illegal operator with minor previous convictions stands a reasonable chance of obtaining a waste carrier permit. Considering the potential hazards posed by the transportation of waste and the fact that illegally dumped waste must first be transported, there would seem to be a strong case for the introduction of much more stringent checks on the part of both SEPA and EHS. This could be financed through increased charges; the current charge for a carrier application is just £145 in Scotland and £120 in Northern Ireland.

Conclusion and recommendations

The most striking aspect of the EHS approach to waste regulation which emerges from this study is its lack of transparency, and the considerable weaknesses in its systems for information management. If EHS was forced to be more transparent about its activities, there would no doubt be a significant improvement in its record-keeping and ability to access its own data. Greater transparency would also assist in promoting greater understanding within the waste industry of EHS and the pressures it faces.

While the most widespread concern among the private sector respondents related to the perceived failure by EHS to target illegal operators effectively, its recent prosecution and conviction rate suggests that EHS is making a considerable effort to catch illegal operators. It may well be, however, that further resources are required. Certainly, EHS could improve awareness of its achievements in successfully prosecuting illegal operators by putting resources into obtaining high profile media coverage of a larger number of the cases it brings to court.

Evidence from the interviews with private sector respondents suggested that there may be shortcomings and inconsistencies in EHS approach to the monitoring and inspection of waste sites. It would be of great assistance to operators if EHS could follow the example of SEPA and publish a manual which details the criteria used to decide how often a particular site should be visited, and which provides details of the frequency of inspections for each category of site.²⁷ The risk-based approach employed by SEPA offers a consistent and cost-effective basis for determining the frequency of inspection visits. It would appear that inspections would be most effective if at least 50 per cent of the inspection visits to any site were unannounced.

Concern was also expressed by a number of respondents about delays in applications for PPC permits and in reviewing existing waste management licences. EHS should publish performance targets which stipulate the maximum period of time between the submission of an application and the granting of a permit or licence. It should also have a policy of providing regular updates to applicants on the progress of their application.

²⁶ Correspondence from the EHS to the author, 25th April 2006.

²⁷ The EHS has informed the author that it intends to publish such information on its website in December 2006.

The system for waste carrier registration appears to be inexcusably lax in both Northern Ireland and Scotland. We would recommend that rigorous checks are carried out on all applicants, and that the resultant increase in costs should be met through an increase in the very modest application fee.

While many respondents believed that a lack of resources was at the root of many of the perceived shortcomings in EHS regulation of the waste sector, this assertion was not borne out by a comparison of the amount which SEPA and EHS spend on activities related to waste regulation. On the basis of this particular comparison, EHS would appear to be generously funded. Again, the lack of data in the public domain for EHS makes it difficult to reach any firm conclusion on this issue. However, it may well be that, in some instances, EHS lacks staff with the right expertise to perform their roles in an efficient and effective manner.

While most of the private sector respondents were not particularly supportive of the idea of an independent environmental regulator for Northern Ireland, there seems little doubt that the creation of such a body would result in a higher level of transparency and accountability. That, in turn, would be likely to lead to better information management, greater awareness among the public and the waste industry of EHS (or a renamed successor body) and its activities, and more effective implementation of the legislation and government policy relating to waste regulation.

Appendix

Below is a list of the questions which EHS refused to answer as detailed in the report:

1. How many landfill sites are there in Northern Ireland?
2. How many are operated by a private individual or company?
3. How many are operated by local councils?
4. How many are operated by other bodies?
5. With respect to how many landfill sites did operators submit Site Conditioning Plans?
6. With respect to how many landfill sites has EHS requested that operators apply for a PPC permit?
7. With respect to how many landfill sites did operators, when submitting a SCP, recognize that the site was not suitable to comply with the Landfill Directive and therefore they would not be applying for a PPC permit?
8. With respect to Q 7, how many of these sites are privately operated, how many are operated by local councils and how many are operated by other bodies?
9. On the basis of the SCP submitted, did EHS assess any sites as not suitable to comply with the Landfill Directive?
10. With respect to Q 9, how many of these sites were privately operated, how many operated by local councils and how many operated by other bodies?
11. With respect to Q9, what action has EHS taken with regard to any sites deemed as not suitable to comply with the Landfill Directive?
12. With respect to how many sites did operators fail to submit a Site Conditioning Plan?
13. With respect to Q12, how many of these sites are privately operated, how many operated by local councils and how many operated by other bodies?
14. With respect to Q12, how many of these are closed and how many are not operating at present?
15. With respect to Q14, how many of these sites are privately operated, how many operated by local councils and how many operated by other bodies?
16. With respect to Q14, what deadline have the operators of these sites been given for the submission of Site Closure Plans and for ceasing to accept waste?
17. With respect to Q14, why is EHS not taking immediate action to enforce and regulate the closure of these sites?
18. With respect to Q12, how many of these sites do not fall under the category of 'closed or not operating at present' as per your letter of 28th February?
19. With respect to Q18, how many of these sites are privately operated, how many are operated by local councils and how many are operated by other bodies?
20. With respect to Q18, what action, if any, has EHS taken in each instance?
21. If an operator failed to submit a Site Conditioning Plan by the due deadline, were they guilty of any offence under the Landfill Regulations (NI) 2003 or any other legislation? If not, what powers are available to EHS to enforce compliance with this requirement?
22. Is it correct that the Landfill Regulations (NI) 2003 applies to all landfill sites, regardless of whether or not they have a waste management licence, except for the exemptions listed in the legislation?

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