

APPENDIX 1

INTERIM REPORT OF THE COMMITTEE FOR THE ENVIRONMENT – INQUIRY INTO THE MANAGEMENT OF USED TYRES – DEPARTMENT’S RESPONSE

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- I. **“The Department should finalise and implement its flytipping protocol setting out thresholds for councils and NIEA to deal with flytipped waste. The threshold for non-hazardous waste should be 20m³ and councils should not have to bear any responsibility for hazardous flytipped waste.”**

Response: A Framework and thresholds have been agreed by the Assembly and a Working Group with NIEA and local government representatives is in place. NIEA will have responsibility for the most hazardous waste including all fuel laundering residue and asbestos regardless of quantity. Councils will remain responsible for some hazardous waste streams such as WEEE, lead acid batteries and contaminated packaging (typically waste that can be accepted at recycling sites).

Action: NIEA has commenced a 12-month pilot project with 11 councils to help develop operational arrangements.

II. “NIEA should develop a risk-based approach to enforcement that focuses its resources on illegal activity.”

Response: NIEA operates in line with its published Enforcement Policy and already has in place a risk-based approach for undertaking all of its regulatory activities. The Environmental Crime Unit does not have the resources to deal with all illegal activity and concentrates on the most serious, criminal, waste activities. The Minister believes this is the right approach, wishes to develop the work of ECU and have greater enforcement generally.

Action: The Land and Resource Management Unit Waste Licensing team has recently set up an Enforcement Section to deal with non-compliant waste activity. However its resources are currently limited, therefore, the section will, in the short term, concentrate on enforcement cases involving serious breaches of waste licences and exemptions.

- III. “NIEA should liaise more closely with local authorities and PSNI to provide a partnership approach to ensuring compliance. This should include cooperation with and involvement of the local council when issuing licences within that area and when monitoring how they are being implemented.”**

Response: District councils are consulted on all waste management licence applications and are sent copies of licences when granted for their register. The Agency’s Licensing staff liaise regularly with council officials and work closely in relation to complaints or incidents.

Action: NIEA has set up a liaison group with council. This work will require close liaison with the PSNI. NIEA has recently signed a co-operation agreement with the PSNI which should facilitate such joint working.

IV. “The Department should conduct regular compliance inspections prior to the granting of a Waste Management Licence to ensure this unlicensed period is not being taken advantage of by unscrupulous operator.”

Response: The Agency’s Waste Management Licensing Unit is wholly dependent on the fee income it generates and does not currently have the resources to cover regular compliance inspections of unlicensed sites.

Action: The implementation of this recommendation would be very much subject to the availability of additional resources to carry out such inspections and commence enforcement proceedings if required.

In the interim the Department is taking legal advice to support its enforcement approach, and ensure that any unlicensed period is not taken advantage of by unscrupulous operators.

- V. **“The current rationale for allowing some practices to operate under an exemption from the Waste Management Licence in relation to used tyres should be examined and updated.”**

Response: Article 24 of the Waste Framework Directive provides Member States the discretion to exempt certain low risk waste management activities from the requirement to obtain a full permit or licence. The UK Member State has availed of this discretion to provide a lighter touch regulatory regime for lower risk waste activities, which is also in keeping with its Better Regulation policies. Accordingly, there are three exemptions available for the reuse, storage or recycling of waste tyres. NIEA is required to operate in accordance with the Waste Management Licensing Regulations (NI) 2003 (as amended). The Agency has, however, as part of the draft Tyre Action Plan taken a more stringent approach when assessing the registering and inspections of exempted tyre sites.

Action: The Department agrees that, in view of the introduction of newer technologies, knowledge gained and progress made since the 2003 Regulations came into operation, a review of current exempt and licensable activities is required. This would be a major project which is likely to take several years to complete and other priorities have prevented this being brought forward to date. The Minister will consider the matter.

VI. The Office of Fair Trading should be asked to investigate discrepancies between the levies charged by retailers under the Duty of Care system in Northern Ireland and those in the other regions of the UK.

Response: The Office of Fair Trading is part of DETI and has a statutory responsibility to apply The Consumer Protection Act 1987. The aim of the Act is to help safeguard the consumer from products that do not reach a reasonable level of safety, for example, sale of new tyres, retreaded tyres and part worn imported tyres. The recycling levy applied by some tyres retailers is a voluntary agreement between the retailer and the customer.

Action: I have written to the DETI Minister, drawing her attention to the Committee's report and recommendations. The Committee may also wish to contact the Office of Fair Trading about this issue.

VII. “NIEA should conduct compliance checks before issuing Waste Carrier Licences and should monitor the holders afterwards increasing the cost of the licence to cover this if necessary.”

Response: NIEA staff do carry out all the compliance checks required under the Waste Carrier Regulations and the Agency also carries out sample checks of carriers.

Action: The Agency intends to recruit additional technical staff to strengthen the compliance and enforcement of the Regulations. A review of the current fees will be carried out to ensure these costs are covered.

VIII. “NIEA should publish on its website lists of currently licensed re-processors and those in breach of their licence and update it weekly.”

Response: This additional IT development of the database was scheduled and completed last autumn. The Public Register on the website is now updated daily to indicate the status of the licence, that is, suspension, surrender or revocation.

Action: None required as the recommendation has been completed.

- IX. “The Department should conduct a communications campaign through its ‘Re:think Waste’ brand to highlight the value of recycling tyres.”**

Response: A bespoke communications campaign would require additional budget. There is currently a constraint on advertising, with a cut of 20% on expenditure against a 2010/11 advertising baseline, across all Departments. Although such a campaign, targeted at industry, would be advantageous, there may be no or limited scope for inclusion of a bespoke tyre advertising campaign during the 2012/13 financial year.

Action: To raise general awareness, the DOE Rethink Waste website, e-Zines and Facebook will shortly include messages on the value of recycling tyres.

- X. **“Northern Ireland should liaise with the Republic of Ireland when considering a suitable mechanism for dealing with used tyres. A strict producer responsibility scheme would be counterproductive unless introduced in both jurisdictions.”**

Response: Officials have met with counterparts in the Department of Environment, Community and Local Government (DECLG) in Dublin to discuss the current and developing policy and legislative environment on tyres. It is accepted that establishing a producer responsibility scheme only for Northern Ireland is unlikely to be workable and that cross-border issues need to be taken into account.

Action: The Department will continue to liaise with counterparts in DECLG to consider potential policy and legislative mechanisms. The Minister continues to work closely with his Dublin colleagues in this regard through the NSMC,

XI. “In the longer term, Northern Ireland should consider the introduction of a strict producer responsibility scheme but the nature of such a scheme and its timing should be developed in close liaison with the Republic of Ireland as indicated in recommendation X.”

Response: A strict producer responsibility scheme is unlikely to be workable for Northern Ireland unless also adopted by the other UK administrations. Such a scheme is likely to be complex and costly and, it is agreed, that it would also need to be developed in liaison with DECLG and EPA.

Action: The Department will consider the merits of introducing a strict producer responsibility scheme bearing in mind the policy environment in Britain and the Republic of Ireland.

XII. “In the short term, the Department should require all sectors in the used tyre chain to register with a compliance scheme to enable it to be more proactive in the tracking and enforcement of tyres including the auditing of retailers.”

Response: The Department has the legal powers to control waste activities but does not have powers under the waste management licensing regime to require all sectors in the used tyre chain to register with a compliance scheme or to audit tyre retailers as recommended. Therefore, the introduction of such measures would require primary legislation.

Under the existing Duty of Care regime the movement of waste, including tyres, must be accompanied by a Waste Transfer Note (WTN). The Department has just completed producing new guidance on the application of the Duty of Care and has developed a new WTN which requires better information to be contained therein. WTNs must be kept by those carrying, treating or disposing of waste for a minimum of two years and must be provided to the Department upon request.

Action: The Department will consider this further in line with recommendations X and XI.

XIII. “NIEA should regularly participate in the UK-wide used Tyre Working Group.”

Response: An Agency official now participates in this Group.

Action: None required as the recommendation has been completed.

XIV. “The Department should establish a robust method of quantifying the amount of waste tyres arising in Northern Ireland on an ongoing basis with a clear indication of what proportion of these is not recovered and utilised in a proper manner.”

Response: The Department recognises that the information it currently holds in relation to all commercial and industrial (C&I) waste, not just for tyres, is not as robust as it would like. Accordingly, as part of its revision of the NI Waste Management Strategy, which is due for publication at the end of this year, the Department has been looking at ways to bridge this gap.

Action: The Department is currently considering options for obtaining more robust C&I data. The All Island tyre survey shall also be complete by the end of July 2011.

XV. “The Department should require public bodies to quantify and report the number of waste tyres found on their property before making arrangements for their disposal.”

Response: The Flytipping Framework and thresholds have already been agreed by the Assembly and a Flytipping Working Group has been set up with NIEA and local government representatives.

Action: NIEA has commenced a 12 month pilot project with 11 councils to help develop operational arrangements. NIEA will consider this recommendation when developing these arrangements.

XVI. “NIEA should carefully, clearly and quickly identify definitions of end of waste in a proactive rather than reactive way so that recyclers can plan their marketing strategies confidently and respond rapidly to changing global markets.”

Response: End of Waste (EoW) is a new definition which was introduced in the EC revised Waste Framework Directive. EoW only came into operation in Northern Ireland on 8 April 2011 through the Waste Regulations (NI) 2011. The European Commission is bringing forward EU-wide EoW criteria for a number of waste streams, including waste tyres. These will be presented as Commission Decisions which are directly applicable in law.

Action: The Department has set up an EoW Group and intends this financial year to produce detailed guidance and procedures. In doing so the Group will need to take into account legislative and policy issues, ensure consistency with other sister Agencies in Britain and other member states, particularly Ireland, and crucially fulfil the objective to minimise risk of pollution of the environment and/or harm to human health. EoW is not as yet resourced and NIEA are seeking approval for additional staff. The Department would wish to emphasise that once a waste becomes a product again, it falls outside the control of waste legislation. This would include waste tyres which become non-waste tyre products.

XVII. “All tyre depots should be required to submit an annual report to NIEA.”

Response: NIEA introduced the requirement several years back that all licensed site operators must submit quarterly data returns. The response to recommendation XII also refers in that the Agency has no powers to require others, such as, retailers and wholesalers to submit an annual report.

Action: As at recommendation XII.

XVIII. “NIEA should publish on its website a list of licensed waste carriers and update it on a regular basis.”

Response: The public register for waste carriers has been published on the NIEA website for quite a few years and is now updated daily. This is a significant improvement in customer service.

Action: The information included in the register will be enhanced with the inclusion of the expiry date of registration.

XIX. “The Department should conduct adequate policing of tyre depots to ensure all tyres are accounted for.”

Response: NIEA has increased its monitoring and auditing of licensed and exempt waste tyre sites. The Agency has no statutory remit to police tyre retail and distributor premises except to audit waste transfer notes. As stated in the report this is in any case an ineffective means to account for tyres and would be extremely resource intensive.

Action: The Department proposes to develop a close working relationship with the district councils and Office of Fair Trading to improve the policing of tyre depots.

XX. “Farmers should be required to record the number of tyres held on their farm on their annual IACS return.”

Response: Those farmers who apply for single farm payment are currently completing their IACS returns for 2012.

Action: NIEA is liaising with DARD to have this request for information in the 2013 IACS return.