



# Evidence

Understanding and improving SME  
compliance

Report: SC080017/R2

Resource efficiency programme  
Evidence Directorate

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Miranda Kavanagh  
**Director of Evidence**

# Executive summary

The objectives of this research were to:

- provide an initial assessment of the challenges that arise for the Environment Agency in its interactions with SMEs, through both traditional regulation and other initiatives to improve SMEs environmental performance;
- identify, and assess the effects of, initiatives taken by the Environment Agency to address these challenges.

The context for this work was the Environment Agency's efforts to continuously improve its regulatory approach and the need to specifically address the impacts of SMEs, which are responsible for about half of all serious industrial pollution incidents. Although a significant report was published in January 2009 by SNIFFER (Sniffer, 2009), there is relatively limited research into what drive SMEs' compliance with environmental regulation and what regulatory measures might improve their compliance.

This small research project used structured interviews with Environment Agency officers, who had knowledge of different regulatory regimes and sectors, to capture the current state of knowledge in the organisation. This provides a baseline for further work.

When investigating **the challenges of regulating SMEs**, we found the following:

- The Environment Agency probably regulates a wide range of SMEs, possibly up to a million, but there is no data on this, only expert opinions. Generally regulations are not designed around the size of businesses, so this information is not collected.
- Most of the regimes that affect SMEs involve either permits or registrations, and a level of inspection. Inspections can be infrequent, for instance farmers are inspected every 20 years (on average) while the most frequent inspections are only annual.
- The lack of information on SMEs means there is limited information about their levels of compliance or the factors that affect their compliance. Most is known about the agricultural sector, where farmers' ability to understand regulations and their acceptance of them are key factors, alongside the costs of implementing regulations.
- The main challenge in regulating SMEs is communication, both to SMEs so that they understand regulatory requirements, and from SMEs so that they are able to engage with regulations and own them. Face to face communication is normally through inspections, but these have a limited effect because of the sheer number of SMEs. The Environment Agency's main communication route to SMEs is probably web-based communication via "NetRegs", but knowledge and use of this site by SMEs is low.

There are a wide range of **initiatives to improve SME compliance**, although their extent varied significantly between regulations/sectors. In some cases the initiatives were not specifically aimed at SMEs but, by their nature, would be particularly helpful to SMEs. We identified four types of initiatives:

- **capacity building** initiatives to improve the ability of Environment Agency staff to understand the nature and needs of the SMEs that they regulate;

- **regulation simplification** initiatives to reduce compliance burdens by changing regulations or regulatory policy;
- **regulation communication** initiatives to enhance the understanding of regulations, both in terms of their coverage and content, such as Netregs;
- **co-regulation** initiatives where the Environment Agency co-operates with other regulators and private sector operators to deliver regulation.

Table i.1 summarises where initiatives are in place in different regulatory regimes/sectors with an indication of the level of activity.

**Table i.1: Initiatives to enhance compliance.**

Area	Regulation	Capacity building	Simplification	Communication	Co-regulation
Water Resources	Abstraction licences	As with Farmers below as key SME			
Water Quality	Discharge consents	√			
	Oil storage			√√	√
Waste	Packaging regulations			√	√√√
	Waste electrical and electronic equipment			√√	√√√
	Waste carrier registrations	√	√	√√√	√√
	Hazardous Waste	√		√	
	Landfills and transfer stations			√	
	Exemptions			√√	
Process Industries	Pollution, Prevention and Control			√	√
Farmers	Various	√√		√√√	√√
Construction sites	Various	√	√	√	√

There is significant variation in the level of initiatives:

- The discharge consent and waste exemption regimes are at an early stage in seeking to better understand the SMEs covered by their regimes in order to better communicate with them.
- The hazardous waste regime does not consider it has an issue with low compliance among SMEs.
- In the waste sector, increased regulation and the effects of consolidation have rapidly driven out 'cowboy' operators. Landfills and transfer station operators are becoming more professional and responsive to regulation.
- Initiatives with farms are much more developed than those for construction sites as there is a much longer history of regulation in this sector, linked to higher environmental risks associated with farming.

As shown above, the most common responses have been communication initiatives. These are addressing the most important challenge, that we identified, in regulating

SMEs. There were also significant levels of co-regulatory initiatives, but limited capacity building and simplification initiatives.

Below is a brief review of how regulations implemented by the Environment Agency affect SMEs, what challenges are posed in regulating SMEs and what initiatives are in place to address those challenges and to improve overall compliance. We have relied only on readily available information from senior Environment Agency contacts. Several **conclusions** can be drawn from our research:

- The Environment Agency is not systematically aware of the number of SMEs it regulates and does not collect this information. Its staff are often unaware of the definition of SMEs.
- Regulatory regimes are designed around environmental risk and are not designed to address any of the particular needs or challenges encountered when regulating SMEs.
- Enforcement of regulations is generally through inspections. These can be very infrequent, for example farms are visited once every 20 years (on average).
- There is very limited understanding of the factors that affect compliance levels among SMEs, except in the case of farmers. This highlights the importance of credible two-way clear and simple communication.
- The levels of initiatives, to improve SME regulation, vary across regulatory regimes depending on the history of the regime and the perceived levels of environmental risks from SMEs.
- The most common initiatives to improve SME compliance are aimed at improving communication. This was also identified as the main factor in achieving improved compliance, according to our current understanding of this area.
- There are very few initiatives designed to build the capacity of officers to regulate SMEs. Even the most developed one, for regulating farmers, does not include information on the economics of the farming industry.
- There are a wide range of initiatives involving different types of co-regulation. Providing these remain credible, they have the potential to increase the efficiency and effectiveness of the regulation of SMEs.

Based on these conclusions, we make the following **recommendations** to the Environment Agency:

- Develop systems to collect data on the regulated community that classify companies into large, medium, small and micro sized. This will facilitate a better understanding of the needs and challenges of the community.
- Consider how to get the most value from inspections by linking them to a broader communication strategy, e.g. inviting the regulated to training days with the incentive that attendees will be inspected less frequently.
- Improve understanding of the factors that affect SMEs' compliance by, for example, working more closely with trade associations and conducting detailed qualitative interviews with regulated SMEs to complement the Netregs quantitative survey of SMEs.
- Systematically evaluate, and learn from, different initiatives to communicate with SMEs.

- Develop initiatives in key sectors (e.g. farming and construction) to further build the Environment Agency's capacity to understand the different types of SME businesses. This could potentially use segmentation approaches being developed by Defra.
- Develop a more systematic policy on the use of co-regulation that recognises the potential benefits in efficiency and effectiveness benefits, but ensures credible regulation.

Our research found that not all Environment Agency staff may be aware of the definition of an SME. The agreed European-wide definition is that an SME is an enterprise of less than 250 employees. Further details are available in appendix 14. SMEs are estimated to account for 99.9% of the estimated 4.8 million private sector enterprises in the UK at the start of 2008.

# Acknowledgements

We would like to thank all the Environment Agency officers that provided their time to inform this study. They are listed in appendix 12.



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# 1 Introduction

## 1.1 Objectives of the Research

The main objective of this project was to make an assessment of the issues that arise when the Environment Agency is regulating SMEs, and to identify, and assess the effects of, initiatives that have been developed to address these issues.

## 1.2 Context and rationale for the research

The Environment Agency faces continuing pressures to be a better regulator, with government targets to reduce administrative burdens by 25%, by 2010, and to exempt, or simplify regulatory processes for, SMEs. SMEs have significant environmental impacts, they produced approximately 60 per cent of all commercial waste in England and Wales in 2006, and cause about half of all serious industrial pollution incidents (Environment Agency 2008).

A better understanding of SMEs' environmental behaviour and the factors that influence it, will help the Environment Agency to:

- reduce the significant negative environmental impacts of SMEs, which may not be governed by traditional regulatory regimes, or find better ways of regulating;
- find more effective and efficient means of improving the environmental performance of SMEs;
- design better, SME specific, campaigns/interventions and engagement activities that maximise the chances of successful communication.

There is a large body of research on individuals and their environmental behaviours, including Defra's work on segmentation and headline behaviour goals. There has been less research on the environmental behaviours of businesses (SMEs and corporations). This is an important research gap for the Environment Agency, given their statutory role and duties. A significant report on better regulation of SMEs was published in January 2009 by SNIFFER (Sniffer, 2009).

A key issue for the Environment Agency is to ensure SME compliance with relevant regulations. There is a significant literature on the challenges that SMEs face in complying with regulations, with some suggestions that size is not necessarily a strong determinate of compliance (Amodo, 2008). While the factors that determine compliance may be complex, the Environment Agency faces immediate challenges in regulating SMEs because of their number and the difficulties of communicating with them. Recent research by SNIFFER suggests that, compared with larger firms, SMEs have different drivers for compliance and these create different responses to regulatory pressures. Large firms are driven more by the visibility of their actions and have more resources to commit to environmental compliance. The SNIFFER report recommends that regulators should focus their resources on SMEs, because the pressure for large firms to comply can be generated from other sources (i.e. civil society and industry forces) and because they have more resources available to commit to environmental compliance (Sniffer, 2009).

## 1.3 Methodology

This research project used interviews with Environment Agency officers to capture the current understanding of SMEs and their compliance, and of SME-specific initiatives. This knowledge is a potential starting point for further investigation.

This approach was itself a challenge, given the size and complexity of the Environment Agency and the regulations it implements. We adopted a two stage approach:

- discussions with immediate experts on the regulatory coverage of SMEs. This was to develop an initial list of relevant regulations and sectors, and contacts for more detailed discussion;
- structured interviews (see Appendix 13 for questions) with specialist contacts in the different regulations/sectors.

Our main focus was to identify regulations that were likely to have significant coverage of SMEs, but we also identified key sectors with significant numbers of SMEs regulated by the Environment Agency.

## 2 Regulatory coverage of SMEs

From initial discussions with SME experts in the Environment Agency, we identified regulatory areas that were likely to have significant coverage of SMEs, see Table 2.1.

**Table 2.1: Regulations with significant SME coverage.**

Area	Regulation	Sectors	SME est '000
Water Resources	Abstraction licences	Agriculture	15
Water Quality	Discharge consents	Various	20
	Oil storage	Various	700
Producer Responsibility	Packaging regulations	Manufacturers, retail, wholesale	7
	Waste electrical and electronic equipment (WEEE)		5
Waste	Waste carrier registrations	Construction, waste	90
Hazardous Waste	Environmental permitting regulations (EPR)	Various	0.06
Landfills and transfer stations		Waste	?
Waste Exemptions		Waste	140
Process Industries		Various	1

We also identified two key sectors that were likely to include significant numbers of SMEs regulated by the Environment Agency; agriculture and construction. This coverage was confirmed by the discussions with experts on these regulations and sectors.

A key question was how many SMEs are covered by these regulations and sectors. Table 2.1 includes estimates of the numbers of SMEs covered by regulations. These are very much expert opinions based on the numbers and types of companies likely to be covered by regulatory regimes. There is no actual data on the numbers of SMEs covered by any of the regimes. These figures should be treated as providing only orders of magnitude; especially as there is some confusion in the Environment Agency as to what an SME is (see Appendix 14). The agreed European-wide definition of an SME is an enterprise of less than 250 employees. Further details are available in appendix 14. The data collected on companies in each regulatory regime is limited to those facts that are of direct relevance to the regime (e.g. for WEEE this is electrical equipment produced) and the size of the company is generally not relevant. Where the size of the company is relevant (e.g. packaging producers with a turnover >£2m are covered by the packaging regulations), the classification system does not link with definitions of SMEs. Hence there was no means, beyond expert opinion, of estimating the number of SME companies covered by regulations.

Estimates of the total number of SMEs are available. SMEs accounted for 99.9% of the estimated 4.8 million private sector enterprises in the UK at the start of 2008 (BIS, 2009).

We found that regulations did not include SME specific measures, such as partial exemptions or reduced reporting requirements. This means there are generally no specific reasons to record company size.

# 3 Operation of regulations affecting SMEs

## 3.1 Nature of regulations

The nature of the regulations varies significantly. Key general elements are:

- **permits or consents** for highly polluting activities such as industrial activities covered by the Pollution, Prevention and Control regime and now by the Environmental Permitting regulations;
- **registrations** for less polluting activities such as packaging producers and waste carriers;
- **reporting** requirements for producer responsibility;
- **regular inspections** for most regimes, based on risk assessments, to check compliance with permits, registrations or general requirements, except for oil storage, construction sites and exemptions, where inspections occur in response to incidents.

Table 3.1 summarises this across the regulations and sectors. These are traditional regulatory approaches that do not vary depending on the size of a company, but are linked to environmental risk. Generally this link is through the OPRA (Operator, Pollution Risk Appraisal) scoring system, which may relate, to some extent, to the size of the business. OPRA ensures that those operations that pose the highest environmental risk receive the most frequent inspections and attention from Environment Agency staff. This means that inspections can be relatively infrequent, for instance, farmers are visited every 20 years (on average). Where inspections are on a proactive basis they usually occur annually. Reactive inspections, in response to incidents, are likely to be very infrequent indeed.

**Table 3.1: Nature of regulations with significant SME coverage.**

Area	Regulation	Permits/ licences	Registra tions	Reporting	Regular Inspections
Water resources	Abstraction licences	√			√
Water quality	Discharge consents	√			√
	Oil storage				
Waste	Packaging regulations		√	√	√
	Waste electrical and electronic equipment		√	√	√
	Waste carrier registrations		√		Road stops
	Hazardous waste	√			√
	Landfills and transfer stations	√			√
	Exemptions		√		
Process industries	EPR	√		√	√
Farmers	Various	Some			√
Construction sites	Various				

In addition to the standard regulatory processes there is also a limited amount of indirect regulation. For instance, in the most significant case, farmers, around 20% of resources are regularly used for indirect regulation. This is mainly influencing and communication activities, such as addressing groups of farmers, working with regional and area stakeholders, and providing best practice guidance on environmental performance.

## 3.2 Factors affecting SME compliance

As regulations do not specifically identify SMEs, it is difficult to determine whether there are any specific factors that affect SME compliance. In the hazardous waste regime, there is evidence that it is the bigger operators that have the worst compliance record. On the other hand, in the Water Discharge Consents regime, it is SMEs that seem to have the worst compliance record.

The best understood sector is the agricultural sector. In this sector the main factors affecting compliance are considered to be:

- the extent to which regulations are understood, in a context where farmers are overloaded with information;
- the degree of acceptance of the case used to justify the need for regulations (e.g. the reasons for slurry containment are well accepted while the reasoning behind the more diffuse pollution effects in Nitrate Vulnerable Zones (NVZs) is much less well accepted);
- the costs of compliance, as farmers are generally unable to pass on the costs of meeting regulations;
- the management capacity of farmers, given that they are likely to be subject to 90 regulatory regimes (on average);

- the pressures from supply chains. These might be positive (e.g. farm assurance schemes) or negative (e.g. pressures to meet delivery deadlines that might encourage environmental risk taking).

These factors are consistent with those identified for hazardous waste sites, although supply chain factors are not mentioned. Other factors that were mentioned related to the costs and benefits of compliance:

- The likelihood of detection. There is high compliance with water discharge consents as infringements are easy to see and with waste registrations, in the case of skips, as these have a high profile.
- The costs of discovered non-compliance. Re-processors in producer responsibility schemes have a high incentive for compliance as their business depends on it.

These factors are broadly consistent with Amodo's (2008) literature review on compliance, conducted for the Health and Safety Executive. However, we did not identify reputation as a key factor. This is likely to be more important to larger companies. The key factors, which are particular to SME compliance, are likely to relate to capacity, both in terms of understanding and implementing regulations. For example, the cost of implementing an effective Environmental Management System (EMS) was cited, particularly in the context of PIR, where the overall burden of regulatory requirements is likely to be higher than for many regulatory regimes.

### 3.3 Challenges of regulating SMEs

As SMEs are not separately identified it is difficult to identify specific challenges associated with regulating them. The challenges are best understood in the farming sector and the main challenges identified in regulating farmer SMEs are:

- the substantial number of operators in the sector;
- the diversity of activities in the sector;
- the complexity of farm businesses, particularly as they are subject to the uncontrollable pressures of weather;
- the potentially limited capacity of farmers to absorb regulatory requirements in the context of 'information overload';
- the willingness of farmers to accept that there is an issue to address, and hence a need to comply with regulation.

Recently the Environment Agency reviewed the success of their regulatory approaches towards farmers this concluded that:

- the credibility of their workforce with farmers was crucial. Maintaining staff credibility was challenging in the face of staff turnover and the number of staff (~200) that have a substantial involvement in regulating farmers;
- legislation needed to be simplified as far as possible;
- the rationale for regulatory action must be clarified in order to convince farmers of the need for compliance, particularly in the case of diffuse pollution impacts such as those arising from nitrate pollution.

The unifying theme in this was the need for two-way, i.e. face to face, communication. The Environment Agency needs to communicate and listen credibly so that farmers



understand and accept regulations. However, this is particularly challenging in a large and diverse sector dominated by SMEs. Alternatives, such as workshops and seminars, may offer other methods of engagement. However, these will be more generalised in content and approach, which could reduce their effectiveness.

These themes also emerge with regards to producer responsibility, particularly where SMEs are not members of trade associations. This means they are difficult to contact and do not have a 'voice' in the development and revision of regulations.

# 4 Initiatives to improve SME compliance

## 4.1 Overview

There are a wide range of initiatives intended to improve SME compliance, their extent varied significantly between regulations/sectors. In some cases the initiatives were not specifically aimed at SMEs, but would, by their nature, be particularly helpful to SMEs. We identified four types of initiatives:

- **capacity building** initiatives to improve the ability of Environment Agency staff to understand the nature and needs of the SMEs that they regulate;
- **regulation simplification** initiatives to reduce compliance burdens by changing regulations or regulatory policy;
- **regulation communication** initiatives to enhance the understanding of regulations, both in terms of their coverage and content, such as Netregs;
- **co-regulation** initiatives where the Environment Agency co-operates with other regulators and private sector operators to deliver regulation.

Table 4.1 summarises the coverage of these initiatives by regulatory regime/sector, with an indication of the extent of activity.

**Table 4.1: Initiatives to enhance compliance.**

Area	Regulation	Capacity building	Simplification	Communication	Co-regulation
Water resources	Abstraction licences	As with Farmers below as key SME			
Water quality	Discharge consents	√			
	Oil storage			√√	√
Waste	Packaging regulations			√	√√√
	Waste electrical and electronic equipment			√√	√√√
	Waste carrier registrations	√	√	√√√	√√
	Hazardous waste	√		√	
	Landfills and transfer stations			√	
	Exemptions			√√	
Process industries	Pollution, prevention and control			√	√
Farmers	Various	√√		√√√	√√
Construction sites	Various	√	√	√	√

There is significant variation in the level of initiatives:

- The discharge consent and waste exemption regimes are at an early stage in seeking to better understand those businesses covered by their regime in order to better communicate with them.
- The hazardous waste regime does not consider it has an issue with low compliance among SMEs.
- In the waste sector increased regulation, and the effects of consolidation, have rapidly driving out ‘cowboy’ operators. Landfills and transfer station operators are becoming more professional and responsive to regulation.
- Initiatives with farms are much more developed than those for construction sites as there is a much longer history of regulation in this sector, linked to higher environmental risks associated with farming.

As shown above, the most common responses have been communication initiatives. These are addressing the most important challenge, that we have identified, in regulating SMEs. There were also significant levels of co-regulatory initiatives, but limited capacity building and simplification initiatives. This is discussed in more detail in the following sections.

## 4.2 Capacity building initiatives

Environment Agency capacity building initiatives are fairly limited in extent. Generally they are not specifically aimed at SMEs as a group, but happen to include them where SMEs are a significant population. Initiatives range from initial work in the water discharge consents regime to understand the sectors being regulated, through to the development of a ‘Patch Pack’ that will support engagement with farmers. This ‘Patch Pack’ includes five elements:

- context: e.g. corporate/regional/area/catchment aims, service levels, aims of relevant stakeholders;
- features and evidence: e.g. features of an area/catchment, data on environmental trends;
- communication materials: e.g. inventory of displays, case studies, presentations;
- organisations and people: e.g. lists/contacts of agricultural stakeholder organisations, contact details of champion farmers;
- other information: e.g. external funding, farmer training schemes.

The packs include materials to support good communication, but it is noticeable that they do not include information on the structure and economics of the agricultural industry in the ‘Patch’. This information is likely to be highly relevant in understanding where the farmers are ‘coming from’.

## 4.3 Simplification initiatives

There is a small number of simplification initiatives that are often significant and resource intensive. They may require regulatory reform or, at least, consultation on, and

development of, regulatory policy. The most significant area for simplification has been in waste exemptions regulation:

- Low risk waste positions have been developed to reduce the regulatory burden on new, and often innovative, waste processes that would otherwise be caught by significant regulation.
- Quality protocols establish end of waste criteria for a number of waste streams and so remove them from waste regulation.

## 4.4 Communication initiatives

This is the most significant area of initiatives and addresses the main challenge in regulating SMEs. The most common initiative has been Netregs<sup>1</sup>, which is a web based tool designed to communicate regulatory requirements in as user friendly manner as possible. Beyond Netregs there are a wide range of initiatives, such as:

- cold calling and direct mailshots to alert businesses, which are potentially covered by regulations, to regulatory requirements e.g. Packaging regulations, WEEE and Waste Carrier Registrations;
- working through the supply chain to communicate with the regulated community e.g. Oil storage regulations, waste carriers and farmers;
- using the trade press to advertise regulatory requirements and prosecutions e.g. Packaging regulations and WEEE.

Of particular interest, in terms of working through the supply chain, has been a recent farming initiative called 'Common Ground'. This project was piloted in the first quarter of 2009 and works with businesses and professionals who have frequent contact with farmers e.g. accountants, vets and bankers. The project aims to brief these organisations and individuals so that they can communicate regulatory requirements and environmental messages to farmers. The expectation is that passing on information to farmers will provide these businesses and professionals with a business advantage, both in terms of understanding the requirements on farmers and in being able to provide value added services to them. The success of the pilot is being reviewed, initial feedback is positive.

## 4.5 Co-regulation initiatives

The Environment Agency has a reasonably wide range of co-regulation initiatives:

- single visits by environmental inspectors covering all environmental regulation (farmers);
- sharing intelligence and understanding with other regulators (Oil storage and construction sites);
- contracting out compliance activities to the private sector through 'compliance schemes' (Packaging regulations and WEEE);
- cooperating with the police and other regulatory bodies in enforcement (Waste Carriers);

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<sup>1</sup> See [www.netregs.gov.uk](http://www.netregs.gov.uk).

- working with trade bodies to improve compliance (Process industries).

Co-regulation has the potential to improve the efficiency and effectiveness of regulation by sharing resources and reducing the number of regulatory visits required. This is potentially important when regulating large populations of SMEs. On the other hand, a key requirement for the successful regulation of farmers, that is likely to be true elsewhere, was the credibility of the inspector. This credibility issue will be more of a challenge the more regimes an inspector has to implement at the same time.

In England and Wales, co-regulation in the farming sector has not yet advanced to the point of extensive inter-agency cooperation. This is in contrast with Scotland, where the Scottish Environment and Rural Services (SEARS)<sup>2</sup> have been established. This involves 9 different Scottish government agencies formally cooperating to coordinate inspections of farms, data sharing and handling of customer enquiries. One Agency, the Scottish Government Rural Payments and Inspections Directorate (SGRPID), has been given the lead inspector role, supported and trained by the other agencies such as the Scottish Environment Protection Agency. This is an ambitious model for England and Wales to learn from.

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<sup>2</sup> See [www.sears.scotland.gov.uk](http://www.sears.scotland.gov.uk)

# 5 Conclusions and recommendations

## 5.1 Conclusions

This project is a brief review of how regulations implemented by the Environment Agency affect SMEs, what challenges are posed in regulating SMEs and what initiatives are in place to address these challenges and to improve overall compliance. We have relied only on readily available information from senior Environment Agency contacts. Several conclusions can be drawn from our research:

- The Environment Agency is not systematically aware of the number of SMEs it regulates and does not collect this information. Staff are often unaware of the definition of an SME. The agreed European-wide definition of an SME is an enterprise of less than 250 employees. Further details are available in appendix 14.
- Regulatory regimes are designed around environmental risk and are not designed to address any of the particular needs or challenges encountered when regulating SMEs.
- Enforcement of regulations is generally through inspections. These can be very infrequent, for example farms are visited once every 20 years (on average).
- There is very limited understanding of the factors that affect compliance levels among SMEs, except in the case of farmers. This emphasises the importance of credible two way clear and simple communication.
- The levels of initiatives, to improve SME regulation, vary across regulatory regimes depending on the history of the regime and the perceived levels of environmental risks from SMEs.
- The most common initiatives to improve SME compliance are aimed at improving communication. We identified this as the main factor in achieving improved compliance, according to our current understanding of this area.
- There are very few initiatives designed to build the capacity of officers to regulate SMEs. Even the most developed one, for regulating farmers, does not include information on farming industry economics.
- There are a wide range of initiatives involving different types of co-regulation. Providing these remain credible, they have the potential to increase the efficiency and effectiveness of the regulation of SMEs.

## 5.2 Recommendations

Based on these conclusions, we make the following recommendations to the Environment Agency:

- Develop systems to collect data on the regulated community that classify companies into large, medium, small and micro sized. This will facilitate better understanding of the needs and challenges of the community.
- Consider how to get the most value out of inspections by linking them to a broader communication strategy, e.g. inviting the regulated to training days with the incentive that attendees will be inspected less frequently.
- Improve understanding of the factors that affect SME's compliance by, for example, working more closely with trade associations and conducting detailed qualitative interviews with regulated SMEs to complement the Netregs quantitative survey of SMEs.
- Systematically evaluate, and learn from, different initiatives to communicate with SMEs.
- Develop initiatives in key sectors (e.g. farming and construction) to further build the Environment Agency's capacity to understand the different types of SME businesses. This could potentially use segmentation approaches being developed by Defra.
- Develop a more systematic policy on the use of co-regulation that recognises the potential benefits for efficiency and effectiveness, but ensures credible regulation.

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# Appendix 1 Water abstraction licences

## A1.1 Regulatory coverage of SMEs

Water abstraction licenses are required by any entity that wishes to abstract water from water bodies. The main abstractors, by volume, are water companies, which are generally not SMEs. The main abstractors, by number, are farmers (for irrigation) and they are, almost without exception, SMEs. In all there are 24,000 licensees of which an estimated 15,000 are SMEs, although there are no records to confirm this. There are no measures in the regulations that only apply to SMEs, so there are no reasons to record whether a licensee is an SME or not.

## A1.2 Operation of regulations affecting SMEs

All those who wish to abstract water require a license. The licensing regime protects the environment by preventing over abstraction. All applicants must prove a need for the water and they may need to provide evidence that their abstraction will not impact on the environment, particularly in stressed catchments.

Compliance with licenses is monitored through risk based inspections and abstraction returns. Risks are based on the size of the abstraction, the nature of the environment and how much water is returned after use. Inspections vary from twice annually to once every 5 to 20 years. Inspections of farmers are part of the integrated regulation for agriculture programme (IRAP) where farmers are inspected simultaneously for a number of environmental regulations (see A10.4.5). Compliance measures are not affected by whether an entity is an SME or not.

In general there are high levels of compliance with licenses and very few prosecutions. The regime aims to be non-adversarial and as flexible as possible. The few non-compliers are often reported by other licensees, particularly in stressed catchments. There is no evidence that SMEs are particularly prone to non-compliance.

There are no particular issues in regulating SMEs and no initiatives under this regime to regulate SMEs more effectively. However, as most of the regulated SMEs are farmers, they are covered by a range of initiatives aimed specifically at them – see A10.4.

# Appendix 2 Water quality discharge consents

## A2.1 Summary

Consents are issued for discharges to water courses. There may be up to 28,000 SMEs covered, but the actual numbers are not known.

Consents are issued for 'large' (>5m<sup>3</sup> per day) and 'small' discharges. Large discharges are inspected and sampled on a risk basis, whereas small discharges are only inspected visually every 3 years. Compliance with discharge consents is lower for the population that includes SMEs, perhaps reflecting their lower capacity.

The Environment Agency is seeking to better understand the regulated community as it needs to consult with the community regarding changes to charging and sampling approaches, including moving to self-sampling.

## A2.2 Regulatory coverage of SMEs

A consent is required to discharge waste water into a water course. Among approximately 60,000 consents currently issued to businesses, about 32,000 are to water companies, which are generally not SMEs. It is likely that a proportion of the remaining consents are issued to SMEs, but the Environment Agency has no knowledge of what that proportion is. The sectors with the largest number (>500) of consents for large discharges (>5m<sup>3</sup> per day) are listed in table A6.1.

**Table A6.1: Sectors with major consents.**

Sector	Number
Property	1481
Mining	1139
Manufacturing	1092
Retail	943
Farming	931
Councils	828
Unclassified	624

The nature of the regulations does not vary for SMEs.

## A2.3 Operation of regulations affecting SMEs

Discharge consents are designed to protect the water environment from degradation. Consents are only given where significant degradation will not occur. The Environment Agency sets a limit on the discharge and charges annually for large discharges (>5m<sup>3</sup> per day).

Large discharge consents are enforced by an Environment Agency sampling regime, which is based on an environmental risk analysis that depends on the size and content of the discharge. The Environment Agency is planning to move to self-sampling, with Water Companies leading the way. There is no sampling of small discharges, which are visually inspected every 3 years.

Currently, compliance is about 70% for non-water company discharges, compared to about 90% for water companies. The factors in non-compliance, including for SMEs, are not well understood. In general all discharges are consented, as they are reasonably easy to see, so compliance at this level is close to 100%.

There is no systematic approach to advising companies on discharges, except through Netregs. Officers will generally provide pre-application advice, which is not charged for.

## **A2.4 Initiatives to improve SME compliance**

### **A2.4.1 Capacity building: Understanding the client base**

The Environment Agency is seeking to better understand the types of businesses that are subject to consents for large discharges because they need to communicate with them about changes in the charging regime, the move to self-monitoring and pollution prevention. To date this has been done by analysing a breakdown of consents by sector.

# Appendix 3 Oil storage regulation

## A3.1 Summary

Oil storage regulations cover oil drums of 45 gallons or greater, and tanks of 1500 l or above. These regulations are likely to cover hundreds of thousands of SMEs, but the actual number is unknown.

The regulations set standards for storage intended to avoid oil seepage. Enforcement is largely reactive when incidents occur. Since the regulations were implemented, incidents have reduced, but reasons for non-compliance are not well understood.

The Environment Agency has conducted a major campaign to promote understanding of the need to avoid oil spillages. It also collaborated with Petroleum Licensing Officers (PLOs).

## A3.2 Regulatory coverage of SMEs

Under the Control of Pollution (Oil Storage) (England) Regulations 2001 (commonly referred to as the OSR (England)), drums of 45 gallons and above, and tanks of 1500 l and larger, are covered by the requirements for oil storage. This excludes domestic and agricultural tanks. There are an estimated 800,000 such tanks in existence, mainly to provide fuel for heating and power generation. About 90% of tanks are likely to be on business premises, an estimate based on the numbers of pollution incidents at businesses, compared to those at households.

Very little else is known about the coverage of these regulations. However, given the number of tanks, it is highly likely that a significant number of SMEs are covered.

The Environment Agency campaigned extensively to raise awareness of this issue through its Oilcare campaign, but incidents only started to reduce when the regulations were implemented. The Environment Agency has also collaborated with the PLOs to identify potential non-compliance with regulations.

## A3.3 Operation of regulations affecting SMEs

The OSR is designed to prevent oil seeping into the ground and polluting waterways. They establish minimum standards for storage, such as requiring a wall as secondary containment round a tank. They also establish location requirements e.g. keeping tanks away from highly trafficked areas.

Enforcement is largely reactive with inspections occurring after pollution incidents. When there are visits to premises for other regulatory reasons, then any tanks or drums will be inspected. Oil storage standards have been incorporated into other regulatory regimes, such as PPC permits. There is no record of how many tanks or drums are inspected as part of other regulatory visits.

According to a review of the OSR<sup>3</sup> it has not met the target of a 50% reduction in overall incidents, but this target was probably unrealistic. However, it has reduced OSR specific incidents, by 70% and contributed to a 30% reduction in non-OSR related incidents, in England. The reasons for non-compliance are not well understood, although there has been work done on understanding the causes of incidents (e.g. road traffic accidents).

## **A3.4 Initiatives to improve SME compliance**

### **A3.4.1 Regulation communication: Oil Care campaign**

Prior to the introduction of the OSR, the Environment Agency conducted a campaign to reduce oil pollution incidents. A key part of this was working with industry i.e. the oil carriers and deliverers and manufacturers of oil tanks. The Environment Agency also provided seminars for building control officers. The Oil Care campaign stabilised the number of incidents, but did not reduce them, hence the introduction of the OSR.

### **A3.4.2 Co-regulation: Petroleum Licensing Officers**

PLOs regulate the storage of petrol from a Health and Safety perspective. During the Oil Care campaign, the Environment Agency developed relationships with PLOs, including carrying out joint visits and sharing information. PLOs visit petroleum oil storage facilities more regularly than the Environment Agency and will alert Environment Agency officers if they note any risks of oil seepage into groundwater. These relationships have been formalised through local groups, e.g. the NW Petroleum Enforcement Licensing Group.

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<sup>3</sup> Oakdene Hollins Ltd, 2008, Review of the Control of Pollution (Oil Storage) (England) Regulations 2001. SI No 2954 (OSR) for the Environment Agency.

# Appendix 4 Producer responsibility regulations

## A4.1 Summary

The main producer responsibility regulations implemented by the Environment Agency, are the Packaging regulations and the Waste Electrical and Electronic Equipment regulations (WEEE). Both are likely to cover a significant number of SMEs, but no specific data is available because the sizes of businesses, in the regulated population, are not recorded.

The main regulatory requirements are registration and the recording of the quantities of relevant materials that are produced and recovered. Compliance levels are considered to be high among registered businesses. The main issues are companies not registering and the export of materials that are not recovered. Communicating to SMEs the need to register is a particular challenge.

There have been two main types of initiatives to improve compliance, particularly of SMEs:

- **regulation communication:** cold calling and following up companies likely to be required to register, and using the trade press to advertise registration requirements and prosecutions of offenders;
- **co-regulation:** private sector compliance schemes exist to which the Environment Agency effectively delegates regulation of compliance.

## A4.2 Regulatory coverage of SMEs

The Environment Agency implements 2 producer responsibility regulations<sup>4</sup> that affect SMEs: the Packaging regulations and Waste Electrical and Electronic Equipment regulations (WEEE).

- The Packaging regulations cover:
  - importers, producers, packers & fillers, wholesalers and retailers<sup>5</sup> with a turnover > £2m using > 50 tonnes of packaging in the previous year – approximately 6,500 registered;
  - the accreditation of re-processors and exporters of packaging waste – approximately 300 accredited;
  - compliance schemes for packaging producers, used to manage their compliance with the regulations – 30 schemes.

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<sup>4</sup> The other main producer responsibility regulation relates to End of Life of Vehicles (ELVs) but this is primarily regulated by DBERR so is not covered in this section although this may change in the future.

<sup>5</sup> For simplicity these will be collectively referred to as packaging producers.

- WEEE covers:
  - importers and manufacturers of electrical and electronic equipment (EEE) – approximately 5,000 registered;
  - the accreditation of treatment, re-processing and export businesses - approximately 200 accredited;
  - compliance schemes for importers and manufacturers of EEE, used to manage their compliance with the regulations – 40 schemes.

There are no records of the numbers of SMEs affected because employment levels are not recorded. However, there are likely to be significant numbers of SMEs affected as:

- the WEEE regulations have no de minimus, so there is no exclusion of SMEs and importers are particularly likely to be SMEs;
- the packaging regulations have a turnover threshold of £2 million a year; this is significantly less than the turnover threshold for small businesses defined as not more than £5.6m let alone medium sized businesses (not more than £22.8 million).

Apart from the above threshold for packaging regulations, there are no other measures to reduce coverage of SMEs.

### A4.3 Operation of regulations affecting SMEs

Under the packaging regulations:

- Packaging producers have to register with a compliance scheme or the Environment Agency. Compliance schemes are intermediaries, between packaging producers and the Environment Agency, who ensure that producers comply with the regulations. Key data that must be reported annually are the volumes and types of packaging produced (42 potential categories).
- Packaging re-processors and exporters must be accredited to issue evidence notes of reprocessing. They must demonstrate an adequate audit system for recording the reprocessing of packaging. They have to report their reprocessing, by type of packaging, annually.
- Compliance schemes have to be registered and have adequate systems for managing compliance.

The WEEE regulations are very similar, although there is no option to register direct with the Environment Agency. There are only 26 potential categories of EEE.

Enforcement of regulations is by inspection:

- A third of registered producers are inspected each year on a risk basis depending on their size, record and membership of a compliance scheme.
- Re-processors are generally inspected twice a year. Small re-processors (e.g. re-processors of < 400 tonnes of packaging per annum) are only inspected once a year, unless problems are identified. These inspections are not co-ordinated with environmental permit inspections.
- Compliance schemes are inspected on a risk basis at least once a year, twice a year for larger schemes.

Re-processors, except small ones, must have independent annual audits of the evidence notes they have issued.

In general, compliance is high among those registered, particularly because compliance schemes handle any complexities of compliance. The compliance schemes and re-processors have strong incentives to comply as their business revenue depends on registration.

The main challenges with compliance are:

- businesses that should be registered are not always registered and are difficult to identify;
- exported packaging waste can be mis-described as 'for recovery' when it is actually just mixed waste.

The main challenge in improving SME compliance is effective communication. SMEs, especially micro-enterprises, are generally not able to attend seminars and do not have the time to read guidance material. They usually do not belong to trade bodies or have the capacity to respond to consultations, so they lack a 'voice' in the regulatory process.

## A4.4 Initiatives to improve SME compliance

### A4.4.1 Regulation communication: targeted cold calling and follow-up

There may be up to 15,000 manufacturers and importers of EEE that are not registered. Based on an analysis of the business types that are registered, the Environment Agency has used business telephone directories to identify businesses that probably should be registered. Using the Environment Agency Call Centre, it has called 4,000 of them and, depending on the response, sent follow-up information packs. It has then checked which businesses have registered and followed-up those that have not. BERR currently provides £1.3m per annum in grant aid to fund this work. In the packaging regulation regime, charge revenue can be used for this work.

### A4.4.2 Regulation communication: use of trade press

Articles on WEEE and packaging regulations are regularly published in relevant trade press. Articles are timed to appear on key dates in the regulatory cycle, e.g. when results are due to be reported. In particular, articles publicise the environmental results of the regulations to emphasise their value and to build their credibility. They also publicise any prosecutions, both to encourage registration and to show registered businesses that they are not 'mugs' for bothering to register. Fines include savings from non-registration and can be very high. A recent fine of £230,000 provoked a flurry of registrations.

### A4.4.3 Co-regulation: compliance schemes

Compliance schemes are private sector organisations that act as a buffer between the regulated producers and the regulator. They implement much of the compliance requirement for the regulated producers and provide an important communication



channel with those regulated. The Environment Agency has regular meetings with the compliance schemes to discuss and clarify policy issues, and to develop positions to take to Government. They also share information and work together to improve data systems. The Environment Agency sees compliance schemes as partners in the regulatory process.

Compliance schemes usually provide other 'value added' services to their members, using the compliance process as a 'foot in the door' for marketing purposes. Potentially this subsidise the cost of regulation, although conflict of interest issues could arise.

The UK tends to have many more compliance schemes than other countries. This potentially adds to administration requirements, but may also increase competition.

# Appendix 5 Waste Carriers registration

## A5.1 Summary

The Waste Carrier registration scheme, which aims to reduce fly tipping, provides waste producers with proof of compliance by registered waste carrier businesses and demonstrates that they are legal carriers of waste. Registration gives the holder a licence to operate one waste carrying vehicle or an entire fleet. The threat that the licence might be revoked is thought to lead to fairly high compliance levels. A key reason for non-compliance is uncertainty over who is 'producing' the waste, and hence whether there is a need to register. Overall, the Environment Agency is uncertain of how many carriers remain unregistered and no record is made of the size of companies that apply for registration.

There are various SME engagement initiatives, classified as regulation communication, being carried out, including NetRegs, mailshots, DVD/web films, registration 'copy cards' and web-based applications. There are awareness-raising programmes, aimed at reducing fly tipping, in the South East and Derbyshire regions.

Proposed new regulations, expected in October 2009, aim to improve clarity and compliance in this regime. For example, businesses that can currently claim exemption for carrying their own wastes (unless carrying construction and demolition waste) would have to register, probably for a one-off registration for life.

## A5.2 Regulatory coverage of SMEs

There are 90,000 registered carriers and brokers of waste in England and Wales. Neither the nature nor size of business is recorded by the Environment Agency and coverage ranges from major waste contractors through to sole traders ('man with van'). The Environment Agency has no true measure of compliance.

## A5.3 Operation of regulations affecting SMEs

Anyone transporting waste (in the course of their business or with view to a profit) must be registered as a waste carrier under the Controlled Waste (Registration of Carriers and Seizure of Vehicles) (Amendment) Regulations 1991. The registration currently applies to the business and not to each vehicle that is operated.

The registration is regarded as simple permit because the Environment Agency has the power to refuse or revoke it if an offence occurs. Removing the authorisation to carry waste would, theoretically, make it difficult for a carrier to operate because all waste producers have a Duty of Care to ensure that any waste carrier they use is registered.

An organisation does not need to register if it carries its own waste, e.g. a market trader. However, this exemption does not apply to construction and demolition waste (C&D) so, for example, builders are required to register.

The main means of enforcing waste carrier registrations is through random roadside checks, carried out in conjunction with the police and local authorities. The check only seeks to establish that the carrier holds a registration. Carriers are not obliged to hold the registration on their person (akin to having to show a drivers licence at a police station).

The Environment Agency developed Key Performance Indicators (KPIs) for this regime (e.g. number of vehicles stopped, number of vehicles not registered), but these were changed two years ago and so the data is no longer comparable over the long term.

Local authorities and the Environment Agency have powers to issue fixed penalties for failure to produce evidence of registration. The Environment Agency has only just started to use these powers. This may be one reason for a steady increase in registrations seen by the Environment Agency.

Relevant conviction checks are carried out when an application is made and this can prevent issue of the registration. The Environment Agency also has the power to revoke the licence if the carrier is convicted while holding the registration and the Environment Agency believes they are “undesirable”. However, only a handful of registrations are revoked each year because of the sensitivity of doing so, i.e. revocation will effectively destroy a carrier’s livelihood. For this reason, licence revocation has been regarded as a human rights issue.

The particular challenge for the Environment Agency is not in knowing the size of the companies being regulated, but to ensure that every business fully understands the circumstances under which they might fall under the regulation. Engaging with small firms is often very difficult because there are fewer opportunities to communicate about this regime alongside other environmental regulations.

The Environment Agency has not carried out surveys across different businesses, but believes that compliance levels vary across sectors. Skip businesses, for example, are believed to have high levels of compliance because this type of business is highly visible. On the other hand, builders carrying their own waste may still not realise that they are covered by the regulation.

At the moment there is confusion over who the regulations apply to because it is not always clear who the waste producer is. The definition of a ‘waste carrier’ is based on whose “intent” it is to generate the waste. For example, landscape gardeners may have a contract to maintain a garden. If tree waste is being shipped off-site, that waste is classified as being generated by the landscape gardener and so they would not be required to register. However, if a property owner contracts a tree surgeon to lop a tree, the tree surgeon would need to register to carry that waste away from the property because the property owner is considered to be the waste producer.

This situation applies to plumbers, carpet fitters etc. The Environment Agency hopes that new regulations (see below) will provide greater clarity on this issue and lead to increased compliance.

Fees are currently set at £152 per application, with a £102 renewal fee payable every three years. The fees for a sole trader are the same as for a firm operating a fleet of 50 vehicles.

The Waste Controls (England & Wales) Regulations 2009 are due to come into force in October 2009. These are being introduced because of the risk of ECJ infraction under non-compliance with the Waste Framework Directive. Italy, for example, was infringed in 2005. The UK is seeking to ensure that it is fully compliant.

Current plans are for a two tier system under the new regulations, such that:

- The 90,000 currently registered businesses would fall into an upper tier, with a one-off registration fee (£60) and an annual fee (£45), which will be accompanied by an annual declaration.
- The annual declaration will simply notify the Environment Agency of any changes during the year or confirm that there have been none.
- All businesses that currently carry their own waste on a “normal and regular” basis, instead of buying in the services of a waste contractor, would have to register. The Environment Agency has estimated that between 100,000 and 388,000 new businesses might be covered. These businesses would fall into the lower tier and would be subject to a one-off registration, for life, of approximately £30.
- Once the regulation has come into force, it is planned that vehicles will display a disc to demonstrate compliance. Firms would pay for each disc, hence fleet operators would end up paying more than sole traders.
- A fixed penalty notice scheme may be introduced for failure to be registered, as opposed to failure to produce authorisation, which is currently the case. However, this would only be possible with changes to primary legislation.

The overall burden on small businesses, from this new regulation, is potentially high and has led the Federation of Small Business to include it in their list of Top 5 onerous regulations.

The Scottish Government are not proposing to introduce legislative changes. This could result in a carrier who operates in England and Wales, and Scotland being subject to different controls. The Environment Agency and Defra are proposing to meet with the Scottish Government to discuss the possibility of mutual recognition of both regimes.

## A5.4 Initiatives to improve SME compliance

The following Environment Agency initiatives generally fall into the ‘regulation communication’ grouping, although there are cases of capacity building and co-regulation in the South East pilot.

### A5.4.1 Regulation communication: mailshots

Mailshots are the Environment Agency’s main method of engaging with business on waste carriers registration. Names are taken from the Yellow Pages and compared with those held on the Environment Agency database. This is followed by a mailshot that draws attention to the need to register. Subsequent registrations are then monitored to determine the effectiveness of this strategy.

The main drawback to this approach is that the Environment Agency does not know whether the businesses it is targeting are actually required to register.

#### **A5.4.2 Regulation communication: copy card**

Waste carriers can apply for individual copy cards for their fleet drivers at a cost of £5 per card. These are similar to a credit card style driver's licence and provide all the details necessary to prove compliance. This simplifies proving compliance and avoids the needs for lengthy roadside checks, reducing costs to the carrier.

The Environment Agency has seen the popularity of the card increase. This is based on feedback from the Customer Contact Centre who are responsible for all registrations.

#### **A5.4.3 Regulation communication: DVD/Web film to inform waste carriers**

This activity would inform waste carriers of their rights, responsibilities and risks. It would encourage them to register, if they are not already, and to fulfil their legal responsibilities. The film would include information on Environment Agency regulatory activities and the penalties for non-compliance. It would be supplied to carriers when they register and would be accessible on the Environment Agency website. Campaigns that promote registration lead to a substantial increase in hits on the Environment Agency website, but these do not necessarily translate into actual registrations. It is also not clear to what extent registered waste carriers are aware of their rights and responsibilities.

#### **A5.4.4 Regulation communication: Derbyshire fly tipping prevention campaign**

The success of one of the six BREW pilot projects, which ran for 18 months in Derbyshire, led to Derbyshire County Council committing £650,000 over three years to fund two full-time secondees from the Environment Agency, under a Local Area Agreement.

Different BREW pilot projects targeted specific sectors where there were likely to be high levels of non-compliance (e.g. builders). Leading suppliers to the UK building and construction industry (i.e. Travis Perkins) were involved to improve the visibility of the scheme. They allowed initiatives, such as 'Buttie van' events, to be held at their premises so that the Environment Agency could engage with builders and raise their awareness of the need to register as a waste carrier.

Paul Slater, who now project manages this fly-tipping prevention project, said that the good practice developed during the BREW project has been extended to cover both waste producers and waste carriers. Current work includes:

- providing advice on waste minimisation;
- highlighting Duty of Care requirements to businesses;
- mailshots to business;
- working with Business Links as a conduit to SMEs;
- running events such as the 'Buttie van' at builders merchants.

#### **A5.4.5 Regulation communication: NetRegs<sup>6</sup>**

NetRegs provides free environmental guidance for small and medium-sized businesses in the UK. Information on coverage, exemption and relevant legislation is available for waste carriers at [www.netregs.gov.uk/netregs/63396.aspx](http://www.netregs.gov.uk/netregs/63396.aspx).

#### **A5.4.6 Regulation communication: web applications**

The Environment Agency has recently started to use a new IT system for registering carriers and brokers and will shortly be enabling web-based registration applications. It is expected that most applicants will be able to make an on-line application in less than 15 minutes, greatly facilitating the application process.

#### **A5.4.7 Various: South East pilot**

The objective of this pilot is to trial a systemic approach to tackling waste crime in the wider South East region<sup>7</sup> by targeting the different parts of the waste 'supply' chain where waste might 'drop out' of the legal waste system. Initially, the pilot will target construction waste and the following key elements in the waste 'supply' chain:

- construction sites where the waste arises;
- waste carriers who transport waste;
- waste brokers who buy and sell waste;
- waste processing and transfer sites.

Legally waste should pass from construction sites via registered carriers/brokers to licensed waste sites to be either recovered (e.g. for aggregate or land covering) or land filled. However, significant amounts of waste 'drop out' of this legal system through being fly tipped, on public or private land, or 'sham' recovered or mis-described and sold as recovered or treated waste. In the latter case, a land holder is typically sold waste as suitable for land cover, which turns out to be contaminated as it has either not been treated or inadequately treated. Also, waste is delivered to landfill sites labelled as inert, when it is not inert and should be landfilled elsewhere.

This pilot project was established as part of a South East region wide initiative called Pathways to Zero Waste (PZW), lead by the South East Economic Development Environment Agency (SEEDA). It is ambitiously seeking to recover all waste and is targeting construction waste in the first instance. The pilot is intended to ensure that waste crime does not undermine the legal waste market by undercutting legal operators. The wider South East is a significant area for waste crime as there is generally a high level of construction activity.

Beyond contributing to WCIP waste diversion and carbon saving targets, this project has the following targets over its 3 years life:

- 80% increase in business awareness of the Duty of Care;
- 90% increase in registered waste carriers;
- 10% reduction in fly tipping;

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<sup>6</sup> [www.netregs.gov.uk](http://www.netregs.gov.uk)

<sup>7</sup> Includes Environment Agency's Thames and Southern Region and Essex in the Anglian Region. It goes beyond the government South East region as much of the illegal waste is imported into the region from London.

- 60% increase in business confidence in Environment Agency enforcement work;
- quarterly reporting of waste data on key waste streams;
- 10% reduction in business costs due to the use of electronic Duty of Care and data reporting.

A key means of engaging with companies will be through awareness raising and education. This will be achieved by organising events and by developing publicity (e.g. a strong media campaign, posters at the roadside, radio broadcasts etc) and training materials aimed at a range of different audiences, including businesses, partner regulators, local authorities and magistrates. Roadstops have also been tried. The following summarises the activities in the pilot:

- **intervention campaign:** capacity building to regulate 'sham' recovery at legal sites;
- **Site Waste Management Plan campaign:** capacity building to regulate SWMPs;
- **brokers campaign:** capacity building to regulate waste brokers;
- **fly tipping campaign:** support enforcement and prevention activity, including police officer secondment;
- **carriers campaign:** support registration of waste carriers with automated telephone system;
- **Crime Patterns Partnership:** identification of potential for, and approach to, joint 'policing';
- **education and partnership working:** awareness raising on waste crime and regulatory requirements aimed at business, charities, enforcement agencies, local authorities and magistrates;
- **waste flow mapping:** recording and analysing waste flows.

# Appendix 6 Landfills and transfer stations regulation

## A6.1 Summary

The Environment Agency regulates over 2500 landfills and a significant number of transfer stations under the Environmental Permitting Regulations. The main focus of the Environment Agency's enforcement activity is on regulatory outcomes (i.e. preventing pollution) so the size of business is not regarded as an issue and is not recorded. The number of SMEs covered by the regulations is unknown.

The main conduits for engaging with waste companies are the Environmental Services Association and the Landfill Regulation Group, although these typically include only the largest companies. The Environment Agency contacts smaller companies by letter, site inspection and audit, but has no proactive approach or initiative to specifically engage with small companies (i.e. what it perceives as SMEs).

Mergers and acquisitions in the sector over the past ten years have led to larger firms, such as WRG and Veolia, dominating site ownership and this is rapidly driving out 'cowboy' operators. The Landfill Directive has raised the bar on landfill standards and this has led to the waste management industry becoming, overall, a more professional sector that aspires to both high landfill engineering and operational standards across all their business units.

Apart from Netregs, there are no significant initiatives to improve SME compliance.

## A6.2 Regulatory coverage of SMEs

There are 500 operational landfills, and 2000 closed landfills, in England and Wales that are permitted under the Environmental Permitting Regulations (EPR). There are also 23,000 landfills that have ceased operations and where permits have been formally handed back to the Environment Agency.

Transfer stations handling commercial and industrial (C&I) waste must also be permitted under the EPR. The Environment Agency is unsure how many transfer stations are covered by the Regulation.

EPR is a single environmental permitting and compliance system that simplifies and combines pollution prevention and control (PPC) permitting and waste management licensing (WML). In England and Wales, the EPR transposes into law the Waste Framework Directive, the Integrated Pollution Prevention and Control Directive and the Landfill Directive. The EPR require any business (SME/non-SME) covered by them to be permitted, unless they are exempt.

There are no SME-specific measures included in the Regulations and the Environment Agency does not record the size of the business permitted to operate these sites. However, the Environment Agency does recognise that a simpler form of regulation is appropriate for activities that present the lowest environmental risk, e.g. handling inert



waste, disposing of dead domestic pets. These activities are generally managed by small waste operators and can be regulated by a 'standard rules' permit.<sup>8</sup>

## A6.3 Operation of regulations affecting SMEs

### A6.3.1 Permits

To simplify the permitting process, the Environment Agency issues two types of environmental permit: standard and bespoke.

Standard permits (SPs) are suitable for some waste activities and contain a standard set of conditions that a firm must comply with. They tend to be simpler, cheaper to apply for and likely to be issued more quickly, than other permit types. There are currently 28 SPs for waste operations. Typical facilities and activities that are covered by SPs include waste transfer stations and sites that are recycling, composting or treating waste electrical and electronic equipment (WEEE).

Bespoke permits are required for operations which have a high impact on the environment and/or are novel or complex. The permit includes a set of specific conditions applied by the Environment Agency.

Sites are regulated (i.e. through visits, review of monitoring data and annual reports etc) according to the potential risk they pose to the environment (i.e. waste types, quantities and proximity to sensitive receptors) and operator performance. This gives the site its OPRA<sup>9</sup> score and the site is regulated accordingly - lower scores mean less regulation.

### A6.3.2 Landfills

The main objective of a landfill permit, which covers both operational and closed landfill sites, is to prevent pollution while allowing limited emissions to occur. The permit bears no relation to the size of company. The Environment Agency determines whether a business is suitable to hold a permit by establishing whether or not the measures included in the permit application will protect the environment. Permits require site operators to have an Environmental Management System (EMS) to ensure that there are formal procedures in place to manage the landfill. The Environment Agency must also assess whether staff are competent to operate the site and operators can use a range of evidence to demonstrate that their staff are competent. The Environment Agency is developing a scheme to help operators of low risk activities to develop their EMS.

Permit conditions have been standardised so that compliance assessments are similar across sectors and risk ratings are comparable.

Application and subsistence charges for landfill permits are based on the site's risk rating or OPRA score. Subsistence charges range from a few thousand pounds per year, for a small inert landfill, through to £35,000 to £40,000 per year for a large hazardous waste site. Revenues are used to fund the Environment Agency's compliance assessment and enforcement activities. The more an operator pays for their permit, the higher the environmental risk associated with the site and the greater the Environment Agency's regulatory effort.

<sup>8</sup> See <http://www.environment-agency.gov.uk/business/topics/permitting/default.aspx>

<sup>9</sup> OPRA – 'Operator, pollution risk appraisal'

Closed landfill sites are still covered by the EPR, which means that the landfill permit is retained by the operator until the site no longer presents an environmental hazard. Permit holders are obliged to provide the Environment Agency with monitoring data for the duration of their tenure and have to apply to the Environment Agency to surrender their permit.

The main focus of the Environment Agency's enforcement activity is on regulatory outcomes – the size of business is not in itself a consideration.

The Environment Agency uses a variety of methods to assess compliance with the permit conditions. These include routine visits, an annual audit (the frequency of audit depends on the risk posed by the site, so it may be more or less frequent), and regular monitoring data that has to be provided by the site operator to the Environment Agency.

Illegal activities are generally reported by enforcement officers. However, the Environment Agency has no running total of incidents. This information could be obtained from the Environment Agency's enforcement database.

The main compliance problems are believed to be with small businesses that operate just one or two sites (e.g. those that take inert waste or construction and demolition waste).

Since the introduction of the EPA 1990, standards in the landfill sector have improved enormously. Financial provisions have become an important feature of the permitting process, which has prevented some firms from contemplating starting up landfill operations because of the future liabilities they would face. The Landfill Directive has raised the bar on landfill standards and has led to the waste management industry becoming, overall, a more professional sector that aspires to high landfill management standards.

The fact that large contracts, especially with local authorities, are generally only handled by large companies (e.g. Veolia, Sita, WRG etc.) has helped to drive out 'cowboy' operators.

The Environment Agency has no proactive approach to engaging with small companies (i.e. what it perceives as SMEs). This is partly because the Environment Agency does not believe there is a problem *per se* with landfill permitting, and partly because the nature of landfill means that the industry is now skewed towards larger firms operating sites. For example, it is hard for small firms to afford the application process since it costs £30,000 for a permit application and £70,000 to £100,000 for a consultant to prepare the application.

The Environment Agency has good relations with the Environmental Services Association, the waste management trade body whose membership includes the majority of the major waste management companies. Therefore, the Environment Agency is confident that any key messages it wishes to convey to landfill operators will be rapidly disseminated through this particular avenue.

Conversely, the main routes to contacting smaller companies are by letter, personal visit and audit.

### **A6.3.3 Transfer stations**

The introduction of OPRA has led to the Environment Agency greatly reducing the numbers of visits it makes to transfer stations each year. Visits now tend to be more of an audit. One of the key indicators, for the Environment Agency in their inspections, is

a proper site management system. This is regarded as more important than the 'belt and braces' approach previously taken to enforcement.

Transfer stations have traditionally been run by skip hire companies who bulked up their waste and shipped it to landfill. They vary in size from almost a one-man operation (a business type that is gradually dying out) to sites employing thirty to forty people. The latter tend to be large material recycling facilities rather than just transfer stations.

Over the last 10 years, buyouts have occurred in the sector that have led to the 'big six' waste companies now dominating transfer station ownership.

The Landfill Directive ban on certain wastes may have a knock on effect for some waste transfer stations, although this has yet to be quantified.

## A6.4 Initiatives to improve SME compliance

### A6.4.1 Regulation communication: NetRegs<sup>10</sup>

NetRegs provides free environmental guidance for small and medium-sized businesses in the UK. Information on landfills is available at [www.netregs.gov.uk/netregs/63530.aspx](http://www.netregs.gov.uk/netregs/63530.aspx) and for transfer stations at [www.netregs.gov.uk/netregs/95438.aspx](http://www.netregs.gov.uk/netregs/95438.aspx).

### A6.4.2 New Environment Agency tools

Within the next 12 months, the Environment Agency is introducing a range of tools intended to reduce the burden on low risk activities. These are typically activities operated by small businesses and consequently SMEs will benefit from the changes. The tools include:

- standard rules permits;
- EMS system;
- low risk surrender criteria;
- lower charges for closed sites.

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<sup>10</sup> [www.netregs.gov.uk](http://www.netregs.gov.uk)

# Appendix 7 Hazardous waste regulation

## A7.1 Summary

In England and Wales, around 80 hazardous waste treatment sites and transfer stations are covered by the Environmental Permitting Regulations (EPR). The Environment Agency believes non-compliance is not skewed towards SMEs. On the contrary, and perhaps surprisingly given that the waste industry is now dominated by large (non-SME) organisations, records show that larger firms are the worst offenders.

The Environment Agency is working hard to raise its own standards for the way it regulates the hazardous waste sector. Its internal hazardous waste sector group ensures its 60 inspectors share best practice and have a common approach to technical and operational challenges.

The Environment Agency has two regulation communication initiatives intended to improve communications with the hazardous waste industry, but not specifically targeting SMEs. One includes regular sector meetings to discuss critical issues and measures for improvement. This has proved to be useful for engaging with single site operators, the most likely firms to be SMEs. The other initiative is an Industry Environment Agency Compliance group, which provides a conduit to reach out to the sector overall.

## A7.2 Regulatory coverage of SMEs

In England and Wales there are around 80 hazardous waste treatment sites and transfer stations covered by the EPR, which replaced the Pollution Prevention and Control (England and Wales) Regulations 2000<sup>11</sup>. Around 100 oil processing depots also fall under EPR. It is estimated that about one third of these are run by SMEs.

## A7.3 Operation of regulations affecting SMEs

The EPR cover thousands of sites and aim to ensure that people operate such sites in a safe manner and their operations pose no threat to the environment.

Hazardous waste site ownership has changed significantly over the past 6 years. The waste management industry has rapidly consolidated and small operators have been acquired by the large waste management companies. Only around one third of sites are now sole-site operations run by companies with perhaps 20 to 30 employees (i.e. the profile of a typical SME).

Barriers to entry into the industry have also increased considerably over the past few years with the introduction of a lot of overarching legislation and onerous conditions that have to be complied with. In fact, the Environment Agency believes it is now very

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<sup>11</sup> Implements the Integrated Pollution Prevention and Control (IPPC) Directive (96/61/EC). The Directive covers: the disposal of waste by landfill; waste treatment and storage facilities that dispose of >10 tonnes of hazardous waste per day; facilities that treat >50 tonnes of non-hazardous waste per day, and some hazardous waste recovery operations that treat >10 tonnes of hazardous waste per day.

difficult to obtain planning permission and environmental permits for hazardous waste sites and this has contributed to making the sector more professional.

The Environment Agency deals with each site on its own merit. As with other waste sites, OPRA ratings dictate the frequency of inspections. The Environment Agency's Compliance Programme also flags up key challenges across the sector and at the site level.

The Environment Agency carries out national audits to check hazardous waste sites for the same issues. These are coordinated through inspectors.

The key areas for inspection are site procedures. Clearly, the nature of hazardous waste requires more frequent inspection and assessment than other types of waste site. This is partly because of the nature of the chemicals being stored and partly because accidents are still quite common in the sector. Indeed, the prevention of accidents is perhaps the major challenge faced across the 200 odd sites dealing with hazardous waste.

The reasons for non-compliance amongst permitted firms are varied and include:

- cost considerations;
- ignorance of the full scope of the regulations;
- lack of management procedures to ensure safe sites;
- complete contempt for the regulations.

The Environment Agency believes non-compliance is not skewed towards SMEs. On the contrary, records show that it is larger firms that are the worst offenders. For example, the most recent prosecution was for an uncontrolled chemical release into a storage tank at Veolia's hazardous waste site in Bootle, Merseyside. The firm was fined £100,000 and made to pay £60,000 costs.

Curiously, accredited sites (e.g. ISO14001) are frequently fined. This may indicate that once sites receive their accreditation a degree of complacency starts to creep in to day-to-day site management practices.

## A7.4 Initiatives to improve SME compliance

### A7.4.1 Capacity building for Environment Agency officers: internal hazardous waste sector group

Around 60 Environment Agency inspectors participate in an internal sector group. This deals with general issues across the sector and is a forum for sharing best practice.

National Compliance and Technical Services do, to some extent, play a co-ordinating role across the various Environment Agency areas.

### A7.4.2 Regulation communication: regular sector meetings

The Environment Agency holds regular meetings with the sector to discuss critical issues and measures for improvement. For example, the next scheduled meeting, in May 2009, will discuss incidents and accidents. This is a useful engagement tool for

the Environment Agency to talk to single-site operators who would normally have to engage through their area office and inspectors.

A handful of the biggest waste management companies, operating multiple sites, have an Environment Agency account manager to help improve the dialogue with the Environment Agency. This mechanism also enables the Environment Agency to deal with larger firms at a strategic level and so reduce bureaucracy.

### **A7.4.3 Regulation communication: Industry Environment Agency Compliance group**

The Environment Agency has regular communication with the hazardous waste industry through a dedicated sector group. The Environment Agency provides regular email updates and uses the initiative as a conduit to reach out to the sector overall. Some of the companies involved in the industry are part of the Environmental Services Association (ESA) or Chartered Institution of Wastes Management (CIWM), but there is no real trade association that serves the hazardous waste industry, so this initiative is seen as a useful and cost-effective engagement mechanism.

# Appendix 8 Waste regulation exemptions

## A8.1 Summary

There are hundreds of thousands of exemptions for waste recovery activities that are carried out by businesses across England and Wales. These exemptions, under Schedule 3 of the Environmental Permitting (England and Wales) Regulations 2007, aim to encourage the genuine recovery of waste, as well as allowing for some disposal activities.

Two key initiatives, classified as regulation communication/simplification, are helping to reduce the burden of regulation on SMEs. Over the past 18 months, an Environment Agency Low Risk Waste panel has written over 300 Low Risk Waste Positions to cover novel waste recovery processes that have begun operating since the original regulations came out. These have helped over 200,000 firms avoid permits. The Environment Agency and Waste & Resources Action Programme (WRAP) are also developing a series of Quality Protocols to establish end of waste criteria for a number of waste streams. The Protocols provide more clarity on the end of waste and regulations, stop materials being sent to landfill unnecessarily and increase the use of waste as a resource.

An exemption review is being carried out. Formal consultation has proposed that a one tier exemption system be introduced. Operations covered by Low Risk Waste Positions will be brought into the scope of the new exemptions, which could well benefit numerous SMEs.

## A8.2 Regulatory coverage of SMEs

An exemption covers the waste recovery activity being carried out by a business. There are currently 143,000 exempted sites across England and Wales. Typically, one site has one exemption. However, some sites, such as farms, may have more than five exemptions. Consequently, there are currently a total of 600,000 Simple exemptions (no fees required) and 70,000 Notifiable exemptions (fees required).

The Environment Agency does not record the size of businesses that register, but it is fairly sure that around 50% of total exemptions, which apply to agricultural waste and land, will be dominated by farmers (i.e. micro SMEs). It also believes that overall, a very large proportion of the exemptions are registered by either micro SMEs or businesses employing up to 40 people.

## A8.3 Operation of regulations affecting SMEs

The purpose of a waste exemption is to relieve someone from the burden of having an environmental permit. The aim of the exemption is to encourage the genuine recovery of waste and to allow for some disposal activities. Exemptions help fulfil part of the Government's Better Regulation initiative, which aims to have simpler, more straightforward regulation with clearer rules.

Notifiable exemptions cover higher risk activities that require some degree of assessment and annual inspection by the Environment Agency. In many cases a fee of around £500 is chargeable, to pay for the Environment Agency to carry out these assessments and on-going inspections. These exemptions are time limited.

Schedule 3 of the Environmental Permitting (England and Wales) Regulations 2007 describes activities that are exempt from the requirement to have a waste management permit. When these regulations first came into force some higher risk wastes were covered by Simple exemptions, when in fact they required a degree of assessment to ensure that operations did not pose environmental risks. Consequently, the Environment Agency has a range of so-called 'Complex' exemptions, which cover inherently more risky activities than Simple exemptions, for example, a site taking compost. Complex exemptions cover chargeable and non-chargeable exemptions. When enforcing the regulations and conducting periodic inspections, the Environment Agency tends to look at Notifiable exemptions first. In future, under a new exemption system, the Environment Agency will use the OPRA risk system to target higher risk, but exempted, activities. Complaints and pollution incidents also help to identify certain businesses.

Some operators may abuse their exemption by carrying out disposal operations under what should be a recovery operation, i.e. they will go beyond what might be regarded as 'acceptable' within the terms of the exemption.

Theoretically, it is possible for the Environment Agency to go to the public Register of Exemptions to contact any business it is interested in speaking to. However, the Register is very out of date. A major reason for this is that Simple exemptions are valid indefinitely. A business that applied for a one-off exemption, may well have moved on to a different activity or ceased trading, but its exemption will still be registered.

The formal consultation proposed a **re-registration system for Simple exemptions** to ensure the public Register is kept up to date. Businesses would be required to re-register every three years (a time period that is thought to minimise the burden on businesses). The formal consultation also proposed the introduction of a £50 fee for Simple exemptions to cover this three year exemption period. The fees would pay for Environment Agency registration and, where necessary, periodic inspections.

## A8.4 Legislative changes in the offing

The exemption review has investigated how to improve the current system of exemptions covered by the Waste Management Licensing Regulation, which has been in place since 1994 without amendment.

Other drivers for the exemption review include:

- many new recovery activities that have started up since 1994 are not covered by the regulations;
- the public register needs to be overhauled and accurately maintained;
- reducing the disparity in fee levels and introducing more appropriate inspection/enforcement practices based on the risk posed by the activities that are being exempted;
- small-scale landfill operators have expressed concern about abuse of exemptions in spreading of inert waste to land, which carries no landfill tax, thus diverting waste from licensed landfills.



Some of the preliminary proposals resulting from the exemption review include:

- Notifiable exemptions will be scrapped and a one tier system introduced.
- Operations covered by Low Risk Waste Positions will be brought into the scope of the new exemptions. This could well benefit SMEs.
- Maximum tonnage limits will be introduced for the materials that exempted activities are allowed to handle. Sites that are currently exempted, but that exceed these thresholds, will fall out of the regulations and transfer to full waste management permits.

The Environment Agency suggests that it is important that the exemption review does not undermine the positive work that the Quality Protocols programme is achieving.

## A8.5 Initiatives to improve SME compliance

### A8.5.1 Regulation simplification: Low Risk Waste Positions

Since 1994, new waste recovery operations, and some disposal operations, that were not covered by the original regulations have begun operating. For example, a business separating plastic and metal from coat hangers and one recovering and reusing waste printer toner cartridges would both require an environmental permit, because neither are covered by the 1994 regulations.

Since such operations are deemed to pose a low risk to the environment the Environment Agency has instigated a programme to facilitate compliance and reduce the regulatory burden. Over the past 18 months, an Environment Agency Low Risk Waste panel has written a number of Low Risk Waste Positions to cover such novel waste recovery processes. The positions are written when the Environment Agency is made aware of a new process that is not covered by the regulations. The idea is that the positions introduce a 'safety valve' that gives business a 'release' mechanism. There are now over 300 such positions that are included in Environment Agency guidance on the subject<sup>12</sup>. Up to 230,000 sites are potentially covered by the positions and, therefore, may fall under any new exemption system.

However, the positions do not necessarily increase compliance and the Environment Agency has no real idea how many businesses, in total, may be carrying out similar recovery operations across England and Wales. Therefore, it does not have a clear view of the numbers of SMEs that might be benefiting from such rules.

### A8.5.2 Regulation simplification: Quality Protocols

The Environment Agency is working in partnership with WRAP (Waste & Resources Action Programme) to launch a series of Quality Protocols to establish end of waste criteria for a number of waste streams. The protocols provide more clarity on end of waste regulations, will stop materials being sent to landfill unnecessarily and will increase the use of waste as a resource. If a business achieves the standards set out in the protocol, the material being handled ceases to be classified as a waste.

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<sup>12</sup> [www.environment-agency.gov.uk/static/documents/Business/Low\\_Risk\\_Regulation\\_Appendix\\_A\\_v33\\_revised\\_January09amended.pdf](http://www.environment-agency.gov.uk/static/documents/Business/Low_Risk_Regulation_Appendix_A_v33_revised_January09amended.pdf)

Materials covered by Quality Protocol projects include:

- [gypsum from waste plasterboard](#);
- [paper sludge ash](#);
- [anaerobic digestate](#);
- [blast furnace slag](#);
- [compost](#);
- [flat glass](#);
- [plastic waste](#);
- [processed fuel oil](#);
- [pulverised fuel ash and furnace bottom ash](#);
- [soils](#);
- [rubber materials](#);
- [waste vegetable oil](#);
- [wood wastes](#).

# Appendix 9 Process industry regulation

## A9.1 Summary

Process industry regulations (PIR) cover a wide range of sectors, some of these, like food and drink and textiles, have a larger proportion of SMEs than others. However, the overall number of SMEs covered by PIR is not recorded.

While the main criteria for regulating companies are their OPRA ratings (higher ratings result in more frequent visits) the Environment Agency is currently pursuing a number of initiatives that aim to improve sector compliance and resource efficiency overall. SMEs will benefit from these measures both explicitly and implicitly.

Initiatives include: developing an Environment Agency tool that will help companies, particularly SMEs, measure and improve their resource efficiency; and discussions with the food and drink trade associations to improve adoption of EMS by SMEs.

## A9.2 Regulatory coverage of SMEs

Process Industry Regulation (PIR) covers a wide range of industries including chemicals, refineries, food and drink, steel, textiles etc. Sectors that have a large number of SMEs include:

- food and drink; there are understood to be around 7000 companies in total, most are SMEs. Three hundred and fifty of these companies are regulated under the Environmental Permitting regulations (EPR) and of these around 25-30 are thought to be SMEs<sup>13</sup>;
- textiles; around 40-50 regulated sites under EPR, of which the vast majority are SMEs;
- metals; around 750 businesses classed as SMEs.

The overall number of SMEs covered by PIR is not recorded.

## A9.3 Operation of regulations affecting SMEs

PPC permits or waste management licences automatically became environmental permits on 6 April 2008. Most permits under EPR are site-specific, 'bespoke' permits that have a set of specific conditions, applied by the Environment Agency, which the company must adhere to.

In the past, companies have been able to avoid a bespoke permit if they could demonstrate that their operations fulfilled the criteria for a Low Impact Installation Permit. Under EPR, less than 5% of sites are currently classified under this heading. In some sectors no site would be able to fulfil the criteria because of the nature of their

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<sup>13</sup> Based on an analysis carried out by consultancy Entec which compared BERR SME statistics and Environment Agency regulated data.

processes (e.g. textiles, where sites generally use a lot of water, have odorous processes and are often located next to sensitive locations). This particular permit type has now been superseded by the Standard Permit.

Under EPR the level of the Environment Agency's engagement with firms depends on the level of risk, as assessed by the OPRA risk system. Company size is not itself a consideration. There are five key attributes of OPRA that help to provide a reasonable measure of the overall risk posed by an operation:

- Process complexity – this is the main factor in determining the level of charges paid by the firm. The sector in which a firm operates has a large influence on 'complexity' since some processes are inherently more risky and pose a greater environmental threat than others.
- Location – for example, whether the site is located next to a river.
- Releases – what is the activity allowed to release into the environment.
- Performance record – including whether or not the company operates a management system.
- Compliance history – whether the site has breached its permits in the past.

The overall OPRA rating determines the level of charges paid by the company and hence the income to the Environment Agency and the hours spent by Environment Agency inspectors in regulating the site.

## A9.4 Initiatives to improve SME compliance

### A9.4.1 Regulation communication: management questionnaire/tool for tackling resource efficiency issues

The Environment Agency is working closely with other organisations and programmes, such as the Carbon Trust and Envirowise, on resource efficiency issues, not least to avoid duplication of effort across various delivery bodies and enforcement agencies. It is clear from this joint working, together with feedback from Environment Agency staff, that there is a need to improve firms' understanding of resource efficiency (i.e. what it is and how to analyse it). This is particularly so in areas such as raw material usage and water consumption. Many firms lack the data that would enable them to develop and implement a reduction plan.

Under the READ programme, the Atkins consultancy has been commissioned to research what distinguishes companies with good resource efficiency from bad ones. A management questionnaire is being developed that, in the short-term, will enable Environment Agency staff to work closely with firms (of any size) on their resource efficiency agenda. For example, inspectors could use the questionnaire as the basis for a site audit and to help the company to set targets e.g. for reductions in water use over a three year period.

This could lead to a self-help guide, perhaps a web-based tool, for industry to improve their resource efficiency and to produce savings.

In a related development, from January 2010 the Environment Agency will require firms to report on their product outputs for the year commencing January 2009, so that the Environment Agency can normalise emissions on the basis of per tonne of product

produced in 2009. This will enable the Environment Agency to better understand those sectors where there is potential for improving resource efficiency.

#### **A9.4.2 Regulation communication: NetRegs**

Netregs, the Environment Agency online source of regulation guidance, has sector-specific sections to inform process industries regulated under EPR; for example, food and drink processors at [www.netregs.gov.uk/netregs/businesses/89675.aspx](http://www.netregs.gov.uk/netregs/businesses/89675.aspx).

#### **A9.4.3 Co-regulation: working with trade associations on sector adoption of EMS**

Approaches to environmental performance and compliance issues vary greatly across trade associations. Some, like the Chemicals Industry Association (CIA), produce excellent environmental guidance for their member companies. The CIA also requires members to sign up to their Responsible Care programme.

In the food and drink sector, where there are a large number of SMEs, levels of operator performance appear worse than in other sectors. There are many complaints, for example, about odour problems. Through 'root cause analysis' the Environment Agency has determined that managerial, and not technical, factors are the primary cause. It is believed that one of the main reasons for this failure is inadequately managed, or lack of, Environmental Management Systems (EMS).

Other reasons could be that:

- the sector has only been covered by EPR since 2005, far less time than many other industries;
- the industry, comprising a very diverse set of subsectors producing edible products, does not have a culture of environmental protection, compared with chemical, refineries, cement etc industries.

The Environment Agency is to meet the main food and drink trade associations in the hope that more companies will adopt an EMS. However, the costs may be prohibitive, particularly if a company is seeking accreditation to ISO14001 or EMAS. As an alternative, the Environment Agency may encourage firms to sign up to a good practice guide, which could achieve the same regulatory outcomes. This approach has been adopted in the scrap yard sector, where it is hard for companies to implement an EMS,

This builds on earlier Environment Agency capacity building work, which involved two staff working full time with food and drink trade associations, before the IPPC regulations came into force.

# Appendix 10 Regulation of farmers

## A10.1 Summary

There are 164,000 farmers and the vast majority are micro enterprises with less than 10 employees. They may be covered by up to 17 regulatory regimes, depending on their location and activities.

The majority of regulations are based on general requirements for environmental performance. These are mainly enforced by risk based inspections (approximately 80% resources) leading to every farm being inspected every 20 years (on average). The remainder of resources are employed in influencing and informing farmers.

Key factors in compliance are believed to be levels of farmer understanding, acceptance of the case used to justify regulations, costs of compliance, management capacity and supply chain pressures. Regulating farmers is particularly challenging because of the number, variety and complexity of farms, the limitations of farmer capacity to take in regulations and their willingness to accept that there is an issue to be addressed. Recent research by the Environment Agency has suggested that the credibility of their work force, the simplicity of regulations and the credibility and clarity of the rationale for regulations are key factors in achieving compliance.

The Environment Agency has implemented a range of initiatives to improve the regulation of farmers:

- capacity building of officers to improve understanding and communication with the farming sector, including the use of 'Patch Packs';
- a range of initiatives to communicate regulations effectively to farmers;
- co-regulation within the Environment Agency, so all regulatory regimes are jointly implemented. This has not yet been extended outside the Environment Agency.

## A10.2 Regulatory coverage of SMEs

The Defra June Census in 2006 reported there were approximately 164,000 farmers. Of these 96,000 are full time principal farmers. The vast majority of these are micro enterprises with less than 10 employees.

There are 17 regulatory regimes that cover farmers to differing extents depending on the farm location and activity, but not employee size. There are no SME specific measures included in the regulations.

## A10.3 Operation of regulations affecting SMEs

The majority of the regulations that affect farmer SMEs are based on general requirements for environmental performance, e.g. application levels of nitrates in Nitrate Vulnerable Zones (NVZs) or location and construction of slurry pits. The

exceptions are; requirements for Pollution Prevention and Control (PPC) permits (only 900 in existence covering large pig and poultry units) and permits under the Groundwater Regulations (~6,000).

Two types of activity are used to implement these regulations:

- The main means of enforcement (approximately 80% of resources) is through inspections of around 5,000 farms per year. This means that operating farms are visited about once every 20 years. These inspections are partly targeted by regime (e.g. 2 inspections per year for PPC sites, unless they are covered by farm assurance schemes; 1% of businesses that claim single farm payments) and partly by specific farm environmental risk (based on location, activity and compliance record, although there is generally limited information on farm activity and compliance record).
- The balance of resources (approximately 20%) is used for indirect regulation. These are mainly influencing and communicating activities, such as addressing groups of farmers, working with regional and area stakeholders, and providing best practice guidance on environmental performance.

These mechanisms are not directly influenced by the size of the farm, except in that larger and more complex farms are likely to pose more significant environmental risks.

The main factors affecting compliance are considered to be:

- the extent to which regulations are understood, in a context where farmers are overloaded with information;
- the level of acceptance of the case made to justify regulations (e.g. the reasons for slurry containment are well accepted, but those for the more diffuse pollution effects in NVZs are much less well accepted);
- the costs of compliance, as farmers are generally unable to pass on the costs of regulations;
- the management capacity of farmers who are likely to be subject to a total of 90 regulatory regimes (on average);
- the pressures from supply chains, which may be positive (e.g. farm assurance schemes) or negative (e.g. pressures to meet delivery deadlines that might encourage environmental risk taking).

The main challenges in regulating farmer SMEs, which are reasonably well understood from research into farmer behaviour, are:

- the substantial number of operators in the sector;
- the diversity of activities in the sector;
- the complexity of farm businesses, particularly as they are subject to the uncontrollable pressures of weather;
- the potentially limited capacity of farmers to absorb regulatory requirements in the context of 'information overload';
- the willingness of farmers to accept that there is an issue to address and hence a need to comply with regulation.

The Environment Agency recently reviewed the success of their regulatory approaches. This concluded that:

- the credibility of their workforce with farmers was crucial. Maintaining credibility was challenging in the face of staff turnover and the number of staff (~200) that have a substantial involvement in regulating farmers;
- legislation needed to be simplified as far as possible;
- the rationale for regulatory action must be clarified if farmers are to be convinced, particularly in the case of diffuse pollution impacts like those arising from nitrate pollution.

## A10.4 Initiatives to improve SME compliance

### A10.4.1 Capacity building: 'Patch Pack'

This initiative is intended to improve the credibility and effectiveness of Environment Agency officers and is in response to the above review, which found that credibility was a crucial factor in regulatory success. It has been developed with, and is currently being piloted in, two regions. The pack is to be held and maintained in areas for officer use and includes five elements:

- context: e.g. corporate/regional/area/catchment aims, service levels, aims of relevant stakeholders;
- features and evidence: e.g. features of area/catchment, data on environmental trends;
- communication materials: e.g. inventory of displays, case studies, presentations;
- organisations and people: e.g. lists/contacts of agricultural stakeholder organisations, contact details of champion farmers;
- other information: e.g. external funding, farmer training schemes.

A key to success will be maintaining the packs and the pilots are exploring the most efficient and effective means of keep packs up to date.

### A10.4.2 Regulation simplification: Whole Farm Approach

This is a website<sup>14</sup> developed by Defra and designed to lighten the regulatory burden on farmers and growers in England. It provides a faster and more efficient way of doing business between government and the farming industry. Over time it will help reduce the number of duplicated requests for information that farmers receive from Defra and its agencies.

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<sup>14</sup> <http://www.defra.gov.uk/farm/wholefarm/index.htm>



### **A10.4.3 Regulation communication and co-regulation: Farming Focus**

This is a West Midlands initiative that was started in circa 2004 when the Agriculture Waste Regulations were introduced. At this time there was an increased need to communicate widely to farmers. However, only a limited number of farmers seemed willing to come to meetings organised by the Environment Agency. The challenge was to find a way to communicate with the majority of farmers, who either did not have the time to attend meetings and/or were unwilling to engage with regulators.

The Environment Agency, together with Natural England (NE), the National Farmers Union (NFU) and the Country Landowners and Businesses Association (CLA), decided to work with the Rural Hubs funded by Advantage West Midlands (AWM). These Rural Hubs had been set up in each West Midland's county with a fulltime organiser to network and communicate with rural businesses. The partnership established regular local county-based workshops to communicate priority issues to farmers. Initially the meetings had low attendances. As they became established and developed farmer buy-in, the attendances increased dramatically and now 4-5 thousand farmers have been to meetings. Environment Agency officers reported that the meetings were clearly attracting 'new faces' and feedback from attendees suggested that farmers were attending for the first time.

As these meetings/workshops became better attended, other regulators (e.g. the RPA and HSE) and other farm advisers (e.g. Momenta) were invited to attend. This ensured information to farmers could be integrated and that meetings provided greater value. The initiative was renamed from 'Green Futures' to 'Farming Focus', both to avoid clashing with another organisation and to broaden the focus of the network. AWM now funds Farming Focus with ~£1m over 5 years. The same model has been rolled out in the East Midlands. Establishing it has been more of a challenge because there are no equivalents of Rural Hubs in the East Midlands. However, the model is now well established and successful in East Midlands.

The main lessons from this initiative are the importance of localised and high value communication and interaction. This is feasible if a number of organisations are involved and information is prioritised so that the audience is not overloaded through 'death by PowerPoint'.

### **A10.4.4 Regulation communication: Common Ground**

This project was piloted in the first quarter of 2009. It worked with businesses and professionals who have frequent contact with farmers e.g. accountants, vets and bankers. The project aims to brief these organisations and individuals so that they can communicate regulatory requirements and environmental messages to farmers. The expectation is that passing on information to farmers will provide these businesses with a business advantage, both in terms of understanding the requirements on farmers and in being able to provide value added services to them. The success of this pilot is currently being reviewed.

### **A10.4.5 Co-regulation: Integrated Regulation for Agriculture Programme (IRAP)**

Over the last few years the Environment Agency has implemented IRAP. This has introduced 2 main elements:

- multipurpose farm inspections;

- risk based regulation.

Previously inspections were all single purpose, conducted for a particular regulatory regime by officers expert in that regime. They were not risk based.

The main driver for this change was to increase the efficiency of regulation. IRAP has allowed the number of inspections to be reduced from about 40,000 single purpose inspections to the current level of around 5,000.

An extensive staff training programme supported the introduction of IRAP. A database of farms (FARMS) was also developed. This holds risk related information and can generate an integrated inspection form with pre-filled data to guide inspections.

The actual outcomes of IRAP are being reviewed, but its implementation has been at least partially successfully because all inspections are now multipurpose and to some extent risk based.

#### **A10.4.6 Co-regulation: pilot with the Rural Payments Environment Agency (RPA)**

The purpose of this initiative was to encourage cooperation with the RPA on regulation, but the initiative has apparently stalled. The rationale is being rethought by Defra and the RPA found the cooperation challenging because of their work practices.

# Appendix 11 Regulation of construction sites

## A11.1 Summary

There is limited knowledge of the number of construction sites that are affected by regulations and the extent to which regulations affect SMEs. There are 12 regulatory regimes that could potentially affect construction sites and the construction industry has a very high proportion of SMEs. With the exception of Site Waste Management Plans, most regimes do not have exclusions based on business size.

Regulations mainly set general requirements to protect the environment. Inspections are only made on a risk based response to pollution incidents. There is limited information on the levels of, and factors in, compliance. Based on information from the Health and Safety Executive (HSE), a likely challenge to effective communication is the low levels of literacy in the industry.

The Environment Agency has implemented a number of initiatives to improve compliance:

- capacity building through the Sitewise project;
- various initiatives to improve communication;
- some minimal co-regulation with HSE, based on learning from them.

## A11.2 Regulatory coverage of SMEs

The Environment Agency does not know to what extent construction sites are covered by regulations or how many of these sites are run by SMEs. This is because sites are regulated on a reactive basis in response to serious pollution incidents. There are thought to be significant numbers of SMEs in the construction sector that are affected by regulation:

- There are 12 regimes regulated by the Environment Agency that are likely to affect construction sites, depending on the construction activities and their location, e.g. Hazardous Waste Regulations, Packaging Regulations and regulations relating to water pollution.
- The construction sector has a relatively high proportion of SMEs. In 2008, among 192,000 businesses, over 99.5%<sup>15</sup> were SMEs.

Regulations generally do not have SME specific measures to reduce obligations. Some regulations are only applied above a specific threshold, e.g. Site Waste Management Plan requirements only apply to sites with a turnover greater than £300,000.

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<sup>15</sup> ONS Construction Statistics Annual, 2008 Edition,  
[http://www.statistics.gov.uk/downloads/theme\\_commerce/CSA\\_2008\\_final.pdf](http://www.statistics.gov.uk/downloads/theme_commerce/CSA_2008_final.pdf)

## A11.3 Operation of regulations affecting SMEs

Regulations are intended to ensure that activities on construction sites do not have significant adverse environmental impacts. They set out general requirements e.g. take reasonable steps to prevent pollution of water courses. They do not involve permits, but there are some requirements for registration (e.g. if commercial waste is being transported) and to apply for exemptions to regulation (e.g. if commercial waste is being stored).

These regulations are enforced on a reactive basis when pollution incidents are reported. The response is then risk based and depends on the seriousness of the incident. This approach is applied to all sites irrespective of the size of the operating business. The Environment Agency is reviewing its regulatory procedures. In particular, 30 regulators are being interviewed, to allow the Environment Agency to better understand the different approaches to regulation on the ground, and to establish what support regulators require to be more efficient and effective.

The Environment Agency does not have specific knowledge of the levels of compliance in the construction industry, or the factors that might affect compliance. However, it has followed the HSE's work on compliance. This suggests that overall compliance is low, particularly among smaller businesses, and highlights the fact that sites are more likely to comply if they are run by companies that have worked on larger sites.

The Environment Agency has learnt, from the HSE and its own experience in Sitewise (see below), that low levels of literacy, particularly in smaller businesses, are a major challenge when communicating regulatory requirements in the construction sector. The Environment Agency is learning from the HSE's approach of using highly visual communication and concentrating on 2 - 3 main basic actions at a time to avoid information overload.

## A11.4 Initiatives to improve SME compliance

### A11.4.1 Capacity building: Sitewise

Sitewise was a pilot project in the Anglian region that operated for 3 years, between 2004 and 2008. It explored approaches to influencing different audiences in the construction sector by engaging with stakeholders and developing communication materials. This pilot is being reviewed with the intention of identifying what can be 'rolled out' across the Environment Agency. This is proving a challenge. Sitewise lacked specific objectives and the monitoring of its impact was limited, so it is difficult to determine the efficiency and effectiveness of its different elements. Some interesting and popular materials were developed, and these could be built on. The experience from the pilot highlighted the importance of simplified communication and working through trusted intermediaries.

### A11.4.2 Regulation communication: Netregs

Netregs, the Environment Agency online source of regulation guidance, has a specific section aimed at informing the construction sector of their regulatory responsibilities<sup>16</sup>.

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<sup>16</sup> <http://www.netregs.gov.uk/netregs/businesses/construction/default.aspx>

This seems to be quite popular, for instance, in 2009 there were 2 - 3,000 hits per month on the section on Site Waste Management Plans.

#### **A11.4.3 Regulation communication: pollution prevention guidance**

The Environment Agency is currently updating and simplifying its guidance on pollution prevention for the construction and demolition sectors.

#### **A11.4.4 Regulation simplification: Aggregate Protocol**

This has been developed with WRAP to ensure better understanding of the regulatory requirements for reclaiming construction and demolition waste, and for recycling it into aggregates so that it is no longer classified as a waste.

#### **A11.4.5 Co-regulation: learning from HSE**

The Environment Agency has collaborated with the HSE to learn as much as possible from HSE's extensive research into, and experience of, regulating the construction sector. For instance it has learnt from their research on factors affecting compliance and on the use of visual communication.

# Appendix 12 Consultations

## A12.1 Abstraction Licenses

Junier Browne      Policy Adviser

## A12.2 Water Quality Discharge Consents

Andy Rogers      Policy Adviser

## A12.3 Oil Storage Regulation

Mark Chandler      Policy Adviser

## A12.4 Producer Responsibility

Adrian Harding      Policy Manager

## A12.5 Waste Carriers Registration

Felicity Clarke      Policy Advisor

Alan Owers      Technical Advisor

Paul Slater      Derbyshire Flytipping campaign, EA

## A12.6 Landfill & Transfer Stations for C&I waste

Pete Clarke      Policy Adviser, Landfills

Mike A Smith      Process Technical Adviser (Biowaste, composting & anaerobic digestion), National Technical Services

## A12.7 Waste Regulation Exemptions

Cormac Quiqley      Policy Adviser, Exemptions

## A12.8 Hazardous Waste

Paul Fernee      IPPC Waste Technical Advisor, National Compliance & Technical Services

Jill Rooksby      PPC Waste Treatment Sector Coordinator

Barry Heaven                      Hazardous Waste Technical Advisor

## A12.9 Process Industry Regulations

Martin Bigg                      Head of Industry Function  
Richard Clarke                      Policy Manager, Industry Regulation  
Jon Foreman                      Industry regulation – Food and Drink sector  
Neil Goodlad                      Industry regulation – Metals sector

## A12.10 Regulation of Farmers

Jane James                      Policy Manager  
Paul Meakin                      Principal Officer, Agriculture

## A12.11 Regulation of Construction Sites

Martin Fodor                      Policy Adviser

# Appendix 13 Interview questions

## A13.1 Regulatory effects on SMEs

1. What do you understand by the term 'SMEs'? Do you know of a definition, and if so what is it?
2. Are there any regulations in your remit that directly affect SMEs? If so, what are they and in what ways do they affect SMEs? (*What do they require SMEs to do in order to comply e.g. administrative/reporting costs?*)
3. Do you know how many SMEs are affected by the regulation in your remit? How did you estimate this? If not, how might you go about estimating the number?
4. Are there any types of SME that are particularly affected (*e.g. sectors, sizes of SME – micro, small, medium*)?
5. Are there any SME specific measures included in the regulations (*e.g. permanent/temporary exclusions from some requirements, reduced reporting*)?

## A13.2 Operation of regulations affecting SMEs

6. What are the broad objectives of the regulation? How is the regulation implemented (*e.g. permits, registrations, bans, penalties, risk-based*)?
7. How is the regulation enforced (*e.g. inspections, audits, prosecutions, non-legislative means such as information campaigns, guidance and support*)? Is this enforcement risk-based? If so, how have the risks been assessed?
8. How have these implementation/enforcement mechanisms been applied to SMEs (*e.g. special treatment – reduced reporting, fewer inspections*)?
9. What factors do you think affect SME compliance with the regulation (*e.g. supply chain cost pressures, cost of keeping informed, complexity of the regulation*)?
10. Are there particular challenges with regulating SMEs (*e.g. enforcement, compliance*)? If so, what are they? Are these challenges fully understood?



11. Have you explored, developed and/or implemented any initiatives/projects to address these challenges?
  - a. *If yes, please go to the next section;*
  - b. If no, why was this? Are there any particular barriers to such an initiative/ project?

### A13.3 Projects/ initiatives to increase SME compliance

12. What is the name of the initiative/project? Over what time period was it implemented? Was it a pilot (e.g. *restricted focus, restricted geography*)? Who managed it?
13. What was the rationale for the project/initiative? What was the evidence base to underpin it? What were its aims and objectives?
14. How did the project/initiative operate? Did it involve cooperation with other regulators, networks or businesses?
15. What were the outcomes and impacts of the project/initiative?
16. Was the project/initiative evaluated or reviewed?
17. What are the lessons going forward? What are the critical success factors?

# Appendix 14 How Environment Agency staff interpret the SME term

In our consultations with Environment Agency staff, understanding of how 'SME' is defined included "no idea", "firms with up to 40 employees" and "small businesses with 'limited' numbers of employees and turnover." One person understood SME to mean Small and Medium enterprises and another that it covered firms with up to 250 employees. No staff were aware of the full European Union definition of an SME (i.e. €50m turnover and up to 250 employees<sup>17</sup>).

Our conclusion is that Environment Agency staff regard "SMEs" as referring to businesses that are at the lower end of the size range that the term actually covers.

The Environment Agency should consider also using the term "micro-SME" when considering how it might improve communication and compliance. This is particularly so in areas like waste management and agriculture where there are thousands of small firms in this category.

## A14.1 European definition of Medium, Small and Micro businesses

Enterprise category	Headcount	Turnover	Or	Balance sheet total
Medium-sized	< 250	≤ € 50 million		≤ € 43 million
Small	< 50	≤ € 10 million		≤ € 10 million
Micro	< 10	≤ € 2 million		≤ € 2 million

<sup>17</sup> [http://ec.europa.eu/enterprise/enterprise\\_policy/sme\\_definition/index\\_en.htm](http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/index_en.htm)

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