

The Rt. Hon. Mark Spencer MP
Minister of State for Food, Farming and Fisheries
Seacole Building
2 Marsham St
London
SW1P 4DF

Date: 28 March 2024

Dear Mark,

RE: Consultation: Environmental Permits and Waste Incineration Facilities

Thank you for your letter of 22 March setting out your intention to explore the role of waste incineration in the management of residual wastes in England and inviting me to consider and respond on the outlined approach.

The Government is taking a number of important regulatory reforms to achieve a reduction in waste, including implementing extended producer responsibility, the deposit for return scheme and better controls on carriers, brokers and dealers, as well as new steps to prevent illegal waste exports. The Environment Agency has long argued for steps to reduce end wastes and move to a more circular economy and will continue to support your work to further increase recycling and reduce environmentally harmful disposal routes.

The Proposed Direction

Your policy review will be accompanied by a renewed proposed Direction to the Environment Agency requiring us to temporarily pause the determination of environmental permits for new waste incineration facilities. There are risks associated with this pause that I should flag.

Since my response to the previous “minded to” letter from Minister Moore, dated 27 February 2024, two of the ten new permit applications I mentioned have now concluded most stages of the determination process. In line with the Regulators’ Code the Environment Agency should ensure that our approach to our regulatory activities is transparent. This means that we keep permit applicants informed of where their applications are in the process, and there is an expectation that this information is provided by our National Permitting Service staff. In the absence of a Direction there is no lawful reason not to issue these permits, and I anticipate that they will be issued at the end of the week commencing 2 April. We would then continue to determine further permits in line with our published practices and Defra’s core guidance. Of course, in the event of a Direction we will immediately pause work on these applications.

The suggested scope of this Direction is clearer and addresses some of the concerns raised in my letter in response to Minister Moore on 28 February. In particular, you have provided clarity on the continued permitting of incineration for clinical and hazardous waste, and the issuing of variations to existing environmental permits, including to develop carbon capture

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and storage. An additional exclusion for waste incineration plant whose principal purpose is the recycling of waste materials or the production of material products other than fuels would provide further clarity and our lawyers will be happy to work with Defra to address this concern.

The length of time for the proposed pause is also reduced which will help mitigate or reduce some of the risks that I set out previously. Government will still need to manage the uncertainty and potential disruption any length of pause in permitting will engender, and the signal it sends to investors about future policy direction.

The Policy Review

I have considered the Environment Agency's advisory role in the accompanying policy work, set out in your rationale document. Our expertise is in delivering permitting and compliance activities, in line with our statutory role. However, the proposed terms of the work are broad, and will require expert input on subjects such as waste planning and land use planning from other authorities. As well as draw on external expertise on residual waste arisings and disposal capacity. We will make all our data and expertise available to the Defra review team.

We will want to consider and discuss in more detail the rationale you set out in the key arguments document and the wider consequences for the planning system, local decision making and accountability. I do however recognise the challenge of plateauing recycling rates in England and welcome the Government considering what more could be done to encourage investment in waste prevention, re-use, and recycling. What we must avoid in the meantime is disincentivising the legitimate handling of waste and further increasing the risk of illegal activity and opportunities for waste crime, recognising the great harm communities face from illegal dumping and poorly managed waste sites.

Next Steps

As previously, our advice in response to this minded to consultation letter will need to be published. Whilst it may not be a legal requirement to publish the Direction under the Environmental Permitting Regulations, we consider that it will need to be published so that permit applicants will understand the Government's decision. I also encourage Defra to undertake proactive engagement with other government departments, waste disposal authorities, waste planning authorities and the waste sector.

Yours sincerely,

Philip Duffy
Chief Executive, Environment Agency