

Justice Committee

Environmental crime and serious organised crime

Written submission from the Scottish Environment Protection Agency

Thank you for providing the Scottish Environment Protection Agency (SEPA) with the opportunity to provide the Committee with information relating to the management of waste as part of serious organised criminal activities.

The presence and activities of Serious Organised Crime Groups (SOCG) within the waste industry in Scotland is a material threat to the health and prosperity of Scotland's natural environment, the well-being of our local communities and, not least, the continuing viability of the waste management sector.

Current estimates suggest that the UK waste and recycling sector generates in excess of £12 billion *per annum* and employs over 128,000 people and this is made vulnerable by operators who actively and wilfully seek to evade regulatory oversight and avoid the legitimate costs and tax burden associated with this sector. In March 2014, industry trade groups concerns led to their commissioning a report on the subject, *Waste Crime: Tackling Britain's Dirty Secret*¹. The report highlights criminal practices that lead to criminals being able to undercut legitimate businesses thus reducing government tax revenue through the evasion of Landfill, VAT and Corporation Taxes. By avoiding the proper costs of waste treatment and disposal, waste criminals offer attractive "too good to be true" gate prices within a highly competitive marketplace where the margins between profit and loss can be wafer thin.

It is our view that SOCG presents a new scale of criminal intent and capability which – if not addressed – has the capacity to inflict serious and lasting harm on Scotland. SOCG are innovative and active. They seek new ways of entering, and concealing their exploitation of, the waste industry. They are a danger because they do not demonstrate the obvious non-compliance behaviours of licence conditions observed elsewhere within the industry identified by SEPA regulatory officers employing a traditional approach to compliance and enforcement. SOCG present a façade of compliance, employing professional managers and consultants to mask their activities. SEPA is determined to meet the challenge of this threat and welcomes this opportunity to make a submission to the Justice Committee on our experience of serious organised crime in the regulated waste industry.

Background

In recognition of this, SEPA introduced an intelligence-led approach based on the sharing and analysis of data and intelligence between key partners, such as the Police Service of Scotland, so that the true nature of the SOCG threat to the waste industry is better understood. No single agency fully understands this threat at a strategic level, and it has only been in co-operation with our partners that SEPA can now look to develop appropriate responses to address the drivers and causes of

¹ Waste Crime: Tackling Britain's Dirty Secret published on 4 March 2014 by the Environmental Services Association Education Trust. The report highlights this growing problem of waste crime and its economic and environmentally damaging effect on society.

waste crime; and identify the pressures presented by the market which offer opportunities to criminals in the first place. Although SEPA has always been aware of the existence of pockets of criminality within the regulated waste industry, our strategic understanding of the issue is a more recent development built upon improved joint working and intelligence exchange with partner agencies. In a period of financial restraint across the public sector, our agency has invested significantly to increase intelligence and enforcement capacity and capability to tackle serious waste crime: 9 staff were dedicated to this work in 2010 with numbers increasing to 22 by 2014.

Improved partnership engagement and intelligence exchange permitted SEPA to engage for the first time in 2010 in an exchange of data with law enforcement partners for the purposes of detecting SOCG in the waste industry and to submit environmental crime for consideration as one of the key business enterprises of SOCG. This was subsequently articulated in the ACPOS Scottish Strategic Assessment of 2010 / 2011. SEPA has since engaged in regular exchanges of intelligence and licence data with criminal intelligence held by the Police Service of Scotland which have consistently identified the presence of SOCG at all levels in the regulated waste industry. The nexus between organised crime, environmental crime and the regulated waste industry, identified by these cross matching exercises, generated early political interest as the potential threat to all stakeholders became more apparent. A Scottish Parliamentary Event was held in February 2011 which brought together key stakeholders including Justice, business, trade bodies, NGOs, NDPBs and government to begin discussion about the most appropriate means to tackling this crime type.

Environmental Crime Task Force (ECTF)

The impetus generated by the Parliamentary event led to the formation in November 2011 of the Environmental Crime Task Force (ECTF). The Taskforce was established by Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment and is a group of experts tasked with supporting delivery of the Scottish Government's commitment to tackling environmental crime. The group is chaired by SEPA Executive Director Calum MacDonald and includes representation from Scottish Government, Police Scotland, HMRC, SOLACE, and COPFS. The group has brought together key agencies responsible for enforcing environmental legislation, given focus to future policy development and helped shape our priorities on environmental crime with a particular focus now on SOCG. The ECTF has been successful in introducing legislative reform, improved information sharing and partnership working, and has been key to the introduction of Proceeds of Crime Act (POCA) and the use of financial investigation in tackling this criminality.

Scale and Extent of SOCG in Waste Industry

It is our assessment that SOCG are not simply engaging in waste crime as an adjunct to other criminal business enterprises, such as money laundering of other crime activities, but as an active business enterprise through which they commit waste crime for the high profits that can be made. Critical to this assessment has been the exchange of intelligence undertaken by SEPA and the Police Service of Scotland. SEPA analysis based on intelligence, licensing data and SEPA case reporting since January 2013 identifies that approximately 20% of all SOCG, including some of the top tier criminals in Scotland, are linked or are directly involved

in businesses within the waste sector. The full scale and extent of SOCG involvement in the waste industry is not fully understood and more work is required in this area to assess their impact and test this assessment further.

Waste Crime Team

In response to the changing landscape of environmental regulation and enforcement SEPA has established a dedicated Waste Crime Team (WCT). This is an 18-month pilot project involving an enhanced skills-set of experienced professional regulatory officers as well as specialist investigators, who have been tasked to initiate and lead on significant investigations into waste crime. It works with relevant partners to investigate the most serious waste crime impacting upon Scotland's environment and economy; and it will support the national, partnership-focused ECTF in providing strategic direction. The WCT is further supported in this work through the formation of an Investigation Advisory Group (IAG) to assist investigations in the provision of support and provide an opportunity to highlight possible specialist resourcing needs at an early stage.

Enforcement Support Team

SEPA's Enforcement Support Team (EST) plays a central role in applying our intelligence-led approach to tackling SOCG. It operates a full intelligence service for SEPA and acts as the primary intelligence gateway with other law enforcement agencies such as the Police Scotland, HMRC, DVSA and others. This unit collects, manages and analyses the intelligence that directs or supports our waste crime enquiries, as well as supporting work using Proceeds of Crime Act 2002(POCA) legislation in confiscation investigations which seek to reclaim assets obtained by offenders, and has provided a dedicated Intelligence Development Officer to directly liaise with industry and progress intelligence on waste crime.

Financial Investigation and POCA

Financial investigation has now been established as a central component of our investigative and enforcement approach; and to this end SEPA participates as a core member of the Scottish Multi-Agency Asset Recovery Team (SMAART) which is the strategic forum for maximising the effectiveness of POCA. The EST has significantly improved its capability to support waste crime investigations by the employment of two accredited financial investigators. Although POCA cases relating to waste crime are extensive and protracted, initial results demonstrate the difference in financial benefit between waste crime and common acquisitive crime: the financial benefit assessed in waste crime cases investigated in 2013/2014 is estimated by SEPA at £27 million with significant assets for potential restraint now identified following extensive work by SEPA and Police financial investigators. (SEPA applies the same criteria and methodology used by law enforcement agencies in Scotland in undertaking this assessment work).

Trans Frontier Waste Crime and International Work

The waste industry is an inter-connected, global industry and the trafficking of illicit waste has been identified by both Europol and Interpol as one of the key crime areas exploited by organised crime at an international level. SEPA participates in a number of Trans frontier waste crime initiatives and is a member of the INTERPOL Pollution

Crime Working Group.² The development of the ECTF in Scotland is of particular interest to INTERPOL and is used by them as an example of multi-agency collaboration best practice.

EU Life *SMART Waste Project*

On 30 April 2014 SEPA was awarded co-funding of €4.3M by the EU LIFE+ Programme to lead a 5 year waste crime project that will look to develop innovative ways to better understand, tackle and reduce waste crime in association with Natural Resources Wales, The Association of Cities and Regions for Recycling and sustainable Resource management (ACR+) and the Brussels Institute for the Management of the Environment.

Regulatory Reform Act

SEPA wants to provide its officers with a more proportionate and flexible enforcement toolkit which will better allow us to deliver on our strategic objectives. The Regulatory Reform (Scotland) Act passed by the Scottish Government on 16th January 2014 provides SEPA with an enhanced enforcement toolkit for the future which reduces reliance on the criminal system to undertake robust enforcement. In addition, amendments to powers under section 108 of the Environment Act 1995 will support enhanced investigation of environmental crimes.

Waste Crime Initiative 2014/15

Together SEPA's WCT and the EST present a response which deals with the most serious symptoms of waste offending. In order to tackle waste crime effectively across different levels, however, it is necessary to construct an inclusive framework across all SEPA remits. This framework will be constructed as part of our Waste Crime Initiative. Tackling waste crime is a key priority project published in our Annual Operating Plan 2014/15. This project will seek to provide a fuller assessment of the scale, cost and harms caused by waste crime in Scotland, and particularly when associated with SOCG. This initiative will further enhance the Agency's capacity and capability to combat the waste crime, both internally and externally through:

1. Improving Intelligence on waste crime;
2. Developing waste crime risk modelling;
3. Production of a Waste Crime Threat assessment to identify the scale and impact of waste crime and set a baseline for future reporting;
4. Enhance our ability to use POCA and financial investigatory tools;
5. Enhance our ability to detect and report on waste crime;
6. Undertake partnership work to deter and disrupt waste crime;
7. Introduce more effective sampling and remote sensing techniques.

The ECTF will sponsor an Environmental Crime Conference in November 2014 to promote tackling environmental crime with a focus on serious waste crime, and which will be directed to appropriate operational officers and other stakeholders that will involve key note addresses from Richard Lochhead, Cabinet Secretary for Rural Affairs and Environment and the Lord Advocate, Frank Mulholland QC together with

² The INTERPOL Pollution Crime Working Group initiates and leads a number of projects to combat the transport, trade and disposal of wastes and hazardous substances in contravention of national and international laws.

ECTF representatives from the Police Service of Scotland, SEPA, SOLACE and HMRC.

We propose to take-up the offer extended by Police Scotland to embed a SEPA Intelligence Officer within the Scottish Crime Campus to support the mapping and targeting of SOCG within the waste industry which we believe is a key to future progress in understanding and tackling this threat.

A key area of future development is closer engagement and joint research with the legitimate industry, in particular the trade bodies; Scottish Environmental Services Association (SESA)³ and the Chartered Institution of Wastes Management (CIWM)⁴, who are particularly supportive of the need to tackle organised crime within their industry sector. Working together we will better understand the vulnerabilities in the market which are exploited by criminals. We recognise that more needs to be done and we will look to further enhance joint working and intervention opportunities with law enforcement agencies and others both here in the UK and beyond in the year ahead.

We hope that the information provided is helpful for the Committee's discussion about its approach to this issue. We would welcome the Committee pursuing this issue and, if they decide so to do, would also take the opportunity to contribute to a future oral evidence session.

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record. If you require further clarification on any aspect of this correspondence, please contact Willie Wilson, National Operations Waste and Enforcement Manager, SEPA Corporate Office, at the address shown.

Calum MacDonald
Executive Director
17 June 2014

³ Scottish Environmental Services Association (SESA) is the sectoral trade association representing Scotland's managers of waste and secondary resources.

⁴ Chartered Institution of Wastes Management (CIWM), is the professional body which represents waste and resource professionals working in the sustainable waste and resource management sectors worldwide.