

Philip Duffy  
Environment Agency  
(Sent via email)

Date: 6 July 2023

### **An open letter**

Dear Philip,

Congratulations on your appointment as Chief Executive of the Environment Agency (EA). We warmly welcome you to the position and look forward to working closely with you in your role as the regulator of the waste sector. As the Environmental Services Association (ESA), we are committed to supporting you and the EA in helping the legitimate waste sector thrive whilst protecting the natural environment.

Waste crime is big business, and we believe that its impact on the sector is the worst it has ever been. It is now essential that we work together to use all of the powers available to you and EA officers to stop illegal activity as quickly as possible. We are keen to work with you to help tackle the criminality blighting our sector.

Your predecessor, Sir James Bevan, referred to waste crime as “the new narcotics” (Gov.uk, 2022). Its severity and impact are still not yet fully understood, but it is clear that criminals are making huge profits at the expense of legitimate operators. This undermines the sector’s investment in new infrastructure and the pursuit of higher standards – which ultimately underpin the UK’s transition to a circular economy.

The Environment Agency’s own recent National Waste Crime survey published on 6 July 2023 highlights that a fifth of all waste produced - 34 million tonnes - is perceived to be managed illegally, and there is little evidence of it decreasing. Respondents to the survey also highlight that whilst the EA is seen as a knowledgeable organisation, it needs more resources to be able to provide an effective response, given the scale of the problem.

Reflecting the severity of the situation, we have commissioned and published three comprehensive reports over the last decade with Eunomia, highlighting the extent of waste crime and its impact on the economy and environment. Eunomia has helped research content for this letter and our recent research with them forecasted that known waste crime costs England about £1bn annually (ESA and Eunomia, 2021). In reality, the figure is likely to be substantially higher than this.

Despite this knowledge, the situation has not improved and has in fact, been deteriorating. In a BBC podcast which delved into the ‘criminal underworld’ of waste crime, Dan Ashby described waste crime as:

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*“Low-risk for criminals and you’re being paid to do the crime.  
It’s an extraordinarily brilliant business” (BBC, 2023)*

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The National Audit Office (NAO) corroborated the view that waste crime costs are growing. The NAO highlighted that, the more waste crime is investigated, the bigger the problem it is revealed to be, as more incidents are identified (NAO, 2022). As such, reported statistics and official data understate the true extent and scale of the issue. Additionally, following a 2018 independent review into serious and organised crime, it was revealed that over the preceding years, organised crime groups were more involved in waste crime, partly due to the market's increased attractiveness and the low barriers to entry (NAO, 2022).

The prevalence and magnitude of this issue indicates the risk of detection and threat of penalty is not a sufficient disincentive to commit waste crime. Indeed, the Public Accounts Committee (PAC) reported that the approach to large parts of waste crime is closer to decriminalisation and that fines were just seen as a business expense (PAC, 2022). They noted that much waste crime is responded to with a minimal, or entirely absent enforcement response: fewer incidents are investigated, investigations are taking longer, and advice and guidance or warning letters are the most common responses for most types of waste crime with the numbers of prosecutions falling 90% since 2007 (PAC, 2022). We would suggest that this is an unacceptable situation and it is imperative that more effective enforcement outcomes are achieved.

The Government outlined in the Environmental Improvement Plan (EIP) a hugely ambitious target of eliminating waste crime by 2043 (HM Government, 2023). Given the current approach and resources dedicated to tackling waste crime, this simply cannot be achieved. However, the ESA is ready to support you in improving the EA's approach and encourages the increase of dedicated resources to help you meet this target.

## **The Economic Gains of Waste Crime**

Waste is more valuable than ever before. The increasing use of policy and legislation to drive waste away from cheap landfill to further up the waste hierarchy has meant that a lorry of waste is worth at least £2,000. Thirty years ago, an equivalent load would have cost £200.

It is, therefore, more important than ever that enforcement action consistently succeeds in reducing the potential for economic gain, and does so in a timely manner. We have encountered some egregious examples of where poor enforcement outcomes have occurred - these are shown in Annex 1.

## **A Call for Action**

### **Adequate resources must be put towards tackling waste crime**

Beyond the moral case for enforcement, there is a clear economic case for increased enforcement resourcing. In our 2014 report, we estimated that every £1 of Government spending on tackling waste crime brings an estimated return of £4.4, over £3 of this directly input back into the public purse (ESAET, 2014). This was validated in a report commissioned by the EA, which calculated that every additional £1 spent on tackling waste crime would yield, on average, £4.96 back into the legitimate economy (EA, 2020).

In 2021/22, just £10m was specifically ringfenced by the EA to tackle waste crime, despite waste crime having an estimated annual cost of £1bn. It is painfully clear that insufficient money is being spent to tackle waste crime. The £10m of ringfenced funding also stands in stark contrast the £50m spent regulating waste activities via permits and registrations (EA, 2022). This disparity clearly deprives the EA of the ability to focus on the activities that are causing the most harm.

We are now in critical need for a dramatic increase in the funding available to tackle waste crime. We understand that there are powers within Section 64 of the Environment Act 2021 for the EA to raise fees from permit holders to combat illegal waste sites. As an industry, we are willing to provide additional revenue for the EA to tackle waste crime and encourage the EA to utilise this power. If further funding from other sources is needed, we support the EA in its efforts to determine and secure the total amount of funding needed to tackle waste crime.

## More effective enforcement is needed

The EA has significant powers in relation to regulating the waste sector. It acts as the regulator, investigator, and prosecutor. It is vital that it fully utilises these powers as well as receiving effective external scrutiny to ensure appropriate use.

The ESA has a broad range of members, covering most of the waste market. As such, we have unique and practical insights into the enforcement powers implemented by the EA, as well as the impacts of these enforcement activities. This is yet another reason why we are keen – and well-placed – to support you in tackling waste crime.

Our member's perception is that it takes far too long to close down blatantly illegal activity, with protracted routes to enforcement and insufficient use of available powers. This means that illegal activity can continue to operate and receive large quantities of waste, even whilst enforcement cases are being built, causing environmental problems as well as depriving legitimate operators of businesses. For example, whilst the EA has the power to essentially 'lock the gates' of known illegal sites, and to crush vehicles used in waste crime, we are aware these powers have only been utilised a handful of times since they were implemented.

By contrast, legitimately operated and well-run permitted facilities are susceptible to quickly accumulating non-compliance scores for very minor technical breaches of permit conditions. These are often associated with no (or very little) environmental impact, but can result in significantly increasing the level of permit subsistence fees on the legitimate operator.

There is also a perception amongst legal experts within ESA's membership, that the EA takes quite a risk averse approach to prosecution of illegal activities, resulting in fewer prosecutions and significant delays in getting cases to court. Where prosecutions are successful, they often result in insufficient penalties, which provide little deterrent to offenders – as also noted by both the PAC inquiry and the NAO report.

There is also concern that the EA is not making full and proper use of the sentencing guidelines, and that the failure to achieve the recommended sentences is the result of the EA prosecutions applying the guidelines incorrectly when presenting cases.

It is important that EA officers receive adequate training to help to achieve more stringent and appropriate sentences, and ensure that cases don't fail on technicalities before they even get to court, which unfortunately happens far too often.

## Regulatory reform must be fast tracked

We recognise that increased funding is not the only action required to tackle waste crime. As part of our previous research, we provided recommendations divided into four broad themes to address the significant factors leading to waste crime:

- modernise the regulatory regime;
- improve enforcement efforts;

- develop secure sources of enforcement funding; and
- improve cross-regulatory cooperation and awareness raising.

In response to our published recommendations, Defra and the EA liaised with industry to prioritise action on waste crime. One of the key developments is the creation of the Joint Unit for Waste Crime. Despite this, little progress has been made on many of the recommendations since they were shared.

For example, in May 2017, we recommended that the waste carrier, broker, dealer registration system should be reformed. Despite good engagement on the issue, we have yet to see reform implemented. We recognise that Defra is responsible for the change, however, we encourage strong pressure from the EA to influence government.

A summary of our previous recommendations and their current progress is included in Annex 2.

## We need to improve the measurement of waste crime

The EA currently uses a single metric on its corporate scorecard to measure waste crime - the number of high-risk illegal waste sites. However, this is not a satisfactory measure of waste crime, as it does not clearly relate to the impact of waste crime.

We have therefore called for new metrics. In particular, we would like metrics that consider the scale and duration of waste crime. Some of the key themes we would expect to be reported include:

- Metrics which capture all types of waste crime. This will show what types of waste crime are increasing or decreasing;
- An assessment of the quantities and types of waste involved in each case of waste crime. This will provide better information of the scale of waste crime; and
- The time taken by the EA from detection to stop each reported case of waste crime. This will provide reassurance that the EA are acting quickly and effectively.

## Working Together

The situation you inherit must be addressed. Despite years of discussion, sufficient additional resources and reform have not followed. The impact of waste crime is no closer to being resolved – to the detriment of our members, your officers, and beyond.

We are currently at a crossroads and inaction will let the industry drift further into the hands of criminals. We want to work with you to vigorously drive out illegal activity from the sector, which in turn will help members of the ESA and other legitimate operators across the sector, to both deliver a circular economy in England and protect the natural environment. As Chairman of the ESA I would welcome the opportunity to meet with you at the earliest opportunity to discuss this pressing issue in more detail.

Yours sincerely,



**Gavin Graveson**  
**Chairman of the Environmental Services Association (ESA)**

This letter was co-authored by Eunomia Research and Consulting Ltd

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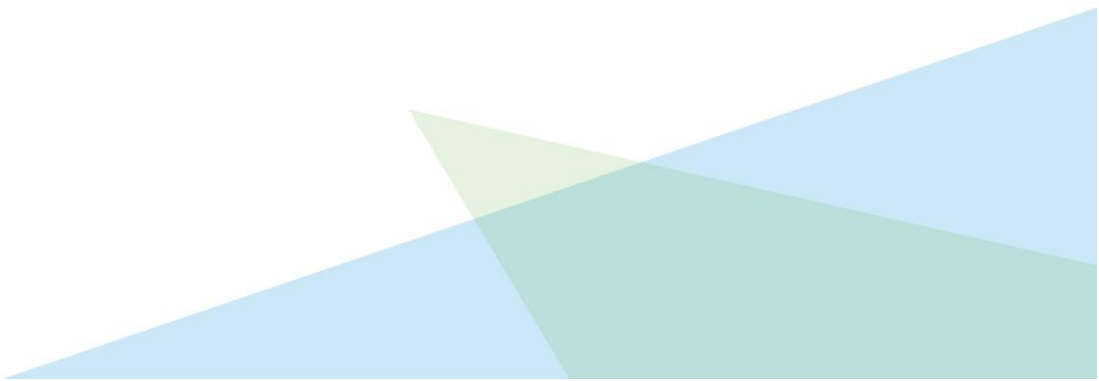
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## A.2.0 Economic Gains of Waste Crime

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The following case studies identify some real-life examples of paltry fines, failed enforcement outcomes, and the costs of not effectively tackling different types of waste crime.

**Illegal Waste Sites:** In 2018/19, the estimated cost of illegal waste sites in England was estimated to be £236 million per year (ESA and Eunomia, 2021). An estimated 1.9 million tonnes of waste was deposited in illegal waste sites in 2018/19 in England (ESAET, 2021).

A critical issue with enforcing illegal waste sites is to stop waste from being deposited in them in a timely fashion. In Surrey, an unauthorised waste site has been in use for more than 30 years (ENDS, 2021). There is photographic evidence of vehicle burning and storage of rusting drums of insulating oil, alongside reports of unidentified liquids discharging into streams. The site is adjacent to a site of special scientific interest, a special protection area and a special area of conservation.

Whilst a fine of £2,500 and a confiscation notice of £26,000 were imposed against the (potentially unconnected) son of the landowner, the prosecution did not stop more waste being dumped. Additionally, local campaigners claim the EA have known the names and details of four occupiers of the site since 2009 “but no legal action has been taken against them” (ENDS, 2021).

**Illegal Burning:** The uncontrolled burning of waste causes significant environmental and economic harm. In 2018/19, illegal waste fires cost England an estimated £22m (ESA and Eunomia, 2021). Whilst much has been done to reduce the risks of fires at permitted sites, there are still cases of fires at illegal waste sites. In 2017, during a period of low value in recycled plastic markets, an illegal waste site storing over 1,500 tonnes of plastic sent a plume of poisonous smoke into the air that could be seen for miles in Staffordshire when the waste was deliberately set on fire. Ultimately, the EA sought no prosecution in this case due to lack of evidence. (BBC, 2017)

Launders Lane, Rainham (East London), is another example of burning happening at an illegal waste site – though fires here have been continuing over the last 10 years (Evening Standard, 2023). London Fire Brigade has reportedly attended more than 70 fires at the site since 2018. Experts believe it could cost as much £10million to finally put out the fire. In the meantime, BreezOmeter is recording the worst possible levels of air pollution in the area, and there are reports from local residents of related illnesses and hospitalisations.

Back in 2019, following an operation from 5 years prior, the EA prosecuted some of those responsible for dumping. Since then, the EA is understood to be only providing “advice and guidance” to the local council, stating that the responsibility of tackling the illegal waste site and the fires that burn on it is not theirs, but the councils. (Evening Standard, 2023)

**Illegal Exports:** In 2018/19, the estimated cost of illegal exports in England was estimated to be £42 million per year (ESA and Eunomia, 2021).

The EA released a warning to the waste and construction sectors in 2021 saying it was “increasingly aware” of contaminated plastic waste from construction sites being illegally exported. However, since the EA’s warning, we have not seen or heard of any prosecutions being brought to the waste or construction sector in relation to contaminated plastics from construction sites.

**Misclassification:** Misclassification of wastes is the inaccurate description of the wastes’ type. The most common type takes place at landfills, where there is a desire to misclassify the waste to move it out of the standard rate of landfill tax (currently at £102.10/tonne) and into the lower rate of landfill tax (currently at £3.25/tonne).

ESA are aware of some landfill sites charging between £60-80/tonne for general waste that should ordinarily attract the higher rate of tax but are charged an all-in fee that is significantly below the higher landfill rate.

HM Revenue & Customs (HMRC) estimates that the gap in landfill tax between the amount that was due and the amount actually paid was £200 million in 2019/20. Despite this, HMRC has not successfully prosecuted anyone for landfill tax non-compliance (NAO, 2022).



## A.3.0 Progress Towards Rethinking Waste Crime Recommendations

### A.3.1 Modernising the Regulatory Regime - Progress since 'Rethinking Waste Crime'

<b>MODERNISING THE REGULATORY REGIME</b>	<b>1</b>	<b>2</b>	<b>3</b>
<i>Recommendation</i>	<b>Reform the Waste Carrier, Broker and Dealer Registration Process*</b>	<b>Mandate the Use of Electronic Waste Transfer Notes</b>	<b>Reform the Waste Exemption Regime</b>
<i>Referenced in the Resource and Waste Strategy</i>	A commitment was made to reform the waste carrier, broker and dealer registration process by late 2019. Preparations had begun, but the consultation has not yet been forthcoming.	A commitment to consult on national reporting requirements was made.	A commitment to reform exemptions from waste permitting for high risk activities by 2019 was made in the 2018 Resource and Waste Strategy.
<i>Referenced in the Serious Waste Crime Review</i>	Recommendation 7 of the review mirrored this recommendation.	Recommendation 5 of the review mirrored this recommendation.	Recommendation 4 of the review mirrored this recommendation.
<i>Government Consultation</i>	A consultation was launched in January 2022	A consultation was launched in January 2022	A consultation was launched in January 2018.
<i>Other Developments</i>	N/A	Up to £1 million of government funding was awarded in 2019 for the GovTech Catalyst Waste Tracking Challenge, <sup>21</sup> which sought to build prototypes for the UK's first comprehensive digital waste tracking system.	In 2019, a further consultation was launched by the Environment Agency that sought to identify suitable standard rules permits.
<i>Latest Status</i>	Awaiting Government response to the waste carrier, broker and dealer system reform consultation	A policy paper was released in April 2022, with IT development work currently underway.	A government response was released in February 2023 with the intention to amend the associated regulations

### A.3.2 Improving Enforcement Effort - Progress since 'Rethinking Waste Crime'

IMPROVING ENFORCEMENT EFFORT	4	5	6	7	8
<i>Recommendation</i>	<b>Enforce Failures in Duty of Care by Waste Producers</b>	<b>Enforce Failures in Duty of Care by Waste Carriers and Brokers</b>	<b>Apply Bans to Repeat and Serious Offenders</b>	<b>Increase the Timeliness of Enforcement Interventions</b>	<b>Enhance Understanding of Waste Market and Price Dynamics</b>
<i>Referenced in the Resource and Waste Strategy</i>	Reference is made to the change in legislation for FPNs.	A commitment was made to consult on changes to the waste carriers and brokers system, however, this has yet to take place.	A commitment was made to toughening penalties for waste criminals.	Not included within the strategy.	Not included within the strategy.
<i>Referenced in the Serious Waste Crime Review</i>	Recommendation 8 of the review mirrored this recommendation.	Recommendation 7 of the review mirrored this recommendation.	Recommendation 3 of the review was similar to this recommendation.	Included within Recommendation 1, where there is reference to agreeing to joint reporting and analysis protocols with industry to improve the integration and analysis of data.	Included within Recommendation 1, where there is reference to agreeing to joint reporting and analysis protocols with industry to improve the integration and analysis of data.
<i>Consultation</i>	This recommendation featured within a consultation and the Government has legislated to enable local authorities and the Environment Agency to issue fixed penalty notices (FPNs) to householders who breach their	N/A	N/A	N/A	N/A

	<p>duty of care. However, this potential change would not increase enforcement for commercial waste producers. One tool for raising awareness of the need for compliance is the Right Waste, Right Place campaign led by industry.</p>				
<i>Other Developments</i>	<p>The introduction of a digital waste tracking system as well as reforming the Carriers, Brokers and Dealers regime may help.</p>	<p>The introduction of a digital waste tracking system may also help</p>	<p>The list of ‘relevant convictions’ that could be a bar to getting an environmental permit updated in 2019.</p>	<p>The JUWC combines multi-agency capabilities to enhance enforcement.</p>	<p>EA has enhanced its effort to understand market forces in their strategic assessment work for waste crime. EA/ESA Partnership agreement in place.</p>
<i>Latest Status</i>	<p>It is unclear on whether this will be further progressed beyond discussions surrounding funding the Right Waste, Right Place campaign led by industry.</p>	<p>Government resources are being directed towards reforming the Carriers, Brokers and Dealers regime.</p>	<p>We understand that this is being looked at in relation to the reform of the Carriers, Brokers and Dealers regime.</p>	<p>It is unclear on whether this will be progressed.</p>	<p>N/A</p>

### A.3.3 Developing Secure Sources of Enforcement Funding - Progress since 'Rethinking Waste Crime'

DEVELOPING SECURE SOURCES OF ENFORCEMENT FUNDING	9	10	11
<i>Recommendation</i>	<b>Impose Landfill Tax on Illegal Waste Sites</b>	<b>Ring-Fence Landfill Tax Revenue for Enforcement</b>	<b>Increase Resource Flexibility and Co-ordination</b>
<i>Referenced in the Resource and Waste Strategy</i>	Not included within the strategy.	Not included within the strategy.	Not included within the strategy.
<i>Referenced in the Serious Waste Crime Review</i>	Not included within the review.	Recommendation 10 focuses on reforming funding for the regulation and policing of the waste sector at the earliest opportunity, however no changes have been made	Recommendation 1 focuses on establishing the JUWC, which has subsequently been established. The JUWC's first year has garnered promising results, with over 150 offences detected and 29 arrests made in October 2019 alone. However, there is a lack of long-term dedicated funding, which threatens to undermine future JUWC efforts.
<i>Consultation</i>	N/A	N/A	N/A
<i>Other Developments</i>	Landfill Tax on illegal waste sites was introduced in April 2018. However, the extent to which it is enforced is unclear.	Additional £30m over 4 years was secured for the EA in the 2017 Budget, but that additional funding has now expired.	EA has been seeking to improve coordination through the development of an overarching enforcement strategy and the strategy for eliminating crime in the waste sector.
<i>Upcoming Progress</i>	N/A	This does not appear to be a priority for Government.	N/A

### A.3.4 Improving Cross-Regulatory Co-operation and Raising Awareness - Progress since 'Rethinking Waste Crime'

IMPROVING CROSS-REGULATORY COOPERATION AND RAISING AWARENESS	12	13	14
<i>Recommendation</i>	<b>Fund Awareness Campaigns Focused on Waste Producers</b>	<b>Obligation on Local Authorities to Identify Legal Operators for Managing C&amp;D Waste</b>	<b>Obligation for Local Authorities to provide End Destination Reports</b>
<i>Referenced in the Resource and Waste Strategy</i>	The review identifies the need to increase awareness of waste regulations, publicising positive work of enforcement bodies as they tackle waste crime, and recognising high performing operators including support for the waste industry's 'Right Waste, Right Place' campaign. However, no funding has been provided.	Not included within the strategy.	Not included within the strategy.
<i>Referenced in the Serious Waste Crime Review</i>	Not included within the scope of the review.	Not included within the scope of the review.	Not included within the scope of the review.
<i>Consultation</i>	N/A	N/A	N/A
<i>Other Developments</i>	Right Waste, Right Place is a joint EA/industry initiative where EA contributed to the first two phases.	N/A	N/A
<i>Upcoming Progress</i>	Discussions are still underway for the next iteration of the Right Waste, Right Place campaign	It is unclear on whether this will be progressed.	It is unclear on whether this will be progressed