

**EXPLANATORY MEMORANDUM TO**  
**THE PET CEMETERIES (ENGLAND AND WALES) REGULATIONS 2007**

This explanatory memorandum has been prepared by the Department for Environment, Sustainability & Housing and is laid before the National Assembly for Wales.

**2. Description**

These Regulations amend the Pollution Prevention and Control (England and Wales) Regulations 2000 (PPC Regulations) removing pet cemeteries receiving 10 tonnes or less of waste in any day or with a total capacity of 25,000 tonnes or less from the list of activities, installations and mobile plants to which the 2000 Regulations apply. They make consequential amendments to the Landfill (England and Wales) Regulations 2002 as well as the Waste Management Licensing Regulations 1994.

**3. Matters of special interest to the Subordinate Legislation Committee**

None. These composite regulations will not be considered by the Subordinate Legislation Committee.

**4. Legislative Background**

4.1 These Regulations are made under Section 2 of the Pollution Prevention and Control Act 1999 and Section 74(6) of the Environmental Protection Act (EPA)1990. Regulations under these sections are to be made through the negative resolution procedure. The functions of the Secretary of State conferred by these sections were transferred, in relation to Wales, to the National Assembly by the National Assembly for Wales (Transfer of Functions) Order 1999 and have subsequently been transferred to the Welsh Ministers (Paragraph 30, Schedule 11, Government of Wales Act 2006).

4.2 The 2000 PPC Regulations implement the 1996 Directive (1999/61/EC) concerning integrated pollution prevention and control (“the IPPC Directive”) and maintain long-standing controls on industrial pollution.

4.3 The IPPC Directive does not apply to landfills receiving 10 tonnes of waste per day or less, or with a total capacity of 25,000 tonnes or less. Therefore the effect of this amendment to Section 5.2 of Part 1 of Schedule 1 of the 2000 PPC Regulations is such that pet cemetery sites regulated under the terms of a waste management licence will not require a PPC permit.

## **5. Purpose & Intended Effect**

5.1 Dead pets are waste within the meaning of the Waste Framework Directive. For many years, pet cemeteries have been regulated under WML legislation. There are currently 25 pet cemetery licence holders in England (23) and Wales (2). The Environment Agency is the regulator for pet cemeteries.

5.2 Pet cemeteries are defined as landfills within the meaning of the Landfill Directive i.e. a waste disposal site for the deposit of waste onto or into land. Landfill sites are in the process of changing from being regulated under the WML regime to the PPC system.

5.3 The operators of pet cemeteries have raised concerns that the direct costs of applying for a PPC permit, and the financial outlay associated with providing the necessary risk assessments and other information in support of the application, mean that continued operation of business is no longer viable.

5.4 The Environment Agency has stated it is not feasible to further reduce its regulatory approach or costs within the extant PPC permitting requirements. The Environment Agency has a duty under the PPC regime to recover its regulatory costs. The fees and charges are already reduced for pet cemetery activities that meet low environmental impact criteria and further lowering of charges is not a realistic option for these operations.

5.5 Defra has been working with the Environment Agency to investigate the scope for taking an alternative approach to the future regulation of pet cemeteries. A number of alternative regulatory approaches were identified.

5.6 The preferred approach is to continue regulating pet cemeteries under the existing WML regime. The advantage of this is that there will be no increase in regulatory or administrative burden for pet cemetery operators. This option represents a proportionate modern regulatory approach.

5.7 The Assembly Government, Defra and the Environment Agency see no further environmental benefit and do not consider it to be in the public interest to bring pet cemeteries into the PPC regime. It is recognised that pet cemeteries are unique and bear little resemblance to “traditional” landfill sites in terms of environmental impact, scale of operation or indeed the maintenance of locality for the purposes of visiting and remembrance. For many pet cemetery sites, the number of deceased pets buried amounts to less than 1 tonne per year compared to other landfill sites that commonly accept over 250,000 tonnes of waste each year.

5.8 There is legal basis to exclude pet cemeteries from PPC requirements. The IPPC Directive does not apply to landfills receiving 10 tonnes per day or less, or with a total capacity of 25,000 tonnes or less. Industry confirmed at a stakeholder meeting on 7 September 2006 that each of the 25 licensed pet cemetery sites receive less than 10 tonnes per day. Furthermore, the WML regime has a proven record in successfully controlling the environmental impact of these sites.

5.9 There is a need to make a change to legislation to specifically exclude pet cemeteries from the PPC regime, rather than exclude all landfills accepting 10 tonnes per day or less, or with a total capacity of 25,000 tonnes or less.

5.10 Pet cemetery operations will continue to be subject to the Landfill Regulations (England and Wales) 2002, which implement the Landfill Directive. The Environment Agency will achieve compliance with these requirements through a licence modification process.

## **6. Implementation**

The Regulations were made on 5 September 2007 and are intended to come into force on 1 October in England and Wales, as they are composite Regulations.

## **7. Consultation**

On 29 March 2007, the Assembly Government and Defra published a 12 week consultation on the future regulation of pet cemeteries in England and Wales. Full details of the consultation are included in the Regulatory Impact Assessment below.

## Regulatory Impact Assessment

### 1. Options

The proposed options are:

Option 1: Do nothing.

Option 2: Continue with the requirement to apply for a PPC permit and seek to reduce the application requirements and costs.

Option 3: Continue with the requirement to apply under the PPC regime and apply general binding rules to their operation.

Option 4: Allow pet cemetery operations under WML and disapply the requirement to apply under the PPC regime.

Option 5: Regulate pet cemeteries under Animal By-Products Regulation (ABPR).

### 2. Costs and Benefits

#### (i) Economic

2.1 Option 1 is no change. It means that application required for a PPC permit and that pet cemetery operators will have to bear the costs. The Environment Agency's Charging Scheme for 2006/07 for PPC permits for pet cemeteries is set out as follows:

#### PPC, low impact installation

Application £2,765  
Annual Subsistence £429  
Standard Variation £339  
Substantial Variation £339  
Part or Full Transfer £339  
Part or Full Surrender £339

#### WML Scheme

Application £334  
Subsistence £131  
Modification £126  
Transfer £317  
Surrender £375

2.2 The application savings alone for a new facility under PPC would be £2431. For an existing facility with a WML an operator would save the fees of applying for a PPC permit and the costs associated with making that application, such as using consultancy to produce the application documents.

2.3 Option 2 is to continue with the requirement to apply for a PPC permit and seek to reduce the application requirements and costs. Application costs can only be reduced through amendment to the Environment Agency's Charging Scheme. The Environment Agency has already reduced charges for pet cemetery activities that meet low environmental impact criteria. The low impact charge reflects the Environment Agency's minimum cost to produce and issue a PPC permit that meets the statutory requirements. It is not possible to lower the charges because the Secretary of State for Environment, Food and Rural Affairs and the Welsh Assembly Government require the Environment Agency to secure sufficient funding to deliver its obligations for pollution prevention control, and to comply with its duty to recover relevant costs from the applicant for and holders of environmental licences.

2.4 Cost savings in Option 3 would be minimal and about the same as a low impact installation.

2.5 Option 4 is to allow pet cemetery operations to remain under WML and disapply the requirement to apply for a PPC permit. For an existing waste management licensed pet cemetery facility, an operator would save the £2341 for not having to apply for a PPC permit. Subsistence charges for a waste management licence are nearly £300 less than those under PPC. See paragraph 5.1 for further details.

2.6 Option 5 is to regulate pet cemeteries under Animal By Products Regulation (ABPR). This option is likely to result in significant reduction in costs to the operator if not subject to comparable permitting and inspection. This would also mean that the regulation of these pet cemeteries falls on Animal Health rather than the Environment Agency. This option may entail significant economical, logistical and enforcement considerations.

## **(ii) Environmental**

2.7 There is no environmental benefit to be gained in Options 1, 2 and 3. Option 5 would remove direct regulation by the Environment Agency with possible environmental impact and consequences.

2.8 The preferred approach is Option 4. This proposal is to allow pet cemetery operations to remain under WML legislation and to exclude them from the PPC regime. However, these activities will continue to be subject to the Landfill Regulations, which implement the Landfill Directive. The Environment Agency will achieve compliance with these requirements through a licence modification process.

2.9 In view of the low environmental risk, and the scale and nature of pet cemeteries, Defra, the Welsh Assembly Government and the Environment Agency see no worthwhile environmental benefit in bringing pet cemetery operations under the PPC regime.

2.10 Separately, proposals to create a streamlined environmental permitting and compliance system, known as Environmental Permitting Programme (EPP), means that the IPPC Directive requirements will no longer apply to operators of pet cemeteries and certain types of small landfill operations.

### **3. Competition Assessment**

There are no competition elements to consider in any of the proposed options.

### **4. Consultation**

4.1 On 29 March 2007, Defra and the Welsh Assembly Government published a 12-week consultation on the future regulation of pet cemeteries in England and Wales.

4.2 The consultation invited views on a proposal to allow the Environment Agency to continue regulating pet cemeteries under the existing Waste Management Licensing (WML) system. The object of the consultation was to negate the need for pet cemetery operators to apply for a Pollution Prevention and Control (PPC) permit so that operators would avoid the financial outlay associated with providing the necessary risk assessment and other information in support of the PPC application. A list of the organisations that were consulted in Wales is at **Annex A**.

4.3 In total, seven responses were received (6 in England and 1 in Wales). A copy of the summary of responses is attached at **Annex B**. A summary of responses will be published on the Defra and Welsh Assembly Government websites: at [www.defra.gov.uk](http://www.defra.gov.uk) and [www.Wales.Gov.UK](http://www.Wales.Gov.UK).

### **5. Post Implementation Review**

5.1 The effect of the Environmental Permitting (EP) Regulations will remove all non IPPC landfills, including pet cemeteries, from IPPC controls from April 2008. Government is introducing amending legislation now because there is still the requirement to ensure that existing pet cemeteries comply with the Landfill Directive. There is no provision for introducing this requirement in the EP Regulations. The Environment Agency will continue enforcement, sanctions and monitoring.

## **12. Summary and Recommendation**

For the reasons set out above, the Welsh Assembly Government considers that the right option is Option 4, as reflected in The Pet Cemeteries (England and Wales) Regulations 2007.

## Annex A – list of organisations which were consulted

ADAS
Age Concern
All Wales Ethnic Minority Association
Anglesey Local Health Board
Arena Network
ASH in Wales
Black Voluntary Sector Network in Wales
Blaenau Gwent County Borough Council
Blaenau Gwent Local Health Board
Bridgend County Borough Council
Bridgend Local Health Board
British Medical Association
Caerphilly County Borough Council
Caerphilly Local Health Board
Cardiff Chamber of Commerce
Cardiff University
Carmarthenshire County Council
Carmarthenshire Local Health Board
Centre for Ecology and Hydrology
CEPNW Chamber of Commerce
Ceredigion County Council
Ceredigion Local Health Board
Chartered Institute for Environmental Health
City and County of Cardiff
City and County of Swansea
Civic Offices
Commission for Racial Equality Wales Office
Confederation of British Industry Wales
Conwy County Borough Council
Conwy Local Health Board
Country Land & Business Association
Countryside Council for Wales
Cyngor Gwynedd
Cyngor Sir Ynys Mon
Denbighshire County Council
Denbighshire Local Health Board
Disability Rights Commission
Energy Saving Trust Wales
Engineering Employers Association
Equal Opportunities Commission

Farmers Union of Wales
Farming and Wildlife Advisory Group
Federation of Master Builders
Federation of Small Businesses
Flintshire County Council
Flintshire Local Health Board
Forestry Commission, Wales
Friend of the Earth
Groundwork Wales
Groundwork Wrexham & Flintshire
Guildhall
Gwynedd Local Health Board
Health and Safety Executive
Hybu Cig Cymru
Institute of Biological Sciences
Institute of Directors Wales
Institute of Environmental Science,
Institute of Geography and Earth Sciences
Institute of Grassland and Environmental Research
Isle of Anglesey County Council
Keep Wales Tidy
Merthyr Tydfil County Borough Council
Merthyr Tydfil Local Health Board
Mid & West Wales Regional Office
Minority Ethnic Women's Network (MEWN) Cymru
Monmouthshire County Council
Monmouthshire Local Health Board
National Farmers Union
National Public Health Service
Neath Port Talbot County Borough Council
Neath Port Talbot Local Health Board
Newport City Council
Newport Local Health Board
NFU Cymru
North Wales Economic Forum
North Wales Regional Office
NSRI Cymru
Pembrokeshire County Council
Pembrokeshire Local Health Board
Pet Funeral Services
Plaid Cymru
Plas Meredydd Pet Burials



Powys County Council
Powys Local Health Board
Princes's Trust Wales
Rhondda Cynon Taff County Borough Council
Rhondda Cynon Taff Local Health Board
RICS Wales
Royal Pharmaceutical Society
RSPB Cymru
School of Management and Business
Setpoint Wales
Sustainable Energy
Swansea Local Health Board
The Environment Agency
The Lesbian, Gay, Bisexual Forum Equal Opportunities
The Vale of Glamorgan County Borough Council
The Wales Environmental Standards Group
Torfaen County Borough Council
Torfaen Local Health Board
TUC Cymru
University of Glamorgan
Vale of Glamorgan Local Health Board
Valeways
Wales Automotive Forum
Wales Biomass Centre
Wales Environment Trust
Wales Social Partners Unit Ltd
Wales Women's National Coalition
Welsh Agriculture Organisations Society
Welsh Conservative Party
Welsh Consumer Council
Welsh Environmental Services Association
Welsh Hospitals & Health Services Association
Welsh Labour Party
Welsh Liberal Democrats
Welsh Local Government Association
Wrexham County Borough Council
Wrexham Local Health Board
WWF Cymru

## **Annex B**

### **Department for Environment, Food and Rural Affairs & the Welsh Assembly Government**

#### **Summary of responses to the consultation on the future regulation of pet cemeteries in England and Wales**

**Publication date: September 2007**

#### **1. Introduction**

On 29 March 2007, Defra and the Welsh Assembly Government published a 12-week consultation on the future regulation of pet cemeteries in England and Wales.

The consultation which closed on 21 June 2007 invited views on a proposal to allow the Environment Agency to continue regulating pet cemeteries under the existing Waste Management Licensing (WML) system. The objective of the consultation was to negate the need for pet cemetery operators to apply for a Pollution Prevention and Control (PPC) permit so that operators would avoid the financial outlay associated with providing the necessary risk assessment and other information in support of the PPC application. This will require amending legislation to remove pet cemeteries from the list of activities, installations and mobile plants to which the PPC Regulations apply.

Dead pets are waste within the meaning of the Waste Framework Directive. For many years, pet cemeteries have been regulated under WML legislation. There are currently 25 pet cemetery licence holders in England (23) and Wales (2).

Pet cemeteries are defined as landfills within the meaning of the Landfill Directive i.e. a waste disposal site for the deposit of waste onto or into land. Landfill sites are in the process of changing from being regulated under the WML system to the PPC regime.

It is recognised that pet cemeteries are unique and bear little resemblance to “traditional” landfill sites in terms of environmental impact, scale or operation or indeed the maintenance for the purposes of visiting and remembrance.

The scale and nature of pet cemetery operations pose low environmental risk and the Environment Agency has stated that the current WML system will deliver an appropriate level of environmental protection, provided the necessary modifications are made to ensure that existing WMLs comply with the Landfill Directive.

There is a sound legal basis to exclude pet cemeteries from PPC requirement. The Integrated Pollution Prevention and Control Directive (IPPC) does not apply to landfills receiving 10 tonnes per day or less, or with

a total capacity of 25,000 tonnes or less. It is understood that each of the 25 licensed pet cemetery sites receive less than 10 tonnes per day.

Operators of pet cemeteries have expressed concerns about the costs associated with applying for a PPC permit. The purpose of the consultation was to negate the need for pet cemetery operators to apply for a PPC permit so that operators will avoid the financial outlay associated with providing the necessary risk assessments and other information in support of the PPC application.

## **2. Responses**

This was a small-scale consultation affecting a very specific industry sector. The consultation document was placed in the Defra and Assembly Government libraries: in the libraries of the Houses of Parliament and on the Defra website at <http://www.defra.gov.uk/corporate/consult/pet-cemetery/index.htm>; the National Assembly for Wales' Publication Centre (02920 823683) and on the Assembly Government's website at [http://new.wales.gov.uk/consultations/closed/envandcouncloscons/pet\\_cemeteries\\_cons/?lang=en](http://new.wales.gov.uk/consultations/closed/envandcouncloscons/pet_cemeteries_cons/?lang=en).

All existing pet cemetery licence holders in England and Wales were sent a copy of the consultation document.

In total, seven responses were received (six in England and one in Wales). One individual and six organisations responded and the names of those respondents is attached at Annex 1 at the end of this paper.

## **3. Summary**

Stakeholders were invited to comment on:

*Question 1. Other than pet cemetery operations, are you aware of any other types of disposal operations that accept less than 10 tonnes per day or less, or with a total capacity of 25,000 tonnes or less?*

There were two respondents. Bath and North East Somerset Council has stated that its cemetery receives less than 10 tonnes per year. The Kennel Club has written that it was not aware of any other types of disposal operations that accept less than 10 tonnes per day or less or with a total capacity of 25,000 tonnes or less, but this was not their area of expertise.

*Question 2. Do you agree that continuing to regulate pet cemeteries under the existing WML regime is the appropriate approach for these operations. If not, please provide details of alternative regulation.*

Bath and North East Somerset Council and Pembrokeshire Local Health Board supported the existing WML system of monitoring by the Environment Agency.

The Kennel Club considered that the continuing to regulate pet cemeteries under the existing WML regime to be the most appropriate approach for pet cemetery operations.

The Environment Agency has worked with Defra and the Assembly Government in drawing up the consultation proposals. The Environment Agency's response reiterated their support for the WML regime to be most proportionate and risk based way to regulate the pet cemetery sector.

One organisation had specific reservation. The Scottish Environment Protection Agency (SEPA) indicated that its current practice was to issue a risk assessed and Landfill Directive compliant PPC permit for a pet cemetery. This currently attracts no charge to reflect the low environmental risk, scale and nature of pet cemeteries. SEPA would like to see this process be replicated in England and Wales.

Although the Association of Private Pet Cemeteries and Crematoria (APPCC) had not specifically responded to the 2 questions, they have raised a number of processing/practical issues. The APPCC has suggested that these issues may be best clarified by guidance.

Stakeholders have questioned whether pet cemeteries should be classified as a landfill and needing to apply for a modification to their WML in order to comply with the requirements of the Landfill Directive.

#### **4. Partial Regulatory Impact Assessment**

Only one respondent provided comments on the partial Regulatory Impact Assessment. The Kennel Club reiterated that pet cemeteries were unique and bore little resemblance to traditional landfill sites in terms of environmental impact, scale of operation or for maintenance purposes of visiting and remembrance. The Kennel Club advocated the choosing of either to allow pet cemetery operations under WML and disapply the requirement to apply under the PPC regime or Option 5; that was to regulate pet cemeteries under Animal By-Products Regulation. This option was not favoured as it would significant changes in the regulatory responsibilities.

#### **5. Statutory Instrument**

None of the respondents commented on the draft Statutory Instrument.

#### **6. Availability of detailed responses**

The detailed responses will be available in the Defra and Welsh Assembly Government libraries on request.

#### **7. Government response**

The objective of the consultation was to negate the need for pet cemetery operators to apply for a PPC permit so that operators would avoid the

financial outlay associated with providing the necessary risk assessment and other information in support of the PPC application.

Defra and the Welsh Assembly Government have considered SEPA's comments to replicate Option 2 of the consultation; that is to continue with the requirement to apply under the PPC permit and seek to reduce the application requirements and costs.

Defra has contacted SEPA to discuss the issue. The intention of SEPA's response was not to object to Defra and the Assembly Government's proposal but to point out the processing differences in regulating the pet cemetery sector in Scotland to those in England and Wales. SEPA's main concern is that the requirements of the Landfill Directive will be met. Officials have assured SEPA that the Landfill Directive requirements will be implemented by the Environment Agency through licence modification to conditions.

SEPA has also noted that the move to the Environment Permitting (EP) Regulations in England and Wales in April 2008 would create an area of different regulation as the EP Regulations do not apply in Scotland. The effect of the EP Regulations will mean that the IPPC requirements will no longer apply to certain small landfills, including pet cemetery operations. It is necessary for Defra and WAG to introduce legislative amendment now to ensure that existing pet cemeteries comply with the Landfill Directive because there is no provision for introducing this requirement in the EP Regulations.

The 1999 EU Landfill Directive regulates the deposit of waste onto or into land. For many years, pet cemetery operations have been classified, operated or licensed as landfill sites. It is considered that the WML regime would be more appropriate for controlling the environmental impact of pet cemetery sites, provided the necessary modifications are made to licences to ensure existing WMLs comply with the Landfill Directive. The Environment Agency will facilitate this process.

Defra, the Welsh Assembly Government with full support of the Environment Agency propose to allow pet cemetery operations under WML and disapply the requirement to apply under the PPC regime.

Government has discussed and agreed with the Environment Agency on producing appropriate guidance on practical implementation issues.

Government will remove pet cemeteries from the list of activities, installations and mobile plants to which the PPC Regulations apply. The instrument also make consequential changes to the Landfill (England and Wales) 2002 (as amended) and the Waste Management (England and Wales) Regulations 1994 (as amended) to ensure that pet cemeteries comply with the requirements of the Landfill Directive. Government will introduce amending legislation on 1 October 2007.

## ANNEX 1

### **Respondents to the consultation on the future regulation of pet cemeteries in England and Wales**

- Mr CN Clayton
- Bath and North East Somerset Council
- The Kennel Club
- Association of Private Pet Cemeteries and Crematoria
- Environment Agency
- Pembrokeshire Local Health Board
- Scottish Environment Protection Agency