Chartered
Institute of
Environmental
Health

Consultation on a draft National Policy Statement for hazardous waste

Response by the Chartered Institute of Environmental Health to the consultation published by the Department for Environment, Food and Rural Affairs

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The Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

Consultation on a draft National Policy Statement for hazardous waste

Introduction

This response refers to the draft National Policy Statement (NPS) for hazardous waste published by the Department for Environment, Food and Rural Affairs in July 2011. The comments of the Chartered Institute, a statutory consultee under the Infrastructure Planning (National Policy Statement Consultation) Regulations 2009, follow below.

Those comments concentrate on the generic impacts described in the Policy Statement itself. We have not commented directly on the Assessments of Sustainability and other documents in the large consultation suite though we note that among those aspects of waste developments which we concentrate on below, air quality and noise are particularly associated in the AoS with negative effects. In that light we would hope that the Department would give particular weight to our suggestions for the text of the final NPS.

The Planning Act 2008

We begin by observing that the Planning Act sets the threshold of relevance of this NPS at either the *de novo* provision of facilities with a capacity greater than 100,000 tonnes pa (landfill/deep storage) or 30Ktonnes (other) or an expansion of an existing facility by the same amounts and it is surely anomalous that an existing facility could expand to a total capacity far in excess of that which a new one could without engaging the NPS. We suspect that will be the preferred development route for the waste industry, reducing the relevance of this NPS.

The influence of markets

Turning to the draft Statement, we understand that the government takes responsibility for the need to protect public health and the environment from the risks posed by hazardous waste (para 2.4.2) and that is quite right; we are less convinced on the other hand, however, that quite so much should be left to the market (para 2.5.3 et seq) to decide in terms of infrastructure provision since while it is correct that the industry is likely to have the greater operational expertise, its view of what is commercially best may not co-incide with best environmental options, particularly since its choices are likely to be influenced by issues of competition.

We have in mind, for example, notwithstanding the point made in the preceding paragraph, the location of waste management facilities in the light of the proximity principle and the relevance to the NPS is the question, consequently, of how the IPC is supposed to consider applications for particular facilities within their individual contexts, i.e. both of their contributions to future capacity and, not least, spatially. That is to say that while there might be agreement that, as Part 3 suggests, there is a need for greater capacity

somewhere, it is another matter that that requires additional capacity of a particular kind, at a particular place, and at a particular time yet the IPC is instructed (para 4.1.9) to take the industry's word for that and hence, of course, for much of what necessarily follows in terms of transport and other impacts. That approach seems to us to undermine a strategic view and is unlikely to serve the public interest best.

Policy and discretion

The reminder in para 4.2.1 that relevant applications must (sic) be accompanied by an Environmental Statement prompts a different kind of comment, however, that is that we think this and the other NPSs should generally be more directory in their language. The purpose of policy being more than mere guidance, we think there should be more "must"s than "may"s or "should"s in the texts, directing the IPC more in what (if not necessarily how) to consider rather than, apparently, leaving so much to its discretion or to what might be suggested to it by participants in a particular application. That is necessary in our view both to ensure thoroughness and so that its decisions reflect a truly strategic view.

Participation

Having raised the issue of participation in the IPC's process, that of Local Planning Authorities (LPAs) is, of course, a crucial part of that, in particular in the production of Local Impact Statements. Such Statements may be required with little notice and are likely to require considerable effort on the part of planners, supported by their environmental health colleagues and, perhaps, external experts too. Bearing in mind that many of the LPAs involved will be small ones anyway, and while, in addition, local authority manpower generally is contracting (and, according to LBRO, planning more than other regulatory services) and the government has said it will not provide additional funding for LPAs for this purpose, we think the IPC needs guidance on how to proceed where a LPA is unable to take part appropriately.

The consequence of such a failure would not lie only in its effect on the consideration of technical details, of course, but decisions of the IPC based on inadequate or erroneous statements will be open to legal challenge. Not least, it would compromise our international obligation to facilitate adequate public participation in the process too.

Cumulative impacts

The advice in para 4.2.3 *et seq* on cumulative impacts is welcome but while it refers to 'other development (including projects for which consent has been sought or granted, as well as those already in existence)' but the possibility of future developments which might reasonably be anticipated is not mentioned until para 4.2.7 and, perhaps, these sections of text need to be swopped around. Wherever possible, related applications should, of course, be brought forward together but a point we would like to see made is that, where not, consent for one project should not make consent for another a *fait accompli*.

Though that may be a difficult line to hold in practice, the IPC should not be placed in a position where it might feel obliged to consent one scheme for the sake only of the viability of another, in particular where they have been mainly market-driven. We think that means the IPC should be prepared to adopt a more investigative role where such a situation might be anticipated.

Turning to the detail of the Policy Statement,

Pollution control – general

Reflecting current national guidance, para 4.7.2 of the NPS repeats the explanation given in PPS23 about the relationship between planning and pollution controls, unfortunately including the ambiguity of that. That says that the planning process is concerned with the principle of land use while the various pollution control regimes are concerned with limiting consequent harmful emissions which is, strictly, correct. It also says, however, that they are separate which is, we think, misleading since where that land use is a polluting use, the planning process nevertheless implicitly consents at least the residual pollution, i.e. that not covered by predictive pollution control regimes, and it is necessarily thereby part of the pollution control regime. That seems to be acknowledged in places in the NPS, e.g. in para 5.2.11, but being so, we would like to see a general statement that the IPC needs to make its decisions in that light and not to subordinate its judgement about the polluting effects of developments completely to that of the pollution regulator. In some cases in addition, polluting effects will be incapable of sufficiently accurate prediction and it is particularly important that the IPC should take a precautionary approach to these, setting appropriate conditions (which could be revoked if necessary) but not gambling on the effectiveness of other regimes.

We agree, nevertheless, that the two regimes are complementary and the draft NPS goes some way towards acknowledging that in para 4.7.7 where it encourages applicants to bring forward their applications for development consent in parallel with those for environmental consents. We believe strongly that this should be a *requirement*, however. If it is not, such that the proposed polluting processes have not been identified and assessed in detail, it will be impossible for the LPA to provide an adequate Local Impact Statement. Resulting from that, the IPC will be unable to identify the potential residual pollution which needs to be controlled through pre-emptive planning conditions. In the same cause, we would like to see a reversal of the advice in para 4.7.9 to say that development consent should not be granted unless there is good reason to believe that any necessary operational pollution controls etc. will be granted.

In some cases, operational controls will allow regulators to require operators to demonstrate continuing compliance with emission limits but where not, we would like to see advice to the IPC to consider applying equivalent conditions to consents. Alternatively, applicants should be required to fund the regulator to undertake necessary monitoring.

Health

We welcome the conflation of [hard] health with well-being in para 4.10.1 which we think matches public understanding and indirectly acknowledges that Local Impact Statements by LPAs are likely to have some focus on quality of life while, of course, assuring that health in its widest sense will be a material consideration in applications. We would, however, still like to see a recommendation that Health Impact Assessments should be expressly required from applicants alongside their Environmental Statements unless there is a good reason not to. This is, in particular, since while HIAs lack the legislative imperative of EIAs, human health concerns could be over-shadowed in the latter by concerns for the wider natural environment.

Common law nuisance and statutory nuisance

We welcome the Department's decision to place the paragraphs in the NPS explaining the effects of section 158 of the 2008 Act (4.11.1 – 4.11.3) after those on health since that underlines what many nuisances are about and the main (though not only) reason why they need to be controlled. The beginning of para 4.11.1 seems to be missing some essential text, however (notwithstanding the Act, statutory authority is actually being granted for nuisances occurring during the carrying-out...etc). It might also be more logical if those later sections of the guidance dealing with particular varieties of nuisance, i.e. sections 5.6 (on dust, odour etc.) and 5.11 (on noise), sat between them but, in any event, were not separated from one-another by sections on flood risk, historic environment etc. i.e. the sections on nuisances were consolidated.

That said, and without wishing to be too pedantic, the final sentence might better end *"and whether or not also a nuisance."* A little more fundamentally, while the paragraph correctly states that the section grants authority for nuisances occurring only while "*carrying out* [the] *development* " it would be helpful to underline explicitly that it does not extend to its operational life. The importance of that lies, of course, in drawing developers' attention to the need (so as to avoid future litigation) to minimise the potential for nuisances *ab initio*.

Whereas we also welcome the guidance that, under the doctrine, immunity flows only to nuisances which are inevitable, for completeness it might be added that that means operators must also take all practicable steps to abate them. The significance of that would be to draw to readers' attention that while what may be practicable is likely to change over time with, for example, advancing abatement technology, the defence will not remain available to them unless they keep abreast of that. It could also be important for the IPC to understand when framing any provision under s.158(3).

Air quality and emissions

The health impacts of atmospheric pollution are a major public health concern and the draft gives significant space to air quality, nevertheless, its advice seems to be contradictory; on

the one hand, in para 5.2.5, it reads 'The IPC should *generally* give air quality considerations substantial weight where a project would lead to a deterioration in air quality in an area, or lead to a new area, where the air quality breaches any national air quality limits.' but on the other, in para 5.2.6, it reads '...In the event that a project will lead to non-compliance with a statutory limit, the IPC should refuse consent.' The latter advice is, of course, correct and we recommend that para 5.2.5 is deleted, its second sentence being appended to para 5.2.6. We also recommend that Environmental Statements should consider not only existing air quality levels (bullet point 4 in para 5.2.4) but the trend in those with particular reference to the emissions anticipated from the proposed waste facility in question.

Dust, odour etc

As we have written, we think these paragraphs would sit better directly above those headed "common law and statutory nuisances" discussed above. That is so that the NPS explains firstly why nuisances in general should be controlled (i.e. for broad health reasons), secondly sets out the nature, sources and impacts etc of various nuisances and then, finally, advises that while the Act nevertheless provides a prospect of immunity to developers for unavoidable nuisances, the IPC should limit or even remove that immunity where the impacts would be unacceptable.

As the draft NPS states, significant waste infrastructure developments almost inevitably bring with them some additional dust (in particular, but not only, during their construction and demolition), odour etc, together with needs for lighting for operational and security purposes. We are not, however, convinced that much of the impacts on amenity for local communities is necessarily unavoidable and we welcome the calls in para 5.6.3 to the IPC to keep them to (or below) a level which is acceptable (though to whom should be specified) and in para 5.6.8 to examine them thoroughly before allowing any immunity. Wherever possible we recommend that that immunity is limited to the minimum and it might be helpful if this paragraph illustrated how that might be done, e.g. in relation to particular parts of the development or particular activities or temporally (or some combination).

In general, we think that the potential impacts of lighting have been under-played in all the draft NPSs we have seen to date. Though the effects may be generic, it seems to us that they can be magnified by the scale and location of the particular development and we should have thought something more might have been said about it in the various paragraphs on landscape and visual impacts.

Whereas para 5.6.1 refers to infestations of insects, waste facilities are in general prone to infestation by a wider range of pests and we would prefer to see the use of that term.

Land use

Though the draft NPS devotes considerable space in section 5.10 to issues of land use, that

focuses on amenity and we would like to see more explicit consideration of contamination issues than the single sentence in para 5.10.7. Though some of the developments contemplated by the NPS may be on previously unused sites, others will be on sites adjacent to existing similar developments or, as para 5.10.3 encourages, re-use previously-developed sites, many of which are likely to exhibit some contamination whether directly because of their previous use or, perhaps, through migration from neighbouring sites. Though at the same time, their future uses may suggest this will present little risk to some potential receptors, i.e. people, that may not be true for others, especially groundwater (acknowledged in para 5.15.1), and the process of development itself may increase that risk. In such cases, there is, of course, a need for care in their remediation apart from the general principle that that should be as sustainably done as possible. Similarly, design opportunities should be taken where possible to minimise soil-sealing and provide sustainable drainage.

Noise

As we have written, we think these paragraphs would sit better directly after those on dust etc discussed above so that the NPS considered all the potential nuisances together.

In relation to para 5.11.1, it ought to be noted that of the nuisances likely to arise, noise is probably the most intrusive. Explaining the attention we give to it here and below, like other "amenity" nuisances, additional noise can alter the character of an area against which the occurrence of further nuisance is assessed, giving rise to and, indeed, condoning "creep" and, not least, there is a growing body of evidence that even at low levels it can cause a variety of adverse non-auditory effects in addition to annoyance and sleep disturbance. Maybe making reference to recent WHO Guidelines alongside the Government's own Noise Policy Statement there, we think this paragraph ought to be expanded accordingly to explain those effects and to emphasise the imperative of controlling noise effectively. Though the paragraph notes that "noise" should include vibration, it might also note that it includes ultrasound and infrasound, just hinted-at in the first bullet point of para 5.11.4.

Notably absent from the list of factors in para 5.11.3 is local background noise levels which, depending on the proposed hours of operation of the waste facility, may need to be considered on a day/evening/night basis and possibly seasonally with respect to human receptors as much as to ecology too. Whereas bullet point 7 under para 5.11.4 suggests applicants should *consider* using 'best available techniques', we suggest that will be essential if they wish to take advantage of the defence of statutory authority.

Along with the good advice in para 5.11.7, we recommend applicants should be encouraged to discuss the scope of their assessments with the relevant noise regulators at an early stage. In the case of construction and demolition works it ought to be noted that the provisions of the Control of Pollution Act 1974 will apply.

We hope these comments are of assistance.