

PRESS RELEASE

Cornwall Waste Forum St Dennis Branch Challenges Environment Agency on Waste Hierarchy

- **Environment Agency's approach "rips the guts" out of the waste hierarchy**
- **Inaccuracies and omissions in Cornwall Council's justification of its incinerator policy were not examined**
- **CWF plans to seek judicial review unless Agency changes its approach**

The Cornwall Waste Forum St Dennis Branch (CWF) has requested the Environment Agency to reconsider its interpretation of the waste hierarchy or face judicial review.

In a letter sent by solicitors Leigh Day, following advice from David Wolfe QC of Matrix Chambers, the campaign group said that the Agency's decision not to take enforcement action against Cornwall Council regarding its failure to comply with the waste hierarchy, brought into law in 2011, was "reached on an unlawful basis" and on "a flawed understanding of... the legal requirements".

The issue raised by the CWF has national significance, and could profoundly affect the way that local authorities' obligations as waste collectors are understood. Under the law, anyone who "imports, produces, collects, transports, recovers or disposes of waste" is required to "take all such measures available to it as are reasonable in the circumstances" to follow the waste hierarchy, which says that the following approaches must be used in priority order:

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery (for example energy recovery);
- (e) disposal.

However, Cornwall Council has refused to collect food waste separately for recycling, unlike a high proportion of councils throughout the country. Instead it plans for this material to be disposed of in an incinerator near St Dennis, currently being built under a PFI contract with Sita. CWF asked the Environment Agency to look into whether

this approach was compliant with the council's duty to apply the waste hierarchy. Cornwall Council wrote to the Agency, explaining its approach, but the Agency decided not to consider this in detail. Instead it agreed with the council on a very narrow interpretation of the law.

In a letter to CWF Chairman Ken Rickard in October 2013, the Agency said that in its view, the law only required the council to "apply the hierarchy on the transfer of waste as *collected*." There could be no legal requirement arising from the hierarchy for the council to introduce a separate collection of food waste, or to build facilities to treat such waste, and it was right to "apply the hierarchy to... mixed waste as an undivided stream."

If the Agency's interpretation of the law is correct, the waste hierarchy means only that it is not lawful to burn or landfill recycling that has already been separated. However in European legislation, and in the view of many commentators, its main force is strategic and hence it should be applied early in any waste system decision process.

Mr Rickard said:

"We were astonished when we received the Agency's letter. Their interpretation of the law rips the guts out of the waste hierarchy – it's as good as writing it out of the law completely. It's a ridiculous position for the Agency to take, when it's supposed to be tasked with enforcing the hierarchy."

The council in its response to the EA left out important information that would be needed to assess whether its position made sense, and misrepresented other important facts:

- It explained the costs it would incur if it was to separately collect food waste – but not the savings it from not having to pay for its incineration or landfill
- It argued that its approach was to try to prevent food waste, but then claimed that the significant waste prevention effect it expected from separate food waste collections would make such a service unviable
- It argued that a survey it carried out said that most householders wanted weekly refuse collections, which would limit participation in separate food waste collections – but didn't point out that both of the options put forward in the survey included a weekly separate collection of food waste.

Yet the Environment Agency did not challenge the council on any of these points, or other questionable aspects of the Council's claims.

Mr Rickard added:

"The council's letter was a very poor justification of its approach, and we simply can't understand why the Agency hasn't investigated the matter

properly. For the council to point to a survey where 100% of responses were in favour of separate food waste collection as the reason for not introducing such a service would be laughable if it wasn't so serious. And the whole issue of costs hasn't been examined at all."

The CWF's letter gives the Environment Agency 14 days to respond, with a judicial review as the next step if the regulator does not change its decision.

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Notes for Editors

1. The Cornwall Waste Forum St Dennis Branch comprises local groups and individuals who work together to move Cornwall towards more sustainable waste management, through campaigning, legal avenues and presentations of detailed research showing cheaper options.
2. The Cornwall Energy Recovery Centre, a 240,000 tonne per year incinerator, is being built under a PFI contract that started in 2006. Legal action has delayed its construction, but despite local opposition, its proximity to a Special Area of Conservation, and clear evidence that cheaper and more environmentally friendly alternatives are available, the council continues to press ahead with the project.
3. The waste hierarchy was brought into law by the Waste (England and Wales) Regulations 2011, implementing the UK's obligations under the EC Waste Framework Directive.
4. The Environment Agency is tasked with enforcing the waste hierarchy, but has suffered substantial budget cuts in recent years. Within the coming year, the Environment Agency will axe 1,700 jobs, representing about 15% of the agency's manpower.
5. For comments and more information, please contact:

For CWF issues

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For waste hierarchy issues

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