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Re: Consultation on the report on Tyres and Waste Tyres in the Producer Responsibility Initiative sector in Ireland

Dear Sir or Madam,

I refer to your Department's consultation on the report on Tyres and Waste Tyres in the Producer Responsibility Initiative sector in Ireland and the invitation to make a submission.

Our understanding is that the purpose of the current regulations is to (i) track tyres supplied to the market (ii) track waste tyres arising and (iii) track the flow of waste tyres to ensure their environmentally sound management. The structures and obligations as set out in SI 664 of 2007 to achieve this objective are cumbersome and 'improving the regulatory system' should include a review and simplification of the existing regulations.

Definitions, terminology and requirements of the regulations:

The definitions and terminology used in SI No 664 of 2007 need to be reviewed to reflect other waste legislation and allow for a consistent approach for waste reporting and enforcement purposes. For example, the definition of reuse in the existing legislation is not in line with the Waste Framework Directive. Also persons engaged in waste collection are defined as "recovery operators" whereas generally recovery operators are those who carry out a recovery process at an authorised waste facility. Also it is unusual in terms of PRI regulation that exporters of the PRI waste are defined as producers. Exporters of waste tyres will be registered as brokers (authorised by NTFSO) or waste operators (authorised by EPA or local authorities) and therefore the destination of any waste exported would be subject to approval under their authorisation conditions, as well as the TFS Regulations, so not sure that exporters of tyres should fall within the definition of producer.

The definitions set out in SI No 664 of 2007 were not consistently applied or referenced in the report (eg 'under his or her own brand' is missing from the reference to Article 2 in Section 9.4.1 Producers. 'Producers or importers' was used throughout the report, although importers of tyres fall within the definition of producer.

The requirements in the existing regulations need to be reviewed to see if they are being undertaken and enforced and whether they are fit for purpose. For example, are the characterisation studies required to be carried out quarterly by recovery operators under Article 19 being carried out? Are they necessary? Are the Certificates of Recovery as required under Article 19 being issued? There was no discussion on these points in the PRI review report.

Waste collectors have numerous obligations under SI 664 of 2007. Requirements regarding management and reporting of waste tyres should be incorporated into waste collection permit conditions and annual return reporting obligations rather than under a separate regulation. Data should be reported once, validated once and disseminated to the relevant bodies for their use as needed. The National Waste Collection Permit Office's website has a register of waste collection permit holders, searchable by EWC code. This forms a register of waste collectors authorised to collect waste tyres and should replace any obligation on waste collectors to separately register with local authorities under SI 664 of 2007 or its replacement.

Registers should be publically available online, be searchable, and preferably be national registers (ie not separate to each local authority).

Reporting obligations:

The detailed reporting obligations currently in the regulations should be replaced by an effective reporting system. Economic operators with obligations under the regulations have to send multiple reports to multiple bodies/regulators. In some cases reports have to be submitted quarterly, other times annually. This is not only ineffective, it is not happening. The report (page 47, 63) states that EPA has data but does not share it. The fact is that the EPA do not receive these reports and do not seek them (we are aware of only one company that submitted annual reports to the EPA under SI No 664 of 2007). There are a number of articles within SI No 664 of 2007 which require reporting by 28th February each year to the EPA (some of which are exempted under Article 25):

- Producers - Article 6(3)
- Waste collectors – Article 18(3).
- Recovery operators - Article 19(1)(b)(ii)

It is expected that these obligations were introduced because of EPA's role in the production of national waste statistics, however the EPA has no role in the enforcement of these regulations and the EPA does not chase these returns. To collate data as set out in the schedules and from these economic operators also would not give the full national picture of waste tyre management. Also it is unlikely that waste collectors would be in a position to provide information required under the Fifth Schedule Part 6 if the waste tyres are passed on to a recovery operator unless the waste characterisations required under Article 19 are being carried out as required.

Reporting on waste tyres should be thought through carefully during any re-drafting of the regulations, so that an efficient data flow that fits in with other reporting systems can be designed and implemented. Responsibilities for data should be placed where they can be handled most efficiently and the producers should pay at least a part of data collection, management, processing and reporting. EPA should have legislative right to ask for information needed for national reporting purposes in the form and at the frequency required from local authorities and the compliance schemes. In general, if local authorities have an enforcement function, and compliance scheme(s) have role in gathering data, the responsibility in the legislation should be that those bodies are responsible for collecting information, validating it, compiling it and then sending it to EPA if requested for national waste data reporting purposes. The report also states that "An independent body needs to run the 'tyre register' which ultimately will report to the DECLG and the EPA." As the EPA has no enforcement role under the regulations, and the register would not inform waste data reporting, it does not seem practical to give EPA responsibility for a tyre register. In any event, any such recommendations suggesting new work for the EPA would require extra resources, ideally provided by the (newly defined) producers.

Setting targets:

We agree with the recommendation to set collection and treatment targets for waste tyres. Under the current legislation, the obligated operators are asked to submit detailed information on tyres supplied and on waste tyres collected, reused, recovered or recycled, but with no targets.

There is no EU Directive setting targets for this waste stream, but because the Waste Framework Directive obliges the waste hierarchy to be applied as a priority, recovery targets should be set to ensure that tyres are not diverted to incinerators without energy recovery and a target for recycling of waste tyres would be appropriate also.

Compliance scheme

The report recommends having one compliance scheme for this PRI, however we would disagree with limiting this PRI to having one compliance scheme as the experience with WEEE and batteries shows the benefit of having two compliance schemes and there is no lack of ‘monitoring’ and ‘holding to account’. In the case of WEEE, collection is co-ordinated between the compliance schemes. This could be prescribed for tyre compliance schemes. It could also be prescribed that the compliance schemes jointly develop reporting systems as needed.

Self-compliers

Self-compliance may suit some companies, so we think that self-compliance should remain as an option. The re-drafted regulations should make sure that self-compliance is transparent, enforceable and achieves the same benefits as taking part in a compliance scheme. The State’s costs associated with administration of self-compliant producers should be borne by the self-compliers (like in the case of battery self-compliers).

Enforcement

As a first step, SI 664 of 2007 should be re-drafted with of view to making the legislation easier to enforce; and the producers (which may of course be re-defined because at the moment this definition includes exporters of **waste** tyres) should be responsible for bearing at least a part of the enforcement costs.

Great care must be taken to ensure that ‘using intelligence provided by the PRO’ is never considered as an obligation on regulators to act on intelligence provided. The format in which this intelligence is provided by the compliance scheme needs to be dictated by the enforcing authorities.

Having administrative sanctions (such as fixed penalty notices) that can be applied by enforcement authorities would be a good introduction to all PRI legislation, because the regulators don’t have to rely on going to District Court for sanctions where non-compliances occur.

Awareness

The report recommends a national campaign to inform the tyre industry of its obligations and promote better compliance with the 2007 Regulations be undertaken in parallel with enforcement obligations. We would be of the view that a national campaign should not be undertaken until amended regulations are in place, which set out clear roles and responsibilities.

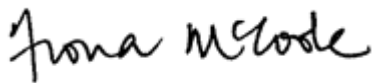
General points:

- Note that tyres are currently retreaded in Ireland and also sold in Ireland. See Section 9.2/Figure 9.1/Section 9.4.

- Table 9.1 is misleading, as it is entitled ‘tyres within the scope of the 2007 regulations’ but the text below the table states that several of the categories in Table 9.1 are *excluded* from the requirements of the regulations.
- The link (footnote 30, page 34) to the EPA’s supplementary paper on the use of tyre bales in above ground installations is out of date. See <http://www.epa.ie/pubs/advice/waste/waste/tyreseowposition.html>.
- A list of references would have been useful as an appendix to the report.

If you have any queries please do not hesitate to get in touch.

Yours sincerely



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