



**Cyfoeth
Naturiol
Cymru**
**Natural
Resources**
Wales

Annual Regulation Report 2017

Future Regulation Group
Evidence, Policy and Permitting Directorate

Report No 2

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Executive Summary

The Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 have given us a real opportunity to revolutionise the way we manage the natural environment in Wales and make the sustainable management of our natural resources a reality. It also places us under a duty to apply the principles of sustainable development in our work

This means we must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Reinforcing, and complementing this, is the Environment (Wales) Act 2016 that states that we must:

- pursue sustainable management of natural resources in relation to Wales, and
- apply the principles of sustainable management of natural resources, in the exercise of its functions, so far as consistent with their proper exercise.

In response to this, we have produced “Our regulatory approach to delivering sustainable management of natural resources – Our Regulatory Principles”.

- Deliver outcomes
- Be intelligent
- Prepared to challenge
- Use the full range of tools available
- Be flexible
- Bring the right skills / expertise together
- Be efficient and effective
- Be clear on what we do and why

To deliver the aspirations of the sustainable management of natural resources, we believe that:

- Regulation is more than the application of the law;
- Formal regulation (underpinned by the law) can contribute to delivery of sustainable management of natural resources and well-being, but the pressures on our natural environment show this is not the whole solution;
- The solution is about doing something – intervening and regulating actions and behaviours, and means doing things and looking at problems differently;
- We need to understand the impact of our behaviours, as well as understanding the behaviours of others; and
- We need to recognise our limitations and constraints, and value the benefit of collaboration to deliver the wider objectives for Wales – it’s not just about looking at what we, NRW, can do – it is what we, Wales, can do

We use our Regulatory Principles to guide our regulatory approach to the sustainable management of natural resources and deliver well-being outcomes. Regulation is about doing something, a clear ‘intervention’ that

makes a difference. In the delivery of this, we remain committed to the applications of the principles of good regulation, and to our obligations under the Regulators' Code.

In our 2017 Regulation report, we report under three main headings, these are Permitting, Regulation and Enforcement. Throughout this report we have included case studies that demonstrate our Regulatory Principles in action.

In summary our regulation report tells us that in 2017 our permitting service issued 3854 permits across our 10 permitting regimes, this total is slightly less than the 3992 permits we issued in 2016.

That there has been a reduction in the number of poor performing Waste sites in Wales.

The worst performing waste sector is Landfill, followed by the secondary metals sector, this is consistent with 2016.

Fires at sites that manage waste continue to pose a risk to the environment and communities of Wales. To mitigate this risk, we have had two Fire and Rescue Officers seconded to NRW to work with our operational and permitting teams. In addition, we have now required waste operators to produce fire prevention and mitigation plans for their sites as part of their permit requirements

There does not appear to have been a significant change in compliance in Regulated Industry over 2017.

Within the Regulated Industry sector, the number of poor performing sites in Wales reduced from 11 to 8 sites.

The food and drink sector continue to be the most difficult to regulate to maintain compliance within Regulated Industry.

In 2017 we recorded 554 regulatory contraventions, this is slightly more than 2016 where we recorded 538 regulatory contraventions. When we look at our regulatory landscape we see that 55% of the contraventions relate to waste regulation, 8% relate to water regulation, 10% relate to fisheries and shell fish regulation and 17% of the records have no charge identified (but from the information reported are likely to be either waste or water regulation), 3% of cases are Wildlife and Countryside offences and 5% are attributable to Forestry offences. When we compare this to 2016 we can see that the results are broadly similar and demonstrate consistency in our regulatory approach.

The Single Justice Procedure (SJP) adopted by NRW for fisheries offences has allowed our officers to have more time policing the river bank rather than producing offence reports at their offices. SJP seems to have had no negative impact on NRW and has seen an increase in the average fine and in our awarded costs. The process had only been running for a year but so far has resulted in cost and resource savings. We are receiving far more guilty pleas

from the Defendants in response to SJP notification, rather than having to prove most cases in their absence at court. This is a more intelligent way of working and shows that we will use the full range of tools available to us.

Our enforcement outcomes show that in 2017 the number of cases we investigated where we took no further action has reduced from 60 in 2016 to 32 and the number of warnings we issued rose from 113 to 133. The number of cases where we issued a caution also reduced from 75 to 55 however the number of cases where we prosecuted offenders rose from 143 to 155. These figures show that we are targeting our enforcement effort where it is most needed in an efficient and effective way.

In Wales the Environmental Civil Sanctions (Wales) Order 2010 and The Environmental Civil Sanctions (Miscellaneous Amendments) (Wales) Regulations 2010 permits NRW as a regulator to impose civil sanctions in relation to offences specified in Schedule 5 of the Order. In 2017 we have served Restoration Notices, Variable Monetary Penalties, and a Stop Notice.

We have been offered Enforcement undertakings on 6 occasions by the offender or their legal advisors. Out of these 2 were accepted and 4 were rejected due to the offender's previous enforcement history. In dealing with these cases by accepting the offer of an enforcement undertaking NRW has received £12,200 in recovered costs and has agreed charitable donations of £40,739.20

Our use of Civil Sanctions supports the delivery of sustainable management of natural resources that helps secure the well-being of future generations.

Permitting

Natural Resources Wales register, process and determine 67 different types of environmental permissions. We assess whether activities or developments are likely to have an impact on the environment, habitats, species and human health. We condition permits to ensure that sites are developed and managed effectively, and that they operate within acceptable limits. When the risk or impact cannot be effectively controlled we will refuse those permit applications. Our role is crucial to ensuring future wellbeing, and the sustainable management of Wales' natural resources.

Permitting Service

Our eight teams continually improve processes, provide pre-application support, process nearly 4,000 permit applications each year, and carry out compliance assessment for certain activities.

We are responsible for delivering and reporting the Key Performance Indicator relating to the determination of applications within statutory or service level timescales.

All of our permit and licence determination work is carried out in line with relevant policy, technical guidance and (internal) operational instructions.

Our Permitting Service consists of ten different regimes, they are; Species Licensing, Felling Licensing, Installations, Radioactive Substances Regulations (RSR), EU Emissions Trading Scheme (EUETS), Carbon Reduction Commitment (CRC), Energy Savings Opportunity Scheme (ESOS), Marine Licensing, Waste, Water Quality and Water Resources.

In 2017 we issued a total of 3,854 applications, a total of 149 applications were not issued; 57 were returned, 81 were withdrawn and 11 were refused.

In 2017 we were informed of six appeals results. The appeals were lodged against our decisions to refuse or not determine licence/permit applications. One appeal was withdrawn, one was upheld and four were dismissed.

Statutory and Service level timescales on our permit applications and licences range from four months for a Bespoke Permit to 7 working days for a Water Industry notification. A full list of our statutory and service level timescale can be found on our website.

Regulation

Operator Performance at Permitted Waste Sites

We recognise the need to strive for better performance and continuous improvement within the permitted waste sector.

Our Wellbeing Objectives in our Corporate Plan 2018-2022 include:

- Reduce the risk to people and communities from environmental hazards such as flooding and pollution; and
- Promote successful and responsible business, using natural resources without damaging them;

The appropriate and safe management of waste will help achieve these objectives. We believe that showcasing good performance in the regulated waste sector and identifying levels and reasons for poor performance will help us further target and address some of the root causes of poor performance and help us sustain and support those businesses and our aims.

Our officers use a four categories system for assessing non-compliance with permit conditions on waste and industry sites.

There are 780 permitted waste facilities in Wales. Of these 618 were operational in 2017. Those that are classified as non-operational may be facilities where no operational waste activities have commenced, or the facility has closed. Of the operational facilities 551 have waste operations permits and 67 have waste installation permits.

Sector/Sub-Sector	Total Operational Permits		
	2017	2016	2015
Non-Hazardous Waste (Storage and Treatment)	263	249	265
Secondary Metals	120	118	130
Landfill (including deposit for recovery)	58	41	51
Hazardous Waste Treatment (Storage and Treatment)	68	64	50
Inert Waste (Storage and Treatment)	40	35	51
Biowaste Use	35	30	34
Biowaste Treatment	34	33	22
Totals	618	570	603

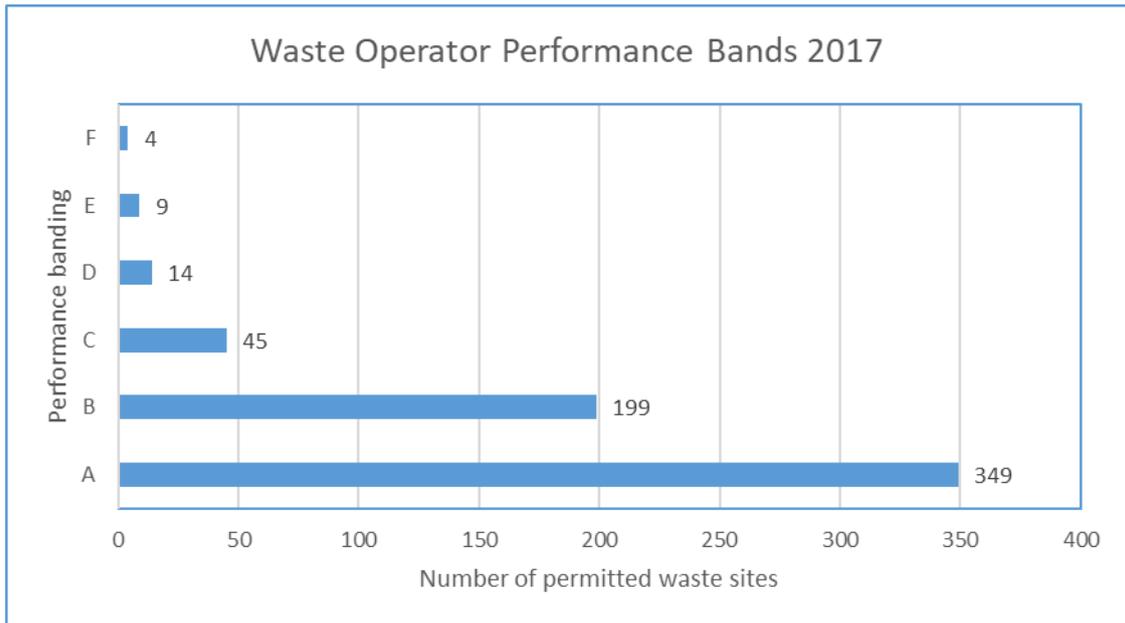


Landfill Site Operations

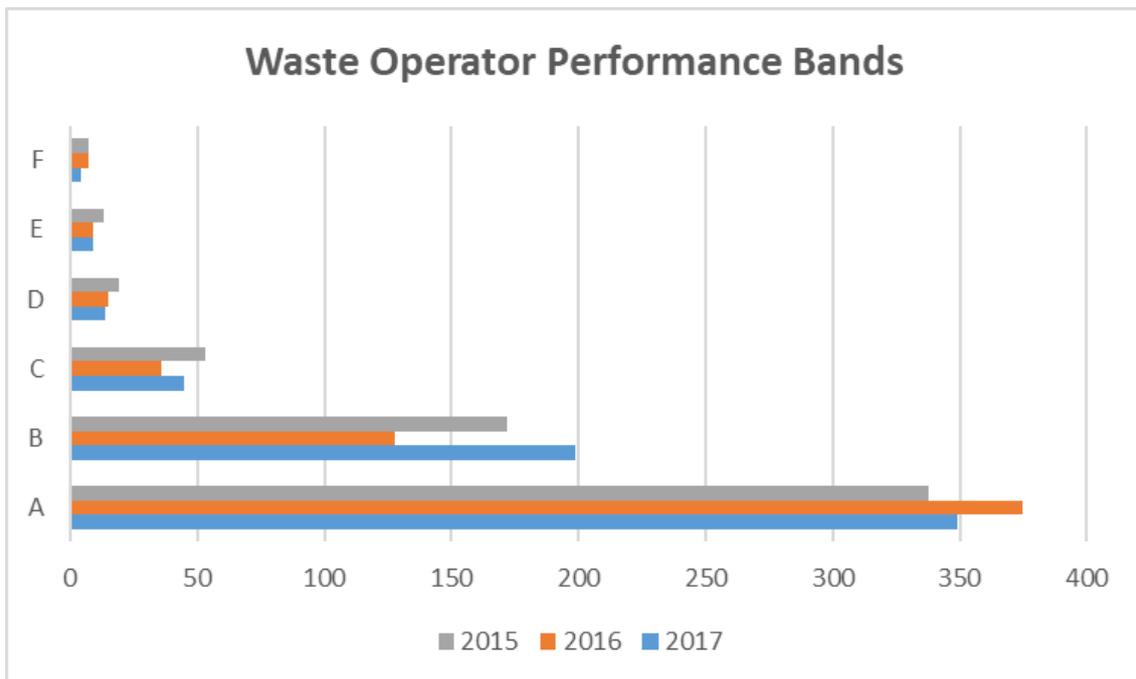


Overall Performance

Overall performance is shown for operational sites in the graph below.



Comparison of Waste Performance Bands 2015-2017



Of the 618 operational sites in Wales, 27 were identified as being D, E and F poor performers. This is a decrease of 4 sites since 2016. Of the 27 D, E and F performers, 14 were Band D, 9 Band E and the remaining 4 Band F performers.



Producer Responsibility Monitoring and Compliance

	No.	Planned Audits	Completed Audits
Packaging			
Producers	277	28	13
Reprocessors & Exporters	24	23	23
WEEE			
Producers	126	9	1
Reprocessors & Exporters	25	19	12
Batteries			
Producers	62	1	1
Reprocessors & Exporters	3	3	5
T11 Exemptions	34	17	8
Total		75	63

Reprocessor and Exporter audits were prioritised over producer audits in 2017. All Reprocessors and exporter accreditations have been renewed for 2018. All producers registered with NRW fully met their 2017 obligations.



Case Studies – Waste Operations

1. A company that holds an environmental permit to operate a waste transfer with treatment facility, located in South Wales had a history of offsite odours caused by waste stored on its site.

We served a notice on the operator, requiring them to implement additional measures to control flies and odours. The proposed measures we received back from the Operator in response to our notice lacked detail and after review, were not considered robust enough to prevent issues re-occurring off site. We determined that in order to prevent the risk of any future off site odour incidents we would have to take further action against the operator, so we served a further Notice suspending the external storage of waste bales on site.

2. We have acted against the operator of a mid-Wales landfill site due to its pollution risk. Officers suspended the operator's permit after evidence showed that the site holds substantially more waste than is legally allowed. We also estimated that the waste stored at the site is significantly greater than permitted. Both are a breach of the operator's environmental permit. Every landfill site needs an environmental permit to operate, which details how the operator will manage the site to minimise the impact on air, land and water in the area. As a result, the operators are not allowed to tip any more waste in the landfill and we have now instructed the company to examine the potential risk that this waste poses. Last year we applied other legal measures, such as serving legal notices on the operator, to try to ensure the site was made compliant with the permit conditions. However, we have now needed to suspend the permit.

Operator Performance at Industry, Radioactive Substances and Intensive Farming Sites

There are 145 sites holding Environmental Permits for industrial Schedule 1, Part A (1) activities, excluding intensive farming, waste treatment and landfill activities. There are a further 11 permits held by operators of Directly Associated Activities on installations holding Schedule 1 permits.

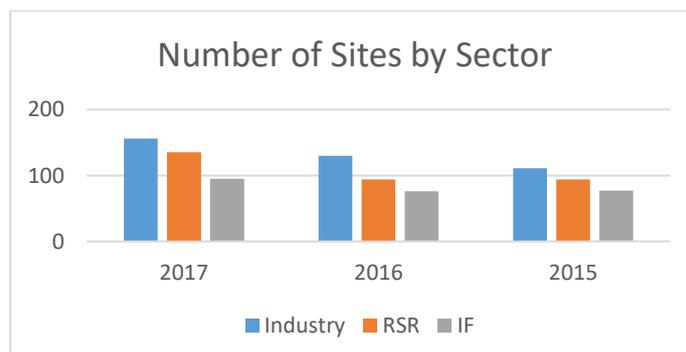
There are 94 permitted intensive poultry farms and 1 intensive pig farm in Wales. 24 of these farms were inspected during 2017 and 13 had non-compliance recorded against them, but none were categorised as poor performers.

There are 94 sites in Wales with permits to hold non-nuclear radioactive sources. Many of the sites have several permits covering different aspects of the regulatory regime giving a total of 135 permits. 64 permits were inspected at 53 sites during 2017 with non-compliance being recorded against 14 permits. None of the sites were categorised as poor performers.

Effective regulation of these installations contributes to achieving the Well-being Objectives within our 2017 Corporate Plan, in particular, Well-being Objective No 4 - "Reduce the risk to people and communities from environmental hazards such as flooding and pollution"; and Well-being Objective No 6 – "Promote successful and responsible business using natural resources without damaging them".

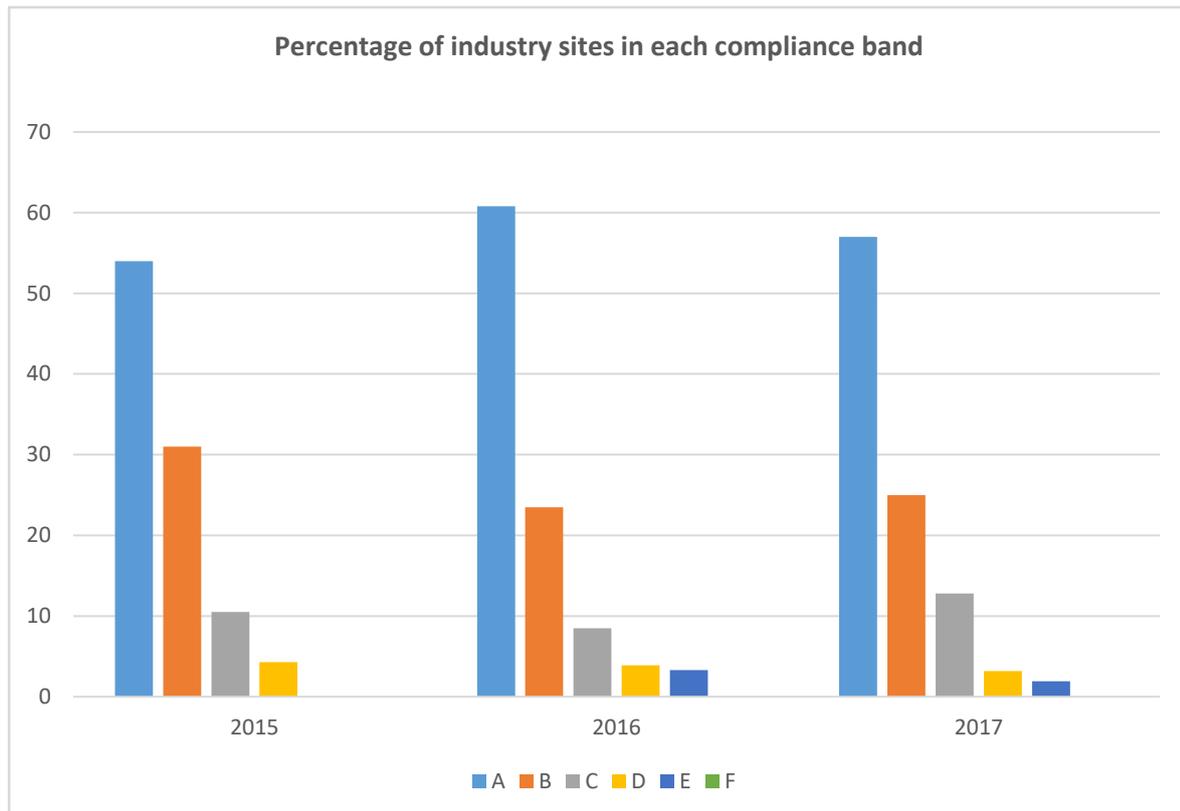
Although heavy industry in Wales, built up on the natural resources of coal, water and coastal locations, has reduced, we face new regulatory challenges with the increasing industrialisation of poultry farming and the associated food industry; also, the increase of waste to energy and complex waste treatment technologies. Legislative progression means that our regulatory work needs to drive forward new standards as does increasing public awareness and demand for a cleaner environment.

COMAH sites are regulated in a different way as there is no permit to regulate against. Sites are required to assess the risk of a major accident occurring and intervention plans are drawn up to ensure that the site continues to minimise the risk of an incident. Officers work with the HSE to routinely inspect sites and assess progress. They are also involved with emergency exercises to test the Higher Tier sites' off-site emergency response plans. COMAH sites will not be looked at in any more detail in this report.



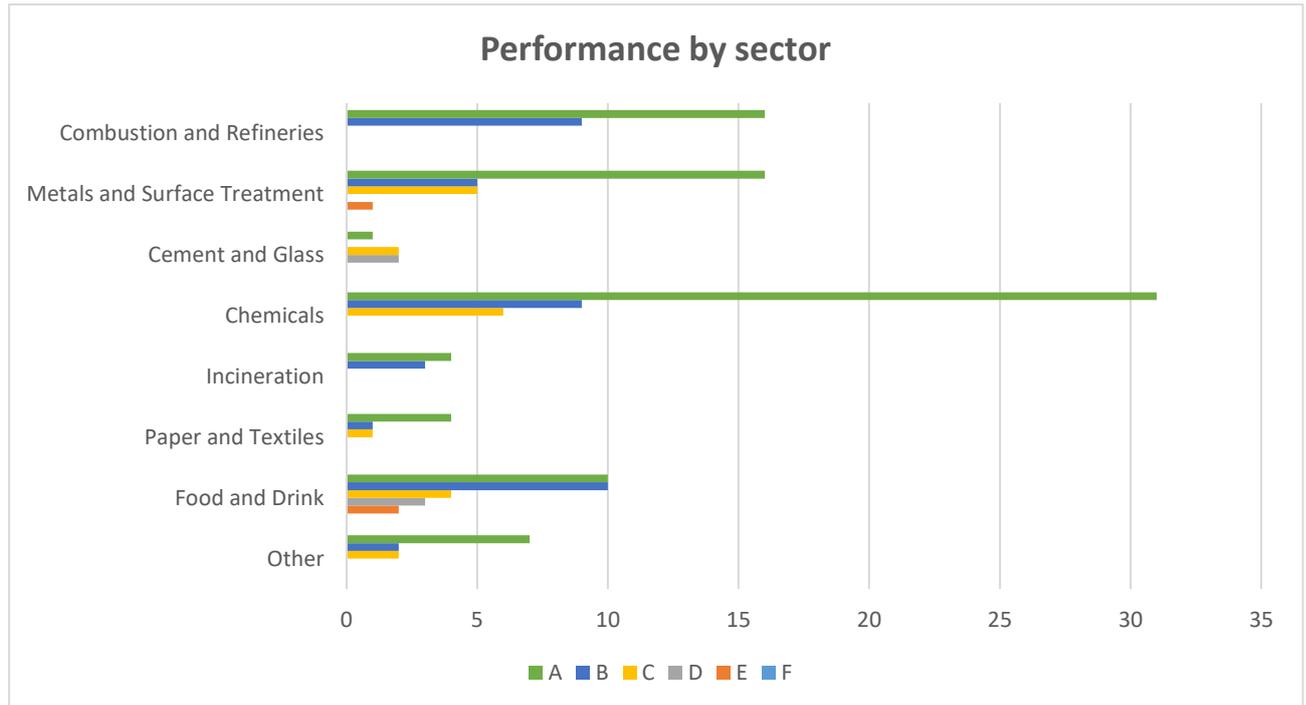
Trends in compliance

When the percentage of sites in each compliance band is looked at over the past three years there is no obvious trend, but there is a fluctuation in the proportion of good and poor performing sites.



Industry Sector Performance

For the purposes of this report the industry sites are grouped under the sections of Schedule 1 of the Environmental Permitting Regulations that their activities fall into. “Other” includes the permits for Directly Associated Activities operated by third party companies on permitted installations; activities that are integral to the functioning of the installation such as combustion.



Numbers of installations in each compliance band by sector

Sector performance is broadly similar to previous years in that the food and drink sector has the fewest band A sites and a larger proportion of poor performing sites, and all the combustion and refineries sites are in bands A and B. The chemicals sector also show good performance with only 15 sites having non-compliance recorded against them and 19 being assessed as compliant during the year.

Improving Sites

Eight of the 11 poor performing sites from 2016 improved to at least band C in 2017. One had stopped operating, but the general picture was of improved operations at all these sites.

Sector Detail

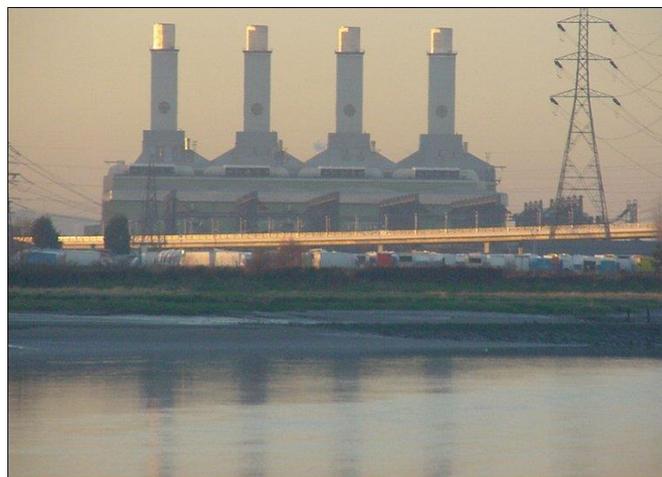
Intensive Farming

Sixteen intensive farming installations had non-compliance recorded against them in 2017; 27 category 3 breaches for issues including not having adequate drainage plans and not including preventative maintenance in management systems. There were also 15 category 4 breaches for administrative failings that had no potential for environmental impact.

57 farms are members of the Farm Assurance Scheme where external auditors carry out inspection work to an agreed methodology. The same methodology is used in England ensuring consistency for the companies who own farms across England and Wales.

Combustion and Refineries

This sector includes the power stations and the gas and oil refineries. 16 of the 25 sites were in band A in 2017 with the other 9 being in band B. There were 9 category 3 breaches recorded for problems including emissions breaches and management failings. A further 7 category 4 breaches were recorded. The combustion sector tends to be well managed resulting in good performance.



Metals and Surface Treatment

This sector includes the traditional heavy industry of steel making and non-ferrous re-melting. It has declined in recent years, but there are still 16 sites processing metal and a further 10 carrying out surface treatment activities. There is also one site operating a Carbon activity which is included in this sector for reporting purposes. 16 sites were in band A in 2017, 10 in bands B and C, and one in band E. This poor performing site is large and complex. A new permit was issued in 2014 to ensure compliance with revised European Best Available Techniques by 2018 and the operator has been working towards achieving these standards.

Cement and Glass

There are five sites in this sector and only one was a band A performer in 2017. The two band E sites from 2016 had improved to bands C and D following intervention work by inspectors, but one of the band C sites declined to band D. Emissions from the activities in this sector are challenging to manage due to the nature of the processes and officers need to work closely with operators to ensure that the revised standards applied to all the cement and glass operations following BREF reviews are achieved and maintained.



Chemicals

The chemicals sector contains 46 sites and has the greatest variety of activities, ranging from very small “low impact” processes to large complex chemical works. There were no poor performers in this sector in 2017 with the two band D sites from 2016 improving operations sufficiently to put them in band C. 31 sites were in band A with 12 being considered sufficiently low risk to not need an inspection during the year.

Waste Incineration

There are 7 sites where the primary activity is the incineration of waste, but only 4 are operational. Three of these were in band B and the fourth in band A. There were only 5 category 3 and 3 category 4 non-compliance events recorded across the three sites illustrating that it continues to be a well-managed sector.

Paper and Textiles

The single textile site in Wales has closed but not yet surrendered its permit. This leaves 5 paper mills in the sector. One site was in band C due to a few breaches of

emission limit to water and one was in band B, similarly for breaches of emission limits to water. The other three were all assessed as band A.

Food and Drink

The number of sites in this sector has increased to 29 making it one of the most significant industry sectors in Wales. The activities range from abattoirs to food processing and dairies. There were 5 poor performing sites in the sector, two in band E following ongoing problems with noise and emissions to water. Notices were served on these sites requiring improvements and enforcement action may also be taken. Of the 5 poor performing sites in 2016, 4 had improved and one had deteriorated.

The food and drink sector continue to require close attention from inspectors due to inadequate management at many sites. It is notable that all three of the category 2 permit breaches in 2017 were at food and drink sites. These were for ongoing issues at two sites that the operators repeatedly failed to address.

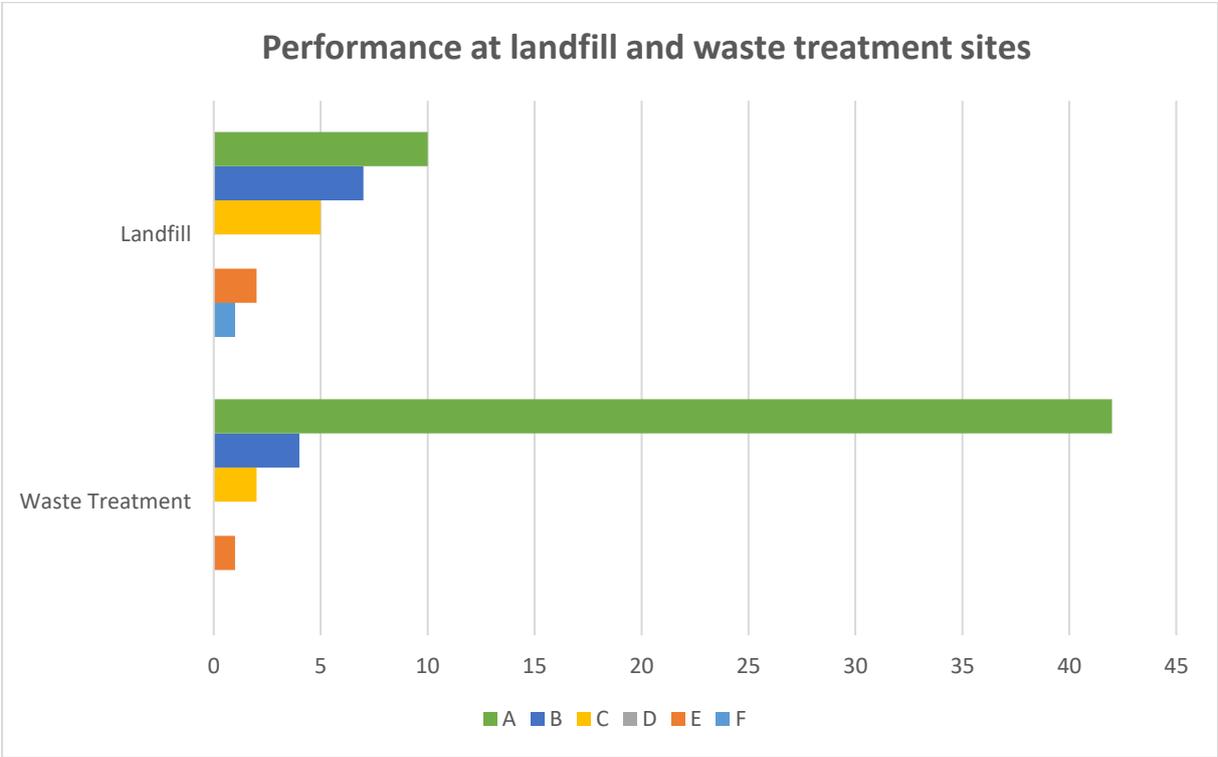
Other

This group includes the sites with permits for Directly Associated Activities. 6 sites were assessed during 2017 with 4 having non-compliance recorded against them. Inadequate training was a common theme indicating that the operators of these sites may not consider the consequences of failing to run the facility properly.

Compliance at waste treatment and landfill installations regulated by industry regulation

The following charts illustrate the compliance and non-compliance at landfill and waste treatment installations regulated by the Industry or Industry and Waste teams across Wales. There are 49 waste treatment installations and 25 landfills, a slight increase since 2016.

There were four poor performing waste installations during 2017, this is an ongoing reduction from 6 in 2016 and 8 in 2015, but these four sites have been persistent poor performers over the last three years. Further details are contained in the Waste Compliance Report, but it is still evident that the waste installations take a considerable proportion of the resource in the regulatory teams.



Numbers of sites in each performance band

Reservoir Safety and Regulation

Our purpose as the enforcement authority is to provide Welsh Government, and the people of Wales, with reassurance that the large raised reservoirs in Wales are kept in safe condition to protect the people who live and work downstream from potentially catastrophic flooding.

We own or manage 38 large raised reservoirs. These reservoirs fulfil different purposes, for example: flood storage and habitat conservation; others are historic structures which lie within the land we manage, including those within the Welsh Government Woodland Estate. Since the creation of NRW, we have continued to identify and assess these reservoirs, carry out inspections where needed and maintain an extensive programme of safety works.

At the close of the reporting period (2015-17) all our large raised reservoirs had been inspected and supervising engineers appointed. Where these inspections have identified measures to be taken in the interests of safety, a programme of works was put in place to ensure these are carried into effect. These measures vary in their scale from administrative exercises to extensive physical engineering works. In addition to safety measures, our staff maintain a schedule of regular visits to monitor and report on the reservoirs. In doing so, our work also considers the overall purpose of reservoir structures. Where the primary use has become redundant, we consider whether its removal is appropriate to reduce ongoing liabilities, or whether it may be managed for some other purpose.

For example, a redundant water supply reservoir may provide flood storage or conservation benefits that we do not wish to lose by removal of the reservoir. The principles of sustainable management of natural resources fits well with our approach.

The Reservoirs Act 1975 directs undertakers as to how they are required to manage their reservoirs. Not all requirements have an equal bearing on safety. Our approach to enforcing the law has focussed on the activities most likely to impair the safety of reservoirs and have a direct bearing on people and property downstream. Our principal priorities are:

- The appointment of qualified civil engineers:
- The completion of mandatory safety measures;
- Reservoir monitoring and record keeping by the undertakers.

We have verified that every engineer belongs to an appropriate engineering panel as appointed by Defra on behalf of England and Wales. This appointment process is administered by the Reservoirs Committee of the Institution of Civil Engineers for the whole of the UK.

In addition to our regulatory activities we have also performed the following functions:

- Maintained the register of large raised reservoirs;
- Responded to internal and external enquiries for information on reservoir safety;
- Responded to consultations on applications for planning consent, development consent orders, water abstraction and hydropower permit applications;
- Created and maintained a register of reservoirs with enhanced information to help us, and other Category 1 responder, to prepare for reservoir flooding emergencies;
- Maintained our working relationship with Government departments and regulators in England, Scotland and Northern Ireland on matters of mutual reservoir safety interest;
- Collated and shared reports of incidents which may affect reservoir safety, to help engineers, regulators and governments ensure lessons can be learned;
- Participated in Local Resilience Forums, information sessions and exercises; and provided advice to the organisations involved;
- Participated as a member of the Reservoirs Committee;
- Participated in reservoir safety Research & Development activities.



Glastir

Glastir is the Welsh Government's sustainable land management scheme, through which financial support is offered to farmers and land managers. Glastir is funded by the Welsh Government's Rural Development Programme 2014-20. It pays for the delivery of specific environmental goods and services aimed at:

- combating climate change
- improving water management
- maintaining and enhancing biodiversity.

There are several different elements of the Glastir scheme, and while it is administered by the Welsh Government, Natural Resources Wales play a significant role in supporting the technical delivery and strategic policy and guidance of the scheme.

Glastir Woodland Creation

The Glastir Woodland Creation (GWC) scheme supports the joint Welsh Government and Natural Resources Wales commitment of woodland expansion, as set out in the Welsh Government's woodland strategy Woodland for Wales and the Natural Resources Wales' State of Natural Resources Report. The scheme aims to deliver a wide range of benefits, including:

- Providing shelter for livestock and buildings from severe weather
- Controlling livestock movement by fencing out and planting inaccessible areas e.g. steep dingles
- Growing a sustainable supply of fuelwood and timber e.g. for construction and fencing
- Establishing habitats for wildlife
- Reducing the risks of downstream flooding and siltation in watercourses
- Screening-out noise pollution e.g. from roads and railways

A total of 47 GWC Round 3 schemes were sent to NRW from April 2017 onwards, and all schemes have since signed a contract. This means that 362.50ha area of woodland has been created in the third round. The average planting size is 7.71ha. 53.8% of the planting area was broadleaves with the remaining 46.2% conifers. A further 50 schemes under the 4th Round of GWC was sent to NRW from September 2017 for verification. All schemes have successfully passed verifications and have signed a contract. 284.4ha of new woodland was created in this round with

the average planting 5.90ha. There was an increase in broadleaves percentage in Round 4, with 63.7% broadleaves and 36.3% conifers.

Glastir Woodland Restoration

Under the 5th round of Glastir Restoration, 61 schemes were selected, including 39 cases within Planted Ancient Woodland Sites (PAWS). Welsh Government assessed all non-PAWS and PAWS cases with high Ecological Potential Score (EPS) or where restocking was 100% native broadleaves.

NRW supported the Welsh Government by assessing 117 hectares of Glastir Woodland Restoration schemes with areas of PAWS with medium and low EPS. This comprised 19 cases and included:

- Area of conifer planted – 82 hectares
 - Area of broadleaves planted – 35 hectares
- 44 contracts and 261.22ha areas have been accepted.

Glastir Advanced

Glastir Advanced is a five-year whole farm sustainable land management commitment which has been designed to deliver the following aims:

- Reducing Carbon and Green House Gas emissions
- Adapting to climate change and building greater resilience into farm businesses
- Managing our water resources to improve water quality and reduce flood risks
- Contributing to economic sustainability of farms, and the wider rural community
- Protecting the landscape and the historic environment while improving access
- Contributing towards a reversal in the decline of Wales' native biodiversity

Farmers and land managers selected to join Glastir Advanced may need to consider making changes to their current agricultural practices to achieve the aims and comply with the contract.

There were 731 cases for Glastir Advanced 2018 in 2017.

Glastir Small Grants

Glastir Small Grants are available to farming businesses across Wales to carry out projects that will help to improve and maintain the traditional landscape features in Wales and provide habitat linkage for pollinating insects (Landscape and Pollinators), will help to improve water quality and reduce the risk of flooding (Water), and help to lock up carbon (Carbon)

Enforcement

In Wales the Environmental Civil Sanctions (Wales) Order 2010 and The Environmental Civil Sanctions (Miscellaneous Amendments) (Wales) Regulations 2010 came into force on 15 July 2010. The Order permits Natural Resources Wales as a regulator to impose civil sanctions in relation to offences specified in Schedule 5 of the Order. It sets out the procedure relating to the sanctions such as the provisions for non-compliance, administration costs, appeals and a requirement to provide guidance. The Regulations amend a number of other Statutory Instruments which permits the regulator to impose specified civil sanctions in relation to breaches of those regulations. Civil sanctions are not meant as a substitute for the criminal law but are intended to provide a more proportionate, more effective approach for operators who are generally compliant, with criminal prosecution remaining available for the most serious offences.

Civil Sanctions are available for certain sections of the following legislation;

- Salmon and Freshwater Fisheries Act 1975
- Salmon Act 1986
- Environmental Protection Act 1990
- Water Resources Act 1991
- Water Industry Act 1991
- Land Drainage Act 1991
- Environment Act 1995
- Water Act 2003
- Sludge (Use In Agriculture) Regulations 1989
- Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000
- Hazardous Waste (Wales) Regulations 2005
- Producer Responsibility Obligations (Packaging Waste) Regulations 2007

As a result of relevant Environmental offences being committed we have been offered Enforcement undertakings on 6 occasions by the offender or their legal advisor. Out of these 2 were accepted and 4 were rejected due to the offender's previous enforcement history.

In dealing with these cases by accepting the offer of an enforcement undertaking NRW has received £12,200 in recovered costs and has agreed charitable donations of £40,739.20

This money has been divided between 3 different organisations in Wales, the Wildlife Trust of South and West Wales, Gwll Taff and The South East Wales Rivers Trust.

Enforcement Undertakings Table 2017

Case Reference Number	Proactive / Reactive	Offender Name	Type of Offender	Offence		Date Accepted or Rejected (date form returned to offeror) - Information/Updates	Charity Donation	Recipient (Where restoration from the alleged offence(s) is not possible, action that will secure equivalent benefit or improvement to the environment.)
				Act	Section			
7821	Proactive	Labelneeds Limited	Company	Producer_Responsibility_Obligations_Packaging_Waste_Regulations_2007	regulation 40(1)(a)	Registered with Compliance Scheme and put procedure in place to register every week.	739.20	Wildlife Trust of South and West Wales
7353/7587	Proactive	P B Gelatins	Company	Salmon and Freshwater Fisheries Act 1975	Section 4	completion certificate 0812.17	40,000.00	Gwll Taff / South East Wales Rivers Trust

Case Studies

Enforcement Undertaking

Following reports in May 2016 of pollutions on the River Taff, our officers identified a small tributary being chronically impacted by an unknown source. After extensive investigations, using dye tracing and sampling, officers identified the source to be from an unchartered connection where the watercourse is culverted through land belonging to a company operating on a nearby estate.

Later during September 2016, waste effluent from the same company discharged directly into the River Taff coating 50 meters of the river bed with trade sediment. Although no fish were killed during either of these incidents, the discharges created conditions that were unfavourable to aquatic invertebrates which are an important food source for fish.

The company involved had a history of causing pollutions into the River Taff and following a careful review of the sentencing guidelines, NRW accepted an offer to use Civil Sanctions rather than prosecute. The company agreed to pay £40,000 to Gwll Taff Rivers Trust project for improvements that encourage groups to enjoy the River Taff in a positive and healthy way, providing long term wellbeing benefits for the people and the environment.

Our investigative costs of £12,000 repaid by the company and we paid this into NRW's Taff Natural Resource Management budget. These additional funds will aid our officers in identifying hot spots for diffuse pollution.

The South East Wales Rivers Trust were pleased to be awarded the proceeds from an NRW enforcement undertaking by a business located on the banks of the River Taff. The money will be used to continue their work that helps local communities and schools appreciate the value of the Gwll Taff and the benefits it brings to the local environment.

The management of the company involved stated "As a company, we take our responsibility to the environment very seriously and we are pleased to be able to make a charitable donation to the river Taff project, knowing it will be put to good use in enhancing the local environment. We would also like to place on record our thanks to NRW for their help in dealing with this matter and are pleased that by taking responsibility for our actions we have the opportunity to put things right voluntarily by working with the local community"

Restoration Notice

In June 2016 NRW received an incident report relating to in-river works on a main river section of a tributary of the River Cleddau in Pembrokeshire.

We found that approximately 500m of original watercourse, with well-established geomorphological features and diverse riverine habitat had been cut-off with flow diverted to a newly constructed featureless channel. In the process of creating this new channel many mature trees had been felled.

The reason given for this work was that it had been done to ease localised flooding, but this would still have not formed a basis for permitting the activity. It was estimated that just under 1600 m sq. of available habitat of fish had been lost due to the modifications made to the river.

At an early stage of the investigation the landowner/offender indicated a willingness to cooperate with NRW in remediating the harm caused by the activity. They appointed a consultant who worked with an NRW Geomorphologist to develop a remediation plan to reinstate the original river sections and plant suitable vegetation to replace that lost and provide stability to the banks. The agreed plan was formalised under the serving of Remediation Notice under Schedule 25 (Flood Risk Activities) of the 2016 Regulations in August 2017 – the first instance in Wales!

By the end of 2017 remediation works had been completed in accordance with the agreed plan, at substantial cost to the landowner. The reinstated river channel and banks will take time to fully settle and return to their previous state but overall the remediation in response to the illegal activity has been considered a success.

Single Justice Procedure

The Criminal Justice and Courts Act 2015 introduced the Single Justice Procedure (SJP) which applies only to cases involving adults charged with summary-only non-imprisonable offences. SJP took effect from 13th April 2015 (1st February 2017 within NRW). It will enable such cases to be dealt with by a single magistrate sitting with a legal adviser on the papers without the attendance of either a prosecutor or the defendant. The defendant will instead be able to engage with the court online (or in writing) and the case will not be heard in a traditional courtroom.

NRW have identified that offences under section 27 of the Salmon and Fresh Water Fisheries Act 1975 that is for “fishing without a licence” are offences suitable for SJP. We have used our data to run a comparison between the outcome of rod and Line offences that went through the court system between 1st February 2016 and 31st January 2017 and rod and line offences using the SJP between 1st February 2017 and 31st January 2018.

These figures show us that whilst there has been a decrease in the number of rod and line cases from 2016/17 to 2017/18, the average fine and amount of costs have increased since the introduction of the SJP process.

SJP seems to have increased the average fine and our costs. The process has only been running for a year but so far has resulted in cost and resource savings. We are receiving far more guilty pleas from the Defendants in response to SJP notification, rather than having to prove most of cases in their absence at court. The SJP adopted by NRW for fisheries offences has allowed our officers to have more time policing the river bank rather than producing offence reports at their offices.

Rod and Line Offences	2016-17	2017-18
Number of Prosecutions	46	37
Total Fines	£7,691.00	£6,919.00
Average Fine	£167.20	£187.00
Total Costs awarded	£3,631.00	£3,909.00
Average Costs	£78.93	£105.65

Regulatory Contraventions

In 2017 we recorded 554 Regulatory contraventions, of this 554 records 55% relate to waste regulation, 8% relate to water regulation, 10% relate to fisheries and shell fish regulation and 17% of the records have no charge identified (but from the information reported are likely to be either waste or water regulation), 3% of cases are Wildlife and Countryside offences and 5% are attributable to Forestry offences

Regulatory Contravention	2017	2016
Environmental Permitting Regulations 2010 (Waste offences)	201	199
Environmental Protection Act 1990 (Waste offences)	91	65
Salmon and Fresh Water Fisheries Act 1975	41	48
Forestry Act 1967	26	15
Environmental Permitting Regulations 2010 (Water offences)	24	61
Water Resources Act 1991	19	22
Wildlife and Countryside Act 1981	18	23
Sea Fisheries (Shellfish)1968	16	9
Environment Act 1995 (Waste)	6	0
Hazardous Waste Regulations 2005	6	1
Silage, Slurry and Agricultural Fuel Oil Act 2010	3	2
Reservoirs Act 1975; Section 22 (1) (A)	2	0
Environmental Protection (Duty Of Care) Regulations 1991	1	0
Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999	1	0
Waste Electrical and Electronic Equipment Regulations 2013(WEEE)	1	0
Theft Act 1968; Schedule 1 (2) (2)	1	0
Transfrontier Shipment of Waste Regulations 2007	1	1
The Control of Pollution (amendment) Act 1989	1	2
EU ETS (Emissions Trading System)	0	3
Nitrate Vulnerable Zone	0	1
Producer Responsibility Regulations (Packaging)	0	1
No Charge Identified	95	85
Total	554	538

Enforcement Outcomes

The information provided below shows our enforcement outcomes from 1st January 2017 until 31st December 2017. A number of cases will have commenced before 2017 but were completed within the year, there will also be cases that were commenced during 2017 that are either still under investigation or in the court system, and these will be recorded in our 2018 report.

No Further Action

Any case that was investigated and found to be unsubstantiated, or that an offence had occurred but there was either no identifiable offender or insufficient evidence found is recorded as no further action.

NO FURTHER ACTION		
	2017	2016
Total number of cases	31	40
Total Number of Offenders	32	58
Total Number of NFA	32	60

Advice and Guidance

We aim to provide advice and guidance to assist an operator or individual to come back into compliance at any point. In the context of enforcement, we will normally provide advice and guidance after an offence is committed or where we consider that an offence is likely to be committed. Where we provide compliance assistance of this type it is without prejudice to any other enforcement response that may be required. This compliance assistance may be either verbal or written but will be recorded. In the event of continued or further non-compliance(s) this may influence the subsequent choice of response.

We will also seek, where possible, to achieve a lasting solution to the problem that caused offences to be committed

ADVICE AND GUIDANCE		
	2017	2016
Total number of cases	93	94
Total Number of Offenders	98	107
Total Number of A&G	103	153

Fixed Penalty Notices

A Fixed Penalty Notice is a financial penalty for an offence, imposed by the regulator, which if unpaid can be dealt with by way of prosecution in the criminal courts. FPNs are available to us for a limited number of offences. Where a Fixed Penalty Notice is served, payment of the penalty discharges the liability. Where this happens a record of the payment of the FPN will be kept and treated in the same way as a record arising from a warning.

Where a Fixed Penalty Notice is imposed by us but not paid, the recipient will normally be prosecuted for the original offence.

FIXED NOTICE		
	2017	2016
Total number of cases	23	17
Total Number of Offenders	28	20
Total Number of Notices Sent	36	22

Other Civil Sanctions

Certain schemes impose specific civil penalties for specific offences. In the EU Emissions Trading Scheme, both in relation to stationary installations and aviation, the legislation sets out civil penalties in the form of financial penalties.

In the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme, the legislation sets out various civil penalties, in the form of financial penalties, publication of breach, determination of an annual emissions figure, the requirement that extra allowances be surrendered, placement at the bottom of the performance league tables and blocking of a registry account.

In both of the above schemes, the level of the financial penalties is generally set out in the legislation. For certain penalties, the imposition of the penalty is mandatory. For others, a power is given to waive or modify the penalty but only in accordance with the limited discretion set out in the legislation.

GREENHOUSE GAS EMISSIONS 2016		
	2017	2016
No. of Charges	0	3

Warning

A warning is a written notification that we believe an offence has been committed. The notification can be either a warning letter or a site warning that is normally issued on-site or otherwise as a result of a compliance visit to a permitted site or activity.

It will be recorded and may, in the event of further non-compliance, influence subsequent choice of sanction.

WARNINGS		
	2017	2016
Total number of cases	107	90
Total Number of Offenders	115	100
Total Number of Warnings	133	113

Formal Caution

A formal caution is the written acceptance by an offender that he has committed an offence and may only be used where a prosecution could properly have been brought. To this extent it differs from a formal warning as described above, which is simply a record and warning about an offence that has been or may be committed. The formal caution is a formal recorded criminal sanction which will be produced in court if there is further offending. It differs from the imposition of a civil sanction as the circumstances which led to the offence have been considered to be appropriate for a prosecution and, indeed, a repetition of similar offending would be likely to lead to such a response.

Formal cautions are intended to be a specific deterrent to an offender and are suitable for cases where, although a prosecution could be initiated, other factors mitigate against this. We must however consider the test under the Code for Crown Prosecutors, namely whether there is sufficient evidence and also the public interest factors involved.

Where a formal caution is not accepted we will normally prosecute for the original offence.

CAUTIONS		
	2017	2016
Total number of cases	39	50
Total Number of Offenders	43	59
Total Number of Charges cautioned	55	75

Prosecution

The sanction of prosecution is available for all criminal offences by law. The legislation which establishes the penalty provisions gives the courts considerable scope to punish offenders and to deter others. In some cases, imprisonment and unlimited fines may be imposed.

Where we decide that a criminal sanction is appropriate we will assess the case in accordance with the requirements of the Code for Crown Prosecutors before commencing a prosecution.

We recognise that prosecution is a serious matter which should only be embarked upon after full consideration of the implications and consequences.

Where it is decided that a prosecution is the most appropriate choice of sanction, we must meet the test set out in the Code for Crown Prosecutors, to determine whether there is sufficient evidence and be satisfied that the prosecution is in the public interest.

PROSECUTIONS 2017					
Outcome	Guilty	In Progress	No Evidence Offered	Proved in Absence	Grand Total
No. of Charges	114	2	28	8	155
Fines	£313,926.25	£0.00	£0.00	£2,640.00	£316,566.25
Costs Awarded	£161,939.75	£0.00	£0.00	£938.00	£162,877.75
Victim Surcharge	£3,460.00	£0.00	£0.00	£312.00	£4,567.00

PROSECUTIONS 2016					
Outcome	Guilty	In Progress	No Evidence Offered	Proved in Absence	Grand Total
No. of Charges	90	1	34	18	143
Fines	£208,136.00	£0.00	£0.00	£31,385.00	£239,521.00
Costs Awarded	£104,628.60	£0.00	£0.00	£9,248.00	£113,876.60
Victim Surcharge	£3,682.00	£0.00	£0.00	£547.00	£4,229

Case Studies

Fisheries

Every year during the spring and early summer months our fisheries enforcement officers patrol our coasts and estuaries to protect migratory fish as they return from the sea to their freshwater spawning habitats

Most of our estuaries have regulations in place that prohibit drift netting to protect various species of fish, including salmon and sea trout, which congregate in these sheltered areas and are confined to narrow channels of water when the tide recedes, therefore making them vulnerable.

On an evening in May 2016 our officers were on a routine patrol when they arrived at a point overlooking an estuary at dusk, our officers saw a small boat drift net fishing inside a prohibited area of the estuary. Our officers watched the boat pick up the drift nets and return to shore, where it was loaded onto a trailer and driven away. With the assistance of Dyfed Powys Police, the vehicle and trailer were stopped and searched, the catch was examined, and equipment was seized.

In June 2017 the two fishermen involved in this illegal activity pleaded guilty to using an unlicensed instrument (drift net) to fish for salmon or sea trout. The Court awarded fines of £2500 and costs of £4000 per offender and ordered forfeiture of the equipment used.



Orders imposed by the Court ancillary to prosecution

The Code for Crown Prosecutors requires us to apply for compensation and ancillary orders, such as anti-social behaviour orders and confiscation orders, in all appropriate cases. Listed below are the ancillary orders that a court may make following a conviction:

Disqualification of directors;

No orders have been made by the court

Confiscation of assets - Proceeds of Crime Act 2002;

See table below

Anti-social behaviour orders;

No orders have been made by the court.

Forfeiture of equipment used to commit the offence;

The court have ordered forfeiture in two cases.

Disqualification from driving;

The court has disqualified two drivers from driving both for 16 months

Compensation;

The courts have also awarded compensation to be paid by the offender in three cases.

Vehicle seizure;

None.

Remediation – under the Environmental Permitting Regulations.

The court has made three orders under Regulation 44 Environmental Permitting Regulations 2010.

Unpaid Work

The court has ordered unpaid work for four persons as part of their sentences.

Community Orders

The court has sentenced two community Orders

Curfew

The court has ordered one person to be tagged and imposed a curfew of six months

Restoration Order under Wildlife and Countryside Act 1982

One order has been made by the court

Case Studies

Variable Monetary Penalty (VMP)

A dairy product company held an abstraction licence which expired in September 2016, the company subsequently applied for a new abstraction licence in June 2017, during the period the company did not have an abstraction licence it continued to abstract water. This is an offence under the Water Resources Act 1991 and one of the offence response options available to NRW is to issue a Variable Monetary Penalty (VMP). This was considered to be a proportionate response in this situation and the company was served with the VMP as well as an Enforcement Cost Recovery Notice.

This is the first instance where NRW has issued a VMP, we received the full payment of the VMP in the sum of £2331.60. We also received payment of the investigation and legal costs of £1403.13.

Stop Notice Regulatory Enforcement and Sanctions Act (RES) 2008

A waste operator was operating on land without a permit, the operator had made a permit application to use this land, but this was refused due to the environmental sensitivity of the area. The operator did have at the time a permitted site located close to the unauthorised site and had moved his waste operations to the illegal site. The operator has not paid subsistence on his permitted site and revocation of the permit will be considered. There is a prosecution case file prepared for the operator in this case. This is the first stop notice to be served by NRW and it is being used to address the environmental risk posed by the illegal activity on site

Section 41(6) Environment Act 1995

This is a notice that can be served to revoke an environmental permit due to the non-payment of subsistence fees. There were five waste operators in South West Wales that had not paid their permit subsistence fees.

These five operators were served with notices under Section 41(6) Environment Act 1995. These notices require payment within 28 days, failure to pay can result in the suspension of their permit.

Four out of the five operators responded to the notice and paid the outstanding subsistence fees, the fifth company abandoned its site. This site has now been served with a partial suspension notice with a full revocation of the permit proposed.

Proceeds of Crime (Asset Recovery Incentivisation Scheme-ARIS)

NRW is a proceeds of Crime Act (PoCA) enabled body, this means that we are a public body directly involved as an investigator, prosecutor and enforcement authority and as such we can make an application at the crown court for a confiscation order. The expression 'confiscation order' is a misnomer as the order itself does not confiscate any property but, instead, requires the defendant to pay over a sum of money. This sum is termed the 'recoverable amount'. This will be either (a) the full amount of what the court has found to be his benefit from his criminal conduct or (b) the value of the defendant's remaining assets called the 'available amount'. Confiscation is only available upon conviction of the defendant after plea or trial.

All our asset recovery confiscation receipts are remitted directly from the courts to the Home Office which retains 50% of the recovered sum, The Home Office pays us back up to 37.5% of the recovered sum and the remaining 12.5% is paid to the courts service

The payment is made in the financial quarter following the date of the receipt of the recovered funds. E.g. money paid into court funds during January, February, March of 2016 (being quarter 4 of the financial year) are not received by the designated body, NRW, until the end of quarter 1 of the following financial year, i.e. June 2016. We re-invest incentive monies in asset recovery activity or increasing financial investigation capacity. The Home Office requires agencies to account for their spending in this area. Any monies not spent are required to be returned to the Home Office.

Tax Year 16-17

Date of Order	Defendant	Benefit	Amount of Order	Payment made	Amount Outstanding
16/02/2016	1	£154,229.93	£81,287.73	£63,112.73	£18,402.41
16/02/2016	2	£907,321.01	£208,000	£0	£212,285.37
16/02/2016	3	£113,415.12	£544.81	£544.39	£0.42
01/07/2016	4	£141,000	£141,000	£141,000	£0
Total		£1,315,966.06	£430,832.54	£204,657.12	£220,688.20



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