

11th June 2007

Scottish Environment Protection Agency
Waste Policy Unit
Corporate Office
Erskine Court
Castle Business Park
Stirling FK9 4TR

Dear Sir,

Consultation on Better Waste Regulation

Please find enclosed a response to the above consultation. This response has been prepared by the Scottish Branch of EAUC, in consultation with the Scottish Association of University Directors of Estates. (SAUDE)

The profile of waste generated in the higher and further education sector is somewhat unusual when compared to organisations of a similar scale. This results from the wide range of activities that can be undertaken by each institutions including:

- Office/administrative activities
- Laboratory teaching, producing chemical waste
- Cutting edge, internationally recognised, research that may produce waste ranging from hazardous chemicals, through animal by-products to material produced by genetic modification and to nanoparticles.
- Medical and dental schools and veterinary schools and hospitals producing clinical waste
- Construction and refurbishment of buildings
- Maintenance of large institutional grounds (including farms) and teaching of grounds based subjects such as golf course management.
- Maintenance of a transport fleet
- Provision of residential accommodation and catering services

Whilst it is typical of the sector that quantities of the more hazardous wastes produced are small, it may be the case that some of the waste can incorporate a number of different hazardous properties or be subject to more than one type of legislation (e.g. waste may be an animal by-product, that is radioactive and contains a chemical material that is hazardous or it may be infectious). Under the present legislative regimen this can cause considerable confusion both to the waste producer, the Regulator and the contractor being asked to dispose of the waste. Where confusion exists so too does the potential for legislative infringement, even when the best possible intentions exist. It is clear, therefore that any steps that can be taken to simplify the overlap of legislation is highly desirable and that when future legislation is being drafted the particular complexities of waste faced by the further and higher education sector should be considered. In addition, all steps that can be taken to clarify the regulatory regimen for these complex waste types should be pursued.

Whilst the enclosed document provides responses to some of the specific questions posed by the consultation I would like, in particular, to highlight some of the areas that are of particular concern to the majority of the sector:

- The definition of waste continues to be contrary to the best interests of the waste hierarchy and it is illogical that SEPA is required to use 'a work around'¹ to apply

common sense. Surely we should be able to find a reuse for non-hazardous waste wherever we can without being bound by the worries that we may be breaking the law?

- Increasingly, a drive towards sustainability and good corporate/social governance has made the use of charitable organisations an attractive route for disposal of our useful waste (e.g. computers, furniture etc). Yet there is great uncertainty in the sector as to what licences etc we should require of these organisations so as to meet our duty of care.
- There is a need for improved clarity in Duty of Care and the WEEE regulations.
- The definition of Clinical Waste (Controlled Waste Regulations 1992) is now redundant and should be removed. All waste that is hazardous is Special Waste (including 'clinical waste'). The term Clinical Waste has come to be incorrectly used to describe non-hazardous waste that has arisen from a clinical environment. Removal of the legal term would remove the confusion associated with this and allow use of the terms Special Waste, Animal By-Product Waste and 'offensive waste'.
- Some waste legislation has undergone a number of significant amendments (e.g. WML Regs. 1994). Production of consolidated Regulations is essential for clarity.

One final area of waste management that seems to be of broad concern within the sector is that associated with composting. There appears to be a general feeling that operations to compost, chip green waste etc and use this as a soil improver, dressing or for other similar uses within our own grounds should not be subjected to the bureaucracy of registered exemptions etc. When the scale of activities is considered in concert with the many environmental benefits of this activity then the barriers to this activity, on such a small scale, should be removed as far as is practical.

I hope that the response that we have provided gives a clear picture of the view of the further and higher education sector on how the regulation of waste could be better achieved. Should you require any expansion of the views expressed or any further input on this or other aspects of regulation relating to our sector please do not hesitate to contact us.



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Summary of Questions

Q1. We are interested in views about the extent to which the proposals in the current consultation address the principles of better regulation noted above.

Q2. If you think further action is warranted with the principles of better regulation in mind, we would be interested in specific proposals for change.

Q3. Apart from those already suggested, are there any other waste streams for which protocols could usefully be developed? Please give reasons.

Waste Oils – the market for the development of alternative fuels is there but due to changes in the law is being under utilised.

Soils – in order to make the reuse of soils within landscaping / building projects easier / cheaper.

Construction Waste – to provide robust protocols for this waste ahead of the likely future introduction of legislation to require site waste management plans in Scotland

Also, potentially, any activity that can be exempt. This would allow the recording of robust protocols that, if followed, could reduce the extent of input required of SEPA.

Q4. Would you like to see SEPA take responsibility for drafting and issuing exemptions, or would you prefer to maintain the exemptions in the legislative system? Please provide the grounds for your views and an indication of how any new system would work.

Allowing SEPA to draft & issue exemptions should make the system more responsive. SEPA should be in the best position to identify which activities are suitable for exemptions. So long as the process is standardised, robust & transparent this would be a positive step. There are two ways in which it might work:

- a) SEPA identifies an activity that is commonly carried out and has a low potential of risk. It could then pro-actively consult with the operators of such an activity and develop an exemption.
- b) Operators of existing or potential new activities could approach SEPA and ask for a new exemption status to be considered. The burden of proof for the level of risk for this should not rest solely on the operator(s) but should be arrived at in partnership as it is also in SEPA's interest to minimise the burden of their enforcement where it is reasonable to do so.

Q5. Are there any activities that you think would be suitable for an exemption that are not currently exempt? You need to provide as much information as possible on the activity and the benefits of covering it with an exemption from licensing as opposed to a waste management licence.

- The storage of alternative fuels (e.g. biomass fuels), in cases where the biomass plant that this storage is linked to is appropriately regulated.
- Small scale spreading of compost if it is compost that the operator has created on their own premises from their own low risk material. On a small scale the

spreading is unlikely to cause pollution it is also unlikely that the operator will have gone to this length just to avoid the material being classified as waste. A beneficial outcome could be achieved with minimal regulation. This type of activity should be completely exempt and not even require a formal exemption application.

- Moving small quantities of waste (including Special waste) between sites to temporarily collect/store on a single site belonging to that operator/owner. This type of activity could allow the operator to achieve commercial benefit by gathering all of their waste in a single location for uplift/disposal. It also has the potential to allow greater control of the storage and disposal process as it could be overseen by one specialist individual. So long as the requirements for transport and storage of the equivalent non-waste materials are met there should be no additional risk. Formal recognition of this as a legitimate business strategy by means of an exemption would be helpful to business.
- Composting of **all** catering waste in a way that applies control that is proportional to the risk. In particular to look at the possibility of allowing composting of meat related catering waste with minimum regulation.

Q6. Should some exemptions, for example, the more complex exemptions (such as those relating to composting and recovery to land and building operations in paragraphs 7, 9, 12 and 19) benefit from an appeal mechanism, with balancing consultation requirements? Please provide the supporting thoughts behind your answer.

Yes, there should be an appeal mechanism for all exemptions, Licences and Permits.

Q7. What aspects and areas of the registration system should be improved upon? It would help if you could explain why and how?

The registration system could be combined with a system for SEPA to collect suitable / necessary data at the same time. It should preferably be electronic and tied to a standardised procedure for applicants to follow which enables them to assess whether they need an exemption or licence or permit and if so, what level, whether there are fees payable, etc. This would save time and be a more enabling system for applicants.

Q8. For which exemptions should electronic registration be considered and if so what impact would this have on you?

Composting and spreading of compost exemptions (new and renewal) and annual returns. This would make life simpler for applicants, cut paper use enormously and, presumably, reduce SEPA's admin time and data collection ability.

Q9. Should the requirement that SEPA inspect exemptions annually be relaxed to require 'periodic inspection' in line with the requirements of the Waste Framework Directive? Please give details of how you think the Directive requirement should be enforced.

SEPA's inspection of higher-risk exemptions should be frequent enough to enable them to assess whether the terms are being met. SEPA should be permitted to increase fees for exemption / licence holders who are persistently non-compliant in order to cover the extra inspection / administration requirements.

Q10. As a financial provision is not a Directive requirement for non-landfills, it may be possible to dis-apply the financial provision requirements of the licensing system for

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some activities. As SEPA's post-2004 position has already reduced the burden of the financial provision requirement on applicants, would this still be useful or necessary? EAUC does not have a comment on this.

Q11. What sorts of activities should such dis-application apply to?
EAUC does not have a comment on this.

Q12. Do consultees agree that operator technical competence is important and should be retained as a requirement of the licensing system? Please explain the reason for your view, whether in agreement or not.

Yes, demonstration of competence should be retained as a requirement. It is imperative that those working within any waste management activity understand the hazards and risk of that activity and how to control them. Whilst this can be achieved without the need to demonstrate competence not all operators are equally committed. The requirement to demonstrate competence before a licence is granted, and as an ongoing requirement, removes this uncertainty. It also ensures that all businesses are competing on a level playing field. The required level of competence should be proportional to the hazard and risk for that activity.

Q13. Do consultees agree that the legislation should make provision for more technical competence assessor bodies? If yes, under what conditions?

Yes. There should be a degree of choice and competition within the system. It is essential that these bodies be monitored by SEPA to ensure that the standard is uniform.

Q14. Do consultees think that for some waste management activities, a formal, externally accredited technical competence is unnecessary? If so, please provide suggestions and justifications for the types of activities that could potentially be undertaken without technical competence qualifications.

Small scale composting/ spreading. Probably some of the other exempt, low hazard, activities.

Q15. Consultees views are sought on whether they consider that continued professional development should be required, and if so, for whom, and how it could be demonstrated.

CPD should be required for individuals who carry out roles beyond the purely operational role. This could be demonstrated by verified attendance at events run by a range of agencies, including SEPA. Assessor bodies could offer on-line training that can be verified.

Q16. Do consultees agree that the relevant convictions test should be retained, and are there any areas for improvement in terms of the requirements or in its implementation? If there are alternatives, what are they?

EAUC does not have a comment on this.

Q17. Is there enough (or too much) guidance for businesses on waste management licensing? Is it the right sort of guidance or could it be improved? Please provide specific examples of how it could be improved. The more specific you can be in making suggestions, the better.

There is currently a lack of awareness / understanding within many businesses as to the requirements under WM licensing / permitting / exemptions. This is compounded by the complicated and competing regulations and the lack of step-by-step guidance available in many (particularly low-risk) areas.

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Guidance should “enable” businesses to work through what their legal obligations are and to act on these obligations.

EAUC would particularly make this observation in relation to

- small operators (e.g. charities) – what should a business/educational institution expect a charity to hold with respect to carriers certificates, waste management licenses (or exemptions)
- The lack of good guidance for educational institutions that choose to engage operators to manage their waste. A step by step guide to what a business/educational institution should require of its waste contractor and how to discharge the duty of care in verifying these requirements would be helpful.

An online, step-by-step approach that allowed producers to enter information as to the amounts / types of waste that are being produced in different instances and which indicated clearly whether the producer required an exemption or a licence and what the fee implications were / what to do next, would be very helpful.

Q18. Do consultees think that SEPA could improve its template approach to licensing and, if so, how could this be achieved?

EAUC does not have a comment on this.

Q19. Do you think the SEPA proposal for an amendment to the law to include mobile composting units would be helpful to industries such as the shell fish producers and who else might benefit from a composting exemption, e.g. hoteliers, catering facilities?
Yes. Universities, colleges and schools could benefit from composting exemptions.

Q20. Are there any other activities/processes that might benefit from mobile plant licensing? It would help if you could say why the activities/processes might be suitable for a mobile plant licence and what the benefits would be.

EAUC does not have a comment on this.

Q21. Do you think that SEPA should be free to add to the categories of mobile plant which may be licensed without the need for changing Regulations?

Yes

Q22. Would it be beneficial to provide a mechanism that will allow an operator to apply to change his site boundary without obtaining a new licence?

To a certain level of change (e.g. up to 10% of total area) and in compliance with specific conditions (e.g. relating to proximity to controlled waters) this could be helpful but it would need to be carefully monitored.

Q23. Are there other licence modification issues that should be considered? Please give an indication of the possible advantages and disadvantages.

Modifications to allow additional waste streams for which current plant/controls/competence exists at that licensed site but that are not currently licensed (i.e. where the modification is, in effect, a formality). This could minimise input by SEPA.

Q24. Do consultees agree that SEPA should have similar charging powers for regulator initiated modifications under waste management licensing that it already has under the PPC regime?

Yes, the systems should work the same way in so far as possible.

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Q25. Do consultees agree that there would be benefits in allowing both full and partial transfer and if so, what are those benefits? What safeguards would there need to be?
EAUC does not have a comment on this.

Q26. Do consultees agree that historic waste management activities should be excluded from the surrender requirement in circumstances where there is no suspected pollutant linkage to licensed activities? Is this practical and what are the advantages or disadvantages of removing this requirement?

Only in so far as it actually overlaps with contaminated land legislation/requirements.

Q27. Can consultees suggest any improvements to the way licences are enforced and what benefits would those improvements bring?

An operator who commits a certain level of infringement could be required to notify all of its customers of the enforcement action taken against it. This would have the benefit of imposing commercial business pressure. This approach would not, however, be appropriate for single minor infringements.

Q28. Do consultees agree that site inspections should be based on risk and operator performance? Please say why.

Inspections should definitely be risk-based with higher risk activities being monitored more carefully. Operator performance related monitoring would only be helpful if it is also area / management structure or site specific.

Performance should not simply be monitored by compliance with ISO/EMAS etc but should be actively audited by SEPA.

Q29. Do you think that charging should include consideration of the potential risks associated with an activity and operator performance?

Yes, on condition that higher-risk activities / poorly performing operators or sites are monitored more carefully and / or inspected more frequently.

However, it is essential to consider the cost/benefit aspects and to ensure that charging does not provide a disincentive for businesses to undertake activities that are, overall, environmentally beneficial.

Q30. Do you consider that there are other areas where improvements should be considered, for example: Duty of Care; Registered Waste Carriers; or Special Waste?

- Overall there is a need to ensure that overlapping areas of waste legislation do not create conflict and confusion. This is particularly relevant to the areas of Animal By-products, Waste Management Licensing, and Duty of Care etc. SEPA should work more closely with other agencies to clarify areas where responsibilities overlap or are in close parallel (e.g. SEERAD)
- All waste should be subject to duty of care
- There is a need to clarify aspects of the duty of care legislation in light of WEEE.
- The definition of waste continues to be contrary to the best interests of the waste hierarchy and it is illogical that SEPA is required to use 'a work around' this to apply common sense.
- Some waste legislation has undergone a number of significant amendments (e.g. WML Regs. 1994). Production of consolidated Regulations is essential for clarity.
- The definition of Clinical Waste (Controlled Waste Regs. 1992) is now redundant and should be removed. All waste that is hazardous is Special Waste (including 'clinical waste'). The term Clinical Waste has come to be incorrectly used to describe non-hazardous waste.

hazardous waste that has arisen from a clinical environment. Removal of the legal term would remove the confusion associated with this and allow use of the terms Special Waste, Animal By-Product Waste and 'offensive waste'

- The current situation in Scotland by which radioactive waste remains classified as radioactive despite having decayed to a safe level of activity can pose problems in the university/college sector if the waste is also hazardous due to its other properties (chemical or infectious). If the activity decays to safe levels at which point it could be disposed via the normal waste stream it should be permissible to remove its classification as radioactive and be able to treat it as 'normal' hazardous waste in accordance with its remaining hazardous properties. With the introduction of the Special Waste Regulations, a difficult gulf has opened up between the requirements of the Radioactive Substances Act and those of waste legislation. This is less of a "problem" for users of higher level radioactivity, however, it needs to be addressed for users of very low level waste.
- The application of the European Waste Catalogue codes and determination of Hazardous Waste thresholds is very unwieldy to deal with within the sector. The complication is compounded by a lack of consistency between the determination of whether a substance is hazardous in safety terms and then whether it is hazardous in waste terms. There are numerous instances where these do not tie up.

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