

BETTER WASTE REGULATION

We seek the views and comments of all interested parties through this public consultation which closes on **22 June 2007**.

You can submit a written response to:

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

If you wish further information on any issue in this consultation, please call 01786 457700 and ask for Gary Walker or Kenny Boag.

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1.0 INTRODUCTION

1.1 Scope and purpose of consultation

This consultation paper has been issued jointly by the Scottish Executive and the Scottish Environment Protection Agency (SEPA). It discusses the regulation of waste in Scotland. The Scottish Executive is responsible for all aspects of waste law and regulations in Scotland, other than green taxes, product specifications, and imports and exports of waste into and out of the UK. As environmental regulator, SEPA implements all waste regulations, and provides technical and practical advice contributing to the development of policy and legislation. The first chapter of this paper considers the scope and purpose of this consultation, and the underlying principles and context of European law. The second chapter gives an overview of the current regulatory system, and relates the different levels of regulation to the potential risk of different waste operations. The third chapter discusses a range of possible improvements to the regulatory system.

Feedback from the waste management industry and local authorities indicates that there is much to commend about the Scottish Executive and SEPA's approach to waste management regulation within the UK context. However, it is also evident that the "complexity, costs and bureaucracy" associated with waste management licensing are a common bugbear. In response to the wide range of views, the Scottish Executive and SEPA wish to seek views on the current legislative and regulatory system, with a view to capitalising on the good work already undertaken and to improve the regime and its practical application.

The current regulatory system has been in place for some time now, is well understood by practitioners, and has delivered substantial improvements for the environment and human health. We wish to continue to deliver these improvements, and to enjoy the benefits of continuity – but refine the system to improve the regulated sector's experience. We are not convinced that a complete change in the regulatory system would either deliver any improvement to human health or the

environment that cannot be delivered by the existing one, or indeed, would be any simpler or less onerous. Any new system would have to implement the same requirements of Community law as at present. In these circumstances our view is that the design and implementation of an entirely new system would prove more costly and burdensome not only to Government and regulators, but also to the regulated sector, which would have to adjust its processes. Instead, we wish to make improvements to the current system that are proportionate to the potential benefits and that do not detract from Scotland's high standards of protection for human health and the environment. Our understanding is that waste managers would generally welcome this approach.

This consultation is the first step in exploring opportunities and mechanisms to achieve real improvements. On the basis of responses to this consultation, the Scottish Executive will consider the necessity for legislative change and SEPA will consider improvements to the administration and implementation of the legislative and regulatory system. Further development work and consultation will take place as necessary in the follow up to this initial consultation.

The essential building blocks of waste management licensing are enshrined in European legislation, principally the Waste Framework Directive (2006/12/EC). Domestic legislation (i.e. The Environmental Protection Act 1990 and the Waste Management Licensing Regulations 1994) translates the requirements of European legislation into Scots law.

The legislation on waste was written at a time when Scotland's principal means of dealing with waste was to landfill it. New policies, practices and technologies have emerged in recent years which mean that the legislative controls could perhaps be improved to encourage innovation and ensure that the aims and requirements of the Waste Framework Directive are delivered in their modern context. The Scottish Executive and SEPA wish to simplify the system yet safeguard the high levels of environmental and human health protection.

Views are sought to establish whether the correct balance is being struck in translating and implementing the permitting requirements of the Waste Framework Directive as set out below in Chapter 2. More importantly, views are sought on the simplifications that can be made to the Scottish system of waste management regulation to make improvements that benefit both business and the environment. It is hoped that some simplifications may be easy to deliver in a short timescale while others may require longer term investigation, further development and consultation.

This consultation does not consider waste management activities that must be regulated in accordance with the requirements of the Integrated Pollution Prevention and Control Directive (96/61/EC), called "PPC". These fall within the terms of the Pollution Prevention and Control Act 1999 and the Pollution Prevention and Control (Scotland) Regulations 2000, not waste management licensing, and there are additional requirements. This consultation does not cover these operations, but for further information on PPC, see the SEPA website.

<http://www.sepa.org.uk/ppc/index.htm>

A Part A PPC permit is considered equivalent to a waste management licence (WML) under the domestic legislation, an existing simplification that avoids any need for dual permitting for those sites.

The European Commission is currently reviewing the application of PPC.

1.2 Underpinning objectives

The main driver of waste policy in Europe and Scotland is the requirement to ensure that waste does not cause harm to human health or the environment. This requirement is explicit in Article 4 of the Waste Framework Directive which requires that:

Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

- *without risk to water, air, soil and plants and animals,*
- *without causing a nuisance through noise or odours,*
- *without adversely affecting the countryside or places of special interest.*

This requirement is replicated in domestic legislation in Schedule 4(4) of the Waste Management Licensing Regulations 1994 as 'relevant objectives'.

SEPA and the Scottish Executive recognise that there has been considerable progress in waste management in Scotland. Those operations that comply with their licences reach high Europe-wide standards. Nevertheless, there are still a significant number of examples of bad practices that contravene the above objectives. These bad practices span a range of recovery, recycling and disposal activities. Very often they are associated with operations that occur entirely outwith the law. For example:

- Fly-tipping blights the landscape, can cause pollution and is expensive to clean up. In one month alone (January 2006), it cost an estimated £262,250 to clear up illegally fly-tipped waste in Scotland.
- There have been several cases of successful prosecution of unlicensed operators who burn waste illegally to save on disposal costs. This can adversely affect local air quality causing problems for neighbours and results in pollution of the environment, for example dioxin emissions.

In such cases, it is not only the protection of environmental and human health that is of concern: businesses that try to comply with the law may be placed at a relative financial disadvantage compared to those that operate illegally.

There are also cases in which exempt (see section 2.3) or licensed (see section 2.4) activities are carried on in a manner that is not compatible with the above objectives:

- The land spreading of organic wastes, for example on agricultural land for agricultural benefit, was in some cases of bad practice associated with water pollution, concerns about human health impacts, and loss of amenity for local communities. This led to the law on exemptions being tightened in 2003.
- Nuisance, in its widest sense, is sometimes associated with waste management including odour, e.g. from spreading undigested sewage sludge on forestry land, dust from rock-crushing operations, or noise from traffic movements. Mechanisms exist within both waste law, and the law pertaining to statutory nuisance, to control such nuisances.

SEPA and the Scottish Executive seek to bring all waste management activities within the scope of a licence or properly registered exemption, and to ensure that authorised licensed activities are properly operated

SEPA licenses and inspects waste management licensed sites to ensure that licence holders maintain high standards of environmental protection. Inspections of licensed operations enable SEPA to identify problems and ensure that the operator takes any necessary remedial action. A written record of SEPA inspections of licensed operations is held by SEPA on a Public Register and allows members of the public to view the inspection reports.

SEPA has a range of enforcement tools at its disposal which it uses in accordance with its published enforcement policy. A copy of SEPA's enforcement policy may be obtained at:

<http://www.sepa.org.uk/pdf/policies/5.pdf>

Beyond protecting the environment and human health, the Waste Framework Directive also aims to encourage the minimisation and recovery of waste, especially by recycling, the use of recovered materials, and to discourage waste disposal. These aims have been reaffirmed in more recent European legal instruments, such as the Landfill Directive (99/31/EC), which sets ambitious targets for reducing the disposal of biodegradable municipal waste to landfill.

The National Waste Plan for Scotland (2003) sets out the strategy to fulfil these targets and also establishes the direction of SEPA's and the Scottish Executive's policies for sustainable waste management to 2020. Amongst other things, the National Waste Plan seeks to ensure a reduction in landfilling of municipal waste from around 90% to 30% by 2020. Accordingly, there is now a major commitment of funding by the Executive to transform Scotland's record on waste reduction, recycling, composting and other recovery through the Strategic Waste Fund.

New facilities will be required to deliver the National Waste Plan and meet the Landfill Directive diversion targets. This consultation presents an opportunity to identify and address regulatory disincentives and improvements to the waste management licensing system.

1.3 Waste Framework Directive Review

As part of the 6th Environmental Action Programme the European Commission carried out consultations, both general and with national experts, on the Waste Framework Directive, with a view to revising it. Its draft text of a revision was published on 21 December 2005, and has been intensively discussed by the European Council and Parliament since. These discussions still have some way to go, so the final form of the revised Directive is not yet clear, as are the implications for Scotland.

However the general intentions of the Community institutions at least are discernible. The intention is to shift the focus from waste disposal up the so-called "waste hierarchy" to waste recovery and recycling, and waste prevention. The draft Directive is also presented as a deregulatory measure. It would define in one place concepts such as "recovery", which have hitherto been largely defined through European Court of Justice judgments (though without necessarily making "recovered" status easier to attain). It would also repeal the Hazardous Waste Directive (91/689/EEC) and the

Waste Oils Directive (75/439/EEC), incorporating such of their provisions as are deemed necessary in the new Waste Framework Directive. It would give a considerable role to comitology in establishing Community-wide standards for recovery processes etc, and could increase the scope and definition of waste plans required from the Member States.

The proposed new arrangements will deliver greater regulatory certainty on what is covered by waste legislation but it is not clear at this stage whether this would result in less control on various economic activities, or more. The Executive and SEPA are both involved in the working group led by the Department for Environment, Food and Rural Affairs (Defra) that is refining the UK negotiating line, whose general focus is to promote the "better regulation" agenda. For further information about the revision of the Directive, please see Defra's consultation paper at:

<http://www.defra.gov.uk/corporate/consult/waste-directive/index.htm>.

1.4 Better Waste Regulation

The Scottish Executive and SEPA are committed to the principles of better regulation and believe that a regime designed around better regulatory principles should -

- Eliminate outdated or unnecessary provisions in legislation
- Consolidate, streamline or merge regulatory regimes where possible
- Base regulatory permitting, inspection and enforcement on sound risk principles
- Ensure where companies break the law that enforcement can be swift and effective
- Minimise the administrative burdens on companies and regulators wherever possible
- Empower regulators to enforce regulations in a fair, consistent and proportionate manner
- Promote best practice and advice to regulated companies wherever possible

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.

In November 2006, the Scottish Executive published "Strengthening and Streamlining: the way Forward for the Enforcement of Environmental Law in Scotland". This consultation paper sought views on a range of concerns including the lack of operator awareness about environmental laws, the level of fines imposed by courts, the paucity of regulatory enforcement tools and the need for a more consistent approach across environmental enforcement regimes. This consultation is now closed. Those wishing to respond to the consultation were asked to do so by 22 February 2007. A copy of the document can be found on the Executive's website at: <http://www.scotland.gov.uk/Publications/2006/11/22152827/0>

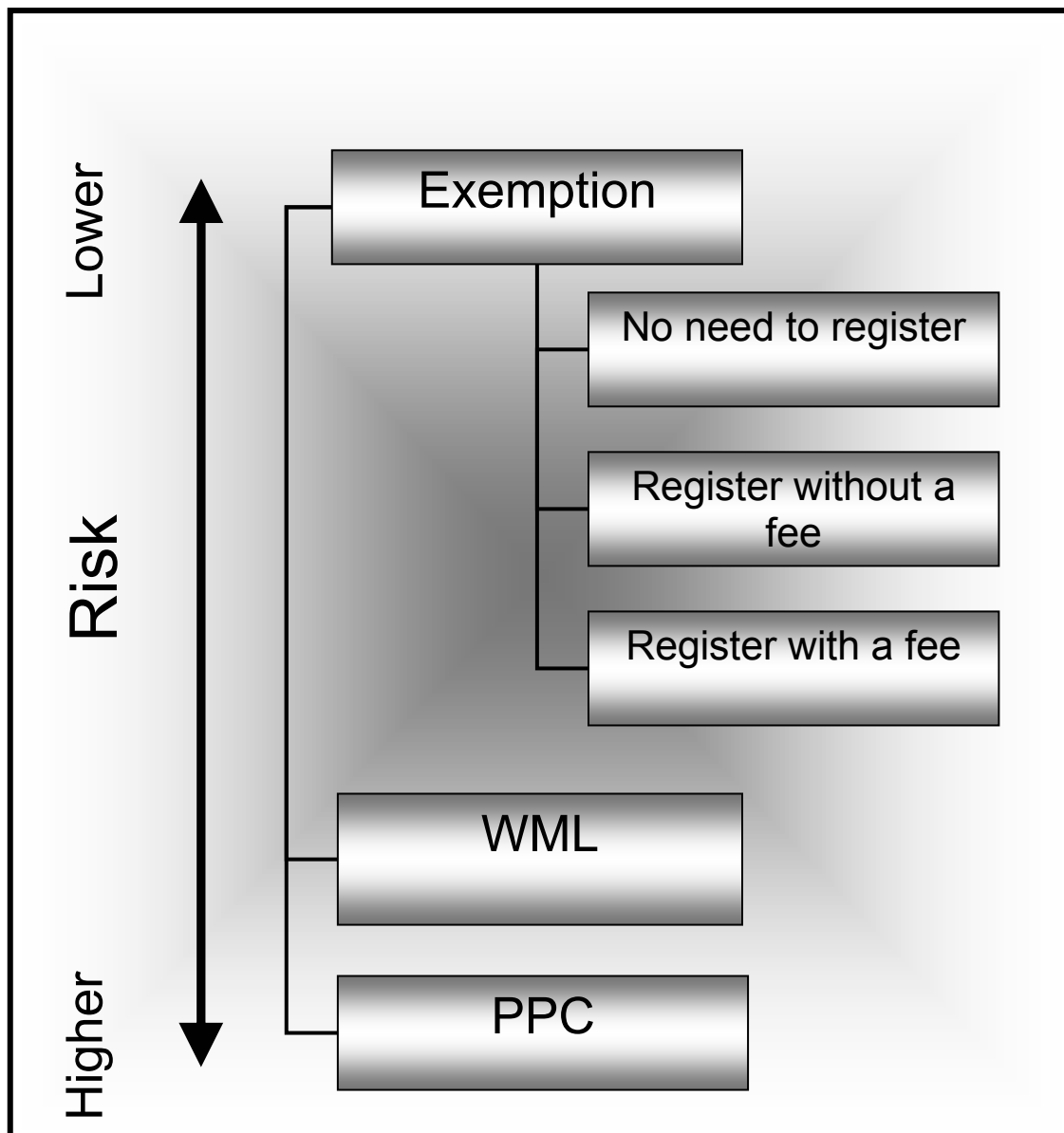
2.0 THE EXISTING SYSTEM

2.1 Background to this section

This section sets out the background to the current regulatory system.

Once a material is determined to be waste (see section 2.2), the current system adopts a tiered approach to regulation that is intended to reflect the comparative risks associated with waste management activities as set out in Figure 1 below.

Figure 1 The current tiered approach to regulating waste management activities



2.2 What is Waste?

Whether a material or substance is “waste” is determined by European Community law and is ultimately a matter for the courts to decide. The Waste Framework Directive defines waste as “any substance or object in the categories set out in Annex I of the Directive which the holder discards or intends or is required to discard”. Annex I establishes that a broad range of materials, substances and objects may be regarded as waste, including as a final entry in the Annex “Any materials, substances or products which are not contained in the above categories”. The intention of Community law is to ensure that a very broad range of substances should be covered by waste law. This is because anything which is discarded has the potential, one way or another, to become a threat to the environment or human health. It is obvious that once any object is discarded it will no longer be taken care of. Similarly “discard” is to be widely interpreted, and includes sending to a recycling or recovery operation. Making what the holder “intends or is required to discard” ensures that a holder of waste does not escape the need to obey waste legislation merely by stockpiling waste with no intention of recovering or disposing of it properly, under the pretence that it had not yet been discarded. However, even though a consumer object, such as a car, or furniture, may well be purchased in the full knowledge that it will be discarded eventually, while it is being actively used it is unlikely it would fall within the definition of waste.

Scottish Office Environment Department Circular 10/94 was the original source of guidance on the definition of waste but many of the concepts in the Circular on the definition are now out of date and have been superseded by more recent case law. The Scottish Executive has required SEPA to disregard the Circular where this is the case. Instead, SEPA’s recently published paper - entitled “Is it Waste: Understanding the definition of waste” – provides more up-to-date information on the complex matter of defining waste and some good examples of objects and substances and the circumstances in which they are not regarded as waste in the first place (e.g. forestry brush that is not discarded). Copies are available on the SEPA internet site at the following location and the document is recommended reading for those responding to this consultation:

http://www.sepa.org.uk/pdf/guidance/waste/is_it_waste.pdf

2.3 Exemptions from Waste Management Licensing for lower risk activities

Exemptions are intended to promote and reward environmentally sound waste recovery and recycling. Exemptions are the lowest tier of regulation.

European requirements

The overall framework for exemptions is established in the Waste Framework Directive and is currently implemented in Scotland through the Waste Management Licensing Regulations 1994.

Article 11 of the Waste Framework Directive allows Member States to provide exemptions from the permitting requirements of Articles 9 and 10 for waste recovery operations, in circumstances where:

- the *competent authorities* have adopted general rules for each type of activity laying down the types and quantities of waste, and the conditions under which the activity in question may be exempted from the permit requirements; *and*
- the types or quantities of waste and methods of disposal or recovery are such that *'waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:*
 - *without risk to water, air, soil and plants and animals,*
 - *without causing a nuisance through noise or odours,*
 - *without adversely affecting the countryside or places of special interest'*

Although the exemptions have generally been used for lower risk *recovery* activities, there is limited scope to exempt *disposal* activities, but only for establishments or undertakings disposing of their own waste at the place where it is produced.

For activities involving only non-hazardous wastes, Member States are simply obliged to inform the Commission of the general rules adopted under the exemption. For activities involving hazardous waste, i.e. special waste¹, Member States must send the adopted general rules to the European Commission no later than three months prior to their coming into force so that the Commission may consult other Member States on whether these general rules can be adopted.

Domestic arrangements

In the Waste Management Licensing Regulations there are three levels of exemptions -

1. Certain exemptions for storage do not need to be registered with SEPA. Table 5.1 of Scottish Office Environment Department² (SOED) Circular 10/94 makes it clear that establishments or undertakings do not need to register the type of activities that fall under the terms of paragraphs 36, 37, 40, and 41 of Schedule 3 of the 1994 Regulations: these are, in the main, temporary storage of a wide range of wastes.
2. Exemptions for recovery activities. These exemptions must be registered with SEPA. Regulation 18 of the 1994 Regulations sets out the general obligations for notifying and registering exempt activities. The general requirements are as follows:
 - SEPA has a duty to establish and maintain a register of establishments and undertakings carrying on exempt activities involving the recovery or disposal of waste. The register is open to members of the public at SEPA's principal offices during normal working hours.³
 - The public register contains –

¹ Special waste is defined in The Special Waste Amendment (Scotland) Regulations 2004 (SSI 112) as being any waste that is hazardous waste as defined by Article 1(4) of the Hazardous Waste Directive (Council Directive of 12th December 1991 on hazardous waste, 91/689/EEC). See the legislation for further detail.

² Formerly the Scottish Office: now the Scottish Executive.

³ Registry Offices are located at East Kilbride, Dumfries, Riccarton, Perth, Aberdeen and Dingwall.

- The name and address of the establishment or undertaking⁴;
- The activity which constitutes the exempt activity; and,
- The place where the activity is carried on.

Regulation 18 makes it an offence to undertake an exempt activity involving the recovery or disposal of waste without being registered with SEPA. Persons guilty of an offence under Regulation 18(1) are liable to a fine on summary conviction not exceeding level 2 (currently £500).

Failure to comply with the 'relevant objectives' or the terms of an exemption mean that the activity requires a waste management licence and an offence is committed under section 33 of the Environment Protection Act. Such offences are subject to maximum fine, in summary proceedings, of £40,000. There are many examples of such activities, such as the case that a mountain biking magazine brought to SEPA's attention involving shells from a scallops processing factory that had been used to build farm tracks. The shells had not been properly cleaned before use resulting in fish parts being left rotting on the surface.

SEPA can also remove exemptions from the Public Register, for example in cases where the operator is not or cannot comply with the terms of the exemption. If SEPA has reasonable grounds to believe that an activity will not comply with the terms of an exemption, SEPA will require that the operator of the activity apply for a waste management licence.

Generally registrations involve the completion of a simple short form, available from SEPA, and the registrations are a one-off requirement, and are free of charge.

3. Exemptions for potentially higher risk activities. These exemptions are for activities that can be carried out in an environmentally sound manner but require a higher level of regulatory scrutiny. These exemptions must be registered annually and most attract an initial registration charge (currently ranging from £58 - £739) with a lower annual renewal fee (currently £58 - £613) should the activity continue beyond 12 months. The charges reflect SEPA's costs incurred in operating the exemptions registration system, including the need to inspect such exempt activities annually.

SEPA can refuse to register these exemption registrations if it has reasonable ground to believe the activity will not comply with an exemption. SEPA can also remove these exemptions from the Public Register. If SEPA has reasonable grounds to believe that an activity will not comply with the terms of an exemption, SEPA will require that the operator of the activity apply for a waste management licence if they cannot demonstrate the activity will be carried out in accordance with the exemption.

The reasons for placing activities into this upper tier of exemption vary. For example, exempt composting activities have been the subject of public concern in the past, owing to issues such as odour, stockpiling and improper use. Land restoration exemptions were considered vulnerable to abuse and it was often difficult to distinguish between genuine recovery activities and illegal landfills. SEPA's 1998 report entitled "Strategic Review of Organic Waste Spread on Land" recommended a tightening up of exemption controls

⁴ The establishment or undertaking is whoever undertakes the activity.

on the use of organic waste as fertilizers and soil conditioners in agriculture to ensure that unsuitable materials were not used and materials, such as sewage sludge and other industrial wastes, which raise potential environmental or human health issues, were dealt with correctly. All of these activities are now in this upper tier of exemption.

Registration of these exemptions must be submitted in writing on forms available from SEPA. Copies of this form can be obtained from your local SEPA office or downloaded from the SEPA website. SEPA Guidance Notes are also available to assist with completion of the form and local SEPA office will provide advice as and when necessary.

Details of the charges for 2006/7 are available on SEPA's website.

http://www.sepa.org.uk/pdf/charging/legal/sched3/waste_mgmt_lic_scheme_2006.pdf

2.4 Waste Management Licensing

Waste management licensing is a higher tier of regulation than exemptions. Licences are generally required for activities that pose a greater risk to the environment and where a greater degree of regulatory supervision and control is required. There are also circumstances where the Waste Framework Directive does not allow for exemptions (see section 2.3 above) and a waste management licence is required as a matter of legal fit rather than comparative environmental risk. The licensing system must therefore accommodate a wide range of activities.

European requirements

The Waste Framework Directive requires that waste recovery and disposal activities must be carried out under a permit, or undertaken in accordance with an explicit exemption from permitting. In Scotland, the permit requirement of the Directive is met through a system of waste management licensing.

Articles 9 and 10 of the Waste Framework Directive state that establishments or undertakings must obtain a permit from the competent authority (SEPA in Scotland) for waste disposal and recovery operations.

A permit for disposal operations must cover the following –

- the types and quantities of waste;
- the technical requirements;
- the security precautions to be taken;
- the disposal site; and,
- the treatment method.

For recovery operations, the Waste Framework Directive does not stipulate what must be included in a permit but SEPA has developed an approach based on Waste Management Paper 4 that a similar range of matters should be covered in a recovery permit.

The Waste Framework Directive further establishes that permits may be –

- granted for a specified period,

- may be renewable,
- may be subject to conditions and obligations, or,
- if the intended recovery or disposal method is unacceptable in terms of environmental protection, may be refused.

Domestic arrangements

The current legal framework for the waste management licensing regime (the licensing requirements) is set out in the Environmental Protection Act 1990 and the Waste Management Licensing Regulations 1994.

There are basically two types of waste management licence: site licences where the licensable activity occurs at a fixed location, and mobile plant licences where the activity occurs wherever the particular mobile plant is located (e.g. in contaminated land remediation).

Mobile plant licences are only available for certain waste management activities as set out in Regulation 12 of the Waste Management Licensing Regulations. These activities are –

- a) an incinerator which is an exempt incinerator for the purposes of Section 5.1 of Schedule 1 to the 1991 Regulations;
- b) plant for—
 - a. the recovery, by filtration or heat treatment, of waste oil from electrical equipment; or
 - b. the destruction by dechlorination of waste polychlorinated biphenyls or terphenyls (PCBs or PCTs);
- c) plant for the vitrification of waste;
- d) plant for the treatment of clinical waste;
- e) plant for the treatment of waste soil;
- f) plant for the dewatering of muds, sludges, soils and dredgings;
- g) plant for the treatment by lime stabilisation of sludge;
- h) plant for the treatment of contaminated material, substances or products for the purpose of remedial action with respect to land or the water environment.

The Scottish Executive and SEPA are keen to ensure that the waste management licensing system is not onerous or disproportionate and wish to explore the potential for improvements. Several improvements have already been made to the system to reduce the cost burdens associated with waste management licensing and these are identified below in section 3.2.

2.5 When Does a Waste Cease to be Waste?

The SEPA 'Is it Waste' paper referred to in section 2.2 above also provides up-to-date information on the considerations made in determining when a waste ceases to be waste.

Protocols which set out detailed technical standards for determining when waste is fully recycled into a new product can play an important part in developing markets for recycled goods and, in appropriate circumstances (i.e. within the context of the aims of the Waste Framework Directive), can be a consideration in determining when a waste ceases to be waste.

WRAP (the Waste & Resources Action Programme) was established in 2001 to promote sustainable waste management and to create markets for recycled resources. It was set up as a not-for-profit company limited by guarantee by DEFRA, DTI, the Scottish Executive, Wales and Northern Ireland and it has taken the lead in the development of protocols of this type.

Building on the success of its “Quality Protocol for the Production of Aggregates from Inert Waste in Scotland” and the BSI PAS 100 certification system for high quality composts, WRAP, in conjunction with SEPA and industry, is developing further protocols to cover:

- Glass recycling
- Thin film (including agricultural) plastic
- IBA (incinerator bottom ash)
- PFA (pulverised fuel ash)
- Wood
- Digestate from Anaerobic Digestion
- Tyres

It is possible that further protocols will be developed for other materials such as PET plastics (Polyethylene terephthalate), HDPE plastics (High-density polyethylene), paper etc.

SEPA is in liaison with WRAP on the development of the protocols. Each protocol that is being developed will be considered by SEPA on its merits to determine whether compliance with the protocols can be a consideration in the legal determination of when a waste ceases to be waste.

The current revision of the Waste Framework Directive, described at 1.3, is likely to result in the concept of protocols being adopted at a Community level. Compost, aggregates, and – subject to a report on its environmental suitability – the burning of tallow, have been suggested for early work. We hope that work done already in the UK may inform the development of any Community protocols. Where the Community does not set Europe-wide standards, it is likely that it will continue to be open to Member States to develop their own. Subject, then, to avoiding duplication of work at a Community level, it may be possible for us to develop further protocols to apply in Scotland.

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

More information on WRAP, its programmes of work, and protocols can be found on WRAP’s website at http://www.wrap.org.uk/about_wrap/index.html

3.0 POTENTIAL CHANGES

This section of the consultation considers changes as they relate to the tiers of regulation set out in Section 2.0.

3.1 Exemptions

The current procedure for making new exemptions and amendments to existing exemptions has been criticised as being inflexible and insufficiently responsive to advances in waste technology and innovation for lower risk recovery activities. It is not uncommon for new lower risk waste management techniques to require a waste management licence because the exemptions law does not cover or anticipate the activity, not because the activity would be unsuitable for an exemption (this was the case e.g. for sites collecting and refurbishing furniture). For activities that are suitable for an exemption from waste management licensing, it then takes time to go through the legislative process to make an exemption and this can create problems for businesses in the intervening period. While SEPA considers individual cases on their merits and will have regard to the Scottish Executive's intentions for prospective changes to exemptions, the strict legal position is that a waste management licence is required until such time as an exemption for the activity has been drafted, consulted on, and approved by the Scottish Parliament. Nor can it be assumed that the exemptions will be approved by the Parliament. Such uncertainty is not helpful, even in situations where SEPA decides not to insist upon waste management licences for activities the Executive intends to lay before Parliament as an exemption.

Since 2003 the Scottish Executive has made significant progress with amendments to the exemptions and amendments are now more frequent and responsive to new activities. However, the procedure can take as long as 2 years if the changes are complex.

Future new exemptions

As the Directive allows competent authorities to make exemptions, SEPA could be given the powers to do this. This would mean that the requirements for legislation, including 12-week consultations and the preparation of regulatory impact assessments (even where the legislation was intended to make *less* impact) would not apply, and the Parliamentary process would be avoided. While safeguards may be necessary to ensure that the system remained accountable, since essentially the decision would be made by SEPA rather than by Ministers and the Parliament, this could enable the mechanism for amending existing exemptions or producing new ones to be simplified and quickened and would remove any business uncertainty associated with time delays. You may however, prefer to maintain the *status quo* in which case, all changes would continue to be prone to the delays associated with making legislation. In any event, SEPA would continue to have to consult on proposed changes.

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.

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.

SEPA has the power to refuse or remove exemption registrations from the Public Register. Currently there is no appeal mechanism should SEPA reject a notification for registration or remove a registration from the register. This reflects the fact that exemptions are meant to be a relatively quick route to carrying out worthwhile waste management activities that should be relatively straightforward to control. If an appeal mechanism is introduced, the exemption system would more closely resemble the licensing system. In particular an appeal system might have to be matched by a requirement to consult with affected parties before the exemption could be registered, as is the case with obtaining a full licence. Consultation would inevitably prolong the time taken to register exemptions and would (if the polluter pays principal is to be followed) increase the associated workload/costs for SEPA and operators.

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.

Registration

We are keen to reduce the administrative burdens associated with the registration of exemptions and are therefore interested in views on areas where the exemptions registration system could be improved.

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

An online process for the registration of certain exemptions is already planned. This would also allow the public register to be accessed electronically.

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

Inspection of exempted activities

The Waste Framework Directive requires periodic inspection of exempt activities to ensure compliance. The Waste Management Licensing Regulations 1994 (as amended) require annual inspection of the higher risk exemptions. This reduces SEPA's flexibility to target resources according to risk assessment of exempt activities, adds the cost of an annual inspection to SEPA's charges, and does not take into account the proactive efforts made by operators to optimise their compliance for these exemptions. It may be possible to develop a more flexible, risk based inspection system so that activities that are commonly well managed and safe may benefit from longer intervals between inspections. For example, the requirement for annual inspection could be relaxed, allowing SEPA to inspect less frequently.

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.

3.2 Waste Management Licensing

Waste management licences are intended to address the permit requirements of the Waste Framework Directive as set out in Section 2.0. Following public consultation, the Environmental Protection Act 1990 did, however, include requirements over and above those required by the Directive. Examples are the 'fit and proper person' test, which takes into consideration relevant convictions, requires operators to be technically competent and to make financial provisions, and site clearance (aftercare) provisions. These concepts were designed to apply the polluter pays principle and ensure that waste is only managed by those with sufficient technical knowledge to ensure that the operations they undertake do not adversely impact on the environment or human health.

What follows are detailed areas of discussion where we think there are reasonable prospects for improvements to the waste management licensing system. Other areas are covered in less detail at the end of this section although, importantly, we are interested in any further areas for improvement in the applications and licensing system that consultees identify.

Fit and proper persons

Under Section 74 of the 1990 Act, a waste management licence can only be issued or transferred to a person who is 'fit and proper' to hold such a licence. There are 3 components to the test of fit and proper person status, as set out in the Environmental Protection Act 1990:

- An applicant for a licence must be in a position to demonstrate that he has made or can make adequate financial provision to meet the conditions of the licence and the costs of aftercare.
- Management of the activities authorised by the licence must be in the hands of a technically competent person; *and*
- Consideration of convictions for a relevant offence;

These are considered below.

Financial Provision

In essence a person is not a fit and proper person to hold a licence if it appears to SEPA that that person *'has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the licence'*.

SEPA considers that for non-landfill waste management activities the primary objective of the financial provision test is to grant licences only to those persons who can demonstrate that they have sufficient financial means to fund the requirements of the licence, including those arising on closure. This may be demonstrated by way of a credit reference check or where this is not appropriate or has failed, an applicant may provide credible evidence from a third party.

This position was adopted by SEPA in 2004 following an internal review and subsequent consultation with industry. Previous SEPA practice was to require financial provision to be made in the form of funds that were set aside or secured. The 2004 proposal was generally well received by industry and following the

consultation exercise, financial provision agreements that had been entered into were returned to holders of non-landfill waste management licences.

Prior to 2004, financial provision was perceived to be one of the most costly and time-consuming aspect of the licensing process. SEPA's revised policy streamlines the process making it quicker, easier, transparent and far less costly for both applicants and SEPA as regulator. For those whose financial provision experience relates to pre-2004 practices, this revised position is a significant improvement.

Guidance on the current approach to financial provision can be accessed at:

http://www.sepa.org.uk/pdf/regulation/waste/Financial_Guidance_WML.pdf

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 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?

Q11. What sorts of activities should such dis-application apply to?

Operator Technical Competence

Scots law currently requires that waste managers demonstrate technical competence. At present, the Waste Management Licensing Regulations 1994 (as amended) specify that the Waste Management Industry Training and Advisory Board (WAMITAB)'s certificates of technical competence (COTC), currently covering 28 different activities listed in Schedule 1A to the 1994 Regulations, shall be the only means of demonstrating technical competence in compliance with the requirement in the 1990 Act (and of waste activities under the Pollution Prevention and Control regime). The requirement to demonstrate technical competence in any way, however, is not a feature of the Waste Framework Directive, and in theory could therefore be removed, in whole or in part.

Q12. Do consultees agree that demonstration of 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.

Should the requirement be maintained, the question arises of how it should be demonstrated. Since the formation of WAMITAB and the requirement for COTC's, it has been suggested that competition among different providers of qualifications could provide an incentive for the maintenance of high standards of assessment and could be a means of ensuring that assessment costs are competitive. For example, bodies other than WAMITAB, among them City & Guilds, provide qualifications that are essential under the Ozone Depleting Substances Regulations 2006.

The Scottish Executive may consider supplementing the current WAMITAB arrangement by recognising other externally accredited qualifications. A potential downside of a wider range of accredited qualifications is that new arrangements would add to SEPA's regulatory task, in the short run at least, since SEPA would have to assess the suitability of the new qualification. This would have to be

reflected in the associated cost of regulation. The views of consultees are sought on this matter.

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

The Scottish Executive may also consider whether the requirement to demonstrate technical competence should be maintained, but some or all waste management licence operations could be undertaken without formal qualifications. In this situation, only an initial technical competence assessment could be required to be undertaken by SEPA itself before a licence is issued. In this case SEPA would be bound to recover the costs of undertaking this assessment from the applicant through the application fee.

Q14. Do consultees think that for some, or all, 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.

The Scottish Executive and SEPA note that there is no requirement for continued professional development associated with COTC's. In a rapidly changing and evolving waste management industry, continued professional development is often viewed as an essential part of modern industrial development.

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.

Relevant Convictions

It is proposed that the “relevant convictions” requirement of the Fit and Proper Persons test be retained as it is considered a useful deterrent to rogue operators. The “relevant convictions”, which are listed in the 1994 Regulations, relate to offences under a range of environmental legislation.

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?

SEPA and Waste Management Licensing

Guidance to SEPA on licensing has been provided through the published series of documents known as Waste Management Papers (WMPs). WMP4 provides guidance on licensing, including recommendations in Annex 1 as to what should be considered for inclusion in a waste management licence. This guidance is formal guidance under section 35(8) and section 74(5) of the 1990 Act and SEPA is required to have regard to it when licensing activities. In addition, SEPA has developed its own guidance for staff and operators, which is available on its website at www.sepa.org.uk

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.

SEPA has developed a template style of processing and maintaining licences. This helps keep the time and costs associated with the licensing process down and as some of the template conditions are generic, this aids consistency. SEPA tailors the template licences to take account of site-specific circumstances and will include site-specific conditions to supplement or replace the template conditions if necessary. A template licence is included as Appendix 1.

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

Mobile Plant Licensing

In conjunction with other UK regulators, SEPA has already taken steps to simplify mobile plant licensing (described at 2.4 above) replacing multiple site licences with a single licence. This reduces the costs of licensing for mobile plant operators who are operating on more than one site at a time.

The Scottish Executive and SEPA are interested in exploring whether the current restrictive list of licensable mobile plant activities should be extended to cover other activities. For example, shellfish processors are often in remote locations where access to a range of licensed waste management techniques or facilities is often limited. Since the introduction of revised Animal By-Products Regulations in 2003, the options for the recovery and disposal of shellfish wastes have been more limited – for example, by the removal of landfill as an acceptable disposal option. Often, in such circumstances it would not be economically viable to build and operate a dedicated local waste management facility for small quantities of waste. An initial assessment by SEPA has indicated that a change in the law to make provision for small scale mobile composting under a mobile plant licence would introduce a locally available solution to the shellfish producers that might not otherwise be economically viable. The initial assessment has shown that a mobile composting unit is technically feasible and there are a number of designs already operating in places such as North America.

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 shellfish producers; and who else might benefit from such a composting exemption, e.g. hoteliers, catering facilities?

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.

More radically, it may be possible to change the legislation to allow SEPA to add to the categories of licensable mobile plant administratively – that is, adding new categories would no longer require legislation and a Parliamentary process.

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

General Waste Management Licensing Issues

The Environmental Permitting Programme (EPP) consultations currently being carried out in England & Wales by Defra are seeking to introduce a new permitting system for environmental licences, which would be unified as far as the very diverse requirements deriving from Community law would allow. This is providing an

opportunity to improve and streamline various process requirements relating to the administration of the waste management licensing system. Although we are not proposing to introduce EPP in Scotland, the Scottish Executive and SEPA believe that a range of technical improvements to the licensing system could be made in Scotland that would deliver similar benefits, without a need to change the entire system. We invite consultees to consider some aspects where improvements could be made, which are described below.

Licence Modification

Under the current legislative system, the boundary of fixed sites licensed under the waste management regime cannot be changed. If you want to expand your site, you need a new licence to cover the new area of ground, or to surrender the original licence and apply for a new licence for the larger area. Under the Pollution Prevention and Control (PPC) regime, on the other hand, the site boundary can be changed. The Scottish Executive and SEPA therefore invite consultees to consider changing the modification requirements to allow operators to increase or decrease their site boundary without requiring a new licence.

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?

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

Under PPC regulations, the regulator can require the operator to apply for a modification to a permit (e.g. to take account of a change in operations) using notice provisions. These regulator initiated modifications are charged to industry in accordance with the polluter pays principle, whereas waste management licensing regulator initiated modifications are charged through annual subsistence.

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?

Transfer of Licences

In Scotland, the legislation does not allow partial transfers. The benefit of allowing partial transfers is greater flexibility for licence holders.

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?

Surrender of Licences

Licences can already be surrendered partially or fully so long as the surrender requirements of the Waste Management Licensing Regulations 1994 are complied with.

The inclusion and consideration of historic waste management activities in the surrender requirements is an issue worthy of further consideration. The contaminated land regime under Part IIA of the Environmental Protection Act 1990 is intended to deal with historic contamination issues and it is proposed that the removal of this requirement would be a simplification of the licence surrender process in cases where there was no suspected pollutant linkage between the current licensed activity (that the surrender process applies to) and historical activities at the site. This would perhaps encourage site remediation and restoration, and remove the duplication between the Waste Management Licensing Regulations and the contaminated land regime. There may however, be practical difficulties for SEPA and licence holders in establishing whether there is a pollutant linkage between the current licensed activity and historical activities at the site.

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?

Revocation, enforcement and sanctions

As indicated in section 1.4, the Scottish Executive is currently consulting on "Strengthening and Streamlining: the way Forward for the Enforcement of Environmental Law in Scotland" consultation with a view to looking at enforcement of environmental law. In relation to revocation, enforcement and sanction provisions of the waste management licensing regime, the Scottish Executive and SEPA are interested in any specific observations or suggestions that consultees may have.

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

Inspection of Waste Management Licensed facilities by SEPA

SEPA currently uses information from site inspections and its operator performance assessments (OPA) to inform and establish proportionate, risk-based inspection frequencies for each site. Through this system, SEPA deploys its resources to target higher risk activities with a higher number of inspection. Operators who perform well benefit from a reduced number of inspections.

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

Waste Management Licensing Charging Scheme

At present, the Environmental Protection Act 1990 provides that the competent authority should be able to charge for the cost it incurs in undertaking the licensing procedures set out above. Indeed SEPA has a duty to recover the costs associated with licensing in accordance with the polluter pays principle. This is achieved through the Waste Management Fees and Charges (Scotland) Scheme 2006. SEPA is currently reviewing the waste management licensing charging scheme with a view to consulting on a revised charging scheme. A copy of the current scheme and the charges for 2007/8 can viewed on the SEPA web site at the following location –

<http://www.sepa.org.uk/charging/booklets/index.htm>

The current charging scheme reflects the relative risks associated with different waste management activities in terms of the types of waste, the quantities of waste, and the type of waste management operation. However, concern is sometimes expressed by companies and community organisations involved in small scale recovery operations about the impact of licensing and the associated costs. We do not want to lose sight of the fact that recovery operations are equally as capable of having an adverse impact on the environment and human health as some disposal operations, but we do want to ensure that costs are proportionate.

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

Final Considerations

There are other areas of waste legislation that this consultation has not touched upon in any detail. The paper has not attempted to outline the requirements of legislation ancillary to the waste management licensing system, such as on duty of care, the need to register as a waste carrier, broker and agent, or special (hazardous) waste. These are all covered by separate sets of Regulations. Nevertheless, if consultees consider that there is scope for further improvements to other parts of the system, the Scottish Executive and SEPA would appreciate your views.

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?

4.0 APPENDICES

4.1 Appendix 1- Sample SEPA template for Small Scale End of Life Vehicle Storage Licence

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1 LICENCED ACTIVITIES

1.1 Activities, Waste Types and Quantities

- 1.1.1 The activity at the site shall be restricted to the keeping of waste.
- 1.1.2 Only waste motor vehicles shall be accepted at the site.
- 1.1.3 The number of waste motor vehicles stored on site at any one time shall not exceed <<10>> vehicles. The quantity of waste accepted at the site in any year shall not exceed <<X>> tonnes.
- 1.1.4 No waste shall be stored on site for longer than 12 months.

1.2 Staffing and Management

- 1.2.1 The site shall be staffed when open.
- 1.2.2 At least one technically competent person shall be responsible for supervising the site and shall be contactable by site staff and SEPA at all times during operational hours. The technically competent person shall visit the site at least once during every week the site is operational.
- 1.2.3 Any changes to the list of technically competent persons who may be in charge of the site shall be notified to SEPA within 2 working days.

1.3 Working Plan

- 1.3.1 All operations on site shall be carried out in accordance with the Working Plan. The Working Plan shall include the operational details and records listed in Annex 2. Where any licence condition conflicts with the Working Plan, the licence condition shall take precedence.
- 1.3.2 Any changes to the operational details of the Working Plan shall be submitted in writing to SEPA. Any proposed changes shall not be implemented until SEPA has given its written consent to the proposed changes. If SEPA does not give its written consent within 14 days of receipt of the proposed changes the request for changes shall be deemed accepted.

2 SITE INFRASTRUCTURE AND OPERATIONS

2.1 Site Security

- 2.1.1 The site shall be maintained in a secure condition to prevent unauthorised access.

2.2 Reception of Waste Motor Vehicles

- 2.2.1 On arrival at the site, all waste motor vehicles shall be:
 - a) immediately placed on an impermeable pavement; and
 - b) inspected by the Licence Holder for damage or leaks.
- 2.2.2 Any vehicle found to be leaking or at risk of leaking shall be removed from the site as soon as possible.

2.2.3 Vehicles shall not be treated or dismantled while on the site.

2.3 Storage of Waste Motor Vehicles

2.3.1 Vehicles shall remain on an impermeable pavement until removed from the site.

2.3.2 Impermeable pavements shall be constructed of concrete or similar material and be laid to a fall so as to direct pavement water run-off to a sealed drainage system and oil interceptor. The impermeable pavement shall be of such a design that any spillage on it or run-off from it is fully contained and cannot escape onto adjacent ground.

2.3.3 Vehicles shall be stored in such a manner as avoids damage to any component containing a fluid or fluids, any recoverable component or any spare part.

3 POLLUTION CONTROL

3.1 Litter

3.1.1 All site operations shall be carried out such that no litter escapes beyond the site boundary. On a daily basis any litter lying within the site shall be removed and contained.

3.2 Burning

3.2.1 No waste shall be burned within the boundaries of the site.

3.3 Leakages or Spills

3.3.1 Any spillages of waste or fluids shall be cleaned up immediately. Suitable spillage collection facilities including a supply of absorbent material, decanters and cleanser degreasers shall be kept on site to deal with any such spillages.

3.4 Emissions to the Water Environment

3.4.1 The licensed activities shall not have a significant adverse impact on, or cause pollution of, the water environment.

3.4.2 The discharge shall not cause:

- a) a significant visible impact on surface waters due to the presence of <<oil or grease>>;
- b) the significant deposition of solids on the <<banks, bed or shore>> of the receiving waters;
- c) significant discolouration of the receiving waters;
- d) significant increased foaming in the receiving waters; or
- e) significant growth of Sewage Fungus in the receiving waters.

3.4.3 Any event involving one or more of the circumstances described in Condition <<3.4.2>> above shall be regarded as an "incident".

4 RECORDS AND REPORTING

4.1 Site Licence

- 4.1.1 A copy of the site licence, its conditions and the associated Working Plan shall be made available on the site when the site is in operation. The licence, its conditions and the details of the associated Working Plan shall be made known to all staff manning, or responsible for supervising, the site.

4.2 Commencement of Operations

- 4.2.1 SEPA shall be advised in writing of the date the site is to become operational and receive waste.

4.3 Temporary Cessation of Operations

- 4.3.1 Any temporary cessation of operations in excess of two weeks shall be notified to SEPA in writing.

4.4 Permanent Cessation of Operations

- 4.4.1 Written notice shall be given to SEPA of the designated date when the site shall cease operations permanently.

4.5 Incident Procedures

- 4.5.1 SEPA shall be informed as soon as reasonably practicable of any incident occurring on site. Immediate action shall be taken to deal with the incident. A written report shall be forwarded to SEPA within seven days of any such incident. This shall include the circumstances of the incident, the identity of any persons responsible or thought to be responsible for the incident and the actions taken by the Licence Holder.

4.6 Reporting of Relevant Offences

- 4.6.1 Where the Licence Holder or other relevant person has been convicted of an offence prescribed by Regulation 3 of The Waste Management Licensing Regulations 1994, the Licence Holder shall notify SEPA in writing within seven days of the conviction, whether or not the conviction is subsequently appealed.

4.7 Waste Data Returns

- 4.7.1 The Licence Holder shall compile the data required to complete "the Licensed/Permitted Site return form" detailed in Annex <<3>>. A copy of the completed form shall be returned to SEPA within 28 days of the last day of March, June, September and December each year.

ANNEX 1 – SITE PLAN

ANNEX 2 – LIST OF INFORMATION TO BE INCLUDED AND RECORDED IN THE WORKING PLAN

In accordance with Condition <<1.3.1>> the Site Working Plan shall contain the following information and records:

Operational Details

1. Name and contact information of Licence Holder
2. Hours of operation
3. List of Technically competent persons for the site (including copies of Certificates of Technical Competence)
4. Details of site security provided at the site
5. Operational procedures for:
 - a. Receiving waste motor vehicles,
 - b. Inspecting vehicles for damage or leaks
 - c. Removing waste motor vehicles from the site
 - d. Attending to spillages (including details of the absorbent material, decanters and cleanser degreasers kept on site)
6. Maintenance procedures (including planned frequency of maintenance) for:
 - a. impermeable areas
 - b. oil interceptor
 - c. fencing, walls and/or gates
7. Construction details (including “as built” drawings) of:
 - a. impermeable pavement(s) for the storage of waste motor vehicles
 - b. oil interceptor(s)

Records

1. Ongoing records of the following:
 - a. Dates of site visits by a technically competent person (including any instructions issued to staff regarding compliance with licence conditions)
 - b. Dates and details of maintenance carried out on impermeable areas, oil interceptor(s) and site security measures
 - c. Details of any incidents and remedial action taken
 - d. Details of any environmental problems specific to the site

ANNEX 3 – LICENSED/PERMITTED SITE RETURN FORM

INTERPRETATION OF TERMS

For the purposes of these Conditions, and unless the context requires otherwise, the following definitions shall apply:

“authorised SEPA officer” means any person who is authorised in writing under Section 108 of the Environment Act 1995 to carry out duties on behalf of SEPA;

“incident” means any of the following situations:

- (a) Where an event occurs which has caused or may have the potential to cause pollution of the environment;
- (b) Where any malfunction, breakdown, or failure of plant or techniques is detected which has caused or has the potential to cause pollution of the environment;

“pollution of the environment” has the same meaning as in section 29 of the Environmental Protection Act 1990;

“relevant person” has the same meaning as in section 74(7) of the Environmental Protection Act 1990;

“sealed drainage system” has the same meaning as in paragraph 45(7) of Schedule 3 of the Waste Management Licensing Regulations 1994;

“SEPA” means the Scottish Environment Protection Agency;

“the Act” means the Environmental Protection Act 1990;

“the Licence Holder” means the Licence Holder specified in the licence or other person to whom the licence has been transferred in accordance with section 40 of the Act. Except where specified otherwise, any reference to the Licence Holder shall include a reference to the Licence Holder’s employees, agents or contractors;

“the operator” means a person who is in occupation of the site and has responsibility for carrying out day to day activities at the site;

“the site” is defined in the site licence;

“the site licence” is waste management licence <<Licence Number>> granted to the Licence Holder by SEPA;

“waste motor vehicle” has the same meaning as in regulation 2 of the End-of-Life Vehicles (Storage and Treatment)(Scotland) Regulations 2003;

“the water environment” means all surface water, groundwater and wetlands.

“surface water”, “groundwater” and “wetlands” shall have the same meanings as in The Water Environment and Water Services (Scotland) Act 2003;

“Working Plan” means the document(s) identified as the Working Plan in writing by SEPA at the time of grant of the licence and any subsequent changes to that Working Plan made in accordance with the conditions of the licence;

Where any Licence Condition requires information to be reported, “in writing”, it may be submitted either by providing two hard copies to the postal address or electronically to the e-mail address specified in the explanatory notes attached to this Licence.

Any reference to a group of Conditions, numbered Condition, Schedule, Table, Annex, Figure or Paragraph is a reference to a group of Conditions, numbered Condition, Schedule, Table, Annex, Figure or Paragraph bearing that number in these Conditions;

Except where specified otherwise in these Conditions:

- “day” means any period of 24 consecutive hours,
- “week” means a period of 7 consecutive days,
- “month” means a calendar month,
- “year” means any period of 12 consecutive months,

and any derived words (eg, “monthly”, “quarterly”) shall be interpreted accordingly.

Except where specified otherwise, any reference to an enactment or statutory instrument includes a reference to it as amended (whether before or after the date of the Conditions) and to any other enactment, which may, after the date of this licence, directly or indirectly replace it, with or without amendment.

EXPLANATORY NOTES

(These explanatory notes do not form part of the licence)

1. GRANT OF LICENCE

This licence is granted in accordance with the provisions of Section 35 and 36 of the Environmental Protection Act 1990.

2. MODIFICATION OF LICENCE

Licence conditions may only be modified in accordance with Section 37 of the Environmental Protection Act 1990. The working plan may be modified in accordance with the relevant conditions of the licence.

3. SUSPENSION OF LICENCE

SEPA may suspend or partially suspend a licence in accordance with the provisions of Sections 38 and 42(5) and (6) of the Environmental Protection Act 1990 and Section 41(6) of the Environment Act 1995.

4. REVOCATION OF LICENCE

A licence may be revoked or partially revoked in accordance with the provisions of Sections 38, and 42(5) and (6) of the Environmental Protection Act 1990 and Section 41(6) of the Environment Act 1995.

5. SURRENDER OF LICENCE

A licence may only be surrendered in accordance with the provisions of Section 39 of the Environmental Protection Act 1990.

A licence shall remain in effect, subject to any modification, revocation or transfer issued by SEPA until such time as the licensed activity has ceased, an application for surrender of licence has been made by the licence holder and the certificate of completion has been issued by SEPA.

6. TRANSFER OF LICENCE

A licence may only be transferred in accordance with the provisions of Section 40 Environmental Protection Act 1990.

7. GENERAL STATUTORY REQUIREMENTS

A licence does not detract from any other statutory requirements applicable to the licence holder or his operations, such as any need to obtain planning permission or building regulations approval or any responsibilities under legislation for health, safety and welfare in the workplace.

8. SUBSISTENCE CHARGES

An annual subsistence charge will be payable in respect of the licence under Section 41 of the Environment Act 1995.

9. OFFENCES

Under Section 33(6) of the Environmental Protection Act 1990, a person who contravenes any condition of a waste management licence commits an offence.

A person who commits an offence under Section 33(6) may be liable to imprisonment and/or to a fine.

10. ADDRESS AND TELEPHONE NUMBERS

The contact address and telephone number for all information to be reported in terms of the licence, is as follows: -

Scottish Environment Protection Agency
Tel No:0800 80 70 60 and/or <<local office number>>
Fax No: <<local office number>>

11. SCHEDULE TO THE END-OF-LIFE VEHICLES (STORAGE AND TREATMENT) (SCOTLAND) REGULATIONS 2003

For information only, the relevant Parts 1 and 2 of the above schedule are given below. The Regulations and the Schedule may be subject to amendment by the Scottish Parliament and the Schedule is only accurate as at <<date>>.

PART ONE

OBLIGATIONS IN RESPECT OF KEEPING OR TREATMENT OF WASTE MOTOR VEHICLES

1. No waste motor vehicle shall be kept (even temporarily) unless such keeping-

- (a) is carried out in accordance with the general requirements laid down in article 4 of the Waste Directive (Council Directive 75/442/EEC); and
- (b) complies with the minimum technical requirements set out in Part 2 below.

PART 2

MINIMUM TECHNICAL REQUIREMENTS FOR THE KEEPING AND TREATMENT OF WASTE MOTOR VEHICLES

1. The keeping (even temporarily) of a waste motor vehicle prior to treatment shall only be carried out at a site-
 - (a) having, in appropriate areas, impermeable surfaces and provided with spillage collection facilities, decanters and cleanser degreasers, and
 - (b) provided with equipment for the treatment of water (including rainwater) in compliance with all applicable legislation concerning health and environmental matters.

5. Any keeping operations shall be carried out in such a manner as avoids damage to-
 - (a) any component containing a fluid or fluids;
 - (b) any recoverable component;
 - (c) any spare part.

4.2 Appendix 2- 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.

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.

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.

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.

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

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

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.

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 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?

Q11. What sorts of activities should such dis-application apply to?

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.

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

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.

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.

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?

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.

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

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?

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.

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?

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?

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

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?

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?

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?

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

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

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

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?

We seek the views and comments of all interested parties through this public consultation which closes on **22 June 2007**.

You can submit a written response to:

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

If you wish further information on any issue in this consultation, please call 01786 457700 and ask for Gary Walker or Kenny Boag.

E-mail: gary.walker@sepa.org.uk or kenny.boag@sepa.org.uk