



Law Society
of Scotland

Consultation Response

Non-hazardous landfill permit consultation

February 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Environmental law Sub-committee welcomes the opportunity to consider and respond to SEPA's consultation: *Non-hazardous landfill permit consultation*¹. We have the following comments to put forward for consideration.

General remarks

We welcome the general approach towards simplification which this consultation represents. However, there are some areas which have the potential to widen rather than level the playing field in the landfill sector and create difficulties for enforcement.

We would welcome some clarification as to what aspects of the Landfill (Scotland) Regulations 2003 limited SEPA's application of the permit simplification principles.

Consultation questions

4. Do you agree that the removal of SEPA approval of site management plans in the permit is the way forward?

We agree with the principle that the responsibility for environmental management should rest with the authorised person in relation to any site. However, how will SEPA ensure that there is a level playing field across the sector in terms of such environmental management if there is no longer a standard template to follow? Does SEPA intend to introduce appropriate guidance to provide at least minimum standards that

¹ <https://consultation.sepa.org.uk/permits/non-hazardous-landfill-permit/>

should be adhered to in order to prevent non-compliance and environmental harm at poorer performing sites?

5. Do you agree with this approach to technical competence?

We agree with the approach but again there should be some clarity provided (perhaps through guidance) as to what SEPA will require, as a minimum, to demonstrate technical competence, particularly given that permits may be suspended if SEPA consider that this has ceased. Given that this is likely to be different from company to company or site to site, SEPA may want to consider a number of examples. It would also be worth clarifying whether the technical competence 'standard' will be assessed on the basis of the company as a whole or in terms of specific individuals.

6. Is it clear from Table 2 in the permit what type of waste is allowed and not allowed in the landfill?

Has SEPA considered how material that cannot be treated or landfilled (according to the revised permit template) will be dealt with? (An example being mixed recycle with no end market or ability to be treated).

7. What are your views on this approach?

Are SEPA intending to ensure that other sectors and those in the supply chain are educated about the expectations of WAC so that all of the issues do not land with the operators on delivery to landfill sites?

8. As an operator, or waste producer, do you think a guidance document would be helpful?

No comment.

9. Do you agree with how SEPA approaches construction at landfills?

No comment.

10. Do you think we should have more or less oversight of construction at landfills?

No comment.

11. What do you think of our proposed approach to landfill gas regulation and protection of the surrounding environment at landfill sites?

On what legal basis are the gases included in the permit template decided upon? There is now precedence in other UK and EU jurisdictions to set limits only for methane on the basis of recent scientific developments.

Given the consequences of a limit being breached, it is important that the assessment and setting of the limits, on a site by site basis, is done in conjunction with operators. There should perhaps be a sliding scale

of penalty in terms of the compliance assessment scheme to reflect (proportionately) the nature and extent of the breach. We consider that minor exceedance of limits should not always be considered an environmental incident.

12. What do you think of our approach to leachate regulation and groundwater protection in the permit?

Again, given the consequences of a limit being breached, it is important that the assessment and setting of the limits, on a site by site basis, is done in conjunction with operators. There should perhaps be a sliding scale of penalty in terms of the compliance assessment scheme to reflect (proportionately) the nature and extent of the breach. We consider that minor exceedance of limits should not always be considered an environmental incident.

13. Are you clear on what these conditions are asking the operator to do?

No comment.

14. As an operator, do you anticipate any difficulty complying with these conditions?

No comment.

15. What do you think of our proposals regarding restoration plans?

Whilst we understand the importance of restoration plans and agree with the principle of making these a legally binding part of the permit, we are concerned that minor variations to a restoration plan will require a formal variation to a permit. There will be circumstances in which that is an extreme (and potentially costly and time-consuming) process for an operator. Is there an appropriate threshold of significance that can be applied?

16. What do you think of our proposal to have an environmental monitoring plan (EMP) for the landfill?

Please see the response to Q. 15 which applies equally to this Q. 16.

17. Is it clear from the EMP guidance document what is required in the EMP?

No, there appears to be some confusion between the existing guidance and the proposed new guidance and SEPA should clarify what is expected of operators before the new guidance is finalised to avoid issues of non-compliance.

18. Do you agree with the planned future transition to ‘full’ operator monitoring for the landfill sector?

Yes.

19. What lead / development time do you estimate would be required prior to this transition?

No comment.

20. Do you foresee any benefits or issues?

There may be a need for SEPA to consider adjusting its compliance assessment and charging schemes as this transition takes effect to ensure that operators are not doubly penalised.

21. Do you think our conditions around nuisance are robust enough to protect the local community?

We consider that it is necessary for SEPA to clarify what will be considered ‘significant’ to ensure that enforcement by officers is consistently applied, albeit taking into account the specifics of the site, rather than subjective.

22. Do you think our proposed approach is fair to operators?

Please see the response to Q. 21 which applies equally to this Q. 22.

23. Do have any comments on our new closure procedure condition?

We agree with the need to ensure that sites are not abandoned, resulting in an environmental issue for SEPA. However, the wording of the template permit could result in issues where a site is not ready for the closure procedure to be invoked (for practical reasons). SEPA should consider re-wording this provision (11.1.11(d)).

24. Do you have additional comments on the permit?

Yes, the following:

- In terms of provision 2.2.1 (on page 5): how does SEPA intend to define, monitor and enforce what the efficient use of resources entails?
- At provisions 2.4.1(c) (on page 6): where does the 30-year period come from/how has that been decided upon?
- At provision 4.4.2 (on page 11): we understand that there are currently derogations permitted by SEPA and Revenue Scotland, such as the use of a weighing shovel. On that basis, this provision should be less restrictive or make provision for such derogations.



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