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Consultation on draft Environmental Permitting Guidance Exempt Waste Operations

October 2009



Llywodraeth Cynulliad Cymru



Department for Environment, Food and Rural Affairs
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This document is available on the Defra website:
<http://www.defra.gov.uk/corporate/consult/waste-exemption-review/index.htm>

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1 Executive Summary

- 1.1 Defra, the Welsh Assembly Government and the Environment Agency have undertaken a review of waste exemptions from environmental permitting. The aim of the review is to provide a more risk based and proportionate approach to the regulation of waste recovery and disposal operations, complementing the new environmental permitting regime.
- 1.2 This consultation covers the draft government guidance to accompany the revised waste exemptions from environmental permitting, which will incorporate a new Schedule 2, 3 and 3A to the Environmental Permitting (England and Wales) Regulations 2007.
- 1.3 The government guidance and associated Environment Agency technical guidance will replace Annex 4 and 5 of Circular 11/94 at the end of the transitional provisions.
- 1.4 The documents are aimed at the Regulator, the regulated community and any others who may be interested. The Environment Agency will produce separate technical guidance for the revised waste exemptions.
- 1.5 A consultation was launched in June 2009 on draft core guidance amendments to accompany the draft EP Regulations 2010. This can be found at <http://defraweb/corporate/consult/env-permitting-guidance/index.htm>
- 1.6 The Local Authorities' General Guidance Manual will be updated as necessary to take account of any amendments to the Core Guidance.

Background

- 1.7 Defra, the Welsh Assembly Government and the Environment Agency undertook a consultation on revised waste exemptions from environmental permitting during 2008.
- 1.8 The aim of the review was to provide a more risk based and proportionate approach to the regulation of waste recovery and disposal operations, complementing the new environmental permitting regime.
- 1.9 A consultation was launched on 31st July 2008 and ran until 23rd October 2008 and included the consultation document, a Partial Impact Assessment and draft regulations. The consultation and relevant documents were published on the Defra and WAG websites.
- 1.10 The consultation paper sought views on 13 questions and, on the proposed exemptions in the draft regulations.
- 1.11 A total of 285 unique responses were received from a broad cross section of stakeholders. The stakeholders included public bodies (both national and local government, and other Government bodies); a wide range of businesses (small, medium and large); trade associations across many business areas; the third sector; and individuals.

- 1.12 This consultation seeks comment on revised Government guidance to accompany the Environmental Permitting Core Guidance.
- 1.13 Responses are available for viewing in the Defra library for 6 months after the closing date of the consultation at:

Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR (Tel: 020 7238 6575, email: defra.library@defra.gsi.gov.uk).

2 Introduction

- 2.1 Environmental Permitting Core Guidance is currently out to consultation to accompany the draft EP Regulations 2010. The Core Guidance provides high level Government guidance on the Environmental Permitting regime.
- 2.2 The Government guidance on revised waste exemptions is a stand-alone guidance document designed to further explain the requirements for exempt waste operations.

Introduction to the consultation

- 2.3 In June 2008, Defra issued a consultation on revised waste exemptions from environmental permitting
<http://www.defra.gov.uk/corporate/consult/waste-exemption-review/index.htm>
- 2.4 As part of that consultation we proposed:
- “to embody the principles and criteria used in the formulation of [the proposed revised waste exemptions] in Government guidance for future reviews”**
- and
- “to provide revised environmental permitting guidance on exempt waste operations”**
- and
- “to include the principles for a regular review of exemptions in the environmental permitting guidance”**
- 2.5 Responses to that consultation and other feedback from industry overwhelmingly supported these proposal and a number of suggestions were made for the format and content of the Government guidance. Further details of the responses to the specific proposals can be found at <http://www.defra.gov.uk/corporate/consult/waste-exemption-review/index.htm>.

About this consultation and how to respond

- 2.6 The consultation will last 12 weeks. The consultation paper contains:
- Draft guidance
- 2.7 Please return comments, preferably by email, to:
- By email: exemptions@defra.gsi.gov.uk

By post: Exemptions Review Team
Waste Permitting Unit
Defra
Area 6D, Ergon House
c/o 17 Smith Square
London
SW1P 3JR

Or in Wales:

By email: owen.venables@wales.gsi.gov.uk

By post: Waste Policy Branch
Welsh Assembly Government
Second Floor, CP2
Cardiff
CF10 3NQ

If you have any queries relating to this consultation please email via the addresses above or call:

In England: 020 7238 4352

In Wales: 029 2082 3213

- 2.8 The specific questions in relation to this consultation are asked in Section 4 of this document.
- 2.9 The Government welcomes your response to this consultation in any form. However, your response can be processed more efficiently if, when answering specific consultation questions, your response is clearly marked with the proposal / question numbers. To help put your response in context, you are also encouraged to indicate who you are and how many operators or others you represent, and who they are.
- 2.10 Comments must be returned to Defra by 5 January 2010

Responses from Wales should be sent to the address in paragraph 2.14, copied to Defra by 5 January 2010

Consultees should note that it may not be possible to consider responses that arrive after the deadline.

Ensuring your confidentiality

- 2.11 In line with Defra's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resource Centre, Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR. The information they contain may also be published in a summary of responses.

- 2.12 If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. You should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.
- 2.13 The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or email requests (tel: 020 7238 6575, email: defra.library@defra.gsi.gov.uk). Wherever possible, personal callers should give the library at least 24 hours notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.
- 2.14 Responses provided to WAG will be published. Normally the name and address (or part of the address) of its author are published along with the response, as this gives credibility to the consultation exercise. If you do not wish to be identified as the author of your response, please state this expressly in writing to us, and your response will be published anonymously.

Geographical coverage

- 2.15 This consultation covers England and Wales only. WAG is a partner with Defra and the Environment Agency in this process:
- WAG has devolved responsibility for all of the matters covered by this consultation;
 - It is desirable for the business community, others who will be affected by the exemptions system, and the Environment Agency as a cross-boundary regulatory authority, that there is a common regulatory system in Wales and England; and
 - WAG is responsible for providing much of the funding for the Environment Agency for its activities within Wales. Thus, WAG largely influences the direction of the Environment Agency's work within Wales.

Who will be affected?

- 2.16 This consultation is directed, in particular, at:
- Those who are currently registered for an exemption from the need for an environmental permit;
 - Those who are currently operating under Environment Agency low risk positions;
 - Those who produce or take waste to sites operating under an exemption; and
 - The wider waste management industry

- 2.17 The Government also recognises that a wide range of other people and groups have an interest in ensuring that waste management operations continue to be managed in ways which protect the environment and human health. In particular, local communities in which these activities take place, and their elected representatives, need to be confident that this remains the case.
- 2.18 This paper is being sent to those organisations and individuals listed on our website at <http://www.defra.gov.uk/corporate/consult/waste-exemption-review/index.htm>. If you are aware of any others who might be interested in seeing this paper and commenting, but who are not listed, please let Defra or WAG know and a copy can be sent to them.

Next Steps

- 2.19 The responses to this consultation will be published by Defra (www.defra.gov.uk) and by WAG (www.countryside.wales.gov.uk). Each response will be considered.
- 2.20 Policy decisions will subsequently be taken on how the proposals within this consultation package should be reassessed in light of responses received.
- 2.21 The new scheme of exemptions from environmental permits is due to be implemented in April 2010. It is proposed that a transitional period will occur after the implementation date to, amongst other things, allow reasonable time periods for operators to take informed judgments about the options that are open to their business; and to take, if applicable, the necessary steps to comply with the new regulatory requirements. Further detail on the proposed transitional arrangements can be found in section 3.10.

Consultation code

- 2.22 The consultation is being conducted in line with the Code of Practice on Consultation in Annex 4. The full version can be accessed at: <http://bre.berr.gov.uk/regulation/consultation/code/index.asp>
- 2.23 If you feel that the consultation does not satisfy these criteria please contact:

Ms Marjorie Addo,
Defra Consultation Coordinator
Area 7C Nobel House
17 Smith Square
London SW1P 3JR

Tel: 0207 238 5947

Email: consultation.coordinator@defra.gsi.gov.uk

3 Summary of draft Government guidance

- 3.1 The key messages from the informal and formal consultations on revised waste exemptions from environmental permitting were that guidance;
- should be clear, concise, simple and easy to understand etc;
 - should be focused at both the industry and the regulator;
 - facilitates the law being applied consistently;
 - should be developed with significant involvement of industry and others affected by it or using it; and
 - must be made available by Government and the regulator well before implementation of the revised exemptions.
- 3.2 There was also recognition in the responses that many exempt activities are operated by smaller businesses and that guidance needs to be widely disseminated to ensure it reaches appropriate sectors.
- 3.3 The Government guidance has been developed using the EPP model / infrastructure and be directed at both the regulator and the regulated.
- 3.4 It is recognised that a combination of Government guidance and regulators' guidance will be needed to provide clarity on the overall approach and specific requirements of the new exemptions system.
- 3.5 Using the EP model Government guidance will be 'high level' guidance to support the aim of compliance. Regulators' guidance will set out the procedural arrangements and any technical requirements and standards.
- 3.6 Guidance will be provided to supplement the Environmental Permitting Guidance and will form a new Annex to the Core Guidance for Environmental Permitting.

Content of Government guidance

- 3.7 The aim is to limit Government guidance to the extent necessary to (a) demonstrate transposition of regulatory requirements and (b) give effect to Government policy. More detailed procedural aspects will be the subject of regulators' guidance.
- 3.8 Within the above boundaries, the subject areas included in the draft Government guidance are;
- The risk based approach to the Government's provision of exemptions
 - The format and grouping of new exemptions
 - List of waste codes
 - Non-Waste Framework Directive Exemptions
 - Part B processes

- Registration Requirements
- Public Registers
- Funding and charging
- Compliance and Inspection
- Record-keeping Requirements
- Appeals and Challenges
- Transitional provisions
- Technical competence (Transitional provisions)
- Regular Review Process

The regulators' guidance

3.9 Detailed guidance on individual exemptions and the requirements for registration that will supersede Annex 5 and 6 of Circular 11/94 will be incorporated into guidance from the appropriate regulator.

4 Questions on draft Government Guidance

- Q1 Does the guidance adequately explain the relevant requirements of the Regulations – and if not, how should it be amended?
- Q2 Do you think that the format and structure of the guidance are helpful in explaining the requirements of the Regulations – and if not, why not?
- Q3 Does the guidance clearly explain how the regulations are set out?
- Q4 Does the guidance adequately explain how the regulations will be reviewed in future and the risk based approach to the Government's provision of exemptions?
- Q5 Does the guidance adequately explain the transitional provisions for those exempt operations moving to standard permits, including the requirement for technical competence?
- Q6 Does the guidance explain the provision of non-Waste Framework Directive exemptions in a clear and concise manner?