Consultation on revised waste exemptions from environmental permitting

Response by the

1 Introduction

1.1 In July 2008, Defra in conjunction with the Welsh Assembly Government and the Environment Agency has released a consultation on revised waste exemptions from Environmental Permitting. The main thrust of this consultation is to:

- Increase the use of exemptions for a wide range of low risk activities
- No longer provide industry with ‘notifiable exemptions’
- Propose a number of new exemptions or change the scope of some existing ones
- Introduce a three yearly registration period
- Introduce a charging scheme for each exempt site including farms
- Allow a transition period of three years for operators to comply dependant on the level of environmental risk posed


1.3 A table compiled by the Association for Organics Recycling which compares the current system of exemptions and the proposed ones, can be found at the following link:


1.4 Exemptions have been provided from the need for a waste management license for many years. Exempt waste operations are regulated but subject to lighter touch regulation than permits. In some instances, waste activities are also allowed to operate under a low risk position.

1.5 In April 2008, Defra replaced the existing waste management licensing scheme with a new regime known as ‘Environmental Permitting Programme’ (EPP). In future, dependant on the size and nature of the activity that is carried out, either an
1.6 As part of this process, Defra and the Environment Agency are conducting a review of exemptions. The aim is for regulation to offer a more proportionate and risk based approach to the control of waste recovery and disposal operations. This will be done in conjunction with the new permitting regime now in force.

1.7 The Association for Organics Recycling is the United Kingdom’s membership organisation, working on behalf of its members to raise awareness of the benefits of composting and compost use. The Association is committed to the sustainable management of biodegradable resources by promoting the benefits of composting and other biological treatment techniques for the enhancement of the environment, business and society.

1.8 The Association aims to act as an advocate for the wider biowaste management industry and to represent its views in a constructive dialogue with policy makers. It envisages a biowaste management industry in which best practice is shared, standards are maintained and surpassed and which makes a positive contribution to safeguarding the environment.

1.9 The Association for Organics Recycling currently has over 500 members including composting, anaerobic digestion and mechanical biological treatment operators, local authorities, consultants, technology suppliers, compost users, academics, other membership organisations and individuals. Given that it represents the majority of compost producers in England and Wales, it welcomes the opportunity to comment on the draft document.

1.10 The Association has consulted with its members on the proposed changes to the Regulations. There has been some divergence of views across the membership, and these have been reflected in this response where appropriate.

1.11 The Association welcomes the opportunity to discuss any of the points raised in this response.

1.12 The Association has focussed its responses on the issues that are relevant to biowaste management.
2 Summary of key points

2.1 The Association recognises that the review of the current exemptions scheme operating within England and Wales is crucial to the biowaste management industry.

2.2 Within the last few years the number of biowaste processing sites has grown considerably as has the volume of material which is being processed. A significant number of these sites currently operate under a Paragraph 12 exemption.

2.3 Small composting operators represent a significant proportion of the whole biowaste treatment industry in the UK:

- out of 199 compost producer members of the Association, 105 process less than 5,000 tonnes per annum of biodegradable waste under an environmental permit, waste management licence (Scotland) or exemption; and

- according to the latest Association’s survey\(^1\), 23 % of the sites processing source-segregated biodegradable materials in the UK in 2006/07 have an annual throughput of less than 5,000 tonnes of input materials.

2.4 Maintaining the diversity of sizes of biowaste treatment facilities encourages a responsive and competitive industry. The Association highlights the significant roles of the community, institution, Non-Governmental Organisations and on-farm sectors as well as the larger centralised sector.

2.5 Small scale and community composting sites fulfil an essential role in the development of the biowaste management industry in the UK, especially within rural communities, inner city areas and other locations where it is difficult to collect and/or treat biodegradable materials. In addition, on-farm composting and anaerobic digestion should play a vital role in sustainable agricultural systems by returning nutrients to the soil and arresting the decline in soil quality. Finally, the use of sites local to biowaste arisings minimises the transport distance and subsequent carbon emissions associated with transport of biowaste.

2.6 The Association recognises that risk assessment of a site’s potential to cause harm to human health and the environment should be reflected in some way within the fee structure imposed on both exempt and permitted sites. The Association supports the Government and Environment Agency’s aim to ensure that sites that pose a lower risk are less expensive to permit (based on the cost recovery principle). This ethos is in line with the proportionate regulation stance that the Environment Agency is adopting.

2.7 The Association believes that fair competition should exist and that a level playing field is necessary such that smaller sites that are currently operating under an exemption are not allowed to operate to lower environmental standards than larger permitted sites. The cost disparity between the two types of operation currently leads to anticompetitive practices occurring in some parts of the country. It is important that any new scheme does not allow this to continue to happen.

2.8 The Association understands that Defra intends to separately consult the biowaste industry on existing and new standard permits for composting, anaerobic digestion and landspreading and that this consultation is likely to start in April 2009 at the latest.

\(^1\) Draft annual survey ‘The State of composting and biological waste treatment in the UK, 2006/07’
2.9 The Association also understands that Defra plans to define different levels of standard permits, based on or differentiated from the existing ones, where provisions will be proportionate to the risks posed by the activities, for landspreading treated biowastes as well as for biological treatment of biowastes. The Association welcomes the opportunity to be consulted on the development of these important standard permits on behalf of its members from an early stage.

2.10 The development of standard permits for larger sites through the EPP is a welcome move and this increased level of regulation for these sites will promote improved compliance. However there is a concern that the step from no payment currently under a paragraph 12 exemption for smaller operators to a permitted regime and associated registration fees is too steep. Under a permitted regime, these sites may in addition, incur compliance costs such as the provision of improved infrastructure such as hard standing, leachate control and the requirement for a site to be managed by an operator with a Certificate of Technical Competence (COTC). This would mean that these operators may in some instances be unable to bear the additional cost and will no longer operate. The Association proposes that the prospective standard permits are tiered in risk categories so that they include a number of fixed criteria for each tier, dependant on the associated risks. The fee chargeable for each tier should reflect its associated level of risk and be sufficient for the Environment Agency to cover its issuing and compliance assessment costs. The Association understands that such standard permits are being considered for the landspreading of treated biowastes as well as for biowaste treatment activities.

2.11 The threshold levels proposed (40 tonnes at any one time with import and export restrictions or 25 tonnes at any one time) appears to be too small to cover any but the very smallest of operators. The Community Composting Network has roughly estimated that 40% of the community composters would fall above this suggested threshold. This means that a significant number of sites currently operating under a Paragraph 12 exemption will need to become permitted, either through a standard or bespoke permit.

2.12 The exemptions of specific interest to the Association for Organics Recycling members are the ones related to composting and anaerobic digestion of biodegradable waste and the landspreading of wastes (including composts and digestates) for the benefit of land and for its reclamation or improvement.

3 Specific answers to proposals

3.1 Proposal 1: The Association welcomes the proposal for there to be thresholds set between the need for an exemption or a permit. The idea of setting three differing levels of risk (low, medium, high) according to the amount of waste involved at any one time is a good one and links the activity to the potential risk.

3.2 Proposals 2 and 3: The proposals that would affect the production of mushroom compost are also of interest to the Association. The proposal to eliminate the existing exemption for the production of mushroom compost on farms (3.47) seems appropriate. The 3 commercial mushroom compost production units in the UK are highly mechanised industrial processes that turn significant volumes of straw, chicken manure and gypsum into mushroom compost. There is significant potential for adverse environmental impact if process management is poor. The Part B permitting route has provided an effective regulatory framework for protecting the environment, human and animal health in this context, and should remain effective for regulation of this small sector. As far as the Association is aware, there are less than 6 mushroom growers who still produce their own growing substrate. Activities of this type can also have negative
impacts on the environment, so rather than becoming unregulated, the Association recommends that these on-farm mushroom substrate producers be regulated under the part B permitting regime, in the same manner as commercial mushroom substrate producers. It makes sense to have only one regulatory regime for this specific sector as it should facilitate consistency and efficiency in monitoring and enforcing the regulation’s provisions.

3.3 Proposals 5 and 6:

The proposal to charge a nominal fee for the administration of exemptions is agreed as being a fair one, and one that is based on cost recovery. This charge should not escalate over time and become increasingly onerous to the smaller operators who will be following this route.

Sites that will become permitted as a result of the proposed changes should not be liable to pay additional fees over and above their permit fees to support exempt activities as this would be a disincentive to follow this route. The Association feels that there should be clarity and transparency in the charging system applied to exempt sites.

The Association notes the concerns raised by the Community Composting Network that the proposed registerable exemptions fees are likely to discourage many schools, community centres and community composting initiatives from making and using composts as they already have seriously stretched budgets. Such discouragement should be avoided because of the valuable roles these kinds of organisations fulfil in demonstrating environmentally aware and socially valuable ways to collect and treat biowastes and make good use of composts. The CCN’s proposal that the exemption registration fee is waived for all not-for-profit organisations should be seriously considered. However, the Association suspects that caveats or a narrower definition may be desirable given that ‘not-for-profit’ could be regarded as covering the whole public sector and allow a loophole through which companies in the private sector could set up arms-length ‘not-for-profit’ legal entities that register multiple exemptions at no charge.

3.4 Proposal 7:

Specifically for the T23 exemption for compost production the Association’s view is that mandatory record keeping would be an unnecessary burden. However, the Association seeks clarification on how T23(3)(f)’s requirement that ‘the treatment results in stable sanitised material that can be applied to land for the benefit of agriculture or to improve the soil structure or nutrients in land’ would be assessed. A compost producer could, of course, voluntarily decide to make and keep compost production records as part of the evidence that biowaste had been sufficiently composted. Regarding the prospective U11 exemption, the Association agrees that there must be a requirement to record what specific material was spread on an identified parcel of land, when the material was spread, the application rate and the responsible person’s name and contact details. This should help to ensure that U11 activities are carried out such that they confer agricultural benefit or improvement of soil structure or nutrients in land.

3.5 Proposal 8: No comment

3.6 Proposal 9:

The proposal as shown is that higher risk activities such as composting currently carried out under a Paragraph 12 exemption will have until 1st October 2009 to obtain a necessary permit, or no longer carry out the activity previously engaged in. The
Association suggests that there should be a transitional ‘cost phasing’ to all compost producers who up until now have had no charge for their previously held Paragraph 12 exemption. It is likely that these operators will have to face a significant cost for obtaining a standard or bespoke permit. The association would like to see this cost phased over a three year period to reduce the cost burden to operators.

Under the above proposal, it is suggested in (3.10.9) that higher risk activities such as the spreading of waste to land will have until 1st October 2011 before this is enforced.

It is understood that there will be a further consultation on standard permits for both composting and spreading of waste to land early in 2009. The Association for Organics Recycling would like to be involved in this process from an early stage as this is of particular interest to our members.

3.7 Proposal 10: No comment

3.8 Proposal 11: The Association welcomes the introduction of sector guidance for exempt operations, this will assist in achieving clarity, consistency and a greater degree of understanding for operators and regulators alike. It is crucial that this guidance is available well in advance of the October 2009 implementation date in order that any questions of understanding can be clarified between the regulator and industry.

3.9 Proposal 12: The Association is in favour of regular reviews of exemptions within the environmental permitting guidance. The biowaste sector is expanding rapidly with new technologies being developed at a rapid pace; regular reviews will ensure that any developments can be assessed on their individual merits.

3.10 Proposal 13: This proposal is of particular importance to the biowaste sector, as a great number of compost producers currently managing sites under a Paragraph 12 exemption do not hold a Certificate of Technical Competence. As proposed under the current Standard Permit conditions, any site that falls outside of the exemption threshold and is therefore required to obtain a permit will need to hold a COTC. The Association welcomes the proposal to provide additional time to obtain this COTC and would like to see this extended from twelve months to eighteen months to ensure sufficient time is made available to qualify to the chosen standard (i.e. Wamitab, CIWM, ESA).

3.11 Exemption for aerobic composting and associated prior treatment

Compost producers that currently operate under a Paragraph 12 exemption do not pay a registration fee for carrying out this activity. The proposal to charge a fee (£50 for a paper registration or probably less for an electronic submission) should not be too burdensome to operators. The key issue here is in respect to the suggested threshold limits set within this particular exemption. The suggested tonnages of 40 tonnes (at any one time, if produced and used on site) and 25 tonnes (at any one time if no import/export is carried out) are both set at an unreasonably low threshold.

If we convert the two proposed tonnage levels into annual throughput, this would mean that only those sites treating a few hundred tonnes of biowaste per annum will be allowed to compost under the new exemption, while all the ones exceeding these thresholds will have to apply for either a standard or a bespoke permit.

The Association supports reduction of the composting exemption’s maximum tonnes at any one time, as this should reduce the extent of sham recovery composting operations in England and Wales. However, having considered the composting exemption thresholds proposed by Defra, the Association agrees with the view of the Community
Composting Network that such low tonnage limits would put significant pressure on small operators to push material through the system very quickly with a resulting compost that is not fit for purpose.

The Association recommends that the upper level for this exemption should be set at 150 tonnes at any one time, as this would be of greater benefit to the small scale community sector than the currently proposed limits, yet should still pose acceptably low risk to the environment, without different maximums for import/export and non-import/export scenarios.

According to the proposed exemption T23(3)(c), a maximum of 10 tonnes of biodegradable kitchen and canteen could be composted. Again, the Association supports the Community Composting Network's recommendations, but suggests that the CCN’s proposed maximum of 50 tonnes is allowed for biodegradable former foodstuffs and Category 3 ABP catering wastes only. The Association suggests these specific animal by-product types as they are associated with similar levels of risk yet are well suited to the catchments that community composting initiatives serve. For example, it may be feasible to service a small village’s shop, pub, school and households under an exempt community composting initiative if the new exemptions allowed such types and tonnages to be composted.

The Association welcomes any regulatory control that reduces the cost burden on producers as long as this is administered in a fair and consistent manner throughout England and Wales.

3.12 Exemptions for landspreading of waste to land to confer agricultural benefit or to improve soil structure or add nutrients and biomass

Under current regulations, there is a charge payable for each Paragraph 7A exemption applied for, which corresponds to £ 565.00 per 50 hectares of land. This charge is for each initial application made with no limit as to the number of exemptions applied for. The proposed cost for the new exemptions (U11 for spreading of relevant waste on agricultural land & U12 for spreading of relevant waste on non agricultural land) is £ 50 (or lower if the notification is received electronically). The fee seems fair, given that there would be no assessment of each exemption registered, and the three yearly registration would assist in reducing the cost to operators.

However, the proposal suggests that:

- ONLY material which has been produced under an exemption (e.g. T23 for composting or T24 for anaerobic digestion) can be spread under the exemptions U11 (agriculture) or U12 (other land),
- a maximum application rate of 50t/ha is allowed to be applied to land,
- under a U11 exemption, a maximum of 200 tonnes of ‘relevant waste’ is allowed to be stored prior to being spread, and
- under a U12 exemption, a maximum of 200 tonnes of ‘relevant waste’ is allowed to be stored at any one time prior to being spread.

In relation to these provisions, the Association highlights the following issues:

- Putting aside the current U11 exemption proposals, outside the Nitrate Vulnerable Zones, an amount of compost higher than 50 tonnes/hectare can be spread. According to the Code of Good Agricultural Practice (CoGAP), a field can receive ‘some non-livestock wastes...which contain very little plant available nitrogen’ at rate
that supplies up to 500 kg total N/ha once in a two year period (in alternate years). This provision enables more cost-effective yet appropriate use of many composts. Given this current guidance and cost pressures, the Association recommends that the prospective U11 exemption should not limit the rate at which compost can be applied, but instead require that all relevant regulations are adhered to (e.g. the NVZ rules) as well as the Codes of Good Agricultural Practice (CoGAP). Such a provision would support appropriate and cost effective agronomic practice and the 200 tonne limit per exemption should ensure that this kind of exempt activity still represents low risk storage and use of composts. What is allowed in the case of an aerobically stabilised fibre separated from whole digestate should also be carefully considered.

- The proposed U12 exemption for spreading waste on land to improve soil structure or add nutrients or biomass would limit the amount of material per exemption to 200 tonnes being stored at any one time and a maximum application rate of 50 tonnes per hectare. Considering the rates at which composts are used in the soft landscaping market (in non-land restoration / remediation works), professional horticulture and other niche non-agricultural markets, the 50 tonne per hectare limit seems too low in cases where the user only wants a small amount of compost but to use it at a high rate over a relatively small area. Examples are soil improvement in planting beds, tree- and shrub-planting pits and mulching soil areas that support established plants with fine- to medium-grade composts in order to protect the soil and provide a slow-release source of nutrients. (The Association has calculated that 50 tonnes/hectare is equivalent to 5 kilogrammes per square metre; very little given typical depths of incorporation in soil or mulch application for compost.) The Association recommends that the U12 clauses include a provision that in certain circumstances (which should be defined in the regulation or in regulatory guidance), the total quantity stored and application rate of compost must be declared when the user registers the U12 exemption.

- The Association assumes that the use of composts for mulching purposes on agricultural (U11) and non-agricultural land (U12) would be within the scope of these particular exemptions. The Association again expresses concern that the proposed application rate limits would be over-restrictive given that 50 tonnes per hectare is equivalent to 5 kilogrammes per square metre, and that mulches are generally less effective at low application rates.

The Association has carefully considered an idea that was mooted at the composting and AD sector workshop (on 7th October 2008) to entirely remove the U11 and U12 exemptions’ requirements that composts and digestates used under U11 or U12 must have been produced under a T23 (aerobic composting), T24 (anaerobic digestion) or T25 (vermicomposting of kitchen waste) exemption. Instead, the Association recommends that the current T23, T24 and T25 exemption restrictions are retained but that in defined, limited circumstances, the compost or digestate spread under a U11 or U12 exemption can be from a process controlled under an Environmental Permit. The Association’s reasons for this are that entire removal of the T23, T24 and T25 requirements would provide a quick, cheap and unchecked route via which substantial quantities of compost/digestate could be spread on land, even within the same holding/ premise. (There appears to be no limit on the number of U11 or U12 exemptions allowed per holding/premise.) In such circumstances, if low quality materials are spread, they carry a higher risk of causing harm and the regulator would have very limited resources with which to cover the costs of checking compliance with the regulations and taking enforcement action if necessary. In addition, those who, in future, would be obliged to obtain Environmental Permits for landspreading ‘relevant waste’ types are likely to regard those who use multiple-exemptions per holding/premise as gaining unfair advantage.
The Association highlights the following scenarios as reasons why defined exceptions to the T23, T24 and T25 exemption requirements in U11 and U12 should be made, as it would support the proximity principle of using suitable local resources, where available:

- a small-holding owner wishes to use < 50 tonnes of compost/digestate within the holding but the only nearby compost/digestate production process operates under an Environmental Permit;
- a soft landscape contractor wishes to use < 50 tonnes of compost / aerated digestate fibre in a one-off landscape maintenance job but the only nearby compost/digestate production process operates under an Environmental Permit;
- similar potential compost/digestate users in the extreme north of England wish to use < 50 tonnes of compost/digestate as described in the examples above but the only nearby compost/digestate production process is located in Scotland and operates under a Waste Management Licence (similar issue regarding Pollution Prevention and Control Permit).

The Association assumes that in such scenarios the intended new Environmental Permits for landspreading wastes would be too much of a disincentive to use compost/digestate, even probably a ‘low risk level’ EP for landspreading, with correspondingly low fees.

3.13 Anaerobic digestion and burning of resultant biogas (T24)

There is a mismatch between the biowaste types allowed under T24(1)(a) and (b) and (2). For the purposes of paragraph T24, those biowaste types allowed under (2) seem to be allowed for anaerobic digestion on agricultural premises and any other premises.

The Association recommends that these discrepancies are removed. The Association also assumes that any of the biowaste types included under T24 would be allowed to be brought into an agricultural premise rather than having to arise within the agricultural premise in order to qualify for the paragraph (3)(a) provision that ‘the total quantity of waste referred to in sub-paragraph (1)(a) [on premises used for agriculture] that is treated or stored does not exceed 1000 tonnes at any one time’. The Association requests that – if the current agriculture and non-agriculture differentiation is kept - the regulation’s text makes clear whether the allowed biowaste types are those brought onto or arising within the agricultural premise.

The Association’s further concern is that T24(3)(b) proposes that the total quantity of allowed biowaste types that are anaerobically digested at a premise that is not an agricultural premise ‘does not exceed 50 tonnes at any one time’. The Association believes this would be inappropriate for two reasons. Firstly, the lower threshold is unlikely to be commercially viable, even at the small scale that the new exemptions are intended to cover. Secondly, although on-farm anaerobic digestion provides an opportunity for the improved management of agricultural biowastes, the desire to encourage this sector’s growth should not provide for inequalities between agriculture and other sectors in terms of the risks they are allowed to take and the extent to which risk control would be checked by the regulator.

The Association requests that the total quantity of waste that is treated or stored does not exceed 1000 tonnes at any one time, whether or not an anaerobic digestion process is located on an agricultural premise.

The Association assumes that fees specific to the T24 exemption for anaerobic digestion and burning of the resultant biogas would be set at a level that reflects the cost of issuing such an exemption, and that renewal fees would cover the costs of compliance assessment.
4 The move into standard permits

4.1 The Association recognises that there is a need to permit a significant number of biowaste facilities that are currently operating under exemptions and at the same time change the spreading of waste from a notifiable exemption activity to a permitted one.

4.2 The Association fully understands that this approach will enable a number of the less complex sites that are able to comply with the fixed conditions a straightforward and relatively easy way of becoming permitted to carry out their biowaste management activity, however

4.3 an area of particular concern is the ‘fixed conditions’ that will be attached to the standard or bespoke permits regarding the operation of biowaste facilities, which will in many instances be replacing the current Paragraph 12 exemptions. These conditions will need careful consideration to ensure that the level of complexity required for each site is proportionate to the risk generated by that specific site. Failure to carry this out will mean that all sites will be posed with a cost burden which is unsustainable in the future. This will be particularly relevant to the on-farm composter who is dealing with relatively small volumes of waste but who is exceeding the proposed low exempt thresholds. The Association would like to see the regulator impose a degree of flexibility within the permitting route which will allow different financial, infrastructure and technical competence requirements dependant on the level of risk associated with each site. This choice could be made by the operator from a selection list when they register for their permit.

4.4 The Environment Agency has proposed that they will engage with key industry stakeholders before April 2009 in order that the standard permit rules can be agreed. The Association for Organics Recycling welcomes the opportunity to be actively engaged in this process from an early stage.

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