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Introduction

1 What is your name?

Name:

Jeremy Jacobs

2 What is your email address?

Email:

jeremy@r-e-a.net

3 What is your organisation?

Organisation:

Renewable Energy Association-Organics Recycling Group

Part I – Consultation Proposals to enhance enforcement powers

Proposal A - Suspending permits where an operator has failed to meet the conditions of an enforcement notice.

4 Do you agree with the Proposal A?

Yes

Please provide any additional comments to support your answer above and, if possible outline any additional measures needed to underpin them.:

It is very important that sites are given adequate time (with an agreed timeline) and resources to respond to any requests that are made, as this may ultimately mean the closure of the site and ultimately their livelihood is at risk. Proportionality is essential for this to be exercised and the provision of guidance for EA staff and operators alike would be helpful.

Do you have any views on whether there are unforeseen costs or benefits to legitimate operators, the regulators or any other organisation that may result from this Proposal?:

Clearly having an even playing field for industry to operate under will be beneficial as often poor performing sites will operate with lower gate fees which gives them an unfair advantage over legitimate operators.

It is essential that each site is treated in isolation so that not all sites are 'criminalized' on the performance of a few rogue operators.

Proposal B - Enable the regulators to issue notices that include steps an operator must take to prevent the breach of a permit getting worse - for example, in the waste industry, key actions to stop more waste coming onto poorly managed sites.

5 Do you agree with Proposal B?

Yes

Please provide any additional comments to support your answer above and, if possible outline any additional measures needed to underpin them.:

As in the previous question, responsible operators should have no fear if they are asked to rectify site issues when they are given adequate time to fix the problems highlighted. For issues for example relating to odour generation, these may take some time to implement as the feedstock on the site will be at different stages of maturity.

It is important that the demands are reasonable and practicable to put into place and not just a 'wish list' which is not achievable.

The REA would like there to be the ability to agree a time limit with the EA to rectify issues depending on the severity of the breach.

Do you have any views on whether there are unforeseen costs or benefits to legitimate operators, the regulators or any other organisation that may result from this Proposal?:

Clearly having an even playing field for industry to operate under will be beneficial as often poor performing sites will operate with lower gate fees which gives them an unfair advantage over legitimate operators.

It is essential that each site is treated in isolation so that not all sites are 'criminalized' on the performance of a few rogue operators.

Proposal C - Enable the regulators to take physical steps to prevent an operator from committing further breaches of the permit.

6 Do you agree with Proposal C?

Yes

Please provide any additional comments to support your answer above and, if possible outline any additional measures needed to underpin them.:

Does this mean such steps as preventing a site to take in any more material onto their site?

If the site has failed to respond to all reasonable requests and is making no attempt to take corrective actions then AS A LAST STEP this action should be taken after all other measures have failed.

Do you have any views on whether there are unforeseen costs or benefits to legitimate operators, the regulators or any other organisation that may result from this Proposal?:

no comment

Proposal D – Enable the regulators to take steps to remove a risk of serious pollution, whether or not a facility is under a permit.

7 Do you agree with Proposal D?

Yes

Please provide any additional comments to support your answer above and, if possible outline any additional measures needed to underpin them.:

There needs to be some form of guidance as to what is meant by 'serious pollution'.

in respects to biowaste sites, would odour be classified as a 'serious pollutant'?

There is a need to ensure that the natural environment is protected and that serious pollution incidents are avoided proactively, this is where more effort needs to be focused rather than after the event.

Exempt sites which do not have routine inspections generally pose a lower risk as the volumes of material they process are smaller, however where they do pose significant risk then the regulator should have enforcement powers to take the necessary enforcement action against them.

Do you have any views on whether there are unforeseen costs or benefits to legitimate operators, the regulators or any other organisation that may result from this Proposal?:

No comment

Proposal E - Enforcement by the High Court.

8 Do you agree with Proposal E?

Yes

Please provide any additional comments to support your answer above and, if possible outline any additional measures needed to underpin them.:

The REA agrees that action may be pursued through the High Court where this is applicable to secure correct compliance by the operator. High court should only be pursued after all other avenues have been explored in full.

Do you have any views on whether there are unforeseen costs or benefits to legitimate operators, the regulators or any other organisation that may result from this Proposal?:

No comment

Proposal F - Power to serve a notice to remove waste.

9 Do you agree with Proposal F?

Yes

Please provide any additional comments to support your answer above and, if possible outline any additional measures needed to underpin them.:

Where there is no alternative option and all other avenues have been exhausted then this may be necessary. I am aware where this request has been made to a biowaste site that was creating an odour nuisance but they were given insufficient time to change their working practice on site in order that the nuisance could be removed.

An AGREED timeline with the operator is essential in any enforcement procedure.

Do you have any views on whether there are unforeseen costs or benefits to legitimate operators, the regulators or any other organisation that may result from this Proposal?:

No comment

Part II - Call for evidence: Fixed penalty notices for fly-tipping

10 Would the introduction of fixed penalty notices for the offence of fly-tipping help tackle the problem?

Yes

11 What are the advantages of the use of fixed penalty notices for fly-tipping?

What are the advantages of the use of fixed penalty notices for fly-tipping?:

The knowledge that there is a potential fine for such a practice (and that this is a serious offence)) would assist in deterring offenders from carrying out this practice particularly if it was supported by a strong publicity campaign.

It is important that the fines levied exceed the cost of prosecution!

They are relatively quick to action.

12 What are the disadvantages of the use of fixed penalty notices for fly-tipping?

What are the disadvantages of the use of fixed penalty notices for fly-tipping?:

If the punitive cost is not seen as much of a deterrent then this would not act as a disincentive to those who fly tip.

It is important that there is clear guidance as to what constitutes fly tipping and that this is made clear to the public. In addition EA staff need to be consistent in their enforcement of the law and adequate training for staff is a prerequisite to make this work effectively.

13 If a proposal was made to introduce fixed penalty notices for fly-tipping, how much should the fixed penalty be set at to act as a sufficient deterrent?

If a proposal was made to introduce fixed penalty notices for fly-tipping, how much should the fixed penalty be set at to act as a sufficient deterrent?:
£250-£450 as a minimum as this needs to cover the cost of collecting the cost of: collection and disposal of the waste.

14 Do you have any views on the possible cost or benefits of issuing fixed penalty notices?

Do you have any views on the possible cost or benefits of issuing fixed penalty notices?:

No comment

Actions to improve landowner awareness of potential liabilities for waste

15 Please provide evidence including examples of the extent to which waste is being abandoned and landowners are being left to tackle waste or pollution caused by current or former tenants.

Please provide evidence including examples of the extent to which waste is being abandoned and landowners are being left to tackle waste or pollution caused by current or former tenants.:

No comment

Residual waste dumping is commonplace and others such as the NFU, National Landowners Association and CIWM are better placed to provide this evidence. In Scotland SEPA require lease agreements to be in place as part of their permit agreement, this could be replicated in England.

16 Do you have any proposals on the best way to educate and increase awareness amongst landowners of their potential liabilities?

Do you have any proposals on the best way to educate and increase awareness amongst landowners of their potential liabilities? :

Through the farming press such as Farmers Weekly and National Farming radio (Farming today on Radio 4)

Look at www.tacklingflytipping.com which provides guidance to landowners.

17 What more can be done through the lease arrangements with tenants to prevent or mitigate the potential liability of landowners?

What more can be done through the lease arrangements with tenants to prevent or mitigate the potential liability of landowners? :

Possibly the use of a 'bond agreement' between the tenant and the landlord.

18 Would you like to see operators provide evidence to the regulators of their landowner's awareness and consent to the proposed waste activity as part of the permit application process?

Yes

If you answered yes above, what evidence should be provided?:

As long as there are no cost implications then this would assist both parties with understanding their respective needs and responsibilities. This needs to be done at an early stage so there is clarity as to what activities are being carried out on site.

If you answered yes above, how should this evidence be obtained?:

In written format as part of their rental agreement with the landlord?

19 Do you have any views on the ability of liquidators to disclaim environmental permits as 'onerous property' in England and Wales?

Do you have any views on the ability of liquidators to disclaim environmental permits as 'onerous property' in England and Wales?:

no comment

Operator competence

Operator competence - Overall

20 What are your views on amending legislation to formally require operators of regulated waste management facilities to be competent in respect of:

(a) Technical competence?:

There used to be a provision for a 'fit and proper person' (under the old WMLR)

The REA is keen to ensure that sites are managed and operated by competent people in order to improve the status of waste sites and give confidence to the public at large.

With regards to technical competence, this needs to be clear on what is considered to define technical competence, how it is demonstrated and if there is any on going training requirements. These need to be clearly communicated and the cost must not be too excessive for the smaller operators.

(b) Financial provision?:

If this is seeking sites to provide a financial bond to use in the event of site closure, then the REA supports this as it prevents clean up costs being carried by the EA which in turn is passed on to legitimate operators.

Costs for this need to be pragmatic and not too excessive, i.e. Amount of bond should be in proportion to the actual cost of site clearance and reflect the actual cost (as an example a compost producer in Scotland where SEPA wanted them to provide a bond of £80 for every tonne of material when in reality it would prob cost <£20/t to get rid of green waste).

(c) Operator performance?:

Operator performance is currently assessed using the OPRA score in an indirect manner. The REA seek clarification on this as we are keen to understand if this relates to the site as a whole or individuals operating within the site.

A site may have a technically competent person on site but the site may not be operated in an effective manner which gives rise to issues.

21 If a proposal were put forward to enshrine the components of the test in legislation, should the legislation apply to just waste management activities or some or all other types of regulated facility?

If a proposal were put forward to enshrine the components of the test in legislation, should the legislation apply to just waste management activities or some or all other types of regulated facility? :

It is important that there is a consistent and level approach taken to this issue as it would not be fair to treat one section of the waste community different to another.

Should Part B facilities that are regulated by local authorities also be included in this if it were to be implemented?

22 Would it be appropriate for operator competence to be re-assessed if a company changed its directors, company secretary or similar managers?

Yes

23 If proposals to assess operator competence on a change of directors etc were put forward, would it be appropriate to apply that requirement to all companies?

If proposals to assess operator competence on a change of directors etc were put forward, would it be appropriate to apply that requirement to all companies?:

There needs to be some flexibility but smaller companies may be as much at risk as larger companies as they have less staff and more dependence on a few key individuals.

It is important that proportionality is used as the REA DO NOT support undue additional cost being put on SMEs

24 If an operator competence test were to be enshrined in legislation, in what way might that be done?

If an operator competence test were to be enshrined in legislation, in what way might that be done? :

Having competent staff on a site is essential and all responsible operators encourage this as do the REA. There needs to be a clause within a permit to ensure that this is the case and that a failure to do this may result in permit revocation or suspension.

Technical competence

25 What are the arguments for applying technical competence to all types of permitted waste management facility, through one of the two currently approved schemes?

What are the arguments for applying technical competence to all types of permitted waste management facility, through one of the two currently approved schemes? :

To ensure that sites operate under a level playing field in respect to the manner in which they are regulated and also this will have an impact on their cost structure and their gate fees. If some sites are not forced to have a requirement for technical competence then potentially lower paid staff and subsequently lower gate fees may prevail.

26 What are the arguments against applying technical competence to all types of permitted waste management facility, through one of the two currently approved schemes?

What are the arguments against applying technical competence to all types of permitted waste management facility, through one of the two currently approved schemes?:

The cost impact on small business may deem this to be an unnecessary burden for them.

27 If this were proposed, would it pose a difficulty for any particular part of the waste industry?

If this were proposed, would it pose a difficulty for any particular part of the waste industry? :

The smaller scale composters and community based sites may find this cost too high, but perhaps a lower requirement could be made for these operators treating less than a certain nominal tonnage PA.

28 Please provide views on the ways in which the regulators are made certain of the name(s) of the technically competent manager(s) at permitted sites.

Please provide views on the ways in which the regulators are made certain of the name(s) of the technically competent manager(s) at permitted sites.:

The site needs to supply a list to the EA of all staff that are qualified as 'competent' and this should be visible for EA staff to see. When they arrive on site they can then ask which of the following names is on site as the nominated competent person.

Whatever is implemented it needs to retain an element of flexibility to ensure sites can operate effectively and without burdensome constraints on their business. The Competent person should complete the site diary to indicate when he/she is on site.

29 Please provide views on how those providing technically competent management at a site should be held to account for the standards of performance.

Please provide views on how those providing technically competent management at a site should be held to account for the standards of performance? :

The REA believes the regulator already has the power in legislation to hold the technically competent person accountable for any incident of non-compliance, by virtue of Section 33 of EPA which allows enforcement against anyone who causes, knowingly or permits non-compliance under an environmental permit.

If there is clear evidence that the technically competent person is no longer 'competent' then there should be the ability of the EA to revoke the sites permit until the person is suitably re-trained to carry out the role effectively. The Site has the duty to ensure that there is a technically competent person for that specific site even though they may share their time with other sites.

30 Please provide views on the amount of time those responsible for managing the site should be present and what factors should determine that period.

Please provide views on the amount of time those responsible for managing the site should be present and what factors should determine that period.

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There needs to be a formula for the time spent on the site to be linked to the OPRA score achieved previously. So that a Band E site will require a greater time for the competent person to be on site than a Band A site. This rewards good performance over time.

An alternative formula may be to link the site tonnage to the hours on site for the TCP as the bigger the site the greater the potential pollution risk.

Financial provision

31 Should financial provision for some or all permitted waste operations be reintroduced on a site-specific basis linked to the type of activity and the type of wastes received?

Yes

If you answered yes, should the amount of the financial provision be linked not only to returning the land to a satisfactory state to meet permit surrender requirements but also to foreseeable clear-up costs resulting from a breach of a permit or after an environmental accident? :

Yes as clean-up costs post closure can be substantive and onerous for the EA to carry. All sites would vary according to the materials they are handling and the size of the operation for example disposing of green waste compared to residual waste would incur very different costs.

For landfill sites, should the scope of financial provision be extended to cover operational costs that are incurred during the period when waste is accepted for disposal and/or after waste disposal has ceased?:

No comment

32 What is the best mechanism or combination of mechanisms for waste operators to make and maintain financial provision for their sites so that it is secure and available to fulfil permit obligations and deal with the consequences of breaches of the permit or environmental accidents?

What is the best mechanism or combination of mechanisms for waste operators to make and maintain financial provision for their sites so that it is secure and available to fulfil permit obligations and deal with the consequences of breaches of the permit or environmental accidents?:

The use of an ESCROW account or a similar BOND arrangement are both well tested but does mean that capital is tied up for the duration of the sites operation.

33 If required to make financial provision, what would be the likely costs of making financial provision and the impact on waste operators of different sizes?

If required to make financial provision, what would be the likely costs of making financial provision and the impact on waste operators of different sizes?:

Clearly for smaller sites then this will be a significant burden, however the Bond needs to be proportionate to the risk posed and the size of that risk.

If the bond is set too high it will prevent smaller legitimate operators from carrying out their business.

Operator performance

34 If you support amending legislation to require operators of waste management facilities to demonstrate operator competence, are changes needed to the particular aspects of past performance, including spent convictions, that should be taken into consideration in determining an application for a permit?

If you support amending legislation to require operators of waste management facilities to demonstrate operator competence, are changes needed to the particular aspects of past performance, including spent convictions, that should be taken into consideration in determining an application for a permit?:

The REA considers that previous convictions, civil sanctions, revocations or enforcement action should be considered BUT not in isolation and needs to be suitably contextualized in light of the offence committed.

Management systems

35 Should the requirement for operators' site management plans be embodied in legislation or are they and their content best left to the regulators to determine?

Should the requirement for operators' site management plans be embodied in legislation or are they and their content best left to the regulators to determine? :

The REA believes that here is no benefit in having site management plans embodied in legislation, this over complicates the issue. The imperative is that sites adhere to the conditions agreed within their permit and the regulator is consistent in the manner in which they take enforcement action.

National fund to tackle abandoned or orphaned waste management sites

36 Does the Government need to make a scheme to cover the full costs of clearing and remediating abandoned or orphaned sites mandatory so that they do not rely on the public purse or would a voluntary approach work?

Does the Government need to make a scheme to cover the full costs of clearing and remediating abandoned or orphaned sites mandatory so that they do not rely on the public purse or would a voluntary approach work? :

This would encourage more abandonment if there was the knowledge that there was a fund to deal with the problem at a later date. This would need to be funded and most likely this would come from compliant operators!

37 Should joining such a scheme be an alternative to, or additional to site-specific financial provision?

Please provide any other relevant comments. :

It cannot be seen as an alternative nor additional a financial provision scheme.

Whatever is agreed it is an imperative that the polluter pays and that compliant sites are not adversely charged to cover the costs of non-compliant sites.

38 If you think such a scheme is desirable, please provide your views on how it should be funded and administered, including how decisions on the need to draw from it would be made?

If you think such a scheme is desirable, please provide your views on how it should be funded and administered, including how decisions on the need to draw from it would be made?:

N/A

39 Do you have any evidence or views on what level of funding would be required for such a scheme so as to be proportionate to the risk?

Do you have any evidence or views on what level of funding would be required for such a scheme so as to be proportionate to the risk?:

N/A

40 Do you have any evidence or views of the costs and impacts incurred by the public sector, businesses or landowners in cleaning up and remediating land or premises which have been used for waste management operations and then abandoned?

Do you have any evidence or views of the costs and impacts incurred by the public sector, businesses or landowners in cleaning up and remediating land or premises which have been used for waste management operations and then abandoned?:

No

Powers to recharge for pollution works

41 Do you have evidence of pollution caused by the deposit of waste on land by waste operations or abandoned waste that might merit powers to remediate?

Do you have evidence of pollution caused by the deposit of waste on land by waste operations or abandoned waste that might merit powers to remediate? :

No, only anecdotal evidence

42 What are your views on widening the scope of the regulators powers to recover the costs of investigations and remedial works undertaken to prevent or remedy pollution caused by the deposit of waste on land?

What are your views on widening the scope of the regulators powers to recover the costs of investigations and remedial works undertaken to prevent or remedy pollution caused by the deposit of waste on land?:

The REA agrees in principle to the recharge of remediation and investigation in a similar way to that utilised under the Water Resources Act for pollution of controlled waters.

Exemptions from environmental permitting

43 Do you have any evidence of the extent of waste crime and poor performance from those operating under registered exemptions from environmental permitting?

Do you have any evidence of the extent of waste crime and poor performance from those operating under registered exemptions from environmental permitting?:

The REA does not have any evidence in this respect.

44 Is there a need to tighten up the process for the registration of exempt waste operations?

Yes

If yes, what steps would you wish to see introduced into the registration process?:

There needs to be some element of random checks on these sites as there have been instances in the past of small non permitted sites taking in excessive volumes of waste at low gate fees which undermine legitimate operators.

Some form of small fee may be necessary for these sites.

The idea of Exemption Registered Operator Competence (EROCC) test to show that exempt facilities at least understand the basics for operating compliantly would assist in ensuring that there is a basic level of competency on these sites.

45 Would you wish to limit the scope of the activities that are exempt from the need for an environmental permit?

No

If yes, which exemptions would you want to see further restricted and why? :