

REGULATING LAND REMEDIATION

IMAGE: courtesy the Sirius Group



Regulating Land Remediation

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This article provides an update on some of the developments I mentioned in last year's *Yearbook*, plus some new developments.

ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2007

The new Environmental Permitting Regulations (EP Regulations) came into force in England and Wales on 6 April 2008, the culmination of years of work to provide England and Wales with a new and more efficient permitting and compliance platform. They replace Waste Management Licensing (WML) and Pollution Prevention Control (PPC) and the Environment Agency has worked with Defra and Welsh Assembly Government to cherry pick the best of both the old regimes to produce the new single system. All of this can be achieved whilst maintaining current environmental standards and is part of the Government's goal of reducing administrative burden on industry.

This is the first step in changing the way that we permit and regulate, as future EU Directives could be implemented through the EP Regulations and further existing regimes added. In March 2008, Defra provided a briefing on the thinking for EPP2 which considers adding the regulation of discharge consenting, groundwater abstraction, radioactive substances, and the implementation of the Mining Waste Directive to the platform provided by the EP Regulations.

WHAT HAPPENS TO CURRENT WASTE MANAGEMENT LICENCES (INCLUDING MOBILE TREATMENT LICENCES) AND PPC PERMIT HOLDERS?

On 6 April 2008, all current waste-management licences and PPC permits will automatically become 'Environmental Permits'. So we will not be sending out new permits; operators do not need to re-apply and there is no change to the conditions in the permit. But there are going to be changes in how we ask you to make applications, how we determine them, and how we regulate them once they are issued.

Mobile Treatment Licences are unique in that they can also operate across the border in Scotland. Because Scotland is keeping the Waste Management Licensing regime, that creates a potential difficulty in both directions in regulating cross-border movements. As a long-term solution, it may be possible to amend our respective legislation, but in the meantime, to minimise disruption to the operators of mobile plant, we will allow Mobile Treatment Licences issued by the Scottish Environment Protection Agency (SEPA) to continue to operate in England and Wales. We will do this if the activity is covered by a valid Mobile Treatment Licence that authorises the activity to be carried out and the necessary site-specific working plan is submitted and approved. Our colleagues in SEPA intend to do the same, but with the assessment of the site deployment form rather

than the working plan (see pages 55 and 56 for more on this).

Under the EP Regulations, the person who has control of the operated facility will be known as the operator and there will be no 'licence holder' role. On 6 April 2008, all existing licence holders will be deemed to be the operator. This may not suit the way that some businesses have their contracts and other systems set up. This is one of the issues we want to explore with industry and local government.

EXEMPTIONS FROM THE NEED FOR A WASTE-MANAGEMENT LICENCE

Because of the current review of the exemption regime which is due to be delivered in October 2009, the exemptions have just about been copied straight into the EP Regulations. There are some changes to exemptions that deal with hazardous waste and those changes mean that some of the numbering has changed. We will be issuing further guidance on this and tell you if you need to do anything.

WHAT IMPROVEMENTS WILL OPERATORS SEE?

A single system will reduce the amount of documentation and guidance that operators need to read and then comply with. Wherever possible, the current system of bespoke permits and licences has been standardised so that activities that are frequently carried out are permitted in the same way. Mobile treatment licence holders **cont..**

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cont... should recognise this as it has been developed from the system of Fixed Condition Licences that were used under the Waste Management Licensing system.

There will be a shorter, more customer-friendly application form which has just been Crystal Marked, and a one-stop-shop for applications nationwide at a new permitting centre. Mobile Treatment Licence holders already have this system in place, and your contacts will not change.

STANDARD PERMITS

The Environment Agency will initially launch 27 standard permits for 'off-the-shelf' waste activities including mobile plant. The permits will refer to a set of rules published on the Environment Agency's website that have already been consulted on with those in the industry. For site-based permitting, provided an operator can sign-on to say they meet these rules, the Environment Agency only needs to make location approvals in order to issue a permit. Later in 2008 it should be possible to apply and pay for Environment Agency permits online.

Standard permits will be cheaper to buy and quicker to determine than the usual bespoke ones. The statutory determination time is three months for a standard permit compared with four months for a bespoke permit.

TECHNICAL COMPETENCE

Industry asked for more flexibility in the way that Technical Competence is delivered, both at the permitting and compliance stages of a permit's life. Two new schemes are in the process of being developed in readiness for 6 April 2008. There is flexibility for other sector-specific schemes to be developed with Defra's and our approval.

One scheme is being led by CIWM and WAMITAB and builds on the existing arrangements in that it

relies upon individuals achieving qualifications to demonstrate competence. Another scheme is being developed by the Environmental Services Association and Energy & Utility Skills, the Sector Skills Council for the majority of the waste industry. This scheme also relies on individuals' qualifications and training, but within a framework of an operator-competence management system which is accredited and periodically audited against an industry standard.

Existing CoTC holders and those who have already passed an Environment Agency assessment will continue to be competent. People benefiting from deemed competence will need to register if they wish to continue to be recognised as technically competent. And competence will be reassessed every two years to ensure competence is being maintained. Operators will have until April 2010 to pass a 'continuing competence' assessment.

MORE FLEXIBILITY

All site-based operators will now be able to expand the boundary of their site through a variation rather than having to apply for another identical permit. If they want it to be smaller then they can apply to partially surrender the permit for the bit they no longer want to operate. And if someone else wants to operate part of the site, then a joint application can be made to partially transfer it.

For site-based activities, the surrender test has been changed from the current "suitable for use" test to the requirement to show that the necessary measures have been taken to return the site to a satisfactory state. While "suitable for use" is appropriate for pre-existing contamination, it is not the right test for the preventive environmental permitting regime. Further guidance will be provided on this.

Those with Mobile Treatment Licences will recognise some of the improvements as they have

built on the flexibility we put into that system. The EP Regulations allow the consolidation of permits at one site – single site consolidation – and the development of a system for one operator holding all their standard permits under a single permit – multi-site consolidation. This is another of the issues we want to explore with industry and local government to find out if they want it, and how it will work in practice for us and them. So we will start with a few pilots from day one, but you will know that it is being worked on.

Overall, the new EP regulations are part of our ongoing work to modernise regulation. Operators with good environmental performance will receive a lighter regulatory touch, freeing up resources to target the worst performers, so we achieve what's best for the environment.

QUALITY PROTOCOL

Last year I mentioned that the Quality Protocols Project was developing a Quality Protocol for materials derived from the remediation of land affected by contamination.

The Technical Advisory Group, comprising industry and regulators, concluded that any generic standard would need to be very tight to ensure that all potential receptors at any receiving site are adequately protected, and that in most cases this would be impractical and not cost-effective.

The TAG therefore recommended that rather than developing a Quality Protocol, additional resource should be invested in supplementing guidance for operators involved in the development of greenfield and brownfield sites that sets out the type of evidence that developers need to gather to demonstrate that material has not been discarded or has ceased to be waste following treatment. This is known as the Code of Practice.

CODE OF PRACTICE

In April 2006, we issued the 'Definition of waste: developing greenfield and brownfield sites' guidance. It was always our intention to revise it once we were content that alternative controls were in place to protect the environment. We had thought this may be achieved through the planning regime, but it became clear that we needed a new plan. Work with CL:AIRE, English Partnerships and industry led to the idea of an industry-led Code of Practice, which would set out a system of self regulation that provided an alternative to having an environmental permit. This work is progressing well and should be finalised within the next few months. Further details can be obtained from CL:AIRE or your usual industry contact.

More information on all of these topics is available on the Environment Agency web site: www.environment-agency.gov.uk

