

Resource Management Association Scotland (RMAS) Consultation Response to:

SEPA Consultation on New Outcome Based Permit for Non-Hazardous Landfills

The Resource Management Association Scotland is a not-for-profit and non-political trade association representing micro, small and medium sized companies in the resource management sector in Scotland.

The Resource Management Association Scotland welcomes the opportunity to respond to the SEPA Consultation on New Outcome Based Permit for Non-Hazardous Landfills.

This response has been developed by the members of the Resource Management Association Scotland using their combined knowledge, experience and expertise.

(1–3) GDPR Questions

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

Yes, the Resource Management Association Scotland agree with the principle that the responsibility for environmental management should rest with the authorised person in relation to any site. However, we are concerned about how will SEPA ensure that there is a level playing field across the sector in terms of such environmental management if there is not a standard template to follow? Does SEPA intend to introduce appropriate guidance to provide at least minimum standards that should be adhered to in order to prevent non-compliance and environmental harm at poorer performing sites? It is particularly important to ensure consistency given that the current measure of technical competence has been removed.



(5) Do you agree with this approach to technical competence?

Yes, the Resource Management Association Scotland 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. This is particularly important given that permits may be suspended if SEPA consider that technical competence 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.

The Resource Management Association Scotland would also welcome clarification as to whether the technical competence 'standard' will be assessed - on the basis of the company as a whole or in terms of specific individuals. The 'corporate' approach has already been adopted by many in the industry and is used as a governance technique to ensure that achieving technical competence is not reliant on one or a few specific individuals.

(6) Section 3.2 - Waste types: Is it clear from the Table 2 in the permit what type of waste is allowed and not allowed in the landfill?

Yes, the Resource Management Association Scotland consider that in the main the table is clear. However:

- BMW should be properly defined, since municipal wastes generally contain materials, in whole or part, of organic compounds with varying levels of biodegradability
- It is unclear how inert soils, used for daily cover, would be classified;
- Have SEPA considered how material that cannot be treated or landfilled (according to the revised permit template) will be dealt with? (An example being mixed recyclate with no end market or ability to be treated)?

(7) Section 3.3 - Waste acceptance: What are your views on this approach?

The Resource Management Association Scotland support this approach provided that SEPA undertake to:

- Produce appropriate guidance in consultation with the industry; and
- Ensure that other sectors and those in the supply chain are properly educated and informed about the expectations of WAC so that all issues do not fall on operators of landfill sites.



(9) As an operator, or waste producer, do you think a guidance document would be helpful?

The Resource Management Association Scotland consider that yes, it would be helpful.

(10) Do you agree with how SEPA approaches construction at landfills?

Yes, the Resource Management Association Scotland agree with the approach but would welcome some comfort from SEPA that CQA plans will be dealt with consistently and timeously going forward.

More oversight is needed, to enable SEPA share responsibility when something goes wrong afterwards.

(11) Do you think we should have more or less oversight of construction at landfills?

Less oversight needed

More oversight needed

I Don't Know

More oversight of the construction needed. Gas migration is the result of what happens inside the landfill and different pressures that exist therein due to the differential stabilisation rates of the buried wastes. Lateral gas migrations can only be controlled from the initial landfill design, hence, once there is migration there is really nothing the operator can realistically do arrest the situation, and penalising the operator is heavy handed. The blame should be on the

standard requirements for the construction of the landfill which the operator must have employed. SEPA should bear the responsibility for any breach where the operator has followed all set construction rules.

Need to make sure that design and construction are right at the outset, particularly to protect against environmental harm. Once the landfill is in use, it is very hard to reverse engineer issues.

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

The Resource Management Association Scotland consider that the proposed approach is sufficient. However, there is now precedent in other UK and EU jurisdictions to set limits only for methane on the basis of recent scientific developments. As such, the Resource Management Association Scotland think that the inclusion of CO2 within the range of compliance limits should be reconsidered given the excessive burden that will place on operators.

The Resource Management Association Scotland also consider that it is important for the assessment and setting of the limits, on a site by site basis, to be done in conjunction with operators, particularly given the consequences of a limit being breached. 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.



Comments: A breach could either be the failure of specifications provided by SEPA, or the result of the operators not adopting the provided specification in the design. We can understand penalising the operator for the latter, but that should have been picked up during the construction stage, where more oversight by SEPA is required. For the former, We fail to see the operator's fault; it is the fault of the system in place. Some lining materials can breakdown for reasons not due to the operator's negligence.

Further questions raised included how would this process work? Would SEPA require historical data from operators and in what format? Is there a sign off between SEPA and operator before setting limits in permit? What flexibility is there for changes and aslo for new/replacement boreholes?

Leachate and groundwater

The question on this page relates to the information in the leachate and groundwater section of the consultation document (pages 13 - 14).

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

The Resource Management Association Scotland agrees with the proposed approach but please see the comments in the second paragraph of our response to Q.12 which are also relevant here.

Capping and restoration

The questions on this page relate to information contained in the capping and restoration section of the consultation document (page 15).

(14) Section 5.2 – Capping: Are you clear on what these conditions are asking the operator to do?

Yes.

15) Section 5.2 – Capping: As an operator, do you anticipate any difficulty with these conditions?

Yes, the Resource Management Association Scotland consider that the proposed approach does not take into account the practical issues which operators face when final capping is required (such as weather conditions, availability of materials and availability of contractors), all of which make the 3 month time limit infeasible.

The Resource Management Association Scotland consider that the wording of provision 5.2.3 needs to be revised such that there is some room for agreement with SEPA of a feasible timescale for full capping.



(16) Section 5.3 – Restoration: What do you think of our proposals regarding restoration plans?

The Resource Management Association Scotland agrees with the proposals in principle and appreciates the need for restoration plans to be made a legally binding part of the permit. However, 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?

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

The Resource Management Association Scotland agrees with the proposed approach but please see our response to Q. 16 which is also relevant here. Comment: It may be necessary for SEPA to produce a template from which authorized persons can adapt for site specific application. That will at least prevent SEPA from widening the goal post as/when they wish.

(18) Is it clear from the EMO guidance what is required in the EMP?

No, the Resource Management Association Scotland considers that there is already 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.

(19) Section 8.3 – Treated leachate effluent: Do you agree with the planned future transition to 'full' operator monitoring for the landfill sector?

Yes.

(20) Section 8.3 - Treated leachate effluent: What lead/development time do you estimate would be required prior to this transition?

Understandably, these will incur some costs, which will depend on the target determinants, frequency of sampling and analysis, and the proximity of accredited laboratories (or setting up of own labs) where these analysis will be carried out. The lead time should be informed by agreement with existing landfill operators, acknowledging that staff training will be required in sample collection, preservation and associated general health and safety issues. We would expect 12 months to be a reasonable lead/development time for existing operators.

Most landfills will monitor their effluent discharge already so the only timescales required would be to develop and agree monitoring protocols. This would be dependent on SEPA.



(21) Do you foresee any benefits or issues?

The benefits are mainly on the side of the regulators who have less responsibilities visiting landfill sites. The biggest responsibility now lies on the operators.

The benefit will be in increasing the SEPA officers' time to check sites against licence conditions ensuring no environmental harm. A spot check of results should be sufficient as long as the authorised person is completing monitoring and measurement and any trends are identified early. For this reason we would expect the monitoring to be monthly, submitted to SEPA. In addition, this will build up a database of how the landfill performs over time.

One drawback will be cost to the authorised persons, there may be additional sampling costs depending on the protocol introduced as currently some operators use in-house testing in conjunction with independent accredited lab testing. Any change in this ratio will have a financial effect on the Operator but this should be outweighed by the environmental benefit of continuous monitoring.

Nuisance

The questions on this page relate to the nuisance section of the consultation document (page 18).

(22) Do you think our conditions around nuisance are robust enough to protect the local community?

The Resource Management Association Scotland consider that the conditions are robust enough. However, it will be 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 being subjective.

(23) Do you think our proposed approach is fair to operators?

Please see our response to Q.22 which is also relevant here.

Closure and aftercare

The question on this page relates to information in the closure and aftercare section of the consultation document (page 19).

(24) Do you have any comments on our new procedure condition?

The Resource Management Association Scotland 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)).



Permit

Another opportunity to comment on the permit.

Non-hazardous landfill permit

(25) Do you have additional comments on the permit?

The Resource Management Association Scotland 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.

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

In terms of the template itself, the Resource Management Association Scotland has the following comments:

- 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 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.

