Standard rules for the Environmental Permitting Regulations: consultation no.14

Landspreading business engagement assessment: summary of responses and decisions

August 2016

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Introduction

The Environmental Permitting (England and Wales) Regulations 2010 (EPR) allow us to offer standard permits, to reduce the administrative burden on business while maintaining environmental standards. They are based on sets of standard rules that we can apply widely. The rules are developed using assessments of the environmental risk posed by the activity.

Through the 14th consultation, live from 20 December 2014 to 20 March 2015, we proposed changes to a number of existing standard rules in relation to:

- landspreading and digestate storage
- deposit for recovery
- soil transfer, treatment and recovery

The consultation invited views on whether we have correctly identified the risks associated with each activity. It also invited views on whether the new sets of rules are appropriate to manage the environmental risks.

As a result of the response to the landspreading consultation, we consulted on a draft business engagement assessment (BEA) in January 2016.

How we ran the consultation

We invited comments on the BEA. We sought views from operators, trade associations and businesses, other regulators, the public, community groups and non-governmental organisations with an interest in environmental issues.

The process was mainly an e-consultation although hard copies were made available to those who requested.

This document summarises the responses to the consultation, our responses to these, the decisions we have made and the actions we will take as a consequence.

Landspreading and digestate storage: business engagement assessment

In January 2016 we consulted on a draft business engagement assessment (BEA). This calculated the costs and benefits associated with changes to standard rules for the storage and landspreading of wastes.

The consultation was concerned specifically with the accuracy of the costs and benefits resulting from the changes. It was not a further consultation on whether consultees agreed with those changes.

We received a total of 10 responses, each of which we have carefully considered. Of these 10 responses:

- 3 were from operators or consultants who advise landspreading operators
- 4 were from trade bodies representing landspreading operators, the water industry or farmers and land managers
- 3 were from water companies

We received a number of comments and questions that did not relate to the costs and benefits or which revisited matters dealt with in the original consultation. These are outside the scope of this consultation and therefore we do not address them further in this document.

Key findings and the actions we will take

Part 1: Standard rules SR2010 No 4, 5 and 6: mobile plant permits for the beneficial spreading of waste on land

Sample size

One respondent questioned why a sample size of 10% was used to estimate typical storage per deployment.

The deployment data is held on individual deployment forms. Each of these must be opened manually and the storage arrangements located and collated. There were over 2,400 deployments submitted in 2014/15. A 10% sample was considered to give sufficient accuracy and degree of confidence when balanced against the available resource.

The need for large numbers of additional standard rules permits

It was suggested that rather than incurring the cost of obtaining multiple mobile plant permits, operators would apply for a single bespoke permit.

We have already considered and discounted this option. To date very few operators have sought to obtain bespoke permits. We believe this is mainly due to the increased complexity, scrutiny and cost associated with a bespoke permit. The alternative of requiring temporary stores to comply with design and construction standards such as CIRIA 759 was rejected on the grounds of cost.

Even if it were possible to obtain a bespoke permit, all deployments would be charged at the highest risk band. This means that a deployment could cost as much as £590 more than under a standard permit. We therefore believe that bespoke permits would not represent a cost effective option.

It was suggested that because some permit holders are already working to a storage limit per deployment, the savings identified do not represent actual savings.

We do not agree. The existing standard rules are clear. If we were to accept this argument, it would condone and reward the non-compliance that has been revealed by inspections and audits. The change represents a real saving when compared to the current cost of complying with the standard rules. This must be reflected in the BEA.

One respondent considered the cost of obtaining a standard permit to be too high.

The figure used is taken from a previous consultation and was derived from extensive evidence collected from consultants and permit holders. We believe this to be a strong evidence base and for this reason we do not intend to adjust the figure downwards.

It was suggested that fewer standard permits would be required because some operators apply for deployments but do not actually use them.

It is impossible to ascertain the extent to which this takes place. We also have to assume an operator's intention of applying for a deployment is to use the storage and spreading it allows. We will therefore continue to use the current number of deployments in the BEA.

One respondent commented that retaining the requirement for a new permit for every 3,000 tonnes of temporary storage would make some operations financially less viable. They also noted it may result in some less environmentally sound end uses.

We agree that moving to storage limits per deployment will improve the overall viability of spreading activities. When combined with reduced storage limits for non-stackable wastes we believe the result will be better use of wastes at lower risk to the environment.

Temporary storage

One respondent considered that the figure of 10% of deployments being used to store non-stackable and liquid wastes to be too low.

The figure is based on a representative sample of declarations made on deployment forms and is the best available evidence upon which to base costings.

One respondent questioned the assumption about the number of operators currently using 'hub' facilities under deployments. Such a use means they already require site based permits.

This practice has been identified and appropriate follow up actions have been initiated. There is no doubt that the deployment system has been used in a manner that was not intended.

One respondent expressed concern that spreading in autumn and spring will mean deployments involving non stackable waste will require site based permits to provide sufficient storage.

The storage limit specified is the storage 'at any one time'. It should not be necessary for wastes to be bulk stored in temporary facilities for long periods. Once the autumn applications have been completed the temporary and now empty storage facility can be refilled with waste for the spring applications.

We do not recognise multiple site permits as a realistic and viable business model that operators would adopt. Our proposals were designed precisely to move operators away from large scale storage in the field towards lower risk storage arrangements.

The costs of storing stackable wastes

Several respondents asked for the cost of storage facilities for stackable wastes to be included in the BEA.

The proposed changes do not require any additional infrastructure for the storage of stackable waste. Consequently there is no associated increase in cost. This is explained in page 13 of main response document.

Pre-notification requirements

One respondent asked whether an operator will need to pre-notify us again in the event that a planned spreading does not take place.

A pre-notification is of the intention to spread; there is no breach of the permit condition if the spreading does not take place. However we will need to be notified again when the operator next intends to spread. It is recognised that this could increase the cost. We have accounted for this in the BEA by assuming 3 notifications per deployment. Given that most spreading occurs in the autumn or spring window we believe this is an accurate reflection of the likely costs.

There was a suggestion that 48 hour pre-notification will reduce the flexibility of operators to react to changes in circumstances such as unfavourable weather. We recognise there may be a marginal loss of flexibility and consider that it can be mitigated by actively managing operations. Any additional costs are considered to be small and difficult to quantify.

Some respondents stated that if pre-notification is by telephone or email that they had no comment on the costings. It is confirmed that this will be the case.

Distribution of savings and costs: small operators

One respondent questioned whether smaller operators would be less likely to benefit from the cost saving achieved by moving to storage limits per deployment.

The saving to operators will be directly proportionate to the size of their operation. Therefore smaller scale operators will realise lower savings than larger scale operators.

While each operator's circumstances will differ, small operators are unlikely to be storing large quantities of waste. Therefore they are less likely to bear the costs of obtaining site based storage permits.

Avoided pollution incidents

One respondent questioned the basis of the costings but provided no alternative evidence upon which to estimate savings. Another stated that the estimate was pure conjecture.

The estimates are based on an Environment Agency 2013 report produced by AMEC (AMEC (2013): 'Development of a methodology to calculate the cost of environment pollution incidents'). In the absence of any better alternatives we consider that this report provides the best means of estimating the avoided costs.

The AMEC report was commissioned by us and although it has not been published we are happy to provide a copy on request.

One respondent asked how the number of avoided incidents has been determined.

In 2015 there were 56 biowaste use incidents recorded. Assuming that only some of these will be avoided due to the changes it is projected that an average of 4 incidents will be avoided annually. We believe this to be the best available evidence upon which to base this assumption.

Updates on the list of acceptable wastes

One respondent recognised that the cost of obtaining a bespoke permit is variable but suggested the figure of £10,000 in the BEA is too high.

No evidence was provided to support this suggestion. Costs will vary according to a number of factors. In some cases the costs will be considerably higher, particularly where the waste needs to be fully characterised. The figure of £10,000 is considered a conservative average cost.

One respondent commented that the figure of 30 avoided bespoke permits is highly uncertain and asked for clarification.

The waste types in question, including those listed in the associated regulatory position, are not niche wastes and are produced in significant volumes. Examples include recycled gypsum, sewage sludge containing compost or digestate and a range of animal by-product wastes.

We received very strong representations from operators wishing to spread these wastes and the regulatory position bears this out. Whilst it is not possible to accurately predict the number of bespoke permits avoided, we believe the figure of 30 to be a conservative estimate.

Haulage costs

One response stated that the potential costs of hauling waste over longer distances had been omitted from the BEA.

We recognise that there may be some additional handling and transport costs. There may also be efficiencies from operating a more integrated network. The diversity and complexity of transport and storage arrangements adopted by landspreading operators means it is impossible to quantify the extent of either. In such cases it is recommended that the BEA simply acknowledges the potential cost or benefit.

The cost of covering high RAN wastes

One response questioned the assumption that operators will always be able to locate high RAN storage more than 200 metres from a designated site.

The temporary nature of the store and the level of saving achieved will provide operators with sufficient reason to locate outside 200 metres. Any additional costs will be offset by the avoided damage to designated sites.

One respondent asked which types of designations are covered – this is explained on page 19 of the main response document.

The definition of place where the waste is to be used

Several responses were received about replacing references to 'site' with 'place where the waste is to be used'.

The existing mobile plant standard rules refer to the 'site'. This has created some confusion with site based permits which apply to a fixed area of land.

To avoid this potential confusion we proposed a change of terminology. This change would have no practical implications for the assessment of deployments and therefore no associated costs.

It appears that the proposed change has itself created some confusion and for this reason we will not be implementing the change. We will continue to interpret site in the current manner - the area of land where mobile plant is deployed as detailed in the deployment form.

Future use of SR2010 no.5 and no.6

One respondent asked whether SR2010 no.5 and no.6 would become obsolete and if so what charges would apply for new permits.

These 2 standard rules will continue to be available in their amended form. There will be no alteration to permit or deployment charges as a result of these changes.

Part 2: Standard rules SR2010 no.17: the storage of wastes to be used in land treatment

The cost of obtaining planning permission

One respondent commented that the BEA should include the cost of obtaining planning permission.

The need to comply with planning obligations exists regardless of the need for an environmental permit. Any changes to standard rules do not affect planning obligations. For this reason the cost of obtaining planning permission is not included in the BEA.

Wastes generated by the water industry

Clarity was sought about the inclusion of wastes generated by water and sewerage companies.

The inclusion of the wastes typically generated by water and sewerage companies provides those companies with greater flexibility. It gives them the opportunity to make contingency for periods of extreme weather or other adverse conditions.

It is recognised that these wastes can also, under specific circumstances, be stored under the Controlled Waste Regulations or an S3 exemption. This will continue to be the case.

Technical competence

One respondent questioned why a figure of 20 additional technically competent persons (TCP) was assumed for the new permitted storage facilities. However they appeared to confuse the figure with landspreading activities which are not relevant.

The additional costs of meeting TCP are specifically for the fixed storage facilities. TCPs are not required to attend sites for 100% of their time so they are able to cover multiple sites. The figure of 20 TCPs recognises the minimum attendance times and provides a generous margin for error.

One respondent considered that the estimated cost of achieving technical competence was too low and provided alternative costings.

The BEA assumes that permit holders are likely to already hold a standard permit for landspreading. Therefore their TCP will already hold 4 of the 6 Wamitab units required to demonstrate technical competence for a SR2010 No 17 facility.

Based on evidence from course providers, the cost of achieving the 2 additional units plus incidental expenses has been increased to £800. This results in an additional £8,000 of costs in the first year.

One respondent commented that the cost of satisfying continuing competence had been overlooked.

We agree that this cost should be included. The ongoing cost for satisfying continuing competence requirements is approximately £100 per annum per TCP. This covers the cost of the test and staff attendance time and equates to an additional £2,000 per annum in total. This will be added to the BEA.

Construction costs

One respondent commented that the construction costs were extremely variable and quoted examples which exceeded those in the BEA.

We accept that the cost of constructing a storage facility will vary considerably and is dependent on a number of factors. The construction costs used in the BEA are drawn from a recognised and respected industry source (John Nix Farm Management Pocket Book 2010). We consider that the figures are representative of the average cost per facility.

Part 3: Out of scope

One respondent disagreed that reducing the quantity of non-stackable waste to 1,250 tonnes would result in lower risk to the environment. They argued that the standard of engineering is the critical factor for risk.

The permit does not specify an engineering standard as this was considered inflexible and disproportionate for temporary storage facilities. By limiting the quantity of non-stackable waste stored under each deployment the potential impact of any loss or release of waste is reduced.

We consider this to be an appropriate measure which allows inspection resources to be directed at addressing poor performing operators.

One respondent commented that new anaerobic digestion facilities should be constructed with adequate storage to accommodate digestate arisings.

The location of digestate storage facilities is a matter for the market and planners to decide. There is no statutory requirement for operators of such facilities to provide a storage capacity beyond that necessary to ensure safe and environmentally secure operations.

Several comments were made about the potential for operators to flout the new permit conditions.

The BEA consultation can only assume the savings or costs to permit holders who are complying with the existing and proposed standard rules. Any consideration of non-compliance is outside the scope of the BEA.

We received one comment suggesting that consideration needs to be given to the sites that move their product status from product to waste.

The exact nature of this comment is unclear. However the proposed changes to these standard rules does not change the status of any materials so there will be no associated costs.

One respondent commented that they disagreed with the need to restrict spreading in groundwater safeguard zones (GSgZs). They felt that the measure was disproportionate to risk. They also felt that the NVZ regulations already cover the risks and that the permit condition amounted to double regulation. They also stated that the measure would increase costs for operators.

We believe the logic of this argument to be flawed. The condition applies specifically to areas of greatest risk and is both targeted and proportionate. Furthermore if the NVZ regulations already prevent spreading in a GSgZ then this permit condition does not increase costs to operators.

There are areas of land that fall within GSgZs but are not covered by NVZ regulations. With this permit condition these areas will benefit from additional protection. The cost of amending spreading arrangements or finding alternative land is recognised within the BEA and page 12 of the main response document.

Another respondent agreed with the proposal and hoped that most operators would be following these rules already.

One respondent asked whether, for deployments greater than 50 hectares, the definition of continuously managed land included deployments for more than one type of crop.

Continuously managed land will apply only where a single crop type is cultivated.

Next steps

New and amended standard rules bringing into effect the decisions resulting from consultation no.14 will be published on GOV.UK before the end of 2016.

Individuals who wish to follow up their responses, or points made within this document, are welcome to contact us.

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