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MPA submission to Defra “Waste crime: consultation on proposals to enhance enforcement powers at regulated facilities; and call or evidence on other measures to tackle waste crime and entrenched poor performance in the waste management industry”

Thank you for informing the Minerals Products Association of the Defra consultation on waste crime.

The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries. With the recent addition of The British Precast Concrete Federation (BPCF) and the British Association of Reinforcement (BAR), it has a growing membership of 450 companies and is the sectoral voice for mineral products. MPA membership is made up of the vast majority of independent SME companies throughout the UK, as well as the 9 major international and global companies. It covers 100% of GB cement production, 90% of aggregates production and 95% of asphalt and ready-mixed concrete production and 70% of precast concrete production. Each year the industry supplies £9 billion of materials and services to the £120 billion construction and other sectors. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors.

Many MPA member’s activities interact with the waste industry and waste legislation. From the transport and use of material in quarry restoration projects, to the production of recycled aggregates from construction and demolition waste. Other areas of waste related activity include the use of waste derived fuels and raw materials in cement manufacture. In 2013 over 1.5 million tonnes of waste and by-products was used in this way. Cement manufacture also produced a small amount (around 50,000 per annum) of kiln dust. Currently this is all recovered back into the manufacturing process or used for land spreading and land restoration.

MPA supports Government in its continued effort to reduce waste crime wherever possible. Indeed, the industry is at risk of waste crime from issues such as fly-tipping on members land, deliberate disregard to permitting limitations by third parties on members land to the mis-description and incorrect classification of waste used by MPA members. MPA also agrees that minimising waste crime will assist Government in delivering a more circular economy and supports initiatives for legitimate businesses. In this regard MPA members have many ‘best practice’ examples of how the

minerals industry can contribute to a circular economy as described above for cement manufacture, and MPA would welcome a more pragmatic approach for legitimate business wishing to pursue activities that clearly have a benefit to minimising waste disposal and helping the circular economy. However, MPA is concerned that some of the proposals will extend beyond waste crime to EPR regulated facilities.

Part 1

1. Do you agree with the proposals, A to F? Please provide any additional comments to support your answer against each proposal and, if possible outline any additional measures needed to underpin them?

Proposal A- We consider that the proposal in principle is correct for those sites posing a significant deliberate threat to the environment by failure to comply with an enforcement notice. We do not agree that this should apply to all non-compliance of enforcement notices as a rule even when there is no risk of serious pollution. There are a number of variables that may prevent an operator complying with an enforcement notice including timescales and weather conditions.

For well performing sites that operate in a transparent way under the environmental permitting regime, a level of pragmatism may be required by the EA in assessing whether or not an operator has failed to meet the conditions of an enforcement notice. MPA are concerned that with a move towards decisions being taken at 'EA area level' (in contrast to nationally harmonised implementation), inconsistencies in approach could be introduced across a sector.

MPA request that further details on this proposal are consulted on. This would include details such as timescales for compliance, the amount of evidence to prove compliance, how the new power would be exercised proportionately and how a consistent approach will be taken with regard to well performing sites to ensure these are not unduly affected.

Proposal B- MPA would consider that warning notices should be provided in all cases prior to the exercise of this power. The issue of notices under this power should be considered as a last resort after all other options and discussions have taken place.

Proposal C- MPA support this proposal for waste criminals posing a high risk to the environment, we would assume that this would be done in liaison with the police.

Proposal D- MPA agree with these proposals to broaden the scope of powers to prevent or remedy pollution where an environmental permit does not exist and there is a risk of serious pollution, but would like further clarity on how the 'risk of serious pollution' will be assessed. MPA members have considerable land holdings, operational, mothballed and restored and are at high risk from waste crime such as fly tipping. However, MPA cement members are concerned that this could cross over to well managed sites where there may be a perceived 'risk of serious pollution' due to the complexity of activities on that site but where there are management systems and measures in place to ensure that no serious pollution occurs.

Proposal E- MPA agrees that the use of the High Court should be readily available for those cases that are posing a significant risk to human health and the environment.

Proposal F- MPA disagrees with this proposal if waste has been deposited under an environmental permit. If deposited under an environmental permit, it is likely that a risk assessment will have been undertaken at the time of the permit application. There should be no reason for the deposit to become unlawful if this has been undertaken correctly.

Removal of the waste may not be the best environmental option and regulators may not necessarily be experienced enough to make this decision. Better options may exist that benefit both the environment and are more cost effective. For example, treatment of the waste may be possible to allow further disposal or beneficial reuse.

2. 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 any of the proposals A-F?

MPA has concerns over the interaction of these proposals with the regulatory powers of planning officers. The majority of sites operated have conditions imposed through planning permission and the environmental permit. Although this has been mentioned before, MPA are still concerned if both Authorities can enforce on a permit/ planning condition breach at the same time. Also, if the conditions on the licences are not the same, which is the “correct” one to comply with.

We also believe that there is not enough information provided on the proposals to fully answer this question. Without knowing timescales for issuing notices relating to the proposals or indeed the evidence required, this is difficult to answer. MPA agrees that where a waste site poses a significant threat to the environment or the public that it must be stopped promptly. It is evident that these extra proposals will go some way to doing this.

It is essential that EA officers have a stringent set of rules to follow to ensure the consistent application of these new powers and that well performing sites are not unduly penalised. Equally, these should be transparent to operators along with rights and process to appeal.

Part 2

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

Yes, MPA agrees that the introduction of fixed penalty notices for the offence of fly-tipping will help tackle the problem when small scale.

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

Fixed penalty notices should deter those that fly tip, once publicised and understood. We also consider that fixed penalty notices should only apply to minor fly tipping operations.

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

We understand that a fixed penalty notice means that there will be no criminal record. This may result in repeat offenders.

4. 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?

No comment

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

No comment

6. 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.

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

No comment

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

No comment

9. 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?

Depending on the evidence required this seems like a beneficial proposal, however we struggle to see how this would fit under Environmental Permitting.

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

No comment

11. 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 (b) financial provision and (c) operator performance?

MPA considers that as some permits already require "technical competence" that it would make sense to widen this to other waste operations. However, the tests should be applicable to the type of waste management facility and simple waste activities, such as storage should have a lighter touch. With consideration to operator performance, this would depend on how frequently sites change hands and operators. In any case, "red tape" should be reduced and any increase in competence levels should be done according to the risk posed by the operation.

12. 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?

This would have to be assessed on a case by case basis for other regulated facilities.

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

If the operator, or person in charge of the site, remains unchanged we see no reason for it to be re-assessed. Indeed, with a large company if the Director was to change it would have very little impact to the way in which the site was operated.

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

Please see response above.

15. If an operator competence test were to be enshrined in legislation, in what way might that be done? Examples might include the inclusion of an operator competence requirement in permit conditions, the creation of a specific new offence for failure to maintain operator competence or the extension of existing suspension and revocation powers to breach of the operator competence test.

Inclusion within permit conditions would seem most appropriate.

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

There are a variety of waste management facilities and the technical competence required will vary. It is essential that no additional barriers or “gold plating” of the legislation are put in place so any system must be affordable and easy for operators to comply with.

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

See response to question 16

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

No comment

19. 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.

This could mirror the way in which the Health and Safety sector work for ensuring site safety.

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

See response to question 19.

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

A pragmatic approach should be taken based on operational hours and waste quantities involved. .

22. 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?

No comment

23. If so, 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?

No Comment

24. 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

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

No comment

26. 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?

No Comment

27. 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?

No comment

28. 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?

We would consider that these are already set in the Environmental Permitting Regime so do not embedding further into legislation.

29. 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?

It is difficult to assess how this would work- in theory it would result in compliant companies funding the remediation work for sites that have been operated illegally. It should be the operator or company who committed the crime that has to pay.

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

Alternative, if anything.

31. 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?

No comment

32. 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?

No comment

33. 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 comment

34. 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 comment

35. 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?

There are already powers available to the regulator to do this along with subsistence fees to pay for investigations etc. We do not see why the scope needs widening.

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

No comment

37. Is there a need to tighten up the process for the registration of exempt waste operations? If so, what steps would you wish to see introduced into the registration process?

No

38. Would you wish to limit the scope of the activities that are exempt from the need for an environmental permit? If so, which exemptions would you want to see further restricted and why?

No Comment

I hope that you will consider our comments carefully. Please do let me know if I can be of further assistance.

Yours sincerely,

Nicola Owen
Environment and Waste Policy Executive
Mineral Products Association