

**Response to joint DEFRA/Environment Agency consultation on the Environmental Permitting Programme – Proposals for creating a streamlined environmental permitting and compliance system, published September 2006**

This response is based on consultation with BMRA members, and supplements comments made at a meeting between BMRA, MVDA and DEFRA Representatives, Stewart Marshall and Dr. Andy Fraser, held on 28 November 2006.

The British Metals Recycling Association (BMRA) is the trade association for ferrous and non-ferrous recycling companies throughout the UK and represents some 300 businesses from multi-national companies to small family-owned enterprises. This £3.5 billion industry processes over 13 million tonnes of metal annually into secondary raw material, which is vital for metals manufacturing.

The UK metals recycling industry is well-established and operates in an international market of traded raw materials. Many companies are family-run, passing on skills and knowledge 'from father-to-son'. Most metals recycling activities are considered low risk [using EP OPRA profiling – A19, A20] and are typically regulated under waste management licensing or registered exemption. The industry is a substantial contributor to the delivery of existing strategies on recycling and sustainable use of resources.

Successful implementation of the EPP proposals in the UK will depend on:

- greater streamlining of industry-Government consultation;
- effective industry engagement;
- transitional arrangements are thought through. For example, thorough 'road-testing' and clear timelines to implementation;
- clarity of Government requirements in relation to technical competence and management systems;
- guidance that is clear, sector-specific and made available ahead of any changes;
- a "planning : permitting" interface that processes applications more efficiently.

BMRA supports the broad principles of Government's vision for a better permitting and compliance system and welcomes the opportunity to comment on the proposals.

1. Proposals lack detail necessary for a full response

Since the initial review of waste permitting in 2003, BMRA has been supportive of Government's objective to improve the current permitting and compliance system and welcomes any opportunity that reduces burden on the regulated industry.

However, as noted in our response to the first EPP consultation, the proposals lack sufficient detail for the full implications to be understood. Many of the proposals will be affected by future Government consultations, for example: Duty of Care; review of Exemptions, Operator Competence; and proposals for Operator Performance Risk Appraisal (OPRA). It is therefore difficult for BMRA to fully embrace and commit to the EPP proposals until we have details on these other closely-related areas.

During the period this consultation has been open, there have been over a dozen other Government consultations that impact on our sector. It is thus extremely difficult to give each a comprehensive and thorough assessment. We would like to see the consultation process be made more user-friendly by grouping related consultations together and staggering others.

Meanwhile BMRA continues to be encouraged by Government's involvement of stakeholders and welcomed the opportunity to discuss the sector's key issues with DEFRA representatives prior to submission of this response.

2. Standard Rules Permits (Chapter 3 of consultation)

BMRA supports the proposals for Standard Rules Permits providing they do not limit the conditions under which sites currently operate.

We were surprised to find that shortly after Government consulted on the principle for standard rules permits, the Agency had circulated the first suite of 'fixed condition licences'.

Industry involvement

These 'licences' were issued without industry consultation and we believe that, as a result, those for metals recycling and vehicle dismantlers contain a number of inconsistencies that limit their appeal to operators. Subsequently, industry has been invited to comment and we understand that this will be reflected in future versions of these documents. However, this issue¹ could have been prevented with appropriate industry involvement during the drafting phase.

Impact on exemptions

Many parts of the metals recycling industry operate under the conditions of exemption to Waste Management Licensing and we favour their continued use. However, it is unclear from the consultation proposals what the long-term implications of standard rules permits are with regard to exemptions for scrap metal and the storage and refurbishment of WEEE. On current information, we would oppose any move to erode or replace exemptions used by the metals recycling sector with standard rules permits.

3. Description of Regulations (Chapter 4 of consultation)

3.1 Changes to the existing system

We support the broad principles of simplified systems, risk-based enforcement, and improved guidance for both operators and regulators. It is essential that :

- there is a clear timeline to implementation;
- the resultant system is thoroughly 'road-tested' before implementation. This would help prevent problems such as those experienced by thousands of companies when the Agency's online registration system for producers of hazardous waste failed when the Hazardous Waste Regulations were introduced in 2005;
- industry is closely involved at all stages to help ensure smooth transition from WML/PPC to EPP;
- simplified systems are supported by sector-specific guidance (see section 4)

¹ Technical issues include: no provision for lead-acid batteries in the metal recycling fixed condition licence; no provision for either hazardous or non-hazardous WEEE; distances from site to sensitive receptor greater for metal recycling facility compared to vehicle dismantler; tonnage limit less than existing Paragraph 45 exemption.

3.2 Due Diligence Defence

We have noted that the proposal in the first EPP consultation to remove the due diligence defence received the greatest percentage of objections (60%). Despite this, the proposal to remove the defence has been carried into the current consultation. Whilst we appreciate the Government's desire to streamline WML and PPC, we believe that our sector in particular (due to the preponderance of family-run businesses), is genuinely concerned that effectively imposing strict liability on operators (i.e. directors of companies) would create recruitment problems. There is also concern that removal of the defence is an erosion of an operator's rights. Whilst the application of the defence is rarely used, we believe that operators would be comforted by its retention under EPP.

3.3 Enforcement Notices and High Court Orders

Illegal activity is a major problem for legitimate businesses in the metals recycling sector. It is essential that any new system tackles this issue. We therefore welcome the proposals for a common system of enforcement notices and the continued use of High Court Orders by regulators where other enforcement powers are ineffective.

3.4 Transitional arrangements

It is essential that the transition from the current WML/PPC system to an EPP system, for existing operators, is kept as straightforward as possible. We believe that businesses should receive a clear timeline to implementation of the new system together with supporting guidance explaining the benefits of transition (especially to standard rules permits) and any measures that may be needed to ensure their continued compliance.

3.5 Operator competence

3.5.1 Certificates of Technical Competence

The proposal not to specify particular qualifications to determine competence is welcomed. We believe that the technical competence requirements for the metals recycling sector differ from those of the waste management (disposal) industry.

It is important that Government provides clarity about:

- overall criteria against which an industry-developed scheme would be accepted;
- any requirements to use national occupational standards or National Vocational Qualifications (NVQs).

It is also important that the system recognises the technical competence of those who have long experience in the industry (e.g. through recognising grandfather rights), rather than the compulsory acquisition of new qualifications. This is particularly significant for the metals recycling sector where the turnover of managers is low and many individuals spend their entire working career within the same company.

BMRA has already begun working with MetSkill (the SSC for the metals industry) to clarify the standards required for technical competence in our sector.

3.5.2 Environmental Management Systems

We support the view that operators should have a management system that sets out how to manage the activity for which they hold a permit. We welcome the risk-based and proportionate approach through which companies would demonstrate an appropriate management system (e.g. full ISO14001 for larger or more complex activities or a basic management system for smaller and simpler activities). However, it is not clear how an

operator's management system (other than ISO14001, which is subject to independent annual assessments) would be measured by Agency officers and with what authority.

It is important that Government provides early guidance on:

- clarifying assessment criteria of "informal" or "basic" management systems.

4. Guidance (Chapter 5 of consultation)

We support Government's intention to produce guidance that explains the procedures and scope of the regulations and we look forward to the public consultation on this key guidance in 2007. However, we are concerned that producing standardised guidance could lead to a 'one size fits all' approach being adopted.

4.1 Specific guidance for sectors

The recycling sector is an established industry where permitting has been superimposed on pre-existing trading activity. It is therefore essential that the sector has its own legal and technical guidance separate from local authority civic amenity sites or PPC-permitted factories/installations.

We have already offered our support to assist the revision of existing Agency Regulatory and Technical Guidance, where appropriate, and would highlight that the metals recycling sector has previously had specific guidance in the form of Waste Management Paper 4a which could provide a useful template for establishing any new guidance.

It is vital that guidance is clear, concise and easy to understand. It needs to tell operators what they need to do to comply with the regulations and crucially, it must be published in good time to allow industry to understand any changes well in advance of implementation.

In the interests of transparency, the guidance given to industry should be the same as that given to and used by Agency inspectors. For example, the metals recycling and vehicle dismantling sector has recently been informal consultees to assist the Agency in developing an End-of-Life Vehicle site inspection checklist for enforcement officers.

We welcome the opportunity to comment and provide suggestions on the document and would encourage further dialogue between Government departments and industry bodies when producing future enforcement guidance/checklists.

There are a number of benefits in making enforcement guidance transparent:

- the operator knows the environmental standards that must be met; and
- risk-based enforcement is applied consistently at the local level.

This would give operators greater confidence in Agency officers.

4.2 Availability of local advice

It is important that with centralisation of Agency resource to the National Customer Contact Centre, together with fewer (pre-application or assessment) site visits, the relationship between operator and local enforcement officer is not eroded. Many operators informally discuss environmental and permitting issues with their local inspection officer during regular site visits.

5. Planning

BMRA members frequently report significant difficulty in obtaining planning consent for site development or modifications to satisfy the requirements of waste management legislation. This in turn can cause lengthy delays in securing an appropriate waste management licence.

The main problem experienced by operators of existing metals recycling facilities is that prior planning consent is required before the Agency can issue appropriate licence modifications/permits.

A recent example of the difficulty this creates was experienced when previously-exempt sites required licenses to operate as authorised treatment facilities under the End-of-Life Vehicle Regulations 2003. The Agency was unable to determine ATF status for sites until planning consent had been obtained. In late 2005, the Agency considered that those sites with unresolved planning status would have their ATF application rejected. As a result, a number of sites were forced to cease part of their activities due to factors beyond their control. These sites had no choice but to make a renewed application.

The requirement for prior planning permission also inhibits business development and investment decisions. We therefore welcome Government's review of options to improve the interface between planning and pollution control regimes.

We believe that some straightforward changes would greatly improve the current situation:

- greater exchange of information between the Agency and planning authorities;
- approval of environmental permit (in principle) in advance of planning consent. This would reduce the number of disputes and the time taken for the decision on planning permission (as the pollution risk would be established; thus reducing objections from the public on perceived environmental grounds);
- clarification of the roles of the Agency, the planning authority and other local authority departments (such as Environmental Health) so that the operator knows who is responsible for advising on specific issues; and
- production of a critical path that plots all aspects of the planning process including potential blockages would assist operators with making investment decisions.

Whatever measures are adopted to improve the interface between planning and pollution control regimes, the resultant system must be flexible and work for new applications and for sites with existing operations.

If there is any aspect of this response on which further information is required, please contact Howard Bluck by email Howard.Bluck@recyclemetals.org or write to:

British Metals Recycling Association
16 High Street
Brampton
Cambridgeshire
PE28 4TU