

CONSULTATION ON THE PROVISION & ASSESSMENT OF TECHNICALLY COMPETENT MANAGEMENT AT LICENSED WASTE MANAGEMENT FACILITIES

The Scottish Environment Protection Agency is consulting on a new approach to the assessment of technically competent management at licensed waste management facilities. The requirement for a licence holder to provide technically competent management at a site is part of the test of whether an applicant is “fit and proper” to hold a Waste Management Licence. The Waste Management Licensing (Scotland) Regulations 2011 now provide for greater flexibility in how technically competent management is demonstrated.

Your response to this consultation will be used to determine SEPA’s approach and produce the final version of a guidance document.

Consultation Questions

In order to help us review response, SEPA has created a number of **questions** for you to consider. We would appreciate your answers to any or all of these and any other comments you might have regarding the content of the draft guidance.

- Do you agree that SEPA should continue to recognise COTC’s issued by WAMITAB as evidence of technical competence?
- Are you likely to seek SEPA’s approval for another scheme for demonstrating technical competence?
- Do you agree that statement of experience needs to assess knowledge and experience independently of each other?
- Do you consider the format for the referees statements to be appropriate?

Consultation Responses

Response or queries to this consultation should be submitted no later than **Friday 16th September 2011** by e-mail to Andrew.Sullivan@sepa.org.uk, or by mail to:

Technically Competent Management Consultation
FAO: Andrew Sullivan
National Operations Waste Unit
SEPA Corporate Office
Erskine Court
Stirling FK9 4TR

SEPA may wish to publish responses to this consultation paper. If so, all responses will be made public unless a respondent specifically asks for their response to be treated confidentially. Confidential responses may be included in any statistical summary of numbers of responses received or views expressed.

Respondents should be aware that SEPA is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request

made to it under the Act for information relating to responses made to this consultation exercise.

What happens next?

Following the closing date, all responses will be considered prior to publication of the final version of the guidance document.

If you wish to discuss the draft guidance in more detail, please contact Adrian Bond in the first instance on 01355 574200.

PROVISION & ASSESSMENT OF TECHNICALLY COMPETENT MANAGEMENT AT LICENSED WASTE MANAGEMENT FACILITIES

1.0 INTRODUCTION

This guidance applies only to the assessment of technical competence of operators of sites applying for, or holding, a waste management licence (either a site licence or a mobile plant licence). It is not applicable to sites permitted under PPC.

The requirement for a licence holder to provide technically competent management at a site is part of the test of whether an applicant is a “fit and proper person” to hold a waste management licence. The term “fit and proper person” is defined in section 74 of the Environmental Protection Act 1990 (“the 1990 Act”).

Section 74(3)(b) of the 1990 Act deals with technical competence. It provides that a person is not fit and proper to hold a waste management licence if “the management of the activities which are, or are to be, authorised by the licence are not, or will not be, in the hands of a technically competent person”. From this it is clear that the technically competent person has to be in a position to control the day-to-day activities authorised by the licence and carried out at the licensed site.

It is up to the applicant or licensee to demonstrate to SEPA’s satisfaction how the particular nature of his management structure and control mechanisms satisfies the requirement to have technically competent management.

It means, for example, that technically competent management of a licensed site may be provided by more than one person. This allows operators to provide control of day to day activities through a group of technically competent staff so that the requirement for on site presence of a technically competent person may be shared.

Alternatively, the company structure may mean that day-to-day management is not delegated down to the site but is exercised at a higher level. This could mean that more than one site was under the day-to-day control of the same individual or group of individuals.

Each individual identified by the applicant or licensee as providing technically competent management for the activities at the site will need to demonstrate their competence to SEPA .

Whatever the approach adopted, a technically competent person should be present on site for an appropriate period of time to ensure that the site is operated effectively and in compliance with licence conditions. SEPA considers that in most cases the minimum period of time a technically competent person should be on site is 25% of the operating hours of the site. A site would be considered operational whenever it is either accepting or removing waste, or undertaking any process involving waste other than its storage.

The minimum period of time a technically competent person should be on site may be reduced in respect of small scale civic amenity site (those accepting less than 5,000 tonnes per year) and other small facilities for which the operator can demonstrate that adequate management controls can be provided through alternative means.

2.0 WHEN CAN SEPA CHECK FOR TECHNICAL COMPETENCE

SEPA may check for technical competence when either:

- A new licence application is received.
- The management of the licensed activities comes into the hands of a different person.
- On receipt of an application to significantly modify the licence which could mean that the site had ceased to be in the hands of technically competent persons.
- On a full or partial transfer of a licence.

Determinations of fit and proper status may also be made in connection with the possible full or partial revocation or suspension of a licence under section 38 of the 1990 Act. In particular, where the holder of a licence has ceased to be a fit and proper person by reason of the management of the activities having ceased to be in the hands of a technically competent person, the licence may be suspended or revoked in both cases in full or in part.

The recent change in legislation relating to the assessment of technical competence is not grounds for reassessing the status of the management of existing sites. If a site was previously considered to have technically competent management then this continues until either:

- The management of the licensed activities comes into the hands of a different person; or
- SEPA receives an application to significantly modify the licence that could mean that the site had ceased to be in the hands of technically competent persons.

3.0 HOW WILL SEPA ASSESS TECHNICAL COMPETENCE

Prior to the introduction of the Waste Management Licensing (Scotland) Regulations 2011 (“the 2011 Regulations”), most managers could only demonstrate technical competence by obtaining the relevant certificate from WAMITAB (the Waste Management Training and Advisory Board). This is no longer the case.

However, SEPA will continue to recognise WAMITAB certificates as evidence of technical competence.

It is open to providers of alternative vocational training to seek approval of their schemes as representing evidence of technical competence.

Where the applicant or licensee does not hold WAMITAB or another approved scheme certification SEPA must make its own assessment of technical competence. This assessment will consider both the knowledge and experience of the applicant in respect of general waste management law and practice, and the specific type of facility they wish to operate.

The assessment will be based on evidence provided by the applicant or licensee in support of his claim that the management of the activities will be in the hands of technically competent person.

Knowledge may be demonstrated through evidence of appropriate formal qualifications, or through evidence of practical application of the legislation applying to waste management sites, in particular the licensing requirements and the Duty of Care.

To satisfy the requirement for experience in waste management, a person should normally have not less than two years of relevant experience at a supervisory level (i.e. supervision of either the waste management activities themselves or of other individuals carrying out those activities). Evidence of this will should be presented in a statement of relevant experience, providing details of the dates, locations and periods of work at the appropriate level.

Additionally two referees of standing to support a statement of experience should be provided i.e. referees who can be seen to be in a position to vouch for the contents of the Statement. A suggested form for the referees' statements is appended at Appendix 1.

In assessing such submissions SEPA will take into account the scale and type of operation and the nature of the wastes involved.

Where an applicant is deemed to not be technically competent they will be able to request a review of this decision and will be invited for an interview to assess the merits of their application. This interview will be chaired by a member of SEPA's National Operations Waste Unit.

4.0 MONITORING FOR CONTINUING TECHNICAL COMPETENCE

SEPA will need to keep under review the extent to which management remains in the hands of a technically competent person.

- The simplest way of ensuring this is to ask the licensee for a list of the technically competent persons who are involved in the management of each licensed site, and for this to be kept updated as appropriate.
- If necessary, this information can be required by means of a licence condition.

Appendix 1 - Letter and enclosure seeking reference in respect of technically competent manager

Our Ref:
Your Ref:

If telephoning ask for:

Date

Dear

**REFERENCE FOR <<Name of Applicant>>
WASTE MANAGEMENT LICENSING TECHNICAL COMPETENCE**

XXXXX has provided your name to the Scottish Environment Protection Agency (SEPA) as a referee with regards to demonstrating their technical competence in waste management in respect of their application to hold a waste management licence at <<name of facility>>

As part of our technical competence checks we are seeking to verify xxxxx's statement of qualifying experience. I am writing to request your assistance in carrying out these checks.

I would be obliged if you could complete the attached form and return it to <<add relevant SEPA office>> at your earliest convenience.

Should you have any queries please do not hesitate to contact me by emailing xxx@SEPA.org.uk or telephoning xxxxx.

Yours sincerely

Name of Applicant
Waste Management Technical Competence

Questions

1. How long did xxxxxx work with you and in what capacity

Date from:

Date to:

Capacity (i.e. post title):

.....

2. Are you related to xxxxxx? If so please state your relationship.

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3. Over what period have you known xxxxxxxx?

Date from:

4. Please describe the role and responsibilities held by xxxxxxxxxx when working with you and the skills that you think they have in respect of waste management activities.

Declaration

Name:

Signature:

Date:

Contact address (if different from that shown on covering letter):

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Telephone number:

Email: