

CIWM Scotland Centre Consultation Response

August 2017

SEPA - Consultation on Revised Compliance Assessment Scheme

The Chartered Institution of Wastes Management (CIWM) is the professional body which represents over 6,000 waste management professionals, predominantly in the UK but also overseas. The CIWM sets the professional standards for individuals working in the waste management sector and has various grades of membership determined by education, qualification and experience.

The Scottish Centre Council of the Chartered Institution of Wastes Management welcomes the opportunity of contributing to the SEPA consultation on the Revised Compliance Assessment Scheme.

CIWM is recognised as the foremost professional body representing the complete spectrum of the waste and resources sector. This gives the Institution the widest possible view and, perhaps more pertinently, an objective rather than partial view, given that our goal is for improvement in the management of all wastes and resources.

CIWM Scotland offers the comments based on the extensive experience of a number of our senior members.

Question 1. Do you have any comments on the proposed timing of the scheme?

CIWM Scotland acknowledges the need to review and improve upon the CAS regime. However, any new regime will only represent an improvement in practice if it is brought in following detailed consultation with industry followed by advance implementation workshops and proper collaboration by SEPA with industry to ensure that it is fully understood prior to it being introduced.

CIWM Scotland would be interested in some more detailed analysis of the existing issues with the current CAS regime (of which there are a number) and how SEPA intends to ensure that those issues are resolved and form part of the new CAS regime within the next three to four months before the new intended regime is introduced. Given how many operators and licence-holders are likely to be affected by this new regime, a period of three to four months from now (which will mean only a couple of months following consultation) seems fairly restrictive.

Question 2. Do you have any comments on the proposed new categories?

CIWM Scotland recognises and acknowledges the importance of full compliance which is reflected in the new CAS categories. However, particularly with respect to operators in the waste industry, there are frequently occasions where minor non-compliance is the consequence of outdated or inappropriate permit or licence conditions or relates to an incident or set of circumstances out with the operator's control which is the subject of on-going discussion and collaborative action with SEPA. In such instances, it seems unreasonable for the only option applicable for the operator is to receive a CAS rating of 'non-compliance' when their rating would have been 'good' under the previous regime.

Given that very few waste sites in Scotland consistently retain an 'excellent' compliance rating, what will effectively happen immediately following the introduction of the new CAS is that the vast majority of waste sites will move from technically compliant to 'non-compliance', irrespective of how minor the non-compliance might be (e.g. an administrative failure) and despite no change having been effected in the environmental impact of those sites. That will have a significant negative impact from a public perception perspective. CIWM Scotland is concerned that, whilst those in the industry might understand why this has occurred, SEPA will not be fully prepared to deal with the public perception/reaction or to support operators in doing so.

CIWM Scotland queries whether the distinction between 'non-compliance' and 'major non-compliance' provides a sufficient range of compliance, particularly for waste sites. Perhaps an alternative would be for 'non-compliance' to be re-named 'minor non-compliance' or for that to be an additional category such that the terminology reflects the severity of the non-compliance.

In addition, CIWM Scotland would like to see some differentiation for permits with numerous conditions and those with very few as that could have an impact on the assessment of compliance and create an imbalance against those permits with numerous conditions.

Question 3. Do you have any comments on this approach to defining compliance?

CIWM Scotland considers that there should remain a distinction between those permit conditions, non-compliance with which could lead to direct harm to the environment and those which are more administrative in nature. Related to what is stated at Q2 above, with respect to waste sites, there may be valid reasons for minor non-compliance of 'management' provisions of a permit or licence which are quickly resolved and would not have the potential to create an environmental risk. Such non-compliance should not be treated in the same fashion as non-compliance with limit conditions etc which could cause immediate environmental risks or issues.

Question 4. Are there any changes that you would like to see in the criteria for defining major non-compliance listed in Annex I?

Unless non-compliance with an administrative permit or licence condition (such as in relation to management or training) is sustained for a significant period of time, it is difficult to see how it could cause environmental risk and that is not really clarified in Annex I.

In relation to waste sites, CIWM Scotland would suggest that what represents management of waste materials in an 'effective manner' is somewhat ambiguous and could therefore be open to differing interpretations and needs further clarification.

As mentioned at Q1 above, CIWM Scotland does not consider that there will be much time for SEPA to develop the examples of major non-compliance in discussion with operators/industry before the intended introduction of the new regime in January 2018.

Question 5. Are there any changes that you would like to see to the way in which we propose to assess compliance?

CIWM Scotland considers that the manner in which compliance is assessed should further take into account the situations mentioned in Q2 above – i.e. as exclusions from non-compliance.

This is particularly relevant in the context of the new means of recording compliance discussed at paragraph 6 below as it could result in continuous 'non-compliance' for minor and explainable permit or licence condition breaches by an operator. CIWM Scotland consider this to be of particular concern in the waste industry where there are numerous outdated permit and licence conditions which make full compliance at all times a virtually impossible standard for most operators.

Given the impact that the assessment of compliance could have on an operator following the introduction of the CAS and the new charging regime, it is vitally important that SEPA ensures there is absolute consistency applied by officers on the ground when assessing sites (something which SEPA have acknowledged is currently an issue). Clearly it is challenging to ensure that what one officer considers to be non-compliance is matched by other officers operating in other parts of the country but that must be addressed to ensure there is a level playing field, particularly considering that there will shortly be financial consequences to these decisions.

Retrospective alteration of a compliance record should be carefully managed.

How will monthly reporting work for sites which are not inspected/assessed on a monthly basis?

Question 6. Are there any other environmental obligations that you consider should be included in the future development of the scheme?

CIWM Scotland considers that all incidents of waste crime, irrespective of their seriousness should be subject to the CAS. SEPA has indicated its desire and intention to 'level the playing field' in relation to waste management activities and that requires sites/incidents which are not subject to a permit or licence to be treated in the same manner as those that are permitted/licensed.

Question 7. Are there any other comments that you wish to make about the proposals?

CIWM Scotland considers that CAS is a step forward and an improvement on the existing regime but that it may be too much of a simplification and that is likely to cause issues (as highlighted in the responses to the other questions), particularly on the immediate introduction of the CAS.

CIWM Scotland notes that CAS will in due course be linked to the new charging scheme such that non-compliance will impact upon the amount that operators pay annually in respect of their sites. Whilst this sends a clear message and is a useful tool to improve compliance, it is unclear to CIWM Scotland how SEPA intend for that compliance factor to interact with the imposition of variable monetary penalties. If an operator is served with, and subsequently pays, a variable monetary penalty for some element of non-compliance and is then further assessed as non-compliant leading to an enhanced compliance factor being applied to their annual charge, that is effectively a double charge for the same incident of non-compliance and would be disproportionate. CIWM Scotland would welcome some clarification from SEPA as to its intentions in this regard.