



Refuse derived fuel market in England – Department for Environment, Food and Rural Affairs Call for Evidence (March 2014)

Written evidence submitted by the UK Environmental Law Association

1. The UK Environmental Law Association (UKELA) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This evidence has been prepared with the help of the Waste Working Party.
3. UKELA offers the following comments in response to the Call for Evidence on the refuse derived fuel (RDF) market in England.
4. UKELA, as an advisory body made up primarily of practitioners engaged in legal matters, is not in a position to provide a substantive response to the specific questions raised in the Call for Evidence. However, it does, as a matter of principle, seem to UKELA that an approach to standard setting that reflects the needs of the user should be preferred, that is, once the necessary level of pre-treatment has occurred to satisfy the regulator that the material has ceased to be general mixed waste for the purposes of trans-frontier shipment approval. UKELA commends the guidance document produced by WRAP titled "*A Classification Scheme to Define the Quality of Waste Derived Fuels*" as a useful framework for developing this approach.

UK Environmental Law Association: making the law work for a better environment

Registered charity 299498, company limited by guarantee in England 2133283
Registered office: City Point, One Ropemaker Street, London, EC2Y 9SS www.ukela.org

President: Rt. Hon. Lord Carnwath of Notting Hill CVO PC

86567707v1



5. UKELA is aware that in many cases final user specifications for RDF are quite stringent, specifying ongoing sampling and quality testing. UKELA suggests giving consideration to incorporating these specifications into the management systems of permitted sites processing and supplying the material as evidence of standards to be met, in a similar manner to those that now apply to Materials Recovery Facilities as a result of the changes introduced by the Environmental Permitting (England and Wales) (Amendment) Regulations 2014¹.
6. In that context UKELA notes that while the processing of material prior to recovery may be subject to the permitting requirements of the EU Industrial Emissions Directive, as yet the Environment Agency has still to determine what thresholds and requirements may apply to such processes. UKELA suggests that the implementation of the Directive in respect of such processes could provide the opportunity to introduce quality standards and controls into site-specific permits. This would, of course, be predicated on supply contracts either having common requirements and/or being of sufficient duration to justify being enshrined in legally enforceable compliance monitoring tools.
7. UKELA also wishes to point out that while RDF can lawfully be exported only to R1 qualifying facilities, relatively few (2, as UKELA understands) UK energy from waste plants are actually accredited by the Environment Agency as meeting the R1 energy efficiency criteria. As the relevant guidance² indicates that a facility should be regarded as a disposal facility unless (or until) it has been accredited as a R1 qualifying facility, the opportunity to

¹ SI 2014/255

² See: <http://webarchive.nationalarchives.gov.uk/20140328084622/https://publications.environment-agency.gov.uk/ms/C7xJLZ>

UK Environmental Law Association: making the law work for a better environment

Registered charity 299498, company limited by guarantee in England 2133283
Registered office: City Point, One Ropemaker Street, London, EC2Y 9SS www.ukela.org

President: Rt. Hon. Lord Carnwath of Notting Hill CVO PC

86567707v1



export RDF to energy from waste facilities provides greater assurance that waste goes for recovery rather than disposal (by incineration) in the UK. This also raises the issue that as most (if not all) local authority supply contracts to existing UK energy from waste plants have been entered into on the expectation that the waste is going for recovery - and therefore meeting local recovery targets - the use of energy from waste plants that lack R1 accreditation may bring these contracts into disrepute.

9 May 2014

Contact:

Angus Evers
c/o King & Wood Mallesons LLP, 10 Queen Street Place, London EC4R 1BE
Telephone: 020 7111 2763
Email: angus.evers@eu.kwm.com

Peter Harvey
c/o Practical Law Company, 19 Hatfields, London SE1 8DJ
Telephone: 020 7202 1237
Email: peter.j.harvey@thomsonreuters.com

Co-Convenors, UK Environmental Law Association Waste Working Party

UK Environmental Law Association: making the law work for a better environment

Registered charity 299498, company limited by guarantee in England 2133283
Registered office: City Point, One Ropemaker Street, London, EC2Y 9SS www.ukela.org

President: Rt. Hon. Lord Carnwath of Notting Hill CVO PC

86567707v1