

Decision of Bryan Welch, Deputy Legal Director, on behalf of the Secretary of State for Business, Innovation and Skills on the appeal by Econo Compliance Limited under regulation 66 of the Waste Electrical and Electronic Equipment Regulations 2006 (SI 2006/3289) against the decision of the Environment Agency to refuse Econo-Compliance’s application to operate a producer compliance scheme (“Econo-WEEE”) for the years 2010-2012

Background

1. On 29th August 2009 Econo Compliance Limited (“Econo”) submitted an application to the Environment Agency (“the EA”) under regulation 41 of the Waste Electrical and Electronic Equipment Regulations 2006 (as amended) for approval to operate a producer compliance scheme for the years 2010, 2011 and 2012. Econo had previously been approved to operate a producer compliance scheme for the years 2007, 2008 and 2009. It operates this scheme under the name “Econo-WEEE”.
2. Part 4 of Schedule 7 of the WEEE Regulations sets out the requirements for a producer compliance scheme (“PCS”) to be approved and for continued approval of a scheme. Paragraph 4 requires that the operator of a proposed scheme has viable plans to collect an amount of WEEE that is equivalent to the amount of WEEE it will be responsible for financing under the Regulations.
3. In June 2009 the EA and the Scottish Environment Protection Agency (which is responsible for the approval of schemes in Scotland) jointly issued “Guidance note WMP8: Guidance on operational plans for WEEE compliance schemes”. This contains guidance on the operational plans required in applications for approval of a PCS. Paragraph 4 of the guidance explains what the EA and SEPA require an applicant to include in its application in order to show that it has a “viable plan”. Such plans “must demonstrate that significant over or under collection will be avoided” and “must be supported by documentation to demonstrate that the plans are ‘viable’ and not simply aspirations or good intentions.”
4. On 17th August, following an unsuccessful judicial review of the WEEE Regulations by Repic Limited, the Department for Business, Innovation and Skills, the EA and SEPA sent each PCS a joint statement with further guidance to applicants for approval of a PCS. Paragraph one sets out what information must be contained in an application for approval of a PCS where a scheme has agreed to collect WEEE on behalf of another scheme or have WEEE collected on its behalf by another scheme. Paragraph one includes the following—

“Details of such third party collection arrangements, including the amounts of WEEE per category and names of the relevant third party schemes involved, must be provided in schemes’ operational plans. Schemes must also provide the relevant Agency [i.e. EA or SEPA] with written confirmation from the third party schemes they are collecting on behalf of / collecting on their behalf. These details and confirmation must be contained in schemes application for approval under the Regulations and any subsequent material changes to the details must be notified to the Agencies.”
5. In Econo’s application for approval it was stated that the proposed scheme would have a financing obligation for [excised] tonnes of WEEE from private households. It was proposed that to contribute to the collection of WEEE to meet that obligation, 700 tonnes of category 2 WEEE would be collected through “stock clearance”. The EA considered that there was no supporting evidence in the application to show that arrangement and it also appeared to them that the WEEE

was other than from private households. The EA sought an explanation from Econo but none was provided by 1st October 2009.

6. The deadline for the EA to determine the application was 1st October 2009. On that day the EA notified Econo that its application had been refused. The particular ground for refusal was that the information provided did not demonstrate that Econo had viable plans to collect an amount of WEEE that was equivalent to the amount of WEEE that it would be responsible for financing. The EA stated in its notification of refusal that this was because there was no definite arrangement to obtain 700 tonnes of category 2 household WEEE. Furthermore Econo had not demonstrated satisfactorily that the WEEE collected from their arrangement with the stock clearance company was household WEEE.

The appeal

7. On 8th October 2009 Econo submitted its appeal against the EA's refusal of its application to the Secretary of State for Business, Innovation and Skills under regulation 66(1) of the WEEE Regulations. They requested that the appeal be determined by way of written representations.

8. In support of their appeal Econo stated that the 700 tonnes of WEEE referred to in the EA's reasons for refusal was attributable to one single member of the scheme and that during the approval process Econo had offered to terminate that member's membership should it prove necessary. Econo went on to say that on 7th October it served notice of termination on that member. The EA accept that the effect of removing this member from the Econo scheme is that the scheme has a viable plan for the collection of an amount of WEEE from private households equivalent to the amount it will be responsible for financing under the WEEE Regulations.

Decision

9. As a result of the changes referred to in the last paragraph I determined on behalf of the Secretary of State that the decision of the EA should be altered so that Econo Compliance Ltd was approved as a PCS (under the name "Econo-WEEE") for the compliance periods 2010 to 2012.

Signed on behalf of the Secretary of State

Bryan Welch

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