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Summary of responses to the Review of Inert Waste Regulation Discussion Paper

September 2008



Environment
Agency
Asiantaeth yr
Amgylchedd



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



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Food and Rural Affairs

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1. Introduction

- 1.1 Defra, the Welsh Assembly Government (WAG) and the Environment Agency jointly undertook a review of the regulation of inert waste in England and Wales during 2007.
- 1.2 The aim of the review was to develop a risk-based and proportionate approach to the regulation of inert waste in response to the recommendations in the Davidson Review of the Implementation of EU Legislation¹.
- 1.2 A discussion paper on the regulation of inert waste was launched on 18th December 2007. The paper was sent to 129 key stakeholders and was also published on the Defra website².
- 1.3 The paper asked for views on 8 questions relating to the regulation of inert waste. The consultation period ran for 13 weeks and closed on 21st March 2008.
- 1.4 During the consultation period a workshop was held in London on 13th February in order to engage stakeholders on the proposed way forward. The aims of the workshop were to provide delegates with an overview of the background to the review and an outline of the proposals and to encourage discussion and debate on the options set out in the consultation paper. 58 representatives from industry and Government attended.
- 1.5 A total of 29 written responses to the consultation were received. A list of respondents is given in Annex A.
- 1.6 Responses are available for viewing in the Defra library for 6 months after the closing date of the consultation at:
Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR (Tel: 020 7238 6575, email: defra.library@defra.gsi.gov.uk).

¹ Davidson Review Final Report

http://www.hm-treasury.gov.uk/media/E/F/davidson_review281106.pdf

² Review of Inert Waste Regulation Discussion Paper

<http://www.defra.gov.uk/environment/waste/topics/pdf/inert-waste-review%20071218.pdf>

About this document

- 1.7 This document is organised into sections relating to each question asked in the discussion paper. A final section sets out a summary of the approach intended to provide a proportionate system of regulation for inert waste.
- 1.8 This document does not attempt to repeat the background information given in the discussion paper and only provides the minimum amount of context for each topic.
- 1.9 For each topic this document:
- summarises the possible ways forward set out in the discussion paper;
 - states the question asked in the discussion paper;
 - summarises the responses to the question; and
 - sets out the actions that will be taken forward.
- 1.10 A summary of actions alongside the problems they will address can be found in Annex B.
- 1.11 References to the Government in this document are to Defra and WAG. A reference to 'we' is a reference to Government and the Environment Agency.

2. Ceasing to be a waste

- 2.1 The discussion paper highlighted that there is significant scope to reuse waste materials or recycle wastes into construction materials. It explained the Quality Protocol approach which enables producers to demonstrate in an auditable way that their waste has been fully recovered and is a non-waste product.

Possible ways forward – waste protocols

- 2.2 The discussion paper suggested that work should continue on the Quality Protocols approach.

Question 1

- 2.3 Question 1 asked: **What are the advantages and disadvantages of the quality protocol approach in the regulation of inert CD&E waste?**
- 2.4 Of the 29 respondents, 20 answered this question. Many of those simply listed the advantages and disadvantages of the quality protocol approach, whilst some also gave explicit support for the use of this approach in the regulation of inert Construction, Demolition and Excavation (CD&E) waste.
- 2.5 Many responses highlighted the importance of quality protocols being robust, not overly burdensome and being developed in consultation with industry. Some responses highlighted a need to promote the use of recovered materials, and one referred in particular to the need for highway and sewerage authorities to facilitate their wider use.
- 2.6 A number of advantages were highlighted. The key advantage of the approach raised in many of the responses was the confidence and certainty it would give to users that recovered materials meet specified standards which should in turn help to promote the use of inert waste. It was also thought it would allow waste to cease to be classified as waste earlier in the recovery process.
- 2.7 The flexibility of a protocol was also highlighted as an advantage in a number of responses in that it can be amended as circumstances change or as case law evolves. Some responses suggested it would reduce the regulatory burden.
- 2.8 Fewer disadvantages were highlighted. The key disadvantages were thought to be the subjectivity of the protocol approach which could be open to varying interpretations, and the concern that materials classified as “products” could be subject to REACH regulations³.

³ Regulation (EC) No 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1907:EN:NOT>

Actions

- 2.9 We agree that quality protocols are useful for demonstrating that waste has been fully recovered, thus promoting re-use. We will support the continued work of WRAP on quality protocols.
- 2.10 A revision of the Waste Framework Directive is currently being considered by the Council of Environment Ministers and the European Parliament under the co-decision process. The latest text of the revised Directive includes a provision which would enable the European Commission to adopt EU-wide end-of-waste criteria for specified wastes. A waste specified in this way would cease to be waste when it has undergone a recovery operation and complies with the criteria set by the Commission. Information about the negotiations on the revised Directive is available on the Defra website⁴. On conclusion of the co-decision process and adoption of the revised Directive, Member States will have two years in which to transpose and implement its provisions. However, the power to set end-of-waste criteria will become available to the Commission on the revised Directive's adoption; and any such criteria would apply throughout the EU and without the need for Member States to adopt transposing legislation.”

⁴ Information about the negotiations on the revised Waste Framework Directive
<http://www.defra.gov.uk/environment/waste/thematicstrat/index.htm>

3. Duty of Care

- 3.1 The discussion paper explained that Defra and the Welsh Assembly Government have consulted on a review of the Duty of Care which should help to deliver a reduction in the mis-management of waste.
- 3.2 The discussion paper did not ask a question on the Duty of Care as this will be consulted on separately (see below).

Possible ways forward – Duty of Care

- 3.3 The discussion paper suggested that the information required on a waste transfer note could include the basic characterisation required by the Landfill Directive. For recovery operations it was suggested that the information required should relate to the characterisation requirements of the permit. The resultant guidance would need to set out the different waste characterisation requirements for disposal and recovery permits and how the characterisation should be recorded.
- 3.4 In the discussion paper it was said that the Environment Agency proposes that its monitoring and enforcement activities with respect to inert Construction, Demolition and Excavation (CD&E) waste should focus on illegal activity and ensuring that the producers and handlers of the waste deal with it in an appropriate way. Enforcement of the duty of care would be an important element of this.
- 3.5 The discussion paper suggested that industry trade bodies, with the support of Government and the Environment Agency, should develop Codes of Practice that help producers to describe, code and characterise their waste.

Actions

- 3.6 The discussion paper explained that revisions on the Duty of Care were being consulted on separately. Proposals on the Duty of Care are included in the consultation on Controls on the Handling, Transfer and Transport of Waste which is currently taking place⁵ until 17th September 2008, with implementation planned for April 2009.
- 3.7 Proposal 20 in the above consultation suggests using the Waste Transfer Note to enable more effective enforcement of the basic characterisation and pre-treatment requirements in the Landfill Directive. It is proposed that enhancements to the requirements for the written description of waste should be

⁵ A second consultation on the controls on the handling, transfer and transport of waste
<http://www.defra.gov.uk/corporate/consult/waste-controls/>

taken forward as part of the revision and update of the guidance provided in the Code of Practice. The consultation paper was launched on Friday 13th June and asks for views on this approach and/or other suggestions of how the Government could get a record of basic characterisation, pre-treatment and de-pollution.

- 3.8 Revisions to the Duty of Care will help the Environment Agency take action and set clear responsibilities for waste producers. The Environment Agency intends to produce a plan setting out how it will enforce the revised Duty of Care for the 'inert' fraction of CD&E waste. This should cover both mis-description of waste and other illegal activity. This should be in place in advance of the planned implementation date of the revised duty of Care.
- 3.9 The Environment Agency will also produce a strategy for dealing with the deposit of CD&E waste at illegal sites.
- 3.10 The Environment Agency's compliance strategy for sites permitted to deposit inert waste (both landfills for inert waste and recovery sites) must recognise the importance of pursuing those who try to bring unsuitable waste on to the site. Permits for the deposit of inert waste should include the requirement that the operator's management system provides a record where unacceptable waste is brought to a site. This will be in place before the end of March 2009.
- 3.11 We think it is important to produce education and guidance for the CD&E sector in order to change the behaviour of the industry with respect to describing and characterising waste. The Environment Agency intends to publish before the end of March 2009 a brief guide on waste characterisation aimed at the 'inert' fraction of CD&E waste.
- 3.12 We will support industry bodies who wish to develop their own Codes of Practice.

4. Recovery or disposal?

- 4.1 The discussion paper explained that the Waste Framework Directive⁶ makes a distinction between recovery and disposal activities and that this distinction is critical in determining how the deposit of inert waste on land is regulated.

Possible ways forward – recovery and disposal

- 4.2 The discussion paper explained that the Environment Agency is proposing to produce revised guidance for the deposit of waste on land to ensure that staff making decisions on recovery and disposal are fully aware of the Abfall judgment⁷ and have a clear set of criteria to support consistent and transparent decision making.
- 4.3 The discussion paper suggested that where industry wishes to produce Codes of Practice or guidance, the Government and Environment Agency should support this so that applications for recovery activities are only made where there should be little likelihood of disagreement between the regulator and the operator.

Question 2

- 4.4 Question 2 asked: **What are the advantages and disadvantages of using of guidance to deal with the distinction between recovery and disposal for the deposit of waste on land?**
- 4.5 There were 23 responses to this question. Guidance on recovery and disposal was generally given a guarded welcome. A number of advantages and disadvantages were raised.
- 4.6 It was felt that guidance had the potential to be helpful and provide more clarity to the decision making process. The point was made that the final interpretation can only be made by the courts. Some respondents felt that the legal position (reference was made to the Abfall judgement) was sufficiently clear in itself. The view was expressed that guidance should come from Government, that it should be statutory and also could be supported by a Code of Practice. The need for industry to be involved in producing the guidance was a point made by a number of respondents.

⁶ The European Community Directive on Waste (2006/12/EC)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0012:EN:NOT>

⁷ European Court of Justice case C6/00

- 4.7 A key advantage of using guidance raised in many responses was that it would facilitate a consistent approach to distinguishing between a waste and a fully recovered product. It was also suggested it would give the Environment Agency greater confidence in decision making. Many points were made that relate to the nature of guidance, such as that it can be delivered more quickly and can readily be revised.
- 4.8 On the other side of the coin, it was suggested that guidance can be open to different interpretations and can be applied inconsistently. There was concern that guidance could confuse the situation by not being clear enough and could be a best fit/compromise position.

Actions

- 4.9 We think that guidance has a role in helping the decision-making process and that both Government and Environment Agency guidance is required.
- 4.10 Guidance on what is recovery under the Waste Framework Directive has been published as part of the Government's guidance on the Environmental Permitting regime⁸. This guidance confirms that the European Court of Justice has established that, "...the essential characteristic of a waste recovery operation is that its principal objective is that the waste serve a useful purpose in replacing other materials which would have had to be used for that purpose, thereby conserving natural resources."⁹
- 4.11 The Environment Agency has also produced draft guidance on recovery and disposal for the deposit of waste on land which forms part of its guidance on understanding the Landfill Directive.¹⁰ The guidance was developed in consultation with industry. The Environment Agency will discuss further its guidance on understanding the Landfill Directive with industry. Any revisions should be in place no later than the end of March 2009.
- 4.12 The Environment Agency will ensure that internal procedures are in place so that its guidance on recovery and disposal is applied consistently to notifications for exemptions and, where there is evidence of abuse, to renewals of notifiable exemptions.
- 4.13 A revision of the Waste Framework Directive is currently being considered by the Council of Environment Ministers and the European Parliament under the co-decision process. The Common Position adopted by the Council in December

⁸ Defra Environmental Permitting guidance on the Waste Framework Directive
<http://www.defra.gov.uk/environment/epp/documents/wfd-guidance.pdf>

⁹ The Abfall case (C-6/00).

¹⁰ Environment Agency Environmental Permitting guidance on Understanding the Landfill Directive
http://www.environment-agency.gov.uk/commondata/acrobat/lfid_1_2005780.pdf

2007 includes revised definitions of “recovery” and “disposal”¹¹. The proposed definition of “recovery” reflects case law by the European Court of Justice and, if adopted, would provide that:-

“‘recovery’ means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or the wider economy....”

- 4.14 Information about the negotiations on the revised Directive is available on the Defra website¹² and confirms that the Department holds regular meetings with stakeholders to ensure that they are informed of and engaged in the negotiation process. On conclusion of the co-decision process and adoption of the revised Directive, Member States will have two years in which to transpose and implement its provisions. On adoption of the revised Directive, the Government will consult with industry on the measures necessary to ensure its transposition and implementation – including its provisions on recovery and disposal.

¹¹ The Common Position’s definitions of “recovery” and “disposal” were not subject to amendment by the European Parliament in its Second Reading of the revised Waste Framework Directive on 17 June 2008.

¹² Information about the negotiations on the revised Waste Framework Directive
<http://www.defra.gov.uk/environment/waste/thematicstrat/index.htm>

5. Recovery activities

- 5.1 The discussion paper explained the different permitting requirements for recovery operations (in particular that the Landfill Directive does not apply) and that recovery operations can be exempt from the need to hold a permit. The discussion paper also explained that a review of the exemptions system is currently underway which proposes to regulate higher risk activities through standard permits and allow only truly low risk activities to be exempt from the need to hold a permit. The review of exemptions will address the abuse of large scale exemptions by requiring permits for such activities in the future.

Possible ways forward – permits for recovery operations

- 5.2 The discussion paper set out that the Environment Agency intends to develop standard rules for permitted recovery activities on land. These standard rules and the guidance that supports them will be developed in consultation with industry as part of the implementation of the review of exemptions. The rules should be in place three months before the exemptions review is due to be implemented (now October 2009).
- 5.3 The discussion paper explained that the Landfill Directive requirements of basic characterisation and waste acceptance criteria do not apply to recovery activities but recovery permits must include waste acceptance procedures and waste characterisation requirements to ensure that the risk to the environment is acceptable. The discussion paper proposed that similar waste characterisation requirements and waste acceptance procedures should apply for both disposal and recovery activities because the two activities can carry similar risks.
- 5.4 The discussion paper stated that the Environment Agency is proposing to produce generic guidance on waste acceptance. This guidance would cover waste destined for landfills for inert waste and the same waste types destined for recovery.

Question 3

- 5.5 Question 3 asked: **What are the advantages and disadvantages of adopting a common approach for characterising waste for permitted recovery and disposal operations which involve the permanent deposit of inert waste on land?**
- 5.6 There were 21 responses to this question. The majority of these supported the adoption of a common approach to characterising inert waste (where the waste is to be permanently deposited on land whether for recovery or disposal). However there was concern that this approach would “raise the bar” for recovery

operations and/or impose the requirements of the Landfill Directive on recovery activities.

- 5.7 Key advantages of this approach were thought to be the delivery of a “level playing field” and a reduction of the burden on industry through simplification of requirements for waste producers and making enforcement easier for regulators. Other advantages mentioned in some responses were a reduced potential for pollution from "rogue loads" and confidence that materials are free of contamination.
- 5.8 Concern was however raised that this could raise the requirements for recovery activities higher than intended by the Waste Framework Directive and risk the diversion of materials suitable for quarry restoration into non-hazardous landfill. Some respondents thought the proposed approach would increase the burden on the regulators and had the potential to be costly and time consuming.

Actions

- 5.9 We think that there are advantages to making the requirements as similar as possible for all disposal and recovery operations depositing inert waste on land. We have no intention of applying the requirements of the Landfill Directive to recovery operations.
- 5.10 We wish to ensure that the waste characterisation requirements for inert waste destined for recovery on land are proportionate and are based on the requirements of the Waste Framework Directive.
- 5.11 The Environment Agency intends to produce technical guidance on the permitting requirements for both recovery and disposal. This will set the common framework for issues such as the permitting requirements for waste characterisation and risk assessment and should help create a more level playing field. A version of this guidance has already been drafted in consultation with industry and should be published before the end of March 2009.

6. Financial provision for landfills for inert waste

- 6.1 The discussion paper explained that financial provision is currently required (by legislation) for all landfills for inert waste, however Article 8 of the Landfill Directive gives Member States the option to not require it.

Possible ways forward - financial provision

- 6.2 The discussion paper suggested three possible options for the way forward on financial provision for landfills for inert waste. These were:
1. Maintain the requirement for financial provision but ensure its application continues to be proportionate and not overly onerous
 2. Amend the legislation to remove the requirement for financial provision for all landfills for inert waste
 3. Amend the legislation to replace the universal requirement for financial provision with a power to enable the Environment Agency to require financial provision where it believes it to be necessary. Government guidance could steer the Environment Agency as to when this may be required. This could allow a risk based and flexible approach to financial provision for landfills for inert waste.

Question 4

- 6.3 Question 4 asked: **What are the advantages and disadvantages of the three options for financial provision for landfills for inert waste?**
- 6.4 There were 21 responses to this question, 16 of whom gave support to a particular option. There were mixed views, with half of those who expressed a preference favouring retention of the present system (option 1) and the rest split between support for the complete removal of the requirement for financial provision (option 2) and amending the legislation to give the Environment Agency the power to require financial provision where it believes necessary (option 3) with option 3 being the least favoured.
- 6.5 A key concern was raised as to whether the Environment Agency can access the funds where this becomes necessary.
- 6.6 A fourth option was suggested whereby the legislation would be amended and the waste industry would be required to propose and implement a code of practice that includes a measure of financial security.

- 6.7 One respondent suggested that if the financial provision requirement is retained, there should be some right for an independent assessment of the level of provision required where an operator feels this is too high.
- 6.8 **Option 1:** Advantages raised were that the system is known to industry and already in operation. Disadvantages raised were doubts that this system would be able to fulfil its role if a company went into receivership and the comment that it does not provide a level playing field.
- 6.9 **Option 2:** Practicality was mentioned as an advantage. Respondee commented that inert waste disposal is a low risk activity and the use of Waste Acceptance Criteria protects against the risk of rogue loads making it unlikely that any problems would occur which would require financial provision. Disadvantages of this approach were that sites need monitoring after closure to confirm the inert nature of the waste and that it does not adopt a risk based approach as proposed in the Hampton Review and underpinning the Environmental Permitting regime.
- 6.10 **Option 3:** Although there was some support for a risk-based approach, no advantages to this option were mentioned. Many responses highlighted disadvantages to this approach, the main one being the likelihood of subjectivity and inconsistency in application. Others highlighted were a likelihood of disputes between the operator and regulator and the Environment Agency being made open to criticism of its decisions.

Actions

- 6.11 We do not think that there is currently a strong case for removing the existing requirement for financial provision for all landfills for inert waste. This is supported by the views of many of respondents to this consultation. We therefore favour option 1 and propose to maintain the current legal position that financial provision is required for all landfill sites.
- 6.12 Government and the Environment Agency will monitor the issue of financial provision to ensure that the position for landfills for inert waste remains proportionate.
- 6.13 We consider that it is essential that the mechanism used for financial provision will allow the Environment Agency to call upon funds where necessary. The Environment Agency intends to keep under review the implementation of the system including the costs to industry and be able to report on how often it has been necessary to call upon financial provision for landfills for inert waste, in particular for those that have only operated under a Landfill Directive compliant permit.
- 6.14 The Environment Agency guidance on financial provision for landfills for inert waste should be revised to ensure that the position for landfills for inert waste

remains proportionate. This revised guidance will be discussed with industry and will be transparent about costs. It should be in place before the end of March 2009.

7. Landfill engineering requirements – Annex I to the Landfill Directive

- 7.1 The discussion paper explained that Annex I to the Landfill Directive sets out a number of important requirements for the engineering at all classes of landfill, some of which allow discretion as to whether they apply to landfills for inert waste.
- 7.2 The discussion paper suggested that a legislative change could be made regarding geological barriers at landfills for inert waste.

Possible ways forward - landfill engineering

- 7.3 The discussion paper offered two possible ways forward:
 - Option 1: Maintain the current implementation of the Directive without attempting to adapt the requirements for landfills for inert waste
 - Option 2: Government could adapt the relevant requirements for landfills for inert waste by amending the Environmental Permitting Regulations to give the Environment Agency the ability to not require a geological barrier where a high degree of environmental protection can be demonstrated through an assessment of the site specific environmental risk.
- 7.4 The discussion paper explained that a consultation would be needed on any legislative change and that this would need to be supported by draft versions of Government and Environment Agency guidance which set out how decisions on the geological barrier requirements would be made.
- 7.5 The discussion paper set out that the Environment Agency proposed to develop guidance on the risk assessment for landfills for inert waste and for a recovery operation involving the permanent deposit of similar waste to land.
- 7.6 The discussion paper also set out that the Environment Agency proposed to develop guidance on the practical application of any geological barrier requirements.

Question 5

- 7.7 Question 5 asked: **What are the advantages and disadvantages of adapting the legislation for landfills for inert waste and providing a power for the Environment Agency to determine whether or not to require a geological barrier on the basis of environmental risk?**

- 7.8 There were 17 responses to this question, 15 of which expressed a preference for one of the options. All of the respondents who gave a view on this question showed support for adapting the legislation (option 2).
- 7.9 Some responses highlighted that the Waste Acceptance Criteria should protect against the risk of “rogue loads” and provided they were properly enforced there was no need for a geological barrier.
- 7.10 It was highlighted that clear and robust guidance is needed to ensure decisions are consistent and proportionate to risk.
- 7.11 A number of advantages to amending the legislation were highlighted. Key advantages were thought to be the creation of a “level playing field” between different ways of using inert waste, removing the cost of unnecessary landfill engineering, and being a more proportionate approach to the environmental risk.
- 7.12 Advantages also mentioned were that this approach would significantly reduce the cost of restoration and make wildlife habitat creation more feasible, and that it was an example of “better regulation”.
- 7.13 Few disadvantages of adapting the legislation were mentioned. However it was suggested that the Environment Agency would have to carry out more monitoring to assess environmental risk. It should be noted that it is the responsibility of the operator to undertake monitoring at a landfill for inert waste and not the responsibility of the Environment Agency.
- 7.14 It was suggested that there could be a public perception of increased risk in instances where there was no barrier – the suggested solution to this was not calling quarry restoration projects landfill sites.

Actions

- 7.15 We believe that the Environment Agency should be able to decide that a geological barrier at a landfill for inert waste is not required on the basis of a site specific environmental risk assessment (submitted as part of a permit or variation application). The site must be consistent with the overall aims and objectives of the Landfill Directive. This view is supported by the responses to this consultation.
- 7.16 We are not currently in a position to decide on the next steps on this policy. Defra is considering making representations to the European Commission about how Annex I of the Landfill Directive should be interpreted with regards to the engineering requirements (including the geological barrier) for all classes of landfill.

- 7.17 If advice is received from the Commission then this will impact on the way forward with this policy. If the Commission deem we can take a risk-based rather than an absolute approach to the engineering requirements, it may be possible in some cases to dispense with the requirement for a geological barrier.
- 7.18 If this were to happen, an amendment to the Environmental Permitting Regulations may be required. Any changes in the position would be reflected in changes to guidance as soon as possible.
- 7.19 The Environment Agency intends to produce guidance on the construction quality assurance requirements for geological barriers for landfills for inert waste. This will form part of the guidance for the deposit of inert waste on land (see paragraph 5.11 above) and will be in place before the end of March 2009.
- 7.20 The Environment Agency intends to produce guidance on the risk assessment requirements for deposits of inert waste. This will form part of the guidance for the deposit of inert waste on land (see para 5.11 above) and will be in place before the end of March 2009.

8. Waste acceptance criteria

- 8.1 The discussion paper explained that Member States must decide which testing method should be used as part of the waste acceptance criteria (WAC) from those set out in the Council Decision (2003/33/EC) on the Landfill Directive.

Possible ways forward - WAC testing

- 8.2 The discussion paper explained that the Environment Agency intends to revise its guidance on testing with respect to inert waste, including consideration of the use of the single stage leaching test for inert waste (BS EN 12457 Part 2) instead of the 2-stage test which is currently required for all types of waste. A change to the liquid-to-solid ratio for WAC compliance for landfills for inert waste was not proposed.
- 8.3 The discussion paper suggested that industry, with the support of Government and the Environment Agency, should develop Codes of Practice for sampling and testing to meet the Landfill Directive requirements for inert waste.

Question 6

- 8.4 Question 6 asked: **What are the advantages and disadvantages of maintaining the current liquid to solid ratio and on the possible adoption of the single stage test for inert waste?**
- 8.5 There were 14 responses to this question. The majority of those who gave a view supported a move to the single stage leachate test.
- 8.6 The advantages raised by many respondents were reduced costs and speed of the single stage test when compared to the two stage test (it was suggested that it costs 30% less and is 50% faster).
- 8.7 Some respondents raised the point that the laboratories conducting the tests must be in a position to adapt to the change.
- 8.8 It was noted that there would be some loss of information compared to the two stage test but that this should not be significant for inert wastes since their leaching behaviour is unlikely to vary greatly over time.
- 8.9 It was observed that such a change would mean that the test for inert wastes would no longer be the same as that for non-hazardous and hazardous wastes. It was also suggested that a change to the single stage test would mean that past test data could not be directly compared with future data.

Actions

- 8.10 We think that the single stage leachate test (BS EN 12457 Part 2) should be used for waste destined for disposal in a landfill for inert waste. We are happy that this is entirely consistent with the Council Decision on waste acceptance criteria.
- 8.11 We think that the relative speed and cheapness of the test will both reduce the burden on industry and help reduce the incentive to mis-describe the waste to avoid the requirement for testing. We consider that any loss of information compared to the two stage test will not be significant for inert waste.
- 8.12 The Environment Agency will talk to those involved in conducting these tests to ensure that when the change is made the laboratories will be in a position to deal with it. The Environment Agency will announce the date from which the single stage test will be acceptable (the two stage test will remain acceptable, should a waste producer wish to use it, as it will also produce a result for the solid to liquid ratio of 1 to 10). This date should be no later than the end of March 2009 (depending upon the discussions with the laboratories).
- 8.13 The Environment Agency will develop guidance on sampling and testing for inert waste (for landfills and recovery sites) and this should be in place by the end of March 2009.
- 8.14 We will support industry in developing Codes of Practice for their sector.

9. Descriptions of waste for landfill

- 9.1 The discussion paper explained that the terminology and definitions used to describe waste in landfill permits and Duty of Care waste transfer documentation are different from those used in the landfill tax regime. This could lead to confusion and duplication of effort.

Possible ways forward – Descriptions of waste for landfill

- 9.2 The discussion paper proposed that Defra would discuss with Her Majesty's Revenue and Customs (HMRC) and devolved administrations whether there are ways in which greater consistency in terminology of wastes sent to landfill can be achieved throughout the UK in a way that does not alter the current scope of the lower rate of landfill tax in any way.

Question 7

- 9.3 Question 7 asked: **What are the advantages and disadvantages of a more consistent terminology for describing inert waste going to landfill?**
- 9.4 There were 19 responses to this question. There was general support for the idea of a more consistent terminology.
- 9.5 One response highlighted that a change might not be needed but just simply more guidance and a closer working relationship between authorities and HMRC. There were also suggestions that the present European Waste Catalogue coding system should be retained but descriptions should be extended to better describe inert soil and rock construction arisings.
- 9.6 Several respondents mentioned that a more consistent terminology would give greater clarity and remove confusion for regulators, producers and receivers of waste, leading to a reduced risk of unauthorised wastes being accepted and making enforcement easier.
- 9.7 Disadvantages raised included the difficulty of adapting to a new regime and the perceived requirement for primary legislation to achieve the change. One response gave the view that both terminologies were well established and the industry was comfortable with using the different terms.

Actions

- 9.8 We note the arguments for consistent terminology. We will consider the matter with HMRC.

10. Other approaches

- 10.1 The discussion paper explained that the actions generated from this consultation must work together to produce a proportionate regulatory approach for inert CD&E waste. However the discussion paper also asked about alternative approaches.

Question 8

- 10.2 Question 8 asked: **What other approaches could meet the objectives of: promoting a sustainable use of inert waste; protecting the environment from inappropriate activity and minimising the regulatory burden for both industry and the regulator?**
- 10.3 There were 20 responses to this question.

Suggested approaches

- 10.4 **An exemption from landfill tax for quarry restoration activities**
An exemption for the infilling of quarries already exists.
- 10.5 **Defining quarry restoration as a recovery operation, or if this is not possible consider creating a specific exemption for it**
Whether a quarry restoration activity can be a recovery operation will always depend upon the site specific circumstances. We propose to use guidance to help the decision as to whether a particular quarry restoration can be a recovery operation. For disposal operations, it is only possible to provide an exemption from the need to hold a permit in very limited circumstances. Where the quarry restoration is a disposal activity, it is not possible to provide an exemption and a permit is required.
- 10.6 **Proper implementation and firm enforcement of Duty of Care shifting the emphasis from the operator to the producer/carrier**
We agree that it is important for there to be an emphasis on the responsibilities of the producer and subsequent holders of the waste. We think that the review of the Duty of Care and the Environment Agency's compliance actions coupled with the implementation of site waste management plans¹³ on construction sites will provide this emphasis.
- 10.7 The Environment Agency will be working with waste producers through the development of a Construction Sector Partnership Plan with bodies representing the main construction contractors and representative organisations of smaller

¹³ For more information on SWMP please see <http://www.defra.gov.uk/environment/waste/topics/construction/index.htm>

businesses in the sector. The Environment Agency is also working with a particular focus on small and medium sized enterprises through the 'SITEwise' initiative.

10.8 Increased levels of inspection on producers

The Environment Agency's plan setting out how it will enforce the revised Duty of Care for the 'inert' fraction of CD&E waste (see paragraph 2.19) will help in addressing the responsibilities of producers.

10.9 Proportionate and risk-based reduction in the requirements for reporting monitoring results/for in-waste landfill gas monitoring

The Environment Agency's guidance on the deposit of inert waste on land (see paragraph 4.12) will set out the requirements for monitoring, including for landfill gas, at these sites.

10.10 Clarification on the definition of waste

Defra is preparing and will shortly publish draft revised guidance on the interpretation of the definition of waste for a 12-week consultation. The consultation will be published in association with the Welsh Assembly Government, the Northern Ireland Assembly and the Environment Agency. The guidance will identify the principles set by the European Court of Justice in case law and, in line with the Davidson Review's recommendations on the implementation of EU legislation, will adopt a purposive, risk based approach and will be as clear and concise as possible, making use of examples where possible to aid understanding.

10.11 Re-defining inert and non-hazardous excavation arisings as raw materials

All EU Member States are required to transpose and implement the definition of waste in the Waste Framework Directive; and it is not legally feasible for any Member States to adopt national legislation that purports to exclude any particular substance or object from the Directive's definition.

10.12 Improving the mechanisms and timescales by which an authorisation for the recovery or disposal of inert waste is obtained

The Environment Agency is committed to providing a high quality service in its provision of permits and has taken actions to achieve this for instance in establishing its National Permitting Service. The future development of standard permits for relevant activities will also help in making permits quicker and more straightforward to obtain.

11. Summary

- 11.1 The purpose of the review of the regulation of inert waste was to produce a proportionate regulatory approach for inert Construction, Demolition and Excavation (CD&E) waste.
- 11.2 We think that the combined actions we have identified in this paper will make significant steps towards achieving this.
- 11.3 Annex B provides a summary of the actions identified in this document including how these actions should address the current problems in the management of inert CD&E waste which were identified in the discussion paper.
- 11.4 We think that the key to the protection of the environment from the 'inert' waste generated by the CD&E sector is to ensure the adequate characterisation and description of the waste. It is important that the Construction, Demolition and Excavation industries take responsibility for managing their waste within the regulatory framework that we are creating following this review.

Annex A - List of respondents

- AMEC Earth & Environmental
- Association of Electricity Producers
- British Aggregates Association
- British Lime Association
- British Waterways
- Buckland Lake Reserve
- CEMEX UK Operations
- Chartered Institute of Building
- Chartered Institution of Wastes Management
- Construction Confederation
- Darrington Quarries
- Egniol
- Environmental Services Association
- Federation of Master Builders
- GP Planning Limited
- Land and Mineral Management Limited
- Local Authority Recycling Advisory Committee
- Miller Homes Limited - North West Region
- MJ Carter Associates
- Norfolk Environmental Waste Services
- Planning Officers Society, Minerals and Waste Committee
- QSP Training
- Quarry Products Association
- Royal Society for the Protection of Birds
- Scottish Environment Protection Agency
- Shanks Waste Management Limited
- The Law Society
- UK Environmental Law Association
- Waste Recycling Group

Annex B - Summary of actions

Action	Paragraph number	Davidson Review point	Owner	Target date
Support the continued work on protocols and codes of practice for demonstrating that waste has been recovered	2.9	Level playing field	Government	Ongoing
The Duty of Care revision*	3.6 and 3.7	WAC implementation	Government	Consultation: June 2008 Implementation: April 2009
Produce a plan setting out how it will enforce the revised Duty of Care for the 'inert' fraction of CD&E waste	3.8	Level playing field	Environment Agency	before end of March 2009
Produce a strategy for dealing with the deposit of CD&E waste at illegal sites	3.9	Level playing field	Environment Agency	before end of March 2009
Permits for disposal and recovery sites should require a record to be kept where unacceptable waste is brought to a site	3.10	Level playing field	Environment Agency	before end of March 2009
Produce a brief guide on waste characterisation aimed at the 'inert' fraction of CD&E waste	3.11	Level playing field	Environment Agency	before end of March 2009
Support industry bodies developing Codes of Practice on the Duty of Care and waste characterisation	3.12	Level playing field	Environment Agency	Ongoing
Discuss guidance on understanding the Landfill Directive with industry and make any necessary revisions.	4.11	Quality of guidance	Environment Agency	before end of March 2009
Review of exemptions*	5.1	Level playing field	Government	Consultation: Summer 2008 Implementation: October 2009
Produce technical guidance on the requirements for both recovery and disposal sites including on risk assessment and on geological barrier construction.	5.11 and 7.19 to 7.20	Quality of guidance	Environment Agency	before end of March 2009
Revise guidance on financial provision for landfills for inert waste	6.14	Quality of guidance	Environment Agency	before end of March 2009
Clarification of the position on Annex I of the Landfill Directive*	7.15 to 7.18	Level playing field / derogations from EC Legislation	Government	Autumn 2008
Discuss with laboratories and announce date for use of single stage leaching test	8.12	Efficient implementation of WAC	Environment Agency	before end of March 2009
Produce guidance on sampling and testing for inert waste	8.13	Efficient implementation of WAC	Environment Agency	before end of March 2009

Action	Paragraph number	Davidson Review point	Owner	Target date
Support industry bodies developing Codes of Practice on sampling and testing	8.14	Level playing field	Environment Agency	Ongoing
Consider with HMRC the use of consistent terminology in Landfill Tax, Landfill Directive and Duty of Care	9.8	Inconsistencies with the landfill tax regime	Government	Ongoing
Site waste management plans*	10.6	Additional point to Davidson	Government	Implemented
Development of Construction Sector Partnership Plan*	10.7	Additional point to Davidson	Environment Agency	before end of March 2009

* These actions are taking place in parallel to this review