

**SCOTTISH
NATURAL
HERITAGE**



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Monday, 23 July 2007

Dear Mr Walker

Scottish Executive and SEPA joint Consultation: Better Waste Regulation

Thank you for consulting Scottish Natural Heritage (SNH) on proposals for better waste regulation. I apologise for the lateness of this response.

We recognise SEPA's lead role in the implementation of waste management licensing as required by European legislation and we support the underpinning objectives for waste policy to ensure that waste does not cause harm to human health or the environment.

We do not have comments or suggestions about the regulatory process but as SNH and SEPA are looking at ways to streamline ways of working this process may identify some improvements to the application of the regulations. We have some detailed observations set out in an annex, on three specific topics: coasts and rivers, soils and places of special interest.

I hope that one of the outcomes of the consultation process will be a clearer definition of waste. If you would like to discuss this response please contact me at jane.clark@snh.gov.uk or 0131 446 2208.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jane Clark', written in a cursive style.

Jane Clark
Head of Sustainable Land Use

Annex

COASTS AND RIVERS

The re-use of extracted material from flood prone rivers

We understand that local authorities routinely undertake extract gravel as a flood prevention practice. We note that the disposal of extracted river gravel must accord with waste regulations and it may be completely removed from river systems. The removal of gravel interferes with geomorphic processes and may both deplete and degrade physical aspects of aquatic habitats.

We understand that similar “quarrying” also takes place in coastal systems, which can affect the supply of sediments. We believe that the best practice for managing sediments at weirs is to take material from upstream and move it downstream of the obstruction, rather than removing and treating it as waste. Some recent work on the River Tay prompted a review of sediment management in the river and we have agreed to try an approach of “no net loss.” We are currently working with the University of Stirling to develop a sediment management code of practice for the River Tay that could be applied elsewhere.

The re-use of harbour dredgings

For similar reasons we would encourage the re-use of non-contaminated harbour dredgings. In many cases, the material dredged has been washed in from the coast

Fly tipping as ‘coastal protection’.

We consider the practice of fly-tipping to combat coastal erosion, from wave and wind, is inappropriate and should be considered as unregulated disposal of waste.

SOILS

The current development of the Scottish Soil Strategy (expected late 2007) will provide a strategy for the protection of soils and it will help promote the fuller integration of policy objectives. “Organic materials to land” and “planning and sealing” will be addressed in the Soil Strategy and these should identify ways to link and integrate consideration of soils with Waste Regulations.

The proposed EU Soil Framework Directive also considers the risk to soils, and how to protect these from, contamination and sealing. In 2004, this linkage was considered in the revision of the Sludge and Biowaste Directive and Soil Thematic Strategy.

When examining waste and soils there are two issues to be considered.

1. Soils (separately or mixed with other materials) as a potential waste.
2. The impact of waste on soil quality and soil resources.

The management of soil-derived wastes requires a sympathetic approach by land managers and policy makers to minimise the production and to promote the recovery of such waste.

By contrast, dealing with the impacts and threats to soil quality from waste is more related to pollution control

Soil as a potential waste

Soils can easily become a 'waste' simply by being handled and removed from natural setting.

Section 2.2 of the consultation, proposes a broad definition of waste "This is because anything which is discarded has the potential, one way or another, to become a threat to the environment or human health."

Whereas this statement may be true for a range of 'manufactured' materials with a single use it may not apply to soils. Fundamental to soil protection is the notion of soil multi-functionality. Soils (in situ or in stock piles) will have different roles and functions depending on land use.

It is essential that the definition of waste recognises that "functional soils," either in situ or not, have a potential value and should only qualify as waste when clear evidence of loss of fitness has been demonstrated

Link between soil waste and the planning system

The production of soil-waste (excluding considerations of contaminated land) is mainly linked to development (regulated by the Planning Acts) and other operations where soil is displaced or removed in full (to the geological layer) or in part (for instance the organic top soil).

The disposal of such 'waste' soils rather than their recovery and re-use can result in a net loss of soil resources, e.g., by being 'sealed' under buildings, and loss of carbon stock. We expect these issues to be covered in the Scottish Soil Strategy.

Impacts on soil from wastes

Soils are explicitly mentioned as a "receptor" in Article 4 of the Waste Framework Directive, and should be more fully integrated into the regulation of waste.

Fundamental to SNH is an appreciation that soils are of value for their functional roles (e.g., support of habitats) and for the diversity of their intrinsic physical, chemical and biological features. Soils are non-renewable resources. It is essential that better waste regulations should aim to protect soil functionality and soil resources.

Loss of quality will be a result of:

- pollution through inappropriate disposal of waste on land; or
- disturbance to soil integrity (compaction, impediments to drainage, the sealing of top soils).

This could modify the physical, chemical or biological properties of soil. This will affect soil fitness and its functionality (e.g., support for habitats, the capacity for water filtering).

The consultation recognises that it "is not uncommon for new lower risk waste management techniques to require a waste management licence because the

exemptions law does not cover or anticipate the activity, not because the activity would be unsuitable for an exemption.” This is even more relevant for risks to natural habitats which often have lower trigger values than those of human health or other issues of environmental quality. The risk of ‘lower risk’, therefore, must be quantified.

“Countryside or Places of Special Interest”

We note that, as part of Article 4 of the Waste Framework Directive, Member States are to take measures to ensure waste is recovered or disposed of:

- “without risk to water, air, soil and plants and animals;
- without adversely affecting the countryside or places of special interest.”

We are aware that there are some activities which are exempted, such as spreading of organic wastes on agricultural land. Whereas legislative measures for exemptions were tightened in 2003 these may not be sufficient in relation to the natural heritage and the “countryside and places of special interest.” By way of example, please see below.

Slamannan pSPA, Falkirk

This was a proposal to restore a quarry, to forestry rather than agriculture using Agricultural “organic waste.”

While SNH’s chief concern, in this instance, was disturbance to Bean Geese (the “conservation objective” of the SPA) from the impacts of restoration (Bean Geese will not roost, feed, etc, in proximity to dense woodland or trees) we were also concerned that there was a possibility of leachate from waste draining from the restoration site to the place of “special interest”. This seemed to be exempt from the license.