



Technical advisers on environmental issues

**The disposal to landfill of road spoil from the
excavation of trenches for utility services.
Review of the future implications of Landfill Tax**

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Executive Summary

Substantial quantities of road spoil are disposed of to landfill each year by the Gas Distribution Networks (GDNs). A proportion of this excavated material currently is consigned as inert waste and/or inactive for landfill disposal although where possible consideration is given by the GDNs to more sustainable waste management practices. The way in which waste and landfills are regulated is complex and is in a period of substantial change both in respect of legislation and guidance which has and is resulting in increasing costs. These increasing costs are of concern to the GDNs in respect of the disposal of road spoil. There is considerable uncertainty regarding the proposed and potential changes to the complex regulatory regime and the potential scale of the increasing costs.

Currently the majority of the excavated material consigned for landfill disposal is defined as 'inactive waste' hence the lower rate of Landfill Tax is paid. There are differences in the definitions of inert waste and inactive waste. The GDNs are concerned that potential changes to the definition of inactive waste used in the application of Landfill Tax may result in road spoil attracting a higher rate of tax. The current Landfill Tax rate for inactive waste is £2.00 per tonne which will increase to £2.50 per tonne from 1 April 2008. The current Landfill Tax rate for active waste is £24 per tonne which will increase at a rate of £8 per tonne per year until at least 2010/2011.

The way in which inert waste is regulated in England and Wales has been the subject of concern to the waste management industry and producers of inert waste as increasingly stringent legislative controls have been applied to landfill disposal by the implementation of the Landfill Regulations. Concerns also have been raised regarding the inconsistent approach in England and Wales to the application of legislation and associated controls. Further regulatory changes that are anticipated include the need to pre-treat all waste disposed of to landfill from 30 October 2007. The extent of pre-treatment associated with road spoil hence the costs that will be associated with pre-treatment are uncertain.

The raft of waste management regulations which currently are relevant to the disposal of road spoil and the application of Landfill Tax is the subject of review at a European and National Level. There is very little information currently in respect of the progression of the reviews and the likely implications in respect of road spoil hence there is significant uncertainty regarding the resultant impacts with respect to the costs for disposal. To provide

clarification regarding the uncertainty discussions have been held with Government, the Environment Agency and other relevant parties.

From the discussions it is evident that the review of legislation regarding the disposal of road spoil is at an early stage with little comment or certainty in respect of the likely outcome available hence little information with regard to the associated costs to waste producers. Much of the ongoing work is scheduled for consultation in late 2007 and early 2008. There are numerous options in respect of the ongoing review of legislation. Each of the options being considered has a different potential impact on costs. Until the review is completed and the legislative changes are made and implemented the uncertainty associated with the costs of the disposal of road spoil will remain. The proposed consultation processes may provide some evidence on which to reduce the uncertainty associated with the legislative reviews hence to remove some of the uncertainty associated with the costs of the disposal of road spoil.

1. Introduction

1.1 Substantial quantities of road spoil are disposed of to landfill each year as a result of planned maintenance, mains replacement programmes and emergency repairs of the gas distribution network. A proportion of this excavated material currently is consigned as inert waste for landfill disposal. The way in which inert waste and landfill disposal are regulated is in a period of substantial change both in respect of legislation and guidance. Changes in legislation and guidance are resulting in changes to waste management practices by the waste management industry which result in direct impacts on waste producers including the Gas Distribution Networks (GDNs) with associated increases in costs.

1.2 Currently the majority of the excavated material consigned for landfill disposal is defined as 'inactive waste' hence the lower rate of Landfill Tax is paid. There are differences in the definitions of inert waste and inactive waste hence the GDNs are particularly concerned that potential changes to the definitions used in the application of Landfill Tax may result in road spoil attracting a higher rate of tax.

1.3 Landfill sites including sites accepting inert waste materials have undergone a period of transition from regulation under the waste management licensing regime to regulation under the pollution prevention and control permitting regime. The GDNs are concerned that the change in the regulatory regime associated with landfills will increase substantially the costs associated with the landfill disposal of excavated materials. The possible changes in the time period up to 2008/2009 and then up to 2012/2013 currently are of particular interest to GDNs.

1.4 MJCA are commissioned to carry out an independent review to provide an opinion on:

A The Landfill Tax charging regime to determine:

- If there is any evidence that definitions of 'active' and 'inactive' wastes will be brought into line with the Landfill Directive definition of inert waste

- The potential impact a change in definitions may have on the waste streams currently consigned as inert or non-hazardous waste; and
- What, if any, precedent has been set in other European Union Member States regarding the application of Landfill Tax, specifically how it is applied to waste spoil and how road spoil is consigned for disposal.

B Changes in the regulatory regime associated with the landfill disposal of excavated material. In particular the definition of inert waste and the independent Waste Acceptance Criteria testing necessary to certify each load in order to demonstrate compliance with inert landfill permits.

C Future requirements for Waste Acceptance Criteria testing for waste disposal at non-hazardous landfill sites and how this may be applied to road spoil. In particular an assessment of evidence that independent Waste Acceptance Criteria testing will be required in future to certify each load in order to demonstrate compliance with non-hazardous landfill permits.

1.5 MJCA are technical advisers on environmental issues and are actively involved in the debates within and between the waste producers, the waste management industry, relevant trade associations, the Environment Agency and the various branches of government regarding the application and review of legislation and guidance related to environmental issues and particularly waste management. MJCA does not provide legal advice and does not employ legally trained or licensed personnel. The review presented in this report is based on the technical and practical knowledge and expertise related to the application of the legislation and guidance which is available to MJCA at the time of writing.

1.6 The review presented in this report is with regard to the legislation which applies in England and Wales. Similar regimes apply in Scotland and Northern Ireland.

2. The current legislation regarding the disposal of road spoil

Is road spoil a waste?

2.1 Excavated road spoil is defined as a waste where the holder of the material intends to discard it. The definition of waste is set out in Section 75 of The Environmental Protection Act 1990¹ and is a complex matter. In general terms where the excavated material is not needed by the excavator of the material it comprises a waste. Under certain circumstances² where the excavated material is reused at the site of excavation it is not defined as a waste. It is understood that almost all of the road spoil excavated by and on behalf of the GDNs comprises waste as it is removed from the site at which it arises for disposal.

2.2 Consistent with Government Policy³ the GDNs are seeking the management of excavated material in a sustainable way by the optimisation of the reduction, re-use and recycling of excavated materials. Notwithstanding the progressive implementation of increasingly sustainable practices it is anticipated by the GDNs that significant volumes of excavated materials will continue to be classified as waste and will be managed by landfill disposal.

Waste management licensing regulations

2.3 All waste activities are defined as recovery or disposal operations as set out in the Waste Framework Directive⁴. Waste which is recovered for reuse is not subject to landfill regulations or the Landfill Tax regime. In limited circumstances waste may be deposited in the ground as a recovery operation rather than a disposal operation for example for the recontouring of land to improve drainage, the use of waste in construction work and use in landscaping work. The determination of whether an activity for the deposition of waste in the ground comprises a recovery or a disposal activity rests with a dedicated Deposit for Recovery central panel of the Environment Agency on a case by case basis⁵. To date very few activities involving the deposition

¹ The Environmental Protection Act 1990 Chapter 43

² Council Directive 91/156/EEC of 18th March 1991 amending Directive 75/442/EEC on waste

³ Waste Strategy for England 2007. DEFRA. May 2007.

⁴ Waste Framework Directive 75/442/EEC as amended by Commission Decision 96/350/EC

⁵ Guidance: Deposit of waste in land as a recovery activity. Environment Agency. Version 1. 21 July 2005.

of waste in the ground have been confirmed by the Environment Agency as recovery activities and it is understood that there is little justification from the Environment Agency regarding the classification of the activities as disposal rather than recovery activities. Where the activity is identified as a recovery activity the Waste Management Regulations apply and the activity is the subject of a Waste Management Licence for a recovery operation. As the activity is not a landfill the Landfill Tax regime does not apply.

- 2.4** Where waste is deposited in a landfill site with the exception currently of some landfills nearing closure which still are regulated under the Waste Management Licensing regime the landfill site is governed by the Landfill (England and Wales) Regulations 2002⁶ as amended by the 2004 and 2005 amendment regulations^{7,8} together with the PPC Regulations⁹. The Landfill Regulations implement the European Landfill Directive¹⁰. The Landfill Tax regime applies to the disposal of waste in a landfill.
- 2.5** Some waste activities are exempt from the waste management licensing regime. Exempt activities must be registered with the Environment Agency. The exempt activities are not subject to the definition criteria which apply to the landfill disposal of waste and are not subject to Landfill Tax.

Landfill disposal

- 2.6** In accordance with the Landfill Regulations landfill sites are defined as Inert, Non-Hazardous or Hazardous Landfill Sites. Inert waste may be deposited in inert or non-hazardous landfill sites. Non-hazardous waste may be deposited only at non-hazardous landfill sites.
- 2.7** Inert waste is defined in Regulation 7(4) of the Landfill Regulations 2002⁶ as waste that:

⁶ The Landfill (England and Wales) Regulations 2002 Statutory Instrument 2002 No. 1559

⁷ The Landfill (England and Wales) (Amendment) Regulations 2004. Statutory Instrument 2004 No. 1375

⁸ The Landfill (England and Wales) (Amendments) Regulations 2005. Statutory Instrument 2005 No. 1640

⁹ The Pollution Prevention and Control (England and Wales) Regulations 2000. Statutory Instrument 2000 No. 1973

¹⁰ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

- does not undergo any significant physical, chemical or biological transformations;
- will not dissolve;
- will not burn;
- will not physically or chemically react;
- will not biodegrade;
- will not affect adversely other matter with which it comes into contact in a way likely to give rise to environmental pollution or to harm to human health;
- has insignificant total leachability and pollutant content;
- produces a leachate with an exotoxicity that is insignificant.

2.8 Hazardous waste is defined in the Hazardous Waste Regulations¹¹. It is unlikely that excavated road spoil will comprise hazardous waste unless it contains significant quantities of contaminants for example spilled fuel or oil. Non-hazardous waste is waste which is not hazardous waste and is not inert waste.

Waste Acceptance Criteria and PPC Permitting

2.9 Wastes which are deposited at landfill sites must comply with the waste acceptance criteria (WAC) set out in the Landfill Regulations⁶ as amended. The WAC include limit values set for the concentrations of contaminants in the waste and in the leachate from the waste. Contaminant WAC are set for inert wastes and for hazardous wastes. There are no contaminant WAC for non-hazardous wastes.

¹¹ The Hazardous Waste (England and Wales) Regulations 2005 Statutory Instrument 2005 No. 894

Before wastes are deposited in landfills for inert or hazardous wastes the wastes must be tested to demonstrate that they comply with the contaminant WAC.

- 2.10** Inert wastes are exempt from testing only if they comply with the requirements of paragraph 10 of Part 3 to Schedule 1 of the landfill amendment regulations 2004⁷. In paragraph 10 there is a list of eleven waste types which may be acceptable at a landfill for inert waste without testing provided that the waste is:

*'(a) from a single stream of a single waste type, and
(b) is from a single source.'*

- 2.11** Even the wastes listed in paragraph 10 must be tested where there is suspicion of contamination or doubt that the waste meets the definition of inert waste. If such testing reveals contamination or the presence of other materials or substances such as metals, asbestos, plastics or chemicals the waste must not be accepted at a landfill for inert waste if the extent of the contamination is such as to increase the risk associated with the waste sufficiently to justify its disposal in other classes of landfill.

- 2.12** The landfill regulations including the need for WAC testing are implemented at landfills through the PPC Regulations⁹. The Environment Agency have implemented progressively the transposition from the Waste Management Licensing regime to the PPC Permitting regime by the issue in 7 tranches of PPC Permits for landfills which supercede Waste Management Licences. Most inert waste landfills for which it was necessary to submit a PPC Permit application were included in Tranche 7 of the Environment Agency programme and the permits were issued in early 2007. Some inert landfills were included in earlier tranches and PPC Permits were issued earlier. There are some inert waste landfills nearing closure for which it has been agreed with the Environment Agency that due to the limited remaining life of the landfill it was not necessary to submit a PPC Permit application. At these sites which will close under their Waste Management Licences WAC testing will not be necessary and the more stringent operational standards necessary as part of the PPC permitting regime will not be implemented. As holders of PPC Permits implement the requirements of new PPC Permits including WAC testing, the Environment Agency enforce the conditions of the PPC Permits and inert landfills the subject of Waste Management Licences it is likely that increasingly more WAC testing will be necessary. The implementation of

the Landfill Regulations through the PPC Permitting regime places significant additional requirements on the operators of inert waste landfills such as the need to provide engineered lining systems at some sites which significantly increases costs.

Pre-treatment

- 2.13** In accordance with the Landfill Regulations 2002⁶ as amended by the Landfill Amendment Regulations 2005⁸ it will be necessary from 30 October 2007 to ensure that all waste is pre-treated prior to landfill. With respect to inert waste pre-treatment is necessary unless it is not technically feasible. The impact that the need for pre-treatment will have on the amount of inert waste landfilled and the costs associated with the landfill disposal of waste is uncertain although it is unlikely that the costs will reduce. The impact in respect of Landfill Tax will relate to the amount of waste landfilled and the classification of residues following pre-treatment. Waste producers have an obligation under the Duty of Care to provide an accurate description of waste prior to disposal. The Duty of Care regulations are the subject of review and it is anticipated that the revisions to the Duty of Care regulations will facilitate enforcement of the requirement for pre-treatment in addition to the conditions in PPC Permits relating to Waste Acceptance Criteria.

Landfill Tax

- 2.14** Wastes deposited in landfill sites are subject to a Landfill Tax payment in accordance with the landfill tax regulations¹². Different rates of Landfill Tax are set for inactive waste and active waste. Inactive waste is defined as that listed in the Landfill Tax (Qualifying Materials) Order 1996¹³ and active waste is other waste. The definition of inactive waste for the purposes of Landfill Tax is broader than the definition of inert waste in the Landfill Directive hence the classification of landfill sites as inert will limit the types of inactive wastes which may be accepted at inert sites increasing the cost for the disposal of some inactive wastes must be directed to other facilities.
- 2.15** The current Landfill Tax rate for inactive waste is £2.00 per tonne which will increase to £2.50 per tonne from 1 April 2008. The current Landfill Tax rate for active waste is

¹² The Landfill Tax Regulations 1996 Statutory Instrument 1996 No. 1527.

¹³ The Landfill Tax (Qualifying Material) Order 1996 Statutory Instrument 1996 No. 1528

£24 per tonne which will increase at a rate of £8 per tonne per year until at least 2010/2011¹⁴.

2.16 Some wastes accepted at landfill sites are exempt from Landfill Tax as set out in the Landfill Tax (Site Restoration and Quarries) Order 1999¹⁵. The exemption provides for the disposal of qualifying materials at sites without the payment of Landfill Tax. The qualifying materials are listed in the qualifying material order¹³.

2.17 The current options for the disposal of road spoil and the implications with regard to the application of Landfill Tax are set out in Table 1.

Summary

2.18 The management of waste is governed by a raft of waste management regulations. There have been significant changes to the legislative controls associated with inert wastes accepted for disposal at landfills. The implementation of the changes in legislation and the enforcement of those changes by the Environment Agency are taking place progressively and are the subject of complex guidance. The changes in the regulatory regime have placed significant additional controls on the management of inert waste and the measures necessary to manage appropriately inert waste. The changes to the regulation of inert waste will increase the costs associated with landfill disposal. The regulatory regime associated with inert waste is the subject of review. Discussion of the reviews being carried out is presented in Sections 3 and 4 of this report.

¹⁴ Budget 2007: Economic and Fiscal Strategy Report and Financial Statement and Budget Report March 2007

¹⁵ The Landfill Tax (Site Restoration and Quarries) Order 1999 Statutory Instrument 1999 No. 2075

3. Current reviews of the legislative controls relevant to the disposal of road spoil

Introduction

- 3.1 The way in which inert waste is regulated in England as described in Section 2 has been the subject of concern to UK industry including the waste management industry as increasingly stringent legislative controls have been applied to landfill disposal. Concerns have been raised regarding the inconsistent approach in different parts of England and Wales to the application of legislative controls. In response to the concerns raised by industry there currently are various reviews by Government and the Environment Agency of the regulation of inert waste.

Davidson Review

- 3.2 At the request of the Chancellor of the Exchequer in the 2005 pre-budget report a review of the implementation of European legislation in the UK was carried out by Lord Davidson QC and presented in his report dated November 2006¹⁶. The objective of the review was to identify areas with respect to the implementation of EU legislation where unnecessary regulatory burdens can be reduced or the system simplified. The review included consultation with government departments, regulators and external stakeholders and specific recommendations are made regarding a number of legislative areas including waste legislation. It is considered that the removal of unnecessary regulatory burdens or simplification of systems may provide cost saving for regulators but it is uncertain if cost savings for waste producers will be achieved.
- 3.3 It is stated in paragraphs 3.55 and 3.56 of the Davidson Review that the controls over the disposal of inert waste vary considerably depending on whether the waste is exempt from or is subject to the Landfill Regulations hence the disposal costs vary considerably also. It is acknowledged at paragraph 3.54 of the Davidson Review that the IPPC Directive¹⁷ states that inert landfill sites can be exempted from the PPC regime. It is recognised at paragraph 3.57 of the Davidson Review that the definition of inactive waste in the Landfill Tax regime is inconsistent with the definition of inert waste in the Landfill Directive.

¹⁶ Davidson Review. Final Report. Implementation of EU Legislation. November 2006 ISBN: 978-0-11840-484-6

¹⁷ Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control

3.4 At paragraph 3.59 of the Davidson Review it is stated that the evidence presented by DEFRA recognised that:

'there are issues about inert waste management activities that require further consideration'

and that the proposed EPP review¹⁸ should help deliver a framework that better enables a risk-based approach to be taken to different waste related activities. It is stated that the DEFRA 2006 Simplification Plan will list the 'proportionate regulation of inert waste' as a potential simplification activity as part of the Environment Agency's proposed Modernising Waste Regulation Programme.

3.5 Recommendation 7(b) of the Davidson Review is:

'Defra and the EA should conduct a full review of the regulation of inert waste with the aim of adopting a more proportionate and risk-based regulatory landscape. As part of this review, stakeholders should be formally consulted by the end of 2007 on options for reform. The review should, as a minimum, cover the following issues:

- the appropriate use of inert waste exemptions in EC legislation;*

- the creation of a more level playing field between different activities involving inert waste (proportionate to the risk posed) – this should also be considered as part of Defra's forthcoming WML exemption review;*

- how implementation of the waste acceptance criteria might be made more efficient;*

- inconsistencies with the landfill tax regime; and*

¹⁸ Environmental Permitting Programme. Third Consultation on a streamlined environmental permitting and compliance system – annex 1. Draft Environmental Permitting Guidance January 2007 Published by the Department for Environment, Food and Rural Affairs

- *the quality of guidance (see also recommendation 8), including the issue of when an activity should be classified as recovery or disposal.'*

3.6 As explained in paragraphs 3.7 and 3.8 of this review the regulation of inert waste currently is the subject of review by DEFRA and the Environment Agency. It is uncertain how the review of the regulation of inert waste will impact upon the costs to waste producers associated with the disposal of inert waste. Although clarity with respect to regulatory standards may be achieved it will be more difficult to ensure the consistent application and enforcement of standards.

DEFRA and Environment Agency review of the regulation of inert waste

3.7 In the Waste Strategy for England 2007³ it is stated at paragraph 15 that DEFRA and the Environment Agency have put in hand a review of the regulation of inert waste covering a range of issues including the appropriate use of inert waste exemptions, inconsistencies with the Landfill Tax regime and the quality of guidance in this area. It is stated that stakeholders will be consulted formally by the end of 2007 on the options for reform.

3.8 The Environment Agency have commenced their review of the application of the regulations and have issued a number of discussion papers to the Environment Agency Landfill Regulation Group, Inert Waste Sub-Group. A summary of the options and issues which are the subject of current discussions are set out in Table 2. A formal consultation paper on the options is anticipated in 2007. To date there has been no feedback from the Environment Agency with respect to the progression of the review or the possible outcomes hence there is uncertainty with respect to the future implications for the cost of the disposal of road spoil.

Review of the exemptions from the waste management licensing regime

- 3.9** DEFRA and the Environment Agency are undertaking a review of the scheme of exemptions from waste management licensing¹⁹. The aim of the review is to complement the proposed new environmental permitting regime so that together the exemptions and the EPP regime provide a more risk-based and proportionate approach to the regulation of waste recovery and disposal as a whole. The proposed target date for the implementation of the new exemptions scheme is April 2009.
- 3.10** Currently sites which are exempt from Waste Management Licensing are not subject to the waste definition criteria which apply to landfill disposal of waste, are not subject to Landfill Tax and it is not necessary to implement the other standards specified in the landfill regulations such as engineered lining systems. Although the review of exemptions has not yet been the subject of formal consultation it is understood that there are three options under consideration which are the continuation of the current system, the removal of the system of exemptions or the introduction of a more risk based approach to the regulation of exempt activities with higher risk activities necessitating simple permits. The outcome of the review hence the likely cost implications for the disposal of road spoil is uncertain.

Review of the Waste Framework Directive

- 3.11** The Commission of the European Communities has proposed a review of the Waste Framework Directive²⁰. The proposal is intended to simplify, modernise and clarify the Waste Framework Directive. There is a lack of legal certainty concerning principally the definition of waste and the distinction between recovery and disposal. It is intended that the revision of the Waste Framework Directive puts forward clearer definitions and/or a mechanism to clarify the distinction between recovery and disposal at the EU level as appropriate. The implications the revisions to the Waste Framework Directive will have on the options hence costs associated with the disposal of road spoil currently are uncertain.

¹⁹ Review of the Exemptions from Waste Management Licencing. A Discussion Paper March 2007.

²⁰ Proposal for a Directive of the European Parliament and the Council on Waste - A Consultation Paper DEFRA October 2006

The disposal of road spoil in other EU Member States

3.12 It is difficult to obtain meaningful information regarding how the Landfill Directive is applied in other EU Member States with regard to the inert wastes. A review of the application of the Landfill Directive across the Member States was carried out in October 2005²¹ which is prior to the time when it was necessary to regulate landfill sites fully in accordance with the Directive. The review states that:

- The methods of reporting illegal landfills used to measure between Member States are not comparable.
- Since the implementation of the Landfill Directive the number of permitted or legal landfills appears to have declined.
- The Landfill Directive has brought some consistency to the principles of engineering design and has encouraged many operators to develop high standard, compliant landfills.
- The implementation of the waste acceptance procedures would appear to be slow and sporadic in Europe and appears to be still on going in most countries.

3.13 An informal review has been carried out by MJCA of professional contacts in other EU Member States. It is understood that some Member States have implemented the WAC consistent with the requirements of the Council Decision establishing criteria and procedures for the acceptance of wastes at landfills²². Other Member States have yet to implement the waste acceptance criteria (WAC). Some Member States have implemented the WAC but have applied additional acceptance criteria and in some instances have applied criteria which are more stringent than the limits specified in the Council Decision. A Landfill Tax is applied to inert waste in only a limited number of other Member States.

²¹ Golder Europe EEIG Report on the implementation of the landfill directive in the 15 Member States of the European Union, October 2005

²² Council Decision of 19 December 2002 establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC

Summary

- 3.14** The raft of waste management regulations which currently are relevant to the disposal of road spoil and the application of Landfill Tax currently is the subject of review at a European and National Level. There is very little information currently in respect of the progression of the reviews and the likely implications in respect of road spoil hence there is significant uncertainty what the impacts will be with respect to the costs for disposal. To provide clarification regarding the uncertainty discussions have been held with Government, the Environment Agency and other relevant parties. A summary of the discussions is presented in Section 4.

4. Potential changes to legislation regarding the disposal of road spoil

4.1 Discussions were held with interested parties with respect to the potential changes to the legislation. These are summarised as follows.

(i) The Confederation of British Industry (CBI) commented

'There have been no announcements with respect to landfill tax'.

CBI understand that informal discussions have been held and that the issue of rationalising definitions has been raised.

(ii) The Environment Agency (EA) commented

'(the EA) doesn't think that there is any intention to change the wastes that attract the lower level of tax'

The EA commented that there have been some discussions with Customs and Excise as to what is likely to occur but they are unable to provide any details at present. A draft paper will to be prepared which will be presented to the Landfill Regulation Group Inert Waste Sub Group. The EA indicated that there will be no change to the list of qualifying materials for Landfill Tax .

(iii) HM Revenue & Customs commented

'There have only been informal discussions between HMRC and DEFRA. It is not right at the moment to give it wider discussion'

(iv) DEFRA commented:

'The issue of the definition of inert is being looked at in the light of the Davidson Review and the inert waste sector. To help operators DEFRA have examined whether the definition of inert waste in the Landfill Directive can be carried over into the Treasury definition of inactive. DEFRA stated that this is unlikely and that they intend to produce a briefing note with respect to inert, inactive and active wastes. The briefing note currently is being prepared and will be presented initially to the Landfill

Regulation Group - Inert Waste Sub Group for discussion. Following the production of the briefing note DEFRA intend to produce a strategy document and a set of proposals for a guidance document which will be put out to consultation. DEFRA stated that they would like to commence the consultation by the end of the year 2007.'

- 4.2** A summary of the potential changes to legislation regarding the disposal of road spoil is presented at Table 3.

Summary

- 4.3** From the discussions it is evident that the review of legislation regarding the disposal of road spoil is at an early stage with little comment or certainty available with respect to the likely outcome. Much of the ongoing work is scheduled for consultation in late 2007 and early 2008. The consultation processes may provide evidence on which to reduce the uncertainty associated with the legislative reviews hence the uncertainty associated with the costs of the disposal of road spoil.

5. Potential changes to the waste acceptance criteria for landfilled wastes

5.1 As far as we are aware currently there are no active reviews of the WAC for landfill. There is a possibility that the WAC for cadmium and mercury for inert landfill sites may be reduced to the analytical limit of detection. This would help to demonstrate that no significant geological attenuation of contaminants is necessary in the barrier to inert landfill sites. Most Member States currently are experiencing difficulties in achieving the WAC limit values for chloride and fluoride for inert and hazardous landfills. Currently there are no specific WAC for non-hazardous landfill sites. It is understood that some EU Member States have introduced WAC for non-hazardous landfill sites and that it may be considered for inclusion in legislation. It is likely that any suggestion to include WAC for non-hazardous landfill sites will be resisted by a large number of Member States. It is possible that a limit for Total Organic Carbon (TOC) may be considered for non-hazardous landfill sites. If a limit for TOC is introduced it is likely that it would take several years to implement due to the consultations necessary and the time that will be taken to reach agreement of a limit value.

Summary

5.2 Although it is considered that changes to the WAC for landfill are unlikely and that even if they were proposed they would take several years to implement it is likely that the costs associated with the disposal of road spoil to landfill will increase as the existing WAC for inert landfill sites increasingly is implemented. As stated in paragraph 2.12 the implementation and enforcement of the inert WAC will increase as the requirements of PPC Permits in respect of WAC testing are implemented and enforced and sites the subject of the waste management licensing regime close.

Table 1
Current options for the disposal of road spoil

Excavated road spoil	Material not defined as a waste (eg reused on site).	Waste management legislation and Landfill Tax do not apply.		
	Material defined as a waste.	Waste management licensing legislation or exemptions apply. Landfill Regulations and Landfill Tax do not apply.		
	Waste material is subject to a recovery operation.	Disposal activity is exempt from waste management licensing.	Disposal is exempt from Landfill Tax	Landfill Tax is not payable.
	Waste material is subject to a disposal operation.	Disposal activity is subject to waste management licensing.	Landfill Tax is payable	Landfill Tax is payable at the current rate of £2.00 per tonne
			The waste is inactive waste	Landfill Tax is payable at the current rate of £24.00 per tonne
			The waste is active waste	Landfill Tax is payable at the current rate of £24.00 per tonne

Note: This table should be read in conjunction with section 2 of the report.

Table 2

Summary of the options and issues which are the subject of discussion as part of the Environment Agency review of the regulation of inert waste

As explained in paragraphs 3.7 and 3.8 DEFRA and the Environment Agency are carrying out a review of the regulation of inert waste and a series of discussion papers have been produced and discussed at the Environment Agency Landfill Regulation Group, Inert Waste Sub Group. This table presents a brief summary of each of the discussion papers and the likely impact in respect of disposal costs and Landfill Tax.

Topic area	Issues identified	Options for discussion	Comments
Recovery and disposal	The differentiation between landfilling in a quarry as a recovery operation and a landfill operation.	Potential increase in the number of activities which will be managed as recovery operations rather than landfill operations	Recovery operations are not subject to the Landfill Tax regime.
Landfill Directive derogations	The Landfill Directive gives Member States some discretion in the application of requirements to landfills for inert wastes.	The issues relate predominantly to the engineering aspects of inert landfill sites. Changes to the engineering requirements for inert landfill sites will be discussed.	Engineering aspects do not impact upon Landfill Tax. It is uncertain currently what changes will be agreed with respect to engineering at inert waste landfills hence what impact there will be on landfill disposal costs.

Table 2

Summary of the options and issues which are the subject of discussion as part of the Environment Agency review of the regulation of inert waste (continued)

Topic area	Issues identified	Options for discussion	Comments
Guidance	The guidance available is not clear enough and not readily accessible.	Methods of improvement to the content and accessibility of the guidance.	Revised and improved guidance will be helpful and should improve consistency of application of the legislation but will not affect the payment of Landfill Tax. Clearer guidance may result in a greater understanding of WAC hence more enforcement resulting in increased costs.
Inert waste risk assessment	Hydrogeological risk assessments are overly onerous with regard to the risks presented by inert wastes. There is a problem regarding how best to deal with the risks from 'rogue loads'.	The risk assessments must comply with the Groundwater Regulations. The current WAC for inert wastes are based on the assumption that a degree of protection is provided at inert landfill sites. If the degree of protection is reduced the WAC may change.	To allow for a reduced level of engineering at inert waste landfill sites the contaminant WAC may be tightened. Additional testing frequencies may be suggested in order to reduce the perceived risks from 'rogue loads'. Tightening the WAC and increasing the frequency of testing will increase disposal cost and may result in more wastes identified as non-hazardous or hazardous increasing disposal costs further.



Table 2

Summary of the options and issues which are the subject of discussion
as part of the Environment Agency review of the regulation of inert waste (continued)

Topic area	Issues identified	Options for discussion	Comments
Landfill Tax	The terminology and definitions used in the Landfill Tax regime and the landfill regulatory regime are different. There is no direct comparison between the list of permitted wastes and the list of Landfill Tax qualifying material.	The definition of inert waste is set by the Landfill Directive therefore it is only the definition relating to the Landfill Tax regime that can be changed.	The EA state in the discussion paper that a change to the wording in the Landfill Tax regime need not mean that only Landfill Directive defined inert waste is subject to a lower rate of Landfill Tax. Changes should not alter the classes of material for which the lower rate of Landfill Tax applies but it will depend on the final wording of any changes. Uncertainty remains with respect to the costs associated with the disposal of road spoil until the wording of any changes is provided.
Waste acceptance criteria	The tests for contaminant WAC are costly (approximately £200 per sample) and time consuming (of the order of 15 days)	Alternative types of tests could be considered which would provide cost and time savings.	Uncertainty exists with respect to the details and frequency of the tests which may be necessary.

Table 2

Summary of the options and issues which are the subject of discussion as part of the Environment Agency review of the regulation of inert waste (continued)

Topic area	Issues identified	Options for discussion	Comments
<p>Waste acceptance and the Duty of Care</p>	<p>Waste which is disposed of to landfill must meet the WAC whereas waste used in a recovery activity need not meet the WAC.</p> <p>It is not necessary to test some inert wastes as long as there is no suspicion that the wastes include contaminated material. An inconsistent approach is being taken to the assessment and testing of inert wastes.</p>	<p>In order to create a more level playing field it is necessary to consider the application of 'WAC type criteria' in the context of waste acceptance at other non-landfill waste activities.</p>	<p>It is likely that any changes will introduce WAC type criteria for non landfill activities hence will increase the restrictions applied to non-landfill disposal options and to activities which are exempt from waste management licensing. There will be costs associated with additional WAC type criteria for non landfill activities and the potential that wastes will be directed for non-hazardous or hazardous landfill disposal which will increase the overall disposal costs.</p>

Table 3

A summary of potential triggers and outcomes following future changes to the legislation together with an assessment of the likelihood of the trigger

Potential trigger	Basis for the potential trigger	Comment and potential effect of the trigger	Likelihood of the trigger
The rate of landfill tax payable is amended consistent with the classification of the landfill site receiving the waste rather than the definition of the waste.	DEFRA and the Environment Agency are carrying out a review of the regulation of inert waste including the inconsistencies with the Landfill Tax regime. The review is at an early stage.	It is considered that costs will increase as a higher rate of tax will be payable on a greater proportion of material.	Uncertain as the review is at an early stage. There may be significant impact on the availability of materials used to construct and restore landfills other than inert waste landfills.
A new definition of inactive waste is introduced which identifies inert inactive wastes non-hazardous inactive wastes. The lower rate of Landfill Tax still is applied to all inactive waste whether inert or non-hazardous.	DEFRA and the Environment Agency are carrying out a review of the regulation of inert waste including the inconsistencies with the Landfill Tax regime. The review is at an early stage.	This change will assist in ensuring that just because inactive waste is directed for disposal at a non-hazardous landfill site it does not have to be subject to the higher rate of Landfill Tax. It is considered that there is no significant change to the current situation.	Uncertain as the review is at an early stage. The indications are that there will be no change to definitions but a guidance document will be produced.

Table 3

A summary of potential triggers and outcomes following future changes to the legislation together with an assessment of the likelihood of the trigger (continued)

Potential trigger	Basis for the potential trigger	Comment and potential effect of the trigger	Likelihood of the trigger
The definition of inactive waste for Landfill Tax purposes may be tied to the definition of inert waste.	DEFRA and the Environment Agency are carrying out a review of the regulation of inert waste including the inconsistencies with the Landfill Tax regime. The review is at an early stage	'Inactive waste' includes a wider range of material types than 'inert waste'. A more limited proportion of material would be eligible for the lower rate of Landfill Tax as currently some non-inert wastes are defined as inactive wastes. It is considered that costs will increase as a higher rate of tax will be payable on a greater proportion of material.	Uncertain as the review is at an early stage. The indications are that there will be no change to definitions but a guidance document will be produced.
More stringent testing regimes may be introduced for inert wastes.	An inconsistent approach is being taken to assessment and testing of inert waste. The issue is the subject of review by the Environment Agency. The review is at an early stage.	If more stringent testing regimes are introduced more testing may be necessary. It is considered that costs will increase.	Uncertain as the review is at an early stage. The application of more stringent testing of inert wastes would be the subject of consultation and likely to be resisted by a large section of industry.

Table 3

A summary of potential triggers and outcomes following future changes to the legislation together with an assessment of the likelihood of the trigger (continued)

Potential trigger	Basis for the potential trigger	Comment and potential effect of the trigger	Likelihood of the trigger
Contaminant WAC are introduced for non-hazardous wastes.	Landfill directive targets are in place currently for a reduction in biodegradable municipal waste being sent for disposal to -landfill.	Wastes sent for disposal at non-hazardous landfill sites currently do not have to meet contaminant WAC therefore do not incur the associated high testing costs. If WAC are introduced at non-hazardous sites the costs of disposal will increase. Pre-treatment of some wastes will be necessary to meet the WAC.	Uncertain. The application of contaminant WAC for non-hazardous waste would be the subject of consultation and likely to be resisted by a large section of industry in the UK and by many other EU Member States.
Inert waste can be used to restore quarries without the need for a PPC Permit.	The differentiation between landfilling in a quarry as a recovery operation and a landfill operation is the subject of review by DEFRA and the Environment Agency. The review is at an early stage.	The inert contaminant WAC will not apply. It is likely that some form of control of incoming wastes will be implemented in order to ensure compliance with the Groundwater Regulations. Costs may be reduced.	Medium as the recovery of land using waste materials is beneficial compared with the use of natural resources which would otherwise be necessary in order to affect restoration.

Table 3

A summary of potential triggers and outcomes following future changes to the legislation together with an assessment of the likelihood of the trigger (continued)

Potential trigger	Basis for the potential trigger	Comment and potential effect of the trigger	Likelihood of the trigger
Exempt activities which do not attract Landfill Tax are restricted.	DEFRA currently are reviewing the scheme of exemptions from Waste Management Licensing. The aim of the review is to complement the new environmental permitting regime to provide a more proportionate approach to the regulation of waste.	It is considered that costs will increase as the Landfill Tax will be payable for activities which currently do not attract tax as they are exempt.	Uncertain as there currently is no information of the details of the review of the exempt activities.
Pre-treatment of all waste disposed of to landfill will be necessary from 30 October 2007.	Legislative requirement.	There will be costs associated with pre treatment some of which may be funded by the recovery of waste and associated reduction in disposal costs. If pre-treatment results in the disposal of a smaller quantity of waste there will be a reduced Landfill Tax burden although this will depend on any other changes to the regulation of inert waste.	Certain as it is a legislative requirement. The extent of pre-treatment necessary is uncertain. It is likely that a pragmatic approach will be taken to the definition of pre-treatment.