



House of Commons
Environment, Food and Rural
Affairs Committee

**Waste policy and the
Landfill Directive**

Fourth Report of Session 2004–2005

*Report, together with formal minutes, oral and
written evidence*

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Environment, Food and Rural Affairs Committee

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Summary

Waste policy has a lower profile than many other environmental issues, but is of great importance. The formulation and implementation of waste policy is hampered by a lack of high-quality data, while many stakeholders complain of uncertainty in the legislative and regulatory framework for waste. There are continuing concerns about the way in which EU waste legislation is negotiated and implemented.

The Committee welcomes the Government's additional funding for the Environment Agency, especially to tackle fly-tipping, and for local authorities' waste management work, but it is not clear that either the Agency or local authorities have sufficient resources to match the increasing demands placed on them. The Environment Agency should seek to reduce bureaucracy where possible, and any additional funding should be used in a way that allows it to focus on what really matters.

The Committee received evidence that nearly 700,000 tonnes of hazardous waste is unaccounted for following the ending of co-disposal of hazardous and non-hazardous waste. This could have a number of serious outcomes, which can be tackled in the short term through more effective enforcement of regulation.

The targets for diversion of biological municipal waste landfill are challenging. The hard work of many local authorities in meeting recycling and composting targets is welcome, but meeting these targets is not a wholly reliable indicator of success in meeting the Landfill Directive targets. We welcome the money the Government has allocated to increased research into new treatment technologies, but more needs to be done to generate the necessary level of investment in new treatment facilities. Steps should be taken to ensure that maximum flexibility is built into the PFI process and that local authorities are able to manage their PFI procurement as efficiently as possible.

The planning system has a major influence on the country's capacity for dealing with the country's waste. The fact that new draft planning guidance is aimed at increasing certainty for all parties is welcome. Central Government needs to make clear its own attitude to different types of waste treatment facility to assist local planning authorities in deciding applications for new waste treatment facilities. Public attitudes to waste treatment are fundamental to the successful achievement of the landfill diversion targets: the public has to recognise that, while society continues to produce more waste, more and different waste treatment methods will be required.

Incineration is a valid method of treating waste, on the condition that it recovers energy from the waste incinerated, and assuming independent scientific research confirms that incineration is not more harmful to health than other forms of waste treatment. But it should not be seen by Government as a panacea for meeting the landfill targets. Incineration of hazardous waste in cement kilns is of particular concern: it may be a legitimate treatment route, provided that such facilities meet the same standards as incinerators. The Environment Agency and cement companies must undertake the fullest possible consultation with local residents.

The Landfill Tax should be raised to £35 per tonne as soon as possible, to provide a significantly increased driver for change and additional funding for programmes designed to reduce waste. Local authority schemes to provide incentives to households to minimise, separate and recycle their waste will contribute to meeting the landfill diversion targets, as well as making the general public more aware of the impact of waste. But discretion about whether to introduce such schemes should be left with local authorities, which should ensure that their local communities are fully engaged with the process. Variable charging schemes should only be introduced if they do not have an unfair impact, especially on low-income families.

1 Introduction

Background to the inquiry

1. England and Wales produce 400 million tonnes of waste a year.¹ England alone produces about 375 million tonnes of waste annually.² On average, each person in the UK throws away seven times their own body weight in rubbish each year.³ Disposing of this mountain of waste, and finding ways to reduce the amount we generate, is a major public policy issue, given its impact on the environment and the cost of tackling it. It involves industry, which generates waste, local government, which has to dispose of municipal waste, the waste management industry, and all of us as individual producers of waste. Despite its importance, waste policy still has a low public profile, compared to other environmental issues such as climate change.⁴ For these reasons we make no apology for returning once more to the subject, following our reports in 2002 and 2003.⁵

2. When we last examined the issue, in 2003, we referred to “poor progress” towards meeting targets for recycling waste, and the “looming deadlines” set by European legislation for reducing the amount of waste sent to landfill. We also drew attention to the potential impact of the reduction in hazardous waste landfill capacity due to take place in July 2004, as a result of the ending of co-disposal of hazardous and non-hazardous waste in the same landfill.⁶ These are the two issues on which this report focuses.

3. Both of them are driven by the requirements of the 1999 EU Landfill Directive, which the Department for the Environment, Food and Rural Affairs (Defra) describes as requiring a “fundamental change to previous UK practices”.⁷ The Directive prohibits the co-disposal of hazardous and non-hazardous waste in the same landfill site, and seeks to reduce the volume of biodegradable waste sent to landfill sites. The main instrument for achieving this is the setting of national targets.

Parliamentary and other scrutiny

4. The importance of the subject is reflected in the level of scrutiny it has attracted in recent years. In addition to our two reports, mentioned above, other scrutiny bodies have also been active. The Environmental Audit Committee has produced two reports in this Parliament⁸, while the European Union Committee in the House of Lords published a report on European Union Waste Management Policy in 2003.⁹ Waste policy is largely a devolved matter, and the Welsh Assembly’s Environment, Planning and Countryside Committee is currently

¹ Environment Agency website, <http://www.environment-agency.gov.uk/subjects/waste/>

² *Waste not, want not*: report by the Prime Minister’s Strategy Unit, December 2002, para 2.1 (<http://www.number-10.gov.uk/su/waste/report/02.html>)

³ Waste Watch website, <http://www.wasteonline.org.uk/topic.aspx?id=19>

⁴ See Ev 1 [Chartered Institution of Wastes Management]

⁵ Eighth Report of Session 2001-02, *Hazardous waste* HC 919, and Eighth Report of Session 2002-03, HC 385, *The future of waste management*

⁶ Eighth Report of Session 2002-03, HC 385, *The future of waste management*, paras 2, 85

⁷ Ev 44, para 3 [Defra]

⁸ *Waste: an audit*, Fifth Report from the Environmental Audit Committee, Session 2002-03, HC 99, and *Environmental Crime: Fly-tipping, Fly-posting, Litter, Graffiti and Noise*, Ninth Report, Session 2003-04, HC 445

⁹ 47th report from the European Union Committee, Session 2002-03, HL 194

undertaking an inquiry into the Welsh Assembly Government's waste policy¹⁰, and Northern Ireland's waste management strategy has recently been examined by the Northern Ireland Affairs Committee.¹¹ The London Assembly's Environment Committee has also looked at hazardous waste and the impact of the Landfill Directive in London.¹²

Scope and aims of the inquiry

5. The aim of our present inquiry has not been to undertake a root and branch examination of all aspects of waste policy, but rather to take a snapshot of the Government's performance in implementing these two key areas of its waste policy. The inquiry's terms of reference were:

- to examine the ending of co-disposal of hazardous and other wastes, required by the EU's Landfill Directive and which came into force in July 2004, including the impact of the change, the adequacy and effectiveness of preparations made for it, and what steps should now be taken
- whether the United Kingdom is on target to meet its commitments under the Landfill Directive, and what is needed to address the challenges of the Directive.

As waste is a devolved activity, this report deals only with the situation in England.

6. We took oral evidence in November and December 2004, hearing from the Chartered Institution of Wastes Management, the Environment Agency, the CBI, the Local Government Association, the Environmental Services Association and the Minister for Environment and Agri-Environment. We also received a considerable amount of written evidence. We would like to thank those who gave us evidence, both in writing and in person.

7. Our report falls into three main parts. First, we consider a range of over-riding issues which are relevant both to hazardous waste policy and to the diversion of municipal waste from landfill. Then the report considers hazardous waste issues, and finally examines progress towards the targets set by the Landfill Directive. Waste policy is a good example of how EU environmental policy works in action, and of how environmental legislation is implemented in the UK – issues which we have regularly considered in our work. Furthermore, given the important Public Service Agreement (PSA) target relating to waste¹³, the inquiry was also another opportunity to consider how Defra is performing against its PSA targets – one of the “core tasks” of select committees.

¹⁰ See <http://www.wales.gov.uk/keypubassemenvplancou/content/waste-e.htm>

¹¹ *Waste management strategy in Northern Ireland*, Sixth Report, Session 2004-05, HC349-I

¹² *Hazardous London*, December 2004, available at <http://www.london.gov.uk/assembly/reports/environment/hazwastereport.rtf>

¹³ Defra, *Autumn Performance Report*, Cm 6396, December 2004, pp 45-46, 96, 102, 104

2 Some over-riding themes

8. During our inquiry witnesses repeatedly raised four issues with us that were relevant to both aspects of our inquiry. We have also covered them in previous inquiries, as have other committees scrutinising the subject. Some of them also have a wider relevance to environmental policy-making. For that reason we have brought them together at the start of our report. They are:

- The quality of data on waste
- Uncertainty in the regulatory and legislative framework
- Lessons to be drawn about the negotiation and implementation of European legislation
- Resources available for the enforcement of environmental policy.

Quality of data

9. The paucity and unreliability of data, and the difficulty of tracking waste flows, especially as regards hazardous waste, was a recurring theme in this inquiry. The problem was put most bluntly by Mr Peter Jones of Biffa Waste Services Ltd – “no-one seems to have a clue what is going where, compositionally, geographically or by industry sector”¹⁴ – but others made similar points. The Environmental Services Association referred to the data available as being “abysmal”¹⁵, and the CBI and Cleanaway Ltd both noted that the quality of data relating to hazardous waste flows was unsatisfactory.¹⁶ There has also been concern about the lack of adequately robust data on fly-tipping, although this has to a considerable extent been alleviated by the introduction of the ‘Flycapture’ database, established in 2004 by Defra, the Environment Agency and the Local Government Association.¹⁷

10. Problems with the data on hazardous waste have been acknowledged by Defra for some time, and the Strategy Unit report also identified a need for improved data on waste management.¹⁸ Defra told the Committee in 2003 that “there are still gaps in the information we have available [on hazardous waste]”. The Hazardous Waste Forum, which was set up in December 2002 to bring together “key stakeholders” to advise on the way forward on the management of hazardous waste, is intended to help “plug the gaps” in the information.¹⁹ More recently, the Minister told us, in relation to hazardous waste:

There has been a problem in terms of reliability in the collection of data of which systems have not really been in place in the past. We are in the process of consulting on

¹⁴ Ev 131, section B [Biffa Waste Services Ltd]

¹⁵ Q 276 [Mr Hazell]

¹⁶ Q 107 [CBI]; Ev 107, para 3.3 [Cleanaway Ltd]

¹⁷ See Ninth Report from the Environmental Audit Committee, Session 2003-04, HC445, para 5; Joint Environment Agency and Defra press release 88/05, 2 March 2005

¹⁸ *Waste not, want not*, para 4.23

¹⁹ Ninth Special Report, Session 2003-04, *The future of waste management:: Government reply to the Committee's Eighth Report*, HC 1084, para 78; Ev 45, para 13 [Defra]

new data collection procedures that will improve this so that we have a better and more reliable grasp of the data flows in relation to the waste stream.²⁰

In spite of these reservations, the Minister has been robust in his rejection of assertions that large amounts of hazardous waste remain unaccounted for following the ending of co-disposal of hazardous and other waste, an issue which we address in detail in paragraphs 34–40 below. The Minister noted that information about municipal waste flows was much more reliable than that about hazardous waste²¹, although Defra also notes that “a lack of information on specific waste streams ... is hampering the development of an effective waste strategy for household and other waste streams”.²²

11. Defra, together with the Chartered Institution of Wastes Management (CIWM) has established the ‘WasteDataflow’ project. It will provide a web-based intranet and central database for the provision of quarterly data on municipal waste.²³ In addition, Defra has consulted on a wide-ranging strategy to determine arrangements that would, across all waste streams,

provide better data to ensure a sound-evidence base for waste strategy and policy making, land-use and business planning, target setting and performance monitoring, and to meet the reporting requirements of various EU waste directives.

This strategy, one of the work streams under the Government’s Waste Implementation Programme (WIP)²⁴, was welcomed by witnesses such as the CIWM and the Environment Agency.²⁵

12. The Local Government Association (LGA) was specifically concerned about the availability of reliable data about the likely growth in the amount of waste being produced in different council areas. Without this, the LGA argued that it would not be possible to make accurate predictions about whether England was on course to meet its landfill diversion targets under the Directive. Furthermore, without more information on the growth of different elements within councils’ waste streams, it would be difficult to target resources on the councils that most need them in order to meet their own recycling targets. The LGA has been seeking to develop a programme under which councils are being asked to provide projections of the amount of biological municipal waste they are likely to be sending to landfill. Defra, while agreeing this is a worthwhile exercise, has been unable to offer any funding to support it.²⁶

13. The lack of high-quality data is a significant obstacle to the formulation and implementation of public policy. Lack of authoritative data has led to uncertainty among producers and processors of waste and has made it difficult to tell how effectively policies are working in practice. We are glad that Defra has recognised the problems with the

²⁰ Q 137

²¹ Q 140

²² Defra website, <http://www.defra.gov.uk/environment/waste/wip/data/index.htm>

²³ Defra website, <http://www.defra.gov.uk/environment/waste/wip/data/index.htm>; Ev 48, paras 31 and 34. The scheme is supported by funding from Biffaward, a programme established by Biffa Waste Services

²⁴ *Ibid*

²⁵ Ev 2, para 1.2, and Ev 5, para 4.6 [Chartered Institution of Wastes Management]; Ev 20, para 5.5 [Environment Agency]

²⁶ Ev 68, para 3; Q 235 [LGA]

existing data available about waste streams, and welcome both the ‘Flycapture’ database and the more recent support, through the Waste Implementation Programme, for a more comprehensive database of information about municipal waste. Defra should publish a statement setting out what it now intends to do to support work by the Hazardous Waste Forum to establish better information about hazardous waste. We look forward to the speedy implementation of the strategy for producing more comprehensive data about all waste streams, although it is regrettable that it has taken so long for this to be developed. We hope this will bring about a position where all players in the waste field can at least agree on the scale of the problem, even if they disagree over the appropriate solution.

14. It is not clear to us that Defra’s data strategy includes the kind of information on future predictions of waste generation by local authorities, which the Local Government Association seeks to compile, as opposed to historic data on waste streams. This kind of information is important, in order to allow for effective forward planning by local and national government, and to inform investment decisions by private companies which may be contemplating building waste treatment facilities. It is especially relevant in the context of the forthcoming Landfill Allowance Trading Scheme. We therefore recommend that Defra re-consider the LGA’s request for funding to support this project.

Uncertainty about the legislative and regulatory framework

15. Many witnesses complained of a lack of certainty surrounding the key areas of the legislative and regulatory framework, arising from delays in issuing guidance, ambiguity in the legislation and the terms of the associated guidance and a lack of adequate consultation with those affected. The CBI and Cleanaway referred to late guidance and legislation from Government, and the Local Government Association (LGA) referred to a lack of “certainty and clarity” arising from the late issuing of landfill allocations.²⁷ The ESA also complained that the legal framework for municipal waste was “unclear and imprecise”.²⁸ The British Cement Association referred to uncertainty, confusion and delays.²⁹ The Environment Agency referred to “the absence of absolute clarity” on the interpretation of the Landfill Directives and other directives.³⁰ (These comments also echo those made in our last inquiry.³¹) On the other hand, the CBI noted that business also had a responsibility to engage earlier in discussions with Government.³²

16. The Minister argued that Government had made great efforts to engage key stakeholders in the process of developing policy and had used various means to keep them informed. These included consultations with local authorities, regular meetings with trade bodies and associations representing the waste industry, seminars set up by Defra and the establishment of the Hazardous Waste Forum, which had provided an opportunity for Government to talk to the waste industry and for the industry to help shape the regulations governing hazardous

²⁷ Ev 34 [CBI], Ev 108, para 4.1 [Cleanaway Ltd], QQ 228-32 [LGA]

²⁸ Ev 84, para 34 [Environmental Services Association]

²⁹ Ev 145, para 1 [British Cement Association]. For other examples see e.g. Biffa Waste Services, Ev 133 para 2

³⁰ Ev 80, para 5, and Ev 84, para 34 [Environmental Services Association]; Ev 30, para 2 [Environment Agency]

³¹ E.g. from local government witnesses, Eighth Report, Session 2002-03, para 23

³² Q 110. See also Environment Agency, Q 81

waste.³³ The Minister also noted that one organisation which had claimed its members were not being kept informed actually sat on the Forum, so should have been passing information on to its members.³⁴ The CIWM acknowledged that the Forum has been helpful, but thought it had been set up too late³⁵, and CBI representatives told us that the Engineering Employers' Federation, representing waste producers, had not initially been allowed to join the Forum, resulting in inadequate consultation.³⁶ The CBI also claimed that the terms of some of the Government's consultation were not always "particularly clear".³⁷

17. The 'uncertainty' referred to by witnesses is attributable both to confusion within the waste legislative framework itself, and a feeling that the Government and its agencies have not done enough to explain how it will work. We note the Government's argument that it has done a great deal to communicate with the industry and other stakeholders. We also accept that such stakeholders also have responsibilities: trade associations, for instance, should ensure that information is passed down the line, and the waste management industry could do more to communicate to waste producers. But Government has the principal responsibility to ensure that legislative proposals, information and guidance are produced early enough to be helpful, and in the clearest possible form. We are not convinced, from the evidence we received, that they have done so in respect to information about waste policy, especially for waste producers.

18. Uncertainty about the legislative and regulatory framework has a significant impact on the development of long-term strategies for investment in the necessary treatment facilities by waste producers and the waste industry, a subject which we address in more detail in paragraphs 63–66 below.

Negotiation and implementation of EU legislation

19. In our last report on waste issues, we concluded: "it is vital that Defra improves its approach to European Union Directives".³⁸ This fairly summarises the evidence we received in this inquiry from waste producers and the waste industry. We heard two particular criticisms. The first was that the Government had signed up to the Landfill Directive before the technical details of how it would operate in practice were agreed. The Directive was agreed in 1999, but it was left to a technical committee to agree the Waste Acceptance Criteria (WAC) which underpin the Directive. A Council decision on the WAC was not published until January 2003.³⁹ The Environment Agency agreed that it would be "in everyone's best interests" if more of the details were settled before such environmental legislation was agreed.⁴⁰ The CBI argued that the Government should not sign up to any European Directives before the details – and the implications for the UK – were determined.⁴¹ The House of Lords European Union Committee concluded that the Government had "signed up

³³ QQ 133-36

³⁴ Q 134

³⁵ Q 8

³⁶ QQ 110-11

³⁷ Q 109

³⁸ Eighth Report, Session 2002-03, para 30

³⁹ Ev 50, Annex A [Defra]

⁴⁰ Q 77

⁴¹ Ev 38, para 5.1 [CBI]

to legislation without knowing the practical implications; while landfill operators were faced with significant uncertainty and confusion about what the law required”.⁴²

20. The second issue raised was the way in which the Government has implemented the Directive in the UK. We have already referred to complaints about the delays in issuing guidance on the legislation – what the Chemical Industries Association referred to as Defra’s “just in time” approach.⁴³ The CBI were concerned about the “over-embellishment” of European legislation by the UK Government, with a more “prescriptive” approach being taken compared to some other Member States. A witness from Corus, drawing on his company’s experience from the Netherlands and Germany, noted that those governments, in complying with environmental directives, identified key issues earlier and took a more “pragmatic” view about how to implement European legislation.⁴⁴ The Non-Ferrous Alliance suggested that a lack of resources in the Environment Agency was used by Defra as an excuse to “gold-plate” European legislation.⁴⁵

21. The Minister denied these charges:

I do not think that in relation to the way that we are transposing current Directives on waste we could be accused of gold-plating them. I think that we are doing them in a pragmatic and sensible way in line with the requirements of the Directives and I do not believe that we are adding additional burdens or requirements to those Directives which would fall on UK industry.⁴⁶

22. Problems with the way in which EU waste legislation has been implemented have added to the uncertainty we have already mentioned. The Government must in future avoid, wherever possible, agreeing to new European legislation without a full understanding of the details of how such agreements will be interpreted and implemented. The Government should also seek to learn lessons from other EU Member States on ways in which environmental directives can be implemented in a pragmatic manner, while ensuring that their requirements are met. In future, when new environmental proposals about waste emerge from the Commission, the Government must engage with practitioners at the earliest possible stage to ensure that such proposals are practicable, enforceable and capable of implementation.

Funding for enforcement

23. The waste management system is driven by regulation. Government policy will dictate how waste can be treated, and – through policies on minimisation, recycling and reuse – how much waste is produced in the first place. But regulation is only effective if is properly enforced. For instance, making it more expensive to send waste to landfill will encourage waste producers to seek more acceptable forms of treatment, but only if there is a likelihood of detection and subsequent prosecution if the waste is illegally disposed of instead. The waste management industry, which invests significant amounts of money in treatment facilities,

⁴² 47th report, Session 2002-03, HL 194, para 29

⁴³ Ev 167, para 2 [Chemical Industries Association]

⁴⁴ Ev 38, para 5.1; QQ 116, 121 [CBI]

⁴⁵ Ev 176, para 5 [Non-Ferrous Alliance]

⁴⁶ Q 202

needs certainty that Government policy will actually be implemented. A waste company will not wish to make firm decisions on, for example, new hazardous waste treatment capacity if there is no guarantee that the hazardous waste will be forthcoming, rather than being disposed of through some illegal, and thus cheaper, method. So proper enforcement of regulation is vital to ensure that the waste market is not distorted.

24. The Environment Agency has the principal enforcement role. In our last report on waste management, we expressed concern that the Agency did not have the capacity to regulate effectively, given the increasing demands placed on it.⁴⁷ This theme was raised again in our present inquiry. The CIWM told us that the Agency “needed more policemen ... more money to police waste management”.⁴⁸ The ESA stated that “the culture of enforcement” was not strong enough, in part because of the Agency’s lack of resources, and claimed that the Agency’s Grant in Aid (GiA) for 2004–05 had been cut by £4 million.⁴⁹ Beyond Waste argued that the Agency lacked the right skills to meet the challenges of the new hazardous waste regime.⁵⁰ The Environmental Audit Committee has also suggested that the Agency needs significantly more money just to combat fly-tipping.⁵¹

25. The Environment Agency described the work it had been doing to police the disposal of hazardous waste following the co-disposal ban, including investigation visits to producers and 30 stop and search operations of waste carriers.⁵² But the Agency also told us it had “limited capacity” to deal with increases in illegal activity and that its GiA was “under pressure”.⁵³ The Minister argued that the Agency had adequate resources, which had been increased, although he admitted that the demands placed on it had also grown.⁵⁴ Defra denied there had been a “£4 million cut” for 2004–05. In the 2002 spending settlement (SR2002), the Agency’s baseline GiA for 2002–03 was increased by £6 million, “in recognition of in-year pressures”. The GiA was also provisionally increased by £6 million for 2004–05 and 2005–06. In the event, the funding for 2004–05 could only be increased by £2m due to budget constraints. So this is a smaller increase than initially foreseen, rather than a cut in actual funding. Defra added that other increases in charging income for the Agency, previously offset by GiA, provided further funding.⁵⁵ In addition, the Agency has been awarded £2 million for 2005–06 from the proceeds of the Landfill Tax, specifically to support the policing of fly-tipping.⁵⁶

26. We note that the Government has given the Environment Agency increased funding, and welcome the recent announcement of additional targeted funding to tackle fly-tipping. But we remain unconvinced that the Agency has sufficient resources to match the increasing demands placed on it by new and forthcoming environmental legislation, including the implementation of the Landfill Directive and associated EU legislation

⁴⁷ Eighth Report, Session 2002-03, para 53

⁴⁸ Q 16

⁴⁹ Ev 82, paras 22-23 [Environmental Services Association]

⁵⁰ Ev 183, section 7 [Beyond Waste]

⁵¹ Ninth Report, Session 2003-04, *Environmental Crime: Fly-tipping, Fly-posting, Litter, Graffiti and Noise*, HC 445, para 30

⁵² Q 87

⁵³ Ev 20, paras 5.3-5.4 [Environment Agency]

⁵⁴ Q 244

⁵⁵ Ev 66-67, para 1 [Defra]. The Agency’s GiA for environmental protection in 2004-05 is £113.4 million (Environment Agency, Corporate Plan 2004-07, p 44)

⁵⁶ Environment Agency press release, 22 November 2004

relating to waste management. We regret that it has not been possible to deliver in full the planned increase in the Agency's Grant in Aid for 2004–05, and we would request that the Government re-examine with the Environment Agency the adequacy of the Agency's resources, so that a proper policing operation can be undertaken to ensure that all wastes, and in particular hazardous wastes, are properly and legally disposed of.

27. Witnesses also noted that there were ways in which the Environment Agency could do its job in a more effective way. For instance, the Waste Recycling Group suggested that the Agency tended to “gold-plate” European Directives through its guidance notes, which were not subject to any peer review or formal adoption process.⁵⁷ The CBI argued that the Agency had adopted a “prescriptive” approach on the permitting of landfill sites, in the absence of guidance from Defra.⁵⁸ In its response to our previous report on waste issues, Defra explained that the Agency's approach should be to target its regulating resources better, and to seek to ensure effective regulation with the minimum regulatory burden.⁵⁹

28. We agree with the Government that the Environment Agency should seek to reduce bureaucracy where possible, and any additional funding should be used in a way that allows the Agency to focus on what really matters, without undue “gold plating”. Defra can also help the Agency's work in enforcing environmental regulation by working closely with it in a way that avoids duplication and which allows the Agency to issue guidance on legislation promptly.

Fly-tipping

29. Recent evidence from the ‘Flycapture’ database has once again highlighted the scale of illegal dumping of waste and the cost of removing it. In the second half of 2004, local authorities spent some £24 million on clearing fly-tipped waste.⁶⁰ In addition to the costs to local authorities and the Environment Agency, costs can also be borne by the owners and occupiers of land on which waste is fly-tipped. This means that, for instance, a farmer may be obliged to pay for the removal of fly-tipped waste from his fields, even when he has taken steps to protect the land from fly-tipping.⁶¹ **We recommend that the Government consider introducing arrangements under which owners and occupiers of land on which waste is fly-tipped could have the waste removed by the appropriate authorities, or could be recompensed for the cost of removing the waste themselves, where it can be shown that they had taken all reasonable steps to prevent fly-tipping. This could be funded from the Landfill Tax, or from the proceeds of fines imposed on those found guilty of fly-tipping. The latter approach would help ensure the application of the ‘polluter pays’ principle.**

⁵⁷ Ev 105, paras 4.1-4.3 [Waste Recycling Group]

⁵⁸ Ev 36, para 2.6 [CBI]

⁵⁹ Ninth Special Report from the Committee, Session 2002-03, para 31

⁶⁰ Joint Environment Agency and Defra press release 88/05, 2 March 2005

⁶¹ Local authorities may serve notices on the occupiers of land to clear fly-tipped waste, although there is a defence that the occupier did not knowingly cause or permit the illegal deposit. Environmental Audit Committee, Sixth Special Report, Session 2003-04, HC 1232, *Government Response to the Committee's Sixth and Ninth Reports*, paras 32-33

3 Hazardous waste

The co-disposal ban

30. The Landfill Directive requires the separation of landfill sites into three categories – hazardous, non-hazardous and inert wastes – and a ban on the co-disposal of any of these wastes (known as the “co-disposal ban”). The ban came into effect in the UK on 16 July 2004. We heard some criticism about preparations made in advance of the ban, and even more about its impact.

Preparations for the co-disposal ban

31. Many witnesses from the waste industry told us of problems over the lack of guidance from Defra about the forthcoming ending of co-disposal. Much of the trouble seems to have stemmed from issues already raised in this report: lateness in agreeing the new legislation and a lack of communication about the implications of the change. Although the CIWM felt that the message had got through to the waste practitioners⁶², other witnesses argued that waste producers were not fully informed. The ESA stated that there had been “very poor government communication with waste producers” and that, overall, the country was “unprepared” for the change, as details of what the ban would mean in practice – via the Waste Acceptance Criteria – were not implemented in UK law until 2004, and there was also a lack of confidence in regulatory enforcement.⁶³ We pressed industry representatives on the level of consultation by Government. The CBI explained that “if the terms of that consultation are not particularly clear then it becomes difficult for business to engage”, adding that it had been frustrating that deadlines had been missed and that the nature of the process had meant that critical technical decisions had not been taken until late in the day.⁶⁴

32. The Environment Agency also suggested that, because the Directive was seen as relating to landfill operators, not enough attention had been paid to communicating its impact to waste producers. Agency witnesses noted that it was particularly difficult to reach the small and medium-sized businesses, although they stressed that very good work was being done to increase awareness.⁶⁵ Defra denied that industry was unprepared for the ban. The ending of co-disposal had been announced in 1999 and the Minister argued that companies “knew this measure was coming” and thus had taken steps to prepare for its impact.⁶⁶

33. The main complaint about preparation for the ban related to the uncertainty over the WAC, and we consider this issue in more detail in paragraphs 42–47 below.

Impact of the co-disposal ban

34. One of the effects of the Landfill Directive was to reduce the number of landfill sites to which hazardous waste could legitimately be sent, as most sites that had previously taken both

⁶² Q 5

⁶³ Ev 80, para 5, and Ev 82, para 20; Q 274 [Environmental Services Association]. Sheffield City Council made similar points, Ev 114.

⁶⁴ Q 109

⁶⁵ QQ 78-79

⁶⁶ Q 124

kinds of waste were no longer able to accept hazardous waste. This also led to an increase in the cost of disposing of such waste. In the run-up to 16 July, fears were therefore expressed that a “hazardous waste mountain” would build up, or that hazardous waste would be illegally disposed of. The question of what actually happened as a result of the ban was one of the most vexed in our inquiry. The waste management industry expressed concerns that large quantities of waste were unaccounted for, while the Minister has repeatedly denied that this was the case.⁶⁷ The ESA told us that there was “mounting concern” that solid hazardous waste was “disappearing”.⁶⁸ In written evidence, the CIWM suggested various reasons why the expected quantity of hazardous waste was not materialising:

- re-classification of wastes as non-hazardous (the CIWM states that many wastes were in the past consigned on a precautionary basis);
- reduction or elimination by waste producers of the production of hazardous waste;
- waste producers clearing out hazardous wastes prior to the ban: evidence for this includes the fact that contaminated land projects showed a significant increase in consignment to landfill in early 2004;
- stockpiling of hazardous wastes by producers, hoping that additional treatment or disposal capacity would become available.

35. The CIWM expressed concern that, in the absence of any evidence that fly-tipping of hazardous waste had increased, much of the waste was being illegally disposed of in non-hazardous landfill.⁶⁹ (The ESA, however, did give examples of increased fly-tipping of hazardous waste.⁷⁰) Other evidence cited by the CIWM to back up their case was that, under the Directive, more hazardous waste now has to be pre-treated before being sent to non-hazardous waste landfill sites. Operators of facilities providing such treatment had not seen the kind of increase in business they would have expected, given the amount of hazardous waste assumed to be in the system. This led CIWM witnesses to conclude that the waste must be continuing to be sent to landfill without adequate pre-treatment.⁷¹ One CIWM witness suggested that some 750,000 tonnes of hazardous waste was unaccounted for.⁷²

36. The Minister argued that there was no evidence for any “missing” waste. The fact that less hazardous waste was being sent to landfill simply showed the policy was working: “what we are seeing is very much in line with predictions from the industry, the Environment Agency, and indeed our own officials. What we expected to see was a drop in the flows of hazardous waste going into landfill”. He felt the drop was due to more remediation of waste on site, especially of contaminated soils, which make up 60 per cent of this waste; acceleration of

⁶⁷ E.g. Official Report, 21 October 2004, col 1004

⁶⁸ Ev 82, para 16 [Environmental Services Association]

⁶⁹ Ev 2, para 2.1; Q Q18-20 [Chartered Institution of Wastes Management]; also Environment Agency Q 85

⁷⁰ Ev 97, section A [Environmental Services Association]. The London Assembly’s Environment Committee also heard some evidence to this effect. *Hazardous London*, December 2004, available at <http://www.london.gov.uk/assembly/reports/environment/hazwastereport.rtf>

⁷¹ QQ 5-7

⁷² Q 8

disposal prior to the ban; and an increase in waste minimisation, reuse and recycling by waste producers. He denied there was any evidence of large-scale re-classification of waste.⁷³

37. The Environment Agency made similar points, also noting that many producers had thought about the ban “quite innovatively” and had segregated truly hazardous waste to minimise the amount of hazardous waste consigned, and therefore reduce costs. They had expected to see this kind of decrease, given the combination of the co-disposal ban and the increased cost of landfilling caused by the reduction in the number of sites that can take hazardous waste.⁷⁴

38. Partly due to the lack of data already mentioned, much of the evidence on this issue presented to us was somewhat anecdotal and patchy. Mr Alan Potter, of the consultancy Beyond Waste, analysed all the available information in an attempt to reconcile the figures and identify the indicative shortfall. This is set out in his very detailed written evidence. Mr Potter emphasised that the data used is based upon the best information available reinforced by market intelligence and professional judgement but “should not be regarded as definitive or absolute.”⁷⁵ However, it is still the most comprehensive assessment of the subject we received, and therefore worth considering carefully. The table below summarises his findings.

Table 1: Hazardous waste

Types of hazardous waste	Amount (million tonnes)
Expected annual quantity of hazardous wastes for landfill	2.75
Less: Ending of hazardous liquid disposal to landfill	(0.09)
Less: Current inputs of hazardous wastes to landfill	(1.16)
Less: Early disposal of construction and demolition wastes	(0.488)
Less: Storage of wastes	(0.1)
Less: Waste minimisation	(0.060)
Less: Revised estimate arisings—newly hazardous wastes ⁷⁶	(0.158)
Balance: waste to be accounted for	0.694

Source: *Beyond Waste*, (Ev 182)

Mr Potter does not believe that factors cited by Ministers, such as waste minimisation, or storage of waste, can account for all of the “missing” waste. His conclusion is simple:

⁷³ QQ 124-25; see also CBI, Q 108

⁷⁴ Q 83

⁷⁵ Ev 178 [Beyond Waste]

⁷⁶ The range of wastes defined as hazardous was widened by the EU in 2002. Ev 179, para 1(iii) [Beyond Waste]

On a conservative estimate perhaps 694,000 tonnes (on an annualised basis) of hazardous wastes are still being co-disposed despite the banning of this practice in July 2004. This waste has not just simply gone away.⁷⁷

He argues that this continuing co-disposal results partly from ignorance of the new requirements among producers, but also from an increase in the practice of describing hazardous wastes as non-hazardous: “There has always been a degree of this but the significantly higher costs resulting from the ending of co-disposal and low risk of detection imply that the risk/reward balance has shifted to encourage operators engaging in such practices”.⁷⁸

39. **Beyond Waste presented us with a careful analysis of a great deal of official and industry-derived data, and concluded from this that nearly 700,000 tonnes of hazardous waste is unaccounted for following the co-disposal ban. We request that the Government, in its response to this report, produce its own assessment of the data which Beyond Waste has compiled, making clear whether it accepts these figures and, if so, what action it plans to take.**

40. **Assuming these findings are valid, it seems to us that several conclusions follow:**

- **Enforcement is not regarded as being tough enough, and as a result waste is being disposed of illegally, for cost reasons. This means that a key financial lever – the increased cost of disposing of hazardous waste – is having a perverse effect, making it less rather than more likely that an environmentally appropriate disposal route will be used**
- **The waste market will be distorted: waste producers and waste management companies correctly disposing of wastes will be put at a commercial disadvantage compared to less scrupulous competitors**
- **If deliberate misdescription of wastes becomes established, greater quantities of more and more hazardous wastes will be diverted from legitimate routes, further distorting the market**
- **Investment in new hazardous waste treatment plants could be jeopardised, as the industry will not be able to rely on a stream of wastes to be treated.**

The main key to avoiding these outcomes, at least in the short-term, is for enforcement of regulation to be more effective: the Environment Agency must focus on ending the practice of illegal co-disposal and make clear to Defra the resource implications of so doing. In the longer term, more must be done to reduce the amount of hazardous waste being produced in the first place. Particular attention should be focused on small and medium-sized enterprises.

41. Another impact of the ending of co-disposal, and the associated reduction in the number of hazardous waste sites, is that hazardous wastes may have to be transported longer distances. Cleanaway noted that “the uneven distribution of the sites is leading to very

⁷⁷ Ev 183, section 7 [Beyond Waste]

⁷⁸ Ev 182, section 5 [Beyond Waste]

significant increases in transportation of hazardous wastes around the country⁷⁹. Safety in Waste and Rubbish Disposal (SWARD) noted the impact, in terms of noise, general nuisance and possible risks to health, on people living near hazardous waste sites, and expressed concern about the potential increase in traffic following the reduction in the number of such sites.⁸⁰ We address the wider issue of public attitudes to waste treatment and landfill sites in paragraphs 77–80 below. But we note here that one of the additional benefits of greater waste minimisation, and thus a reduction in the amounts of hazardous waste being produced, would be the reduction in long-distance transportation, and of an increased concentration of traffic at the remaining hazardous landfill sites.

The Waste Acceptance Criteria

42. The Landfill Directive introduces detailed criteria for the disposal of certain wastes, the Waste Acceptance Criteria (WAC), which come into force on 16 July 2005. The WAC are a key element of the Landfill Directive. They set criteria for three kinds of waste:

- hazardous waste to be disposed of in a hazardous waste landfill site
- stable non-reactive waste to be disposed of in a separate cell in a non-hazardous waste landfill
- inert waste to be disposed of in an inert waste landfill.

Defra states that, under the WAC, where disposal by landfill is the identified option for all or part of the waste, waste producers will consider appropriate treatment options, identify the landfills that may be able to accept the waste and establish whether the waste will meet the WAC. Usually this will involve the producer in discussions with waste contractors and/or landfill operators. Producers are responsible for ensuring that the waste going to landfill meets the criteria.⁸¹

43. The major complaint we heard was that the WAC were agreed much too late, and that technical guidance on how they would operate in practice was also very late in appearing. As a result, witnesses suggested it would be difficult for waste producers and the waste industry to be prepared for their coming into force in July 2005. The ESA told us in December 2004 that the procedures for sampling and testing of waste to meet the WAC were not in place, so waste producers still did not know at that stage what they had to do. Other details were still not decided, so “neither the industry nor waste producers yet have the full regulatory information that they need in order to plan for next July”.⁸² The Non-Ferrous Alliance (NFA), which represents the UK non-ferrous metals industry, stated that clarity about the requirements for the monolithic WAC, which particularly affects their industries, were still not available in November 2004.⁸³ SITA, a major waste company, was uncertain that the UK

⁷⁹ Ev 107, para 3.4 [Cleanaway Ltd]. See also Ev 37, para 4.1 [CBI]

⁸⁰ Ev 178 [Safety in Waste and Rubbish Disposal (SWARD)]

⁸¹ Defra website

⁸² Q 276; Ev 86, section 1 [Environmental Services Association]

⁸³ Ev 176, para 4 [Non-Ferrous Alliance]

would have sufficient treatment capacity to handle the hazardous waste stream arising from the implementation of the new criteria.⁸⁴

44. The Minister once again stressed that industry had had time to prepare, and he was satisfied that the waste management industry and waste producers would be ready to implement the WAC on time. Some “technical work” remained to be done in relation to guidelines on the operation of the Criteria, although this related only to a small proportion of waste. The Minister explained that the Government was talking to the companies involved: “it is not as if it will be a complete surprise and they are waiting for the actual details in May”.⁸⁵ He emphasized that the industry had no real cause to complain about not being kept involved:

They have been involved in a number of seminars which the Department has set up and in relation to the specialist wastes there is also close and regular contact between the industry sectors and my own Department.⁸⁶

The Environment Agency noted that the UK, among others, had felt it was not satisfactory to have insufficient detail in the Criteria, allowing for clarity in preparing for the Directive, and the UK had been in the lead on pushing forward the work that led to agreement.⁸⁷

45. In supplementary evidence, the Agency explained that agreement had now been reached which would allow guidance on the WAC to be published in March 2005, rather than May:

We had been awaiting Government confirmation of the regulatory requirements for sampling and testing of monolithic wastes with the final document planned for publication upon issue of the amending regulations. We have recently agreed with Government that this guidance can be finalised and published despite the regulations still being subject to consultation. This has allowed us to bring forward publication of the final guidance document to March.⁸⁸

46. Much of the argument surrounding the technicalities of the Waste Acceptance Criteria (WAC) is complex, and we did not take sufficiently detailed evidence to reach a clear view about what exactly will happen in different industries on 16 July 2005. But we were disappointed to hear, *once again*, so many complaints from industry about lack of clarity and lateness in the issuing of guidance. We were pleased to hear that the UK pressed for proper clarity in the WAC, but we note again that the difficulties which have arisen because of the decision to agree the Directive without knowing what the details would be, were exacerbated by the length of time it took to agree precisely how the WAC should operate. We hope that the Minister is correct in stating that industry will be fully ready to manage the impact of the WAC, but, given the doubts cast on the Government’s fairly sanguine view of the ending of co-disposal, we remain unconvinced. We were pleased to learn of the pragmatic decision by the Government and the Environment Agency to allow publication of the guidance in March, earlier than expected, although we

⁸⁴ Ev 159, para 16 [SITA UK]

⁸⁵ Q 129-31

⁸⁶ Q 133

⁸⁷ Q 75; also Defra Ev 47 para 23

⁸⁸ Ev 32 [Environment Agency]

note that this gives industry only four months to make their final arrangements. Nevertheless, we hope this will allow waste producers and the waste industry to make effective preparations for the introduction of the WAC.

47. The Government, together with the industry, should commission independent work to establish with complete clarity the reasons behind their differing perceptions relating to preparedness for the introduction of the WAC. The outcome of such a study would provide a valuable insight into how to avoid this type of problem occurring in the future.

4 Diversion from landfill: the Government's targets

48. Article 5(2) of the Landfill Directive sets targets for the amount of biodegradable municipal waste (BMW) that is sent to landfill. The Directive defines municipal waste as “waste from households, as well as other waste which, because of its nature or composition, is similar to waste from households”, and biodegradable waste as “any waste that is capable of undergoing anaerobic or aerobic decomposition”, such as food and garden waste, and paper and paperboard.⁸⁹ BMW represents about two-thirds of all municipal waste.⁹⁰ The targets are expressed as a percentage of the amount of waste that was landfilled in 1995. A derogation is available under the Directive allowing Member States which had previously landfilled more than 80 per cent of BMW to postpone meeting the targets by up to four years. The UK has taken advantage of this derogation. Its targets are set out in Table 2 below. Given that growth in municipal waste has been continuing to rise at a rate commonly quoted at around 3 per cent (although it varies significantly between authorities)⁹¹, these targets pose an even more significant challenge to the Government, and the country as a whole. Table 3 makes clear the magnitude of the task, plotting the impact of annual BMW growth of zero, one, two and three per cent.

Table 2: The UK's targets for diversion of BMW from landfill

Year	2010	2013	2020
Proportion of BMW allowed to be landfilled compared to 1995 amounts	75%	50%	35%

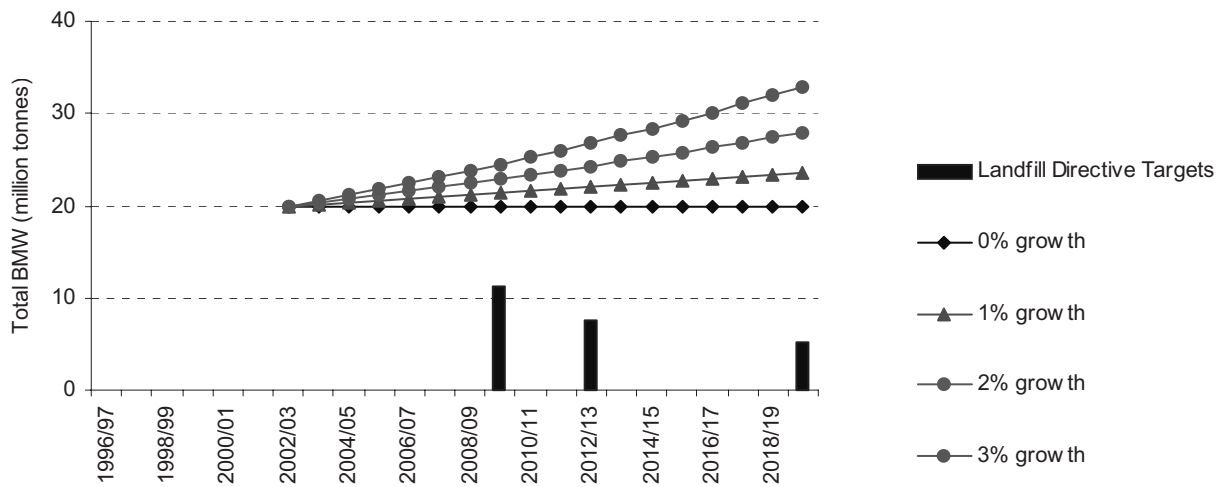
Source: Defra, Ev 47

⁸⁹ Ev 118 [Professor Chris Coggins]. There are arguments over the definition of municipal waste, which we return to later in paragraphs 56-57 and 60 below.

⁹⁰ Ev 71 (graph) [LGA]

⁹¹ Ev 70, para 21 [LGA]

Table 3: Biodegradable Municipal Waste and the Landfill Directive Targets



Year	LFD Targets (m tonnes)	BMW to be diverted if 0% growth in BMW (m tonnes)	BMW to be diverted if 1% growth in BMW (m tonnes)	BMW to be diverted if 2% growth in BMW (m tonnes)	BMW to be diverted if 3% growth in BMW (m tonnes)
2010	11.2	8.73	10.17	11.69	13.31
2013	7.46	12.47	14.56	16.83	19.32
2020	5.22	14.71	18.38	22.69	27.72

Source: ESA, Ev 86

Current trends in municipal waste show that the total amount of waste has continued to rise, although the proportion of that waste being recycled or composted has also risen. The amount incinerated with energy recovery has remained roughly constant. A larger proportion of municipal waste is having some kind of value extracted from it than before, and a smaller proportion is going to landfill. For the first time in recent years, the actual tonnage of municipal waste landfilled has also decreased slightly, from 22.3 million tonnes in 2001–02 to 22 million tonnes in 2002–03.⁹²

49. The Government has implemented various measures to meet the national targets. These include a tax on landfill, funding for schemes to stimulate waste minimisation, reuse and recycling, additional funding for local authorities, most recently through the Waste Implementation Programme (WIP), statutory recycling and composting targets for local authorities and a system of tradable landfill allowances for local authorities.⁹³ In this section

⁹² Ev 48, para 29 [Defra]. Defra has agreed that waste sent to anaerobic digestion may count towards the waste recycling Best Value Performance Indicator targets.; see http://www.defra.gov.uk/environment/waste/localauth/pdf/bvpi_faq.pdf

⁹³ Ev 44, paras 5-6 [Defra]

we look briefly at the targets set for local authorities, then consider whether they, and the targets under the Directive, are on track to be achieved.

50. Defra has set all local authorities that have waste management responsibilities individual performance standards for recycling and composting in 2003–04 and 2005–06, as Waste Best Value Performance Indicators (BVPs).⁹⁴ Different standards were set for different groups of authorities in recognition of differing local circumstances. On average, authorities were asked to double their rate of recycling by 2003–04 and have been asked to triple it by 2005–06. No decision has been taken on extending the targets beyond 2005–06. The overall aim of these targets is that nationally, at least 17 per cent of household waste should be recycled or composted by 2003–04, and at least 25 per cent by 2005–06. These targets are incorporated in Defra’s Public Service Agreements (PSAs) under SR2002, and taken forward in the SR 2004 PSAs.⁹⁵ Defra announced in January 2005 that the 2003–04 target had been achieved.⁹⁶

51. Figures for individual authorities show considerable variations in the proportion recycled or composted, the rate of increase, and the extent to which rates exceed or fall short of the target set. Lichfield’s rate, at 46 per cent, is the highest in England, and far higher than its target of 26 per cent, while at the bottom Liverpool failed to reach its modest target of eight per cent.⁹⁷

52. The other main driver introduced by the Government to influence local authorities is the Landfill Allowances Trading Scheme (LATS). Under the scheme, each waste disposal authority is allocated a certain amount of BMW that it is allowed to landfill in each year from 2005–06 to 2019–20. Authorities will be able to trade allowances with other authorities, save them for future years or use some allowances in advance.⁹⁸ We address LATS, along with other financial instruments, in paragraphs 111–19 below.

Will England meet the landfill diversion targets?

53. Many witnesses expressed doubts that the national targets could be met. Several noted that the amount of waste being produced was continuing to grow, and would have, in the LGA’s words, a “dramatic” impact on the chances of meeting the targets. Data gathered by the LGA from waste disposal authorities, setting out each council’s prediction for the amount of BMW they will be sending to landfill over time, suggest it is highly unlikely that the 2010 target for England for reducing BMW to landfill will be met.⁹⁹ The LGS added that in the following years “it gets significantly worse than that”.¹⁰⁰ The LGA’s essential message was that more resources were needed for local councils, and in particular, resources needed to be targeted at the authorities which are most at risk of missing their targets. This concern was related to the Association’s argument, addressed earlier in our report, about the lack of data

⁹⁴ Defra website : <http://www.defra.gov.uk/environment/waste/management/guidance/mwms/10.htm>

⁹⁵ Defra, Autumn Performance Report, Cm 6396, December 2004, pp 45-46, 96, 102, 104

⁹⁶ Ev 65 [Defra]; Defra press release 18 January 2005; Ev 67, para 3 [Defra]

⁹⁷ Defra press release 18 January 2005

⁹⁸ Defra website: <http://www.defra.gov.uk/environment/waste/localauth/lats/index.htm>

⁹⁹ Ev 78 [LGA]

¹⁰⁰ Q 268

on future waste flows. If it is not clear which local authorities are going to face the biggest tasks in the future, the LGA conceded that they would be “shooting blind”.¹⁰¹

54. The Composting Association was one of several organisations which concluded that the national targets were not likely to be met because of insufficient treatment capacity.¹⁰² The CIWM felt that the earlier targets could be met, but it would be very difficult to reach the later ones on the basis of recycling and composting schemes alone.¹⁰³ The earlier targets were of their nature easier to achieve, but it would become progressively more difficult to raise the level of diversion higher and higher. Although the low-performing authorities should not find it too difficult to improve their performance, the high-performing authorities might find it more difficult to improve on their rates. To achieve the 2020 targets, more treatment capacity would be needed, in addition to more recycling and reuse.¹⁰⁴ The Institution of Civil Engineers made similar points.¹⁰⁵

55. The Waste and Resources Action Programme (WRAP), which works to promote waste minimisation, reuse and recycling, argued that the United Kingdom “is now making substantive and rapid progress towards the challenging recycling and composting targets”, and felt that this level of progress suggested that councils had a “fair chance” of meeting the 25 per cent target.¹⁰⁶

56. An issue which may cloud discussion over likely progress towards meeting the targets is that there appears to be some confusion over the definition of “municipal” waste. Professor Chris Coggins notes that the Waste Emissions Trading Act 2003, which is the statutory authority for the Landfill Allowances Trading Scheme, uses the same definition as the Directive, but the Prime Minister’s Strategy Unit report, *Waste not, want not*, defines municipal waste as “all waste under the control of local authorities”. 89 per cent of this is household waste. Professor Coggins cites other apparent confusion over the exact meanings of the phrase, and the extent to which some commercial waste, included as “municipal” by some authorities, would fit in with EU interpretations.¹⁰⁷

57. The ESA noted that it appeared that organic waste collected by, or on behalf of, a local authority could be defined as “municipal” waste when the same waste would not be included in the definition if it were disposed of directly by, for instance, a restaurant. Mr Peter Jones, of Biffa, regarded this as “intellectually flawed”.¹⁰⁸ The LGA noted that trade waste collected by a local authority will be defined as “municipal” waste, but not if it is collected by a private sector operator.¹⁰⁹ There are other apparent anomalies: waste from schools and universities, for instance, is defined as household waste.¹¹⁰

¹⁰¹ QQ 235-36

¹⁰² Ev 151, para 1.1, and Ev 152, para 3.4 [The Composting Association]

¹⁰³ Q 48

¹⁰⁴ Q 55-57

¹⁰⁵ Ev 160, summary [Institution of Civil Engineers]

¹⁰⁶ Ev 171, para 5 [Waste and Resources Action Programme (WRAP)]

¹⁰⁷ Ev 121 [Professor Chris Coggins]

¹⁰⁸ Q 277

¹⁰⁹ Ev 69, para 16 [LGA]

¹¹⁰ Defra: http://www.defra.gov.uk/environment/waste/localauth/pdf/bvpi_faq.pdf

58. The Minister was more upbeat than other witnesses about the chances of meeting the targets. He told us he was “a lot more confident” than he had been a year earlier, given the progress being made, particularly by municipal authorities, in relation to recycling and reuse, and considerable new investment in treatment facilities and the imminent introduction of the Landfill Allowances Trading Scheme. The fact that the 2003–04 target had been met, and his confidence that the 2005–06 target would also be met, encouraged him to believe that the overall EU targets could be met as well. He acknowledged that there were “major challenges in relation to reducing the waste stream” and in hitting the targets, but that these challenges were “achievable”.¹¹¹

59. We agree with the Minister that the targets for diversion from landfill are challenging, but we are less optimistic that they can be achieved. While we welcome the hard work of many local authorities in meeting their targets for recycling and composting, we are not convinced that their achievement in meeting the 17 per cent target for recycling and composting – low by the standards of some other EU countries – is a wholly reliable indicator of likely success in meeting the targets under the Directive. We recommend that, in its response to our report, Defra set out, with as much statistical data as possible, how it thinks progress towards each of the Landfill Directive targets will be met.

60. We also note evidence about the confusion among many stakeholders over the exact definition of municipal waste, and are concerned about the possible impact this might have on assessing whether local authorities have achieved their targets and indeed on the operation of the Landfill Allowance Trading Scheme (LATS). We recommend that Defra make clear, as quickly as possible, precisely what categories of waste will be allowed to count towards achievement of local authority targets and will be included in the LATS, and the criteria used in deciding them.

5 What is needed to increase our chances of meeting the targets?

61. To meet the targets for diversion of waste away from landfill, it is necessary to reduce the amount of waste being produced, and to reuse or recycle a greater proportion of the waste which is subject to disposal. The Government has done a great deal to assist businesses to find ways of minimising waste and reusing materials, for instance through the funding of the Waste Implementation Programme (WIP), the Waste and Resources Action Programme (WRAP) and Envirowise.¹¹² The Government is also continuing to provide funding for local authorities to further develop household recycling and similar projects. Financial instruments like the Landfill Tax and the LATS also have an important role. We address some of these issues in this section of our report. First, however, we address another important factor in

¹¹¹ QQ 155-57

¹¹² Ev 48-49, paras 30-38, and Ev 65 [Defra]; Ev 170 [WRAP]; www.envirowise.gov.uk

diversion from landfill: the adequacy of treatment capacity for existing and future waste streams.

Developing additional treatment facilities

62. There is a range of treatment methods for municipal waste, set out in Table 4.

Table 4: Waste Management Technologies for Municipal Solid Waste

Treatment	Definition
Biological Processes	
Anaerobic Digestion	Biodegradable wastes are decomposed by bacteria in the absence of air, under elevated temperatures in much the same way as organic waste degrades in landfill sites to produce methane but under accelerated controlled conditions. This leads to the production of a 'digestate' containing bio-solids that may be suited for application to land and/or a liquid, and a methane rich 'biogas' which can be used as a fuel to produce electricity. Can be used to deal with certain high organic content industrial or agricultural wastes.
Centralised Composting	Green wastes (and sometimes kitchen waste or the biodegradable fraction of MSW e.g. cardboard) are composted in a centralised facility. Where kitchen waste is involved, this requires in vessel or enclosed systems. The process is tightly controlled to achieve and maintain specific temperatures to facilitate bacteria/pathogen destruction to satisfy the provisions of the Animal By-products Order. Produces a compost or soil conditioner which may have a market value. May also accept certain commercial wastes e.g. catering waste, due to be banned from landfill under ABPO.
Thermal Processes	
Conventional incineration with energy recovery (EfW)	Combustion of mixed waste under controlled conditions, to reduce its volume and hazardous properties, and to generate electricity and occasionally heat. It uses a wide variety of combustion systems developed from boiler plant technology and also more novel systems such as fluidised bed. Principal residues produced are: bottom ash, which is non-hazardous and can generally be recycled as an aggregate; metals which can be recovered for recycling; and fly ash, which is classed as hazardous and requires specialist treatment/disposal.
Gasification	A high temperature (800-1200°C) thermal process, similar to pyrolysis but involving breakdown of hydrocarbons into a gas via partial oxidation under the application of heat. Some outputs (syngas) can be used as a fuel to produce electricity, some may find a use as a chemical feedstock but may require disposal if no markets are available. May be used in combination with combustion of syngas.
Pyrolysis	A thermal process (400-700°C) where organic based materials are broken down under the action of applied heat in the absence of oxygen to produce a mixture of gaseous and liquid fuels and a solid char fraction (mainly carbon). Most technologies prefer a homogenized feedstock containing limited non-organics. The outputs may be used as a fuel to generate electricity, while others may require disposal or additional processing for recycling/energy recovery. May be combined with gasification to maximise production of 'syngas'.
Hybrid Processes	
Mechanical Biological Treatment (MBT)	A generic term covering a range of technologies for the processing of MSW using the combination of mechanical separation and biological treatment. In its simplest form MBT biostabilises the mass of residual waste to be landfilled. Normally the processing of the incoming waste stream permits the extraction of fractions of the waste stream with end purposes in mind, with biological processing of the residual waste. Some systems use in-vessel composting or Anaerobic Digestion to process the residual biodegradable elements of the waste. Most systems generate a material suitable for use as a refuse derived fuel (RDF). MBT is extensively used in Germany, Austria and Italy.
Mechanical Heat Treatment	Using mechanical and thermal processes to separate/prepare mixed waste into more usable fractions and/or render it more 'stable' for deposit into landfill. An example is the application of steam and pressure to a mixed waste stream in a sealed vessel (autoclave) to initially degrade the waste. The remaining material may be sorted, depending on the available applications. May be used in combination with gasification.

Source: Beyond Waste

Investment issues

63. Evidence to our inquiry made clear that the demand for new treatment capacity, to replace the country's historic reliance on landfill, is immense. The Environment Agency estimated in 2003 that at least 1,000 new treatment facilities would be needed in England to meet the requirements of the Directive.¹¹³ The Institution of Civil Engineers (ICE) cited a figure of “between 1,500 and 2,300 new facilities” in the UK as a whole, costing between £10 billion and £33 billion.¹¹⁴ The CIWM suggested that £1 billion a year needed to be invested.¹¹⁵ The Prime Minister's Strategy Unit cites research from Ernst and Young that an additional £600–700 million over ten years would be needed.¹¹⁶ Whichever figure is right, this represents a very large level of capital investment. The ICE was concerned that the level of investment, and the number of contracts necessary, might be beyond the capacity of the waste management industry.¹¹⁷

64. In addition to the capital cost of new plants, witnesses drew attention to the length of time it takes to develop new waste treatment facilities. Witnesses suggested that it could take anything between two and ten years for a facility to move from conception to operation.¹¹⁸ This does not allow England much time to develop sufficient capacity by the deadlines set by the Directive. To attract investment in such schemes, there needs to be certainty about the regulatory framework and its enforcement, so that investors can be confident of the flow of business. The CIWM told us:

A lot of this money is going to come from private sector investment ... they will want to see planning timescales that give the ability for real thresholds of return and for the higher rates of return to be achieved. They will want to see pricing structures and they will want to see contracting arrangements with authorities which enable prices to be achieved and returns to be achieved that make those investments worthwhile.¹¹⁹

65. Defra acknowledges that the delivery of national waste policy objectives will require “significant new investment” in, among other things, waste processing plants.¹²⁰ The Minister drew attention to “major investments” now taking place.¹²¹ The Government is also aware of the need to increase confidence in some of the newer technologies. Two funding programmes under the Waste Implementation Programme (WIP) have been launched to encourage the take up of new technologies in the treatment of biodegradable municipal waste, allocating around £2 million through the Technology Research and Innovation Fund (TRIF) to address the current lack of funding for research and development projects into new technologies; and

¹¹³ Eighth Report from the Committee, Eighth Report of Session 2002-03, HC 385, *The future of waste management*, para 38, Ev p 105

¹¹⁴ Ev 160, para 2 [Institution of Civil Engineers]

¹¹⁵ Q 61

¹¹⁶ *Waste not, want not*, p 101

¹¹⁷ Ev 161, section 4 [Institution of Civil Engineers]

¹¹⁸ Ev 160, summary [Institution of Civil Engineers]

¹¹⁹ See e.g. CIWM, Q 60

¹²⁰ Ev 49, para 39; Q 204 [Defra]

¹²¹ Q 157

some £30 million to help to establish new waste treatment technologies and instil confidence in them.¹²²

66. We welcome the money the Government has allocated to increased research into new treatment technologies and to develop confidence in them. However, the Government is relying on the private sector to invest very significant sums in the future of waste treatment. We have already noted the importance of greater clarity and certainty in the legislative and regulatory environment. Without it, investor confidence is unlikely to be high enough to generate the level of commitment to new treatment facilities that is required. The Government should initiate an immediate study to determine if sufficient private investment is likely to be made in the appropriate technology required for new waste treatment facilities.

The Private Finance Initiative

67. The Government regards the Private Finance Initiative (PFI) as “one of the best ways to support value-for-money investment in waste services”. Defra told us that 16 waste PFI projects have been approved, of which nine are operational. PFI projects totalling £1 billion have been signed or are in procurement., with more projects in the pipeline. “Current healthy levels of demand for PFI projects suggest that many local authorities and funding institutions are content with the PFI approach”.¹²³

68. The LGA welcomed the funding available through PFI, but had some concerns about the costs involved. However, LGA witnesses stressed that a good deal of work was being done with Defra, including on standardised contracting. The LGA also wanted Defra funding for the creation of a national waste procurement centre, based in one of the existing regional centres of procurement excellence. The LGA felt that such a national centre would enable councils dramatically to reduce the costs they pay during the procurement process, and beyond it, as they manage their contracts.¹²⁴

69. Witnesses from industry also suggested that there were problems with the PFI process, but that there was scope for alleviating them. The ICE argued that companies in the construction sector would be ideal partners in consortia developing PFI waste schemes, but believed that such companies had not entered the market because of “serious concerns with the nature and allocation of risk in waste PFI contracts and the high upfront costs of bidding”. The ICE noted, however, that Defra had recognised this problem and was taking steps to seek a resolution.¹²⁵ The CIWM told us that it was working on guidance on best practice in developing contracts, with input from waste management operators and local authorities. The CIWM also made the point that in order to recoup the high capital costs of investment, PFI contracts would have to be long-term. But this did not mean that parties should automatically be locked into an inappropriately constrictive contract: “flexibility has to be the order of the future”. The CIWM were, however, convinced that this kind of flexibility would be achievable.¹²⁶

¹²² Ev 66 [Defra]

¹²³ Ev 66 [Defra]

¹²⁴ Q 260; Ev 79 [LGA]

¹²⁵ Ev 161, para 5.1 [Institution of Civil Engineers]

¹²⁶ QQ 69-70

70. The Government sets great store by the PFI process in creating sufficient new treatment facilities to allow the country to meet its landfill diversion targets. We recommend that, if this route is to deliver all that the Government hopes, steps should be taken to ensure that maximum flexibility is built into the process. We also recommend that Defra provide funding to support the development of a national centre of waste procurement excellence, which would help ensure that local authorities are able to manage all their procurement as efficiently as possible.

The planning process and public attitudes

71. One of the factors to which witnesses attributed some of the uncertainty over development of waste treatment facilities was the planning system. The impact of the planning system was acknowledged by the Strategy Unit in 2002:

Delays in obtaining planning permission are perceived as a barrier to the delivery of the Landfill Directive targets and to moving to more sustainable waste management. The issues of concern are:

- the length of time it takes to secure planning permission;
- the risks that permission will be refused due to public opposition; and
- inconsistency in planning decisions.¹²⁷

The Minister acknowledged that there was always opposition to any new facility, of whatever type, and “the planning process has slowed investment in the infrastructure and that is not helpful in relation to the urgency that we have in terms of meeting these targets”.¹²⁸

72. Industry witnesses complained of the length of time and cost it took to get projects through the planning process, as well as the relationship between planning system and the Environment Agency’s permitting system.¹²⁹ Cory Environmental, a waste management company, stated that the planning lead time on even a small-scale composting facility could be two years, while for larger-scale facilities it could be up to a decade.¹³⁰ SITA UK’s comment was fairly typical:

the waste management industry has for many years faced inordinate delays in achieving planning and permitting for its facilities, be they incinerators or “greener” alternatives such as recycling and compost plants.

SITA recommended that the planning process be conflated with the separate process by which the Environment Agency issues permits for treatment operations.¹³¹ The LGA also noted problems with the planning process, but argued that the main problem was with the

¹²⁷ *Waste not, want not*, para 4.9

¹²⁸ Q 205

¹²⁹ See e.g. Ev 106, para 4.5 [Waste Recycling Group], and Ev 84, para 44 [Environmental Services Association]

¹³⁰ Ev 150, para 9 [Cory Environmental]

¹³¹ Ev 158, para 3.1(c) [SITA UK]

“challengability” of proposals. The ability of local people to make such challenges was a matter of “local democracy”.¹³²

73. The ODPM and Defra are currently consulting on revised planning guidance (PPS10) as part of a wider review of sustainable waste management. The intention of the new guidance is:

to deliver sustainable development and deliver a better match between the waste communities generate, and the facilities needed to manage this waste ... The new policy requires clear policies regionally and locally, and sites to be identified in local plans, so as to increase certainty for both local communities and industry.¹³³

The Minister argued that the new guidance would allow for “a more strategic approach to the facilities which seem to be required in relation to waste treatment”, as well as involving local communities more in the decision-making process.¹³⁴ The ESA felt that the consultation paper on revisions to planning guidance was “a step in the right direction” but did not go far enough.¹³⁵ The LGA broadly welcomed the consultation paper, although it felt that it raised questions about the capacity of local government to deal with, in particular, environmental impact assessments. This is in the context of what the LGA described as “a severe shortage nationally of planning officers in the waste planning area”.¹³⁶ Cory Environmental argued that the new guidance would be an opportunity for the Government to lay out “the guidelines upon which decisions on infrastructure must and will be based ... Clear guidance on required facilities, unambiguous policy direction and supporting legislation will enable local authorities to take the decisions necessary.”¹³⁷

74. We welcome the close working between the ODPM and Defra on ensuring that the planning system helps deliver the capacity for dealing with the country's waste. We are especially pleased that the draft planning guidance is aimed at increasing certainty for all parties involved. We hope that the revisions to the planning guidance will remove any structural problems within the planning process. But the planning system must balance the country's strategic need to manage the waste we produce with the right of the public to challenge planning proposals. The key to developing treatment facilities is not to curtail the public's right to challenge proposals, but to ensure they fully understand the need to cope with the country's waste streams, which they play a part in creating, and the details of proposals for particular treatment facilities.

75. The Government has made it clear that decisions on planning applications for new waste treatment facilities are a matter for local planning authorities. But those authorities need to work within the Government's national strategic priorities for waste management. It would assist local authorities in managing the planning process if the Government could make clear its own attitude to different types of waste treatment facility, including incineration.

¹³² Q 272

¹³³ ODPM press release, 6 December 2004

¹³⁴ Q 204

¹³⁵ Ev 102, section D [Environmental Services Association]

¹³⁶ Q 272

¹³⁷ Ev 151, paras 11, 13 [Cory Environmental]

76. We further recommend that, in its response to this report, the Government gives an assessment of how feasible it would be to combine some elements of the Environment Agency's permitting system into the planning process, as this could save duplication and thus reduce the time taken from conception to operation of new facilities.

77. One of the most important functions of the planning process is to give the public a chance to make its voice heard. So the way in which the system works is closely related to the public's attitude to, and understanding of, waste treatment. There is clear evidence for public support for recycling of waste, but more must be done to ensure that the general public fully grasps the impact of their own consumption and disposal habits on the waste stream. We noted in our last report that "consumers need to be made aware of waste as an important environmental issue".¹³⁸ This can cover not only raising public awareness of the need for, and benefits of, recycling, but also their awareness of new methods of waste treatment. For example, Defra noted that one of the factors affecting the mix of technologies that would be available to process waste would be the extent to which local communities will support energy recovery facilities.¹³⁹

78. The Government has initiated various programmes to help achieve this. For instance, funding for WRAP includes work in improving public awareness of recycling and waste reduction. The Government has also funded *Recycle Now*, a £10 million national awareness campaign for England featuring TV and press advertising, a support package for councils and celebrity endorsements.¹⁴⁰ The 'Demonstrator' Programme will provide some £30m, through the Waste Implementation Programme, to help instil confidence in, and help overcome the perceived risks of implementing, the new technologies, and to provide accurate and impartial technical, environmental and economic data about them.¹⁴¹

79. There is often a lack of knowledge about the potential impacts on health and the wider environment of different waste treatment technologies. In our earlier report, we concluded that well-managed, well-regulated waste management facilities, operating to the best available techniques, pose a minimal threat to human health.¹⁴² This was, broadly, the message of the *Review of Environmental and Health Effects of Waste Management*, which we discuss further below.¹⁴³ But this is not always the perception of the public, particularly residents in areas where such facilities are sited. An especially acute example is that of incineration, which we deal with separately in paragraphs 81–96 below.

80. Public attitudes to waste treatment are fundamental to the successful achievement of the landfill diversion targets, given that waste minimisation and reuse cannot in themselves ensure that the targets are reached. Even the more "acceptable" treatments of waste, such as recycling and recovery of materials, will require the development of more facilities. We conclude that the public has to recognise that, while society continues to produce more waste, they will have to accept that more and different waste treatment

¹³⁸ Eighth Report, Session 2002-03, HC 385, *The future of waste management*, para 55

¹³⁹ Ev 66 [Defra]

¹⁴⁰ Ev 172, para 14, and Ev 173, para 18 [WRAP]

¹⁴¹ Ev 66 [Defra]

¹⁴² Eighth Report, Session 2002-03, HC 385, *The future of waste management*, para 53

¹⁴³ Enviro Consulting Ltd and Birmingham University, *Review of Environmental and Health Effects of Waste Management - Municipal Waste and Similar Wastes*, May 2004, Extended summary

methods will be required. Central to the public accepting this will be the Government's role to play in ensuring that the public has confidence in the systems put in place to treat waste.

Incineration and cement kilns

81. The incineration of waste, and especially incineration using cement kilns, was highlighted in our inquiry. Incineration is regarded by the Government as preferable to landfill, although it still has a low place in the “waste hierarchy”. Some of the evidence we received argued strongly in favour of the inclusion of incineration, including energy production (also known as energy from waste) in the range of options for treating waste. Sheffield City Council has used incineration for many years as one way of dealing with the city's waste. The Council argues that “state of the art incinerators with energy recovery will be a safe, cost effective way of meeting landfill diversion targets”. Its own energy from waste plant provides heating to some 42 major buildings, and also converts spare heat into electricity, which is sold through a Non Fossil Fuel Obligation agreement. Sheffield also cites the experience of other EU countries as appearing to show that “a balance of incineration with waste minimisation and recycling” can deliver results in terms of landfill diversion.¹⁴⁴ The Environmental Audit Committee noted that other European countries incinerate a large proportion of municipal solid waste. Denmark, for instance, sends more than half of its waste to incineration and the Netherlands a third.¹⁴⁵ The Irish Government has made clear its belief in the use of incineration, in addition to recycling, as part of an integrated waste management strategy.¹⁴⁶

82. We also received evidence criticising the incineration of waste, on health grounds and because it is regarded as less environmentally friendly than other forms of treatment. Dr C V Howard, a toxico-pathologist, argued that incineration was

a totally unsustainable use of resources and the inevitable emissions of particulates and toxic organic chemicals such as dioxin-like substances are likely to have harmful effects on health, especially the health of the most vulnerable members of society [e.g. babies in the womb and young children].¹⁴⁷

The Green Alliance was also concerned about the use of incineration, especially where it is not combined with energy recovery, on environmental grounds. The Alliance argued that it should be subject to the same kind of tax as landfill, as this would encourage more sustainable forms of waste treatment.¹⁴⁸

83. The Strategy Unit's report noted concerns over the health impacts of various forms of waste treatment and recommended that the Government commission an independent review of the subject. The Government accepted this recommendation and the resulting report was published in May 2004 as *Review of Environmental and Health Effects of Waste Management—Municipal Waste and Similar Wastes*. The Review noted that some adverse

¹⁴⁴ Ev 115 [Sheffield City Council]

¹⁴⁵ Environmental Audit Committee, Fifth Report, Session 2002-03, *Waste: an audit*, HC 99-I, para 32

¹⁴⁶ UK Environment News, Issue 1 vol 9, February/March 2005, p 7; Irish Government press release, 6 December 2004

¹⁴⁷ Ev 114 [Sheffield City Council]

¹⁴⁸ Ev 176, para 1 [Green Alliance]

health effects had been noted in populations living around older, more polluting incinerators and industrial areas, but it

did not find a link between the current generation of municipal solid waste incinerators and health effects ... the current generation of waste incinerators result in much lower levels of exposure to pollutants. We considered cancers, respiratory diseases and birth defects, but found no evidence for a link between the incidence of disease and the current generation of incinerators.¹⁴⁹

84. The Review noted concerns about emissions of dioxins and furans and their potential impact on boys in the womb. However, the Review concluded that emissions from municipal solid waste incinerators accounted for less than one per cent of the dioxins experienced by members of the public. This compares to 18 per cent from domestic sources such as cooking and burning coal for heating. The Review notes that dioxins from an incinerator in an industrial environment will only slightly increase the total deposition of dioxins; although an incinerator located in a relatively clean rural environment could significantly increase the dioxin deposition, this would “not be expected to be a concern with regard to health”.¹⁵⁰ The Review concluded that managing municipal solid waste accounts for less than 2.5 per cent of most emissions in the UK.¹⁵¹

85. The Review also considered the environmental impacts of different waste treatment methods. It concluded that the most significant effects reported in the scientific literature were in respect of global warming impacts, and that avoiding the landfill of municipal solid waste gave a benefit in avoiding emissions of methane which would otherwise have a significant effect on global warming. The impact of incineration on global warming was “unlikely to be significant”.¹⁵²

86. The Green Alliance regarded the findings of the Review as “counter-intuitive”, and drew our attention to concerns expressed by the Royal Society about the quality of the data it employed.¹⁵³ The Society had “substantial concerns” about an earlier version of the report, but was satisfied that the revised version addressed a significant number of these concerns.¹⁵⁴ The Minister told us that the Royal Society had identified some concerns in relation to the data and interpretation, but not concerns that would invalidate the conclusions of the report. He explained that the Government had commissioned further research into the areas the Society had identified, specifically composting and digestion.¹⁵⁵ The Review admits that the information in this field is incomplete, but notes however that “relatively reliable information” exists concerning emissions to air from incineration.¹⁵⁶ In the light of the

¹⁴⁹ Enviro Consulting Ltd and Birmingham University, *Review of Environmental and Health Effects of Waste Management - Municipal Waste and Similar Wastes*, May 2004, summary, p 18.

¹⁵⁰ *Ibid*, summary, p 19

¹⁵¹ *Ibid*, summary, p 39

¹⁵² *Ibid*, summary, p 38. Defra has stated that landfill sites released 25% of the UK's methane emissions in 2001 (Defra press release, 3 February 2005)

¹⁵³ Ev 176, para 6 [Green Alliance]

¹⁵⁴ *Ibid*, Annex 4

¹⁵⁵ QQ 212-215

¹⁵⁶ *Ibid*, summary, p 41; full report, p 251

report's findings, the Minister has urged local planning authorities to press ahead urgently with the task of approving planning applications for waste management facilities.¹⁵⁷

87. The use of cement kilns for the burning of waste has always been a particularly sensitive matter. Recent discussion about possible changes in the type of materials which may be disposed of by this method has again aroused public sensitivities. Although the evidence we received focused on the incineration of hazardous, as opposed to non-hazardous waste, in cement kilns, we have included the issue in this section of our report, given these wider concerns about the use of cement kilns for general waste treatment. The cement industry in the UK and throughout the world uses waste as a substitute fuel in place of fossil fuels such as coal and petroleum coke. Substitute fuels can include waste materials such as tyres, paper, waste solvents from the chemical industry, plastic, sorted municipal waste, paint residues from spray coating, sewage sludge or meat and bone meal. World-wide their use is long-established. Substitute fuels comprise around 65% of fuels used in kilns in the Netherlands, 30% in Switzerland, Germany, Austria, and France. In the UK the figure is around 6%.¹⁵⁸ It is argued that using such substitute fuels can help with the sustainable management of waste by reducing the volume of waste which has to be disposed of in less environmentally favourable ways such as landfill. The use of waste as a substitute fuel is governed by the Environment Agency's Substitute Fuels Protocol (SFP). During the course of our inquiry, the Environment Agency consulted on a revision to the SFP, and the revised SFP was published on 1 February 2005.¹⁵⁹

88. The Air We Breathe Group, based in Wiltshire, was especially concerned about the Environment Agency's proposed amendments to the SFP. The group argued that the changes meant, in effect, that the operators of cement kilns would be allowed to treat hazardous waste without being subject to the same strict rules as dedicated incineration plants. They were concerned that the revised SFP would allow the release of more substances into the atmosphere that could be damaging to health, and regarded the consultation by the Environment Agency as unsatisfactory.¹⁶⁰ The Welsh Groups Network argued that standards for co-incineration of hazardous wastes in a cement kiln were worse than for waste incinerators, with much less stringent limits for particulates, nitrogen oxides and sulphur dioxide.¹⁶¹ The Minister told us that the Environment Agency would not allow anything to be burned within the cement kilns which could have a detrimental effect on the environment or on people's health.¹⁶²

89. Neither The Air We Breathe nor the Welsh Groups Network made any criticism of either the incineration of hazardous waste other than in cement kilns, or the incineration of non-hazardous waste in cement kilns. The Air We Breathe group noted that "the disposal route to Hazardous Waste Incinerators is a proven environmental benefit", and were concerned that

¹⁵⁷ Ev 50, para 47 [Defra]

¹⁵⁸ Environment Agency

¹⁵⁹ http://www.environment-agency.gov.uk/news/964998?lang=_e

¹⁶⁰ Ev 110-111 [David Levy]

¹⁶¹ Ev 141, para 1.2 [Welsh Groups Network]

¹⁶² Q 215

the changes to the SFP could damage the viability of the hazardous waste industry, by allowing operators of cement kilns to undercut it financially.¹⁶³

90. Representatives of the cement industry argued strongly in favour of increasing the use of waste as a substitute fuel in cement kilns, and therefore of revising the SFP. The British Cement Association (BCA) noted that other EU countries have a higher use than the UK of co-incineration by cement kilns using alternative fuels and high temperature incineration. In 2001, 4,370,000 tonnes of waste were recovered in European cement kilns. Of these, 20% were liquid, 80% were solid, and about one-third were hazardous wastes. The BCA argued that cement kilns have a very positive role to play within the UK's waste infrastructure, not least as they represent existing treatment capacity which could accept some of the hazardous waste that can no longer be landfilled.¹⁶⁴

91. We asked representatives of the waste management industry about the potential impact on their business of an increase in the co-incineration of waste in cement kilns. The ESA told us that as long as kilns operated to the same emissions standards as any other facility that manages waste, they had a legitimate place in the treatment infrastructure:

as the European legal framework takes full effect, cement kilns will have a recognised place and a legitimate place ... They are not really going to impact negatively on the economic of our sector.¹⁶⁵

92. The Environment Agency considers, on the basis of extensive domestic and international experience of the use of substitute fuels, that substitute fuels are, overall, beneficial in terms of making a contribution to sustainable development by recovering wastes as fuel, and also have the potential to contribute to reducing emissions from kilns to air.¹⁶⁶ The Agency states that the new SFP will:

- help conserve our natural resources by using the energy from waste and saving non-renewable fossil fuels
- help with the sustainable management of waste and contribute to the Government's Waste Strategy by reducing the amount of waste that has to be disposed of
- reduce the overall emissions to air, primarily oxides of nitrogen (NOx) that are normally produced by combustion processes

The Chief Executive of the Agency has stated:

The revised protocol will continue to provide effective protection of public health and the environment. We will ensure there are mechanisms in place to keep local communities well-informed about emissions and engaged with the regulatory decision-making process where plant operators propose substituting conventional fuels ... The Agency will continue to encourage the recovery of energy from waste and prevent the

¹⁶³ Ev 111 [David Levy]

¹⁶⁴ Ev 146-147, paras 11, 15, 23 [British Cement Association]

¹⁶⁵ Q 309

¹⁶⁶ SFP, para 3.8 (http://www.environment-agency.gov.uk/commondata/acrobat/revised_sfp_01_02_05_964920.pdf)

use of cement and lime kilns for the disposal of waste that does not provide energy to the process.¹⁶⁷

93. We have noted the evidence for and against the use of incineration as a way of treating waste. We conclude that it is a valid method of treating waste, insofar as it reduces dependence on landfill, on the condition that it recovers energy from the waste incinerated, and assuming independent scientific research confirms that incineration is not more harmful to health than other forms of waste treatment. In this context we note the apparently reassuring conclusions of the independent review of the health impacts of waste treatment, although we look forward to the outcome of the further research commissioned by the Government.

94. There was a suggestion in evidence that we might expect to see a change in the direction of Government policy as regards incineration. An ESA witness told us:

There is a suspicion ... that we are perhaps being softened up in fact to take this material [waste] elsewhere ... Maybe it will be diverted to electricity generation, whether thermally or through gasification, and of course, via cement kilns.¹⁶⁸

We do not believe that incineration should be seen by the Government as a panacea for meeting the landfill targets, but only as one part of a wider strategy. We recommend that, in its response to this report, the Government give a clear indication of its attitude towards incineration. It should also define the role it expects incineration to play, and provide a definitive statement on the public safety issues raised by the use of this waste disposal technique.

95. It is clear from the written evidence we received that the incineration of hazardous waste in cement kilns is of particular concern. Although both the Minister and the Environment Agency have stressed that the changes to the Substitute Fuels Protocol will not allow any increase in harmful emissions to the air, those opposed to the practice are obviously not convinced. We were also concerned about criticisms of the consultation process undertaken by the Agency. We conclude that the incineration of hazardous waste in cement kilns may be a legitimate treatment route, provided that such facilities meet the same standards as incinerators. The Environment Agency must not allow any “sham” treatment of waste to take place – that is, the blending of wastes with no fuel value with other wastes with a fuel value to avoid having to pay for disposal in a merchant waste incinerator.

96. Given the concerns raised by witnesses to our inquiry, we also expect the Agency and cement companies to undertake the fullest possible consultation with local residents about changes to the nature of wastes being co-incinerated, and for the views of local residents to be adequately addressed before any Agency permit to co-incinerate is issued.

¹⁶⁷ Environment Agency press release, 1 February 2005

¹⁶⁸ Q 309

Resources for local authorities

97. Meeting the landfill diversion targets will require significant efforts from local authorities in increasing recycling and composting rates. This requires substantial levels of funding to allow authorities to implement options that divert waste from landfill. Defra provides a range of funding to assist local authorities in meeting their recycling targets. These include the Revenue Support Grant, the Private Finance Initiative, the Waste Minimisation and Recycling Fund (and its successor the Waste Performance and Efficiency Grant), and a number of smaller-scale grant schemes. Direct support, advice and guidance, and assistance in building capacity is available through the Waste Implementation Programme (WIP) and the Waste and Resources Action Programme (WRAP). Defra states that this support enables local authorities to draw up suitable local waste strategies and to meet the goals contained in those strategies. Diversion options can include waste reduction (e.g. real nappy initiatives), reuse (e.g. helping charities to reuse clothing, footwear and furniture), recycling (e.g. through segregated kerbside, bring bank or civic amenity site facilities) or composting of green and kitchen waste (e.g. through home composting, segregated kerbside or civic amenity site facilities).¹⁶⁹

98. Defra noted that in the 2004 Spending Review, the Government announced an increase in the Environmental Protection and Cultural Services block of the Revenue Support Grant of £888 million by 2007–08, compared to 2004–05. This increase includes the return of revenues from the increased landfill tax, fulfilling the Chancellor's commitment to keep landfill tax increases revenue-neutral to local authorities.¹⁷⁰ Funding via the EPCS is not hypothecated; it is up to individual local authorities to decide how to allocate it between different services.¹⁷¹

99. The LGA told us bluntly that insufficient funding was available to allow them to meet their targets. LGA witnesses focused on the funding available through the Environmental Protection and Cultural Services block of the Revenue Support Grant:

Lack of adequate funding remains the single most challenging issue facing local councils ... The Government's Spending Review 2004 did not provide the additional funding which will be needed to deliver Article 5 targets, and the LGA is still extremely concerned that the shortfall in funding remains a significant obstacle to delivery of Government targets.¹⁷²

The LGA argued that increases in the local authority settlement did not match the task of managing an increasing waste stream:

We have calculated that the [increase in EPCS] is only a two and a half per cent increase into that block against, as you were saying, increasing waste growth and an awful lot of other calls on that money.¹⁷³

The LGA further argued that the 2.5 per cent increase did not in fact represent a real-terms increase in the funding settlement, as it just accounted for inflation.¹⁷⁴ LGA witnesses

¹⁶⁹ Ev 65 [Defra]; Ev 49, paras 40-44 [Defra]

¹⁷⁰ Ev 66 [Defra]

¹⁷¹ QQ 181-82

¹⁷² Ev 69, paras 13, 15 [LGA]

¹⁷³ QQ 237-38

welcomed increases in the Waste Implementation Programme (WIP), which offers technical support to local authorities, and other programmes, but argued that the funding gap was still “very large – and possibly as much as a half a billion pounds a year for waste services alone (rather than EPCS services as a whole)”.¹⁷⁵

100. The LGA also felt the Treasury should do more to explain how it reached its conclusions about the level of the ‘waste element’ of the EPCS block.¹⁷⁶ We put this point to Defra, whose response was:

As part of the Spending Review 2004 process, Defra undertook a modelling exercise to estimate likely total spend by local authorities on waste management over the Spending Review period. This analysis was shared with the Local Government Association, who were broadly supportive. HM Treasury took account of the outputs of the modelling exercise in taking decisions on the Spending Review settlement.¹⁷⁷

101. It was not just the LGA which suggested that they were under-funded for the task. SITA UK, while noting that expenditure on recycling services had increased year on year, argued that it was still well short of the amounts required to bridge the gap between the present household waste recycling rate and the 2005–06 target.¹⁷⁸ The ESA argued more resources need to be invested in the management of the municipal waste stream, as this country spent “only half what comparable European countries spend on municipal waste management”.¹⁷⁹ (Defra did not believe that this calculation took account of differences in government systems and waste management operations, or of ‘value for money’ considerations.¹⁸⁰)

102. Like the LGA, we welcome the fact that funding for waste management through the Environmental Protection and Cultural Services block of the Revenue Support Grant has increased. But the evidence we heard has not convinced us that the increase will be sufficient to meet the increasing demands placed on local authorities. We are aware that it is up to local authorities to determine how their funding from central government is spent, and it is open to any individual authority to divert spending to waste away from other services. There are always hard choices to be made in deciding how to divide up the cake, and it is clear that additional spending on waste would not be regarded as a priority by many local residents. This reflects the low profile of waste, which we have already noted. We also note that increases in council tax to provide more funding for recycling and other forms of treatment might have a disproportionate impact on less well-off households.

¹⁷⁴ Ev 79, para 14 [LGA]

¹⁷⁵ Ev 79, para 13 [LGA]

¹⁷⁶ Ev 70, para 23 [LGA]

¹⁷⁷ Ev 66 [Defra]

¹⁷⁸ Ev 157, para 2.2(a) [SITA UK]

¹⁷⁹ Ev 84, para 38 [Environmental Services Association]

¹⁸⁰ Ev 67 [Defra]

Financial instruments

103. The use of financial instruments to reduce reliance on landfill, and more generally reducing the generation of waste, by changing behaviour, was widely supported in our inquiry. In this section we look at three such instruments: the Landfill Tax, the Landfill Allowances Trading Scheme, and incentive schemes and variable charging for households.

The Landfill Tax

104. The Landfill Tax was introduced to stimulate reductions in the levels of waste going to landfill and encourage the development of more sustainable waste management practices. The tax was introduced in October 1996, at a rate of £7 per tonne for active waste. The rate was increased to £10 with effect from April 1999, and an escalator of £1 per tonne per annum was also introduced. The escalator will rise to £3 per tonne with effect from April 2005. Defra's aim is that the tax should reach £35 per tonne in the medium term. The rate is currently £15 per tonne.¹⁸¹

105. There was general support for the tax. The Minister told us the tax, especially as it reached the £35 target, would provide an incentive to divert waste away from landfill, while it was pitched at a level that gave those industries which were providing alternative treatment routes economic viability.¹⁸²

106. In our report in 2003, we welcomed the tax and recommended that it be increased more quickly to the £35 per tonne level.¹⁸³ Witnesses in our present inquiry made the same point. The Environment Agency noted that, if the rate of increase were to be escalated faster, it would give much clearer and faster signals to waste producers, consigners and operators.¹⁸⁴ Previously, Ministers had been concerned that raising the tax too quickly would cause difficulties for waste producers, and it was necessary to give them time to adjust.¹⁸⁵ However, the Environment Agency noted that the system was adjusting quite quickly and that a case could therefore be made for a faster escalator.¹⁸⁶

107. Representatives of the waste industry told us that it should be raised more quickly: a £35 landfill tax would immediately equalise the cost advantage currently enjoyed by landfill, and would give the waste management industry far more incentive to put forward proposals for alternative treatment. It would also encourage local authorities to invest in facilities.¹⁸⁷ The Environmental Industries Commission argued that as the tax was a key instrument to deliver diversion from landfill, it should be raised faster. This would also encourage minimisation, especially if revenue were spent on minimisation initiatives.¹⁸⁸ The Green Alliance argued that the tax needed to rise faster to overcome the view that recycling was uneconomic.¹⁸⁹

¹⁸¹ Ev 120 [Professor Chris Coggins]; Defra press release 22 November 2004

¹⁸² Q 169

¹⁸³ Eighth Report, Session 2002-03, HC 385, *The future of waste management*, para 46

¹⁸⁴ Q 100

¹⁸⁵ Ninth Special Report, session 2003-03, HC 1085, *The Future of Waste Management: Government Reply to the Committee's Report*, para 55

¹⁸⁶ Q 100

¹⁸⁷ Q 300

¹⁸⁸ Ev 140, section 3 [Environmental Industries Commission]

¹⁸⁹ Ev 175 [Green Alliance]

108. The CBI felt that a quicker increase in the tax would have a varying impact on different firms:

Those who have done a lot to date will have less ability to do other things with waste and will have to, as it were, take a greater hit on margins as a result of the tax. Others who are not quite so far down the road of behavioural change may be incentivised to do things they would not otherwise have been incentivised to do through the tax.¹⁹⁰

109. The CBI was especially keen that revenue raised from the tax went back to assist businesses in waste reduction.¹⁹¹ The Chief Executive of the Environment Agency also noted that increasing the tax would also generate more money that could be recycled back into business to allow them to adopt more sustainable waste practices and materials resource handling practices.¹⁹² Defra has announced that £284 million will be returned from the proceeds of the Landfill Tax over the three years from 2005–06, to assist a range of projects that support businesses, and also to the Environment Agency.¹⁹³

110. We once again recommend that the Government raise the level of the Landfill Tax to the £35 per tonne level as soon as possible. Not only would this provide a significantly increased driver for change, but it would also provide additional funding for programmes designed to reduce the waste streams. We welcome the funding that has already been made available from the proceeds of the tax, and recommend that the Government consider whether, if the level of the tax were increased, more could be allocated to the Environment Agency for its enforcement work. Without effective enforcement, as we have already noted, financial drivers such as the Landfill Tax could have a perverse effect on behaviour.

The Landfill Allowance Trading Scheme

111. The Landfill Allowance Trading Scheme (LATS), under which councils are allocated an allowance representing the maximum amount of waste they can send to landfill, and creates arrangements for these to be traded, is an innovative approach to waste policy and practice for the diversion of biodegradable municipal waste from landfill. It is the first such scheme in the world. Defra intends that it should provide a cost-effective way for England to meet its targets for reducing the landfilling of biodegradable municipal waste. The Minister has stated that the scheme “gives authorities the flexibility to decide how and when to make the necessary changes in the way they handle their waste, while ensuring that England meets national and international obligations in the most cost effective way”.¹⁹⁴

112. The Waste and Emissions Trading Act 2003 provides the legal framework for the scheme and for the allocation of tradable landfill allowances to each waste disposal authority (WDA) in England. These allowances will convey the right for a waste disposal authority to landfill a certain amount of biodegradable municipal waste in a specified scheme year. Under the scheme, each waste disposal authority will be able to determine how to use its allocation

¹⁹⁰ Q 106

¹⁹¹ Q 106

¹⁹² Q 100

¹⁹³ Defra press release, 22 November 2004

¹⁹⁴ Defra press release, 3 Feb 2005 <http://www.defra.gov.uk/news/2005/050203a.htm>

of allowances in the most effective way. It will be able to trade allowances with other authorities, save them for future years (bank) or use some of its future allowances in advance (borrow). This will allow individual waste disposal authorities to use their allowances in accordance with their investment strategy. Defra allocated landfill allowances to each waste disposal authority in England in February 2005.

113. Defra argues that the advantage of a trading scheme is that it overcomes the fact that the diversion costs faced by each WDA will differ according to their circumstances. WDAs with low diversion costs will have an incentive to divert as much biodegradable municipal waste to landfill as possible, selling their surplus allowances to WDAs that face a higher cost of diversion. Therefore, trading should help local authorities find the most cost effective way of diverting from landfill to reflect their local circumstances.¹⁹⁵ A detailed analysis of the scheme is included in written evidence from Professor Chris Coggins.¹⁹⁶

114. The Minister told us that LATS would make “a huge difference” to local authorities’ behaviour. It would

force local authorities to meet [the] targets or to buy in credits to allow them to achieve them. That is also an encouragement for good local authorities who have made excellent progress who will have credits to sell. It is also an inducement to them to continue the work that they are doing in relation to minimising waste. In relation to other local authorities, there will be a considerable cost, including fines, for not achieving those targets. Those are very powerful drivers.¹⁹⁷

The Minister noted that carbon trading schemes “work very well”, with the implication that therefore LATS would also work well.¹⁹⁸

115. The LATS has not yet come into effect, so our discussions of it in this inquiry centred on preparations for it and speculation about the effect it might have in practice. On the first point, the LGA’s principal concern was that preparing for, and eventually running, the scheme “diverts resource in terms of sheer funding – and really a very important resource, which is our officer time – from the prime objective of dealing with waste”.¹⁹⁹ Defra acknowledges that this is a new way of working for local authorities and has arranged a series of seminars for local authority officials on how the scheme will operate.²⁰⁰

116. On the question of whether the LATS would help in reaching the targets, the LGA was sceptical:

There is no reason why landfill trading alone will ensure the delivery of the 2009–10 target, since it simply allows councils to buy off their obligation by purchasing permits from councils which have them to sell without giving a clear picture of the overall amount of new infrastructure (diversion capacity) being built. Not only will it not

¹⁹⁵ Defra website, <http://www.defra.gov.uk/environment/waste/localauth/lats/index.htm>

¹⁹⁶ Ev 118 [Professor Chris Coggins]

¹⁹⁷ Q 157

¹⁹⁸ Q 158

¹⁹⁹ Q 267

²⁰⁰ Defra website, <http://www.defra.gov.uk/environment/waste/localauth/lats/index.htm>

ensure delivery on its own but, in its current form, it introduces rigidity and expense rather than the flexibility it was intended to afford.

The LGA argued that the scheme needed to be improved in two ways:

- Councils need to have access to market intelligence, i.e. a collation of predictions for the amount of BMW each waste disposal authority intends to send to landfill over time, which would translate into the number of permits it could buy or sell over time²⁰¹
- The penalty needs to be reduced dramatically to much nearer the level of the likely cost of a permit on the market.²⁰²

117. Professor Coggins also noted evidence that authorities would be risk-averse to trading allowances and would instead bank them (at no financial cost to the local authority) in case of unforeseen events which would cause them to miss their targets.²⁰³ This would of course have a tendency to distort the operation of the market.

118. The Minister argued that some councils were in favour of the scheme:

very efficient local authorities who have done well in their waste management and are likely to have credits and who like the scheme ... can see the logic in this scheme and they can see how it can work to their benefit. It should not necessarily be a cost on local authorities who are achieving their targets.²⁰⁴

The LGA also felt that the scheme would work for some authorities, but not others.²⁰⁵ Sheffield City Council told us that it had “taken waste and turned it into an asset that will enable the City to realise a financial benefit from use of the Landfill Allowance Trading Scheme”.²⁰⁶ The Environment Agency told us it supported the scheme and would help the Government with administration and monitoring. Agency witnesses thought the system would work, but “it will be tough ... it is an incentive scheme and incentive schemes are about promoting innovation, promoting faster movement than hitherto has been the case”.²⁰⁷

119. The Landfill Allowance Trading Scheme has yet to come into operation and we cannot therefore comment at this stage on how it will work in practice. We recognise that this is an innovative and potentially useful way to encourage local authorities to divert waste away from landfill and that, in theory, it would reward those authorities which are effective at diverting landfill while providing significant incentives, through the use of financial penalties, to the less well-performing authorities. However, we are concerned by the comments of the Local Government Association that, in practice, the market operated under the scheme will not be perfect, in particular because of the lack of access by councils to accurate market intelligence. In its response to this report, Defra should set out how it will address such concerns.

²⁰¹ This is relevant to the LGA’s concern over lack of data on future waste streams, discussed above in para 12

²⁰² Ev 78, para 4 [LGA]

²⁰³ Ev 122 [Professor Chris Coggins]

²⁰⁴ Q 199

²⁰⁵ Q 267

²⁰⁶ Ev 115 [Sheffield City Council]

²⁰⁷ Q 103

Variable charging and incentive schemes for households

120. There has been a long-standing debate about the possible role of variable charging, or incentive schemes, for the collection of household waste. Such schemes, sometimes known by the general title Direct and Variable Charging (DVR), can take various forms. For instance, direct charging can take the form of charging a household by reference to the quantity – e.g. weight, volume – of the waste put out for collection. Alternatively, householders can be encouraged to separate waste into different categories, with unseparated waste being charged for. This provides an incentive to improve separation of materials, as well as reducing the amount of waste put out for disposal.²⁰⁸

121. In our last report on waste issues, we noted:

Householders pay for the collection and management of their waste through their council tax. The cost of waste management is not differentiated from the costs of the other services their council provides, and few people know how much of their council tax is spent on waste. In addition, the cost to the householder is the same no matter how much waste they throw away or recycle, so there is little incentive for individuals to try to reduce the amount of waste they produce.

We therefore encouraged the Government to complete its consideration of policy in this area as soon as possible. Our report supported household incentive schemes, while noting that variable charging for waste collection can be regressive, and thus should only be introduced if people had a means of controlling the amount of waste they dispose, e.g. through the provision of good recycling services.²⁰⁹

122. Evidence to our present inquiry once again strongly supported a range of charging and incentive measures. The ESA argued that variable charging and rewards for householders who achieved specified levels of separation of wastes, would apply the ‘polluter pays’ principle. However, the ESA felt that the primary aim should be to increase funding for waste management rather than to disburse funds to householders through reward schemes.²¹⁰ The CIWM also argued that local authorities should also be allowed to trial direct or variable charging for residual waste collection, and noted that such charges have been used effectively elsewhere in Europe, assisting waste diversion and recycling.²¹¹

123. The LGA believed that household incentives had a role to play. Some local authorities believed such schemes would encourage local people to recycle more waste, and would also help increase the funding available for recycling programmes. The LGA emphasised that whether to establish such schemes, and the approach employed, should be left to the discretion of individual authorities, which would need to develop schemes that suited their local communities. Schemes would only be effective where local communities were fully engaged in their development. Schemes can be quite modest, but get good returns: one

²⁰⁸ See Eunomia Research and Consulting, *Waste Collection: to charge or not to charge*. Final Report to the Chartered Institution of Wastes Management Environmental Body, 2003, p 7

²⁰⁹ Eighth Report, Session 2002-03, HC 385, *The future of waste management*, paras 54-58

²¹⁰ Ev 84, para 40 [Environmental Services Association]

²¹¹ Ev 5, para 4.5 [Chartered Institution of Wastes Management]

authority puts households that are participating in their recycling scheme in for a prize draw for a gift voucher, which has increased participation.²¹²

124. The Environment Agency thought that putting in place economic incentives to promote greater household segregation of waste would help local authorities to meet their targets. The Agency drew our attention to research which indicated that households were willing to sort their waste if they were given the right facilities to do so and that they were willing to be incentivised by paying a higher charge for unsorted waste for the future.²¹³ The Green Alliance argued that local authorities should be given powers to introduce economic incentives for householders to reduce waste:

Introduction of economic incentives is a vital step in raising public awareness of waste and broader consumption issues. These should be enabling powers, not a requirement to implement schemes, and should only be used after good quality kerbside recycling facilities are already in place.²¹⁴

In its response to our earlier report, the Government noted that it was carrying out further work, with the LGA, on the practicalities of operating such schemes.²¹⁵ The Minister told us that, in principle, he was in favour of incentives for households. He thought there was “a very strong argument” for a differential approach in relation to waste charging, for instance in relation to weight, but he noted that allowing councils to make differential charges would require primary legislation. However, incentive schemes that, for instance, gave some benefit to people who minimised, separated waste and recycled waste, did not need new legislation. The Government would welcome local authorities undertaking pilot schemes along these lines.²¹⁶

125. We welcome the Government’s support for schemes that would allow local authorities to provide incentives to households to minimise, separate and recycle their waste, and would encourage local authorities to develop schemes along these lines. Such an approach would contribute to meeting the landfill diversion targets, as well as making the general public more aware of the impact of waste, the real cost of its treatment and their responsibility for helping tackle the growing municipal waste stream. Discretion about whether to introduce such schemes should be left with local authorities, who in turn should ensure that their local communities are fully engaged with the process. We believe that priority should be given within such schemes to incentives to minimise the overall amount of waste put out for disposal.

126. We were also interested to hear the Minister’s agreement, in principle, to the idea of variable charging for household waste. This would be a significant step further than schemes that reward households. Such schemes would be a further encouragement to households to tackle the waste stream, but care would need to be taken to ensure that variable charging did not have an unfair impact, especially on low-income families.

²¹² QQ 268-70

²¹³ Q 95

²¹⁴ Ev 176, para 3 [Green Alliance]

²¹⁵ Ninth Special Report, session 2003-03, HC 1085, *The Future of Waste Management: Government Reply to the Committee’s Report*, paras 38-39

²¹⁶ QQ 160-64

Adequate facilities for recycling and composting would have to be available before this kind of charging came into operation. In addition, charging could create an incentive to dispose of waste illegally, to avoid paying the charge. This reinforces our earlier conclusions that effective policing of fly-tipping and other illegal waste disposal would be necessary for such financial instruments to work properly.

Conclusions and recommendations

Quality of data about waste

1. The lack of high-quality data is a significant obstacle to the formulation and implementation of public policy. Lack of authoritative data has led to uncertainty among producers and processors of waste and has made it difficult to tell how effectively policies are working in practice. We are glad that Defra has recognised the problems with the existing data available about waste streams, and welcome both the ‘Flycapture’ database and the more recent support, through the Waste Implementation Programme, for a more comprehensive database of information about municipal waste. Defra should publish a statement setting out what it now intends to do to support work by the Hazardous Waste Forum to establish better information about hazardous waste. We look forward to the speedy implementation of the strategy for producing more comprehensive data about all waste streams, although it is regrettable that it has taken so long for this to be developed. We hope this will bring about a position where all players in the waste field can at least agree on the scale of the problem, even if they disagree over the appropriate solution. (Paragraph 13)
2. It is not clear to us that Defra’s data strategy includes the kind of information on future predictions of waste generation by local authorities, which the Local Government Association seeks to compile, as opposed to historic data on waste streams. This kind of information is important, in order to allow for effective forward planning by local and national government, and to inform investment decisions by private companies which may be contemplating building waste treatment facilities. It is especially relevant in the context of the forthcoming Landfill Allowance Trading Scheme. We therefore recommend that Defra re-consider the LGA’s request for funding to support this project. (Paragraph 14)

Uncertainty

3. The ‘uncertainty’ referred to by witnesses is attributable both to confusion within the waste legislative framework itself, and a feeling that the Government and its agencies have not done enough to explain how it will work. We note the Government’s argument that it has done a great deal to communicate with the industry and other stakeholders. We also accept that such stakeholders also have responsibilities: trade associations, for instance, should ensure that information is passed down the line, and the waste management industry could do more to communicate to waste producers. But Government has the principal responsibility to ensure that legislative proposals,

information and guidance are produced early enough to be helpful, and in the clearest possible form. We are not convinced, from the evidence we received, that they have done so in respect to information about waste policy, especially for waste producers. (Paragraph 17)

European legislation

4. Problems with the way in which EU waste legislation has been implemented have added to the uncertainty we have already mentioned. The Government must in future avoid, wherever possible, agreeing to new European legislation without a full understanding of the details of how such agreements will be interpreted and implemented. The Government should also seek to learn lessons from other EU Member States on ways in which environmental directives can be implemented in a pragmatic manner, while ensuring that their requirements are met. In future, when new environmental proposals about waste emerge from the Commission, the Government must engage with practitioners at the earliest possible stage to ensure that such proposals are practicable, enforceable and capable of implementation. (Paragraph 22)

Funding for enforcement

5. We note that the Government has given the Environment Agency increased funding, and welcome the recent announcement of additional targeted funding to tackle fly-tipping. But we remain unconvinced that the Agency has sufficient resources to match the increasing demands placed on it by new and forthcoming environmental legislation, including the implementation of the Landfill Directive and associated EU legislation relating to waste management. We regret that it has not been possible to deliver in full the planned increase in the Agency's Grant in Aid for 2004–05, and we would request that the Government re-examine with the Environment Agency the adequacy of the Agency's resources, so that a proper policing operation can be undertaken to ensure that all wastes, and in particular hazardous wastes, are properly and legally disposed of. (Paragraph 26)
6. We agree with the Government that the Environment Agency should seek to reduce bureaucracy where possible, and any additional funding should be used in a way that allows the Agency to focus on what really matters, without undue "gold plating". Defra can also help the Agency's work in enforcing environmental regulation by working closely with it in a way that avoids duplication and which allows the Agency to issue guidance on legislation promptly. (Paragraph 28)

Fly-tipping

7. We recommend that the Government consider introducing arrangements under which owners and occupiers of land on which waste is fly-tipped could have the waste removed by the appropriate authorities, or could be recompensed for the cost of removing the waste themselves, where it can be shown that they had taken all reasonable steps to prevent fly-tipping. This could be funded from the Landfill Tax, or from the proceeds of fines imposed on those found guilty of fly-tipping. The latter

approach would help ensure the application of the ‘polluter pays’ principle. (Paragraph 29)

Hazardous waste

8. Beyond Waste presented us with a careful analysis of a great deal of official and industry-derived data, and concluded from this that nearly 700,000 tonnes of hazardous waste is unaccounted for following the co-disposal ban. We request that the Government, in its response to this report, produce its own assessment of the data which Beyond Waste has compiled, making clear whether it accepts these figures and, if so, what action it plans to take. (Paragraph 39)
9. Assuming these findings are valid, it seems to us that several conclusions follow:
 - Enforcement is not regarded as being tough enough, and as a result waste is being disposed of illegally, for cost reasons. This means that a key financial lever – the increased cost of disposing of hazardous waste – is having a perverse effect, making it less rather than more likely that an environmentally appropriate disposal route will be used
 - The waste market will be distorted: waste producers and waste management companies correctly disposing of wastes will be put at a commercial disadvantage compared to less scrupulous competitors.
 - If deliberate misdescription of wastes becomes established, greater quantities of more and more hazardous wastes will be diverted from legitimate routes, further distorting the market
 - Investment in new hazardous waste treatment plants could be jeopardised, as the industry will not be able to rely on a stream of wastes to be treated.

The main key to avoiding these outcomes, at least in the short-term, is for enforcement of regulation to be more effective: the Environment Agency must focus on ending the practice of illegal co-disposal and make clear to Defra the resource implications of so doing. In the longer term, more must be done to reduce the amount of hazardous waste being produced in the first place. Particular attention should be focused on small and medium-sized enterprises. (Paragraph 40)

10. Much of the argument surrounding the technicalities of the Waste Acceptance Criteria (WAC) is complex, and we did not take sufficiently detailed evidence to reach a clear view about what exactly will happen in different industries on 16 July 2005. But we were disappointed to hear, once again, so many complaints from industry about lack of clarity and lateness in the issuing of guidance. We were pleased to hear that the UK pressed for proper clarity in the WAC, but we note again that the difficulties which have arisen because of the decision to agree the Directive without knowing what the details would be, were exacerbated by the length of time it took to agree precisely how the WAC should operate. We hope that the Minister is correct in stating that industry will be fully ready to manage the impact of the WAC, but, given the doubts cast on the Government’s fairly sanguine view of the ending of co-disposal, we remain unconvinced. We were pleased to learn of the pragmatic decision by the Government

and the Environment Agency to allow publication of the guidance in March, earlier than expected, although we note that this gives industry only four months to make their final arrangements. Nevertheless, we hope this will allow waste producers and the waste industry to make effective preparations for the introduction of the WAC. (Paragraph 46)

11. The Government, together with the industry, should commission independent work to establish with complete clarity the reasons behind their differing perceptions relating to preparedness for the introduction of the WAC. The outcome of such a study would provide a valuable insight into how to avoid this type of problem occurring in the future. (Paragraph 47)

Diversion of waste from landfill

12. We agree with the Minister that the targets for diversion from landfill are challenging, but we are less optimistic that they can be achieved. While we welcome the hard work of many local authorities in meeting their targets for recycling and composting, we are not convinced that their achievement in meeting the 17 per cent target for recycling and composting – low by the standards of some other EU countries – is a wholly reliable indicator of likely success in meeting the targets under the Directive. We recommend that, in its response to our report, Defra set out, with as much statistical data as possible, how it thinks progress towards each of the Landfill Directive targets will be met. (Paragraph 59)
13. We also note evidence about the confusion among many stakeholders over the exact definition of municipal waste, and are concerned about the possible impact this might have on assessing whether local authorities have achieved their targets and indeed on the operation of the Landfill Allowance Trading Scheme (LATS). We recommend that Defra make clear, as quickly as possible, precisely what categories of waste will be allowed to count towards achievement of local authority targets and will be included in the LATS, and the criteria used in deciding them. (Paragraph 60)

Developing new treatment technologies

14. We welcome the money the Government has allocated to increased research into new treatment technologies and to develop confidence in them. However, the Government is relying on the private sector to invest very significant sums in the future of waste treatment. We have already noted the importance of greater clarity and certainty in the legislative and regulatory environment. Without it, investor confidence is unlikely to be high enough to generate the level of commitment to new treatment facilities that is required. The Government should initiate an immediate study to determine if sufficient private investment is likely to be made in the appropriate technology required for new waste treatment facilities. (Paragraph 66)
15. The Government sets great store by the PFI process in creating sufficient new treatment facilities to allow the country to meet its landfill diversion targets. We recommend that, if this route is to deliver all that the Government hopes, steps should be taken to ensure that maximum flexibility is built into the process. We also recommend that Defra provide funding to support the development of a national

centre of waste procurement excellence, which would help ensure that local authorities are able to manage all their procurement as efficiently as possible. (Paragraph 70)

Planning and public attitudes

16. We welcome the close working between the ODPM and Defra on ensuring that the planning system helps deliver the capacity for dealing with the country's waste. We are especially pleased that the draft planning guidance is aimed at increasing certainty for all parties involved. We hope that the revisions to the planning guidance will remove any structural problems within the planning process. But the planning system must balance the country's strategic need to manage the waste we produce with the right of the public to challenge planning proposals. The key to developing treatment facilities is not to curtail the public's right to challenge proposals, but to ensure they fully understand the need to cope with the country's waste streams, which they play a part in creating, and the details of proposals for particular treatment facilities. (Paragraph 74)
17. The Government has made it clear that decisions on planning applications for new waste treatment facilities are a matter for local planning authorities. But those authorities need to work within the Government's national strategic priorities for waste management. It would assist local authorities in managing the planning process if the Government could make clear its own attitude to different types of waste treatment facility, including incineration. (Paragraph 75)
18. We further recommend that, in its response to this report, the Government gives an assessment of how feasible it would be to combine some elements of the Environment Agency's permitting system into the planning process, as this could save duplication and thus reduce the time taken from conception to operation of new facilities. (Paragraph 76)
19. Public attitudes to waste treatment are fundamental to the successful achievement of the landfill diversion targets, given that waste minimisation and reuse cannot in themselves ensure that the targets are reached. Even the more "acceptable" treatments of waste, such as recycling and recovery of materials, will require the development of more facilities. We conclude that the public has to recognise that, while society continues to produce more waste, they will have to accept that more and different waste treatment methods will be required. Central to the public accepting this will be the Government's role to play in ensuring that the public has confidence in the systems put in place to treat waste. (Paragraph 80)

Incineration and cement kilns

20. We have noted the evidence for and against the use of incineration as a way of treating waste. We conclude that it is a valid method of treating waste, insofar as it reduces dependence on landfill, on the condition that it recovers energy from the waste incinerated, and assuming independent scientific research confirms that incineration is not more harmful to health than other forms of waste treatment. In this context we note the apparently reassuring conclusions of the independent review of the health impacts of waste treatment, although we look forward to the outcome of the further research commissioned by the Government. (Paragraph 93)

21. We do not believe that incineration should be seen by the Government as a panacea for meeting the landfill targets, but only as one part of a wider strategy. We recommend that, in its response to this report, the Government give a clear indication of its attitude towards incineration. It should also define the role it expects incineration to play, and provide a definitive statement on the public safety issues raised by the use of this waste disposal technique. (Paragraph 93)
22. It is clear from the written evidence we received that the incineration of hazardous waste in cement kilns is of particular concern. Although both the Minister and the Environment Agency have stressed that the changes to the Substitute Fuels Protocol will not allow any increase in harmful emissions to the air, those opposed to the practice are obviously not convinced. We were also concerned about criticisms of the consultation process undertaken by the Agency. We conclude that the incineration of hazardous waste in cement kilns may be a legitimate treatment route, provided that such facilities meet the same standards as incinerators. The Environment Agency must not allow any “sham” treatment of waste to take place – that is, the blending of wastes with no fuel value with other wastes with a fuel value to avoid having to pay for disposal in a merchant waste incinerator. (Paragraph 95)
23. Given the concerns raised by witnesses to our inquiry, we also expect the Agency and cement companies to undertake the fullest possible consultation with local residents about changes to the nature of wastes being co-incinerated, and for the views of local residents to be adequately addressed before any Agency permit to co-incinerate is issued. (Paragraph 96)

Resources for local authorities

24. Like the LGA, we welcome the fact that funding for waste management through the Environmental Protection and Cultural Services block of the Revenue Support Grant has increased. But the evidence we heard has not convinced us that the increase will be sufficient to meet the increasing demands placed on local authorities. We are aware that it is up to local authorities to determine how their funding from central government is spent, and it is open to any individual authority to divert spending to waste away from other services. There are always hard choices to be made in deciding how to divide up the cake, and it is clear that additional spending on waste would not be regarded as a priority by many local residents. This reflects the low profile of waste, which we have already noted. We also note that increases in council tax to provide more funding for recycling and other forms of treatment might have a disproportionate impact on less well-off households. (Paragraph 102)

The Landfill Tax

25. We once again recommend that the Government raise the level of the Landfill Tax to the £35 per tonne level as soon as possible. Not only would this provide a significantly increased driver for change, but it would also provide additional funding for programmes designed to reduce the waste streams. We welcome the funding that has already been made available from the proceeds of the tax, and recommend that the Government consider whether, if the level of the tax were increased, more could be allocated to the Environment Agency for its enforcement work. Without effective

enforcement, as we have already noted, financial drivers such as the Landfill Tax could have a perverse effect on behaviour. (Paragraph 110)

The Landfill Allowance Trading Scheme

26. The Landfill Allowance Trading Scheme has yet to come into operation and we cannot therefore comment at this stage on how it will work in practice. We recognise that this is an innovative and potentially useful way to encourage local authorities to divert waste away from landfill and that, in theory, it would reward those authorities which are effective at diverting landfill while providing significant incentives, through the use of financial penalties, to the less well-performing authorities. However, we are concerned by the comments of the Local Government Association that, in practice, the market operated under the scheme will not be perfect, in particular because of the lack of access by councils to accurate market intelligence. In its response to this report, Defra should set out how it will address such concerns. (Paragraph 119)

Variable charging and incentives for households

27. We welcome the Government's support for schemes that would allow local authorities to provide incentives to households to minimise, separate and recycle their waste, and would encourage local authorities to develop schemes along these lines. Such an approach would contribute to meeting the landfill diversion targets, as well as making the general public more aware of the impact of waste, the real cost of its treatment and their responsibility for helping tackle the growing municipal waste stream. Discretion about whether to introduce such schemes should be left with local authorities, who in turn should ensure that their local communities are fully engaged with the process. We believe that priority should be given within such schemes to incentives to minimise the overall amount of waste put out for disposal. (Paragraph 125)
28. We were also interested to hear the Minister's agreement, in principle, to the idea of variable charging for household waste. This would be a significant step further than schemes that reward households. Such schemes would be a further encouragement to households to tackle the waste stream, but care would need to be taken to ensure that variable charging did not have an unfair impact, especially on low-income families. Adequate facilities for recycling and composting would have to be available before this kind of charging came into operation. In addition, charging could create an incentive to dispose of waste illegally, to avoid paying the charge. This reinforces our earlier conclusions that effective policing of fly-tipping and other illegal waste disposal would be necessary for such financial instruments to work properly. (Paragraph 126)

Formal minutes

Wednesday 9 March 2005

Members present:

Mr Michael Jack, in the Chair

Mr David Lepper

Joan Ruddock

Mr Mark Lazarowicz

Mr Bill Wiggin

Mr Austin Mitchell

The Committee deliberated.

Draft Report [*Waste policy and the Landfill Directive*], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 126 read and agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.—(*The Chairman*).

Several memoranda were ordered to be reported to the House.

The Committee further deliberated.

[Adjourned till Wednesday 16 March at half past Two o'clock.]

Witnesses

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Baroness Young and Liz Parkes, **Environment Agency**

Ev 21

Michael Roberts and Richard Foreman, **Confederation of British Industry**, and Dr Paul Brooks, **Corus Group plc**

Ev 38

Wednesday 1 December 2004

Elliot Morley MP, **Department for Environment, Food and Rural Affairs**

Ev 51

Wednesday 15 December 2004

Cllr Paula Baker, **Basingstoke & Deane Borough Council**, Derek Goodenough, **Leicestershire County Council**, and Alice Roberts, **Local Government Association**

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Dirk Hazell, **Environmental Services Association**, Marek Gordon, **SITA**, and Peter Jones, **Biffa**

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List of unprinted written evidence

Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons library where they may be inspected by members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1 (tel: 020 7219 3074). Hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

Welsh Groups Network (Memorandum)

Confederation of British Industry (Supplementary Memorandum)

Lillian Pallikaropoulos (Memorandum)

Reports from the Committee since 2001

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Third Report	The Work of the Committee in 2004	HC 281
Second Report	Dismantling Defunct Ships in the UK: Government Reply	HC 257
First Report	The draft Animal Welfare Bill (<i>Reply, 385</i>)	HC 52–I

Session 2003–04

Nineteenth Report	Water Pricing: follow-up	HC 1186
Eighteenth Report	Dismantling Defunct Ships in the UK (<i>Reply, HC 257 Session 2004–5</i>)	HC 834
Seventeenth Report	Agriculture and EU Enlargement (<i>Reply, HC 221 Session 2004–05</i>)	HC 421
Sixteenth Report	Climate Change, Water Security and Flooding (<i>Reply, HC 101 Session 2004–5</i>)	HC 558
Fifteenth Report	The Departmental Annual Report 2004 (<i>Reply, HC 100 Session 2004–05</i>)	HC 707
Fourteenth Report	Sites of Special Scientific Interest: conserving the Jewels of England's Natural Heritage (<i>Reply, HC 1255</i>)	HC 475
Thirteenth Report	Bovine TB (<i>Reply, HC 1130</i>)	HC 638
Twelfth Report	Reform of the Sugar Regime (<i>Reply, HC 1129</i>)	HC 550-I
Eleventh Report	GM Planting Regime (<i>Reply, HC 1128</i>)	HC 607
Tenth Report	Marine Environment: Government reply to the Committee's Report	HC 706
Ninth Report	Milk Pricing in the United Kingdom (<i>Reply, HC 1036</i>)	HC 335
Eighth Report	Gangmasters (follow up) (<i>Reply, HC 1035</i>)	HC 455
Seventh Report	Implementation of CAP Reform in the UK (<i>Reply, HC 916</i>)	HC 226-I
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Second Report	Annual Report of the Committee 2003	HC 225
First Report	Water Pricing (<i>Reply, HC 420</i>)	HC 121

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Eighteenth Report	Conduct of the GM Public Debate (<i>Reply, HC 443 Session 2003-04</i>)	HC 220
Seventeenth Report	Biofuels (<i>Reply, HC 88 Session 2003-04</i>)	HC 929-I
Sixteenth Report	Vets and Veterinary Services (<i>Reply, HC 974 Session 2003–04</i>)	HC 703
Fifteenth Report	New Covent Garden Market: a follow-up (<i>Reply, HC 123 Session 2003-04</i>)	HC 901
Fourteenth Report	Gangmasters (<i>Reply, HC 122 Session 2003-04</i>)	HC 691
Thirteenth Report	Poultry Farming in the United Kingdom (<i>Reply, HC 1219</i>)	HC 79-I
Twelfth Report	The Departmental Annual Report 2003 (<i>Reply, HC 1175</i>)	HC 832
Eleventh Report	Rural Broadband (<i>Reply, HC 1174</i>)	HC 587
Tenth Report	Horticulture Research International (<i>Reply, HC 1086</i>)	HC 873
Ninth Report	The Delivery of Education in Rural Areas (<i>Reply, HC 1085</i>)	HC 467
Eighth Report	The Future of Waste Management (<i>Reply, HC 1084</i>)	HC 385
Seventh Report	Badgers and Bovine TB (<i>Reply, HC 831</i>)	HC 432
Sixth Report	Rural Payments Agency (<i>Reply, HC 830</i>)	HC 382
Fifth Report	The Countryside and Rights of Way Act 2000 (<i>Reply, HC 748</i>)	HC 394
Fourth Report	Water Framework Directive (<i>Reply, HC 749</i>)	HC 130
Third Report	The Mid-term Review of the Common Agricultural Policy (<i>Reply, HC 615</i>)	HC 151
Second Report	Annual Report of the Committee 2002	HC 269
First Report	Reform of the Common Fisheries Policy (<i>Reply, HC 478</i>)	HC 110

Session 2001–02

Tenth Report	The Role of Defra (<i>Reply, HC 340, Session 2002-03</i>)	HC 991
Ninth Report	The Future of UK Agriculture in a Changing World (<i>Reply, HC 384, Session 2002-03</i>)	HC 550
Eighth Report	Hazardous Waste (<i>Reply, HC 1225</i>)	HC 919
Seventh Report	Illegal Meat Imports (<i>Reply, HC 1224</i>)	HC 968
Sixth Report	Departmental Annual Report 2002 (<i>Reply, HC 1223</i>)	HC 969
Fifth Report	Genetically Modified Organisms (<i>Reply, HC 1222</i>)	HC 767
Fourth Report	Disposal of Refrigerators (<i>Reply, HC 1226</i>)	HC 673
Third Report	Radioactive Waste: The Government's Consultation Process (<i>Reply, HC 1221</i>)	HC 407
Second Report	The Countryside Agency (<i>Reply, HC 829</i>)	HC 386
First Report	The Impact of Food and Mouth Disease (<i>Reply, HC 856</i>)	HC 323

Oral evidence

Taken before the Environment, Food and Rural Affairs Committee

on Wednesday 10 November 2004

Members present:

Mr Michael Jack, in the Chair

Mr Colin Breed	Joan Ruddock
Mr David Drew	Alan Simpson
Patrick Hall	David Taylor
Mr David Leper	Paddy Tipping
Mr Austin Mitchell	Mr Bill Wiggin
Diana Organ	

Memorandum submitted by the Chartered Institution of Wastes Management (X25)

EXECUTIVE SUMMARY OF EVIDENCE

Negotiation of the Landfill Directive and its UK implementation has been long and difficult. Regulations, guidance and standards have been late and the complexity, resources and time needed to prepare often underestimated. Outcomes have included uncertain future investment in the industry, uncertain waste management capacity both in the short and long terms, and a great deal of effort for both waste managers and waste regulators throughout the whole process.

Underlying these problems is the low profile of waste and resource management with the general public, waste producing businesses and politically. Government needs to show real leadership in driving sustainable waste and resource management issues—as is being done for climate change—alongside legislative and policy initiatives.

Much work remains to be done on implementation of the Landfill, IPPC and Hazardous Waste Directives. However, it is also clear that lessons are being learned and there are increasing signs of better practise in and around Government.

This evidence therefore looks forwards rather than backwards—to help the later stages of the Landfill Directive implementation, and, more importantly, to improve future Directive negotiations and implementations. The acid test will be to look back in the future at the introduction of new waste Directives—such as the forthcoming Batteries Directive—to see whether lessons learned have indeed been put into practice.

For convenience CIWM offers evidence to the Committee under four general headings:

- Legislative development and implementation.
- Material bans from landfill sites (including hazardous waste).
- Landfill operations.
- Landfill Diversion.

Some more general points have been included in the last section but are broadly applicable across a range of issues.

1. LEGISLATIVE DEVELOPMENTS AND IMPLEMENTATION

1.1 *Resources and time needed for Directive implementation should be carefully planned and procured*

Waste and Resource Management has become complex, as has the EU and UK policy and legislation that drives it. Many EU Directives and Regulations work in tandem—the current changes in landfill are driven by at least the Landfill, IPPC, and Hazardous Waste Directives at the same time, plus the Animal By-Products Regulation, Waste Incineration Directive and others. The complexity and importance of these changes means their preparation and implementation should be carefully planned. Other stakeholders need certainty over when they need to respond to consultations and when other forms of input to Government's work will be needed. There are signs of more effective planning and management in Defra and DTI, but it needs to be strengthened. Key skills should be planned from the start; there should be no reason why consultations etc are held up for lack of lawyers to work on them.

1.2 UK input to Directive negotiation needs to be co-ordinated and supported between a wide group of stakeholders

Only Government can lead for the UK in EU negotiations—but they should be fully supported by the industries and regulators involved. The cost of co-ordinating input would be easily offset by better preparation for the implementation phase. It would also allow earlier or better prediction of the impact of new initiatives—individually or in conjunction with other initiatives. Defra's Hazardous Waste Forum has been partly successful in keeping stakeholders briefed, allocating work, and allowing input to the Department's thinking. This approach should be started earlier in the process of negotiating and implementation. Government should also consider whether or how individual stakeholder groups should be co-ordinated and whether they should be run by or for the Departments.

Government should also take this opportunity and that of the forthcoming Waste Strategy review to check whether all the strategic inputs and responsibilities to support their work are in place. Implementation of Directives needs:

- data collection and management;
- R&D co-ordination;
- collection and dissemination of information (such as the available technologies and their performance, cost and health impacts; current and predicted waste management capacities; likely future demand etc);
- market analysis and prediction of the impacts of new initiatives;
- contingency planning in case of strategic shortfalls predicted in capacity;
- management of co-ordinated input to, and liaison with, departments; and
- horizon scanning—especially looking at how up-coming policy or legislation will act together with existing or other new initiatives.

Other roles include the preparation of tools to help use the data and information available and support for those who need to use them. Government also needs support in terms of monitoring of the delivery of strategic objectives and the effectiveness/efficiency of current policy and controls. Again, this could be done either by or for Government Departments.

Some of this is being put into place and is welcomed. WIP's data programme and R&D co-ordination by Defra will make a difference. We now need an analysis of whether the right bodies have the right and clearly expressed responsibilities and the powers and resources to carry them out.

2. MATERIAL BANS FROM LANDFILL

2.1 *Materials bans from landfill have not led to sustained waste treatment demand*

In July 2001 wastes such as highly flammable, oxidising and hazardous liquids were excluded from landfills. Although there was an initial increase in demand for treatment, it soon fell back to pre-ban levels.

The end of co-disposal in July 2004 severely curtailed the remaining hazardous waste landfill capacity in the UK. This change was well heralded and there was a marked increase in special wastes consigned to landfill prior to the ban. Following the ban consignments were much reduced though regulators report that the number of consignments is now beginning to pick up again in some areas.

The landfill bans are intended to make landfill more environmentally sound and to apply pressure on hazardous waste producers to either produce less hazardous waste or to have it recycled, recovered or pre-treated. The down turn in special waste consignments will be due to:

- re-classification. Many wastes were consigned on a purely precautionary basis—they were probably never “special” wastes;
- eliminated or reduced special waste production;
- special waste clear-outs before the ban to buy time. Contaminated land projects showed a significant increase in consignment to landfill in early 2004; and
- stockpiling of special wastes hoping that additional treatment or disposal capacity will become available.

Regulators confirm there has been no noticeable increase in hazardous waste flytipping or abandonment. Hazardous waste site operators have therefore been left puzzled as to where the additional special waste has gone. Concern has been expressed to Defra and the regulators that mis-description, mixing or sham treatment of hazardous wastes may become commonplace. Much of this activity would be clearly illegal and possibly dangerous. Some may be encouraged by the vagueness of the current guidance on pre landfill treatment for hazardous wastes.

2.2 *Diversion of hazardous wastes away from landfill and investment in alternative treatment hinges on clear standards and firm regulation*

The Agencies need to issue clear guidance on the degree of treatment required before wastes can be landfilled in advance of the widely reported July 2005 introduction date for full Waste Acceptance Criteria. This must be backed by robust regulation of the hazardous waste market—including waste brokers who are seldom checked. This needs to be backed by enforcement action and targeted by information from compliant businesses where they have reason to believe they are being undercut by waste crime.

The Environment Agency expects to release waste treatment guidance shortly. Earlier co-ordination of such work through the Hazardous Waste Forum may have eased and speeded this work.

Under the new (2005?) Hazardous Waste regime greater responsibility should be placed on waste producers for closing the information loop for their own wastes—making sure they have gone to an appropriate facility. The regulators will need more skilled staff to deploy in compliance checks at all types of business, compared to their mainly data management role at present. As ever the agencies need to be fully resourced to take on this task to support compliant businesses and best practice.

3. LANDFILL OPERATIONS

3.1 *Government must support investor confidence in the future of this industry*

Waste is a regulation-driven sector. Investment in higher landfill standards and non-landfill or pre-treatment technologies will only follow if investors believe that standards (and therefore cost) of waste management operations will be clearly specified and strongly enforced. Nobody will invest in the future of this sector if the risk of being undercut remains. Policy and legal implementations therefore need to be programmed from the start, identifying when guidance, regulations etc will be issued and should include early clarification of standards to be met. The programme should include other stakeholder input and should be adhered to.

Regulators should be fully resourced and skilled to enforce standards. The significant lead time for capacity building for the regulators should be included in any implementation plan.

3.2 *The regulators should streamline and prioritise landfill PPC permitting processes*

Quite rightly, the environment agencies have prioritised the re-permitting of hazardous and complex landfill sites as these have the greatest strategic importance. The re-permitting process is slow however and the Agency and SEPA should review their processes to streamline wherever possible and ensure that new landfill applications are as well supported.

The waste industry has its part to play in streamlining the permitting and re-permitting process. Not all applications reach the standards needed by the regulators. Often applicants rely heavily on consultants in the early stages of application and don't have their own in-house skills or knowledge to manage the application subsequently.

3.3 *Government should explore improvements to non-PPC waste permitting outside of the terminated waste permitting review*

Diversion from landfill will increase the number and range of waste treatment facilities needed. Many will be small and/or low risk waste recovery operations under Waste Management Licences or Exemptions. Many small operations are discouraged from starting because of the cost and administrative complexity of licensing, and the suspension of the Waste Permitting Review is a lost opportunity to support more sustainable waste solutions. If we are to successfully reduce reliance on landfill the waste planning and permitting systems need to deliver an adequate network of new facilities. CIWM urges Defra and the Agencies to identify improvements in permitting in the absence of the review.

3.4 *Greater involvement of stakeholders, as in the Hazardous Waste Forum should be a model for future policy/legal implementations*

Early preparation of standards and guidance would be helped through routine stakeholder involvement. Co-operation between the waste management sector, regulators and government departments is vital. It should start as early as possible—even pre-implementation—and it should be co-ordinated and fully supported.

4. DIVERSION OF BIODEGRADABLE WASTE FROM LANDFILL

4.1 CIWM welcomes and congratulates many Local Authorities on their recent recycling performance. This takes commitment of resources and leadership and can only be achieved with high rates of public participation. It will, at least in part, help meet the Landfill Directive biodegradable municipal waste (BMW) diversion targets.

Government has recognised the importance of meeting the BMW diversion targets and has concentrated its effort and resources on the matter. CIWM welcomes the creation and maintenance of WRAP to stimulate recycling capacity and recycle demand, and the creation of the Waste Implementation Programme (WIP). Both have ambitious programmes but may struggle to turn resources into performance in the short term. WIP makes use of broadly-based steering groups to support and inform their programmes, and this should be used as a model for future work elsewhere. Funding for the continuation of WIP beyond its initial three years should also be secured.

The introduction of the Landfill Allowances Trading Scheme (LATS) will provide the mechanism to drive BMW diversion. It is being closely watched elsewhere in Europe as a novel method for broader application.

CIWM believes many Local Authorities should, with appropriate support and expansion of recycling, be capable of reaching the 2010 landfill diversion targets (35% reduction in BMW sent to landfill compared to 1995), provided that stimulation of recycle demand is adequate and waste-derived compost is suitable for use.

Municipal waste is still growing, albeit at a reduced rate. CIWM wants to see more resources concentrated on waste reduction, for example through consumer product design, rather than reliance on recycling and recovery of waste only.

4.2 CIWM does not believe that the 2013 target (50% reduction) can be met by recycling and composting alone. The current high performing Local Authorities are achieving above 40% recycling, but this is not the same as 40% BMW diversion, as items like metals, glass and textiles are either not biodegradable or only contribute in part. Using Daventry District Council (2003–04), their 42% recycling rate comprises:

- 26.5% from garden waste and cardboard composting (100% biodegradable);
- 8.2% paper (100% biodegradable);
- 5.4% glass (not biodegradable, so does not count towards BMW diversion);
- 2.0% plastic bottles and cans (non-biodegradable); and
- 0.05% textiles (only 50% counted as biodegradable).

This equates to around 35% BMW diversion. Even higher performing Councils will find 50% BMW diversion challenging without alternative residual waste management options or significant waste reduction.

Evidence from effective recycling authorities suggests that meeting early targets of 30–40% diversion can be achieved with appropriate investment in existing technologies and public awareness. However, reaching the later targets will involve capital intensive residual waste treatment facilities. Project Integra (Hampshire) is one of the leading public/private waste partnerships in terms of developing and implementing a recycling based strategy. They suggest 50% will be the upper limit to what could be reasonably recycled. They have therefore included three energy from waste facilities in their strategy to achieve the necessary longer term BMW diversion.

Non-landfill waste treatment technologies have significant lead-in times—often seven to eight years or more. The time to plan for waste treatment capacity to meet 2013 targets and beyond is therefore now.

4.3 The present waste planning system needs to be made more efficient. ODPM has described the current planning system as complex, remote, hard to understand and difficult to access. CIWM therefore welcomes Government's proposals to revise guidance for waste planning and Municipal waste management Strategies. We would like to see speedy consultation and implementation of these proposals if they are to be in time to help make planning and investment decisions that could set the way forwards in municipal waste management for the next 25 years.

The concept of BPEO (Best Practicable Environmental Option) at an individual project scale should be superseded by Strategic Environmental Assessments in waste strategy development. CIWM also seeks assurance that Local Authorities at all levels will have the resources, skills and access to data, tools etc to develop sustainable waste and resources strategies quickly and efficiently. This should be matched with a clear timetable with deadlines and consequences for not meeting them for all authorities involved in preparing the plans under the new planning regime.

The WIP New Technologies Programme will provide much needed information on non-landfill waste management technologies. We look forward particularly to the demonstrator projects providing objective financial and technical information about different technologies available to treat BMW and other wastes. This should give commercial and political decision makers greater understanding of waste treatment techniques and their performance—overcoming some of the current widespread misunderstanding and misinformation about the options available.

4.4 More financial support is needed for English local authorities to meet BMW diversion targets. Support has been available through a number of schemes, but bidding rounds have been rushed and the amount available too small—particularly compared to the Strategic Waste Fund in Scotland. More funding announcements are expected shortly regarding the use and allocation of the increased Landfill Tax from 2005–06. This could yield around £200 million per year by 2010 and Government needs to make clear its proposals for these monies. Given that this money is paid in the first instance by local authorities for the landfill they use, and that the LATS scheme will penalise over reliance on landfill, CIWM questions the need for dual control over local authority BMW diversion in this way.

4.5 Government should give greater attention to communication of waste policy and initiatives. CIWM welcomed the use of a Defra communications manager recently for hazardous waste. We understand this approach will be used in other waste policy areas, and believe it will make a difference to the effectiveness of future initiatives. Successful BMW diversion hinges on public support and participation. We need clear and sustained messages from Government that the producer really must pay the real price for the management of their waste, and that individual responsibility makes a difference. Government should support reduced frequency of residual waste collection (as recommended by the Audit Commission as far back as 1997). Often householders are reluctant to relinquish their “rights” to have as much refuse collected as they want every week. Local authorities should also be allowed to trial direct or variable charging for residual waste collection. Such charges have been used effectively elsewhere in Europe, assisting waste diversion and recycling.

4.6 Future Government policy and strategy should give greater attention to industrial and commercial wastes. Re-allocation of new landfill Tax monies should stimulate waste prevention, minimisation and recycling, and Government should clarify their priorities for use of these resources. The review of Waste Strategy 2000 also offers an opportunity to broaden Government’s focus on these much larger waste streams. Other Government initiatives such as the planning system review, WIP’s Waste Data programme and WRAP should help industrial and commercial waste management as much as municipal waste management.

ABOUT THE CHARTERED INSTITUTION OF WASTES MANAGEMENT

CIWM is the professional body for waste managers in the UK. It has over 6,000 members from all areas of the waste and resource management sectors, was awarded its Royal Charter in 2002, and has been a founding constituent body of the Society for the Environment in 2004. CIWM sets professional standards for individuals working in the sector and its objectives are to: Advance the scientific, technical and practical aspects of wastes management for the safeguarding of the environment; promote education, training, research and the dissemination of knowledge in all matters of wastes management and to strive to achieve and maintain the highest standards of practice, competence and conduct by all its members. CIWM provides professional impartial representation on all matters of waste and resource management.

18 October 2004

Witnesses: Mr Steve Lee, Chief Executive, Mr Chris Murphy, Deputy Chief Executive, and Mr Roger Hewitt, honorary Treasurer, Chartered Institution of Wastes Management, examined.

Q1 Chairman: Good afternoon, ladies and gentlemen. Welcome to this first evidence session in the Committee’s inquiry into waste policy and the Landfill Directive. We have one witness this afternoon: the Chartered Institution of Waste Management. Welcome and thank you for your written evidence. We welcome to the Committee Mr Steve Lee, the Chartered Institution’s Chief Executive. Mr Lee, you were Environment Agency, were you not?

Mr Lee: I have been a man of many colours!

Q2 Chairman: I was just checking. I did not want to put my foot in it in any way. I thought it must be the same person. You are very welcome, because you have been kind enough on previous occasions to come and give us evidence. You are accompanied by Chris Murphy, the Deputy Chief Executive, and Roger Hewitt, Honorary Treasurer. I notice the two Chief Executives have put the Treasurer in between, which must say something about resources. I have to say, gentlemen, that I still find this a confusing and difficult area to wrap my mind around, if for nothing else than that the acronyms and nomenclature are quite difficult if you are not a day-by-day practitioner in the schemes. Looking at the Landfill Directive, I was struck by a point in paragraph 1.2 in your evidence when you said, “Government should also take this opportunity and that of the forthcoming Waste Strategy Review to check

whether all the strategic inputs and responsibilities to support their work are in place”, which gave me the impression that the whole of the implementation of the Landfill Directive was still in a malleable state where you perhaps felt that not all the thinking that should have been done had yet been done to make certain that its implementation was going to go as successfully as possible. In answering that question could you tell the Committee a little bit more about what this Waste Strategy Review is about, what will it cover and who to your knowledge is supposed to be involved in it?

Mr Lee: I will take that one, if that is all right, Mr Chairman. Thank you for that question. It is a very important and timely question. At the moment we have Waste Strategy 2000 that was written to guide the waste strategy for England and Wales. Subsequently Wales has got its own waste strategy, and, coming up to 2005, it is time for the five-year review of all the policies, instruments, tools and ideas that were originally built into the original strategy. The strategy review is to be led by Defra and most of their work will be done towards the end of this year and through the first half of 2005. For me the most important question is what are the bounds to this review of the strategy? How far do you intend to go? Do Defra intend only to concentrate on municipal wastes? Do you intend to stretch out all of the policy to cover industrial and commercial waste as well? The bounds to the strategy review are

10 November 2004 Mr Steve Lee, Mr Chris Murphy and Mr Roger Hewitt

absolutely fundamental for me, and that is something that we will want to learn from Defra in the next two to three months.

Q3 Chairman: So they have a role to sort all that out. The Committee has received quite a lot of evidence from various groups on the implementation of the Landfill Directive, and let me just entertain you with one or two of the quotes that have been put to us. The Environmental Services Association referred to the country as being “unprepared” for the implementation of the Directive, and Biffa Waste Service’s comment was that the Government had failed to provide adequate information and guidance to waste producers. You, on the other hand, took a different view. You said that the changes were “well heralded”, but you also recommended that the Government should give greater attention to communication of waste initiatives. Why the difference? Why does the trade think it is a bit of a dog’s breakfast and you think it is all right?

Mr Hewitt: I do not think there is that much of a difference of view really, Chairman. It may simply be a different emphasis on words.

Q4 Chairman: But they are rather important in this context.

Mr Hewitt: Yes, they are. There is no doubt that even today a very large part of the waste producing community in this country do not understand what the end of co-disposal and the Landfill Directive meant to it. The amount of information given to them was sparse and their understanding of what they needed to do was even sparser. It was a pity that the forum that the Government established was not established at least two years before it was put together, because a great deal more work could have been done by the industry. The members of the forum included the Chartered Institution, and the ESA. All the interested parties together could have done so much more to have provided the Government with the information it needed to have made better plans. The fact is 16 July was seen by many people to herald a major change. I am not only the Treasurer of the Institution, I am also a major operator of hazardous waste treatment plants, and I can tell you that the only change that I noticed between 16 and 17 July was that I handled less hazardous waste for treatment on 17 July than I did on 16 July. That should not have been the case, I should have been seeing more, but I did not, I saw less, and it has remained less from that day to this.

Q5 Chairman: When we did our last report into this we got the usual ministerial reassurances—as they say, “Everything will be all right on the night”—and I was in the House last week, or the week before last, for Defra questions and I seem to recall questions of waste mountains, of hazardous waste being discussed and the Minister looked with distain on those who raised any question. Everything, according to him, was absolutely fantastic. How is it that, in spite of the run in we had to this, the

information does not seem to have got through to the practitioners? Give us a flavour about what the current situation is.

Mr Hewitt: I think the information has got through to the practitioners. If you mean the people within the waste sector who operate waste management facilities, the message has got through to them. The question that I would ask—and I am not asking this of you, I would ask the Government—is if you anticipated a crisis arising post 16 July and that is what you put in place the hazardous waste forum for, then what happened to the crisis post 16 July? Two million tonnes of waste was going to be displaced from landfill by co-disposal, and we have to remember what co-disposal and the Landfill Directive is all about. It is designed, as is the Government’s waste strategy, to move waste away from being disposed to landfill to other means. Also, there is a little phrase contained within the Directive which says, “All waste must be pre-treated prior to disposal.” We could spend many hours talking about what you mean by “pre-treatment”, but I think most of us have a very good grasp of what that means. If this two million tonnes of waste was being displaced from landfill by the Directive, plus another million tonnes is likely to occur because of the imposition of the European Waste Catalogue and definition of “Hazardous” Waste—that is three million tonnes of waste—in theory, if not in practice, that would all need to be pre-treated prior to disposal. Therefore, I should have seen trucks queuing up outside my plant; I should have seen the amount of drums I treat every day going up. Why is it that since that time I have seen 30% less drums than I did the day before? The reason is that most of that waste is going to landfill. It is going where it went to and where it is not supposed to be going to, and the question mark about it is how much of it is being properly pre-treated before it goes there?

Q6 Chairman: That, I presume, raises the question that when vehicles arrive with this material present there are not people of sufficient qualification to say, “No, you cannot bring that here.” Is it as practical a problem as that?

Mr Hewitt: I think that depends much upon the regime. If a landfill operator is responsibly relying upon the information he has been provided with as to the mechanism of treatment for that material before it gets to his gates and he is relying upon it reasonably so, then he will perhaps accept that the material has been treated, but much of it cannot have been. If you look at the amount of treatment capacity in the country, one of the issues that the forum was established to approach was that paucity of treatment facilities and how they were going to encourage people like myself to invest more money in more facilities. The answer to that was: “If I see the waste, I will invest in the facilities. If I do not, I will not because what I have got already will be over invested”, and that is the case I have. The reality is that this waste now goes to landfill, much of it in an untreated condition, and the basis upon which it goes there must be questionable. If that was the means of avoiding a crisis, then it has been avoided,

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but in reality the problem is still there. I go back to the two tenets that we are looking at: one is that all waste should be pre-treated—and, as I said, we could debate the mechanism, and I am open to that debate—the second one is that the whole purpose of the Landfill Directive and the co-disposal ban in itself was to move waste away from landfill, not to it. It seems to me we have achieved exactly the reverse. If that is avoiding a crisis successfully, I have to congratulate the people who thought that that is what they were going to do.

Q7 Mr Mitchell: You said we know what pre-treatment is. I do not. Is it expensive?

Mr Hewitt: It varies greatly. Some wastes which are very hazardous require a great deal of pre-treatment and a lot of thought about it before it happens. Other material—and I do it every day—can be treated from a hazardous condition to a non-hazardous condition so it can go to non-hazardous landfill without any problems, but I think the point that needs to be stressed here is this: The real argument was about two things: the shortage of hazardous waste landfill, because there would not be enough sites permitted, and the shortage of treatment facilities. If you add those two things together, you have, in theory, a mountain. If that mountain was going to be going anywhere, it would have to be pre-treated before it went there. It would have to go through plants like mine to get to non-hazardous landfill sites. That cannot be the case: because I could easily take another 200 tonnes a day for treatment for that to happen, but it is not arriving. It must be going to sites without adequate pre-treatment. It may be that the originators of that waste can satisfy the receiving site that the material is acceptable—the test will be “Is it acceptable?”—and, I suppose, the end part of that is this. Unfortunately the European Waste Acceptance Criteria may not come into being for non-hazardous sites until 2007 at the earliest. For hazardous sites it is now. So those non-hazardous sites can go on taking that kind of waste way into the future. If it is pre-treated properly, there is no question. If it is not, there is a big issue there.

Q8 Paddy Tipping: You mentioned a few moments ago about the Hazardous Waste Forum and your evidence describes the Hazardous Waste Forum as a partial success. Could you take me through what the success was, what the failure has been? I got the impression it was set up far too late and may be that the voice of the private sector was not being listened to earlier?

Mr Hewitt: I think the sadness about it was that it was set up too late. I think there were a lot of people on that forum with a great deal of experience, both from within this country and outside. I have operated waste management in the United States, Europe, all over the world, so there is a great deal of experience to be taken, not just from me, but from others. I think the bony fingers of caution were raised that, if we did not plan properly, there would be issues of misdescription, misrouting, hazard and possibly environmental damage that would be to

nobody's credit at the end of the day. A great deal of good work was done—the document I am looking at here was a report on treatment capacity available—but I do not think it was used properly. It was not considered adequately and it was not used properly, and you began to feel that what we were sitting here doing was arriving at an answer that was already pre-thought out, that we were trying to give everybody a comfort feeling that this crisis was going to be averted; but, if you did the arithmetic or the analysis and you spent any time in the business, it was obvious to anybody that if you had six million tonnes of hazardous waste prior to 16 July you have got at least that post it. There is an argument that a lot of producers over-classified waste because the economics prior to the ban meant that you could send hazardous and non-hazardous to the same place at virtually the same price, so they over classified; but even if you factored that out, and a lot of other percentages too, you still arrive at today being unable to account for at least 750,000 tons, probably well over a million tons, of hazardous waste. We cannot account for it. Where is it?

Q9 Paddy Tipping: Let us stick with the process for the minute. I think you used the phrase “the bony fingers of caution”. Whose fingers are they? Who is being cautious? Is it the ESA—Steve Lee knows all about that—or is it Defra itself? Who has put the mockers on this?

Mr Hewitt: The ESA did. The Environmental Services Association was very voluble in its views. Their members made clear their reservations and their concerns, we did at the CIWM and so did many other members. The consultants employed to produce information said the same things.

Q10 Paddy Tipping: Who was saying, “There is a problem”? Who was not taking you seriously? That is what I am getting at?

Mr Hewitt: I think that the Agency were concerned but came into the piece with everybody else too late to do it, and, I have to say, since 16 July and discussions with them and debate about the issues, I think they have understood there is a problem here and have set about a responsible programme of measurement, audit, tracking in order to get to grips with it. My criticism, I think, sits with Defra in that they were the originators of the forum, and I think they should have listened much more carefully to the words that were being spoken, to the concerns that were being levied and the facts that were being put before them that, if this was not handled properly, we had enough experience. In August 2002 the ban on corrosive and liquid waste to landfill came to pass. I saw that mountain of waste outside my sites for two months. It disappeared. Where did it go? It went back to landfill, but it should not be going back to landfill; that material was not being treated and it was not magicked away anywhere. We already had enough examples of what could go wrong if you did not have the policing and the control mechanisms there. That was not taken sufficient notice of. Time and time again we raised those and other points.

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Q11 Paddy Tipping: What you are telling me is that people in the industry knew of the problems and often knew the solutions, and I think you said very clearly that Defra did not take any notice. What is the lesson to be learned on this? Most of our environment legislation is now driven from the EU. If you were to look back over this episode, how would you use the knowledge, the learning that we have had about future EU legislation? How can we implement it in the UK more effectively and more efficiently?

Mr Hewitt: I think we need to get the interested parties together much earlier. Where there are issues in investment for future technologies—that is people like myself being encouraged to make that investment—we need to be very certain that the economic parameters will be available. We do not want a situation where the Environment Agency is used as some sort of fifth power within the economic balance of the way that waste management works. I think that is where the Environment Agency has been put by the way this whole process has not worked. So, getting people together much earlier, I think listening, not just sitting there and taking notes but listening to what is being said, and being prepared to work together constructively. We are not all right all the time, we can all be wrong, but working together constructively in order to deal with the issues when they occur, but having a policy and intending to tell people that that is going to work so that other people in the waste industry—the brokers, the transporters, the transfer stations—the other people involved who understand that this policy, this directive, must be obeyed and the parameters of how it is going to be obeyed are laid out and put there early. The delay in the implementation of the hazardous waste regulations is a big mistake. The fact that the Waste Acceptance Criteria were not brought in last July is a big mistake. We should bring these things in early, we should plan to bring them in early and we should make them effective and work.

Q12 Paddy Tipping: So early decisions will help long-term private sector investment?

Mr Hewitt: Yes, and working together.

Q13 Paddy Tipping: You are saying that there is not enough clarity and so you cannot do that?

Mr Hewitt: Correct.

Q14 Chairman: Before I bring in David Drew, what were the reasons given for the delay and did you think they were valid?

Mr Hewitt: I do not think enough reasons were given for the delay. The delay appeared to me to be nothing more than a wasted passage of time. I am sorry to sound so accusatory about it, but there were views about resources and staff and legal people and drafting resources, and so on, but anybody used to doing things to critical paths and building projects and making them work knows that you commit resources to overcome things when you know there is a necessity for something to happen. If you have convinced yourself that that necessity perhaps can be avoided or the crisis around it is not going to

arise, you can take a laid-back view, but, in my view, not enough emphasis was placed upon the need to get these things in place. It was almost as if it was going to be all right on the night. It has not been all right on the night, and unless they are put in place one cannot have an effective regulatory structure. We cannot ask the Environment Agency to regulate if the structure to regulate against is not there.

Q15 Mr Drew: It is that very point that I want to take up. Obviously in the previous inquiries that we have undertaken the criticism of the industry has often been that the civil servants that they have been operating with have not had sufficient grasp of the detail or knowledge of the industry to be able to engage in a sufficient level of rigorous debate so that we can get appropriate solutions. Is there any evidence that this is improving, and, if it is not improving, what message should we be taking to Defra to try to get it to improve?

Mr Hewitt: I have been in this business over 30 years and I can look at Defra, DOE, through all of its developments over that period of time. It would be fair to say that the resources that the Government department has in the shape of Defra now are far less than they were 25 years ago. The way that the industry worked with the then DOE, or whatever it might have been called at the time, I think was different. I think it was more rapid and I think it was more productive. I think they are short of resources. Defra is inadequately resourced for the job it needs to do. Maybe there is an issue of management for those resources, I cannot say—I am not responsible for that—but I believe they are short of the necessary people, and it has been that way since the establishment of the Agency. 1996, I think, was the big moment in time when the Defra resources, or DOE as it was then, shrank, and they have never been replaced. I think it would be a fair comment to say from their side that they do not have sufficient resources, and they should have.

Q16 Mr Drew: Can I parallel my earlier question with one to do with the Environment Agency? Have they got a better calibre of people, have they got more understanding of what is happening in the field, or are they too remote to really be able to do this job effectively, which is basically to be able to lead from the front to take people with them?

Mr Hewitt: My personal view is the Agency needs more resources; it needs more policemen. I think it has been a mistake. For example, the landfill tax has disappeared back into the Chancellor's pocket. I would like to see a big chunk of that given to the Agency to fund the resources it needs to police waste management in particular, and hazardous waste would be one of those items. Initially when we started the discussions, particularly in the forum, the Agency were somewhat behind in understanding the size of the problem and actually appreciating the kind of malpractice that has gone on in this particular sector. It has caught up with that. It has taken the issue on and it is developing the policies. I suspect had they more resources to have done that with, particularly in the field in policing, then they

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would be a lot more successful more quickly. I think there is another aspect to Agency regulation, and that is that they should be encouraged to be less tick-boxing and more measuring. There is a big difference between those two things. I think effective regulation is about measuring and less tick-boxing. I think that is the way these kinds of organisations tend to grow over a period of time, and I guess they will see the need to change that but I think it is needed in this instance.

Q17 Mr Mitchell: You gave us quite a high estimate of three-quarters of a million tons of hazardous waste disappearing. One of the highest ones we have had. It is a nightmare vision actually.

Mr Hewitt: I am sorry?

Q18 Mr Mitchell: I said it is a nightmare vision: three-quarters of a million tons being driven around the country in lorries which has disappeared. I wonder how much has gone into fly-tipping. The evidence of increased fly-tipping is all around. Certainly whenever I venture into the country, which is rare, you see quite a lot of dumped stuff. The Clean Streets organisation in Grimsby tells us there is more fly-tipping, and it must be going on on a scale because it has even reached the Archers! Even they have had fly-tipping. How much of this has gone into fly-tipping prosecutions?

Mr Hewitt: I do not believe that we are seeing a very high level of fly-tipping of hazardous waste. That we have not seen. I know it was anticipated or worried about, but we have not actually seen that. I do not think that is where this waste is going. It is not being fly-tipped in ditches or in pieces of waste ground. There may be a little of that, but it is not huge. I would be interested to hear Steve's view in a moment on that, but I do not think it is huge. I think this waste is going into landfill sites, and it is going misrouted, misdescribed and not pre-treated.

Q19 Mr Mitchell: And mixed in with non-hazardous waste?

Mr Hewitt: Oh, yes.

Q20 Mr Mitchell: It would be nice to hear from somebody apart from the Treasurer, who seems to do all the talking for the organisation.

Mr Lee: Fly-tipping is one of my favourite topics. I think the Environment Agency will tell you, and you will no doubt ask them when they are here in a few weeks time, hazardous waste fly-tipping does not seem to have risen dramatically after July 2004. It has always been there. It is a low, but still important, level with no real change across the banning co-disposal. Tons of hazardous waste is missing, and there are some good reasons why hazardous waste might not be out there in the market at the minute. Some of the stuff that was consigned as special waste was, frankly, never special in the first place. It was done on a precautionary basis. It was cheap. It was a good way of tracking where your waste went to; it was never special. Some of it has been designed out of people's processes already. They do not want the added administration costs of having to manage

hazardous waste in the future, so they have changed from solvent-based paint to water paint. Great stuff! Some were subject to a clear out. There is no doubt about that. The regulators report to us a dramatic increase in the amount of special waste that was consigned before the end of co-disposal and, not surprisingly, there was a quiet period immediately afterwards. Some people are holding their breath. Some people are stock-piling special waste, hoping that some solution will come out of the woodwork. There are all sorts of reasons why the downturn in the market could be anticipated and explained away. Our concern is does that explain away all of the difference that we are seeing in the hazardous waste market? There is a concern that people are misdescribing waste, or illegally treating it, or illegally mixing it with non-hazardous waste, and that is where we need confirmation back from the regulator. We need them to tell us whether the missing tons are there for good reasons or illegal reasons, and you will want to explore that with them.

Q21 Joan Ruddock: I was going to ask a number of questions which Steve Lee has just about answered already, I think, in what he has been saying. Just on the issue of the Environment Agency, clearly Mr Hewitt said that they should have more resources and thought that they could do more, and all the rest of it, but what are they currently doing? You say that they were late in the game, but what are they currently doing? Have there been prosecutions? Are you aware of real actions by the Environment Agency in respect of that which has disappeared going, presumably, into landfill hazardous waste?

Mr Lee: I think I can confirm that if they had found something that was of great concern to them and they were considering prosecution or other enforcement actions, they would not tell me. In a classic way they would have to keep that to themselves. What I am satisfied that they are doing is they are trying—

Q22 Joan Ruddock: Through your membership I imagine you hear of inspections happening?

Mr Lee: Yes, there is an increased level of activity by the Agency. We know they are prioritising where they put their effort. They are trying to think what are the most important waste types they should try and track; what are the most important sites or types of operator that they should be concentrating on? I know that they have done a lot of targeted inspections of those sorts of people. The big question is, out of that targeted activity, are they finding things that they are deeply unhappy about? Are they considering prosecution action? Again, that is something that you will have to ask of the Agency. I do warn you that if they are finding something that they want to consider for prosecution, they may well be not inclined to tell you either, and they have to do that for good reasons.

Q23 Joan Ruddock: You are suggesting that there is not yet evidence of them taking action. This is quite mysterious, is it not? You are saying to us you think that there is a lot of inappropriate material definitely

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going into landfill which is either untreated, and therefore not safe for landfill, or remaining hazardous and should not be put in landfill, but you are seeing no action being taken from the industry?

Mr Hewitt: No, I think we are seeing activity by them in increased site audits, stopping of vehicles, inquiries of producers as to what material they are producing and what their pre-treatment is before it has left their site and the classification they are giving it before it leaves their site. In treatment plants such as mine they inspect us to find out what we do, what our pre-analysis and post-analysis is, how we justify saying that the material is non-hazardous or hazardous when we have treated it. No, I think there is a very high level of activity now by the Agency.

Q24 Joan Ruddock: But at the moment none of us know whether they are finding anything?

Mr Lee: I think that is a good summary. We can see activity. What I cannot tell you is whether that has been turned into legal actions.

Q25 Joan Ruddock: Do you think that activity short of legal actions would change behaviour?

Mr Lee: Yes.

Mr Hewitt: Steve touched upon two points which I think are important, and that is what philosophy is being used by the transfer stations and other operators in how they are handling this material? What level of treatment are they putting upon it? They are not, generally speaking, themselves rated to carry out treatment; so if they are sorting waste what do they mean by "sorting"? Sorting is a recognised means of reducing the hazard of a particular load, but you can appreciate that, if I am not applying any physical change or chemical change and I just separate those two things, I have got some material here that is still hazardous and some that is non-hazardous. What happens to this piece that is still hazardous? How is that then dealt with? The mere separation of it does not change its hazardous nature. It is also the way that it then gets described. Are they illegally mixing materials at those sites? All of those things need to be ascertained by the Agency and the message of them doing that by audit, by inspection, going back to those operators and being very clear that this is not acceptable practice—whether they are going to be prosecuted or not it is not acceptable practice—starts to filter through to the industry that this has got to be handled differently.

Q26 Joan Ruddock: One of the things you say is that, apart from going into landfills illegally, there may be stock-piling by manufacturers. How widespread do you think that is and how safe do you think it is?

Mr Hewitt: The days of large quantities of hazardous waste being produced by big operators have gone. I can identify that by saying that six years ago probably every day one of my plants would take eight or nine loads of 80 drums each from single manufacturers. Most of those loads are now made up by what we call "milk rounds"—they pick up 10 here, 10 somewhere else, 10 somewhere else—and it is the SMEs that now produce a large amount of this

waste. Their resources for stock piling are few. Although stock-piling will have gone on, I do not believe it has been a huge activity. We will not find a million tons has been stock-piled somewhere.

Q27 Joan Ruddock: So designing out and stock-piling probably do not account for much of this three-quarters of a million tons. Is that correct?

Mr Hewitt: No. Minimisation and avoidance probably was a 10, maybe 20% exercise. Reclassification may be another 10 to 20%, but when you add up the numbers you still come back to three-quarters of a million to a million tons is going somewhere, and it is not going where it should be going to.

Q28 Mr Lepper: Can I clarify one thing about the Waste Acceptance Criteria? Mr Hewitt, you talk about 2007, not 2005?

Mr Hewitt: No, that is for hazardous sites. It is a bizarre situation that hazardous sites from next year (2005) must follow the Hazardous Waste Acceptance criteria. For non-hazardous sites it does not come into effect until 2007 at the earliest.

Q29 Mr Lepper: Your view, from what you said earlier, was that more coherence would have been achieved by running those things together?

Mr Hewitt: If I was asked what my practical view would be: firstly, they should both have happened on the same day to make any logical sense of waste management, and, secondly, the regulations behind them should have come into effect on the same day as well. This business of these things being separated by time just creates bigger problems. It does not take them away.

Q30 Mr Lepper: Let us have a look at what comes into force in July next year. It is 16 July next year, is it not, for the Waste Acceptance Criteria and the Hazardous Waste Directive?

Mr Hewitt: Yes.

Q31 Mr Lepper: How are we doing on planning to meet that date from what you have told us so far?

Mr Hewitt: We are still waiting for clarifications related to WAC and we are still waiting for the regulations.

Q32 Mr Lepper: "Clarifications"—can you expand on that a little more?

Mr Lee: There is a lot more work that needs to be done. We need regulations. The fact we are waiting for amendment regulations from Defra that will amend their 2002 Regulations and their 2004 Regulations gives you some idea of how complex the law, even just around the Landfill Directive is becoming. We need technical guidance from the regulators to tell us how the analytical process is to be done to sample and analyse wastes. We need guidance from the Environment Agency as to what treatment is and what is adequate treatment for waste to be able to go into landfill. All of that needs to be in place in time for the waste producing and waste management industries to react to it in time

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for July 2005. Taking the kindest view of it, if Defra are to consult on their amendment regulations, let us say, in November, that means we can anticipate the regulations being ready for issue in March or April 2005. Coupled with that, we need a lot more technical guidance from the regulator. That still leaves waste producers and waste managers with surprisingly little time to make sure that they have looked at their wastes; they have looked at their analyses; they have looked at their protocols in time to make sure that they are ready to ensure that the right wastes go to the right sites in July 2005. As ever, time is tight.

Q33 Mr Lepper: That was a charitable timescale you were putting forward there, I think. Is there any sign at the moment of that kind of timescale that you have just outlined, tight though it is, being met?

Mr Lee: I have given up being optimistic about the appearance date of consultations and regulations, but my understanding is that Defra intend to start the consultation pre Christmas, maybe late November, but it is not in my gift to tell you when that will happen.

Q34 Mr Lepper: But without the technical guidance that you have also referred to, presumably it is very difficult for those involved in the industry to know--- Am I being naive in saying it is too difficult for them to know what investment they need to be putting into various processes of treatments?

Mr Lee: Yes, and, of course, the technical guidance really ought to be guided by the regulations; things ought to fall in place sequentially.

Q35 Mr Lepper: You said you are not being optimistic, but let us look forward. What situation are we going to be faced with on 16 July next year, do you think? Are we going to have more hazardous waste trundling around the countryside being stockpiled in the way in which you have suggested?

Mr Lee: I can guarantee you that there will be more hazardous waste simply because of the implementation of the Hazardous Waste Directive at the same time, which will bring some more materials into the definition, a lot more oily wastes, fluorescent light tubes, more materials like that. They will not increase the tonnage dramatically, but they will dramatically increase the number of businesses which produce hazardous wastes; so that will be an important element. The question you are asking me is whether in response to the introduction of the Waste Acceptance Criteria there will be a lot more homeless hazardous waste?

Q36 Mr Lepper: That is it.

Mr Lee: Of course, that is the \$64,000 question. I cannot answer it for you. I dearly hope that there will not be, but that is one thing that I would want to press on the Environment Agency and Defra. They have to make that their number one priority. If there are to be homeless hazardous wastes they have to be clearly identified and we have to make sure that they are not misdescribed, illegally mixed or otherwise sneaked through the system.

Q37 Mr Lepper: From what you have been telling us this afternoon, would it be true to say that you, as representatives of part of the industry, and other industry representatives have been pressing governments strongly on these issues for a considerable time?

Mr Hewitt: Very strongly, yes. I have no idea what the technical guidance related to the Waste Acceptance Criteria that affects my plants will be next July. I can only assume that the practice that I now see going on will continue post next July.

Q38 Mr Lepper: Is the example of what is happening in other European countries any guidance to you in the absence of anything coming from Defra?

Mr Hewitt: You mean in other European countries?

Q39 Mr Lepper: European countries, yes?

Mr Hewitt: They, of course, took a different path some 20 years ago. If you look at France, the value of the waste management industry in France is three times what it is here. They have many more incinerators, many more treatment plants. They took the decision many years ago that they would treat waste before it was disposed of, and, of course, have far fewer landfills and they are differently orientated. It is a very different structure there to here. We are 20 years behind that.

Q40 Paddy Tipping: What is the problem? Why do we not give you this guidance? Why do they not tell you what to do? You lads are in the industry. You know what is what. You know how to do it. Why can we not sort it?

Mr Hewitt: It is an excellent question.

Q41 Paddy Tipping: What is the answer?

Mr Hewitt: I wish I knew.

Q42 Paddy Tipping: What do you think it is?

Mr Hewitt: What do I think is the reason they do not do it?

Q43 Paddy Tipping: Yes.

Mr Hewitt: It is very hard to get behind the thinking of people or organisations that do not see timescales in the same way as you do. They obviously see different timescales. They perhaps do not see the same imperatives. Maybe it is an issue of shortage of staff—it is very difficult to say—but you can be certain that our request for this action has become more vociferous at each meeting. At the next meeting of the Hazardous Waste Forum on 24 November you can be sure that I will be saying what I have said here today but in even stronger terms.

Q44 Paddy Tipping: Is it to do with legal liabilities maybe?

Mr Hewitt: No, I cannot see that.

Mr Lee: I would not have said so. In terms of the technical guidance, it should not be underestimated how technical some of it is; how much more complicated it is going to get. Let us take an example: so-called monolithic waste—hazardous waste that comes in a sizable lump. It is going to

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depend on a test that might take 60 days to complete, with some really heavyweight science behind it as to how rapidly hazardous materials might be leached out of this block of hazardous waste. There is some heavyweight science behind it—it does not happen overnight—but, much more importantly for me, just because the science is tricky behind it, I do not think I have ever met one single organisation that has all of the understanding, all of the skills or all of the information that is needed to make these very complex implementations work. I think Roger is absolutely right: one of the keys to success is co-working. The industry has a lot of expertise and information that needs to be played in; so has the regulator; so has Defra; so have the waste producers. It would have been much better if the co-working that has been done through the Hazardous Waste Forum had been started earlier. I wish it had been started a year earlier; even better if it had been two years earlier. I have to tell you, if I ruled the world, I would have liked something like the Hazardous Waste Forum to have existed in some form maybe 10 years ago to make sure that the inputs of information and the opportunity to do work between different partners could have been started at the discussion phase of the Directive rather than the late stages of its implementation. Let us recognise that that needs to be done and let us do it as early as possible.

Q45 Paddy Tipping: Are we making it too difficult? It seems simple to me, disposal of waste. I do not understand some of the terms you are using, but this is an area of public policy. We ought to be able to understand this, ought we not?

Mr Hewitt: I wish it was simple. I have been working in the industry now for something like 25 years and it gets more and more complex. Yes, there is a desire to make things as simple as possible. Simplicity means that compliance should be relatively straightforward; so it is something that we should all strive for. Unfortunately, over-simplification means that people are puzzled as to how the rules operate in their particular circumstances, what the standards are for their particular waste. So, try as hard as we all might to keep things as simple as possible, I think they inevitably become technical and complex, but it is to a good end.

Q46 David Taylor: Leicestershire is an area where there is a great deal of road stone, gravel, clay and coal; and it has produced large number of holes over the years. We have a direct interest in the Landfill Directive in terms of reducing the amount that goes to landfill, and, particularly the area that I want to examine now, driving up the rate of recycling for biodegradable municipal waste. We were in the converse position of having the direct disadvantage of so many landfill sites and yet, as an authority, being so poorly funded that we were not able to recycle much ourselves. Why do you think there is such a range of success rates amongst English local authorities in terms of recycling? You refer to it in

your evidence, and the Government produce statistics frequently on this and they cover an enormous spectrum.

Mr Murphy: Another very good question. If we had the answer to that we would solve many dilemmas. It is a function of many things—investment, being willing to undertake some of the recycling activities—and it is true to say that some adjoining authorities are far better at recycling than others, bizarrely. Perhaps that is through funding and a political will at an early stage. We do see that there are some good hotspots of recycling activity amongst local authorities through investment, through public awareness, which is crucial, and the history of recycling and feeding that information back to the public. Coupled with composting and awareness-raising, this is not only allowing authorities to meet their recycling targets but also contributing to their biodegradable diversion from landfill, and we see that the two things are crucial. Unfortunately, whilst some authorities are at an exponential phase and recycling large amounts proportionally of their household waste, municipal waste, they are going to reach that lag phase, and that will compromise their ability to divert the amounts of biodegradable waste from landfill to meet their targets.

Q47 David Taylor: Two of the leading authorities happen to be Midlands' authorities that I know moderately well, Daventry and Lichfield. I think they would be described as moderately well to do, leafy, middle-class areas. Is there a social element to the likely success rates on recycling? The Government regularly state that they have put an extra £100 million into providing extra recycling facilities because some of the very urban areas are finding it extraordinarily hard to escape from single figure percentages in terms of recycling. Do you have any tips as to how we can avoid our tips?

Mr Murphy: It certainly seems to be, to some extent, socially and economically related. I live in the adjoining authority to Daventry, again another wealthy authority, but nowhere reaching the recycling targets that has Daventry reached. There is no reason why they should not do; it is a matter of political will and investment. It can happen. The other authority on the other side of Daventry is significantly below that, but perhaps very differently structured in terms of its economic capacity. There is no simple answer to this. It is public awareness raising and public involvement, and the recent investment into the work of WRAP and the advertising campaign on the TV should help to do this.

Q48 David Taylor: Education and cultural change will take a lot longer and carry us well beyond the expected dates for higher and higher targets for recycling. We are never going to catch up, are we, on that basis?

Mr Murphy: There are some serious warning signals at the moment. We can reach the early figures. With the kind of investment in local authorities we are getting from Defra, to some extent political will and

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public involvement, we can reach the early targets. The latter targets will be very difficult to reach through that recycling and composting.

Q49 Chairman: Before Mr Simpson continues our line of questioning, can I ask for a word of explanation. In your evidence you talk about the "Landfill Allowances Trading Scheme". What is it and how does it work?

Mr Murphy: It is a system introduced under the Waste Emissions Trading Act to encourage local authorities to contribute to the Landfill Directive through diverting biodegradable waste away from landfill. They have targets over a period to reduce 35% of biodegradable wastes away from landfill by 2010, and then there are more stringent targets over the remaining 10 years. We have seen that the early targets are achievable through recycling, composting and waste diversion minimisation. The later targets are that much more difficult. The trading part is that disposal authorities will receive a credit if they reach that target early, and they can use that credit in England to trade. The trading will not take place in Wales, but, in effect, if they reach the target, they will be able to use that to sell credits to those authorities that are not reaching their own targets.

Q50 Chairman: The trading is solely between local authorities?

Mr Murphy: Yes.

Q51 Chairman: I presume some market place will arise for the trades. Who supervises the operation of this mechanism?

Mr Murphy: It will be self-marketing.

Q52 Chairman: Somebody must be the keeper of the numbers?

Mr Murphy: Yes, the system will work through waste data flow, which is a piece of data information which rests with Defra.

Q53 Chairman: So Defra will have somebody there who has all the numbers coming in, and, at certain points in time, I presume somebody will say, "Here is the end of the year. Those of you who have beaten your targets, here are your credits", and the ones that have not have then got to go and buy something from the ones who have. Is that the way it works?

Mr Murphy: That is right, and the market will be set as the market dictates. The only stipulation is that the market cannot reach that figure which would have been the penalty if you do not reach the target of the Landfill Directive.

Q54 Chairman: It is an internally driven carrot and stick arrangement to try and encourage good diversionary practice?

Mr Murphy: Yes.

Q55 Alan Simpson: You are fairly upbeat about the 2010 target. I suppose if you start at the Daventry and Lichfield end of things the picture does not look so bad at all, but at the other end it looks pretty

bleak. The figures for Liverpool 1.9%, Sunderland 2.5%, Barking and Dagenham 2.2%, Bolsover 3.2%, Tower Hamlets 3.4%—that is a lot of ground to make up by 2010. Do you seriously feel that you have the basis of such optimism that we are going to meet those 2010 targets?

Mr Murphy: Yes. It will be incrementally more difficult for the Daventrys and Lichfields to increase their targets. As I say, they are reaching that line, but to go from 1.7 to three, four, 5.7 does not take a great deal of effort. A great deal of political will, perhaps investment, public understanding and public involvement, but that is in the early part—that is the exponential part—the national publicity campaign, localised campaigns and some of this invested money from Defra, which has been distributed both regionally and also to those more affluent authorities as well as the less affluent authorities. It has been specifically related to those who under-perform as well. I think, yes, the early part, the increase from 1.7 to two, three, 4.7 is attainable.

Q56 Alan Simpson: But it is the 35% figure that I am looking at. I understand that the early stages are the ones where there are often the easiest gains, but that still leaves a lot of authorities with a long, long shortfall from that 35% figure by 2010. I have not even got on to the 2013 one yet. I just want to know on what basis you feel optimistic that the authorities that are so far adrift at the moment could actually get there by 2010?

Mr Murphy: It is a function of many things—as I say, the composting, the home composting, community composting, recycling, and perhaps alternative technologies, MBT and technologies like this—which will help bridge that gap. It is not going to be easy, but there is a willingness and there is an investment, I feel, from Defra into doing this.

Q57 Alan Simpson: Taking it on then to the 2013 targets that you feel more sanguine about, what have we got to do to reach those targets that we are not doing now? What do we need in government programmes that would allow us to be serious about not only setting those targets but hitting the 50% target?

Mr Murphy: It is the investment in the newer technologies, the technologies which are being tested now—the pyrolysis classification, NBT plants, anaerobic digestion—which are alternatives to landfill, which will treat the other wastes prior to it being disposed of as some inert material back to landfill. So we have got the established at home, kerbside recycling and then the new technologies, and the residual will go to landfill and that gap will be filled by these new technologies.

Q58 Alan Simpson: Where are we in those alternative new technologies? You just trailed a number of them past us, but where are we in practical terms? If as a Committee we were wanting to look at this on the ground, is that to be found in Project Integra, which you have mentioned, in Hampshire?

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Mr Murphy: No, I think I said earlier, we are behind our European partners here. These are technologies which are used overseas for waste material and they are new technologies in that they are new to waste materials. They are in place for other industrial processes, but we are talking about being new to waste. Defra has a significant programme, a waste implementation programme, and they are investing a lot into the new technologies, pilot plants, investments, research, database and education programmes all linked to these new technologies, because we need to inform and educate not only that these technologies are out there but what they can do and how much they cost, their comparative cost, and then we need to get them in place. There is still that gap, but there is a lot of work being done on explaining the value and the input of these projects into an integrated system.

Q59 Alan Simpson: Can I just push you on that because it is great that Defra is doing that investment in the research now, but you said that the actual implementation of alternative treatment technologies is to be found elsewhere. Are we at the point at which we can say, "Look, there are X, Y and Z countries who are already putting this into practice and these are the technologies that are seen to work"? We do not need to ask Defra to reinvent the wheel on this, but we need them to put the money into the investment programme. I am just worried about the lead-through time between now and 2013. If you are saying that we are just at the research stage, I do not know whether I am picking it up from your body language, but would that give us a timescale for investment in implementation that we have got to have for meeting the 2013 targets?

Mr Murphy: There is an added impediment in that these facilities would have to be planned and fit into a planned system.

Q60 Alan Simpson: We have not even got through to the political stage of getting approval.

Mr Murphy: Well, yes, and I have to say that the planning system is probably an eight-year span, which means the process has to be started now to deliver by 2013 where the pinch point is.

Mr Hewitt: We need to create investor confidence. You see, we are talking here of vast sums of money. A lot of this money is going to come from private sector investment, City investment. Now, they will want to see planning timescales that give the ability for real thresholds of return and for the higher rates of return to be achieved. They will want to see pricing structures and they will want to see contracting arrangements with authorities which enable prices to be achieved and returns to be achieved that make those investments worthwhile. We are talking here of very, very large numbers of money and that is going to need to be planned for. Within the timescales we are talking of to achieve the kind of diversion targets we are talking of, that investment is going to happen very rapidly. Some estimates were made some two or three years ago of the overall number and it is probably something like £30–40 billion of investment and it is at least at the

rate of £1 billion a year now that needs to be invested. We are talking huge sums of money and for the City, for investors to be putting that cash in, they have got to be absolutely confident of seeing the returns, and I do not believe those structures are there; those financial structures are not there.

Q61 Alan Simpson: We are not going to get it, are we? Let's be realistic about this. You are talking about investor confidence now for a planning process where we have not even identified how we would get over the political hurdles of the planning applications that would go in for approval even before investor confidence becomes sensible to hope for, so if that is not going to happen, we need just to have a fairly radical rethink of the other mechanisms that the Government may have to use to address and meet these targets. Presumably we are also talking about waste reduction strategies.

Mr Hewitt: It goes back to, I think, and Steve will want to add something to this, but it goes back really to some of the points I was making earlier about timescales, planning and working together to achieve things in hazardous waste. I have thought for a long time that we have needed a strategic waste authority to take responsibility for the overall planning of these things and the inception of them. That is the only way that these kind of large-chunk projects, these large-chunk targets are ever going to be achieved. For them to be played around with on a piecemeal basis, as they are now, I think will just ensure that we do not get there. I would rather we have some overarching strategic waste authority, headed up by somebody with a record of actually making things happen—rather than saying things that people want to hear, and there is a big difference between those two things, we might stand a chance. That person and that authority get together the interested parties, the contractors, the operators, local government and the investment community around a table and are not afraid, and if there were not ladies present, I would use a stronger term, to kick the backsides to make it happen because that is what you have got to do. Achieving major projects never happens by people having lunch and being kind to each other. It happens by people sitting in rooms and talking about the real issues and finding the solutions, and that is not happening and it will only happen when there is an authority with the responsibility and the will to do it.

Q62 Alan Simpson: I used to run a local authority waste disposal company with an incinerator that used to turn household waste into domestic heating for district heating systems. It was very interesting, but I doubt, if we had been seeking planning approval for a project like that now, that we would have stood a cat in hell's chance of getting that approval. Just in relation to incineration, are you effectively saying to us that we have to acknowledge that if we cannot meet the recycling targets from landfill in terms of other technologies, the use of incineration connected to district heating systems, whether you like it or not, is going to be forced on to the agenda to meet those targets?

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Mr Hewitt: Again my colleague will say something on that, but there is a principle of economics and it is iron-clad, and that is supply, and demand determines supply. Now, you have to define a need and fulfil it. You cannot think of the fulfilment and then create the need as that will not work, and recycling is an excellent ambition and they are first-class objectives, but to believe that these targets are going to be reached by recycling is an act of naïve self-delusion. It is going to need other technologies, such as energy from waste, but the basic laws of economics cannot be changed. Nobody will buy a pile of recycled material just because it is a pile of recycled material. They will buy it because they can do something with it. The clever thing is to find the person who is going to do something with it first and then to produce the pile of material.

Q63 Paddy Tipping: You mentioned £30–40 billion worth of investment—

Mr Hewitt: Over a long period of time, yes.

Q64 Paddy Tipping: Just remind me, most waste disposal companies now are international companies, SITA, for example. Given the complexities you have been talking to us about, the regulatory framework, the scientific work that needs to be done, the planning system, those companies are going to invest elsewhere rather than the UK, are they not?

Mr Hewitt: I think that is the risk we run. All organisations have investment policies in the way they look at investing money. I am obviously not familiar with those of SITA, Onyx, or any of the other international companies, but I am aware of those I have practised in my own and other large international companies I have worked for and if the analysis says that I can get a return on investment quicker and more profitably and at a better cash rate in another country than I can in this one, then I would be running the risk of getting sacked by my board if I did not go and put the money there rather than here.

Q65 Joan Ruddock: I have to say you are all painting a very depressing picture for us, but I think the difficulties of getting incinerators sited are as great as probably getting the other new technologies sited, so I think we are in great difficulties here. I have to say personally that I have my own anaerobic digester, Greencone, so one can do it oneself. However, to get to more serious points, a lot of people have proposed that if we were to charge households for their waste, and there were differential charges and incentives, that this could make a difference. My own view, and I wonder if you share this, is that until there is an offer from local authorities to collect all the “recyclables”, you cannot begin to punish people if they fail to put their recyclables out. How do you see this area developing? Do you think it is essential and if we got to that point where the offer was there, you can do all your recyclables and, therefore, if you do not, you are punished or whatever, do you think we might end up with more fly-tipping?

Mr Lee: I will answer that question and start at the back and work forwards again. Yes, I share a fear, I think, with most people I talk to that as the cost of responsible waste management goes up, so the risk of uncontrolled fly-tipping goes up with it, so whatever it is that we do to try and move us all towards more sustainable materials practice, that has to be tempered by an awareness of the potential downsides and strong local authorities and strong environment agencies to prevent it and to cope with it if it arises, so fly-tipping, for me, is still one of the most potential serious downsides to all of this development. Now, in terms of the role of local authorities and householders in actually helping this waste and materials revolution to happen, it could hardly be more obvious. We depend on individuals being more responsible with their own purchasing decisions, what they do with their own materials as they waste them and we, as a professional institution, one of the reasons why we exist is to use the expertise and experience of our individual members to come together to actually describe for local authorities, for businesses and for individuals what best practice might look like. Actually we have just weighed your Committee Clerk down with three best practice documents produced by the institution, one of which is on what we believe could, and should, happen on direct or incentive-based charges for householders. The second is on what local authorities ought to be doing to put the householders in a position to be able to separate out their wastes, and the third is the issue that Mr Simpson was talking about just now, and that is the mechanisms of recovering the energy value from the waste when all of the other valuable materials have already been pulled out. The truth is that recycling and minimisation are going to get us so far and we believe that with the political will, the resources and the stimulated markets to make it happen, local authorities and people can just about make the 2010 targets by recycling and minimising. We think it is pretty clear that some bigger, probably more capital-intensive solutions are necessary to get us beyond 2010 and the sad truth is, and you have put your finger on it already, have you not, that the planning system and the need to get the investment in place means that we need to start making those decisions about how we are going to reach the 2013 targets and beyond, and the decision time is about now, unless we can streamline the systems to get us there, and those systems include the planning strategy development, individual planning permission application decisions and the issuing of regulatory permits by the Environment Agency. All sorts of things need to be there if we want the mechanisms there to treat residual waste after we have minimised and recycled to the maximum.

Q66 Joan Ruddock: You have raised a very interesting question which just struck me as you were speaking. If incinerators are only to burn residual waste, that changes the nature of their operation to an extent. It also brings to bear important questions of how they get sufficient tonnage because they would then need to be getting

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it from a much wider area. I have SELCHP in my constituency and that has always been an issue, how to feed that plant, and it is one of the reasons why my local authority has such a very low level of recycling because it was thought 10 years or more ago that it was doing the right thing in sending everything to SELCHP.

Mr Lee: I think what is at the real heart of your question there is the structure of future waste management contracts and not getting locked into practices that you wish you had not done.

Q67 Joan Ruddock: But are there not technical issues as well if you only burn residual waste?

Mr Lee: Yes, there are technical issues, and predicting the future volume and composition of residual waste is absolutely vital. We can see from energy from waste-based strategies around the British Isles that whilst the volume of waste going into some energy from waste plants is going down, very often the calorific value of the residual waste is currently going up, so there is a very careful balance to be played here. But I think your point is absolutely crucial, and you need some very thoughtful planning. We are not looking two years ahead, but in these sorts of solutions, we are looking 20 years ahead and we need to make sure that we have got flexible technical fixes and flexible contract arrangements to go with them.

Q68 Chairman: I just want to raise one minor question because in terms of the level of the local authority to introduce new collection techniques which are encouraging certainly the waste producer the initial sorting exercise, you have got a combination of capital investment by the local authority, saying, "We'll be the collection system", but the penalty is that it then has every other week disposal and the net result is that wastes build up, the householder becomes disillusioned with the new system, you get untidy waste and you get all kinds of waste going where they should not do. If you are going to invest in it and involve people right the way through the waste chain, have you not got to make certain that, if you are going to have a high level of investment in sophisticated separation equipment, that is backed up by high-frequency collections to keep a high quality of system in place?

Mr Lee: There is no one perfect solution. That much is quite clear to us. In putting this best practice guidance together, we have been able to find a large number of good examples that we can point at and all of them operate on different principles. What is clear is that when householders are encouraged and helped to separate their waste, they can actually produce a surprisingly small amount of residual

waste. Now, it may be more efficient and effective for the local authority to say, "If we help you to be effective in that way, we might not need to come to pick up your residual waste every week", as it might well not be worth it. On the other hand, there are local authorities who have found that that really is not accepted very well by the householders in their area and they have either elected to stay with weekly collections and some of them have even had to go back to weekly collections. There is no one ideal solution. What is clear is that local authorities need support and they need to learn from each other and they need the skills and resources to put these schemes into place because without them, we are not going to reach the 2010 targets. That much is obvious.

Q69 Paddy Tipping: I was interested in the point Mr Lee made a minute ago about not getting locked into long-term contracts. Now, most local authorities are going the PFI route at the moment and the danger of that is that it does lock them into long-term contracts. What advice are you giving in terms of best practice to local authorities around this?

Mr Lee: I can confirm that another piece of best practice work being done by the institution with input from all sorts of parties, including waste management operators and local authorities, is some guidance on best practice in developing contracts. It is interesting that you used the word "locked". I suspect that means that I did earlier on and being locked into a contract, there are two ways that you can look at it. Obviously in order to recoup the high capital costs of some of these investments, there has to be a long term to the contract. It does not mean to say that you necessarily want or need to be locked into what becomes an inappropriately constrictive contract. Flexibility has to be the order of the future.

Q70 Paddy Tipping: You are confident that you can work flexibility into PFI contracts?

Mr Lee: I am convinced it can be done.

Q71 Paddy Tipping: Has it been done?

Mr Lee: Well, perhaps experience might tell us whether it is being done now.

Chairman: Well, upon that very neat piece of footwork, Mr Lee, we will draw our evidence-gathering session to a conclusion. Thank you for the candour of the way that you have answered our questions. I think you have set our inquiry off to an extremely good start, and you have posed some challenging issues which will guide us in our further questioning. Thank you again for your written material and for the time you have spent with us this afternoon.

Wednesday 17 November 2004

Members present:

Mr Michael Jack, in the Chair

Mr David Drew
Patrick Hall
Mr Mark Lazarowicz
Mr David Lepper

Mr Austin Mitchell
Joan Ruddock
Paddy Tipping
Mr Bill Wiggin

Memorandum submitted by the Environment Agency (X22)

1. SUMMARY

This submission presents the Environment Agency's views on the implementation of the Landfill Directive (LFD) with particular reference to hazardous waste management in England and Wales.

- The Implementation of the LFD will bring about major changes in the way the UK manages its waste. More needs to be done to identify the impacts of such legislation during negotiation and manage implementation strategically from the point of adoption. Domestic implementation of the LFD has been a piecemeal process, not helped by late decisions from the European Commission.
- Sustained behavioural change in the management of waste requires a combination of measures both economic and regulatory (including producer responsibilities), underpinned by effective communication between those affected and those charged with implementation. Any change, but particularly one of this magnitude, requires sufficient time to allow regulators, waste producers and the waste management industry to respond.
- We hope and expect the costs of hazardous waste management to continue increasing at rates significantly above levels of inflation. Increased costs are essential to support investment in improved waste management services and alternatives to landfill. In addition, business will require support to reduce wastes and improve resource efficiency. Government waste programmes should be centrally co-ordinated to address the immediate and strategic business pressures generated by the LFD.
- We are concerned that implementation of the LFD Article 5 targets is directing attention on municipal waste at the expense of the majority of waste streams. There is a need to clarify who is responsible for ensuring an adequate network of waste management facilities.
- The Agency has expressed concern that the limited availability of facilities, their distribution, and the increased costs of hazardous waste management may increase the likelihood of illegal disposal. The Agency and other regulators have limited capacity to respond to increases in illegal activity, although Defra has consulted on proposals to assist in tackling the problem and has funded a new database and the development of skills for local authority staff. The Agency has submitted detailed proposals to Defra for a four-year programme of fly-tipping abatement work with the suggestion that this could be funded from the proposed increases in landfill tax revenue.
- The Government's joint landfill and hazardous waste implementation programme (LHIP) has provided a successful model for managing the impacts of changes on hazardous waste streams. This approach should be developed to ensure that future regulatory strategy for waste streams is more broadly based than end of pipe regulation.

2. INTRODUCTION

2.1 The Agency welcomes the introduction of the LFD, which is aimed at reducing the negative impacts of landfill on the environment. It achieves this through restricting the location of landfill, tightening the operational and infrastructure standards, and by limiting the types and nature of waste that can be landfilled.

2.2 The implementation of the LFD has taken place progressively since 2001, with the re-permitting of existing landfills due for completion by 2007. Many of the consequences (such as a reduction in landfill capacity) will take place before 2007, but others will continue to change the nature of landfilling beyond 2007.

3. PREPARATIONS FOR THE LANDFILL DIRECTIVE

3.1 *Negotiating the Landfill Directive*

3.1.1 The Department of the Environment started negotiating the LFD in March 1990 although it did not come into force until July 1999. Throughout this period the responsible Government department, latterly Defra, held regular consultation meetings with stakeholders to ensure they were engaged in the process.

3.1.2 The LFD was adopted on the basis that European standards for waste acceptance criteria (WAC) would be in place by July 2001. These were to be developed by a Technical Adaptation Committee (TAC) consisting of experts from Member States. The Agency provided technical support to Defra during negotiations on WAC at the TAC. In the event the decision to adopt the TAC's recommendation on WAC was only taken in December 2002—some 18 months later than expected. Clarity on the technical requirements for waste acceptance was not provided until Defra published the outcome of its consultation on the implementation of WAC in March 2004. The phased implementation of the Directive during this period has contributed to concerns about regulatory uncertainty from industry.

3.1.3 The LFD applies to all landfills. The Integrated Pollution Prevention and Control (IPPC) Directive was belatedly extended to apply to most landfills, and to a number of “associated activities” eg landfill gas utilisation. Reconciliation of the different requirements of the two Directives is difficult. For example it is not clear whether the LFD constitutes “BAT” (best available technique) for landfill. This has resulted in uncertainty over the regulatory approach to be adopted, especially where there are “associated activities.” The protracted and piecemeal manner in which the LFD has evolved and has been transposed into UK law has created uncertainty for all involved.

3.1.4 As expert adviser the Agency considers that it has relevant regulatory and technical expertise that can assist the UK position when negotiating European Directives. To ensure that Directives can be implemented in a practical and proportionate manner a high level of early involvement in the negotiating process needs to be maintained.

3.2 *Domestic implementation and regulatory issues*

3.2.1 Domestic implementation of a complex technical Directive requires interpretative technical and regulatory guidance to underpin and clarify its meaning. Ideally domestic implementing regulations should be in place before or in parallel with such guidance. In some cases the Agency has had to produce guidance that has had to “second guess” the shape of the regulations and as a consequence lacked the clarity we would have wished. Additionally the Agency recognises the value of stakeholder engagement to better specify and target the guidance to its intended audiences. To use this process to best effect and to gauge appropriate lead in times, regulations should be in place beforehand but take effect within practical implementation timescales.

3.2.2 An ideal sequence of actions upon adoption of a new Directive would be:

- Identify the desired outcomes and establish a joint implementation plan between Government and the regulator with clear responsibilities and deadlines assigned for delivery of defined products. The plan should identify the timing and manner of communications with stakeholders;
- Produce implementing regulations and interpretative Government guidance, reflecting defined outcomes, as soon as possible after adoption of the Directive; and
- Identify the technical and regulatory guidance/tools necessary to deliver the outcomes, using interactive dialogue between affected stakeholders.

3.2.3 Putting in place these key elements would allow Government and the Agency to effectively manage available resources and to deliver the timely, authoritative and consistent messages needed to drive change and allow planning by industry for investment to deliver any new requirements.

3.3 *Inter-dependency of Directives*

3.3.1 In addition to the IPPC Directive, landfills also need to satisfy the Habitats and Groundwater Directives. In the case of the latter we are required to prevent the entry of list I substances into groundwater. The LFD requires that groundwater be prevented from entering landfills. Despite the construction of liners and barriers absolute prevention is very difficult if not technically impossible to achieve in practice. The requirement for prevention is an over-prescriptive approach and does not allow consideration of environmental outcomes.

3.3.2 The Water Framework Directive (WFD), is in principle a risk-based Directive that, amongst other things, seeks to protect and enhance the status of aquatic ecosystems and ensure a progressive reduction in groundwater pollution. It should not place substantive new or prescriptive obligations on landfills but it does require that the effects of all pollutant sources are considered in combination and this may have implications for some landfills.

3.3.3 Two proposed Daughter Directives to the WFD, the Priority Substances and the Groundwater Daughter Directives, are subject to negotiations in Europe and have the potential to impose unnecessarily restrictive water quality standards. Dependent on the outcome of these negotiations, there are both opportunities and threats to the risk-based and proportionate approach that the UK seeks to adopt. These Directives are good examples of where the Environment Agencies have provided strong technical support to Defra from the outset and the UK is having a major influence on the debate in Europe over the practicability and environmental benefit of the proposals.

3.4 Stakeholder engagement

3.4.1 The Agency has previously highlighted the need for effective co-ordination and leadership from Government in respect of hazardous waste management. The Agency set up a specific working group on WAC for landfills for hazardous waste in 2001 and has supported Defra technical groups. The core of the WAC group was formed from representatives of the waste management industry and the wider group was made up of trade bodies representing waste producers and the Chemical Industries Association. The aim was to inform negotiations and to keep industry abreast of the likely outcome. This group ran until late 2002 and was the precursor of the Hazardous Waste Forum (HWF) which was established in 2003, partly in response to calls from the Agency during 2002 for a hazardous waste strategy. The Agency has played an active role in the Hazardous Waste Forum, which has proved an effective sounding board.

3.4.2 The Agency has redesigned its permit delivery arrangements to meet the requirements of the LFD. A centralised project team was established to handle the 1,500 site conditioning plans that all existing landfill operators were required to submit. This was a large undertaking to a very challenging timescale. Landfill permitting has not proceeded as quickly as we would like. We continue to work with industry to improve the process although regulatory decisions in respect of landfills are likely to continue to remain contentious. By working closely with industry the Agency has been successful in meeting the LFD requirements whilst minimising the impact on the industry. Building on this approach the Agency established three centralised Strategic Permitting Groups (SPGs) to undertake re-permitting of existing installations (including landfills) under the Pollution Prevention and Control regime. This operational focus on permit delivery and centralisation of technical resources has been welcomed by industry.

3.4.3 The Agency established a centrally co-ordinated team to ensure that hazardous waste continued to be managed effectively following implementation of the co-disposal ban and the predicted move away from reliance on landfill. Activities have included awareness raising for key waste producers and managers, including local authorities and co-ordinated enforcement and compliance effort.

3.4.4 The Agency also issued a clear statement of its enforcement priorities and engaged proactively with the media to help raise awareness of the potential for illegal waste management and the firm but fair enforcement approach that the Agency takes with those that break the rules.

3.4.5 The Agency particularly welcomed Defra's establishment of the joint Landfill and Hazardous Waste Implementation Programme (LHIP) in February 2004. This has:

- recognised and addressed further requirements for Government and Agency policy and guidance;
- co-ordinated consistent communication to key stakeholders;
- monitored likely landfill capacity against predicted waste arisings; and
- identified and targeted those waste streams with potential to be mismanaged.

3.4.6 This programme provides a model for devising and delivering a regulatory strategy that is focused on environmental outcomes and more broadly based than just the delivery of regulatory products.

4. IMPACT OF THE JULY 2004 CO-DISPOSAL BAN

4.1 Market response

4.1.1 Article 10 of the LFD requires that the gate price charged by landfill operators reflects the full cost of operating the landfill, including long-term aftercare. This requirement could have been imposed by Government at an earlier stage to stimulate the market and support investment in treatment facilities and alternatives to landfill.

4.1.2 Waste producers have been faced with large increases in the cost of treatment and disposal of hazardous waste. The trend of increasing disposal costs is likely to continue with implementation of full WAC in July 2005. This will require many waste streams to be characterised and treated to higher standards than currently prevail. These costs need to be borne by waste producers. Waste minimisation must be regarded as a business imperative but experience indicates that producers will need support from Envirowise, the Agency and others to help them to take advantage of waste minimisation opportunities.

4.1.3 Historically most waste producers have relied on the waste management industry to provide a comprehensive service to meet all of their regulatory requirements. In many instances communication between producer and waste manager was limited to negotiation of contracts and signature of any necessary paperwork. The demands of the LFD, and in particular its requirements that waste be pre-treated and properly characterised, mean that in order to ensure compliance waste producers and waste managers need to communicate better.

4.1.4 The issue that arose belatedly with fragmentiser residue is an example of what can go wrong when communication fails due to lack of awareness or engagement. The inability of either waste producers or the waste managers to demonstrate whether the residue was either hazardous or non-hazardous was presented as a problem caused by and to be resolved by the Agency and Government. The Agency has since taken an active role in facilitating dialogue between the parties, and providing practical support in developing an appropriate testing methodology. It was disappointing that industry had not prepared adequately for these changes. Without rapid action this could have led to the perceived, if not real, threat of waste vehicles being mismanaged. The Agency is working with Government and other stakeholders to ensure that a repetition of this type of incident does not occur when full WAC are implemented in July 2005.

5. WIDER LANDFILL DIRECTIVE ISSUES

5.1 Article 5 of the LFD sets targets for the diversion of biodegradable municipal waste. The Agency considers that the diversion targets can be achieved if they are given sufficient priority and alternative facilities are encouraged. However, this focus on municipal wastes does not address the larger amount of biodegradable wastes found in industrial waste streams.

5.2 Implementation of the LFD has reduced the availability of landfills for hazardous wastes, municipal wastes and certain other wastes, such as waste tyres. It is important that a strategy is put in place to ensure an adequate network of waste management facilities is available at a reasonable cost to local authorities and to business.

5.3 The limited availability of facilities, their distribution and the increased costs of hazardous waste management increase the likelihood of illegal disposal. The Agency and other regulators have limited capacity to respond to increases in illegal activity. Defra has consulted on a Fly Tipping Strategy to tackle the problem and on proposed legislative changes linked to broader clean-neighbourhoods issues. The Defra funded of the Flycapture database will inform development of local strategies to tackle the problem and support more effective enforcement action.

5.4 The Agency's work to tackle waste-crimes such as fly-tipping is funded through Grant In Aid; this is under pressure. To help address this, the Agency has submitted detailed proposals to Defra for funding a four-year programme of fly-tipping abatement work. We have suggested that this could be funded from the revenue from the planned increases in landfill tax. The programme contains work-streams to address the need to improve capacity of the Agency and local authorities to tackle and prevent the growing problem of waste crime and fly tipping.

5.5 In the short and medium term more waste facilities of different types are needed to replace the UK reliance on landfill. This means

- Better data on:
 - (a) waste production;
 - (b) current and future disposal/recovery options;
 - (c) the environmental impacts of products across the life cycle;
 - (d) their reliability and costs.
- Integrating strategic waste management and spatial planning.
- Simplifying the regulatory regime.
- Developing forecasting capabilities.

We welcome the development of Defra's waste data strategy. There needs to be a commitment to its implementation.

5.6 It is important that the resource, both in terms of people and the necessary research, is not fragmented across several sectors of Government, and that someone has overall responsibility for making sure all the delivery agents work as a coherent whole. We need clarity of roles and responsibilities with more effective engagement between the different bodies involved in strategic waste management.

Witnesses: **Baroness Young**, Chief Executive, and **Ms Liz Parkes**, Head of Waste Regulation, Environment Agency, examined.

Chairman: Good afternoon, ladies and gentlemen, to our second evidence session on the subject of waste policy and the Landfill Directive. Could I just explain to those who have come in that we are in what we might call disruptive mode this afternoon and we are likely, in just a few minutes, to have to rush away. It is nothing you have said or done, but we have to go and vote and then we will be back for a short period. Then, I think at about four o'clock, again there could be a series of votes. I apologise in advance to our witnesses that things may be a little disruptive. Could I welcome the Environment Agency, I think for the third time before either the Committee or a sub-committee. We are sorry if we are occupying you permanently but nonetheless, Baroness Barbara Young, we are most grateful for you coming again before us, the chief executive of the Environment Agency, and supported by Liz Parkes, the head of Waste Regulation. May I thank you in advance for the written evidence that you gave us. Well, I got the welcome in before we break. We will break for no more than 10 minutes and then resume our evidence session.

The Committee suspended from 3.30 pm to 3.43 pm for a division in the House

Q72 Chairman: Ladies and gentlemen, the Committee is now a quorate so we will begin questioning. Baroness Young, I want to ask you about the question of the processes that were involved in introducing the Landfill Directive and the preparation for the ending of co-disposal because your own evidence is littered with phrases like “not helped by late decisions from the European Commission,” and you then go on, I think in paragraph 3.1.2, to say: “In the event the decision to adopt the [Technical Adaptation Committee’s] recommendation on [the Waste Acceptance Criteria] was only taken in December 2002—some 18 months later than expected.” You finally comment in paragraph 3.2.1: “In some cases the Agency has had to produce guidance that has had to ‘second guess’ the shape of the regulations and as a consequence lacked the clarity we would have wished.” How is it, given the fact that the measures that we are investigating have been on the stocks for a very long time indeed, that we have got ourselves into the situation where (as our last report indicated) there was much uncertainty about the Waste Acceptance Criteria and now your own evidence confirms that in a number of areas you are almost feeling in the dark? How is it that we have got ourselves into this position where (a) Europe does not seem to be able to make its mind up about what it wants, and (b) our own Government has taken a very long time to decide what it wants and to implement this Directive?

Baroness Young: I think the process for bringing European law into the UK and implementing it right across the board, not just in waste, is not well developed and is unsatisfactory and we are certainly, with Defra, working far more on a project management basis with clear project timetables,

deadlines and adequate resources to be able to fulfil those deadlines, but that will still require Europe to play its part and obviously we need to be involved in the European discussions and to try to influence them as much as possible. But the important thing, I think, is that we all get ahead of the game and do not sit waiting for resolution of a particular issue before we move on to planning for the remainder of the issues, which may mean sometimes we have to do fruitless work because we do not have sufficient clarity about the previous stage because we are still waiting for Europe to make its mind up. I always hesitate to use the “f” word in this gathering, but fridges was an example of a lack of clarity at all stages and perhaps people sitting waiting for answers too late to be implemented in the next stage adequately.

Q73 Chairman: It is all right saying what you would like to do in the future, but what I am intrigued about is how this particular mess developed on this Directive because everybody in Europe, all the governments, would have all needed specific information to enable them to implement within their own countries and hopefully the Commission and the Council of Ministers had some idea (or did they?) of what it was that they were passing. I am interested as a legislator in knowing why it is that you can be so critical of the implementation procedure, because it is like saying, “Well, we’d like to do this and this is roughly what we’d like to do. Well, we’ll agree it and then we’ll work out how we’re going to do it afterwards.” As you rightly observed with reference to fridges, and indeed the Landfill Directive, the devil lies in the detail. Why so little detail? Why so late?

Baroness Young: Well, I think you need to raise with Government the issue of negotiating directives in Europe because obviously that responsibility lies with them.

Q74 Chairman: But did you not give advice and take the lead in those technical discussions which underpin the work of the Council of Ministers?

Baroness Young: Well, perhaps I could ask Liz Parkes to comment on the detail of that because she would be involved in terms of our input.

Q75 Chairman: Tell us, Liz. What is the answer to my question?

Ms Parkes: The Landfill Directive was 10 years in the gestation. The Directive was signed up to in 1999 and it did leave the detail of the Waste Acceptance Criteria to be agreed by a technical committee and it is a fact that that then took a long time, discussions amongst Member States, and I have to say that the UK Government, supported by the Agency, was very vocal and was in the lead on many of those discussions to try and push forward and get a conclusion because it was unsatisfactory that there was not the clarity there to allow us all to prepare for the implementation of the Directive.

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Q76 Chairman: Have you got any idea why there was not clarity, because if we are to pick up Barbara Young's suggestions about what should be done next time around then we do have to have a detailed understanding, given the timescale involved—and I am delighted to hear that the UK was taking the lead on these matters—of why, with our usual pragmatic and incisive way of doing business here we could not actually get everybody to come to some real world practical conclusions, particularly on the things that I read out from your evidence?

Ms Parkes: I think the problem was that the Directive was signed up to in 1999 without the detail of the Waste Acceptance Criteria being clear and I think there has been a lot of criticism of that, that the Directive should not have been adopted without that clarity being in place.

Q77 Chairman: So that is a clear statement and that is something perhaps you would think the Government should take up with the incoming Commission to make certain that future environmental legislation has a lot more of the 'i's dotted and 't's crossed before it gets into the process of implementation?

Ms Parkes: That would seem to be in everyone's best interest.

Baroness Young: I think also the process of modernising regulation in Europe and the need for impact assessments in order to be able to assess what are the real costs to both business, the individual Member States and to the Regulator is an important part of that process as well because that in itself will require a degree more clarity.

Q78 Chairman: You make a point in your own evidence about small producers of waste being unaware of what is going on. Would you like to tell us why that is the case and who should be telling people about what is going on? Is it the Government, is it the Agency, or is it somebody else?

Ms Parkes: I think one of the challenges of this Directive is that it is being seen as an end-of-pipe Directive. It is called the Landfill Directive and it is being focused at landfill operators. Clearly, what we are about doing is reducing the impact of landfill on the environment and that does not just mean controlling landfills, it means controlling the wastes that go into landfill, and I think there has been a failure to understand the impacts on waste producers and to adequately communicate that early enough.

Q79 Chairman: Let me just stop you there. A failure to understand. Whose failure was it? Who failed to understand the impact?

Ms Parkes: I would say collectively it is being used as an end-of-pipe piece of regulation rather than something that has got to drive changes upstream with producers.

Q80 Chairman: You say "collectively". Let us name some names. Who are the collective?

Ms Parkes: Well, the Government is clearly in the lead on negotiating and implementing directives.

Q81 Chairman: Right. I do not want to put words into your mouth, but it sounds to me as if you are saying that the Government has a key role to play in assessing the impact and communicating to the interested parties what the effect would be and, following the logic of what you have said, in this case it has not been done?

Ms Parkes: I would say that Government has a key role. We have a role in advising Government, but equally parts of industry are very active in working in Europe to actually see what is coming down the line, to make sure that we are actually driving that rather than being driven by the agenda. There is a lot of evidence of very good work that has taken place through the Hazardous Waste Forum and through other mechanisms such as Envirowise to increase awareness amongst waste producers, particularly SMEs.

Baroness Young: But I think, to defend Government gently on this one, it is a very complicated set of processes that leads from the producers of waste, some of whom will be big business where it is fairly easy to interrelate with them, where one would expect them to have thought through what some of the implications are, and others where even with the best available information about who the producers were it would have been (and continues to be) extremely difficult to be able to be in touch with them because they are very small businesses and there are notorious difficulties of really interrelating with the SME community. But there is a huge programme of work now tracing back from the end-of-pipe position that Liz talked about right through the waste streams back to producers and that, I hope, will be intensified with the introduction of the Waste Acceptance Criteria, where those are not just about what happens to operators but are about the way in which wastes are produced by the producers.

Q82 Mr Lepper: Can we think a moment or two about the impact of the co-disposal ban. We had evidence last week from the waste management people, who conjured up pictures of anywhere between three-quarters of a million and a million tonnes of hazardous waste which have become invisible. That could be trundling around the countryside somewhere in white vans, or bigger vehicles, but it has just disappeared from the scene and nobody seemed to know where it was or where it was going. Has the Environment Agency made any estimate of how much hazardous waste is unaccounted for following the ending of co-disposal and what has happened to it?

Baroness Young: Well, first of all, I do not think we accept the figures that are being put around for the kind of missing hazardous waste quantum. Our information certainly is two-fold, I think. One is that the quantum of hazardous waste being produced was reducing anyway. It has reduced by almost 25% since 1999, 10% in the year 2003 alone, so we would have expected there to be a downward trend in hazardous waste. To be quite frank, with the amount of promulgation of information about the regulations and the amount of effort that we, Government, Envirowise and a whole lot of

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other people, the trade bodies, have put into communicating what the issues are it would be pretty outrageous if we had not seen an acceleration of the reduction in that waste. We do believe that a lot of the missing tonnage is not missing, it is being properly consigned and segregated rather than being simply bulk consigned as hazardous waste and so far our investigative work has not revealed huge abuse, though we would be rash to say that no abuse is happening. One of the disappointments, I think, is that we are getting lots of people coming forward and saying that abuse is happening, but we do need chapter and verse from them. The numbers of firms who are alleging that there is a missing waste quantum but not coming forward with chapter and verse is unsatisfactory. Some people have, but not many yet and we would very much like that information in order to be able to follow it up. Liz has been very much involved in the work to look at both what is happening to the hazardous waste streams in terms of reduction and at the inspection and enforcement process that we have been involved in to make sure that we are not seeing lots of illegal activity.

Q83 Mr Lepper: Just before we come to this, why the over-estimate? You say some people come along to you with tales which are then not substantiated?

Baroness Young: Well, I am not saying they are tales because we are very grateful to people who do raise these issues with us, but I think to some extent some of the hazardous waste operators who were expecting a particular volume based on their previous experience are now not seeing that volume coming forward and their assumption is, therefore, that it must be being illegally disposed of or mis-consigned. Our view is that in many cases producers thought about the ban quite innovatively and have either already adopted ways of segregating their truly hazardous waste so that they can minimise the amount of hazardous waste they consign, and therefore the cost that they bear, or in some cases have accelerated in the period prior to the deadline in order to get as much as possible of their hazardous waste quotient out of the way. We think that is probably pretty true of the construction industry, where we saw a big acceleration of hazardous waste consignment in the run-up to the ban. The combination of those impacts and also the sorts of changes that we wanted this change to drive (which is more treatment, more reduction, more minimisation), those are the things we would expect to see as a result of these initiatives, both the cost of landfill and the co-disposal ban.

Q84 Mr Lepper: So the picture that we were having painted for us to some extent last week of an industry frustrated, waiting around for more guidance, more direction from Government to know how to comply with these various new directives coming on stream is perhaps not quite an accurate one? What you are suggesting is that within the industry itself there has been quite a lot going on in terms of preparation, despite the absence of all the guidance that might be needed?

Baroness Young: I think we have got to specify the difference between waste producers and waste operators, the people who receive it, because I think they are operating under very different circumstances, but Liz will best be able to tell you about the things that are still outstanding in terms of guidance that will allow industry to make even more progress.

Ms Parkes: I think it is fair to say that what industry needs for this July is in place and was in place prior to July, but there was some frustration at the time it had taken for that to come forward. What industry are calling for now is greater clarity over the full Waste Acceptance Criteria requirements, which will come in next July, and they are looking for that certainty, particularly, as Barbara says, upstream so that they know the standards that waste needs to be treated to. Certainly we are engaged and we have guidance ready to go as soon as Defra implement the remainder of the regulations relating to the Landfill Directive. We have guidance that we can get out there to help advise industry.

Q85 Mr Lepper: Have you got any estimate of illegal disposal at all?

Ms Parkes: The evidence is that there has not been a significant increase in illegal waste disposal of hazardous waste since 16 July. We are keeping that under review. As Barbara said, we are following up the intelligence that we have had from parts of industry to look at particular practices and we are very pleased that that intelligence is now coming forward and there is an acceptance that to actually then focus in on that activity will take a number of months, because if we are talking about mounting surveillance with a view to taking enforcement action that will take a number of months. But there is no evidence of increases in fly-tipping and particularly no evidence of orphan waste streams, which is something we have been working on very closely with, with Defra and the DTI, and particularly producers, so that we fully understood the impacts of a certain landfill closing, for instance, and were able to help the producer identify another disposal site for that waste or treatment option or a waste minimisation option.

Q86 Mr Lepper: Thank you. Just one final thing, if I may. What you have told us so far suggests the Agency reacting to information received, as it were, about hazardous waste being illegally disposed or unaccounted for. Is the Agency also doing things that are rather more pro-active in terms of investigating these issues? I do not want you to blow any undercover operations that are going on.

Ms Parkes: I am sorry if we implied that we were only being reactive.

Q87 Mr Lepper: I thought there must be more to it than that. If you could just tell us about that.

Ms Parkes: We obviously inspect all licensed facilities, whether they be licensed landfills or transfer stations. In addition to that, which we have been targeting at hazardous waste in the run-up to July and we expect to carry on focusing on

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hazardous waste over the next two year period because this is a period of change, we have also carried out over 1,000 audits, investigation visits to producers, cradle-to-grave audits, looking at particular waste streams that we thought were vulnerable to illegal waste management, concentrating on those we thought would pose the greatest risk. We have carried out over thirty stop and search operations of waste carriers where we work with the police and other enforcement agencies. In addition, I can say that we have got forty-five prosecutions actually pending and we have taken seven prosecutions to date relating to hazardous waste. So we are very much targeting our efforts at hazardous waste but it is too early to see the direct outcomes of that since July.

Mr Lepper: Thank you.

Chairman: The Committee stands adjourned for either the vote or series of votes, depending upon what happens, and I would ask colleagues to come back as quickly as possible after the last of the votes that are now commencing.

*The Committee suspended from 4.01 pm to 4.25 pm
for a division in the House*

Q88 Joan Ruddock: May I, on behalf of all Members of this Committee, apologise to our witnesses for this horrendous delay and confusion and the fact that this state of affairs will probably continue. But to get to some questions, you spoke earlier about the Waste Acceptance Criteria and your dismay about the way that that had not been planned sufficiently well. As I understand it, there are two stages. First of all, are you quite confident that the date it is to come in, in July next year, is actually properly prepared for and happening and is your concern with the second stage or is the whole thing still problematic?

Ms Parkes: If I could just confirm there is a single date, which is July 2005, which is the date when full Waste Acceptance Criteria will come in for hazardous waste. There is no other Waste Acceptance Criteria proposed for non-hazardous waste. I do not know, to be honest, where the 2007 date came from. I think perhaps there is some confusion in people's minds between the waste treatment requirements and Waste Acceptance Criteria. It is true to say that we are still awaiting confirmation of when the waste treatment requirement for non-hazardous waste will come in. We suspect it will be 2007, but we are awaiting confirmation of that.

Q89 Joan Ruddock: Obviously that is an important clarification for us. We have been misled.

Ms Parkes: The key date, therefore, is July 2005 and we have been saying that having got through the co-disposal ban we must turn our attention immediately to preparing collectively for the 2005 date. In fact we have just organised a seminar with Defra for the waste producing industry and the waste management industry on 6 December to try and make sure that both parts of industry are engaging and that the intermediate service providers are also well-informed and engaged. Really what we

want to do is to make sure that we do not see a repetition of some of the things that almost happened this July by making sure people are very aware for next July. If I could also say, because we do realise there is some confusion over the timetabling, it is not the most transparent of directives. We have just produced a very simple timetable, as simple as one can make this complex issue given that different dates apply to different types of waste, and we will be issuing that next week together with some very simple guidance for the producing industry which helps to explain the way through and the relationship between waste treatment and Waste Acceptance Criteria. So it is a helpful guide which actually says, "This is what you need to know to deal with your waste so that you can get it to landfill," to try and find a way through this complication.

Q90 Joan Ruddock: That is obviously very important. What sort of assessment have you made of the likely impact of this on waste management?

Ms Parkes: For Waste Acceptance Criteria coming in?

Q91 Joan Ruddock: Yes.

Ms Parkes: Well, we are talking with the industry about what they foresee may happen because it depends upon what treatment methodologies are employed between now and next July. We have not so far identified any problems with particular waste streams but we really do think there needs to be proper industry engagement to make sure that they are informed and that we are informed, and that is the purpose of this first workshop on 6 December, to get that engagement going and to actually look at particular waste streams. What we have said through the Hazardous Waste Forum is that if we need some follow-up sessions early next year then we will make sure that happens as well.

Q92 Joan Ruddock: Thank you very much. If I could go on to ask about whether you will have all your technical guidance in place by the time this comes into force in order to see that it is successfully implemented?

Ms Parkes: As I say, there is further guidance needed for next July. That has been developed. Much of it has been out to consultation and really we are just waiting for the new regulations from Defra because we obviously cannot issue guidance in advance of those regulations being finalised, but we are using the Hazardous Waste Forum to share advance copies of documents like this so that we can get that direct feedback, not just on the content but on the usability of the guidance.

Q93 Joan Ruddock: You have not got much time to do that then, by the sound of it. When do you expect to get the information from Defra?

Ms Parkes: Well, that is a question for Defra as to when they will consult on the regulations. We would like to see a consultation this year and the regulations coming into force in advance of the July deadline. Obviously the earlier the better.

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Joan Ruddock: Thank you.

Q94 Chairman: Are Defra moving at the right speed or are they going slow for any reason?

Ms Parkes: The delays have been to do with the negotiation on Waste Acceptance Criteria. There has been some very tricky technical detail, technical issues around testing and sampling. Again, we are working in partnership on that. I think they are now moving as quickly as they can do to get the regulations in place and I understand that they have everything they now need to consult on the regulations. That includes obviously a full regulatory impact assessment. I should say that one of the other key aspects which we hope will come into play and which we want to see is the requirements being passed up the chain to the producer. As I said earlier, it is important we do not just see this as an end-of-pipe obligation. We do have some sympathy with the waste management industry, which has to satisfy the requirements of the Directive end-of-pipe and it is very difficult if they have not got the necessary evidence from the waste producing industry, so we have been encouraging Defra to look at the controls upstream and if possible to impose requirements on producers as part of the duty of care to make sure that waste is properly characterised. We think that will really aid compliance and make sure that the awareness is there upstream, but obviously that is a bigger change and will require full consultation and a full regulatory impact assessment because it is important it is not over-bureaucratic.

Q95 Mr Drew: If we can look at this issue of municipal waste, trying to find an alternative to landfill. If I could just start with a very local example, but I am sure it is true of other parts of the country. In Gloucestershire we are in the process of negotiating a PFI deal and the idea is that as part of that PFI deal there will be the beginning of a substantial reduction in landfill. The problem is that for that PFI to work there is the need for both time and resources and in the interim the local authority is likely to face some fines because of its inability to have already reduced its commitment to landfill. Is there a way round this, and if there is what should the local authority be doing other than what they are asking me to do, which is to seek a delay in the imposition of the fines from central government?

Ms Parkes: I think the targets are challenging, particularly the second group of targets for local authorities given the lead time in getting new technology in place. So I think it is a challenge and I believe there are frustrations over the lack of responsiveness of the planning system, but also I think there is a challenge we all face in terms of getting public acceptance of waste facilities. All of that contributes to delays. Really the Agency's role with regard to the municipal waste targets is one of monitoring and running the trading scheme and then reporting back to Government, and really the question of whether local authorities are able to meet their targets or not is one for Government to take up with local authorities. We are inevitably

concentrating our efforts on the other 90% of the waste stream. Frankly, there is always less interest in the non-municipal waste stream and it is important that we continue to focus our efforts on that 90%.

Baroness Young: The whole aim of the move to try and divert from landfill is, of course, not just an end-of-pipe issue but about the way in which municipal waste is produced and then segregated and sorted. We would like to see more action in the future—it is unlikely before an Election, I am sure—to put economic incentives in place to promote greater household segregation of waste. That will help, of course, the whole process of local authorities being able to meet their targets. The work we did on public opinion showed us very clearly that households are willing to sort their waste if they are given the right facilities to do so and that they are willing even to be incentivised (if that is the word) by paying a higher charge for unsorted waste for the future. So there are other bits of economic instruments and mechanisms which can be brought into play to help the process.

Q96 Mr Drew: So can I be clear that there is at least a problem, not just for the Gloucestershires of this world but nationally, that if this is a process it is happening around the country the non-municipal waste is not going to get the level of prioritisation that it could and should be getting because at the end of the day the local authorities are going to be focusing on avoiding being fined because that is what will really hurt them?

Baroness Young: I think one of the bits of the jigsaw that is still missing in this country is a workable system for the strategic planning of waste because in reality although the municipal waste stream is reasonably well planned for and handled, because local authorities have got a key central role. For the majority of other waste streams there is not an immediately obvious location for the coordination of all of the activity that needs to take place in terms of the way in which waste producers are encouraged and incentivised to reduce their waste and the way in which waste managers and waste operators then provide the facilities for the disposal of that waste. So although Government has a responsibility to provide under the Directive an adequate network of proper installations for the disposal of waste in a modern fashion, I do not think yet we have quite got the system right to be able to get that to happen, to get the strategies in place, particularly to break through some of the planning issues which get in the way of providing that network of facilities and also to be able to step in when the market fails to provide it. At the moment in terms of hazardous waste, for example, there is quite a lot of sitting back by the operators and waiting to see what will emerge as things like the Waste Acceptance Criteria emerge, as the market begins to develop, as they see how much waste minimisation actually reduces the hazardous waste streams. We have got an example there of a potential market failure and yet I think we do need to have a much more effective way of planning strategy and then implementation beyond that if we

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are going to really see waste across the piece, not just individual waste streams, which is very much how it is planned at the moment.

Ms Parkes: Just to add to that, traditionally municipal waste has gone to the same landfill as other commercial industrial waste. Local authorities are now, as you say, concentrating very much on meeting municipal waste targets and it is very likely that the new treatment plant will come into place in municipal waste. It is important that we do not forget about the industrial and commercial waste within that, because if you put the two together one may get the economies of scale that are needed to make sure that proper diversion from landfill is in place. This is why we need to look at the whole picture, not just focusing on a single waste stream.

Baroness Young: One of the most important things, I think, is to look at what makes up the totality of some of these waste streams. For example, it was really only when we began to think in depth about hazardous waste that we realised just how important the construction industry is in all of this and the huge amount of the hazardous waste stream that comes from construction and how there can be quite a major impact both in terms of volume and in terms of the facilities needed for disposal by things like on-site remediation and by proper segregation of hazardous waste at site. Those things can make a big difference to the way the market operates but they need to be planned for.

Q97 Chairman: Can I just follow up one of the points. I noticed Paddy Tipping nodding at the same time I was about planning issues and the provision of new facilities. If I have understood the issue correctly, Lancashire County Council are running into problems already on their proposals for new waste stations and part of it appears to have been occasioned by a lack of transparency in their proposals for a plant, for example on the edge of Preston, and an unwillingness to fully engage not just the adjoining area but perhaps the people of Lancashire in a proper debate and informed discussion about what should happen to their waste. Do you think that local authorities should, given the new arrangements which are coming on-stream, now spend a lot more time advising, educating and being open with people about this whole matter? Is transparency a key ingredient to success?

Baroness Young: We certainly believe that if you look at the examples of successful best practice in terms of county level waste planning, for example, Hampshire is always held up as the example of a county which went in for a major public engagement exercise that really tried to develop an ownership in the public of the fact that it is their waste and what would they like done with it, rather than, "Would you like an incinerator at the bottom of your garden?" They had a fairly successful time in being able to introduce a more modern range of waste disposal techniques and they have got a good and improving level of recycling, re-use and waste minimisation. But it has proved difficult for other counties. Cheshire had a very bumpy ride and had to withdraw its proposals and, as you know,

Lancashire is in the same position. We believe that greater engagement is important, that the question the public needs to talk through with its elected representatives is, "We've got this waste. How are we going to reduce it? How are we going to recycle it? How are we going to safely dispose of the residual amount?" and there needs to be even greater transparency around the issue of the genuine impacts of various waste disposal facilities ranging right across all of the techniques, composting, recycling plants, incineration, landfill, and really trying to get beyond the "Not in my backyard" proposition but also making sure that wherever possible facilities are sited in places that are not going to cause nuisance and are going to be a sensible place for waste facilities to be located. I think some of the great angst that there is amongst the public about certain waste facilities is because they were originally put in the wrong place and the planning decision was a wrong one.

Q98 Paddy Tipping: You were just talking about involving people and you made some points a moment or two ago about financial instruments and, in effect, direct charging and I got the impression that you were saying that the Agency were in favour of direct charging. Is there a case for some pilots on direct charging?

Baroness Young: I certainly think that incentives for recycling, sorting and segregating, even if they are the reverse incentive of paying for the residual unsorted waste at the moment, are well worth trying, although I think probably using the "tax" word is unhelpful at any time and particularly unhelpful in the run-up to an Election. I hope that we can have that sort of discussion after the Election.

Q99 Paddy Tipping: It is a third term issue then?

Baroness Young: Your words, not mine!

Q100 Paddy Tipping: Well, I wish I could get other people to say it is a third term issue. Let me turn to another financial lever, which is the Landfill Tax. It is going to go up to £35 per tonne, the alleged real price of landfill. The majority of opinion seems to be that we ought to get there sooner rather than later. Again, is that the Agency's view?

Baroness Young: It has been interesting watching what has happened as a result of both tightening legislation and increasing the costs of waste disposal because I think we are beginning to see both of those driving real change in both waste production and waste consignment. Inevitably, if the escalator was to escalate faster on the Landfill Tax I think two things would happen. One is, it would give much clearer signals and much faster signals to our waste producers, consigners and operators, but it would also create this kitty of money that can be recycled back into business to allow them to adopt more sustainable waste practices and materials resource handling practices. We would also like to get our shovel in that one in a very modest way, a small seaside spade perhaps rather than a shovel. One of the major things we do not have any or much money for at the moment is to really enforce against illegal

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operators and illegal waste dumping. We know from experience in Wales, where the National Assembly for Wales funded us to do additional work, that the payback on that is huge. Small amounts of additional surveillance working jointly with local authorities can produce major enforcement action and really pick up on that end of the waste market which is making big profits out of illegal waste activity and really is distorting the playing field for other legitimate businesses. We think that means that this is not an unfair call on the BREW money,¹ the Landfill Tax money, because it will be helping a level playing field to allow legitimate business to operate properly.

Q101 Paddy Tipping: So why is the Landfill Tax escalator not running more quickly? Why are people cautious about it?

Baroness Young: I think there was a feeling that there needed to be time to let the system adjust, but I would hope that very shortly we will be able to show through the figures we are gathering that the system is adjusting quite quickly and it may well be that there is a case to be made for a faster escalator. I do not know whether Liz wants to come in, because she was involved in the discussions.

Ms Parkes: I think it is also important to look at the overall gate price. We have seen about a doubling in gate prices for hazardous waste since July and I think it is important, as Barbara says, that we take time for the market to settle down and see what the impact is with full WAC next year as well. So I think it is about looking at the total, not just the Landfill Tax component.

Q102 Paddy Tipping: In a sense that is the essence of the problem. We need a strategic input of these things and yet if we have got a market operating and sitting on the two horses it is not very easy, is it?

¹ The Business Resource Efficiency and Waste programme.

Ms Parkes: Well, certainly it would send a clear signal, as Barbara said, if it was going up more quickly.

Q103 Paddy Tipping: Right. Just tell me about Landfill Allowance Trading Schemes (LATS). Are they going to work?

Baroness Young: Oh, the system will work. It will be tough, as you heard from David, for those local authorities for whom they have got the proposition in the pipeline that will get them to a point where they are able to get out from under the penalties, but it is an incentive scheme and incentive schemes are about promoting innovation, promoting faster movement than hitherto has been the case, and therefore we support it and we will be helping Government with the administration and the monitoring.

Q104 Paddy Tipping: Can you not name a name or two? Which local authorities are going to get to their targets and have credits to sell?

Ms Parkes: I am not in a position to comment really on which local authorities may or may not.

Q105 Paddy Tipping: Are there going to be any?

Ms Parkes: I suspect some will be able to rise to the challenge. I think one of the challenges at the moment is that people are looking at waste streams and at the technology to treat the waste streams and what we need to see is a shift towards looking at what the market wants, what the market needs, so that we are not just looking at diversion from landfill but at how we can use those valuable resources in a more sustainable way. I think that is going to be one of the true tests over the years to come.

Chairman: Thank you very much indeed. There may well be some further points that we would like to put to you in correspondence. I apologise for the disjointed nature of our proceedings and as we may well start voting again sometime around about five o'clock we would very much like now for the CBI to take your place, but thank you very much for coming.

Supplementary memorandum submitted by the Environment Agency (X22a)

SUPPLEMENTARY QUESTIONS ARISING FROM THE ENVIRONMENT AGENCY'S WRITTEN EVIDENCE

1. *Para 3.1.2 states that the decision to adopt the Technical Adaptation Committee's recommendation on the Waste Acceptance Criteria was only taken in December 2002—some 18 months later than expected. What were the reasons for the delay?*

The Directive came into force in July 1999 requiring its Technical Adaptation Committee (TAC) to agree Waste Acceptance Criteria by July 2001, the date for Directive implementation.

The Commission did not establish the TAC Landfill sub-committee until February 2000. The sub-committee were unwilling to adopt existing German and Austrian limit values as most Member States wanted to set limit values related to environmental protection measures. A modelling group was therefore set up in May 2000 to develop these values and did a great deal of work in a short time-scale. However it took over a year to agree the methodology and the limit values for inert waste landfills. Sampling and testing standards under development by the Comité Européen de Normalisation (CEN) were not due to be ready for consultation until July 2002 and the European Commission agreed in April 2001 that the timetable would slip accordingly.

Further delays occurred when the draft decision document presented at the July 2002 TAC meeting did not accord with the document agreed by the landfill sub committee. It included a new risk assessment provision and a much earlier implementation date than that requested by Member States and as a result it was not agreed. The decision was finally approved in Council on 19 December 2002.

2. *Para 3.1.3 states that “it is not clear whether the LFD constitutes “BAT” (best available technique) for landfill. This has resulted in uncertainty over the regulatory approach to be adopted”. Why isn’t it clear whether the LFD constitutes BAT?*

BAT is a requirement of the IPPC Directive. The concept of what is “best” and “available” is intended to change over time as knowledge and technology improves. Procedures exist through BAT reference documents (BREFS) and other means to define what constitutes BAT for any given process at any time. Landfills were only included in the IPPC Directive at a relatively late stage and the linkage to the already existing Landfill Directive (LFD) was not properly or fully described.

As a consequence the LFD contains a number of prescriptive standards, such as those in relation to landfill lining, which seems to run contrary to the principle of BAT. In other respects, such as for landfill gas plant, the LFD is silent and it is therefore assumed that BAT applies.

3. *Para 3.3.1 states: “Despite the construction of liners and barriers absolute prevention [of list I substances into groundwater] is very difficult if not technically impossible to achieve in practice”. Can you explain the technical reason why this is so difficult to achieve?*

In English law prevent means to stop—which strictly means even infinitesimal amounts of List I substances should not enter groundwater. All liners/barriers have a finite, albeit normally very low, permeability and over time will allow the migration of a small quantity of landfill leachate, given the large surface area of the base and sides of a landfill. If designed and constructed to the high standards expected of a modern landfill, this leakage will be very small and environmentally trivial. Nevertheless the Groundwater Directive’s requirement for absolute prevention will not have been met, even if it complies with the spirit of the Directive in the sense that there is no environmental impact.

We understand there may be slightly different translations and therefore meanings of the “prevent” clause in the Groundwater Directive across Europe. In practice it is often interpreted as using best endeavours or aiming to prevent, recognising that absolute prevention is unachievable. To meet this problem in the Agency’s guidance on landfill risk assessment we require that there should be no discernible discharge of List I substances from the landfill.

Under the Water Framework Directive (WFD) the existing Groundwater Directive will be repealed in 2013. However, an equivalent level of protection for groundwater is required under the WFD. The details of this are likely to be included within the proposed Groundwater Daughter Directive (GDD), which is currently progressing through the European Council and Parliament. It is notable that in the WFD a more purposive approach is taken and we hope that this will also be reflected in the proposed GWDD. Our position is that Member States should only be asked to use their best endeavours and not be asked to undertake measures that are technically not feasible or necessary for environmental protection.

4. *Para 3.4.2 notes that “Landfill permitting has not proceeded as quickly as we would like”. What are the reasons for this?*

Permitting requires an assessment of the impacts of the landfill on the environment and public health. Applicants have to demonstrate that the site will satisfy the requirements of the Landfill, Groundwater, IPPC, Waste Framework and Habitats Directives. This is a challenging exercise for industry and the regulator, particularly where information, such as that required to undertake a hydrogeological risk assessment, is not readily available. Poor quality applications have contributed to delays, as we have to require further information, often repeatedly. Some applications have also been delayed whilst planning issues are resolved (the legislation prevents us from issuing a permit for a waste site unless planning permission is in place).

We meet regularly with the main trade body (the Environmental Services Association) as well as individual operators to resolve generic issues and have held workshops with the industry to help improve the quality of applications. We continue to review the permitting process to identify efficiencies that we can make, such as the need for discussions on financial provision to commence much earlier in the permitting process. We are currently looking to simplify the process for inert landfill applications to ensure that we can continue to focus resource on those sites that pose the highest risk.

5. *Para 4.1.1 notes that the requirement that the gate price charged by landfill operators must reflect the full cost of operating the landfill, including long-term aftercare, "could have been imposed by Government at an earlier stage". Does the Agency have a view on why this did not happen earlier?*

It may have been considered that this requirement was aimed at those countries where the State is responsible for running waste disposal facilities.

In England and Wales, local authorities were required to contract out waste collection and disposal services during the 1990s. It may have been assumed that under a situation where market forces prevailed, no further action was required to ensure that the true costs of disposal are reflected in landfill gate prices. Despite this landfill prices remained low with the only substantial upward pressure coming from the landfill tax. The Environment Agency has advocated a price increase in order to drive waste minimisation and reduce society's reliance on landfill. We resisted previous suggestions that we should be given a role in monitoring gate prices as we do not have the necessary expertise and considered it could undermine our role as environmental regulator. Government has been reluctant to intervene in the market place itself or to identify an economic regulator to monitor and potentially influence gate prices. We do think it would be have been prudent to consider other measures needed to reduce reliance on landfill in advance of the co-disposal ban taking effect and that active application of Article 10 should have been explored more fully.

6. *Para 4.1.3 states that "producers will need support from Envirowise, the Agency and others to help them to take advantage of waste minimisation opportunities". Why will they need this support; and can you give examples of the kind of support available?*

Whilst many larger businesses have taken steps to reduce and even eliminate hazardous materials and wastes, the majority of hazardous waste producers will be small and medium sized enterprises (SME's) from a range of often fragmented business sectors. Surveys show that SME's are generally less aware of their environmental obligations and the business opportunities of good product design, waste minimisation and waste recovery and have little capacity to take advantage of good practice. The Environment Agency recognises the difficulties for small businesses and has developed sector specific web-based guidance (NETREGS) that explains regulatory requirements simply.

Envirowise is an established Government programme that provides support to businesses through a national helpline, publications, tools and on site assistance. The Environment Agency is working with Envirowise to develop new tools for hazardous waste producers including the HAZNET web tool of good practice materials. In addition local business support organisations, such as Groundwork, provide advice to businesses and waste minimisation clubs provide a forum for training and support.

7. *Para 4.1.4 refers to the issue of fragmentiser residue. Can you give more detail about this episode, the problems that arose and the lessons to be drawn?*

The Environment Agency meets regularly with the metal recycling industry to discuss emerging issues and provide support on regulatory and policy issues, particularly those associated with the End of Life Vehicles (ELV) Directive. That Directive has required, since November 2003, vehicles to be "depolluted" which involves removing the hazardous components.

In the lead up to the co-disposal ban the shredder industry raised concerns about the suitability of the analytical method most commonly used by industry for determining the mineral oil content of fragmentiser waste. They had been unable to persuade landfill operators that fragmentiser residues were non-hazardous and were unwilling to pay the much higher costs of landfilling hazardous waste. This was presented to the Environment Agency as a problem for us to resolve on the 12 July, with the threat of all the shredder operators shutting their doors to ELV's on 16 July. This would have had the effect of increasing vehicle abandonment.

Elliot Morley called an urgent meeting on 19 July with all parties to clarify the underlying issues and agree a way forward. The Environment Agency met with the key stakeholders on 20 July and was able to agree and issue a statement on 21 July. This statement gave comfort to the waste management industry that, provided ELV's had been depolluted and this could be evidenced through the waste transfer note, the residue would be treated as non hazardous. The Environment Agency also offered to let a contract to develop a form of sampling and testing that would verify the hazardousness, or otherwise, of fragmentiser residue. It took a number of months for industry to agree the methodology for this work and the findings will be delivered shortly. The original statement has therefore been reviewed and reissued whilst the Environment Agency continues to work with the shredder and waste management industry to ensure a long term solution is developed and subsequently signed up to by all parties.

The episode highlighted the need for waste producers and waste management service providers to engage at an early stage to understand the impacts of legislative change and work together to develop solutions. We consider trade bodies have an important role in this respect. We have organised a seminar on the Waste Acceptance Criteria, jointly with Government, to bring various trade bodies together and ensure such debate happens well in advance of the July 2005 requirements, and avoid a repetition of the fragmentiser issue.

8. *Para 5.5 states that there needs to be a commitment to the implementation of Defra's waste data strategy. Are you confident that there is such a commitment?*

We believe that there is a clear commitment to the data strategy. This will need to be reflected through the provision of additional resource for the Environment Agency to allow it to develop the necessary IT systems to implement its role effectively.

We are required to provide information on wastes and their management to the Commission under the Waste Statistics Regulation. We do this by carrying out national surveys of a sample of industry and commerce. Although the sample is several thousand and the work costs several million pounds, we can only reach a small proportion of the 1.5 million businesses that exist and the figures are necessarily estimates.

It also takes a great deal of time to collate the data and to clean and complete it to a stage where we can use it to produce the estimates. This means that information tends to be published later than we would like.

We agree with the phased approach in the Data Strategy and we support the use of regulatory mechanisms wherever possible. To give effect to the waste data strategy will mean we have to develop new software systems to record data returns from licensed and exempt sites. We consider this to be a better use of the money that Government would otherwise have to provide to carry out surveys and should be cheaper than traditional surveys.

30 November 2004

Further supplementary memorandum submitted by the Environment Agency (X22b)

THE ENVIRONMENT AGENCY RESPONSE TO QUESTIONS FROM THE COMMITTEE ARISING FROM WRITTEN EVIDENCE SUBMITTED BY THE ENVIRONMENTAL SERVICES ASSOCIATION

1. *In paragraph 25 of its written evidence, the ESA states that legal framework to interpret and apply the requirements arising from the Landfill Directive is unclear and imprecise and that 10 out of 12 technical guidance notes were still outstanding at the time the ESA submitted their evidence in October. Can the Agency state how many of the guidance notes are still outstanding?*

The list the ESA are referring to is out of date. An up to date list of relevant guidance is available on the Environment Agency website.¹

Of the documents referred to by ESA, six relate to landfill gas management. Two of these have now been published on the Agency's website and in hard copy, two more will follow by the end of this week and the remaining two will be published by mid-January 2005. Whilst landfill gas management is an important issue for some landfills, this is not universally the case and the production of other more pressing guidance has taken priority.

Of the documents listed as outstanding:

- Guidance on WAC sampling and testing—this being produced to complement the forthcoming amending regulations on WAC that are being drafted by Government. We have already consulted on the draft guidance with the intention of publishing it once the regulations come into effect. Given the urgent need for clarity over WAC we have now agreed with Defra that the guidance can be published in advance of the regulations and expect to do so early in the New Year.
- Guidance on waste acceptance procedures—we are now incorporating these into a single document aimed at waste producers, covering waste treatment and waste acceptance. A summary of this was released in November with the more detailed guidance available in January.
- Over-arching guidance on risk assessment—this is not a separate guidance document but a summary of existing Agency guidance already published.
- Guidance on landfill completion—following consultation this document is now in the process of being finalised and we intend to publish it in January.

2. *In paragraph 26, ESA states: "Since the start of the landfill permitting process in early 2003, ESA's Members have had constantly to reassess permit applications because of revisions to the Agency's guidance. In some cases engineering work was carried out and became almost immediately redundant because of revisions to the Agency's guidance". Is this the case?*

The Environment Agency has had to produce guidance in the absence of absolute clarity on the interpretation of the Landfill, IPPC and Groundwater Directives, as acknowledged in our own evidence. This is a far from satisfactory position for the regulated and the regulator. As new information becomes available, or in response to requests for clarification, we have undertaken reviews. We have also reviewed the impacts of the application of the guidance as permitting has progressed.

¹ http://www.environment-agency.gov.uk/business/444217/444663/landfill/?version=1&lang=_e

As a result of those reviews, we have confirmed that our interpretation has not changed, but we have sought to clarify some aspects of our policy position. This has been a particular issue for guidance on the engineering requirements for existing landfills, to ensure they are Groundwater Directive compliant. We continue to receive requests from ESA to revise our policy position and associated guidance. We are resisting this as we do not consider it necessary and are mindful of the impacts on those companies that have now invested heavily on the basis of current guidance.

3. *In paragraph 27, the ESA states that the Agency has processed only 20% of the 250 permit applications that have been submitted. What is the current figure for the number of applications processed; and why has the Agency not met its deadline for processing 80% of the applications submitted?*

Nearly a third of the applications received (422) have been determined (132). As can be seen from these numbers, this is a significant workload over a short period of time. We are constantly seeking ways of improving the efficiency and effectiveness of the re-permitting exercise. We deliberately targeted the most complex sites and those with the greatest potential environmental impact at the beginning of the process so that they would be brought into an integrated pollution prevention and control regime at the earliest date possible.

Some operators are contributing to the delays. There have been many poor quality applications, which has meant we have had to request further information. A significant number of operators have been slow in coming forward with proposals for making adequate financial provision. Where sites already exist there is little incentive for operators to progress an application rapidly.

We regularly review our own performance and discuss progress with ESA. As a result of those reviews we have made and will continue to make improvements to the process and to ensure industry is clear on the requirements. We are confident that any delays to permitting have not had a negative impact on the availability of hazardous waste landfill capacity, as existing hazardous waste sites can continue to accept hazardous waste under their waste management licence. We also meet regularly with the major operators to ensure that any delays are not having a detrimental impact on their business.

4. *In paragraph 29, the ESA states that “an approach currently proposed by the Environment Agency would require our Members to divert hundreds of millions of pounds to specific accounts at a time when they need to raise capital to fund investment in new waste management infrastructure”. Could the Agency comment on this claim?*

The Environment Agency recently consulted on a proposed change to policy in relation to financial provision to ensure Landfill Directive requirements are met. We believe that operators should make provision that ensures that they have funds to meet the inevitable costs which arise on landfill closure and aftercare. We specifically asked consultees for views on the potential financial implications of the proposals but we have seen no evidence to support the allegations that it will cost hundreds of millions of pounds. We are carefully considering the alternative solutions put forward by the finance and waste management industry and will make an announcement shortly on our intentions in the light of the comments we have received.

The ESA's proposals for a compulsory levy are of particular interest, but will require legislative change by Government. We have been active in promoting a debate between industry and Government on this issue in recent years, but are not aware of any commitment by Government to progressing the necessary legislative change.

15 December 2004

Further supplementary memorandum submitted by the Environment Agency (X22c)

ENVIRONMENT AGENCY COMMENTS ON ESA SUPPLEMENTARY EVIDENCE

SCHEDULE A—ILLEGAL WASTE ACTIVITY

The Environment Agency has a national incident reporting system (NIRS) to support management of pollution incidents. The system allows us to aggregate data on incidents involving illegally dumped waste and is used to inform our enforcement priorities. In 2003 we dealt with 5,399 such incidents resulting in 254 prosecutions.

The need for a complete set of national data specifically on fly tipping has been recognised. During 2003–04 Defra and the Welsh Assembly Government funded us to develop the *Flycapture* database to address this knowledge gap. The database collates data from the Environment Agency and local authorities

on the number and type of fly-tipping incidents dealt with, the cost of tackling the incidents and the enforcement action taken. *Flycapture* will allow assessment of data to develop national and local strategies to tackle the problem of fly-tipping.

A proposal to extend the use of the database to major landowners such as British Waterways, Network Rail and the National Trust is under consideration.

We spend some £12 million annually tackling all environmental crimes across England and Wales—with £7 million spent on waste crimes alone. Resources for tackling the growing problems will always be under pressure. The provision of funding through the BREW programme will assist in demonstrating the benefits that additional resources can bring to tackling the scourge of waste-related crimes.

SCHEDULE B—MEETINGS AND CORRESPONDENCE WITH DEFRA

No comments.

SCHEDULE C

We have taken care to ensure all information provided to this Committee is accurate. There is no substance to the assertion made by the ESA that this may be otherwise.

SECTION 1—STATUS OF ENVIRONMENT AGENCY GUIDANCE

We have a role in producing guidance to support Government's implementation of regulations. Production of guidance is not the exclusive preserve of the Environment Agency. Trade bodies such as the ESA can help by producing guidance specific to the needs of their membership.

The issuing of draft guidance for consultation referred to by ESA has helped industry to prepare for the likely changes and to identify what further guidance would be helpful. The ESA have produced a useful guidance document on sampling and testing of wastes based on one of our consultation drafts.

Because implementation of aspects of the Directive has been piecemeal we have necessarily prepared and consulted on separate pieces of guidance as the requirements became clear. In order to help waste producers and managers understand how the various requirements fit together we have reviewed the content and number of documents as well as taking on board the comments received. Wherever possible we have published final guidance in a format that best meets the users' needs and explains the relationship between waste acceptance criteria, waste acceptance procedures and the pre-treatment requirement, for example, rather than producing three separate documents. We are placing a table on our website that will help explain this more clearly and avoid any further misunderstandings.

The status of the guidance documents referenced is as follows:

Sampling and testing of waste to meet the Waste Acceptance Criteria

Once the waste acceptance criteria were agreed at a European level we produced draft guidance to enable industry to prepare for the requirements and consulted in November 2003. We had been awaiting Government confirmation of the regulatory requirements for sampling and testing of monolithic wastes with the final document planned for publication upon issue of the amending regulations. We have recently agreed with Government that this guidance can be finalised and published despite the regulations still being subject to consultation. This has allowed us to bring forward publication of the final guidance document to March.

National Interim Waste Acceptance Procedures

We published a consultation draft outlining the requirements in August 2002. This helped to inform Government's "Interpretation of the Landfill Regulations" which was published last year. The more detailed elements of our consultation that are not included in the Government's document have now been incorporated into a simple summary guide for waste producers and waste managers. This document, "*Requirements for waste destined for disposal in landfill*", was published in November 2004 and helps explain how the various requirements fit together.

Waste Treatment Requirements of Article 6(a) of the Landfill Directive

We consulted on draft treatment guidance in 2001 to give an early indication of the new requirements. Responding to consultee feedback we have produced two documents to explain the requirements. Both publications cover general acceptance requirements for waste destined for landfill, including treatment.

The first publication, *“Requirements for waste destined for disposal in landfill”*, was published in November 2004. This document includes our interpretation on the principles and objectives of waste treatment. It is aimed at waste producers and waste managers.

The second document, *“Acceptance of waste in landfills”*, contains more detailed guidance case studies on waste treatment. This will be published in February this year.

SECTION 2—REVISIONS TO ENVIRONMENT AGENCY’S GUIDANCE

The shift from waste management licensing to the PPC permitting regime has required some adjustment by industry and some of the appeals relate to discomfort with procedural rather than policy aspects.

The Environment Agency is currently handling 21 appeals. The majority (13) relate to appeals against refusal of a Pollution Prevention and Control (PPC) authorisation normally as a result of the tougher standards introduced by the Landfill Directive. We are required to close such sites as soon as possible but lodging an appeal has the affect of delaying closure of the site when a PPC permit has been refused.

SECTION 3—PROCESSING OF PPC APPLICATIONS

The Environment Agency has taken care to ensure that all information provided to the Committee is accurate so that its investigations proceed on the basis of sound fact.

We stated in our submission that 422 applications had been received and 132 applications had been determined. These figures were correct and relate to work undertaken by our Strategic Permitting Group, the national group set up specifically to ensure efficient re-permitting under PPC, as well as that undertaken in our Area teams. The permitting figures currently stand at 463 applications received of which 161 have been determined.

We understand that the ESA contacted an officer at the Strategic Permitting Group and obtained data relating only to those applications handled by the Group. Using such means to challenge our data does little to assist the Committee’s investigations.

SECTION 4—FINANCIAL PROVISION

We consider our previous submission to be accurate. We are supportive of any means of making financial provision that meets our policy objective.

The ESA has put forward proposals for a compulsory levy which would require legislative change by Government. The Agency has to work within the current legal framework and hence has consulted on proposals that it would consider to be acceptable within that framework.

We anticipate that some hundreds of millions of pounds of liabilities associated with landfills will be identified through Landfill Directive re-permitting. This figure is likely to be less than £1 billion. Whatever mechanisms are used to discharge these liabilities which will inevitably arise in the future, a cost will be involved.

We included a draft Policy Impact Assessment with our consultation paper. The costs to industry of funding the current arrangements for financial provision are not transparent. Operators frequently claim commercial confidentiality for the quanta and mechanisms of provision at individual sites making it difficult for the Agency to accurately assess the true costs. We specifically sought comment to improve the quality of the information available and our understanding of the impacts. The ESA did contribute information in its response to our consultation. However, no information on the costs of cash accounts has been provided and the 10% per annum cost now claimed has not been quantified. In addition we would welcome quantification that “hypothecation of £1 of Landfill Tax should prove more than ample”.

In light of the comments received, including a number of suggestions for alternative mechanisms, we have announced that there will be no changes to our current policy before May. We are in active dialogue with the industry and finance providers to further advance our consideration.

SCHEDULE D

No comments.

Environment Agency

February 2005

Confederation of British Industry (CBI) (X15)

EXECUTIVE SUMMARY

Waste is one of the most pressing challenges facing the UK and its effective management is critical for sustainable development. CBI members recognise they have a key role to play in stimulating and implementing resource efficiency, minimising waste and supporting the Government in implementing its developing waste strategy.

The process of transposing, implementing and enforcing waste legislation continues to impose significant pressure on the resources of business, regulators and policy makers. This response considers the challenges arising from the approach adopted when implementing the Landfill Directive and makes recommendations on opportunities for improvements.

Ultimately the UK Government must ensure that future implementation of EU waste directives is improved. Consultation on implementing recent waste Directives, including the Landfill Directive, has been protracted and difficult. It has resulted in late transposition and hurried implementation with little useful guidance in place on which business can rely on. Crucially the resultant uncertainty, caused by a lack of decision making on implementing key provisions, has contributed to a less than favourable climate for investment in the necessary waste management infrastructure to fulfil key requirements of the Landfill Directive.

THE IMPACTS ARISING FROM THE END OF CO-DISPOSAL INCLUDE AN INCREASE IN:

- storage of hazardous waste;
- transportation of hazardous waste across the UK;
- fly-tipping of hazardous waste;
- the likely need for more integrated waste management facilities incorporating waste to energy plants; and
- the costs of managing waste.

RECOMMENDATIONS FOR IMPROVING UK IMPLEMENTATION OF EU WASTE DIRECTIVES INCLUDE:

- Government must not sign up to EU Directives before the detail has been agreed and the implications in the UK are understood.
- Government must ensure that transposition, implementation and provision of guidance is carried out in a timely manner allowing adequate time for business to implement the changes.
- Wider, more detailed consultation with the business community would help ensure that more pragmatic regulations are developed. This must involve a recognition of the differing perspectives and needs of the waste management industry, waste producers who manage their own waste, and the more general waste production sector who do not.
- A level playing field must be maintained in implementing EU waste directives.
- Government must avoid “goldplating” its implementation of EU waste directives. It should note that the only direct targets in the Landfill Directive relate to municipal/household waste, and should avoid placing unnecessary or ill thought through targets or burdens on business.
- A greater clarity over the respective roles of Defra and the Environment Agency—business is concerned that the Agency, rather than the Department, appears to be developing aspects of policy.
- Government needs to give urgent consideration to how the required investment—estimated at up to £30 billion in a recent ICE survey—needed to meet the municipal waste landfill diversion targets can be funded and required planning permissions achieved.

1. GENERAL COMMENTS

The CBI welcomes the House of Commons Environment, Food & Rural Affairs Committee inquiry into waste policy and the Landfill Directive (LD) and the opportunity to provide input. We believe that this provides an essential opportunity to consider the work of the UK government in transposing and implementing waste regulation generally.

The CBI with a direct company membership employing over 4 million and a trade association membership representing over 6 million of the workforce—is the premier organisation speaking for business in the UK. The activities of our membership extend across the entire spectrum of the resource management cycle, from primary extraction of raw materials, to product manufacture, product use, waste recovery and recycling, and finally to disposal of residual waste. This response seeks to outline the weaknesses of the current system, highlighting specific concerns arising from implementation of the Landfill Directive and poses recommendations on where improvements can be made.

1.1 *Regulatory uncertainty prevents investment*

Recently there has been much activity in transposing and implementing EU waste legislation including the Waste Electrical and Electronic Equipment (WEEE), End of Life Vehicle (ELV), Packaging & Packaging Waste in addition to the LD. The UK Government must ensure that future implementation of EU waste directives is improved.

Consultation on implementing recent waste Directives has been protracted and difficult. It has resulted in late transposition and implementation with little guidance in place on which business can rely on. In addition the lack of certainty on regulatory requirements prevents industry from preparing adequately and investing in the technology essential to ensure compliance. This process has and continues to impose significant pressure on the resources of business, regulators and policy makers alike.

In addition to the Landfill Directive, a classic example is that of fridges. Difficulties arose when government sought to implement the EU regulation which required the removal of ozone depleting substances from the foam insulation in fridges destined to be scrapped or recycled. Despite industry calls for clarification over the requirements, little information/guidance was provided. This actively prevented industry from investing in the treatment infrastructure, the absence of which meant fridges were stored in the form of "Fridge Mountains". Indeed, the House of Commons Environment, Food & Rural Affairs Committee was highly critical of UK implementation of this Directive. They concluded that "while the EC must accept some blame for lack of clarity, the overwhelming responsibility for mishandling the implementation of the regulation lies with the government".

1.2 *Confusion over alternatives to landfill*

Government has signed up to a Landfill Directive that implies a significant increase in alternative treatment options. However, the Government has yet to provide stakeholders with a clear steer on its commitment to the use of differing waste management options. The net result is confusion and lack of action on waste treatment options. The current planning and PPC systems are major causes of delay in securing the much-needed infrastructure. This lack of understanding and progress is a significant concern for UK businesses. The recent Government review of the environmental/health effects of all waste disposal should be used as the basis for establishing a clear commitment to the differing waste management techniques.

1.3 *Maintenance of a level playing field*

UK implementation of EU waste directives should not be any more onerous than that in other Member States. Maintaining a level playing field is a critical part of implementing in a cost effective way, one which achieves environmental benefit but is not detrimental to the competitiveness of British business. A more costly or onerous regime in the UK not only sends a negative message to global businesses but also may result in future investment being jeopardised, companies withdrawing from the UK and substantial job and economic losses.

This issue has been a significant cause for concern in implementing the ELV Directive. Originally, the Government indicated that it was considering early implementation of financial producer responsibility. Early implementation of producer responsibility would have imposed significant competition problems between the other major car manufacturing countries, principally France and Germany. This would have resulted in hardship for certain vehicle manufacturers with large vehicle populations and financial liabilities leading to potential bankruptcy within the UK. Fortunately, government has agreed to adhere to the deadlines enshrined in the Directive. It is estimated that this will save the motor manufacturing sector £450 million. Whilst Government must remain faithful to its commitment in implementing financial responsibility in 2007, at the same time the possible consequences of relying on last owners for disposal until 2007, such as increased flytipping of vehicles, should be considered. Additional support for sectors such as the metal recycling who have highlighted substantial concerns arising from the UK approach, should be addressed.

1.4 *Broader costs and benefits of waste policy*

It has been estimated that up to £30 billion of investment may be needed by 2020 to meet landfill diversion targets. This is a very significant figure, and raises questions about whether such investment would lead to greater environmental gains if invested to address other environmental challenges, and also as to how we can seek to make the investment required more affordable. CBI would be happy to engage in dialogue with all stakeholders as to how to secure maximum efficiency in environmental expenditure.

2. CHALLENGES FROM THE APPROACH TAKEN TO IMPLEMENT THE LANDFILL DIRECTIVE

2.1 *Uncertainty from the outset*

The LD continues to cause on-going problems for waste producers and the waste management industry. The CBI is most concerned that the UK government signed up to the LD without sufficient and timely thought being given to key requirements associated with the Directive in the context of the UK situation. This principally relates to the Waste Acceptance Criteria (WAC) which were developed separately by an EC Technical Adaptation Committee. Significant delays have occurred within Europe in agreeing the criteria (only finally agreed on 28 January 2003), which sets strict limits on the type/quantities of waste acceptable to landfill sites.

2.2 *Delays in decision making*

Member States were required to transpose the Directive into national law by July 2001. However, the Landfill Regulations (England and Wales) were only laid before parliament in June 2002 and several changes were made between the draft and final regulations.

The CBI is also concerned over the time the UK government took to make a decision on implementing WAC. We welcomed the full consultation that took place, however, Council Decision 2003/33/EC on the WAC was agreed by the EU Technical Adaptation Committee in December 2002 and yet the Defra consultation was not released until late September 2003. Ultimately it took the Government 15 months to make vital decisions on how and when these would apply.

2.3 *Regulatory uncertainty represents a barrier to investment*

The delays outlined above (in particular on WAC) have made it extremely difficult for waste management companies to assess the true impact of the regulations and how they will affect landfill sites. This also has a major impact on waste producers as it is unclear what disposal options will be available and more critically will there be adequate capacity. Crucially the resultant uncertainty, caused by a lack of decision making on implementing key provisions, prevented business from investing in the necessary waste management infrastructure to fulfil key requirements of the LD.

2.4 *Lack of guidance*

In transposing the LD into UK law, Defra has adopted an approach which broadly replicates the exact requirements of the Directive—very little further detail has been added to the regulation's text. This has its advantages in that it avoids potential embellishment which may arise from expanding on the directive's text within the regulations. Further interpretative text has been required, essentially in the form of guidance, on how the regulations will apply in practice. At the time of writing this evidence (26/7/04), interpretative text for the overall directive is still being drafted. Initial insights of this document give an impression that it is a useful overall guide to meeting the requirements of the directive. This type of document is fundamental in providing business certainty and must to be issued, via consultation with industry, much earlier on in the process of transposing EU regulation.

2.5 *Permitting delays*

Industry is becoming increasingly concerned over the lack of progress being made by the Environment Agency in PPC permitting of landfill sites. Extensive delays in the first permitting phase have already occurred, primarily due a lack of resources.

2.6 *Permitting requirements changing*

The approach to re-permitting landfill sites under the Integrated Pollution Prevention Control (IPPC) Directive has proved problematic and resulted in delays, in the absence of clear policy direction from Defra. Without clear guidance on the criteria required for compliance, for example with the Groundwater Directive, the Environment Agency has developed its own policy in the form of internal guidance notes. Within the second tranche of landfill permits, policy enshrined within original Environment Agency guidance has changed, to take into account concerns associated with "piggybacking" and ensuring compliance with the Groundwater Directive. The Landfill Directive allows a risk based approach to be implemented and this has been taken up by member states such as France. But with a lack of guidance from Defra however, the Environment Agency has adopted a less pragmatic and more prescriptive approach. Estimates suggest that this approach could mean the premature loss of at least 10% of currently permitted industrial landfill void space.

Another example of changing permitting requirements and potential "gold plating" of EU Directives is the Environment Agency's current proposal that escrow accounts will be required for tranche four landfill

IPPC approvals, despite not having been required on earlier tranches nor being mandated by the original Directive which only refers to financial provisioning. CBI is concerned about the unilateral imposition of escrow accounts on the waste industry in this manner.

3. THE LANDFILL DIRECTIVE—IMPACT OF CODISPOSAL

3.1 *Lack of treatment capacity*

Historically, the UK, along with certain other Member States, has had a high dependence on landfill as a means of waste disposal and the banning of co-disposal from 16 July 2004 has resulted in significant changes to the way we manage our waste. The Environment Agency estimates that the number of landfill sites accepting hazardous waste could reduce from about 250 to fewer than 10. As stated in Defra's partial Regulatory Impact Assessment (RIA), there is a significant risk of shortfall in treatment capacity for all wastes requiring landfill disposal. A recent Enviro report suggested that about 3.5 million tonnes of additional treatment and disposal capacity is required by 2005 but is unlikely to be available until 2009. This is likely to result in a number of implications including:

- Capacity shortages are likely to mean significant problems for companies needing to dispose of waste types such as metals, incinerator residues, contaminated soils and oily wastes.
- A lack of local facilities, is likely to cause an increase in waste transported across the UK, mostly by road on congested highways. This is particularly the case for areas such as Wales where it is anticipated there will be no hazardous waste landfills available.
- An inevitable consequence is the increased storage of hazardous waste at production sites. This storage may be beyond the exemption allowances currently set in the Waste Management Licenses (1994), requiring more producers to obtain storage licenses, the cost of which would be high.
- Ultimately the costs of managing waste in the future will rise. The Environment Agency predicts a rise from £150 to £500 million for managing hazardous waste per year.
- There will be an increase in flytipping of hazardous waste and inappropriate disposal eg fluorescent tubes and paint cans in domestic waste bins (caused by the anomaly that domestic waste is generally classified as non-hazardous.)

3.2 *Flytipping*

Flytipping already represents a substantial challenge with a range of environmental and social impacts implications and economically, undercutting the majority of responsible waste management companies. With the substantial cost increases and restrictions on hazardous waste disposal, a likely consequence is a further increase in flytipping. Provisions must be put in place to deal with this outcome, especially considering the nature of the material—ie its hazardous content and potential for harm to human health/environment. The Agency needs to be equipped with adequate resources to target the illegal waste disposal.

3.3 *More waste to be classified as hazardous*

The European Hazardous Waste Directive contains a defined list of substances classified as hazardous waste. The UK's Special Waste Regulations 1996 implement the requirements of this Directive, defining hazardous waste as "special" waste. The European Commission has recently published a revised European Waste Catalogue which will add approximately 250 waste types to the "hazardous waste" list. This is likely to triple the number of shipments and producers of such waste, adding a further 250 waste types to the hazardous waste list. Examples include pieces of equipment such as computers and fluorescent tubes and the number of producers could triple from 200,000 to 600,000. The UK therefore faces a significant increase in the quantity of hazardous waste and hazardous waste producers. This will merely compound the likely problems associated with the imminent restrictions on hazardous waste disposal to landfill, as above.

4. FUTURE ACTION ON LANDFILL DIRECTIVE

4.1 *Contingency plans*

Not only is it a capacity problem but the uneven distribution of treatment sites is set to cause difficulties. It is anticipated that there will be no commercial landfill sites accepting hazardous waste in Wales, the west midlands and London. This will lead to waste being transported over long distances by road with increasing haulage costs, pollution and risks of accidents. To avoid similar problems associated with the fridges experience, government must ensure that contingency plans and emergency storage capacity is put in place. It is particularly important that these are established in the short term, as this is when the immediate and most substantial shortfall is predicted. Despite continued calls for contingency measures to be put in place, these plans continue to be distinctly lacking.

4.2 *Thermal treatment*

Under the LD, WAC requires new limits on the total organic content of waste to different classes of landfill. For organic-rich hazardous waste, current physical, chemical and biological technologies may be insufficient and they could require thermal treatment. Again the partial RIA suggests that in the albeit extreme case of having to thermally treat all hazardous waste, a significant increase in thermal treatment capacity from 33kt pa to 460k/t pa (in the form of four new facilities) would be required. Although thermal treatment is a politically sensitive issue, the government must provide clarity on the role of this waste management option in the future. In any case there will be a long lead-in time for these facilities and therefore short/medium term storage arrangements will be required.

5. THE WAY FORWARD FOR WASTE

5.1 *Recommendations for the future*

Valuable lessons have been learnt from previous experience in developing waste policy. These should ensure that future proposals achieve real environmental benefits and at the same time are not detrimental to the economic well-being of the country. The following recommendations are intended to improve the quality, timeliness and effectiveness of implementation:

- In future the Government must not sign up to mandatory EU legislation which imposes statutory requirements on business, before assessing the implications of detail of the proposals.
- Government should seek to anticipate the implications of conceptual and draft EU legislation.
- Government must ensure that the transposition into UK law regulation is developed in a timely manner (ie well in advance of the implementation deadline) with guidance so that business has sufficient time to adapt and invest to ensure compliance with the regulation.
- Wider, more detailed consultation with industry should ensure that the implementing legislation is pragmatic and burdens on business are minimised.
- To protect the competitiveness of British business, government must ensure that a level playing field is maintained in the development and implementation of EU waste directives.
- Government must avoid over-embellishment of EU legislation, which increases costs and puts UK competitiveness at risk.

5.2 *Longer term thinking*

It is becoming increasingly important for government to develop a long-term vision and strategy for waste. Rather than taking a reactionary approach to EU waste policy initiatives, there is scope for government to be more far-sighted by anticipating and preparing (in strategic terms) for the direction in which future policy should be directed. For example, further consideration should be given to how the optimisation of the use of raw materials and other resources, including energy, can be integrated into waste management.

5.3 *Involvement of all stakeholders*

CBI members recognise they have a key role to play in minimising waste, stimulating resource efficiency and limiting landfilling, but this is a shared responsibility. Therefore in addition to targeting industry, all stakeholders must be treated equitably. A truly holistic approach does not only targets producers, but also individual consumers and households which have a vital role in achieving sustainable waste management. If optimum environmental outcomes are to be achieved, the role of consumers must be considered in developing policy.

8 October 2004

Witnesses: **Mr Michael Roberts**, Director, Business Environment, CBI, **Mr Richard Foreman**, Senior Policy Adviser, Waste Issues, CBI, and **Dr Paul Brooks**, Group Environment Manager, Corus Group plc, examined.

Chairman: Gentlemen, welcome. Thank you for your written evidence. For the record, we welcome Mr Michael Roberts, the director of the business environment at CBI, Mr Richard Foreman, the senior policy adviser on waste issues, and Dr Paul Brooks, who is the group environment manager of Corus Group plc. Gentlemen, you will have gathered that we may have a short time for the

pleasure of hearing what you have to say, so I shall say no more than ask Mr Lazarowicz if he would be kind enough to start our questioning.

Q106 Mr Lazarowicz: Thank you, Chairman. Good afternoon. You will have heard the last discussion with the Environment Agency on the Landfill Tax and I want to start straight away by asking you to

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assess the impact of the Landfill Tax on CBI member companies. Given that there have been suggestions that the Landfill Tax should be raised more quickly, what is your reaction to that proposal?

Mr Roberts: I think the impact of the tax will vary according to the industry sector and also within industry sectors to the extent that some companies have been more active than others. In addressing the issue of waste, particularly in reducing waste, clearly there will be a difference in terms of how much more can be done by those companies and therefore the incidence of the tax will have a different effect. Those who have done a lot to date will have less ability to do other things with waste and will have to, as it were, take a greater hit on margins as a result of the tax. Others who are not quite so far down the road of behavioural change may be incentivised to do things they would not otherwise have been incentivised to do through the tax. In terms of our overall view on how the tax will develop in the future, we have acknowledged the Government's policy objective of increasing it to £35 per tonne in the forthcoming years. Our particular focus has been to ensure that the additional revenue that is generated through that is recycled back to the business community in a way that is effective in helping businesses who need assistance to reduce waste that is created through processes to do the right thing.

Mr Lazarowicz: Thank you.

Q107 Chairman: How is co-disposal and its ending going to impact on your members?

Mr Roberts: Well, I think everyone who has an interest in this issue is conscious that the quality of data and information out there is not as good as it should be and to some extent we are all working on the basis of what we hear rather than hard quality data, but I think we have seen changes taking place both in advance of and subsequent to the 16 July date earlier this summer. Much of what we heard in the previous session from the Environment Agency is an assessment that we would agree with. I do not know if Paul Brooks would like to say something about the experience of Corus on this.

Dr Brooks: One thing we have seen immediately is something like a trebling of costs almost overnight, so that obviously has a very significant impact upon business, and of course that is one of the contributors as to why there is a lot less material going to landfill. I think what we are also seeing from the ban on co-disposal is that we are having to deliver a different strategy in terms of our waste management and certainly we have had any number of problems in developing that strategy because of the situation we are finding ourselves in with late guidance, and particularly with the Waste Acceptance Criteria. This delay has caused us a lot of problems. Let me illustrate that. In 2002 we were required to make decisions on our landfills (and Corus is an in-house landfill operator as well as a waste producer), on what landfills we were going to have, whether they were hazardous or non-hazardous, and we were asked to do that on the basis of not knowing whether our waste would be in fact inert hazardous or non-hazardous. So clearly we

were expected to make strategic decisions on things which we had no basis to make those decisions on. Time will tell whether we have made the right decisions. We have got a mix of hazardous, non-hazardous and inert sites across the country.

Q108 Chairman: Could I just ask in terms of the practicalities of disposing of hazardous and non-hazardous materials under the present regime, are you getting any feedback from your members that they are having difficulties in finding appropriate facilities? Last week we heard that 700,000 tonnes of material had gone missing. Then we heard that some material that should have been hazardous may have been reassigned as non-hazardous and figures of a waste mountain of up to four million tonnes have been quoted by various people. It is difficult to get to the truth of the matter. What is the CBI's take on it?

Mr Roberts: We do not have any sense that there is a waste mountain out there. We have no evidence to suggest that there has been an increase in fly-tipping, presumably of hazardous waste, and again I would endorse what was being said by the Environment Agency on that front in the previous session. Members have seen prices of treatment and disposal of hazardous waste increase significantly. That price in some cases also includes the price of transporting waste greater distances, and we do have stories of members, for example in Wales, who have no adequate provision for disposal and treatment nearby and they are having to transport waste significant distances. We would endorse the comment from the previous session which indicated that there has been considerable activity by businesses to separate out more effectively hazardous from non-hazardous waste where perhaps that was not happening before and I think the reasons for that are fairly obvious. There was always anticipated to be an increase in the price of dealing with hazardous waste and that has made the process of testing consolidated waste to a far greater degree of detail more effective than was previously the case. It is worth their while to identify and separate out hazardous from non-hazardous. The other point I would mention is that even before the 16 July end of co-disposal many companies were in any event, for other reasons, seeking to minimise the level of hazardous waste they created and that was a sort of background trend which I think set the scene for the more immediate changes that we have seen more recently.

Q109 Mr Mitchell: You are complaining that Government does not consult adequately with industry about the impact of the waste legislation and yet you are also complaining that consultation on the Waste Directive has been protracted. Surely, if Government is going to consult it is going to be protracted? You are going to get it both ways here.

Mr Roberts: Well, there is something about the nature of consultation which is, I think, challenging for business in that business can be consulted but if the terms of that consultation are not particularly clear then it becomes difficult for business to engage. I think one of the additional frustrations that we

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have observed is that on this particular issue of the Landfill Directive, and specifically hazardous waste, deadlines have been missed. Although we have known that the Directive has been in place for a number of years now, the process has not led us to take decisions, critical technical decisions, until late on in the day.

Q110 Mr Mitchell: Whose fault was that?

Mr Roberts: I think, from our perspective, there is probably a shared responsibility on the part both of government departments such as Defra and the Agency as the home of much of the technical expertise for bringing us to the state of affairs that we have found ourselves in. Having said that, I think most latterly around the time of the 16 July deadline and subsequently the Agency has sought to be pragmatic in discussing issues of compliance with the regulations with individual sectors and in turn business, which obviously has a major role to play in this (it is not just one-way traffic from policymakers to business, there is also a responsibility upon business to engage earlier), despite the fact that it is having to deal with a lot of regulatory developments at the moment, not just on the environment field, has responded to that spirit of pragmatism by trying to engage more constructively than perhaps it has done in the past.

Dr Brooks: One of the specific issues, because it is waste, has been in terms of consultation. In the early days there was a presumption that the waste management industry had the same view as the waste producer necessarily, or someone like us who is an in-house operator, and in fact we have different perceptions on some issues and similar ones on others. I think it is only latterly that waste producers have been engaged more. A classic example is the Hazardous Waste Forum where through our trade association, which is the Engineering Employers' Federation, we tried to get on that forum in the early days as a waste producer and were refused. Only latterly, when they realised they did not have enough waste producers on the committee, were we then allowed to join. So there has been a whole issue about consultation on this particular Directive.

Q111 Mr Mitchell: So you felt you were inadequately consulted as a waste producer?

Dr Brooks: Correct, and I think as a waste producer and a larger company we were far better off than many of the small companies.

Q112 Mr Mitchell: If there had been more consultation, with the producers particularly, do you think the burden on business would have been produced? Would it have been cheaper and more straightforward to implement?

Dr Brooks: Well, I would hope so. I mean, that is my job, certainly, to engage with Government when consulted, with that objective in mind.

Mr Roberts: If I might suggest it is not just about the extent or the amount of consultation, it is about the timeliness of the consultation. There is not much point in having a heck of a lot of consultation compressed into the last month before compliance

actually has to take place. I think this has been perhaps one of the lessons that we all need to take away from the experience in this particular field, which is that the Hazardous Waste Forum which Dr Brooks mentioned a moment ago was set up at the very end of 2002 and became operational in 2003, which is some three or four years after the Landfill Directive itself had been agreed within Europe. In an ideal world Member States, including the UK, at government level, at enforcement level (in other words the Agency) should be engaging with the business community through things like the Hazardous Waste Forum at the time at which decisions are taken in principle to sign up to directives. I think the problem has been that the principles are signed up to and then people feel, "Oh, well, now we're going to sort out the technical detail." As I think has been indicated in the previous session, a lot of the devil is in that detail and it becomes obvious at a later stage that principles become difficult to implement in practice as a consequence.

Q113 Mr Mitchell: I accept that, but the Hazardous Waste Forum you are saying was set up too late. Even with that proviso, has it helped industry to get its point across?

Mr Roberts: My observation is, yes.

Q114 Chairman: One of the things that you deal with is feedback from members and one of the challenges in this area is to reduce streams of waste, both hazardous and non-hazardous. Are you collecting examples of good practice as to where that has occurred, because if you have we would be very interested to hear about them?

Mr Roberts: Yes, we are. We have not finished the process. We are in fact looking at examples of best practice across a range of environmental activities, not simply on waste, and we hope to be in a position to show those publicly over the course of next year and we would clearly be delighted to share that with this Committee. I would just as a general point flag up that with regard to the record of business on waste and diverting waste from landfill, if you look at the industrial and commercial waste streams (which are obviously only a part of the overall four hundred million odd tonnes a year of waste that is generated) the rates of recovery, (in other words things like recycling) in those streams is significantly higher than is achieved under municipal waste. In industrial waste, for example, rates of recovery are of the order of 45% compared with of the order of 19 or 20% in a municipal waste stream. That is not to suggest that there is any complacency within the business community that is responsible for those waste streams, but I would indicate that there is plenty of good stuff that is already happening there which can be built on.

Q115 Chairman: So you would think business is rising to the challenge of minimising waste?

Mr Roberts: There are undoubtedly examples out there and I hope we will be in a better position next year to be able to showcase some of them. I think it

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is important to recognise that for technical reasons the level of performance will differ significantly between different waste streams within, if you like, the aggregate business waste stream and if it is helpful we could make available to the Committee an annex that we made available to evidence to another committee in this place on publicly available information on the different levels of recycling, for example, in the different waste streams—textiles versus automotive, versus glass, etc.

Chairman: That would be very helpful indeed.

Q116 Mr Lepper: You have mentioned a number of lessons learned so far, you think, in particular where co-disposal is concerned, about consultation, about setting deadlines and getting the guidance in order to comply with them. Are there other lessons you have not told us about so far that you feel Government ought to learn?

Mr Roberts: There are two that I would highlight. The first is the need to avoid our favourite bugbear, which is that of gold plating European legislation, and in a moment I will turn to one of my colleagues just to exemplify the point in this particular field. The second is, I think, the need for Defra and the Environment Agency more effectively to establish their respective roles in policy-making. I think there is a concern, a frustration within the business community at the lack of clarity of who leads in that respect. Listening to the evidence given in the earlier session, I think reference was made to a particular dimension of this issue where the Agency was seeking to push policy development and it was specifically with regard, I think, to the duty of care. I think from the business point of view the challenge that raises in their minds is, “Well, shouldn’t that actually be the job of Defra, the department which ultimately has to take the decision?” Not alone, not without the Agency’s involvement because, as I think I mentioned before, the Agency is often the repository of good quality technical expertise. The two have to work together, but ultimately someone needs to make the decision, someone needs to be in the lead, someone needs to be taking recognition of the wider set of policy objectives that Government is trying to achieve and in our view that ultimately should fall to the department that has a democratically accountable Secretary of State at its head. I think that is a very important lesson to learn from experience here, trying to get clarity of their respective roles in a way in which both those bodies then engage with the business community. Perhaps I could turn to –

Q117 Mr Lepper: Before you do that—and I am interested to hear about the gold plating—do you feel that this lack of definition about whose role is what, means that things can fall through the middle, that things do not happen?

Mr Roberts: Exactly. I was going to make the comment anyway.

Dr Brooks: I think if the regulator is going to make policy they view it in an entirely different way to the way a politician looks at policy. The regulator looks at it in a way in which it would be easier to regulate;

the politician looks at it as a whole and looks at it in the balance and the best decision overall, and I think that is a fundamentally important point on who develops policy.

Mr Foreman: If I can add to that, there is another risk so far as industry is concerned and that is the risk that both will make policy. There is currently a consultation document out from the Environment Agency on the financial provisions for landfill sites, which in its opening pages itself says that in the future Defra will produce another consultation. It seems to me that from an industrial point of view I do not know whether what I am reading now is the finished article or whether it is the next stage of a continually changing scenario.

Mr Roberts: Would you like us to turn to the second issue, the gold plating?

Q118 Mr Lepper: Well, you said you had got an example or two of what you called gold plating, yes.

Mr Roberts: It relates very much to what Richard has just said.

Dr Brooks: This proposal for landfill financial provisions is a proposal to limit the option for financial provision to cash-based mechanisms and to have a common financial provision period of sixty years for all landfills, whether they are inert, hazardous or non-hazardous. Now, the Directive and the regulations say that the period should be variable depending upon the hazardous nature of the waste. The Directive also says that the provision can be made by various alternative means as long as they are equivalent. So clearly there is a move to constrain the options to just cash-based when there are other ways of making the same equivalent provision, but it is more expensive and of course an inert site is nowhere near the same hazard as a hazardous site and should not have the same financial provision period.

Q119 Mr Lepper: So this is over-cautiousness?

Dr Brooks: Absolutely.

Q120 Mr Lepper: Has the CBI been involved in making representations about that, or did you suddenly find it thrust upon you?

Dr Brooks: The consultation period ends on 30 November, so the answer is yes, we will be.

Mr Lepper: Thank you.

Q121 Chairman: Can I just in conclusion ask you one thing. You have referred to the implementation processes in the United Kingdom of the Landfill Directive. What discussions have you had with your sister organisation and with other European Union countries about their experiences? What do they say to you about the way, for example, these measures have been implemented in Germany, France, or Italy? Did you have any discussions to give us some comparisons on this subject?

Mr Roberts: In a moment, if I may, I will turn to Dr Brooks, who (wearing his Corus hat) has experience of operations overseas. I think a general observation is that the process works more smoothly in general, in terms of developing policy. There is engagement

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of the business community at a technical level at an earlier stage in the process and when it comes to the issue of producing guidance, for example, the finished product in terms of guidance tends to be briefer and to some extent, therefore, clearer. There is an argument to say that in some cases business might actually welcome more detailed guidance which gives greater clarity and certainty than might otherwise be the case. There is a view in this country from our members that compared with what is seen overseas guidance is longer, is more detailed, but not to the benefit of adding clarity; it is to the detriment of it and tends to make it more prescriptive. That is the general view. Perhaps I can ask Dr Brooks to come in.

Dr Brooks: We have operations in most European countries, but particularly Germany and the Netherlands, so I feel we are qualified to answer that. I would say simply that we do not see the same level of delay and debate in other countries on this landfill issue in particular, but also on other issues, I have to say. That is quite interesting in many ways because, of course, Holland is very much based on consultation and very much that sort of type of society, but even then we do not see the same level of issues and certainly there is, to echo what Michael said, identification of the key issues much sooner in the process, I would say. Therefore, the key debates are held much earlier and a clear strategy is set out earlier in the whole process.

Q122 Chairman: But there is no question that they do not do what the Directive says they are doing, because often the allegation is that people abroad have a more lax time than they do in the United Kingdom?

Dr Brooks: Well, certainly in those two countries which we were talking about, Germany and the Netherlands, I think they do comply with the requirements of the directives. They generally take a more pragmatic view of them, though, and will look at them not quite as precisely or in quite the same specific terms. They will say, "Well, that is equivalent to what the Directive says, therefore that's the way we will do it." That is quite often my experience, particularly in Holland.

Mr Roberts: Just in general support of that point, at the risk of opening up a Pandora's Box at this late stage, one of the issues which is in the background of all this is the definition of waste and how different countries approach that issue. I think it is interesting that recently there has been a European Court of Justice ruling on how Italy has approached that particular issue and it would appear that the judgment has been that the Italian government and enforcement agencies have taken a more liberal approach, which perhaps has brought them in contravention of the spirit of the European approach. But it does seem to at least provide one example of a slightly different approach in other countries.

Chairman: Mr Tipping caught my eye before "final" becomes final.

Q123 Paddy Tipping: I just wanted to open another box, but you will have to be brief in light of what the Chairman said, which is that of the planning system. It takes a heck of a long time to get planning for these things and once you have got your planning you have got to get your regulation and your permit. What can be done to speed things up?

Mr Roberts: With regard specifically to planning as it affects the waste management industry, I suspect that the Environmental Services Association would probably be better placed to answer your questions there, but the general point I would make is that in the first instance there needs to be a clear statement and ownership at a regional level of the strategic priorities for providing waste treatment and management facilities. The process of the planning system as it has recently been reformed in principle provides for that to happen in a way in which it did not happen before. Regional spatial strategies are supposed to embrace a whole range of individual strategies, as I am sure you are familiar with, of which waste will be one and these spatial strategies will now have statutory force. The challenge is to ensure that the quality of those strategies is good. That is not straightforward because there is a lot of change going on in the planning profession, particularly within local authority departments. There is a loss of much of the past expertise and I think that is a big challenge which needs to be addressed. I think the other aspect with regard to ownership is that although the regional level can set the priorities, ultimately the development control process, the signing off of permission on an application happens at the local level. Local politicians will be more than keenly aware of the public's perception of provision of waste facilities and although it is perhaps a little bit pat to say it, there clearly needs to be a far better debate with the public involving business as well as local authorities and politicians more generally to confront the public, the individuals, with the consequences of many of their consumption and purchasing behaviours to the end that people need to recognise that if indeed they are going to continue with those behaviours there will be a generation of waste and that will need to be dealt with in some way, either to reduce it or to treat it, or then to dispose of it. I do not think that debate has happened sufficiently to date and until it does there will not be, if you like, the political space for politicians (either at the local or indeed at the regional level) to take the really tough decisions about enabling facilities to come on-stream in a way that we would all want them to.

Mr Foreman: Could I just add a technical point to that. I think one of the problems with planning at the local level is the general public's perception of things, and the general public's perception of things can be manipulated by scare stories in newspapers. From that point of view, I would welcome the recent Defra research into the health effects of waste management systems and the waste management industry in this country. I am slightly disappointed that that does not make the headlines in the tabloids, but that sort of unbiased opinion signed off in that case, I think, by the Royal Society no less does help inform things like planning debates.

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Chairman: Gentlemen, I am sorry it was a slightly shorter session than we might have planned for reasons of the votes earlier on, but nonetheless I am grateful to you for your contribution and for the written evidence you have sent us. In those areas that we identified where you are kindly going to send us a little more information we look forward to receiving it. Thank you very much for coming.

Wednesday 1 December 2004

Members present:

Mr Michael Jack, in the Chair

Mr David Drew	Alan Simpson
Mr Mark Lazarowicz	David Taylor
Mr David Lepper	Paddy Tipping
Joan Ruddock	

Memorandum submitted by the Department for Environment, Food and Rural Affairs (X8)

A. INTRODUCTION

1. This memorandum covers implementation of the Landfill Directive in England as the devolved administrations have responsibility for policy and implementation in their countries.

Summary

2. The Government is committed to reducing the UK's reliance on landfill, in order to reduce its environmental impact and because landfilling is a missed opportunity to recover value from waste. This is part of the UK's commitment to more sustainable waste management in line with the objectives and policies set out in Waste Strategy 2000. Implementation of the provisions in the Landfill Directive is a key component of this commitment.

3. The Landfill Directive requires a fundamental change to previous UK practices. In particular the ban on the co-disposal of hazardous waste and non-hazardous waste resulted in the number of landfill sites available to accept hazardous waste post 16 July 2004 was reduced from some 230 to around 30. In general, however, the capacity within those sites (1.5–2 million tonnes per annum) is considered adequate to meet demand.

4. Annex II of the Landfill Directive sets out general principles for acceptance of waste at landfills, general procedures for testing and interim guidelines. This was supplemented by a Council Decision of December 2002 on the criteria and procedures for accepting waste at landfills. The main requirements of the Decision were implemented in England and Wales by the Landfill (England and Wales) (Amendment) Regulations 2004.

5. Article 5(2) of the Landfill Directive sets challenging targets to reduce the amount of biodegradable municipal waste (BMW) being sent to landfill to 35% of BMW arisings in 1995 by 2020; a reduction of almost 12 million tonnes compared with 1995 levels. Waste Strategy 2000 sets out a range of policies to help deliver the step change in waste management needed to meet these targets including the Landfill Tax, with the increases to bring it to £35/tonne in the medium term; establishment of Waste and Resources Action Programme (WRAP) to stimulate markets for recycled materials; setting statutory recycling and composting targets for local authorities; and increased funding for local authorities including the National Waste Minimisation and Recycling Fund and PFI credits. These have been strengthened in the last eighteen months with the establishment of Defra's Waste Implementation Programme to provide support for local authorities.

6. In addition the Government is introducing a scheme of tradable landfill allowances to provide local authorities with some flexibility to meet their required reductions in the most economically optimum way for them. The Waste and Emissions Trading Act 2003 provides the legal framework for schemes for limiting the amount of BMW that waste disposal authorities (WDAs) in the UK send to landfill. In England, regulations provided for in the Act will establish the Landfill Allowance Trading Scheme (LATS). The scheme, due to begin in April 2005, is based on allocating to WDAs a decreasing number of landfill allowances for each year from 2005–06 through to 2019–20.

7. While municipal waste arisings continues to grow, the quantity ending up in landfill is falling in both percentage terms and actual amount as a result of government actions identified in paragraph 3.

8. In addition to changes to legislation affecting landfills, new draft Hazardous Waste Regulations are now out for consultation. The overall aim of the Regulations is to ensure that the requirements of the Hazardous Waste Directive are fully implemented in a cost effective way which minimises additional burdens on industry.

General background

9. The Landfill Directive is a complex and highly technical piece of legislation that has serious ramifications for waste management in this country, representing a step change in current practice not only for landfill site operators but for all waste producers. The Directive is particularly challenging for the UK, as some of its requirements are practices that are already in place in other member states. In order to achieve as smooth a transition as possible, the Government has consulted widely and frequently before implementing the provisions of the Directive.

10. Annex A sets out a full chronology of events involved in implementing the Directive. The comprehensive consultation process contributed to the UK being 11 months late in transposing the technical and regulatory aspects of the Directive and 16 months late in transposing the Article 5(2) targets (see paragraphs 27–29); as a result the UK was infringed by the European Commission.

11. Infraction proceedings have also been taken against Germany, Belgium, Portugal, Luxembourg, Greece, Italy, and Finland for late implementation of the Landfill Directive. France, Spain and Greece have also had infraction proceedings started against them because of illegal landfill sites.

B. GOVERNMENT ACTIONS: HAZARDOUS WASTE

12. To address key issues arising from implementation of the Landfill Directive, Defra has:

- set up the Hazardous Waste Forum and the Landfill Directive Implementation Group—membership includes representatives of waste producers such as the CBI, the Chemical Industries Association and the Federation of Small Businesses as well as representatives of the waste management industry, regulators, local authorities, the Environment Agency, devolved administrations and Government Departments;
- published the Hazardous Waste Forum action plan on the reduction and environmentally sound management of hazardous waste;
- with the Environment Agency, set up the Landfill and Hazardous Waste Implementation Programme (LHIP);
- assisted in the issue of guidance material by the Environment Agency, including technical guidance on assessing and classifying hazardous waste;
- organised seminars and taken part in those organised by others (eg the Environmental Services Association, the Chemical Industries Association, the Engineers Employers Federation, the Parliamentary Sustainable Waste Group and Envirowise);
- held bilateral meetings with a wide range of industry and other interests; and
- commissioned research and other projects (either direct or through the Hazardous Waste Forum or the Environment Agency).

Hazardous Waste Forum

13. The Hazardous Waste Forum was established by the Government in December 2002, to bring together key stakeholders to advise on the way forward on the management of hazardous waste. The Forum has a strategic role in considering the demands on industry of existing and forthcoming legislation and providing a means of bringing all relevant sectors together to work towards the goals of hazardous waste reduction and managing it safely. It has set out advice on the way forward for hazardous waste management. The Forum produced an Action Plan in December 2003 and has been pressing Government and the Environment Agency to deliver the key actions and decisions that are needed. The Forum has also done some valuable work in assessing likely future landfill and treatment capacity for hazardous waste and communicating the very real concerns of the waste management industry. The terms of reference for the Forum are at Annex B.

Landfill and Hazardous Waste Implementation Programme (LHIP)

14. In order to manage implementation of both the Landfill and Hazardous Waste Directives, Defra and the Environment Agency jointly set up the Landfill and Hazardous Waste Implementation Programme (LHIP). The Programme brings together all of the activities related to the change in requirements under a single reporting structure, with dedicated management and communications resources and a coherent view of activities across its breadth. The LHIP is managed as a Programme within Defra, and involves all the Governmental bodies related to the change. This includes: the Environment Agency, DTI, ODPM, the Welsh Assembly, the Scottish Executive, DOENI and Envirowise. The LHIP Programme has a full-time professional programme office, which produces weekly status reports for those involved, coordinates the activities of the Programme, maintains an up-to-date register of risks.

Hazardous Waste Regulations

15. In addition to changes to disposal of hazardous waste arising from the Landfill Directive, there are other changes arising from the requirements of the Hazardous Waste Directive. A consultation on new Hazardous Waste Regulations is now in progress. The proposed new regulations in England will replace the Special Waste Regulations 1996 (the 1996 regulations) and implement the revised European hazardous waste list, now incorporated into the European Waste Catalogue. The 1996 Regulations have provided a system of control to ensure that hazardous wastes are soundly managed from the point at which they are produced to the final point of disposal. They were intended to implement the requirements of the Hazardous Waste Directive and the 1994 EC Hazardous Waste List.

16. On 1 January 2002 changes to the Hazardous Waste List were applied in the EU and the list was incorporated into the European Waste Catalogue. The 1996 regulations need amendment to take account of these changes. In particular, the revised list classifies more waste as “hazardous” than was previously the case. The review of the Special Waste Regulations provides an opportunity to consider the application of the current procedures for consigning special waste, and to streamline those procedures where possible. The aim is to ensure that the requirements of the Hazardous Waste Directive are fully implemented in a cost effective way which minimises additional burdens on industry.

Site classification

17. As part of the 2002 conditioning plan exercise required by the Landfill Regulations, sites had to say what classification they required. Around 230 landfills opted for a hazardous waste classification, most so they could continue as co-disposal sites (ie being able to take all types of waste, including municipal) for as long as possible. Under the interim national waste acceptance criteria set out in Schedule 1 of the Landfill Regulations:

- Hazardous waste sites could accept wastes on the Hazardous Waste List. In addition, until July 2004 they can also accept non-hazardous wastes;
- Non-hazardous waste sites could accept all wastes accept hazardous wastes. However, stable and non-reactive hazardous wastes can go to non-hazardous sites as long as they are landfilled in separate cells.
- inert waste sites can accept wastes on the list of wastes in Schedule 1 and any other wastes which fall within the definition of inert waste in the regulations.
- The criteria in Schedule 1 of the current Regulations will be replaced on 16 July 2005 by the waste acceptance criteria in the Landfill (England and Wales) (Amendment) Regulations 2004. These set more detailed criteria based on the achievement of limit values following leaching tests on the waste.

18. With effect from 16 July 2004, the Landfill (England and Wales) Regulations 2002 banned the co-disposal of hazardous waste and non-hazardous waste and waste can only go to a landfill site classified to accept such waste (ie hazardous waste can only go to hazardous waste landfills, non-hazardous to non-hazardous landfills and inert waste to inert and non-hazardous landfills). From that date, co-disposal (hazardous) sites had to decide whether to continue as hazardous sites and so accept only hazardous waste, or be reclassified as non-hazardous and accept all wastes accept hazardous wastes (and stabilised, non-reactive hazardous wastes in separate cells). The result of this change was that the number of landfill sites available to accept hazardous waste was reduced substantially (see below).

Landfill capacity

19. The Environment Agency has received 18 applications for permits to operate merchant hazardous waste landfills post June 2004. A further 12 applications were received to operate in-house landfills. Of this total of 30 applications, permits have been issued for nine sites, five applications have been refused, two have planning issues to resolve and the remainder are under consideration. In total, the capacity amounts to 1.5–2 million tonnes per annum. While the aim to complete the consideration process before 16 July in most cases was not achieved, sites with a current waste management licence to accept hazardous waste can continue to do so.

20. In addition to the above, the Environment Agency has received 39 applications to operate separate cells for stable, non-reactive hazardous waste at non-hazardous waste landfills; six permits have been issued, two applications have been refused and the remainder are under consideration. These figures are continually updated and the latest position can be found on the Environment Agency website (www.environment-agency.gov.uk)

Alternative disposal options

21. Many hazardous waste streams are not generally landfilled at present. For those that are, research for the Defra concluded that there was sufficient alternative disposal systems (in use or planned) to cope with the large volume of organic process waste streams requiring diversion from landfill.

22. Stable and non-reactive hazardous wastes that are not banned from landfill can be disposed of in separate cells at non-hazardous landfill sites. The Directive will also act as a driver for waste producers to minimise waste arisings and recycle, re-use or recover in order to divert waste from landfill.

Waste acceptance criteria

23. The Landfill Directive agreed by Council in 1999 contained waste acceptance procedures. Annex II sets out general principles for acceptance of waste at landfills, general procedures for testing and interim guidelines. However, the Council decided that more detailed procedures were required if the overall objective of the Directive was to be met consistently in member states. The Commission was very slow to come forward with a proposal to meet the Council's request and were only able to do so as a result of the work of a modelling group, chaired by the UK.

24. Council agreed a revised proposal (by unanimity) on 19 December 2002 which was published in the Official Journal on 16 January 2003 as Council Decision 2003/33. A provision in the Decision allowed only 18 months for it to be transposed into national law (rather than the more usual two years) as this had to be achieved by 16 July 2004. For England and Wales, this target was met, with the Landfill (England and Wales) (Amendment) Regulations 2004 coming into force in June 2004, for implementation on 15 July 2005.

C. GOVERNMENT ACTIONS: ARTICLE 5(2) TARGETS

Background

25. Article 5(2) of the Directive sets challenging targets to reduce the amount of biodegradable municipal waste (BMW) being sent to landfill. The reduction targets set by the Directive are:

- by 2006 to reduce the amount of BMW going to landfill to 75% of that produced in 1995;
- by 2009 to reduce the amount of BMW going to landfill to 50% of that produced in 1995;
- by 2016 to reduce the amount of BMW going to landfill to 35% of that produced in 1995.

The Directive allows member states which landfilled over 80% of their municipal waste in 1995 to postpone meeting the targets by up to four years and the Government intends to make use of this derogation. National target dates of 2010, 2013 and 2020 are set out in the Waste and Emissions Trading Act .

Trading scheme

26. In October 1999, in the consultation paper "Limiting Landfill"¹ the Government outlined several options for meeting the targets in Article 5(2) of the Directive. The option of a tradable permit (now allowance) scheme was supported by over 70% of the responses to the paper. As a result Waste Strategy 2000 signalled the Government's intention to introduce a system of tradable landfill allowances in England to limit the amount of BMW authorities could landfill.

27. The Government published a second consultation paper, *Tradable Landfill Permits*² in June 2001, outlining the basis of how the scheme might work and suggesting options for its implementation. In the light of responses to the second consultation paper the Government introduced the Waste and Emissions Trading Bill for consideration by the Houses of Parliament in November 2002. The Bill, which became an Act in November 2003, sets the framework for a landfill allowance trading scheme and provides for the details of the scheme to be established in regulations made by the Secretary of State.

28. The first set of Regulations³, sharing the UK total of allowances between the four component countries, have been agreed by Parliament. England's Landfill Allowances and Trading Scheme Regulations will be considered by Parliament in the Autumn. Each local authority was notified of its provisional allocation for each year of the landfill allowances scheme (2005–06 to 2019–20) on 11 August. The notification explains how each authority's landfill allowances has been calculated, gives them an early indication of the allocation they will receive under the scheme and provides an opportunity to comment on the calculation of their provisional allocation and to notify Defra of any errors in the data used by 8 October 2004.

¹ *Limiting Landfill: A Consultation paper on limiting landfill to meet the EC Landfill Directive's targets for the landfill of biodegradable municipal waste.*

² *Tradable landfill permits: A consultation paper.*

³ *The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (2004 No 1936).*

Data

29. Defra publishes estimates and final figures on municipal waste arisings and management in its Municipal Waste Management Survey. The latest results are based on information supplied by local authorities in England for the financial year 2002–03.

Municipal waste arisings and management:

- The total amount of municipal waste has continued to rise to an estimated 29.3 million tonnes in England in 2002–03 compared to 28.8 million tonnes in 2001–02, an increase of 1.8%.
- In total, 24.8% (7.3 million tonnes) of municipal waste had some sort of value (recycling, composting, energy from waste) recovered from it in 2002–03, a rise from 22.4% (6.4 million tonnes) in 2001–02.
- The proportion of municipal waste being recycled or composted increased from 13.6% in 2001–02 to 15.6% in 2002–03. The proportion of waste incinerated with energy recovery has remained roughly constant at just under 9%.
- The proportion of municipal waste being disposed of in landfill has decreased from 77% in 2001–02 to 75% in 2002–03.
- For the first time in recent years the actual tonnage of municipal waste disposed of in landfill has also decreased slightly from 22.3 million tonnes in 2001–02 to 22.0 million tonnes in 2002–03. It is now about the same level it was in 1999–2000.

WIP/WRAP

30. The Waste Implementation Programme (WIP) was set up by Defra in June 2003. WIP is focused on supporting local authorities to deliver improved services and meet their targets. These include statutory recycling and composting targets for each local authority in England. The national target of 17% of household waste recycling and composting by 2003–04 is a key milestone on the way to meeting the Landfill Directive targets.

31. WIP is taking forward eight work-streams, three of which are being managed by WRAP, that, alongside policies set out in Waste Strategy 2000 (eg increases in landfill tax), are aimed at driving waste management solutions up the waste hierarchy. WIP is heavily focused on delivery—looking to make a strong positive impact and work with stakeholders. The eight WIP programmes are:

- Local authority funding
- New Technologies
- Local Authority Support
- Waste Minimisation (WRAP takes the lead)
- Kerbside (WRAP takes the lead)
- Waste Awareness (WRAP takes the lead)
- Data
- Research.

32. WIP is making good progress in rolling-out these programmes. For example, WIP's Local Authority Support Unit has provided a range of targeted support measures, which can be found on the Defra website at <http://lasupport.defra.gov.uk/>. Issues covered on the website include procurement; strategy making; kerbside, including a recyclables capture toolkit; estates; civic amenity sites and bulky goods collections. Additionally, the Local Authority Support Unit has offered all local authorities up to £20,000 of direct consultancy support, including to assist planning for the introduction of the Landfill Allowance Trading Scheme.

33. Preferred bidders have now been identified to take forward a first tranche of new technology demonstration plants. This will give local authority and industry stakeholders the opportunity to see first hand the operation of different waste treatment technologies that offer a viable alternative to landfill. The aim is to have five operational pilot plants in place by end-2005, with a further five by end-2006. A separate data centre will bring together current data and research on new and emerging technologies, including the results of the demonstrator projects. A support programme has also been set up to ensure that these results are widely and effectively disseminated to all the relevant stakeholders.

34. Work is also underway to improve the effective co-ordination, provision and dissemination of data and research on different waste streams. A 3-year national data strategy will be issued for public consultation in autumn 2004. The aim is to meet the data needs of local authorities (who should be better equipped to develop long-term planning for their waste management activities) and inform investment decisions by the waste industry. Defra plans to publish a new waste R&D strategy in late September, aimed at delivering a sound evidence base for better-informed policy development, implementation, monitoring and evaluation for sustainable waste management at both the national and local levels. This will include effective mechanisms for access to, and dissemination of, research results.

35. WRAP is making good progress on waste minimisation with a Home Composting Programme, delivered collaboratively with local authority and community partners. Work is also underway to support the development of a Real Nappies Programme, including research on stakeholder perceptions and assessing different communication and awareness raising options.

36. WRAP's major Retailers Initiative is currently underway, seeking to work with the top retail supermarket chains. Retailers and producers can help to reduce waste by eco-design to ensure products are more recyclable and friendlier to the environment. This could reduce the amount of packaging/waste passed on to households. WRAP is currently developing a strategy for engaging retailers at a high level to secure agreement to waste reduction measures. Hand-in-hand with the Retailer Initiative is a Waste Minimisation Innovation Fund, aimed at providing support for retailer-led innovation projects. The fund will provide resources (research, pilot programmes, professional services and capital grants) to retailers wishing to work with WRAP on waste minimisation projects.

37. WRAP's separate work on market development for recyclates has progressed well since its establishment in 2001. Over the first three years of its work programme, WRAP have played a key role in increasing recycling capacity in the UK. Across WRAP's material streams (paper, plastic, glass, wood and aggregates) over 1.3 million tonnes of extra capacity is operational or under construction, with a further 1.8 million tonnes in delivery. WRAP projects have also secured over £120 million investment from the private sector. Through their work WRAP projects have identified new uses for recycled materials such as lightweight lorry panelling, fluxing agents, water filtration media and carpet underlay. The market development programme has developed and launched a number of Publicly Available Specifications for materials, to set recognisable standards and thereby increase certainty in the quality of recycled materials. WRAP have also provided training to many local authorities and voluntary groups, run seminars and events and have developed a number of well received web resources, such as the Aggregain Website.

38. WRAP's market development programme is set to continue to at least 2006 and is aiming to build on the results and successes of its original work programme to further increase recycling capacity, turn the results of R&D projects from the first three years into commercially viable projects, deliver further training and advice and encourage further investment in recycling businesses.

FUNDING FOR LOCAL AUTHORITIES

39. The delivery of national policy objectives for waste—including the obligations imposed by the EU Landfill Directive—will increase local authority waste management costs and requires significant new investment in collection systems, recycling facilities and waste processing plants.

40. The Private Finance Initiative (PFI) is increasingly one of the key mechanisms for funding investment in waste services. Government has increased resources provided for waste PFI projects in recent years. To date, 16 waste PFI projects have been approved, of which nine are operational. The other seven are at procurement stage. Over the next six months another four projects are likely to be approved with combined PFI credits of £207 million. PFI is making a significant contribution to the delivery of key waste management objectives, and these projects help to promote new technology options as Defra's selection criteria places considerable emphasis on recycling and the use of innovative approaches.

41. Additional funding support for local authorities is provided through the Waste Minimisation and Recycling Fund ("The Challenge Fund"). In February 2004, Ministers announced over £40 million in additional funding to help local authorities provide improved waste services (particularly kerbside recycling) to around 2 million extra households. These projects will also divert some 300,000 tonnes of waste from landfill each year. A total of £223.8 million has been awarded to local authorities, outside of London, since 2002–03.

42. Defra has made available a £20 million targeted recycling grant for local authorities in 2004–05 to address the pressure each authority faces to invest in its waste management services this year—particularly to meet its Statutory Performance Standard for recycling and composting in 2005–06. A formula has been designed to distribute the grant between local authorities according to need to spend on waste management services.

43. The consultation on the Government's proposed design for the Waste Performance Reward Grant (£45 million in 2005–06, £105 million 2006–07, £110 million 2007–08) ended on 31 March. Officials are continuing to analyse responses received, many of which expressed legitimate concerns. The Government will make an announcement on the final design in due course.

44. The 2004 Spending Review provided an extra £150 million PFI credits per year by 2007–08, and an extra £35 million over two years (2006–07 and 2007–08) for the new waste management Performance Reward Grant to enable investment in sustainable waste management. This was in addition to increases of £389 million in 2006–07 and £823 million in 2007–08 in local government funding through the Environmental, Protective and Cultural Services (EPCS) block grant, which funds activities including waste management. This increase in EPCS funding includes the recycling of revenues from the Landfill Tax escalator to local authorities.

PLANNING

45. Diverting waste away from landfill requires the development of a range of other waste management facilities. The planning system plays a critical role in enabling the delivery of such facilities. Defra is working closely with the ODPM in a revision of the planning policy guidance note (PPG10) that sets out national planning policy on waste management. The revision is part of the Government's drive to streamline planning policy to give greater clarity in terms of the outcomes to be achieved. The ODPM expect to consult on a draft of the new planning policy statement later this year. This will build on the planning reforms already being taken forward by the Deputy Prime Minister following the enactment of the Planning and Compulsory Purchase Act 2004.

46. Alongside this work, Defra will be consulting on draft guidance on the preparation of municipal waste management strategies. These will help inform the planning process as well as providing a mechanism for local authorities to plan the future management of municipal waste and associated investment decisions.

47. The department has published an independent Review of the Environmental and Health Effects of Waste Management which has been sent to all local authorities. In the foreword to the report the Minister of State, Environment and Agri-Environment, urged local planning authorities to press ahead urgently with the task of approving planning applications for waste management facilities. Mr Morley has also written to all local authorities in England on the importance of having hazardous waste facilities in place.

D. CONCLUSION

48. The Landfill Directive signals a major change in the way the UK deals with its waste. The UK supports the overall aim of the Directive "to prevent or reduce as far as possible the negative effects on the environment from the landfilling of waste". Moreover, the UK also views landfilling as unsustainable as it wastes resources and creates potential environmental problems for generations to come. It therefore also supports the underlying principle of the Directive that wherever possible, alternatives to landfill that have less environmental impact and makes better use of resources should be explored.

49. The new Hazardous Waste Regulations will streamline procedures in dealing with hazardous waste from point of production to point of disposal/reuse where possible, while retaining the necessary controls. The overall aim is to ensure that the requirements of the Hazardous Waste Directive are fully implemented in a cost effective way which minimises additional burdens on industry.

50. The Government cannot achieve those goals alone. Waste producers, waste managers, regulators, local authorities, representative organisations and consumers must all work with Government and each other if the very real benefits on offer by the Landfill Directive are to be fully realised.

Annex A

WASTE POLICY AND THE LANDFILL DIRECTIVE

Chronological Order of Events

April 1999	Landfill Directive agreed in Council of Ministers
July 1999	Landfill Directive published in Official Journal
October 1999	Limiting Landfill consultation
August 2000	Implementing the Landfill Directive (1st) consultation
June 2001	Tradable Landfill Permits consultation
July 2001	Transposition deadline for Landfill Directive
October 2001	Implementing Landfill Directive (2nd) consultation
June 2002	Landfill Regulations come into force
November 2002	Waste and Emissions Trading Bill presented to Parliament
December 2002	Council Decision on Waste Acceptance Criteria agreed
December 2002	Hazardous Waste Forum launched
January 2003	Council Decision on Waste Acceptance Criteria published
August 2003	Landfill Allowances Trading Scheme (LATS) consultation
September 2003	Waste Acceptance Criteria (WAC) consultation
November 2003	WET Bill Royal Assent
December 2003	Landfill and Hazardous Waste Implementation Prog.
December 2003	Publication of Hazardous Waste Forum Action Plan
March 2004	WAC consultation outcome
April 2004	LATS consultation outcome
June 2004	Landfill (Amendment) Regulations [WAC] come into force
July 2004	Landfill Scheme Regulations come into force
July 2004	Hazardous Waste Regulations consultation

WASTE POLICY AND THE LANDFILL DIRECTIVE

HAZARDOUS WASTE FORUM: TERMS OF REFERENCE

The Forum's terms of reference are:

- (a) to advise on the way ahead over the next five years for reducing hazardous waste and better managing it;
- (b) to identify opportunities to reduce the production of hazardous waste and to recover that which is produced;
- (c) to consider the impacts of existing and forthcoming legislation, and advise on Government/Agency action; and
- (d) to provide up-to-date and reliable data.

7 October 2004

Witness: **Mr Elliot Morley**, a Member of the House, Minister for Environment and Agri-Environment, examined.

Q124 Chairman: May I welcome as our witness this afternoon Elliot Morley, Minister for Environment and Agri-Environment. I think you may have brought a few supporters with you, Minister, but you are out there on a solo run for which, as always, we are very grateful and we are delighted to have you as our witness. Can we also thank your Department for its written submission. One of the questions that you have had put to you in the House and which has been the subject of some of our considerations to date, has concerned the current situation and what has been described as either a "waste mountain" or the "missing waste". In terms of the co-disposal ban, I think the most solidly put and well worked out number we have had was from the Chartered Institution of Waste Management who claim that some 750,000 tonnes of waste, in their judgment, is unaccounted for as a result of the introduction of the new arrangements and that the trajectory could go over one million. Could I ask what monitoring you have done in an objective sense to look at the flows of waste, both pre and post the new arrangements, and what conclusions you have come to?

Mr Morley: The conclusion that we have come to is that what we are seeing is very much in line with predictions from the industry, the Environment Agency, and indeed our own officials. What we expected to see was a drop in the flows of hazardous waste going into landfill for a number of reasons. Firstly, about 60% of hazardous waste was contaminated soil and there is now a very big inducement (because of the cost factor) to remediate hazardous soil on site. Indeed, concerning the figure that you were given by the Chartered Institute of Waste Management, I can think of one site on its own that has diverted something in the region of 450,000 tonnes of soil which otherwise would have gone into landfill and that in itself accounts for some of this figure. Secondly, the change that was introduced is quite deliberately designed to discourage the use of landfill and to encourage remediation, waste minimisation, recycling of waste, other uses of waste, and we are seeing that

happening in relation to the waste stream. We expected to see a drop in relation to the hazardous waste stream and that is what we are seeing. It may slowly pick up because it is likely, and again the evidence shows that before the co-disposal ban came in there was an acceleration in some of the disposal of waste that was brought forward by various companies because they knew that this measure was coming. That also accounts for a drop within the waste stream. So it is very much within predictions. I do find this allegation of the missing waste quite bewildering, as if we are somehow squirreling it away quietly at night at various sites underneath Defra or in various places. The fact is that the policy is achieving what it was designed to do.

Q125 Chairman: I think, though, the point that CIWM were making was whether waste had been appropriately disposed of. In other words, if there is a missing amount going to the proper designation (by their definition) then if what should have been hazardous has become reclassified as non-hazardous there is an issue. What efforts were made at the point of change to monitor whether in fact misclassification was taking place?

Mr Morley: The responsibility in relation to checking waste falls upon the waste operators and that is a condition of their licence. They are subject to inspection by the Environment Agency and, in fact, far from complaints about sites taking hazardous waste which is classified as non-hazardous there was, as you will be aware Chairman, an incident whereby there was a great argument involving vehicle dismantlers who argued that the non-hazardous sites were being too rigorous in their testing of waste that was coming in and turning away waste which they deemed to be hazardous when they were arguing that it was non-hazardous. That is a dispute which is in the process of being resolved by improving the tests and also by the de-pollution of vehicles to ensure that the waste is non-hazardous and is treated as such. So there is no evidence that there are large scale amounts of waste being reclassified.

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Q126 Chairman: Can I just press you on that point. What objective studies were carried out? You have given us some anecdotal reports, particularly about what went into or did not go into non-hazardous sites but you also counselled us that monitoring was the responsibility of the Environment Agency. Have they actually produced any kind of report monitoring? What has happened since the change in arrangements took place?

Mr Morley: They have produced reports to Defra on such things as monitoring fly-tipping, for example, and they have a new data system—

Q127 Chairman: But the question I was probing was about the authorised, licensed sites for disposal of hazardous and non-hazardous waste. I was not talking about fly-tipping.

Mr Morley: No but you did not allow me to finish the point I was making, which is that we have reports from the Environment Agency which include monitoring fly-tipping, which also give us figures in relation to capacity, which also give us figures in relation to the amount of waste going into merchant landfill sites, for example, and that is subject to the conditions of the licences of the operators in relation to what they do and subject to inspection and checking by the Environment Agency.

Q128 Chairman: Let's just focus on that because I am interested to know whether there is a percentage, for example, of materials that were going into either hazardous or non-hazardous sites that were specifically monitored by the Environment Agency? Is there X% that they have monitored since the change took place to satisfy themselves that all of the licence criteria, the disposal criteria were being properly followed? Has there been any objective assessment?

Mr Morley: There will be the inspections which are part of the regulatory regime and that will feed into reports from the Environment Agency and they will be available, and I am sure I can get you that information, Chairman.

Chairman: I think it would be useful for the Committee to know what has been done, when it has been done, and when some kind of assessment could be made. The reason I probe on that is that we come back to CIWM, who do not strike me as particularly what I might call—and I hope I do not upset them—a salacious body, they are key operators, and they were absolutely adamant that some 750,000 tonnes of hazardous waste, by their definition of hazardous waste, was unaccounted for. That is why I am interested to know whether the monitoring may help to answer once and for all a question which you keep getting put to you which they put to the Committee in their evidence. David Lepper?

Q129 Mr Lepper: 16 July next year is the next big step when the Waste Acceptance Criteria come into operation. One group which has given us evidence, the Waste Recycling Group, who are involved in waste management as you will know, refer to “even more stringent rules” coming into force then. Are you satisfied that both the waste management

industry and those who are producing waste are going to be ready by 16 July next year to implement the criteria?

Mr Morley: Yes, we are satisfied that we will be in a position to do that. There is some quite technical work that needs to be done in relation to the Waste Acceptance Criteria guidelines, although it is for quite small proportions of waste in the actual waste stream. We do believe that although there is still work underway that we will have those guidelines in place.

Q130 Mr Lepper: But Defra has not yet published the regulations; am I correct?

Mr Morley: The actual details are not expected to be published until round about May 2005, although of course the actual regulations have been implemented and put in place. In fact, I might say, Chairman, that it is only us and Sweden out of the whole of the EU who have actually met the deadline for the transposition of these regulations.

Q131 Mr Lepper: Okay, but when we had the Environment Agency here a week or so ago they told us, firstly, that they thought you were getting on with this as quickly as you could but also that they could not publish their technical guidance on the Waste Acceptance Criteria until the draft regulations were published. Are you talking about May next year for the publication of the draft regulations, just two months before the 16 July deadline?

Mr Morley: It is just two months before but they do relate to a quite limited number of waste streams such as monolithic waste and also some other very technical issues. It is not a large amount of waste that is actually covered by these regulations and we are talking to the companies who are involved. They are involved in the actual process so it is not as if it will be a complete surprise and they are waiting for the actual details in May. They are part of the process building up to that.

Q132 Mr Lepper: And you have said that we are moving faster than anybody else except Sweden.

Mr Morley: That is correct. No-one else has actually implemented the regulations apart from the UK and Sweden.

Q133 Mr Lepper: I am just a little concerned that we often hear on issues relating to waste at this Committee the waste management industry saying to us, “We wanted to get on with doing and planning for X (whatever X might be) but we did not know exactly what is going to be required of us, we did not know exactly where the investment (where investment is needed) ought to be going,” and that is why with hindsight we reach a situation where there are lots of fridges, et cetera, et cetera. I am just a bit wary. You do not think we are going to get a situation of the industry coming before us at some point in the future and saying, “We wanted to be ready but . . .”?

Mr Morley: I do not and there is no justification for the industry to do that because of course we have the Hazardous Waste Forum which has involved the

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industry since 1999 in the details of all these regulations so the industry have been involved at all levels. They have been involved in a number of seminars which the Department has set up and in relation to the specialist wastes there is also close and regular contact between the industry sectors and my own Department.

Mr Lepper: Thank you,

Q134 Mr Drew: If we look at the evidence we have taken earlier, the one universal feature that comes out of it is that everyone seems to think yourselves and the Environment Agency have consulted too little too late. Who is in charge of the communications strategy? I know that you will grimace at this because “they would say that, wouldn’t they”, but they do say that. What proposals have you got to try and at least allay their fears that there is not enough communication?

Mr Morley: I do not know on what basis these claims are being made. I go back to the point there has been the Hazardous Waste Forum. There has been widespread consultation since 1999. All the main industry trade association groups are involved. We have also provided support to SMEs through Defra and through bodies like Envirowise in relation to advice. So I do not know on what basis this claim has been made. I did hear a claim made by the Small Business Federation who said that their members were not informed and yet the Small Business Federation sat on the Hazardous Waste Forum and was part of the actual process. So I think there is a bit of a failure in relation to communications which is not simply in relation to the Government. In terms of whose responsibility it is, it is for Defra to set the policies and to determine the regulatory framework. It is for the agencies to actually implement that and also, in terms of their contact with the various stakeholders with whom they deal, they also explain the procedures as well. There is therefore a network of contact with industry and there should not be any basis for claims of that kind.

Q135 Mr Drew: Is there a particular problem between the waste producers and those who treat waste in as much as there do seem to be some internal problems within the industry as a whole? What strategies have Defra and, dare I say, the Environment Agency got to try and make sure that the industry communicates within itself but also outwith itself so that there is a greater feel of connection?

Mr Morley: I cannot say that these problems have been brought to my attention although I must say that the Chartered Institute of Waste Management, on the point made earlier about the “missing” 750,000 tonnes, have not actually written to me to express concern about these figures, which I find quite curious. I feel in relation to the producers and those who treat waste there are sometimes disagreements and those disagreements are often based on cost in relation to the cost of various processes and treatments which are being made available. These can be resolved and we will provide whatever help and support we can from Defra, as I

mentioned earlier, in relation to difficulties within different groups. I have on occasion chaired meetings with trade bodies. I have met with the trade associations on a regular basis. I have kept in regular touch with the Environmental Industry Association, which is the trade body for waste sites. I think that I have had a great deal of contact, both personally and through my departmental officials, with all the key players in relation to the waste industry here, and I would certainly invite the Committee to put that to those particular members and check accordingly.

Q136 Mr Drew: How successful do you think the Hazardous Waste Forum has been?

Mr Morley: I think the Hazardous Waste Forum generally has been very successful because it has influenced the shape of the regulations, and it has been an opportunity for talking to the industry directly, and for listening to their views.

Q137 Chairman: Right, Minister, I want to move on to the question of targets and monitoring because I find this a complex area, to say the least, so let us start with a simple question: can you tell us in terms of what is happening, to follow up my initial line of questioning, who is responsible for monitoring the flows of waste, both hazardous and non-hazardous, into the appropriate form of disposal? Who gathers the data? Secondly, what data is gathered?

Mr Morley: Well, it is back to the point that the principal responsibility in terms of management is with the operators as a condition of their licence. The Environment Agency is the regulator. There has been a problem in terms of reliability in the collection of data of which systems have not really been in place in the past. We are in the process of consulting on new data collection procedures that will improve this so that we have a better and more reliable grasp of the data flows in relation to the waste stream.

Q138 Chairman: If the data flow is to be improved, how reliable can we be about the data that is available?

Mr Morley: The data available is collected generally by the landfill operators.

Q139 Chairman: But would you not agree with me, bearing in mind that we have European Union agreed targets in terms of diversion of material from landfill, that having an accurate idea of a) how you are doing, b) where you have come from, and c) where you are going to is absolutely essential to being able to direct policy and to take decisions? One of the things that intrigues me is, as I understand it, the targets are cast with a base of 1995. How certain can we be of the data as far as 1995 is concerned if you are telling us now in the year 2004 that you are consulting on ways of improving yet further the gathering of factual information about what is going on?

Mr Morley: We are talking about two different things here, Chairman. I was talking about hazardous waste, which I thought you were.

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Q140 Chairman: I did say hazardous and non-hazardous, and if I did not, I apologise.

Mr Morley: I was referring to hazardous waste. In relation to municipal waste municipal waste figures are collected by the waste disposal authorities. They are collected and also they are audited by the National Audit Office and we are just waiting for those figures at the present time. The municipal side is much more established and much more reliable in relation to the figures compared to, for example, non-hazardous waste. It is the hazardous waste where we are improving the data capture.

Q141 Chairman: How is that going to be disseminated to all the people who are, if you like, the originators because it strikes me if we are talking about sustainability, waste minimisation policies, pre-treatment, some of the issues we have touched on already, there needs to be some method to communicate collectively to generators of waste how we are doing against the target. How is that going to be improved so that people will know whether they are doing a good job or a bad job as part of the overall target?

Mr Morley: We will have the actual figures and we will make those figures available because in the end it is Defra's job to monitor the progress that is being made in relation to our obligations under the Landfill Directive.

Q142 Chairman: Let me ask you a question. The Local Government Association were kind enough to furnish me with a graph which you may well have seen, and this deals with the Landfill Directive, Article 5 profile (so that we know what we are talking about) and it charts for me to look at the rising trend of total waste with the datum of 2002–03 moving inexorably upwards. It charts against that, again moving inexorably upwards, a line of hazardous waste and it comments about the challenging numbers which emerge from this forward analysis and, I suppose, our ability to meet the targets against an ever-rising stream of waste. How confident are you that we are going to be able to meet all of these targets when you are not dealing with a fixed quotient every year, you are dealing with a rising quotient, and at the same time as trying to deal with disposal you are also trying to deal with waste minimisation, but that does not seem to be having much effect if the forward projections are to be accepted?

Mr Morley: Be careful about these projections because of course all that has happened there is that you have taken a point in time on the data and you have taken a projection from that point upwards. What is actually happening is that we are seeing a slowing in increase in the municipal waste stream and that is very welcome. It is still increasing and we would prefer to see it decreasing, but the last figures that we had in relation to the municipal waste stream showed the biggest drop for some years and the total amount of municipal waste going into landfill was the lowest for four years. That was in last year's figure. Also, as I say, the rate of growth was slowing in the municipal waste stream. In the commercial

waste stream there has been something like an eight per cent drop in relation to commercial waste going into landfill, so the figures that we have are demonstrating that there is a decline going on in relation to the amount of waste going into landfill, both municipal and commercial. We have already discussed the issue of hazardous waste where we have seen a drop, which is exactly what we expected to see, and I expect to see that drop continue.

Q143 Chairman: But am I not right in saying that the targets that we had to meet as far as landfill diversion were concerned, which were originally set to start in 2005–06, were postponed?

Mr Morley: Sorry, which targets were those?

Q144 Chairman: The targets in terms of diversion from landfill, in other words the reduction? Am I not right?

Mr Morley: No, I do not think you are right, Chairman.

Q145 Chairman: As I understand it, there was a target set in terms of where we are supposed to be by 2005–06 in terms of diversion from landfill and the achievement of that target was postponed until 2010. This was a derogation that we had.

Mr Morley: Yes but that is a derogation; it is not quite the same as a postponement. We have taken a derogation, that is true.

Q146 Chairman: Why?

Mr Morley: Because in terms of Europe we had more reliance on landfill than any other European country, so in relation to the targets which were set they fall on this country more heavily than any other European country, and therefore we have taken that derogation to give us some more time in relation to diverting the amount of waste going into landfill because we start at a lower level than anybody else in Europe. We are making progress on that and we are determined to make progress on that, but that is why we have taken the derogation, which just reflects our position.

Q147 Chairman: In statistical terms, what level of confidence would you put on being able to meet the increasing volume of material that has got to be diverted from landfill from where the target kicks in after the end of the derogation period? How many per cent certain are you that you are going to meet this?

Mr Morley: It is a very difficult to give a hostage to fortune—

Q148 Chairman: Well try!

Mr Morley: What I would say to you is that I am a lot more confident now than I was a year ago in relation to the progress that is being made, particularly by municipal authorities, where there has been an acceleration in relation to recycling and reuse. In terms of the commercial side there have been some very welcome trends in relation to minimisation, particularly on the packaging side. I

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still think that there is an awful lot more that needs to be done and I would not want to give the impression—

Q149 Chairman: Let's look at a number. As I understand it, in 1995–96, 23,700,000 tonnes of material went to landfill and the amount that is going to be allowed by 2009–10 is, roughly speaking, half that amount, so where are we on the scale at the moment?

Mr Morley: I come back to the point I made to you before. In fact, we have seen the levels of landfill last year at the lowest level for four years. So we have seen one of the largest drops for a very long time in the amount of municipal waste.

Q150 Chairman: What is the amount that went to landfill last year?

Mr Morley: I will have to get that figure for you, Chairman. That was 29.3 million tonnes.⁴

Q151 Chairman: 29.3 million tonnes went last year so in tonnage terms it has gone up from 1995–96 by six million tonnes and between last year, 2003, and 2009–10—that is six years—you are telling this Committee that you are confident that you can get out of landfill 18 million tonnes?

Mr Morley: I am not sure what that 18 million tonnes is.

Q152 Chairman: You have just told us that 29.3 million tonnes of material is currently going into landfill.

Mr Morley: In 2002–03, yes.

Q153 Chairman: As I understand it, of the biodegradable municipal waste that is allowable to go into landfill in 2009–10 that figure is 11 million tonnes. If that is right—

Mr Morley: That is correct, yes.

Q154 Chairman: So effectively in a period of six years maximum, or five and a half years depending on where you take it, you are going to have to remove 18 million tonnes from landfill. What is the track to reducing that? What does the graph look like in reductions? Is it a straight three million tonnes a year or does it increase or decrease? How is it going to be done?

Mr Morley: It is going to be done by diversion, by—

Q155 Chairman: Break this figure down as to where it is going to go when it does not go into landfill. What does your analysis tell you?

Mr Morley: It is going to go different ways because of course different waste authorities are going to put in place different methods in relation to diverting waste from landfill. You are going to see some energy from waste investments, you are going to see some very large-scale composting and mechanical digestion projects. We have something like £400 million of PFI credits available for very large schemes for managing waste. You are seeing those coming on-line at the present time and there will be further announcements.

Q156 Chairman: It seems, Minister, that there are not a lot of plans in place but I would be interested because the United Kingdom has signed up to achieving various targets and we have postponed the evil day because, as you rightly counselled the Committee, of our heavy dependence on landfill. You as a representative of the Government who signed up to these targets would not have done it if you were not entirely confident that you would achieve the target. So somebody must have given you some numbers that said “we think we can get rid over this period of time (five or six years) of this 17 million tonnes of waste.” It is going to go somewhere and you hinted at some of those methods but there must be a piece of analysis sitting in Defra with some numbers attached to it that gives you confidence about where it is going to go. For example, you talk about PFI projects, but there are only a known number of technical ways that you can divert and deal with waste. So can you provide us with some breakdown as to what you estimate the flows of waste are going to be other than landfill?

Mr Morley: I will certainly see if we can do that, Chairman, but in terms of diversion into what methods of treatment, it very much depends on choices which are made by waste disposal authorities. I will certainly try and give you what figures we can.

Chairman: I think it would be helpful. Mr Simpson?

Q157 Alan Simpson: Mr Morley, I think you have an enormous groundswell of sympathy and support on the Committee in wanting to be where Defra wants us to end up. The difficulty is knowing how we get there. Most of the evidence that we have had from the industry suggests that we are really going to struggle to meet any of the targets that you have said we are committed to. It has specifically said that in terms of recycling and composting on their own, it is almost impossible to see how we can meet either the 2013 or even the 2010 targets. Can you just take us through, if not now in writing afterwards, how we are going to deliver on those gaps against the rising landfill waste volumes that we are currently dealing with that the Chairman has taken us through? That gap is the struggle. It is not the will, it is not a lack of desire to end up with what we have signed up for; it is just how we are going to get there.

Mr Morley: I understand the point that you are making on this and I also do accept that of course there are major challenges in relation to reducing the waste stream and these targets. What I would say to you, however, is that when I took over this job one

⁴ *Footnote by witness:* The relevant figures for England are as follows:

Municipal waste arisings in 2002–03 = 29.3 million tonnes
 Municipal waste landfilled in 2002–03 = 22.0 million tonnes
 Biodegradable municipal waste (BMW) landfilled in 2002–03 = 15.2 million tonnes
 BMW Landfill Directive target for 2009–10 = 11.2 million tonnes
 BMW to be diverted from landfill before 2009–10 = 3.0 million tonnes.

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of the very first debates I had in my new role was actually on the NAO report on waste. That report said that we were not going to hit our recycling targets. I am very glad to say that we are going to hit our recycling targets and that is because of the rapid progress that is being made and the rapid increase in terms of recycling which has been going on by local authorities, and that of course is diverting waste out of the waste stream. I am confident that we are going to hit our target of 17% for the 2003–04. We will get the figures very soon from the NAO on that. Our next target is 2005–06 which is 25% which makes a big contribution in terms of reducing the municipal waste stream. I think that is achievable. It is challenging but I think it is achievable because we are still seeing that acceleration of diversion of waste out of landfill and we are seeing a big increase in composting. We are also seeing some major investments in various forms of waste treatment and that is reducing the amount of waste going into landfill. As I say, we have seen a big drop on last year's figures. I am confident that we can see further reductions in terms of meeting the kind of targets that we have to under the Landfill Directive and the points that you make. So while it is challenging, and I do not dispute that for a moment, given the underlying fact that we have still got an increase in the waste stream, and that is what makes the achievement of targets so difficult because you are constantly running because the waste stream is increasing even though you are making the good progress on the recycling and the reuse and the minimisation and also the new investments. I think people generally are becoming more aware in relation to waste. The introduction of the landfill allowances, for example, makes a huge difference to local authorities as a major driver. It is something I should have said in relation to how we are going to achieve these particular issues. By setting limits with the landfill allowances, that will force local authorities to meet those targets or to buy in credits to allow them to achieve them. That is also an encouragement for good local authorities who have made excellent progress who will have credits to sell. It is also an inducement to them to continue the work that they are doing in relation to minimising waste. In relation to other local authorities, there will be a considerable cost, including fines, for not achieving those targets. Those are very powerful drivers and they are part of the strategy that we put in place to achieve the overall targets, and they also deal with the points that you make.

Q158 Chairman: Minister, I am pleased to see that you have adopted the standard word which usually in Defra terms equates to the triumph of hope over expectation and that is the word “challenging”. The Permanent Secretary in our more difficult areas of questioning falls back on that word. When all else has failed, if pressed, use the word “challenging”!

Mr Morley: To be fair, though, Chairman, I do not duck a question and you know very well that I will not duck a question from the Committee. I am not going to pretend that everything is easy or there are no real problems because there are. We have put

in place a range of mechanisms. The Landfill Allowance Scheme is a very novel scheme and it is the only one of its type in the world. We know, for example, carbon trading schemes, which we have also pioneered on a national basis in this country, work very well. We know that they are very effective measures, along with the Landfill Tax and other fiscal measures we have in place, which will bring about this change in attitude and culture in terms of how waste is treated. So I am optimistic but I am not going to duck the fact that there are real challenges with this.

Chairman: Mr Taylor wants a brief supplementary and then Paddy Tipping.

Q159 David Taylor: It is a brief supplementary and it relates to authorities like my own of North West Leicestershire which as a minerals producing area of the East Midlands has got very substantial numbers of landfill sites and potential landfill sites and therefore it is in our interests that the local authority, North West Leicestershire District (co-terminous with the constituency), was able to up its record in terms of recycling. I am sorry I was late, Chairman, I do not think this point has been made so far. The Minister will be aware that there are some shire districts which have been enormously cash-strapped for other reasons and which have found it very, very hard indeed to devote the extra resources necessary to upping their own performance in this area. Is the Defra ministerial team in regular contact with the Office of the Deputy Prime Minister in terms of the resources that are available, whether ring-fenced or not, for shire districts like my own? I have to say that they have actually improved their record tremendously and they are very much heading towards this 2010 target but to double again within a three-year period is a word that is well beyond “challenging” on the spectrum. I am not going to say “impossible”, but there we are.

Mr Morley: What I would say is that we are in close touch with ODPM in relation to the financial commitments that go with the targets that we have set for local authorities, but what I would say to you is that in terms of the environmental protective and cultural services block there has been something like an additional £1.5 billion⁵ gone into that, to actually help local authorities deal with these targets and local authorities have known for a very long time the kind of reductions that they need to make. So there is a responsibility on local authorities to be making the necessary investment and to be utilising the money which has gone to them both directly through the actual block and also indirectly through the waste minimisation funds that they can bid for (and local authorities have been bidding for) and of course the PFI credits in relation to the large schemes, so there are considerable resources available to local authorities to finance the kind of changes that they need to make to meet these challenges.

⁵ The current figure is £1.2 billion.

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David Taylor: Two Midlands local authorities are right at the leading edge of this—Daventry and Lichfield and I rejoice that that is so—but they are well-resourced, so-called “leafy” authorities which are able to do this. Cash-strapped authorities find it much more difficult even though the political will is there. That is just an observation.

Q160 Paddy Tipping: I want to return to another driver for change and one which we have had discussions about over a long period of time and that is direct charging to householders. I know the Government has been looking at this; what is the current thinking?

Mr Morley: The current thinking is that we believe in relation to the total range of measures that we should use in terms of minimising waste and diversion from landfill, that there is an argument for incentives and it is something that we would like to see local authorities introduce, initially on a pilot basis in terms of those local authorities who would like to participate in such a scheme. There are some local authorities which have introduced various forms of incentives themselves in relation to refuse collection. You can do it on an incentive basis. You could have differential charging in relation to weight, for example, which is certainly something which has been discussed and it is certainly something that I would not rule out for the future. For the moment, however, the way that we would like to approach it is through incentivising schemes so those people who minimise waste, separate waste and recycle get some benefit from that. There are various ways of doing it and we would like to explore this with local authorities and to support innovation so that we can look at the various schemes that are available.

Q161 Paddy Tipping: So in principle you are in favour?

Mr Morley: Yes.

Q162 Paddy Tipping: You need to incentivise, maybe by reducing the council tax?

Mr Morley: That is one way of doing it. There are a number of ways.

Q163 Paddy Tipping: What is your timetable on this because there has been a lot of discussion on this for a long time?

Mr Morley: There has been and we have the Environment and Clean Neighbourhoods Bill which will be before Parliament this session. It has a range of measures within it and although we do not need legislation for incentivising you would need legislation if you wanted to bring in differential charges, for example. Our priority at the moment is for an incentive approach and it is possible that we could talk to local authorities about having some pilot schemes. Certainly we can discuss it. I do not know whether it would be too soon for April 2005, it probably would be, so I think more realistically April 2006.

Q164 Paddy Tipping: Is the whole of Government sanguine about this? I know the Treasury in the past have not been entirely comfortable about incentive charging. Perhaps you would say in your own words where you think the Treasury is on this?

Mr Morley: I would not presume to speak for the Treasury. I think that would be a very dangerous thing to do. I can only speak for myself and for Defra. I think that there is a very strong argument for a differential approach in relation to waste charging.

Q165 Paddy Tipping: Can I just ask you about a plastic bag tax. Again I understand that you have commissioned officials to look at this. There has been some work done in the Department. There needs to be a whole environmental cycle approach to this. Again, what is the timetable on thinking around, as it is put in the press, a plastic bag tax?

Mr Morley: There has been a lot of debate about this. It is certainly something that has caught the public imagination because we get a lot of letters about it as well. We have been looking at the whole of life assessment in relation to a plastic bag tax and when you apply a whole of life assessment there are some complications with it. The Irish experience, for example, has seen a switch from plastic to paper bags and there is an issue of weight and moving around. In relation to fuel use there has been a switch from using shopping bags to buying black sacks, for example, so there are some issues that you do need to look at. What it has done is it has raised public awareness and I think there is value in that alone. WRAP are promoting a “Bag for Life” with the big retailers and I think there is some scope, even if we did not introduce a bag tax, for looking at some voluntary measures with the retailers in terms of encouraging reusable bags. I understand that B&Q are introducing reusable baskets and a charge of five pence for bags. That is a voluntary measure. I think that is worth exploring with other retailers in relation to what measures we could take there. I would not rule out a plastic bag tax but it may be that we can get very similar results with a voluntary agreement with the retailers.

Q166 Paddy Tipping: The real advantage is just raising the public profile of the issue?

Mr Morley: In terms of a whole of life assessment it does appear that the main advantage is raising awareness.

Q167 Chairman: What are you doing to promote the use of real nappies? As I understand it, the only nappies that are included in new mothers’ Bounty bags when they have their babies are disposable nappies and I would like to know what the Government is doing to make certain that at least there is an equality of opportunity for choice for new mothers in terms of nappies.

Mr Morley: I quite agree that it is important that new mothers are given the opportunity for choice in relation to nappies. The Bounty bag, as you will be aware, is a commercial operation so therefore what is in it is what various producers pay to go in it

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because it is a commercial venture, however we have talked to the Department of Health on this issue. The Department of Health do produce leaflets for new mothers which also within the leaflet give equal treatment to reusable nappies as well as disposable nappies. It is also the case in some hospitals and some maternity units, although not all, that reusable nappies are used within the maternity wing and of course it is an opportunity for new mothers to see how reusable nappies have moved on from the old terries. I have seen a range of these new nappies myself. They are much more convenient, they are better designed, they also have removable liners as well which make things a lot more convenient, too. In various parts of the country there is a complete laundry service which includes the collection and delivery of the nappies which are collected and brought back laundered, which is convenient in relation to what people want. So there are range of options and we think it is very important that people do have the choice on those options.

Chairman: Nobody can say this Committee does not get down to the bare basics but, Mr Lepper, you wanted to make a point?

Q168 Mr Lepper: Just an observation on that, Chairman, if I may. My own local hospital, the Royal Sussex County Hospital in Brighton, promotes the use of real nappies within the hospital but then, as the Chairman has already indicated, what often happens when the new mum is leaving with baby is they get the Bounty pack with the disposable nappies in it, undermining to some extent some of the good work that has been done in the hospital itself. I gather that the little rake-off that they get from these Bounty packs does not raise very much for hospital trusts. Could I commend to you a publication aptly called *Time for a Change* produced by the Brighton and Hove and East Sussex Real Nappy Network, recently published partly thanks to assistance from your Department which helped to fund a project officer who is doing a lot of good work in the Brighton and East Sussex area. Just an observation.

Mr Morley: I am very pleased to hear that, Chairman.

Q169 Chairman: Let us move to the end product then—well, not quite—to the Landfill Tax. Minister, the level is going to rise in due course to £35 a tonne. Why was £35 chosen as the right number?

Mr Morley: I think that there is a consensus amongst groups I have spoken to, whether they are environmental groups or industry groups, that £35 is about the right level. That really begins to impact on people and both provides an incentive to divert waste away from landfill and also is at a level that gives those industries which are providing alternative services and alternative routes some economic viability. So I think that the actual level of £35 is pitched about right.

Q170 Chairman: What is the current take from the Landfill Tax and how is it split between public and private?

Mr Morley: I can give you those figures in relation to the current take on that. I think it is £284 million, although that is what we are expecting in the 2004 Spending Review over three years from Landfill Tax.⁶

Q171 Chairman: And how is that split between public and private?

Mr Morley: The BREW programme for 2005–06 will deliver round about £43 million in the year 2005–06 and that will be split between Envirowise to do minimisation work and WRAP to help small businesses deal with waste.

Q172 Chairman: I was interested in the income stream, in other words where was the money coming from?

Mr Morley: From which sectors?

Q173 Chairman: Yes.

Mr Morley: I would have to write to you with that, Chairman, with the actual breakdown.

Q174 Chairman: Right. The reason I am asking the question is, first of all, why the resistance moving to £35 now, why the transition period?

Mr Morley: Like all things, there is a debate in relation to the benefits of the level of the tax, the £35, and the impact that that would have on industry and the industry sectors who rely on landfill. It was felt that going straight to £35 per tonne would be such a huge impact that it would be very damaging in relation to industry competitiveness, so therefore it is being phased in at a rate of £3 a year from the original level. There is always going to be an argument about whether that level is too high or too low. I think there is a very good argument for getting to that £35 as quickly as possible. Nevertheless, you have got to take into account the impact on industry and I think that is the balance that has been struck.

Q175 Chairman: Are you happy with the way in which the money is being used in terms of the diversionary projects? Are you seeing good results from that expenditure?

Mr Morley: Yes, I think we are seeing good results. I think that WRAP have used the money very well. It has been very helpful in relation to the way that they have put money into developing markets, for example for recyclers, because separating waste and recycling is one thing and recycling but finding new markets is a crucial part of that because you need the markets to give the value. That is also an incentive to the minimisation, the reuse and the diversion. The funding has gone into other areas as well. I was mentioning Envirowise in relation to minimisation and there are also things like the DTI Technology Fund and the Market Transformation Programme, for example, which Defra has.

⁶ The figure of £284 million refers to the increase in Landfill Tax paid by business [Note by witness].

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Q176 Chairman: When could we expect to see a report which would analyse the value for money that has been achieved, or the outputs that have been achieved, for the expenditure of the Landfill Tax to assess the different levels and whether in fact the diversionary and other educative programmes to reduce waste have actually been effective.

Mr Morley: WRAP, who are one of the major recipients, produce an annual report and that does outline the various expenditures, where the programmes have gone, and how that has been applied. There is also the BREW Programme which starts next year in April 2005 and that will also have an annual report in relation to the money that goes particularly into the business side, so in terms of all the expenditures there will be an annual report which will outline where the money has gone, what projects have been supported and what they have achieved.

Q177 Chairman: What I would be interested to know when you write to us with your further contributions—for example, I understand that last week you allocated a further £43 million—is whether that is fully funded by the private payers of the Landfill Tax or whether in fact there is a public contribution to that? It would be useful to know what the split of public and private is.

Mr Morley: That £43 million is from landfill.

Q178 Chairman: So that all comes from private users?

Mr Morley: There would be the local authorities of course that would pay towards that as well.

Q179 Chairman: That is why I was asking the question because effectively you are recycling public money, are you not?

Mr Morley: It is private and public money.

Q180 Chairman: That is the point I am making. I was interested to know what the split was because, effectively, you have got people who are making a business out of disposing of materials, and there is an inducement for them to pursue minimisation criteria of their own and then there is the public side. What happens is that the local authorities (who are already hard-pushed for cash) who may not be able to be as good as other local authorities at reducing the amount of material that is going to landfill end up by paying more and more money in the landfill pot. So what you have got is the Government through the Landfill Tax reclaiming some of the money it has already given to local authorities, then handing it back to them to try and make them better at reducing the amount of material that is going to landfill. So I was interested to see how this cycle was moving and what the proportions were between the public funding of the Landfill Tax and the private funding of the Landfill Tax.

Mr Morley: I am sure I can give you a detailed breakdown on that, which I think will be of benefit to the Committee, but what I can also say to you is that the £43 million that goes to the Business Resource Efficiency and Waste Fund is all from industry. In relation to what local authorities pay in

Landfill Tax, that is recycled back to them through the environment, protective and cultural services block.

Q181 Chairman: How much of that block is actually money for environment and waste services? Can we have a breakdown of that block because when you have something that is as broad as environment through to cultural services, that seems to encompass everything. What is the breakdown of that?

Mr Morley: I think it is for local authorities. They get their share through that block and it is to finance things like waste disposal.

Q182 Chairman: I appreciate that.

Mr Morley: But it is for them to decide, Chairman, you see.

Q183 Chairman: When the local authority gets its money from the Government it knows that there is a line somewhere that comes out with a number at the end of it against this environment through to cultural services. There is a number for each local authority at the end of the line. How is that broken down? There must be a formula which determines how much they get. What is the formula?

Mr Morley: You mean how they split that themselves?

Paddy Tipping: How the block is made up.

Q184 Chairman: Yes, how is the block is made up. Somebody in the Office of the Deputy Prime Minister must know that. When all this money is moved around, there must be a way of saying there is so much for the environment, so much for culture, so much for this, add it all together and, "Here you are, local authority, this is your number against that line?" How is it made up.

Mr Morley: That is correct. The formula for the actual payment is based on population but I do not think that is what you are asking. No, it is not what you are asking.

Q185 Chairman: I want to know how you work out how much money each authority is getting because it comes back to the point I was making.

Mr Morley: The money is related to the population. The total amount of money is based on population.

Q186 Chairman: What we do not know in that is whether it is 20% for environment and X% for cultural services or what. I am unclear as to what logic informs this.

Mr Morley: There is a calculation, Chairman, which is done by both the Treasury and ODPM in relation to what they calculate is needed in terms of waste collection, for example, or environment.

Q187 Chairman: So how do they calculate this "need" business? The reason I am asking these questions is that you have got local authorities who are paying the Landfill Tax. It comes out of hard-pressed resources. The ones that are not doing terribly well in terms of diverting waste from landfill

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are going to end up paying more Landfill Tax. You have said that it gets recycled to them. I am unclear as to what the starting point is because many local authorities have put it to us that they have not got sufficient resources to deal with these tasks. So do they simply get worse at it so that they get more landfill money back or do they look for another form of funding to try and improve their performance to reduce the expenditure and, if so, when we come to the middle bit, which is how much they are getting for this, how is this constructed because we will never be able to work out whether local authorities are telling us that they have got too much or too little if we do not know how it is formulated.

Mr Morley: I have never known local authorities to say that they have got too much money for any particular service, Chairman.

Chairman: Will you undertake to provide us with a detailed breakdown as to how this piece of magic works, and what are the proportions within that line of budget which are accounted for by these different elements, and how it is determined by a local authority that they get whatever they get? Joan Ruddock?

Q188 Joan Ruddock: I think it would be very useful to know what advice Defra actually gives to ODPM as to how Defra is placing upon local authorities higher targets, more pressure, et cetera, et cetera. Many of us would say that we want more spent on the environment and many electors would say that they want more spent on the environment.

Mr Morley: Sure.

Q189 Joan Ruddock: So what advice is given in making up the block which the Chairman has referred to?

Mr Morley: We do give advice and we also have an indicative figure about the kind of spend that there should be.

Q190 Joan Ruddock: You do?

Mr Morley: Yes. In relation to, for example, in our case, environmental issues and waste services, you will appreciate that this is wider than this and these are ODPM and Treasury issues, but I am very happy to get the calculations for you so that you can have a look at those.

Q191 Paddy Tipping: Can we go back to the Landfill Allowance Trading Scheme and, if I understand this right, if a local authority gets to its target earlier on, gets a credit, they can then sell on to other people?

Mr Morley: Yes.

Q192 Paddy Tipping: When will it happen? When will local authorities be in a position to start trading?

Mr Morley: The actual scheme starts from the 1 April next year, although there are some local authorities who already are offering credits and have put their own price on them, which of course is a speculative price.

Q193 Paddy Tipping: What is the price?

Mr Morley: It is £43 per tonne, though whether or not that reflects what the market is, but that is a very, very advanced local authority which, I think, is testing the water.

Q194 Paddy Tipping: Would you like to put a name to that local authority?

Mr Morley: I think it is in the public domain. Yes, it is, and I think it is Cambridgeshire. I am advised it is actually £32 per tonne.

Q195 Chairman: So Cambridge is £32?

Mr Morley: It is Cambridgeshire.

Q196 Paddy Tipping: So with the waste disposal authority it is £32 a tonne?

Mr Morley: Yes.

Q197 Paddy Tipping: Now, I know Cambridgeshire a bit and it is a pretty affluent county, is it not?

Mr Morley: Yes.

Q198 Paddy Tipping: What about the point that Mr Taylor was making to you earlier on that this LATS favours relatively affluent counties whereas the disposal authorities are more disadvantaged, if we can put it like that, or are at a disadvantage?

Mr Morley: I think that would be a significant generalisation really. It is certainly true that if you wanted to use the expression, the more affluent local authorities have generally done better in relation to recycling and minimisation than the less affluent authorities, but amongst that, there are categories you would put there, some of whom have done very well and some of whom have done very badly. There are some local authorities that you might regard as in less affluent areas which have an extremely good record on recycling and minimisation and I do not doubt that some of those local authorities will have credits to sell and to utilise.

Q199 Paddy Tipping: The LGA are not very happy about this scheme, are they?

Mr Morley: Well, I think it depends who you talk to in the LGA, whether they are happy or not. There are members of the LGA who represent very efficient local authorities who have done well in their waste management and are likely to have credits and who like the scheme. I think it is a general principle, talking to local authorities generally, that they can see the logic in this scheme and they can see how it can work to their benefit. It should not necessarily be a cost on local authorities who are achieving their targets that we have set and it is back to the point that you made, Chairman, of how do we get the waste down from landfill into the scale which you quite rightly pointed out, but there is going to be the statutory target and the caps on landfill which local authorities will have to comply with, so there are these very powerful drivers. It will focus attention, it is focusing attention because I know from my own experience and contact with local authorities that those local authorities who frankly have been dragging their feet, when faced with the

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implementation of LATS, have suddenly realised that if they really do not address the issue of waste minimisation, then it is going to cost them and their council taxpayers considerable sums of money. That is one of the reasons why we are seeing this acceleration in terms of recycling and minimisation which I mentioned and which is part of what I believe will be how we will get to these targets and how we will deliver them. I think that in the end it is not so much whether an area is affluent or not affluent, but it is a question of political will from the leadership of the councils concerned about whether they think that waste minimisation is a political priority. If they think it is a political priority, then it will be done.

Q200 Paddy Tipping: I would like to take you elsewhere to environment legislation, most of which comes from Europe now. I am always struck when I go across to the EU how highly they speak of British officials and British ministers and yet we do seem to have difficulty translating Directives into practice here in the UK, and landfill is an example, refrigerators, dare I mention them. What is going wrong? Why do we find it so difficult to agree the principles and then to turn the rhetoric into reality?

Mr Morley: I do not think it is so much that we find it a problem agreeing the principles. I think it is that we start from a lower base in relation to waste disposal than many European countries because we have had this reliance on cheap landfill that many other European countries have not and that has influenced the operation of waste collection and disposal in this country. I think that if we look at some of the recent legislation, and hazardous waste is one example, I come back to the point that there are only two countries in Europe which have actually transposed the Hazardous Waste Directive, and we are one of them. Now, in relation to hazardous waste, this is an area where we are very much in the lead in relation to what we are doing in European terms and it is fair to say that we have not always been in the lead in relation to waste management in this country, but that demonstrates what we can do and we have managed to do that. I also think that some of the methods of treating waste, some of the new innovations that we are seeing are also ground-breaking in terms of particularly classification methods and energy from waste and some of the new investments which have been put in place in this country. We started at a disadvantage and we started from a very low base in relation to the way that we manage waste in the UK compared to Europe, but I think we are catching up rapidly and I think that where there has been recent legislation, such as that on hazardous waste has demonstrated, we are actually giving a lead on that.

Q201 Paddy Tipping: When the private sector say to us, "We're not involved early enough in implementing Directives", do you think there is any validity in that?

Mr Morley: Every effort is made to involve the private sector in implementing Directives and of course we introduced in this country regulatory

impact assessments and the UK has been pressing for the EU to introduce them into European legislation, and indeed we are beginning to see that. That is part of taking into account the effects of regulation on industry and the regulatory impact on industry and, speaking for myself, I am very keen to involve all sectors who are affected by EU Regulations as early as possible and to involve them in the actual process, and we have made a big effort to do that in Defra.

Q202 Paddy Tipping: What about this complaint that is often around and we have even heard the Prime Minister saying it, that we gold-plate our transmission into UK law? Perhaps I will take the Prime Minister's name out of this! Is there any validity in this criticism?

Mr Morley: I do not think that in relation to the way that we are transposing current Directives on waste we could be accused of gold-plating them. I think that we are doing them in a pragmatic and sensible way in line with the requirements of the Directives and I do not believe that we are adding additional burdens or requirements to those Directives which would fall on UK industry.

Q203 Paddy Tipping: I have got colleagues here, and you can think of them as well, who would say, "These wicked foreigners, they're not playing the same game. It's not a level playing field".

Mr Morley: You always get these allegations and of course we always invite people to give us examples and where there are examples, then of course we will take action by raising it with the Commission and insisting that people comply with the Regulations. The Commission themselves are not slow in coming forward in taking action against countries whom they believe are not in compliance with the Regulations. They will bring infraction proceedings and they have done it against a number of countries. It is also fair to say that some of these Directives were passed a very long time ago in this country and they have never been properly implemented and that is what we are trying to do at the present time.

Q204 Mr Lepper: Can I just bring you back to a local authority issue again, Minister. You talked earlier to David Taylor about the resources that go to local councils to deal with waste management and you have also talked just now about the need perhaps for a greater sense of urgency and political will on the part of some local authorities, but it does seem to me that one of the problems that some local authorities confront, despite the resources, despite the political will, is the planning process. My own local authority, a unitary authority, has joined with our neighbouring county authority of East Sussex in coming up with a strategic waste management plan which seems to have been around and been kicked around from one committee to another, from one public inquiry to another for something like five or six years now. Meanwhile, we find ourselves faced with possible penalties as a local authority for failing to meet the various targets and we get another political party, not represented around this table at

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the moment, in East Sussex discovering that around about election time all the waste that we are talking about comes from the city rather than from the county. Now, what has Defra got to say about the local planning policy and indeed planning strategically for waste management insofar as the planning process itself affects it?

Mr Morley: There is a real issue of planning, particularly in large infrastructural projects and the fact is that we do need a lot of additional facilities within this country to deal with waste, to deal with it properly and safely and also to minimise it. Now, wherever you have an application for a new facility, whatever it is, from the controversial, such as an incinerator, to what you might regard as non-controversial, such as a composting site, there is always opposition to it. Now, the ODPM are reviewing the planning guidelines and PPG10 is the one which relates to waste planning. That is currently being done by ODPM and the approach taken there is actually to have a more strategic approach to the facilities which seem to be required in relation to waste treatment. It also seeks to involve communities more in relation to the kind of decision-making process and what needs to be done in a strategic way, a bit like a structure plan approach, which I think is the right thing to do. That is in its final stages of completion.

Q205 Mr Lepper: And Defra is working with ODPM on that?

Mr Morley: Yes, we have been very much involved with ODPM on this because of course it is of key interest to us in relation to the planning structure because you are quite right to say that the planning process has slowed investment in the infrastructure and that is not helpful in relation to the urgency that we have in terms of meeting these targets.

Q206 Mr Lepper: When do you anticipate that guidance will be published?

Mr Morley: In the very near future in relation to PPG10. I can let you have that later on.

Q207 Mr Drew: I am sorry to go to something else, but it follows on directly from David Lepper's point which is connected to the planning process which is that many authorities, as you know, are taking on large PFI projects and the problem with that is that to actually get them under way, notwithstanding the planning process, does take a considerable amount of time. The biggest difficulty with that is that with the pressure coming on in terms of the fines and the charges which are going to be put in place for household waste so it is not diverted away from landfill, local authorities feel they are damned if they do and they are damned if they do not. Can you give us some reassurance that there is going to be some level of tolerance so that if there is a clear indication that authorities are going to deal with their real waste problems, they will not be at least hammered in the short run?

Mr Morley: Well, I think we have to look at the particular instance and the circumstances of a case because I go back to the point I made earlier on, that

local authorities have known about these changes for a very long time and whilst there may well be some genuine cases of delays in the planning process, that might be only for one aspect in relation to waste treatment and it should not really be an excuse for not meeting the targets.

Q208 Joan Ruddock: I want to turn the Minister's attention to health issues in relation to waste disposal, with which I know he is very familiar, with reference to the Government's report on the *Review of Environmental and Health Effects of Waste Management—Municipal Waste and Similar Wastes* which was published earlier this year.

Mr Morley: That is right.

Q209 Joan Ruddock: I think that the Minister's view of that report in its presentation was that the public was not really at serious risk from these sources as compared to the risk of—

Mr Morley: Everyday life.

Q210 Joan Ruddock: Yes, indeed, and that less than 1% of dioxins were being received by the population from waste incineration. However, you will know that that has not satisfied many of the people who have looked at this report and indeed we have had evidence from people who are very concerned about how that report is actually impacting on government policy, so my first question would be: how are the findings of that report influencing the Department in the way that it approaches waste policy?

Mr Morley: The report was produced by Defra for the benefit of local authorities' decision-making so that we give them a better idea of health risks associated with all methods of waste disposal. What the report showed was that there is an element of risk with all methods, but the risks were low, as you quite rightly stated. It also demonstrated that there were gaps that we needed to fill in relation to our knowledge, although, as it happens, incineration, for example, had more data on that than just about any of the disposal methods because of the requirement of air monitoring and the studies that go with that, but we have commissioned further work and there is further research being done on the basis of that report. However, the belief of our scientific advisers is that the basis of that report should give confidence to decision-makers in terms of the particular waste disposal treatment method that they would want to choose for their local area, and in fact the risks associated with it are low, but there is more work that is being undertaken in relation to health risks.

Q211 Joan Ruddock: But has it resulted in any changes in direction or reinforcement of directions being followed? What has been the impact on the thinking in Defra?

Mr Morley: It has not really changed Defra's thinking because our view is that it is up to the local authorities, the waste disposal authorities, to determine what is the most appropriate method of waste disposal in their areas because it is going to

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vary in terms of circumstances, but they should not be deterred from considering the full range of options.

Q212 Joan Ruddock: You say that with great confidence, but you may be aware of the Royal Society's concern about the data and the way in which the study was conducted.

Mr Morley: Yes.

Q213 Joan Ruddock: Is that the reason for the additional work?

Mr Morley: Yes, it is part of the reason for the additional work because Defra asked the Royal Society to peer-review the report and the Royal Society did identify some concerns in relation to the data and interpretation, not concerns that would invalidate the conclusions of the report, and that was not the view of the Royal Society, but they did raise some issues which we do take seriously and there is further research which has been commissioned.

Q214 Joan Ruddock: Are you able to tell us what research that is?

Mr Morley: Actually one of the areas was composting and biodigestion which are relatively new technologies and there is relatively little data, particularly in biodigestion, and that is one of the areas where more research is needed.

Q215 Joan Ruddock: Let me ask you now to consider the cement kiln issue which has been raised with us by particularly the Welsh Local Groups Network. They make reference to the fact that previous environment committees have made very critical reports on the issues of burning waste and cement kilns and that, as a consequence of that, a special protocol was adopted for the authorisation process. It does appear that now the Environment Agency is setting that aside and encouraging burning in cement kilns which would not previously have been authorised by that protocol.

Mr Morley: I do not know whether it would be fair to say that the Environment Agency is encouraging the burning of waste that was not there previously within cement kilns. Whatever is burned in cement kilns is very, very tightly regulated in relation to the emissions and potential effects on people and the environment. Whilst it is true that the Environment Agency have certainly been reviewing and consulting on the protocols, which is quite right and proper, the Environment Agency, as regulator, are not allowing anything to be burned within their cement kilns which could have a detrimental effect on the environment or people.

Q216 Joan Ruddock: Well, that is a matter of judgment, is it not?

Mr Morley: It is actually a matter of statutory requirement.

Q217 Joan Ruddock: But they are permitting a wider range of hazardous wastes, I understand, to be burned.

Mr Morley: Yes, that is part of the consultation.

Q218 Joan Ruddock: So it is only consultation, it is not a decision?

Mr Morley: It is consultation in relation to the protocols which have been applied, but I think that there has been some waste which has been given permission to be burned in cement kilns which has not previously been burned.

Q219 Alan Simpson: Minister, it was not exactly *Apocalypse Now*, but *Recycle Now*, the big advertising campaign to encourage the public to do more in the way of recycling, was launched on 20 September?

Mr Morley: That is right, yes.

Q220 Alan Simpson: What feedback have we had so far? Did anyone see it? Has there been any attempt to measure whether it has had an impact or not? Did we just throw the money out of the window and hope? What have we got back?

Mr Morley: It has been put together very carefully and it has been put together with the advice from professional consultants. The strategy has been carefully planned and there is going to be an evaluation of the impact of the campaign by NOP which is part of the overall commissioning so that there will be an NOP study about whether people have seen it, whether it has affected people's attitudes, so we will get some proper evaluation of the impact of the particular campaign which I am very keen on actually. I think if we are going to spend money on TV advertising, I think it is certainly worth doing a proper evaluation on the impact of that.

Q221 Alan Simpson: Would that evaluation include your being willing to go back and revisit some of your own assumptions? For instance, if the feedback is that there is largely a willingness on the part of the public to be part of this process, but their experiences of involvement in recycling just identified lots of gaps, particularly funding gaps, it seems to me that if we want to follow it through, then those funding gaps have to be addressed. The most obvious one for me, going back to Paddy Tipping's point, about whether there would be a point at which we would accelerate the Landfill Tax in order to say, okay, if the cycle is a funding cycle and we know where we will be taking the money from, if we are actually trying to push at an open door, but there is no money to push the positive position there, how would you respond?

Mr Morley: Well, there is clearly an issue of funding in relation to having the facilities and the infrastructure, but large sums of money have been made available. It is why we have now got something like 80% of authorities who have got doorstep collections now and that is as a result of the money which has been made available through the various funding streams which I have outlined to the Committee. The actual evaluation is not so much linked to that, although I do not dispute that there is an issue of funding, but the evaluation is on

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whether or not people have seen it and whether or not it has changed their attitudes. You can provide the infrastructure, and that is one thing and that is an issue of funding, it is true, but you have also got to get people to use it, you have got to get people to have the commitment actually to look at their own lifestyles, actually to separate waste themselves and to do that as a matter of routine. Now, that is what the campaign is designed to do, to encourage people to use the facilities which have been put in place and the evaluation will be to see exactly what effect the campaign has had on people's patterns of behaviour. That is what the evaluation will be primarily.

Q222 Alan Simpson: Sure, but in practical terms, Minister, this was brought home to me in the brief hot spell part of the summer when people called me out and said, "Look, we are really quite happy to have the local authority waste separation scheme, but the bins are being collected on alternate weeks and you come and stand at the bottom of my garden when it is just getting close to the fortnight of food waste sitting in there and not only does my bin stink, but the whole street's bins stink and we can't stand it!" You cannot have it such that you just split the existing collection system and call one week one thing and one another. If you are serious, then there has to be increased frequency of collection and that is where the costs come in, so what if we identify a public willingness to go down this path and at an accelerated rate, but there is an inadequacy of the resources to actually follow through?

Mr Morley: But I do not accept that argument at all.

Q223 Alan Simpson: I wish you had stood in this street and explained that!

Mr Morley: Well, I will tell you why I do not accept it, because, first of all, I fully understand it because I hear these kind of complaints, particularly in local authorities who are introducing a twin-bin scheme with alternative collections, but Scunthorpe, which has pioneered many things in this country, including, I think, the first dog wardens, has had a twin-bin collection for many, many years. Now, when it came in, there was exactly that kind of response from people, but part of having a twin-bin collection is also persuading people and educating people about reducing waste and what they can do and really a lot of kitchen waste can be composted in the garden, for example. If you separate it out and even if it goes into the brown bin scheme, which is to go to compost, really you generally should not have a problem with smell. You really should not get that unless it is very wet, or there might be some handling issues in the way that is done. The main complaint that goes with it is not so much the issue of smell actually, but the main complaint is that one bin overflows because the brown bin is being collected one week and the other bin is spilling over, but that is also about if people take out the glass and the tins and separate it, then it reduces the waste stream as well, so there is a way of using that twin-bin approach and if it is used properly, then alternate-week collections are appropriate and a good use of resources.

Chairman: Well, that is a matter, as they say, of conjecture.

Q224 Joan Ruddock: I ought to apologise to the Minister for taking him back a little bit, but we were trying to ensure that we got some of those questions I asked earlier on the record, so I have to jump back now to some of the stuff we were talking about earlier in relation to enforcement, the Environment Agency and so on. We always hear from witnesses, and many of us feel this ourselves, that the Environment Agency is not sufficiently resourced for all the vital tasks that we want it to carry out. Is it still your view that the Environment Agency has the resources to do the tasks which are so important in terms of policing, particularly in terms of co-disposal?

Mr Morley: Yes, I do believe it has adequate resources. Its budget has increased significantly, although I would accept that a lot of the requirements have also increased of what it has to do, so I understand that very well. I meet with the Environment Agency regularly to talk about their budgets and what they are doing. It is their choice of course in terms of their overall budget as to how they allocate it, it is choices for the Agency and the Agency Board, but we have tried to help out with specific issues and the co-disposal issue is one where of course there are risks, for example, of fly-tipping and we want to address those seriously. As part of the £43 million, which I mentioned, which goes into the BREW fund, £2 million of that have been made available to the Environment Agency for specific campaigns against fly-tipping, stop and search, very high-profile campaigns, and in fact there has been some very good press coverage on these. In fact there was a story in the *FT* on 27 November about vehicles searched in curbs on fly-tipping as part of the high-level campaigns they do in co-operation with the police where in areas of known concentrations of fly-tipping, they actually stop vehicles and search them. It has been a very successful campaign, so that is an additional £2 million that we have made available for that kind of campaign. I think that, generally speaking, the Environment Agency use their resources very well. There is always a case for more resources, as we know, but I think that they are effective in what they do and I think that given their budget has increased, they have the choices in how they allocate it and I think they do so quite effectively.

Q225 Joan Ruddock: Well, I smile at the Minister's reply about the good publicity because I actually introduced those measures as a Private Member's Bill many, many years ago, so the fly-tipping powers that they have, I was very pleased I was able to introduce. However, I have to say to the Minister on the £2 million that my local authority alone spends an increasing amount, but the last time we had the figures it was £ $\frac{1}{2}$ million, one single local authority spending £ $\frac{1}{2}$ million on fly-tipping. It is such a huge problem and unless we are able to arrest more and more of the perpetrators and bring them to justice, then actually we cannot solve this problem because

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just collecting the material repeatedly is not a solution and we have to stop the criminals who are doing it. I would say to the Minister that if the Environment Agency had more people available more often for the sightings that people themselves report, then I think a lot more could be done in this area, so I say to him, it is good to have £2 million, but I really do not think it is enough.

Mr Morley: Do not think that £2 million is all that is being spent on fly-tipping. That is additional for a specific campaign. The Environment Agency has very large resources to apply to fly-tipping and local authorities of course, as you quite rightly say, also have a responsibility on this. We have also introduced new powers and new penalties in relation to fly-tipping, particularly to deal with the organised criminal element which is part of it, although an awful lot of it, and we are analysing data on fly-tipping in more detail and that will be made

available in due course, but the vast majority of it does appear to be domestic refuse which is just people tipping stuff from their households. Now, again there is an issue there of culture and people have to accept that this is anti-social behaviour and is not acceptable and it may mean making examples of some people in relation to the law, but a lot of it is really domestic. I think we can deal with the criminal element, but it would be a great help if people were a bit more responsible in what they did themselves.

Q226 Chairman: Minister, thank you very much indeed. There are one or two areas we would have liked to have covered, dealing with PFI and new technologies, which we will write to you about and hopefully solicit a reply from you, but may we, as always, thank you for the candour of your replies and the fullness of your answers. Thank you very much indeed.

Mr Morley: It is always a pleasure to be here!

Supplementary memorandum submitted by the Department for Environment, Food and Rural Affairs (X8a)

DIVERSION OF WASTE AWAY FROM LANDFILL

Government has set two types of target for local authorities to encourage them to divert municipal waste away from landfill. The first of these are targets for recycling and composting of household waste, which apply in 2003–04 and 2005–06. The second type is the number of landfill allowances allocated to each local authority under the Landfill Allowance Trading Scheme, starting in April 2005. There are a number of options available to local authorities to help them recycle and compost more household waste and to divert increasing quantities of biodegradable municipal waste away from landfill to meet these obligations.

Most local authorities will make use of a mix of these options that best meet their local conditions/requirements. Central Government's role in this is to provide the financial and other support needed by local authorities. Financial support is provided through Revenue Support Grant, the Private Finance Initiative, the Waste Minimisation and Recycling Fund and its successor the Waste Performance and Efficiency Grant, as well as through a number of smaller-scale grant schemes. Direct support, advice and guidance, and assistance in building capacity is available through the Waste Implementation Programme and the Waste and Resources Action Programme. This support enables local authorities to draw up suitable local waste strategies and to meet the goals in those strategies.

The diversion options include:

- Waste reduction (eg real nappy initiatives).
- Re-use (eg helping charities to re-use clothing, footwear and furniture).
- Recycling (eg through segregated kerbside, bring bank or civic amenity site facilities).
- Composting of green and kitchen waste (eg through home composting, segregated kerbside or civic amenity site facilities).
- Energy recovery (eg energy from waste facilities).
- Stabilisation (removing or reducing the biodegradable content of waste which is subsequently landfilled) (eg mechanical, biological and technical (MBT) treatment facilities to stabilise residual waste).

Our best current estimates are that England will meet its national target to recycle or compost 30% of household waste in 2010, and that we will meet our obligations under the Landfill Directive to divert biodegradable municipal waste from landfill. Factors that will affect the mix of facilities and technologies used to recover energy from or stabilise municipal waste which is not recycled or composted include the outcome of the current Environment Agency consultation on the outputs from the MBT process, the waste industry's ability to deliver the facilities demanded and the extent to which local communities will support energy recovery facilities.

Defra's current estimates of future municipal waste management are based on modelling work which is subject to further change to incorporate developments in our assumptions.

My Minister's confidence in the ability of local authorities to make progress springs from the distance they have already travelled in a relatively short time, the seriousness with which local authorities take these obligations and the support that has been and will be put in place to help local authorities achieve the targets. This confidence is underpinned by the policy levers we have put in place to drive local authority behaviour—the new landfill tax escalator and the Landfill Allowance Trading Scheme, both due for introduction in April 2005.

COLLECTION OF LANDFILL TAX

My apologies to the Committee, but I understand that HM Customs and Excise (HMCE), who collect the tax on behalf of the Treasury, do not hold data which breaks down the proportion of landfill tax paid by specific sectors. HMCE have developed a model to estimate tax receipts from landfill of municipal waste based on local authorities' expected response to the policy levers in place. HM Treasury took these estimates into account in making decisions on the increase to the Environmental, Protective and Cultural Services block in Spending Review 2004.

RETURN OF LANDFILL TAX TO LOCAL AUTHORITIES—EPCS

Formula grant (Revenue Support Grant, National Non-Domestic Rates and Police Grant) provides general funding for local authority services. It is an un-hypothecated grant and spending decisions are, as the Committee accepts, a matter for individual authorities. Formula grant is distributed through Formula Spending Shares. The Office of the Deputy Prime Minister (ODPM) is responsible for the formulae underpinning each Formula Spending Share (FSS) blocks, of which EPCS is one. The EPCS block covers a wide range of local authority services including waste management, and the formula used to allocate the block between individual local authorities is predominantly population driven.

In this year's Spending Review (SR2004) the Government announced an increase in EPCS FSS block of £888 million by 2007–08 over 2004–05. This increase includes the return of revenues from the increased landfill tax, fulfilling the Chancellor's commitment to keep landfill tax increases revenue-neutral to local authorities. As part of the Spending Review 2004 process, Defra undertook a modelling exercise to estimate likely total spend by local authorities on waste management over the Spending Review period. This analysis was shared with the Local Government Association, who were broadly supportive. HM Treasury took account of the outputs of the modelling exercise in taking decisions on the Spending Review settlement.

In addition, you raised two issues in relation to funding alternative technologies and the role of PFI. The need for investment in new technologies is well understood. Confidence in those technologies is a vital component. That is one reason why two WIP funding programmes have been launched to encourage the take up of new technologies in the treatment of biodegradable municipal waste. The Technology Research & Innovation Fund (TRIF) will allocate around £2 million to address the current lack of funding for R&D projects into new technologies. The Demonstrator Programme will provide some £30 million to help to establish new waste treatment technologies that require pilot plants to demonstrate their viability. The programme is intended to instil confidence and help overcome the perceived risks of implementing new technologies in England and to provide accurate and impartial technical, environmental and economic data.

On PFI, an extra £275 million worth of waste PFI credits were included in the 2004 Spending Review. We see PFI as one of the best ways to support value-for-money investment in waste services. Current healthy levels of demand for PFI projects suggest that many local authorities and funding institutions are content with the PFI approach. Indeed, projects totalling £1 billion are presently signed or in procurement and a further eight projects handling over three million tonnes of municipal waste are in progress.

17 December 2004

Further supplementary memorandum submitted by the Department for Environment, Food and Rural Affairs (X8b)

DEFRA RESPONSE TO QUESTIONS FROM THE COMMITTEE ARISING FROM WRITTEN EVIDENCE SUBMITTED BY THE ENVIRONMENTAL SERVICES ASSOCIATION⁷

1. The ESA states in paragraph 23 of its written evidence that the Grant in Aid budget from DEFRA to the Environment Agency, used to fund policing and enforcement of illegal waste activity, has been cut by £4 million for 2004–05. Can Defra confirm that this figure is correct?

This is not correct. Overall Agency GiA budgets for 2003–04 were increased by an additional £6 million in recognition of in-year pressures. The budget for 2004–05 could only be increased by £2 million due to budgets constraints, but still provided an additional £2 million in 2004–05, not a £4 million cut. Other

⁷ Ev 80

increases in charging income for the Agency, previously offset by GiA, provided further funding. It should be emphasised that these are overall budgets to cover all Agency GiA demands across all functions. The GiA is not hypothecated and it is for the Agency to allocate funding in order to deliver strategic outcomes.

2. In paragraph 33, the ESA states that Austria and the Netherlands already comply with the 2016 BMW diversion targets of the Landfill Directive. Can Defra confirm which EU countries are already in compliance?

Unfortunately, Defra is not in position to confirm which EU countries already comply with the 2016 targets. This information will only become available when the European Commission issues a Report.

3. Paragraph 35 states that “As things currently stand, local authorities do not know how much BMW they will be allowed to landfill from 1 April 2005 or whether statutory recycling targets will be extended beyond 2005–06”. Does Defra agree with this statement?

Defra issued provisional allowances under the Landfill Allowances Trading Scheme to local authorities in August 2004 and the final allocations in February 2005. These allowances show the amounts of BMW that every waste disposal authority is allowed to landfill in each year from 2005–06 to 2019–20. Decisions relating to recycling targets beyond 2005–06 will be announced in due course.

4. Paragraph 38 states that the UK spends only half what comparable European countries spend on municipal waste management. Can Defra confirm the basis for this figure?

ESA has always maintained that the UK spends a much smaller proportion of GNP on municipal waste management than do “comparable” countries elsewhere in Europe. However, while it is generally accepted that the UK has a degree of catching up to do in respect of waste management, as far as we are aware, this straightforward calculation takes no account of differences in government systems and waste management operations nor in “value for money” considerations.

5. In paragraph 43, ESA states that the Government “does not appear to know whether recycling and recovery treatment capacity sufficient to enable the UK to comply with the Landfill Directive is being consented or even whether there is currently a net loss of permitted waste management infrastructure”. Does Defra have this information?

Clearly this is a moving target and the Defra/Environment Agency Landfill and Hazardous Waste Implementation Programme project board receives regular reports on licensed/permitted waste treatment facilities/capacity. Also a working group of the Hazardous Waste Forum, chaired by a waste management industry representative, keeps a watching brief on waste treatment capacity. It is also worth pointing out that the scare stories in circulation before July 2004 that there would be insufficient landfill capacity for hazardous waste when co-disposal came to an end have proved to be unfounded.

February 2005

Wednesday 15 December 2004

Members present:

Mr Michael Jack, in the Chair

Mr Colin Breed	Diana Organ
Mr David Drew	Alan Simpson
Mr Mark Lazarowicz	David Taylor
Mr Ian Liddell-Grainger	

Memorandum submitted by the Local Government Association (X21)

1. The Local Government Association, which represents local authorities throughout England and Wales, is grateful for the opportunity to comment on this important issue.
2. The evidence submitted here focuses on the main issue affecting local authorities—the implementation of EU Landfill Directive Article 5 which sets targets for reducing the amount of biodegradable municipal waste (BMW) being sent to landfill. Our evidence deals in particular with:
 - Progress in England towards meeting Article 5 targets.
 - Challenges local authorities continue to face.
 - What, in LGA's view, is needed to address the challenges.

SUMMARY

- The LGA is collecting and collating information which can accurately predict whether England is on course to meet Article 5 targets, and it is hoped that a picture of pressure points (geographical and at particular points in time) and progress towards national targets in England will be available by the end of 2004.
- The Landfill Allowance Trading Scheme; inadequate funding; continuing uncertainty over some key issues; an illogical position on trade waste; a lack of funding for key support projects; and continuing waste growth are all challenging local authorities' ability to deliver.
- The LGA and local authorities will do what they can to tackle these challenges, but Government could help by: supporting LGA work on LATS; narrowing the major funding gap; resolving key uncertainties; reconsidering the interpretation of the definition of "municipal waste"; supporting key local government "improvement" initiatives; and working with local authorities to tackle waste growth.

PROGRESS IN ENGLAND TOWARDS MEETING ARTICLE 5 TARGETS

3. The Association discussed with Defra the possibility of their providing some funding for a "traffic lights" project which would build on work the LGA is doing to collect predictions data from local authorities. Councils are being asked to provide projections for the amount of BMW they are likely to be sending to landfill, and hence whether they will be over or under their allowances in years up to 2020 (but focussed on the years up to 2010 in particular). This would give an indication of the regional picture over time so helping to target support where most needed; would provide essential market intelligence for the Landfill Allowance Trading Scheme; and would also provide a picture of national progress against targets.
4. Defra Ministers and officials have indicated they feel this is an important project but have said funding is not available to support it. Some capacity is needed to obtain comprehensive and accurate projections figures, and to maintain the database over time, and the Association is now asking councils to consider contributing to a central pot of funding so the work can be continued. In the meantime the work progresses rather slower than hoped, but at the time of writing the LGA holds a fairly complete data set. It is hoped that a picture of pressure points (geographically) and progress towards national targets in England will be available by the end of the year.
5. The LGA is not aware of any other organisation collecting or collating information which can accurately predict whether England is on course to meet Article 5 targets.

 CHALLENGES LOCAL AUTHORITIES CONTINUE TO FACE
Landfill Allowance Trading Scheme (LATS)

6. Government has introduced the Landfill Allowance Trading Scheme (LATS) by way of implementing the UK's targets under Article 5 of the EU Landfill Directive. This scheme threatens to take resources away from councils which need them to deliver and to push up council tax to levels where Central Government would introduce capping. For councils which have to buy permits, LATS does little other in reality than create a huge financial penalty.

7. Even authorities which have planned in good faith to meet targets may face huge additional unavoidable costs. One partnership of authorities, which has put in place plans to meet the targets, has calculated it could face unavoidable additional costs of £13 million over a two year period alone, if implementation is delayed by 18 months for example because of challenge in the planning process.

8. The LGA wrote to the Minister (Elliott Morley MP) questioning the wisdom of taking money away from councils which need it to deliver services, and has also questioned the principle of local authorities having to bear unfunded additional costs, given that Government-supported new burdens procedures require that local authorities are funded where Central Government introduces any new legislation with a cost implication.

9. While Government argues (and while it may be accepted) that, as a whole, local authorities are funded to meet the new burden, there is little recognition that costs are likely to be borne disproportionately by some councils. The LGA wrote to the Minister, saying that our "understanding is that the principle of landfill trading is that it will help local authorities to deliver targets in a cost effective way . . . but I suppose the question from our point of view is whether this is at the (substantial) expense of some authorities?"

10. (In point of fact, the LGA does not agree that local authorities are funded to meet the new burden, but that issue is dealt with below.)

11. The Minister indicated in his response that Defra officials would be interested to share the findings of any work carried out by, or on behalf of, the LGA that indicates whether individual councils are being treated unfairly. The challenge local authorities now face is establishing the capacity to gather the necessary evidence. The Committee will appreciate this is a complex and sensitive task. As discussed above, the LGA is working with its members to try to establish this capacity. In the meantime, some individual councils are contributing officer time where possible.

12. The other challenge local authorities face is the uncertainty over likely costs and how Government will react when council tax looks to be forced over "capping levels". The LGA's challenge is to work with Government to make the case for agreeing a protocol for managing this risk which, in the LGA's view, threatens both local and central government.

Funding

13. Lack of adequate funding remains the single most challenging issue facing local councils. This impacts on both collection and disposal authorities. Separate kerbside collections add very significantly to the costs incurred by collection authorities, yet it is important that they continue beyond 2005-06 (when there is no longer any statutory duty) to avoid mismatch (either by material type, quality or volume) with the treatment infrastructure provided by the disposal authority.

14. Meanwhile, waste disposal authorities must create the new infrastructure needed to cope with feedstocks of various recycling/compost feedstocks, and also new waste treatment and disposal infrastructure to deal with residual waste. In two-tier areas, recycling and composting involve increased costs for collection authorities, which in theory should realise savings for the disposal authority. However, because disposal authorities must pay recycling credits (equal to the cost of disposal per tonne), no savings are realised.

15. The Government's Spending Review 2004 did not provide the additional funding which will be needed to deliver Article 5 targets, and the LGA is still extremely concerned that the shortfall in funding remains a significant obstacle to delivery of Government targets. The LGA estimated prior to Spending Review 2004 that an additional £1.44 billion will be needed for waste management during 2005-06, 2006-07 and 2007-08. Put another way, by 2007-08, councils will need an extra half a billion pounds per annum, over and above the amount they receive now. In real terms, there was no increase in funding for the Environment Protection and Cultural Services block.

The treatment of "trade waste" in the definition of municipal waste

16. An issue which is concerning many authorities is the official interpretation of the EU definition of municipal waste for the purposes of the Directive. The directive describes municipal waste as "waste from households, as well as other waste which, because of its nature or composition, is similar to waste from household(sic)". However the UK interpretation is "waste under the control of local authorities". This means that trade waste collected by the private sector falls outside of the interpretation, even though the exact same waste—if collected by the local authority—falls inside the interpretation. This presents

challenges because prices will have to go up for clients in the public sector but not those in the private sector, so councils may lose the business, and/or lose income.

Coping with risk and uncertainties

17. Councils are also faced with managing some difficult uncertainties, notably:
- The price of LATS permits are unknown which makes budget planning impossible.
 - Various technical, financial and legal issues relating to trading under LATS remain unclear (a schedule is to be developed by an LGA advisory group).
 - Councils considering using “MBT” processes remain unclear whether the residual materials will be classified as biodegradable or not for the purpose of compliance with the Directive targets.
 - There is no framework for end-use of MBT residuals, or movement on development of markets for Refuse Derived Fuel (RDF).
 - Councils still face risk in relation to planning or permitting challenge or delay and await new guidance (which should improve matters, but remains outstanding).
 - Some other, related policy decisions remain outstanding, in particular: whether recycling targets will be set beyond 2005–06, and how Performance Reward Grant will be distributed.

18. A related point is that, since successful waste management is strongly dependent on active co-operation from householders, which implies their commitment and loyalty need to be nurtured and reinforced over time, it is impossible to implement successfully sudden changes in collection services to cope with, for example, legal changes or new policy guidance. Changes need to be introduced in a timescale which will allow for public acceptance and changes of behaviour.

19. Councils need a stable and clear policy environment and need to see these issues resolved, not only so they can plan and sign contracts with confidence, but also so work with householders is effective.

Support to deliver

20. The Government has put in place the Waste Implementation Programme which in part exists to offer support to councils to deliver Article 5 targets. The LGA has made several representations focused on the need to help local authorities develop “self-improvement” projects which will improve capacity over the long term. Defra has provided some support for a “Peer Review” pilot (a type of support delivered by local authorities to local authorities). The challenge now is to find the funding and capacity to deliver Peer Review in the longer term, to deliver support for Members, support on procurement, and support for central networking and good practice projects.

Continuing waste growth

21. A further important challenge is municipal waste growth. Commonly quoted as rising at 3% to 4% annually, but rising at very different rates across the country and at much higher rates in some regions, the inability to stem or stabilise waste growth leaves councils forever running to stand still. The impact on ability to deliver Landfill Directive targets is dramatic when considered over time, because targets are static at and a graph is attached to demonstrate how important this issue is.

What, in LGA’s view, is needed to address the challenges?

22. LATS

The LGA is keen for Government to help fund the project it has begun, to enable accurate projections data to be collated, and likely impacts on individual councils to be monitored. This will help identify the level and extent of risk councils face in relation to council tax. An agreed central/local protocol on how to handle situations where particular councils find they cannot avoid spending large sums of money buying permits, and where this threatens both a council tax crisis (ie capping and/or service cuts) and loss of the funds needed to deliver, would also help to manage risk.

23. Funding

The Association is extremely concerned that Government does not recognise there is a gap in funding in the Environment Protection and Cultural Services funding block, or that this is putting pressure on other services and forcing councils to cut discretionary services which often fall into this area. Treasury must make proper provision for councils or at the very least work with the LGA to be clearer about how its conclusions are reached in respect of the “waste element” of the EPCS block.

24. Definition of municipal waste

The LGA has considered how this issue may be resolved through use of local authorities’ existing powers. For example, could the Well-Being Power be used to require all trade waste (whether in the public or private sector) to be treated similarly? It remains unclear at the time of writing whether this is possible, though it seems unlikely.

25. Coping with risk and uncertainties

The LGA is working with Members to consider how best to offer advice to local authorities. The Association is also committed to raising issues with Government at regular liaison meetings, and local authorities clearly need timely responses to issues raised.

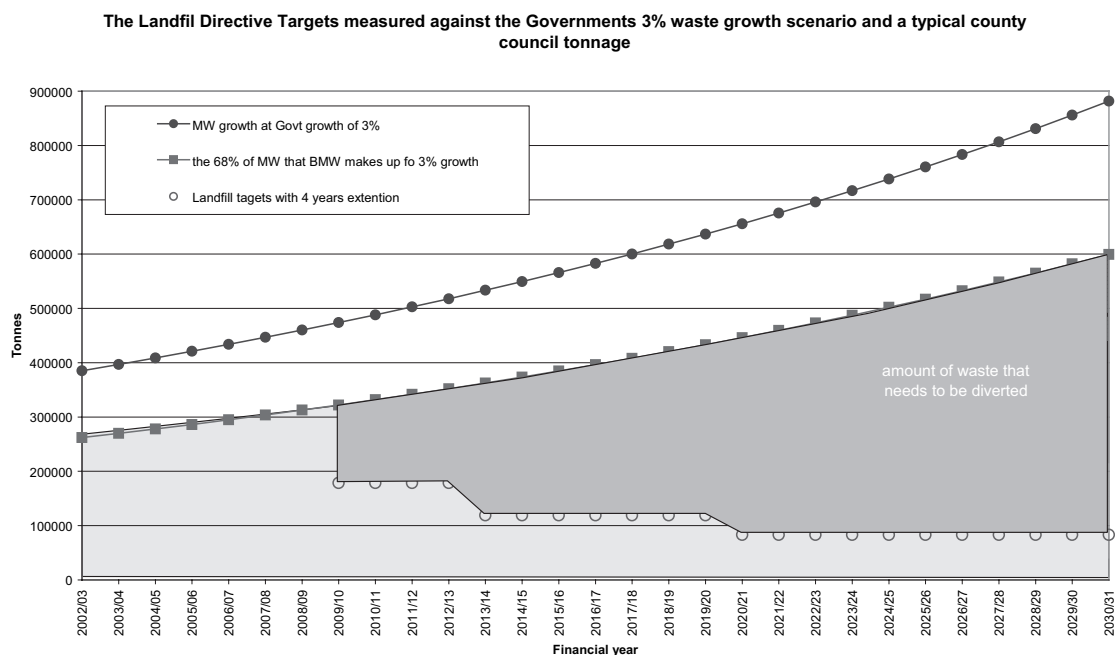
26. Support to deliver

The LGA is eager to establish a longer term Peer Review programme, and also support for local Elected Members, support on procurement, and support for central networking and good practice projects. The Association will of course work with its Central Bodies—the IDeA and 4ps—and other organisations to develop this type of support, but would be delighted to see Government supporting local authority initiatives wherever possible.

27. Continuing waste growth

The LGA welcomes Government’s funding for WRAP’s waste prevention activities, and has itself worked to support councils through sharing good practice in tackling waste growth. However there remains a need to gain a much more sophisticated understanding of what is driving waste growth and which elements or “fractions” of municipal waste are growing faster. This needs to inform both central and local action. The LGA considers this a major priority, and as such is eager to work with central government to develop a central/local vision for how to tackle waste growth into the future, including potentially a national waste prevention campaign along the lines of WRAP’s very welcome “recycle now” campaign.

8 October 2004



Witnesses: Cllr Paula Baker, Basingstoke & Deane Borough Council and LGA Environment Board, Mr Derek Goodenough, Waste Disposal Manager, Leicestershire County Council and Ms Alice Roberts, Senior Project Officer, Environment, Local Government Association, examined.

Q227 Chairman: Ladies and gentlemen, can I formally open this further evidence session on the Committee’s inquiry into Waste Policy and the Landfill Directive and welcome the Local Government Association. Before I introduce you, can I thank you for your formal evidence and also some material which you provided us with very kindly which helped us in our questioning of the Minister last week. We have with us Councillor Paula Baker from Basingstoke & Deane Borough

Council and from the Local Government Association Environment Board, Mr Derek Goodenough, the waste disposal manager for the Leicestershire County Council—you will find references around the table from colleagues interested in Leicestershire matters—and Ms Alice Roberts, the senior project officer from the LGA. You are all extremely welcome. You all came along, particularly Alice Roberts, I know you were there listening to the Minister last week. Did you

15 December 2004 Cllr Paula Baker, Mr Derek Goodenough and Ms Alice Roberts

think the Minister had got it right or was he being over optimistic about seemingly saying everything in the garden would be lovely or the targets had been met, the money is okay or the legislation is entirely clear, what are all these whinging and moaning people going on about? What did you think about Mr Morley last week? Who wants to give us a commentary on that?

Councillor Baker: It might be easier if we addressed the issues that you have just identified from our point of view.

Q228 Chairman: That is a very diplomatic reply, and you are saying that with a big smile on your face which makes me think that we ought to pursue you a little bit more closely on the reasons for the smile and your retreat into answering factual questions. Perhaps I shall not press you too hard, but do give us a flavour of your observations about the Minister's comments. At the end of the day you and your members have to deal with the outcome of Defra's perspective on these matters. Let us start with recycling targets. The Minister expressed cautious optimism in spite of the fact that I pointed out to him that he had a huge amount of material that had to be diverted from landfill, and at that point he seemed to stutter and not have an answer as to how we were going to get from where we are now to where we want to be. Councillor Baker, I have given you plenty of time to consider how to start and respond to my questions, you fire away.

Councillor Baker: In terms of diverting from landfill, which is the issue you just mentioned, we are not overly optimistic. We think there is a huge challenge there ahead of us. There are some specific issues which we feel we would love to have in place. I think you mentioned certainty and clarity, and that is something we feel is very important and we do not believe we have it.

Q229 Chairman: Tell me in detail as the operators, if you like, the deliverers of the policy, where are you uncertain? Because Ministers keep giving all of these very optimistic replies that everything is going according to plan, now you are saying there is uncertainty, give me the main areas of uncertainty.

Councillor Baker: We only received our targets this year and we are working to put in place systems that are going to carry us through a long time period. Some local authorities are in contracts which could well be 25 year contracts. We are putting recycling schemes in with our local communities which we need to communicate to them. We need to have them totally on board and I think we all have the same aspirations about what we want to be able to achieve. They need certainty and we need to be able to communicate with them and give them a clear picture of what it is they are supposed to do so we can be sure we are delivering materials from waste collection authorities to waste disposal authorities in all three, volume and type and what the disposal authorities are expecting, because they have to have the infrastructure to cope with it.

Q230 Chairman: What is not going to happen though? You will try and do your best. You made a specific comment, you said you have got your targets, which targets?

Councillor Baker: Our allowances, which are only provisional.

Q231 Chairman: This is under the landfill trading arrangements?

Councillor Baker: Under the Landfill Directive which we have only received this year. We are talking in terms of infrastructure that can take years and years to provide and costs a very large proportion of the funding available to us in local councils. Therefore, it has to be right and we have to have financial confidence and regulatory confidence that what we are putting in place is going to fulfil our needs, meet the needs of our community and the regulator.

Q232 Chairman: How many requests did the LGA make to Government to have these targets and information earlier? How many times did you go to Defra and say "Where is this information? We know this policy is going to be implemented, where is it?"

Councillor Baker: I cannot remember off the top of my head.

Ms Roberts: We have made representations via networks and via meetings, on and off. I would not be able to say specifically. Certainly we made a move earlier this year to publish provisional targets that we calculated ourselves because we were so concerned that the Government had not issued the allocations.

Q233 Chairman: When do you think the Government should have given you this information?

Ms Roberts: The Government published *Waste Strategy 2000* some years ago. That set out the outlines, it took them some years to get the WET Act through the Parliament. I suppose those would be the reasons why they have not been able to lay the allocations down. I suspect that what might have happened was that provisional allocations or a clear indication might have been given three or four years ago.

Q234 Chairman: Why has Defra been dragging its feet, in your judgment?

Ms Roberts: I think the answer to that is the way in which this piece of legislation was transposed, which was through the WET Act, and that took some time to put through Parliament, obviously, and that there are matters of accountability. Government—I imagine in its view—simply cannot say something which has not been dealt with in the correct parliamentary processes.

Q235 Chairman: Let us move to the practical world. In some of the material that you very kindly helped us with last week to get an overview, what is quite clear is the amount of municipal waste is continuing to grow and seemingly, also, we have

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got a widening gap in terms of landfill diversion. Given these parameters, what makes you believe you will achieve eventually the targets that have been set? Is it that it will happen eventually but albeit on a slower timescale or is it a question that the targets are in practical terms unachievable, however long you keep chipping away at it?

Councillor Baker: Waste is growing, the targets are static, so there is an obvious conclusion that may lead you to believe we are never going to get there. I think the issue is all about information about waste growth in order that we have a much clearer picture of which elements within the waste stream are growing because how you deal with them needs to be informed by that information. Also, we need to target support to the authorities which are most at risk of missing their targets and most in need of that support. The Local Government Association has been gathering information and had a project to try and assist with that targeting. It is a very complex area. We were hopeful of getting financial support for a particular project, Defra have offered us some support in kind with it but it is a difficult task.

Q236 Chairman: Without that project being completed you are shooting blind?

Councillor Baker: Yes. There is a risk that whatever support is offered is not going to where it can do the most good.

Q237 David Taylor: The LGA state in evidence they are concerned there is a shortfall of funding which remains a significant obstacle to delivering on targets and you urge that the Treasury must make proper provision for local authorities in this area. The Minister in evidence to us very recently talked in relatively glowing terms, as they tend to, of an additional £1.5 billion going into the EPCS block. You have argued the need for a further half a billion or so. Firstly, do you accept the £1.5 billion figure that he gave us? Secondly, if that half a billion gap is not bridged, what are the consequences that you can foresee?

Councillor Baker: We believe there is still a gap. When you look at the FSS that gives the EPCS block, we have calculated that is only a two and a half per cent increase into that block against, as you were saying, increasing waste growth and an awful lot of other calls on that money. One of the significant risks as well is that the authorities who most need to invest in infrastructure, if they foresee that they are having budget problems coming to them in the future then they may well take a decision that they cannot afford to invest in the infrastructure but they need to set the money aside to cope with the eventuality that they are penalised.

Q238 David Taylor: Did last week's grant announcement make any significant difference?

Councillor Baker: We calculate it as two and a half per cent across the EPCS block. You would never expect the local authority to say it was bad news to get additional funding but we see the gap as being greater than that.

Q239 David Taylor: I am not sure who this question is addressed to. When I was on the local bench, Chairman, you had to declare an interest if someone you knew was a witness in front of you and you stood down. I know Mr Goodenough, I have to say that, but I shall not be standing down! We heard from the Minister that the local authorities pay landfill tax, but have the money effectively returned to them through the EPCS block. Do authorities get precisely the same amount back that they spend in landfill tax? Whatever amounts they do get back, is it your experience—whoever is going to answer the question—that authorities passport that money back into waste management which is the object of the whole exercise or do they divert it elsewhere?

Councillor Baker: I think the increase in the landfill tax is only a small part of the expenditure of the authorities' collection and disposal in dealing with waste management.

Q240 David Taylor: I understand that but it is the amount that local authorities pay in landfill tax. They pay landfill tax and we are trying to examine whether or not that comes back in precisely the same amounts and, if so, where is it utilised?

Councillor Baker: It goes back into the EPCS block but it is not ring fenced.

Ms Roberts: My understanding is that the money is returned via EPCS which is on the EPCS formula, therefore it does not go back to an authority based on the amount it pays otherwise it would not be an incentive.

Q241 David Taylor: There can be a disparity between the amount paid and the amount returned via the block? It can be a loser or a gainer or it can be roughly the same.

Ms Roberts: It is a deliberate disparity I think because otherwise it would not create the incentive. It is redistributed back to local authorities on a generalised basis and according to the EPCS formula, that is my understanding, or it will be.

Q242 David Taylor: Are any statistics maintained by authorities or the LGA as to the differences there might be as to the amounts paid and amounts received?

Ms Roberts: We do not have that evidence, we can certainly look into it.

Q243 David Taylor: One of the other initiatives that the Government has is the Waste Implementation Programme, how effective a vehicle do you think that is in helping authorities to deliver on target?

Councillor Baker: I think all help is useful. Where funding has to be bid for that can be a significant problem, particularly for small authorities, because of the investment needed to put forward a bid without having any certainty of getting any funding. We are back to the issue that the funding and support needs to be targeted to those authorities who have the most need for it.

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Q244 David Taylor: You say there is a particular problem for small authorities, what type of authority do you have in mind, a shire district with a population of less than a hundred thousand?

Councillor Baker: Exactly.

David Taylor: That would be categorised as an authority in some difficulties, not unlike North West Leicestershire.

Q245 Chairman: Can I just interrupt, Mr Taylor, there is a point in paragraph 14 which I think may be relevant but I did not understand it in your evidence. It says "In two-tier areas, recycling and composting involves increased costs for collection authorities, which in theory should realise savings for the disposal authority. However, because disposal authorities must pay recycling credits (equal to the cost of disposal per tonne) no savings are realised". Could you explain what that means?

Councillor Baker: Depending on the arrangements in the locality—

Q246 Chairman: Give me a for instance because I did not understand that.

Councillor Baker: Disposal authorities pay recycling credits to collection authorities to reward them for the extra working expense in collecting separate kerbside collections. I think what that phrase is saying is that the collection authorities are invoking increased costs and the saving should happen to the disposal authority because it is having less that it needs to landfill or dispose of by alternative means, but in fact they also then have to pay additional recycling credits back to the collection authority.

Q247 Chairman: Nobody saves anything really.

Councillor Baker: It goes round and round. In some areas there are different arrangements between collection and disposal.

Chairman: With apologies to my colleague, Mr Taylor, what are the implications of this circular argument? What should I read into that? What are the real world implications of it?

David Taylor: Two tier authorities.

Q248 Chairman: Yes. What does it mean in real world speak?

Ms Roberts: The issue of the recycling credit is that costs will increase to the county so they do not realise any savings so the grouping is still spending more money. We have been working with Government to say that the recycling credit needs to be capped below the cost of disposal so that it becomes cheaper to pay the credit than to dispose. There is a cyclical element of where the funding goes here but actually if that decreases the cost to the county decreases and so the overall cost does decrease.

Q249 Chairman: To come back, in terms of will we meet our targets, I am getting the message that life does not get any easier for the district authority who is a collector and life does not get any easier for a county authority who is a disposer. In other

words, the incentivisation in this system to reduce materials that are ultimately to be landfill is not going to work properly, is that right?

Councillor Baker: I would say the more aspirational the authorities are the harder it gets.

Q250 Chairman: The Government have not responded yet as to how that should be fixed?

Ms Roberts: The results are not out from the recycling credit consultation but we are hopeful that they will have listened to what we have suggested which is that the credit should be capped or some other mechanism to keep the cost down of recycling credit.

Chairman: I would be very grateful if you could write to us with a little more explanation because it seems to me rather an important point. It would be nice to have some real world understanding, bluntly, of what the implications are if your recommendations are not followed through. With apologies to Mr Taylor, do please continue.

Q251 David Taylor: Just to give an opportunity to Mr Goodenough to observe from a disposer's point of view whether or not there are real incentives built in to the system from the Shire level of the two tier area.

Mr Goodenough: The incentives for the waste disposal authority, of course, are all contained in the Landfill Directive and obviously the allowances that we discussed earlier. One of the issues that we have had for many years is the payment of recycling credits with the continuing escalation of the landfill tax because each time the landfill tax goes, and now it is £3 per annum that goes on to the recycling credit that we pay in the districts, from a waste disposal authority perspective there are no savings in generating more recycling that is done by the districts.

Q252 Chairman: Do these credits go back in real money terms?

Mr Goodenough: They do.

Q253 Chairman: They get money back?

Mr Goodenough: Yes, from the county.

Q254 Mr Liddell-Grainger: Can I just ask, there is an awful lot of money sloshing around here, is there not? Let us get our little piggies up the wall. £1.5 billion, £90 million a year on waste disposal, £630 million on PFI credits, there is a lot of money going in for waste, do you believe all this money will help you become more efficient and better? We are talking about £2.2 billion that has been put in to help.

Councillor Baker: I think the issue goes back to the fact that we have a remorseless, it seems, increase in the amount of household waste that is generated. As I said earlier, we have had a 2½% increase on the EPCS block overall.

Q255 Mr Liddell-Grainger: Do you mind, this does not make sense, does it? This is the five year plan, *Delivering the Essentials of Life*. It says they are

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going to give you £630 million, PFI, they are going to give you £90 million a year, I do not know how long for, presumably five years, so £90 million every year, £1.5 million to the EPCS and you are only getting two per cent. It does not quite add up, does it? This is what money is being put in. That does not quite add up, does it? You would have thought there would be more money. Is it just 2% or is this all of this coming in different pots which you do not know about or in different ways?

Ms Roberts: The calculation we have made is around the EPCS block for the settlements for the forthcoming year. In terms of what we need in the future there are no indications that there will be enough money to fill the gap which we see to be around—

Q256 Mr Liddell-Grainger: That is not what the Government are saying. Have you seen *Delivering the Essentials of Life*? It is the Defra five year strategy, HMG, dated December 2004.

Ms Roberts: Last week.

Q257 Mr Liddell-Grainger: If you look on page 31 it is all laid down there, what we will do—Comrades—it is all there. You are saying it is not there.

Ms Roberts: We have crunched the numbers back at the LGA for the settlement and for the various announcements that happened, partly the Spending Review this year, partly the settlement, and partly the various bits and pieces of funding.

Chairman: Can I make a suggestion because we are in danger of having a very interesting discussion but without, in fairness, enabling you to focus on Mr Taylor's questions which he wants to ask about PFI. I think what Mr Liddell-Grainger is concerned about in the context of budgetary adequacy is taking into account the different streams of money which are available to you whether in your judgment, however they arrive and to whichever authority they go, you have adequate resources over the timescale of the targets which have been set for landfill diversion to meet those targets. Perhaps if you have done some number crunching, again you might provide us with your observations on adequacy of funding. David?

Q258 David Taylor: In the waste paper basket on 2 May 1997 at the Treasury was found a discarded piece of paper, crumpled up with PFI on and this Government, sadly, uncrumpled that and got the PFI system up and working. The Minister said to us just a few days ago that there are £400 million of PFI credits available for very large schemes to tackle some of the problems you have mentioned in your evidence and what you said earlier on about creating new infrastructure to cope with various recycling, compost, feedstocks and so on. What has been your members' experience of using the PFI routes? In quite a lot of areas of the economy where PFI has been used they have found PFI to be prohibitive in cost and flawed in concept and intolerable in consequence. I do not want to set you up for an answer but what is your response?

Councillor Baker: Perhaps we could mention, also, one of the difficulties that local government is having is that we do not have certainty, for example if a particular authority chooses mechanical and biological treatment as being the way it wishes to deal with its local waste, how the output from that is going to be coped with which means that you do not have certainty over what use the material can go to or how much it will cost to dispose of that route which makes it extraordinarily difficult for councillors to have any confidence about whether a particular investment is a good and safe long term investment for their area.

Q259 David Taylor: It is coerced privatisation, is it not?

Councillor Baker: You might say that.

Q260 David Taylor: I think I did! Where your members have used the PFI route, how difficult have they found accessing the funding because the Minister suggested that there is funding just waiting there to be rolled out into appropriate schemes. He gave the figure of £400 million.

Ms Roberts: I think there are a couple of issues. One is that we do welcome funding for PFI. It is very expensive. I could give evidence from one council where I think they spent £3 million putting together their PFI. I would need to get them to give you the details on paper. We know there are concerns on both sides, both for industry and local government, about the costs. We have worked and we have worked hard together to try to tackle those issues. We are also looking towards promoting prudential borrowing and things like joint ventures and, frankly, any other way of perhaps trying to attract funding to this area. We are focused on it. We know there are issues with PFI. We are working with our sister organisations, the 4ps, and others to try to improve the issues which are very often around contracting documents, legal fees and consultants' fees that we believe are duplicated a lot around the country. We have been lobbying hard to have a centre of procurement excellence set up for waste. We hope very much the Government will provide funding for that. We believe that will enable councils dramatically to reduce the costs they pay as they go through procurement, but also beyond procurement as they manage their contracts and in fact deliver efficiencies as per this Government's Gershon agenda, which has been our own agenda for a very long time.

David Taylor: There is precious little sign of that at the moment in the early output from these schemes. They are extraordinarily expensive to set up and inflexible in operation, but I welcome the point that you have made.

Q261 Chairman: Perhaps you might be able to answer this. We have been through PFI. What proportion of the cost of the project has been represented by the fee structure you have just described? That would be interesting. Is there in your area any standard form or template contract which might help in the future to relieve the

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concerns which you put forward? Let us move on to the question of landfill trading schemes. There seems to be a difference of opinion about whether these things are going to work. The Minister told us last week that efficient local authorities that have done well in their waste management are likely to have credit with this scheme; in other words, there are supporters. Equally, there are some who disagree with that. Give us a flavour of how the world of local authorities sees this scheme. Are there more supporters than antagonists?

Councillor Baker: I think flavour can be had from a recent workshop that the Local Government Association held where councillors and officers from a wide range of authorities were dealing with specific problems that we saw upcoming in the future. Half of the room was entirely devoted to dealing with the issue of LATS and the other half was actually looking at the practicalities of how we deal with the materials we are all collecting for disposal.

Q262 Chairman: Whose responsibility is it to sort out the practicalities? The Government has given you all your targets under this scheme, but whose job is it to make it work?

Ms Roberts: There are certain aspects of the trading scheme on which we would have hoped Government would have taken more of a lead, and in particular have helped us with setting up some kind of system whereby buyers could buy and sellers could sell. There is no system out there. Hopefully, we will be launching a bulletin board for trades next week at the LGA, which is perhaps an extraordinary thing for the LGA to do, but somebody had to do it.

Q263 Chairman: That is a sort of waste eBay, is it? Is that not a jolly good idea because eBay works without anybody interfering? People just get on and buy and sell things. Is it not right you should set up something like that?

Ms Roberts: The Government is committed to setting up a bulletin board, but it has not committed to doing anything more than that. We believe councils want to trade now, and that is why we want to set up this bulletin board now.

Q264 Chairman: Why do you not put your credits on eBay? They seem to sell everything else like London Underground parts and old furniture. Your credits would do rather well on there, would they not?

Ms Roberts: That is a very interesting idea and one that I had, in fact, thought about. What that would not tell you, I guess, would be the price. The critical issue for local authorities is a lack of knowledge about the price. Local authorities do not work like the private sector or other sectors. We need to have a certain amount of understanding of what things will cost in order to be able to budget. This scheme is going to create particular problems with budgeting because we do not know the price.

Q265 Chairman: One of the points you make in your evidence is that this seems to be a potentially difficult issue, that those authorities that are struggling to meet their targets may well end up not getting credits but end up being in deficit. In paragraph 7 you conjecture, and I quote, "One partnership of authorities, which has put in place plans to meet the targets, has calculated it could face unavoidable additional costs of £13 million over a two year period alone if implementation is delayed by 18 months for example because of challenge in the planning process". I find that a nightmare scenario. The first question I put in the margin when I read that is: if the authority has not got the £13 million, what happens if it does not pay up?

Councillor Baker: That is our worry as well. We think there should be at least some kind of protocol established so that we have some idea.

Q266 Chairman: Are you really saying as far as the Landfill Allowance Trading Scheme that it sounds like an interesting idea but it has not been properly thought out and worked through, and that there are some serious practical pitfalls or elephant traps waiting out there if somebody does not get hold of it?

Councillor Baker: Our view is that it could be a useful tool for some authorities to use but not all.

Q267 Chairman: How is it that the Government has put one of their principal shirts on this particular rider? The Minister speaks in glowing terms, and you are looking at me as a hard-bitten, experienced local government operator and saying, "This thing is not really going to suit everybody. It looks as though it is going to fall at the first fence". Is that your view?

Councillor Baker: It is certainly our view that it is not going to suit everybody and that it diverts resource in terms of sheer funding—and really a very important resource, which is our officer time—from the prime objective of dealing with waste.

Chairman: In your subsequent note, perhaps you would like to append your observations as to what needs to be done to fix this particular nag before it goes into catastrophic failure at the first fence.

Alan Simpson: In relation to that note, it would be helpful to the Committee if you were a little less polite with us. It is almost like Defra officials saying to us, "This helps a little here and we think it might help there, and people are doing their best here". By and large, the Committee is fairly single-minded about the bottom line of our inquiry and that is: is this going to meet the targets? If it is not going to meet the targets, you need to tell us. More than that, if you are, as it were, the front-line delivery vehicles for this programme and know it is not going to meet the targets, it would be helpful if you would say, "And if you want to meet the targets, you are going to have to do A, B and C". Whether it suits some or others is immaterial to us. I do not give a toss about that. I want to know the bottom line and whether the targets are going to be met

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and, if they are not, what we have to do. In a sense, that is my plea for a fairly forthright set of inputs in your note.

David Taylor: If there is not going to be a hope in hell, do not say, "It will be something of a challenge" because that is not good.

Q268 Chairman: The word "challenge" is often used by the Permanent Secretary in Defra and it means we have not got a cat in hell's chance, but he calls it challenging.

Councillor Baker: I would say that it is extremely unlikely that we would meet our targets for 2010. Our projections suggest that over the following years it gets significantly worse than that.

Alan Simpson: That is more like it.

Chairman: Mr Simpson is quite right to go for bluntness.

Q269 Alan Simpson: In that context, where the household incentive schemes fit in and we are told that there is a degree of interest and enthusiasm in this, do you see that enthusiasm being manifested within the LGA? Are you clear about the other options that you might have for incentive schemes? How do you see this so far and what other choices might we have?

Councillor Baker: We definitely believe household incentives have a role to play but it will not be one size fits all. They will be appropriate for some local authorities; they will not be in others. Other forms of incentive may work in some areas but not in others because this is very much an area where the local authority needs to go with the full co-operation of residents and what will work in some areas will not work in others. What we are seeking is that we should have the power to introduce such schemes, granted to local authorities, but local authorities then have the discretion to choose what kind of scheme, if any, is appropriate in their area. Some authorities are very keen and believe it would work and would give an incentive that would encourage their local people on the amount of waste and to recycle more and will also help by increasing the funding available to them for their recycling.

Q270 Chairman: I know there is an interest in trialling direct or variable charges. Do you have any current examples of other incentive schemes that have worked well in particular areas?

Councillor Baker: Yes, I believe there is one authority which puts households that are participating in their recycling scheme in for a prize draw for a gift voucher, or something like that, on a regular basis and they found that increased participation. There is an authority that has given us a case study on how they have worked with their local community to ban the collection of side waste and to limit the size of wheelie bins for residual waste. They have been getting good results, but in each case these are authorities that have done it after considerable engagement with their local community and then ongoing continued

engagement because they need to reinforce the feedback and of course deal with any difficulties that people are experiencing.

Q271 Alan Simpson: Does that then follow in the opposite direction to what we are being told about planning approvals, that the pressure to improve the planning system seems to be time driven? I am not sure how well that sits with what you have just described as local authorities working closely with local communities. You do not do that overnight, but it seems to me that what we are talking about in planning gain is something really that translates into speeding up the process or the period within which planning applications are processed. I was following the Chairman's earlier point: how does that square with something like an application for an incinerator?

Councillor Baker: The waste strategy and the development of a waste strategy for an area will take time to develop. My own authority is within Project Integra in Hampshire. We had a long community consultation drawing up our waste strategy, but that still meant that the planning process was difficult. We have a small incinerator in my own authority. You are still vulnerable to a very mobile population, in many of our urban areas particularly. However hard you strive to engage with your community in developing a strategy, that is only a proportion of the community and not all of it, and so you are still vulnerable within the planning system.

Q272 Alan Simpson: Do you see the provision of the planning guidelines as helping you or hindering you in the process?

Ms Roberts: The consultation on PPS10 was published last week, or perhaps even this week. We have tried to take a look at it in advance of this inquiry. Perhaps I could make a couple of comments, although without prejudice to what we might say in our final submission. We welcome the provision for the idea that plans would be site-specific because we believe that would give the industry the confidence they need to put in applications. In terms of the extent to which this would stop the "challengeability", let us be clear that the processing of planning applications is not what is slowing this; it is the "challengeability" and the number of challenges that are made for waste facilities as they go through the process and that is a matter of local democracy and needs to be dealt with. We welcome moves to try to deal with the structural issues in the process, which are complex, and perhaps we should not necessarily go into now, but we believe that they will deal with this problem to an extent. So we broadly welcome what is in the consultation. We believe that it does raise quite serious capacity issues for local government because it introduces a role for local authorities in particular in doing environmental impact assessment, and that will create a capacity issue. Something that the Committee may find interesting

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is that there is a severe shortage nationally of planning officers in the waste planning area. That is something we are focused on in the medium term. **Chairman:** Thank you very much indeed for your practical observations. We have found this most helpful. I am sorry we have left you with a rather long list of further questions but we are anxious to concentrate on the practicalities. When you write, I would be most grateful if you would reflect on what Mr Simpson says and be candid with us; otherwise, we will not be able to produce a report

which will challenge the Government in those areas where you continue to have reservations. Thank you very much indeed for coming to give evidence and for your written contribution so far and in anticipation of that which is to come. I do hope you have a very happy Christmas but I suspect that your own activities may, in their own way, generate even more waste in the New Year.

*The Committee was suspended from
3.47 pm to 3.55 pm*

Supplementary memorandum submitted by the Local Government Association (X21a)

LGA was asked to suggest how the Landfill Allowance Trading Scheme might be improved

1. The LGA has gathered data from waste disposal authorities which sets out each council's prediction for the amount of Biodegradable Municipal Waste (BMW) they will be sending to landfill over time. The data suggest it is highly unlikely that the first target (2009–10) for England for reducing BMW to landfill—as per Article 5 of the EU Landfill Directive—will be met.

2. There is no reason why landfill trading alone will ensure the delivery of the 2009–10 target, since it simply allows councils to buy off their obligation by purchasing permits from councils which have them to sell¹ without giving a clear picture of the overall amount of new infrastructure (diversion capacity) being built.

3. Not only will it not ensure delivery on its own but, in its current form, it introduces rigidity and expense rather than the flexibility it was intended to afford.

- (i) A council is unlikely to use the system to buy off its obligation without knowing how doing so would compare to the costs of building infrastructure to discharge its obligation directly.
- (ii) In the absence of any knowledge of the price of a permit, councils are likely to assume (prudently) that they may have to pay as much as the £150 per tonne penalty. Since this is much higher than any waste management option, a prudent council would be unlikely to expose itself to the risk of paying this high price when all other options are cheaper.
- (iii) The lack of knowledge of price, and the fact that councils *must* buy permits if they exceed their allowance even before the target year 2009–10, combine to create a risk that councils will either pay over the odds for permits or simply buy permits because they have to (ie not as part of any trading strategy), so inflating the costs of delivery overall. This is what is termed “gold-plating”.

4. *The LGA believes two things need to happen to make LATS work*, to ensure the scheme delivers the flexibility it is intended to afford authorities, targets for England are met and costs are not inflated:

- (a) It is critical that councils have access to market intelligence. Essentially this would involve collating predictions for the amount of BMW each waste disposal authority intends to send to landfill over time. This would translate into a number of permits it could buy or sell over time. It would also translate into a “big picture” of overall capacity planned across the country. Further, it would create a map of “problem areas” which could be used to target support or manage joining-up of diversion projects, if the projected shortfall is indeed correct (the data which LGA has already collated needs to be properly validated, updated and made complete). The LGA is working to ensure this information is available (our “market intelligence” or “traffic lights” project). We aim to work with Defra on this project, though we have yet to find funding to support it.
- (b) The penalty needs to be reduced dramatically to much nearer the level of the likely cost of a permit on the market.

5. If these two issues are addressed, the LGA and the many officer networks which the LGA works closely with believe LATS could indeed provide councils with flexibility to deliver. In the absence of these and in particular the first, the scheme creates rigidity, a risk of overall non-delivery, and a longer-term risk of building of *too much* new infrastructure (since there is no coordination of new diversion capacity being built) or paying too much for it (since trading could transfer funds over and above the real cost of diversion).

6. Unless these issues are addressed, the LGA is concerned that LATS may simply create additional costs for councils which can ill afford them.

¹ providing there are permits on sale: if not they would have to pay a fine.

At the very least LATS is creating a “budgeting effect” which is putting pressure on Council Tax. It is appreciated that perfect trading would mean that LATS is revenue neutral nationally. However, the uncertainty and high levels of fines discussed above mean that in reality LATS is unlikely to be revenue neutral for budgetary purposes. There is no idea of supply or demand and therefore no agreed estimate of how much permits will trade at. The general accountancy principle of prudence means that it is highly likely that selling authorities will be budgeting for income from trading at a lower figure than purchasing authorities, creating a negative impact on Council Tax.

This brings us to the next question which the Committee asked for supplementary evidence on.

LGA promised more data (if they existed) on how much money authorities got back via the EPCS block compared to what they paid out in landfill tax

7. The system of redistributing Landfill Tax via EPCS does not come in until 2005–06 so no data exists at the present time. The system is designed to be revenue neutral at national level, and the LGA supported redistribution via EPCS.

8. The redistribution of Landfill Tax is really just a means of funding EPCS, and clearly the bigger issue for the LGA and local authorities is the considerable funding gap in EPCS: the Committee asked the Minister, Elliot Morley, how the formula calculations for EPCS work, and specifically how Government arrives at the amount per council (ie though we know that EPCS is distributed by head of population weighted for various issues—labour costs, deprivation, sparsity—the real question is on what basis the per head calculation is arrived at). The LGA is also keen to see the answer to that question.

There was discussion of the funding situation in two-tier authorities and the recycling credit system and LGA agreed to submit some more detail

9. A recycling credit must be paid by the disposal authority to the collection authority for every tonne of recyclable material collected and sent for either recycling or composting. The sum paid is the amount which the disposal authority has saved in not having to dispose. This system is meant to reflect the savings the disposal authority makes as a result of activity funded by a collection authority. This system is currently under review (LGA has been closely involved with the Defra consultation).

10. In reality, costs of waste/recyclables collection, treatment/reprocessing and/or disposal all interact and affect one another, and the LGA has concluded it would be impossible to find a simple and transparent mechanism for transferring funds which would reflect the real costs for each party. As such, the LGA supports a position where councils can put in place their own arrangements for transfer of funds between authorities, which would better reflect local circumstances than the current system. (In reality many groupings of councils have already put in place their own arrangements.)

11. The LGA appreciates this would require a change in partnership arrangements in many two-tier areas, in many cases moving towards more formal joint decision-making, budget-sharing or management arrangements. For that reason the LGA has supported an Innovation Forum project which aims to help councils build these new arrangements.

12. LGA were asked to provide a note in response to Mr Liddell-Grainger’s point about the PFI and WIP funding listed on p 31 of Defra’s five year strategy, and how it fitted in with LGA’s comments on the increase in the settlement for local authorities.

13. The issue of adequacy of funding for implementing sustainable waste management goals is one which we do not necessarily agree with Government on. Government *has* put more funding towards the EPCS block, PFI and some specific grants, and it has also funded the Waste Implementation Programme which offers technical support to local authorities. All of this is very welcome, but the LGA *still* calculates the funding gap to be very large—and possibly as much as a half a billion pounds a year for waste services alone (rather than EPCS services as a whole).

14. The LGA has calculated that there is in fact no real term increase in the funding settlement in the EPCS block for 2005–06. At just 2.5% increase this just accounts for inflation. Given that inflation for local authority spend in this area is likely to be higher than the general inflation figure, it is more likely that this 2.5% represents a real term cut. In any event, it is the lowest increase compared to the other funding blocks eg those which support education or social services etc.

On PFI, the LGA agreed to send a note on the cost to local authorities of the PFI process (LGA mentioned £3 million in the case of one authority, but other examples/average figure would be helpful) and the extent to which standard contract forms were used as a way of streamlining the process

15. The LGA has not been able to gather detail on the issue of costs associated with PFI bids in time and would be grateful if you could pass on our apologies to the Committee. A good deal of work has been undertaken on developing standardised contracting and LGA has worked with Defra and we are confident things are moving in the right direction.

February 2005

Memorandum submitted by the Environmental Services Association (X12)

1. The Environmental Services Association (ESA) is the UK's sectoral trade association for the waste and secondary resource management industry which annually contributes more than £5 billion to GDP.

2. The Landfill Directive is the single most important driver for our sector's future. ESA's Members want to be enabled to deliver the United Kingdom's compliance with the Landfill Directive and other relevant EU law, with appropriate pre-treatment of hazardous wastes and the return to the productive economy of much more of the energy and materials contained in waste.

KEY COMMENT

- there has been improvement in the Government's performance, particularly in relation to municipal waste, but not at a rate sufficient to secure the UK's compliance with the Landfill Directive;
- uncertainty, the dominant theme identified by the Committee in its inquiry into hazardous waste, continues to characterise the implementation of the Landfill Directive; and
- the Country was unprepared for the banning of co-disposal and we do not see evidence that preparation for forthcoming milestones is better.

1. THE GOOD NEWS

3. There has been recent movement in the right direction including:

- the review of environmental and health effects of waste management and the current Minister's accompanying comment;
- The Waste and Emissions Trading Act 2003;
- The Household Waste Recycling Act 2003;
- work by the Waste and Resources Action Programme to develop markets in recycled materials; and
- leadership within Europe on the use of economic instruments to deliver defined environmental outcomes.

4. However, the rate of progress does not appear to be adequate to comply with required diversion of biodegradable municipal waste (BMW) from landfill. The Country has not caught up with comparable EU Member States in recovering value from the municipal waste stream and the Government has chosen to reach the destination of the regime required by the Landfill Directive for hazardous waste through a route that involves avoidable and significant risk.

2. HAZARDOUS WASTE: A NATION UNPREPARED

5. Although the Committee identified uncertainty as the dominant theme of its inquiry into hazardous waste, this has, as is illustrated by the table below, continued to dog implementation of the Landfill Directive. For example, the Waste Acceptance Criteria (WAC), which define the basis of any investment in infrastructure to pre-treat hazardous waste, only came into force in the summer of 2004.

(a) *The Story since the EFRA Committee's Report on Hazardous Waste*

<i>Date</i>	<i>Milestone</i>
<i>2002</i>	
July	Environment Select Committee publishes its Report on Hazardous Waste.
December	The Government establishes the hazardous waste forum.
December	Waste Acceptance Criteria appear in the EU's Official Journal.
<i>2003</i>	
February	1st meeting of the hazardous waste forum.
April	ENTEC's report for the Environment Agency warns that new capacity to treat 2 million tonnes of hazardous waste per year will be needed.
May	The Environment Agency warns that the number of hazardous waste landfills in England and Wales will fall by 92% from 16 July 2004.
December	12 months after the establishment of the hazardous waste forum and with less than seven months before the banning of co-disposal the Government publishes its "hazardous waste action plan".
<i>2004</i>	
March	Enviros warns the hazardous waste forum that 3.5 million tonnes per annum of treatment and disposal capacity is likely to be needed to manage hazardous wastes before 2005.
17 May	Regulations applying WAC to English and Welsh landfill sites are laid before Parliament.
15 June	Regulations applying WAC start partially to come into force, one month before the end of co-disposal.
29 June	The Environment Agency warns that the costs for waste producers of disposing of hazardous waste will triple following the banning of co-disposal.
16 July	Co-disposal is banned.
29 July	The Government launches a consultation on implementing the EU Hazardous Waste Directive: the deadline for transposition was 1 January 2002.
September	The Government publishes its interpretation of the Landfill (England and Wales) Regulations 2002 which had come into force more than two years before.

6. The Government could and should have avoided uncertainty and substantial environmental risk by indicating some years ago that hazardous waste would be required to be treated to final storage quality compliant with WAC when co-disposal was banned. This would have enabled our sector to invest in pre-treatment infrastructure and given waste producers confidence that lawful and safe treatment would be available for hazardous wastes.

7. In a context where we believe defective implementation of EU law is now, for practical purposes, providing a permissive framework for criminal and dangerous disposal of hazardous waste streams, we do not believe the Government has taken anything like sufficient action to raise awareness within the legitimate business community of the legal duties businesses retain regarding the waste they produce and the risks that are run when such wastes are consigned to criminals.

8. There is some evidence that most businesses are unaware of their duties and the Federation of Small Business has recently commented,

"Government's failure to publish the regulations in good time and implement an effective and high profile information and awareness programme has resulted in an information vacuum for many small businesses". (ENDS, July 2004)

9. It is, for example, beyond the powers of ESA and our Members to ensure British business is fully informed of aspects of the new legal framework for hazardous waste such as reclassification of some waste streams as hazardous. ESA repeatedly urged the Government to launch a high profile media campaign aimed at business.

10. In the event, the Government's dedicated website on hazardous waste was only available immediately before the end of co-disposal and we are not aware of any evidence that it has perceptibly raised awareness of hazardous waste.

11. While the establishment of a hazardous waste forum, following a recommendation from this Committee, was useful in bringing together partners to discuss and press key issues, it was never going to be sufficient—as we warned from the outset—to prepare the nation for the banning of co-disposal.

(b) *Where are we now?*

Certainties

12. The United Kingdom has a significantly diminished hazardous waste landfill capacity. Only six merchant hazardous waste landfill sites have received a permit to accept a wide range of hazardous wastes.

13. The present climate is not conducive to investment in infrastructure even though, for example, compared to 16 high temperature incinerators in France, the UK has only three, one of which is mothballed, to treat hazardous waste.

Uncertainties

14. For a number of reasons, ESA has for some time pressed the authorities to obtain real-time data on relevant material and waste flows.

15. This has not happened and, as a result, the Government and the Environment Agency still do not know precisely what has happened to hazardous waste streams formerly sent to co-disposal landfill sites.

16. Following the banning of liquid hazardous waste from landfill sites in 16 July 2002 our Members reported no significant increase in this type of waste being accepted into regulated treatment facilities. ESA and our Members do not know what has happened to this waste stream. There is now also mounting concern that solid hazardous waste seems to have been similarly “disappearing” since 16 July 2004.

17. Neither the Government nor the Environment Agency knows how much hazardous waste is being stockpiled by producers, disposed of illegally by criminals or being incorrectly classified by waste producers as non-hazardous.

18. Whilst we welcome fly-capture it has been operational for only a few months and does not automatically include fly-tipping on private land. In addition, no significant additional resources have been allocated by the Environment Agency to detect and prosecute criminal dumping of waste.

(c) *Where do we need to go?*

19. The banning of co-disposal was the first step in implementing the hazardous waste provisions of the Landfill Directive: the application of hazardous WAC in July 2005 is as significant for producers and managers of waste and is another deadline for which the Government is failing to prepare the nation.

20. As noted above, WAC were confirmed only in the summer of this year. Our Members have been given a year to identify markets, raise finance, gain planning consents, obtain environmental permits, construct facilities and conduct appropriate testing before finally accepting and treating hazardous wastes.

21. Again, the conditions for prudent investment are not yet in place. The legal framework is still unclear. Our Members still do not know how the WAC for monotholic hazardous waste will be defined and the Hazardous Waste Regulations have still not been transposed into UK Law.

22. More generally, the culture of enforcement is still insufficiently strong to encourage investment.

23. For example, the Grant in Aid budget from Defra to the Environment Agency, used to fund policing and enforcement of illegal waste activity, has been cut by £4 million for 2004–05 even though the implementation of more prescriptive EU environmental standards is so obviously bound, if inadequately policed, to increase criminal activity.

ESA RECOMMENDATIONS

- The Government must fund the development of a real-time data management system to track waste flows and, therefore, to identify and police criminal dumping of waste.
- The Government must promptly launch a substantial and effective awareness campaign to inform British business of its legal duties as producers of waste and of the implications of applying WAC from 16 July 2005.

3. IMPROVING LANDFILLS

Treatment prior to landfill

24. The Landfill Directive requires waste to be pre-treated before acceptance into landfill. In 2001, the Environment Agency consulted on draft guidance on waste pre-treatment requirements of the Landfill Directive. Three years later, it still has not published this guidance. In addition, and as mentioned above, the Government’s interpretation of the pre-treatment requirements was only published in September 2004, more than two years after relevant Regulations came into force.

Engineering and Design of Landfills

25. The Directive requires changes to the design and engineering of landfill sites resulting in significant investment by our Members. The legal framework to interpret and apply these requirements is unclear and imprecise: currently 10 out of 12 technical guidance notes are still outstanding (see Appendix One) [Not printed, the guidance notes are available from the Hazardous Waste Forum website www.nhhwf.org.uk]

26. Since the start of the landfill permitting process in early 2003, ESA's Members have had constantly to reassess permit applications because of revisions to the Agency's guidance. In some cases engineering work was carried out and became almost immediately redundant because of revisions to the Agency's guidance.

Processing of Applications

27. The Environment Agency has processed only 20% of the 250 permit applications that have been submitted. It has therefore not met its own deadline of having processed 80% of the applications submitted.

Financial Provision

28. ESA has for a decade attempted to drive forward implementation of Articles 8(a)(iv) and 10 of the Directive including, on our own initiative, proposing two viable solutions.

29. An approach currently proposed by the Environment Agency would require our Members to divert hundreds of millions of pounds to specific accounts at a time when they need to raise capital to fund investment in new waste management infrastructure. We believe it would be economically and environmentally more sustainable transparently to apply the polluter pays principle by introducing a transparent PPC Landfill Remediation Contribution to be paid in addition to the operator's gate fee and Landfill Tax on each waste of tonne accepted into a landfill facility.

4. MUNICIPAL WASTE: PROGRESS BUT NOT FAST ENOUGH

30. There has been progress during this Parliament on municipal waste. For example, working in partnership with ESA's Members, local authorities are recycling more waste than ever before and the amount of municipal waste landfilled fell last year.

<i>Date</i>	<i>Milestone</i>
<i>1999</i>	
July	Landfill Directive appears in the EU's Official Journal.
October	The Government publishes its consultation entitled <i>Limiting Landfill</i> .
<i>2001</i>	
April	The Government confirms that a system of tradable permits will be introduced in England to limit the amount of BMW landfilled.
<i>2002</i>	
November	Waste and Emissions Trading Bill is published.
<i>2003</i>	
29 August	Defra launches a consultation on the Landfill Allowance Trading Scheme (LATS).
October	In its reply to the EAC's report, Waste—an Audit, Defra states that LATS " <i>is unique in Europe and is evidence of the Government's commitment to changing the face of waste management and ultimately surpassing the requirements of EU Directives</i> ".
November	The Waste and Emissions Trading Act receives Royal Assent.
November	Defra delays the introduction of LATS until 1 April 2005.
<i>2004</i>	
May	Defra publishes the outcome of the consultation on LATS.
22 July	The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 come into force.
August	Defra writes to local authorities informing them of their provisional landfill allowances. Final allowances are expected to be announced in November 2004.

31. However, we do not believe that progress is yet adequate to achieve the 2010 BMW diversion targets of the Landfill Directive.

32. This Committee stated recently, “we are extremely doubtful that the target (the 25% recycling target for 2005–06) will be met, and were surprised that Departmental Report said that Defra was ‘on course’ to achieve its goals” (The Department Annual Report 2004).

33. Our EU competitors like Austria and the Netherlands already comply with the 2016 BMW diversion targets of the Landfill Directive and ESA’s Members are already recovering much more value from municipal waste streams in other EU Member States. Closer to home, the Government has still not delivered full funding of the municipal waste stream, a clear and precise legal framework or an effective and efficient planning process. All are needed to deliver compliance with the Landfill Directive.

Inadequate Legal Framework

34. The legal framework for municipal waste remains unclear and imprecise. In its Report, *The Future of Waste Management*, this Committee commented:

“Defra must ensure that regulations and guidance on the treatment of biodegradable waste are made available as soon as possible”.

35. As things currently stand, local authorities do not know how much BMW they will be allowed to landfill from 1 April 2005 or whether statutory recycling targets will be extended beyond 2005–06. One example of operational uncertainty is that local authorities and our Members are still awaiting official guidance as to the deemed level of treatment delivered by Mechanical and Biological Treatment Processes.

36. ESA has also proposed significant modernisation of environmental regulation and suggested that the British Presidency in 2005 would be a good opportunity to align environmental regulation to the next wave of environmental initiatives.

Inadequate Funding

37. A Mori survey of 2002 showed that waste collection, management and recycling was seen as the most important service delivered by local authorities—well above schools and maintenance of roads—even though it accounts for only 1.5% of total expenditure by local authorities.

38. The Local Government Association, the Policy Studies Institute, Ernst and Young and PricewaterhouseCoopers all agree with us that more resources need to be invested in the management of the municipal waste stream. We spend only half what comparable European countries spend on municipal waste management: spending on municipal waste management needs to get to £1 per person per week to achieve average European standards of performance.

39. The Gershon review missed an opportunity to reduce public spending: it could have recommended that funding for municipal waste management be taken out of public spending altogether.

40. Variable charging may well be the long-term funding solution for management of the municipal waste stream. It applies the polluter pays principle and, properly structured, could deliver new infrastructure without any increase in public spending.

41. However, at current stages of public awareness and to avoid a potential increase in fly-tipping, we see merit in an initial period of a flat rate direct charge which provides no perverse incentives. Subject to the caveat that the primary need is to get more money into waste management rather than to disburse funds, we also see merit in schemes which reward householders for achieving adequate levels of segregation.

Poor Planning Performance

42. According to the Environment Agency, 2,000 waste management facilities may be needed to comply with the Landfill Directive.

43. In its response to this Committee’s inquiry into the Implementation of the WEEE and ELV Directives, the Government suggested that the planning process was “doing a good job”. We do not see that the Government is in a position to substantiate this cheery assertion: as the Government is not measuring the additional waste management capacity being delivered it does not appear to know whether recycling and recovery treatment capacity sufficient to enable the UK to comply with the Landfill Directive is being consented or even whether there is currently a net loss of permitted waste management infrastructure.

44. The cost, delay and uncertainty of the current planning regime present ESA’s Members with very considerable difficulty in funding and managing the construction of new facilities. For example, in 2002–03 nearly half of “major” waste management applications took longer to be determined than the Government’s target of 17 weeks.

45. The review of PPG10 presents the Government with an opportunity, which it is imperative to seize, to improve the performance of the planning process. To contribute to this review, ESA published earlier this year *Land-use Planning for Sustainable Waste Management*. This report sets out in some detail how key land-use planning issues at national, regional and local levels can be addressed now to achieve more sustainable resource of uses.

ESA's recommendations included:

- (a) a national framework offering precise guidance on the interpretation and interaction of key planning principles, and setting out the waste management capacity required in 2010, 2013 and 2020;
- (b) preparation of model policies; and
- (c) promotion of environmental business planning zones.

5. THE GOVERNMENT: CAN IT DELIVER ON WASTE?

46. The Government's performance on waste has been consistently criticised during this Parliament:

This Committee:

"We are concerned that Defra still appears to lack the capacity, the vision, the sense of urgency and the political will to break the mould and bring about truly sustainable waste management in this country" (from *The Future of Waste Management*).

The Environmental Audit Committee:

"The difficulties associated with the UK's waste problem are compounded by the fact that the Government's record in dealing with EU Legislation on waste is so poor" (from *Waste: An Audit*).

The House of Lords Select Committee on the European Union:

"The Government do not provide convincing evidence of a strategic approach to EU waste policy" (from *European Union Waste Management Policy*).

47. Delivering progress on waste management requires political determination and co-ordination within the Government: compared to many other parts of the EU, the political commitment to become a world leader in recycling and recovery is still lacking and, as a result, the country is continuing to lose economic and environmental opportunities.

48. A strategic waste authority would certainly not be the answer: its main practical effect would be to dilute the ability of the Select Committee to hold Ministers to account.

49. Nor does ESA necessarily believe that responsibility for waste should be brought under the control of one Department: to achieve alignment of economic and environmental outcomes, there is potential merit in a constructive tension between DTI and Defra where Defra leads on proposing environmental policy and legislation and where DTI provides effective economic analysis of the costs and benefits.

ESA RECOMMENDS:

Making the Economic case for the Environment

50. We do not believe that the Government, and this applies to each of the Treasury, DTI and Defra, is properly making the economic case for environmental improvement and increased resource efficiency. It is likely that the price of commodities will tend to rise considerably during this Century. It would be prudent to secure better resource efficiency in the British economy sooner rather than later and this would also enable the UK to develop a more appropriate share of global markets in environmental services.

The Right Priorities

51. The primary driver for the waste management industry is regulation: a clear and reliable legal framework is a pre-requisite for the £10 billion of investment the sector probably needs to make in new infrastructure over the next decade. Taken as a whole, we believe it would be difficult for the Government to sustain a claim that it had invested sufficient intellectual capital in aligning economic and environmental sustainability in the context of EU law.

Increasing Parliamentary Scrutiny of the European policy making process

52. We welcome the ambition of the Leader of the House to improve Parliamentary scrutiny of EU Legislation. In the context of the Maastricht and Amsterdam Treaties which applied QMV and Co-Decision to environmental policy, it has also become much more necessary for the Government to engage potential partners like ESA in the emerging new wave of EU activity but this has not yet happened.

Modernising Environmental Regulation

53. ESA believes that the UK should use its Presidency of the European Union to modernise environmental regulation and that this could also help the UK as Chairman of the G8 to secure essential environmental outcomes. The next generation of environmental improvement cannot be achieved by adding another layer of prescription to regulation of industrial process. Environmental regulation should instead

sustain a better environment by harnessing the market to carefully defined environmental outcomes. Our industry would welcome the opportunity to rise to the challenge and opportunity of consistent, transparent and more scientifically prioritised regulation of environmental outcomes in order to align economic and environmental sustainability.

1 October 2004

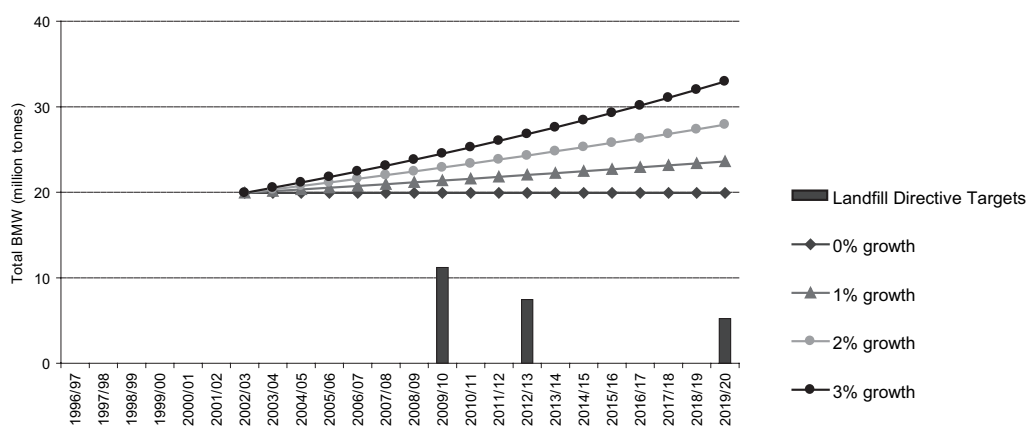
Supplementary memorandum submitted by the Environmental Services Association (X12a)

Further to your line of questioning of Elliot Morley MP on the tonnage of biodegradable municipal waste (BMW) that needs to be diverted in England by 2010, 2013 and 2020, I thought it would be helpful to send to the committee before our appearance on 15 December, a series of graphs which demonstrate the scale of the challenge. The graphs are based on:

- 29.31 million tonnes of municipal waste produced—as recorded in Defra’s Municipal Waste Management Survey 2002–03, the last year for which figures are available;
- Defra’s assumption that the biodegradable content of municipal waste is 68% (specified in the Landfill Allowance Trading Scheme Regulations); and
- Restrictions on the BMW able to be sent landfill in England of 11.2 million tonnes of BMW in 2010, 7.46 million tonnes of BMW in 2013 and 5.22 million tonnes of BMW in 2020 (specified in the Landfill Allowance Trading Regulations).

Figure 1

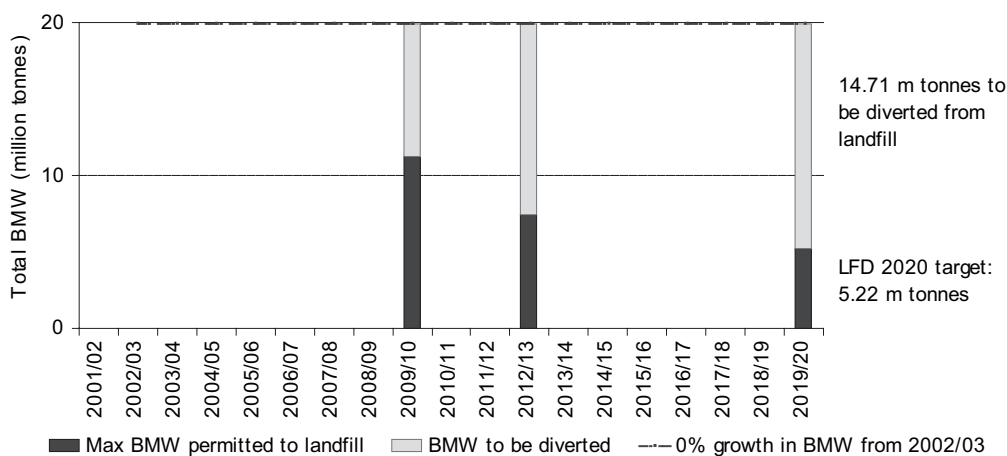
BIODEGRADABLE MUNICIPAL WASTE ARISING AND THE LANDFILL DIRECTIVE TARGETS



	<i>LFD Targets (m tonnes)</i>	<i>BMW to be diverted if 0% growth in BMW (m tonnes)</i>	<i>BMW to be diverted if 1% growth in BMW (m tonnes)</i>	<i>BMW to be diverted if 2% growth in BMW (m tonnes)</i>	<i>BMW to be diverted if 3% growth in BMW (m tonnes)</i>
2010	11.2	8.73	10.17	11.69	13.31
2013	7.46	12.47	14.56	16.83	19.32
2020	5.22	14.71	18.38	22.69	27.72

Figure 2

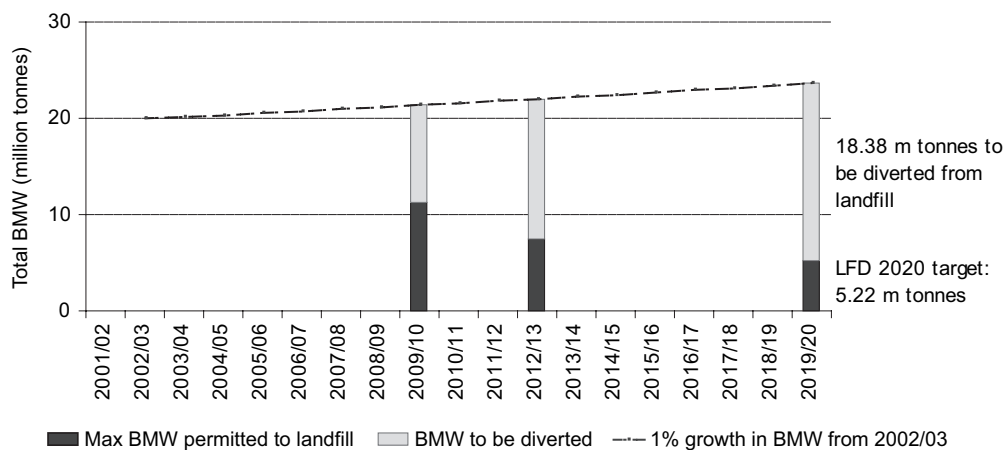
BMW TO BE DIVERTED FROM LANDFILL IF GROWTH IN BMW IS ASSUMED TO BE 0% PER ANNUM



	<i>LFD Targets</i> (million tonnes)	<i>Total MSW</i> (million tonnes)	<i>Total BMW</i> (million tonnes)	<i>BMW to be diverted</i>
2010	11.2	29.31	19.93	8.73
2013	7.46	29.31	19.93	12.47
2020	5.22	29.31	19.93	14.71

Figure 3

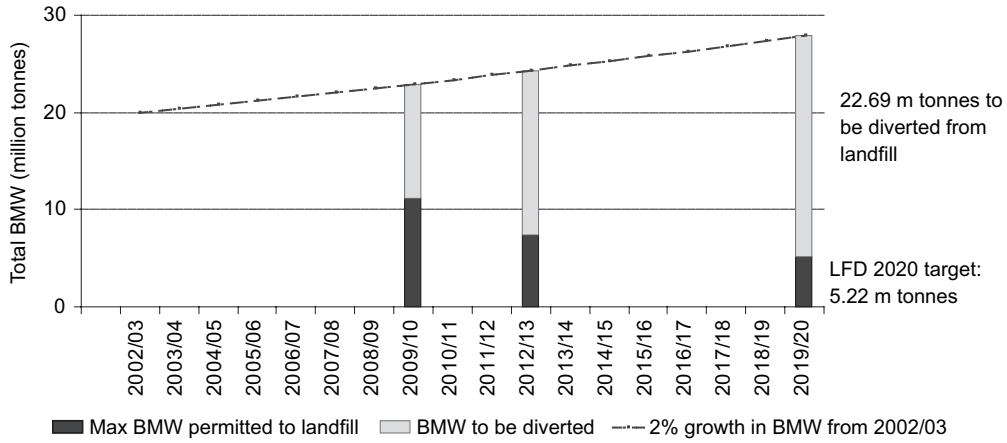
BMW TO BE DIVERTED FROM LANDFILL IF GROWTH IN BMW IS ASSUMED TO BE 1% PER ANNUM



	<i>LFD Targets</i> (million tonnes)	<i>Total MSW</i> (million tonnes)	<i>Total BMW</i> (million tonnes)	<i>BMW to be diverted</i>
2010	11.2	31.42	21.37	10.17
2013	7.46	32.38	22.02	14.56
2020	5.22	34.71	23.60	18.38

Figure 4

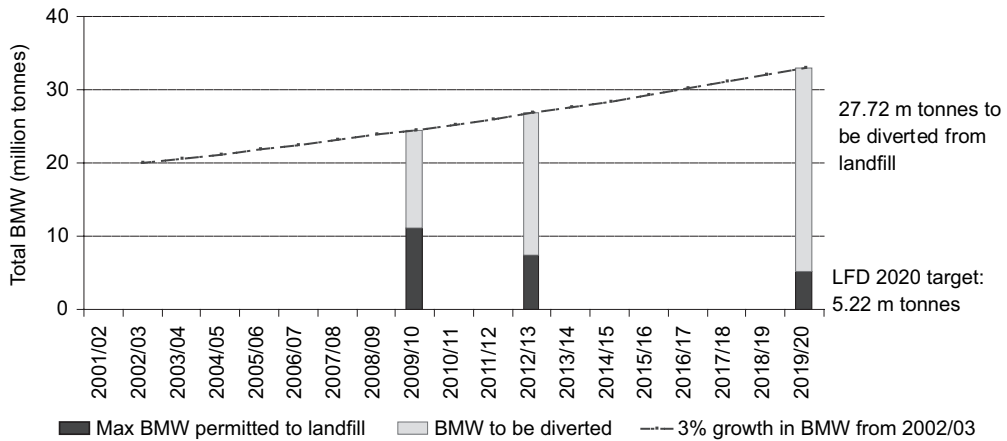
BMW TO BE DIVERTED FROM LANDFILL IF GROWTH IN BMW IS ASSUMED TO BE 2% PER ANNUM



	<i>LFD Targets</i> (million tonnes)	<i>Total MSW</i> (million tonnes)	<i>Total BMW</i> (million tonnes)	<i>BMW to be diverted</i>
2010	11.2	33.67	22.89	11.69
2013	7.46	35.73	24.29	16.83
2020	5.22	41.04	27.91	22.69

Figure 5

BMW TO BE DIVERTED FROM LANDFILL IF GROWTH IN BMW IS ASSUMED TO BE 3% PER ANNUM



	<i>LFD Targets</i> (million tonnes)	<i>Total MSW</i> (million tonnes)	<i>Total BMW</i> (million tonnes)	<i>BMW to be diverted</i>
2010	11.2	36.05	24.51	13.31
2013	7.46	39.39	26.78	19.32
2020	5.22	48.44	32.94	27.72

Witnesses: **Mr Dirk Hazell**, Chief Executive, ESA, **Mr Marek Gordon**, Chief Operating Officer, SITA, and **Mr Peter Jones**, Director External Relations, Biffa, examined.

Chairman: We welcome old friends of the Committee, the Environmental Services Association. Mr Simpson will start our questioning with matters connected with hazardous waste.

Q273 Alan Simpson: We are told that we are just not prepared for the ending of co-disposal. Is that an accurate starting point, that we are a nation unprepared?

Mr Hazell: It is certainly the case, Chairman, that we were a nation unprepared for the end of co-disposal and we are a nation unprepared for the full introduction of the waste acceptance criteria, the pre-stabilisation for hazardous waste, next July. There are the same four reasons in both cases: regulatory deficiency; poor data; a lack of confidence in regulatory enforcement; and very poor governmental communication with waste producers. Obviously, in a supplementary I can deal with the end of co-disposal last July or what is coming next July, whichever is the most pertinent.

Q274 Alan Simpson: One of the main bits of advice when you are in this sort of situation is: when you are in a hole, stop digging. That is not an option for the Government. What should we be seeking to advise the Government to do now to address those four areas of deficiency? It would have been easier to say, with the consultation that has been going on since 1999, what more could you have asked for? You have given us a list of four specific areas of failings. What now does the Government urgently need to do?

Mr Hazell: The Government needs to do four things. The single most important is to put the regulatory system completely in place as soon as possible: that is for Defra and the Environment Agency. We have produced a schedule of incomplete regulation for the Committee this afternoon which is broadly similar to the supplementary schedule the Environment Agency has produced, except ours is not quite as complete! Our schedule sets out very clearly on one page the regulations that still need to be put in place for next July.

Q275 Chairman: Does this take into account the exchange you had with reference to the Environment Agency, your comments, their reply, and your seeing their reply? Is this up to date? You have made a lot of accusations and the dear old Environment Agency gave you a bit of a belting, did they not?

Mr Hazell: I would quite like to deal with the Environment Agency's allegations, perhaps a little later on in oral evidence, if I may.

Q276 Chairman: We will give you an opportunity to do that. You concentrate on the table.

Mr Hazell: Specifically on the table, as you can see, as of today, the hazardous waste regulations are not in place and they specify what is and is not hazardous waste, and also the procedures for consigning hazardous waste. Second, the landfill

amendment regulations are not in place. Perhaps the main practical impact of that is dealing with monolithic waste, which is effectively stabilised cementitious waste that would go not necessarily to a hazardous waste landfill but to a stable, non-reactive cell. In brief summary, there are those two aspects of the regulations that are not in place. We still do not know what the Agency's Enforcement Priorities are. The procedures for sampling and testing of waste to meet the Waste Acceptance Criteria are still not in place, so waste producers do not really know what they have to do. The national interim waste procedures on the Environment Agency, the final version, were expected in the autumn. We still do not really know, incredibly, what the full treatment and management requirements are for hazardous waste in the current interim year and we are half-way through that. The overarching risk assessment guidance still is not out. What was not on our list, but in fact is on the Agency's list, is guidance on treatment requirements, and that is not out. One way and another, neither the industry nor waste producers yet have the full regulatory information that they need in order to plan for next July. I said there were four headings and there are. Another one is: poor communication. We think Defra's communication with the nation has been pathetic. The Environment Agency undertook a survey two years ago. It emerged very clearly from that that three-quarters of the country's honest businesses do not actually know what their duties as waste producers are. They certainly cannot be expected to know of any change in the duties unless the Government really makes quite a serious effort to tell people what they are. We wanted a high media television programme. We understood the Minister to say on *Newsnight* in the summer, when he and I were on the same programme, that there would be, but in fact that media programme turned out to be about towards municipal waste. We would certainly invite the Committee, in the context of very inadequate public communication by the Government, almost concealment by the Government of the changing regime on hazardous waste, to consider recommending a joint DTI/Cabinet Office review of engagement with waste producers and our industry in terms of public information. More generally, because I think this goes back to all the briefs, and the Chairman was kind enough to say we had been a friend of this Committee, it is the same thing every time we come here. In terms of implementing any new European laws, we really need detail from day one, from the day it appears in the official journal of the European Union, from the Government for the relevant industries on how it is actually going to work in practice. They certainly had not thought it through on hazardous waste. So two of the items are regulation and poor communication with waste producers. We do not really have very much confidence in the regulator's enforcement; there are clear instances where the regulator has given a nudge and a wink to people that a semi-blind eye will be turned, and data is abysmal. Data is Mr Jones's crusade; he got there before we did.

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Q277 Alan Simpson: Before we get on to whether you achieve your desire for a joint interdepartmental committee on this, and that is another matter, you cannot be faulted for not having produced your list of presents for Santa. Whether Santa in No. 10 takes heed of them, I think we can hold our breath on that one. Can I move us on to the hazardous waste and the data issue? Communication is one thing but communication about what is another. You heard the Minister say that he was bewildered, his term, about your claims on problems in terms of the disappearing data. He had said that he thought it was entirely to be expected that there would be a fall in hazardous waste. Can we just try and be clear about what data there is, as opposed to what speculations there might be. This came up in your introduction.

Mr Hazell: Before Peter Jones comes in, could I say that we have read the Minister's evidence very carefully. It almost certainly is the case that there has been an increase in minimisation and waste segregation, but we are not going to speculate on the amount of hazardous waste that is missing because the data simply is not there. I think that really is Peter Jones's cue.

Mr Jones: First of all, I would certainly add to Dirk Hazell's Christmas shopping list and perhaps look at an umbrella feature. If you look at the history of our industry over the last three or four years, the removal of liquid hazardous wastes from landfill, (that ban came in two or three years ago) the whole fridges saga, now the hazardous waste saga and potentially the WEEE saga—have all been episodes where much greater regulatory effort has been applied to a particular area, and the stuff has magically disappeared! Nobody knows where it is. We find that extraordinarily strange. In our legitimate operations, we never saw an upswing in this hazardous liquid waste to treatment centres. None of us had anything to do with the fridges to any great extent because there was no money going in. The fear that we have is that disorganised crime is being attracted in as a result of these fairly fundamental regulatory difficulties, which are driven by absence of data. The second overarching dichotomy in this whole process is that it is intellectually flawed. We have a regulatory framework on local authorities associated with organic wastes under LATS, (which is about organic waste from households), yet we blithely ignore exactly the same material with the same constituents that is coming from hotels, pubs, restaurants and commercial establishments. That is intellectually flawed. If organic waste is a problem, it is a problem; it does not really matter where it comes from. When we look at hazardous waste, it is exactly the opposite. We have this immense regulatory framework with weighted conditions and methods of operating associated with defined hazardous wastes from industry and commerce—which we welcome. But we totally ignore identical materials of not dissimilar tonnage (when you exclude contaminated soils) coming from people's domestic dustbins. There are just as many aerosol

cans and sprays, deodorants, paints and similar materials in domestic waste as there are coming out of industry and commerce. I think that is a major intellectual flaw, and it demonstrates within Defra and the Agency how tunnel vision they are about what they are trying to solve. Moving on to the specifics of the data issue, the history is, (and I can make the letter available to you), that there was a system promoted called SWANS, which is another dreaded waste acronym: Special Waste Authority Note System. I wrote to Terry Coleman of the Environment Agency in January 1999. A number of members in our industry offered them the landfill tax credits to pay for the Agency to put this system in, and it did not go anywhere. A few meetings were held. Similarly, just recently on the issue of data, John Turner, who is the Chair of the Advisory Committee on Packaging, has offered £250,000 of industry money to Andrew Skinner in the Environment Agency to put in a similar on-line database system for capturing information that would represent a 70 to 80% contribution to the cost of such a project. At the moment, the Agency seems to be saying: "It was not invented here; we are nervous about the on-line maintenance costs, and so on."

Q278 Chairman: Can you just explain to me who would be the beneficiary of the information streams you have just described and why are they needed?

Mr Jones: The objective of any data capture system, Chairman, is that you create a double-entry book system. If all the members of the committee say that they gave to Biffa 300,000 tonnes of hazardous waste, and you report that back to a central database individually as separate "companies", and I process that, I then have to report what I have done with that 300,000 tonnes in passing it to the gentlemen and ladies behind me. The system would, within weeks and days, identify that if I report that I have only got rid of 200,000 tonnes, then something is wrong in my operation. Conversely, if they independently reported that they had only had 100,000 tonnes from me, then the regulator would come knocking on my door and say, "You have a discrepancy". That is the way the banking system works; that is the way that billions of pounds worth of cheque transactions operate every day of the week. Gordon Brown runs the Treasury on those numbers. There are transfers, liabilities and debts that move around the system and you adjust your policy. If we had had that system in place, if they had started working on that in 1999, we would have known within a fortnight where hazardous waste had either suddenly stopped arising if it had all been handled, or where it was not being passed on.

Q279 Alan Simpson: The dispute is over whether it is not being handled as opposed to it just being there and the waste minimisation strategies are working. You have made specific claims that small waste producers are disposing of hazardous waste

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illegally, either on community sites or in contaminated soils, by blending. Can you tell us: have we got specific evidence of that?

Mr Jones: The short answer is that because we do not have a data capture system, then it can only be conjecture. What was alleged to be 2.5 million to 3 million tonnes has suddenly evaporated. Some of that is in part due to the fact that there may be stockpiling but nobody knows. Some of it is due to the fact that there is greater management control, so instead of just throwing it all into a 35 yard container, property developers are being far more punctilious about just sending the contaminated bit. There could be soil blending going on. What we know is that that 2.5 million tonnes is not arriving at our members' sites as hazardous waste and between us we are now land-filling about 600,000 to 700,000 tonnes of that stuff a year. We do not have the sites now.

Q280 Alan Simpson: The Minister's claim is that that means that the waste minimisation strategies are working. It is not waste that is clandestinely being shipped about and dumped in the dead of night; it is no longer being generated.

Mr Hazell: We know that there is some criminal activity. We cannot say, just like one or two of your other witnesses have said, how much. We cannot quantify it. It might be helpful to mention that in July, for example, the Greater London Assembly Environment Committee, which is obviously a much more modest affair than this, did its own inquiry into hazardous waste and it was actually heart-rending listening to some of the local authority officers describing, and this was obviously coming up to the ban on co-disposal, how organised some of this dumping of hazardous waste is in the streets of London and what some of those local authorities actually have to deal with in terms of their engagement with these criminals. We know that there is criminal activity.

Q281 Alan Simpson: Can I just pin you down on that? In a way, this is almost like the complaints that MPs get in their constituencies about acts of vandalism, people intentionally loitering in a threatening manner. MPs will always begin their questioning by saying, "Can you give us some idea on this? Give us something to work with, otherwise we are just chasing rumour and speculation". Give us a bit of hard data yourselves.

Mr Hazell: There are specific examples. What we cannot do is aggregate them and say it comes to X thousand tonnes a year across the country.

Alan Simpson: I am not even asking that. I am just asking: have we got any specific examples? Have those examples been communicated to Defra? Is there a line of investigation that can legitimately be asked of the Department: are you pursuing this?

Chairman: Before you answer that, Diana Organ wants to add a postscript.

Diana Organ: It really ties in with this. This stuff cannot vanish into thin air. If you are making this argument to us and to others from information through your members that the hazardous waste is

being dealt with criminally as opposed to the Government's argument, which is that this is minimising because the strategy is working, I wondered if you had a list that you could give us with examples of where you know that criminal activity is going on and you have reported it to the relevant agency. If your argument is true, this stuff does not disappear into vapour. It is somehow going to contaminate our land or our water courses and it will be fed back because the Environment Agency somewhere along the line will have a report of contamination and they will ask, "How did this material get into this water course" and they will trace it back. Do you have those instances?

Chairman: Mr Drew is aching to add his two pennyworth to this.

Q282 Mr Drew: I want to ask the very simple question: have you directly tackled Ministers on this? Would you write to us with evidence of when you told Ministers? We have a Minister saying there is not a problem.

Mr Jones: First of all, the crunch point on this will not be now because the developers are not starting up major new, brownfield redevelopment sites. Traditionally that does not happen at this time of the year. The crunch will come and the proof will be in "the pudding" next March/April/May when you start seeing large-scale developments of brownfield sites, (depending on what the state of the office and housing property markets is). That is when you would expect to see this issue burst out. The second point I would make is that it is not our task. Certainly I know of one case in Bristol where the Agency has re-classified what a waste operator legitimately feels is hazardous waste; they have told him now to send it and consign it as ordinary waste. I can give you the information on that. I will have two or three examples as each of us in the Association may have. That is the regulator's task. It is not the task of the waste industry to catch criminals. The Environment Agency should be there understanding this process.

Q283 Chairman: Mr Jones, you have just said that the Environment Agency gave an instruction to reclassify a waste. That is not illegal, is it?

Mr Jones: No, because they write the rules.

Q284 Chairman: You have just put before the Committee, in the light of Mr Simpson's trenchant questioning, examples of illegal, illicit disposal. What we need is some concrete evidence of what is going on. If the Environment Agency and others are not capable of dealing with it, then we need to have the evidence to put in a report and say, "Here are two or three real world examples. Go out there and sort the job out". Can you provide us with that information?

Mr Jones: We can provide you with odd examples from all of our members, but it will not add up to a comprehensive, bullet-proof case that goes to the heart of this problem. If we had had the database collection system, we would not need to define that.

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Q285 Chairman: We get before this Committee farmers, for example, who tell us that X, Y and Z countries are not implementing this that or the other of the European regulations, that they are all breaking the rules. We ask, "Give us some proof". They say, "Ah, well, I heard it". We cannot work on that. We have to have some concrete stuff. Mr Hazell, it is now your turn.

Mr Hazell: One piece of concrete stuff that would probably be helpful to you is a report of the Greater London Assembly Environment Committee, which I think came out fairly recently. Their evidence did contain some specific examples. Perhaps the most helpful way to respond to Mr Drew's question would be to send the Committee a chronology of our engagement. I would like to emphasise, and I do not think these things should generally be personalised, that the present Minister of State has been much easier to engage with and has been much more responsive generally to our sector's concerns than his predecessor.

Mr Jones: The other firm and clear piece of evidence was all over the national papers, and it was the fridges again, in Trafford Park. That was a problem we had all been told had been solved and £80 million of public taxpayers' money has gone over three years into managing the fridge problem and that has not been achieved. The Minister said about eight months ago (in response to a parliamentary question) that only about one-quarter of the CFC chemicals were being recovered, and nobody ever knew where the other three-quarters were going because there was no proof of destruction. In a recent parliamentary question from a member of your Committee, I note that he said a report is just about to be produced. There were people and charlatans working in that particular sector, and that is symptomatic of what happens when you do not have a comprehensive data network despite a framework of high regulation.

Q286 David Taylor: On landfill diversion targets, in paragraphs 30 and 31 of your evidence to us you note that in progress on municipal waste local authorities are recycling more. Then, very helpfully, you sent us supplementary evidence and to the Council which loves diagrams and figures. It is a real joy to see information expressed in this form, although what it revealed was quite startling. It does show, does it not, that if there was a 3% annual growth in biodegradable municipal waste, then by 2010 we have got to divert 13.3 million tonnes a year. Even if it flat-lined, we are still at 8.73 million tonnes a year. You have given this evidence and it will form part of the document. Are these targets achievable, even if it were possible to reduce the level of biodegradable municipal waste? The first two figures, the 3% growth to 2010 and the flat-line to 2010, seem way beyond the capacity of the system at the moment. What is your observation, Mr Gordon?

Mr Gordon: It is way beyond the capacity of the system at the moment, there is no doubt about it. That is why we are saying that the targets are unlikely to be met. What we need is a considerable increase in the amount of infrastructure in this country. We start from a very low base in comparison perhaps to our European neighbours. We have to build a lot. There are many reasons for delay to that building, one undoubtedly being the planning system, which is a very slow process indeed. We have some good stories in our industry of good infrastructure being built, but the length of time taken between award of contract, getting planning permission and building infrastructure is extraordinary. We are already five years away from these targets. We have to build a lot of infrastructure to meet these targets. I will give a broad-brush number here. If an average facility copes with 100,000 tonnes of waste, you can work out how many facilities this country has to build to divert that amount of waste by 2010.

Q287 David Taylor: There is a very large facility that was granted planning permission on the borders of Leicestershire and Derbyshire called the New Albion project. There was delay in granting permission, and that permission was granted probably six or seven years ago. That has not yet taken a lorry-load of waste. What is happening?

Mr Jones: There is an issue here about the transfer of risk. If you look at what happens, there are 150 waste disposal authorities on this list that are going to be subject to LATS' targets. Each of them is going to need about two of these biggish facilities. We are looking at 300 sites. In the case of the failure on that particular one, the ideal, from the waste industry point of view, is that many of those 150 authorities needs to get three beans in a row. The first set of beans is the need to acquire land under its own ownership to manage its own waste. The second thing it needs to do is then to indulge in dialogue with the local community as to the sort of technology solution they want and give themselves outline planning consent in conjunction with the communications and dialogue process. Finally, they come out to the bid process (whether it is PFI or open tendering), to the industry and say, "We have the sites; we have outline consent. We want you to tender for this sort of solution". If you get those things out of kilter, you will end up with problems. Some waste disposal authorities, as a result, have tried to transfer the risk of planning consent or site acquisition or both on to the private sector. In the end, the public sector ends up paying for that deficiency. If we are three separate contractors bidding for the same contract, we have three sets of lawyers; we are spending about £1 million each, which times 150 is half a billion pounds over the cycle between now and, say, 2012, when these places get built.

Q288 David Taylor: The point I am putting, and I am sorry to interrupt, is that you are allocating responsibility to the public sector, in a sense, in terms of slowness of permitting, or indicating

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suitable sites, but the one large example I have given, permission and site acquisition and so on, were in place years and years ago and yet not a lorry-load of waste has yet gone into them.

Mr Jones: I am coming to that one because this is all about transfer of risk. When companies in our sector are not prepared to take on that risk, what happens is that you start to see the emergence of partnership arrangements between these 150 authorities and the technology providers, who are sometimes companies without substance. They are basically one-product companies. There are issues around balance sheets and so on, but they are keen to sell a particular piece of kit. Local authorities are not necessarily informed (although the Defra WIP programme is doing something about that). As a result, you end up with plants being agreed that are never ever built. Only large major companies are prepared to take that risk, and each of us approaches that risk differently. By and large, when that risk is between a local authority and a technology provider, it does not work. Where we are invited to tender for contracts, where we see that sort of relationship operating, we as Biffa have walked away from them. We have just walked away from two major County contracts because they were trying to tell us how to do the job, rather than focusing on outcomes.

Q289 David Taylor: The real problem is that there are not too many waste disposal authorities. You are not seeking to have them regionalised or nationalised?

Mr Jones: No. It is not an issue in terms of the number of them. It is the process that is important.

Q290 David Taylor: Finally, can I ask about cost because this is important. In paragraph 38 of your evidence you assert, and I have not yet seen the proof and that is what I want to examine you on, that we spend as a nation only half what comparable European countries spend on municipal waste management. You then go on to say that we need to get the costs up to about £1 per person to achieve average European standards of performance. There are two elements to this. Is it purely a question of throwing yet more money at it to achieve our national landfill diversion targets? Is that what you are saying?

Mr Hazell: It is not just the money but the money is an essential component. In response to a parliamentary question, and it is not quite current, it has not actually gone up all that much. Mr Liddell-Grainger is no longer with us but he did not quite get his sums right. In 2001–02, the United Kingdom spent £1.63 billion on collecting and managing municipal waste. I will not go through the workings, but that is 47p per person per week.

Q291 David Taylor: I accept that your figure would lead to £3 billion per year or thereabouts.

Mr Hazell: It is about that. If you look at somewhere like North Rhine Westphalia in Germany, the average the cost for a basic waste management package in the urban areas is £191 per

annum for a household, and in the country it is £153. We have gone to our comparable trade associations in those countries to get the figures. In the Netherlands, the average cost per household is between £157 and £178 a year. In the Irish Republic, and again we got this from the Irish Waste Management Association, they are looking at an estimated cost, by the end of 2005, of £138 per household.

Q292 David Taylor: So the Government is trying to do it on the cheap, is it?

Mr Hazell: It is definitely being done on the cheap. But it cannot be done. It is actually quite easy to work out why it cannot be done because, to get to the diversion target, most people are saying you have to look at about £8 billion of investment in infrastructure.

Q293 Chairman: Over what time period?

Mr Hazell: Over about a decade, but to get to the funding level, if you assume a 10% funding cost, that is actually 26p per person per week in the country, just to fund it, not to run it.

Q294 David Taylor: It would be a lot more if it was done by PFI, would it not? In paragraph 39 you say, and our business is intended to be disingenuous is it not: “The Gershon review missed an opportunity to reduce public spending: it could have recommended that funding for municipal waste management be taken out of public spending altogether.” You go on to talk about variable charging. It is not really taking it out of public spending, is it? It is equivalent to PFI being said to take loan debt off the Government’s balance sheet. It does not really. We, the community, still have that obligation and we, the community, would still have the responsibility of the revenue cost to dispose of our waste. It is not really taking it out of public spending, is it?

Mr Hazell: Can I say, first of all, that ESA would never dare to be disingenuous in giving evidence to a select committee. We might sometimes have the odd spat with counterparties but we are not disingenuous. There is an underlying concern about the Gershon review, which is that not all but a number of the political parties do seem to have interpreted the Gershon review as giving a signal that waste management expenditure can fall: it cannot. It may well be that there are operational efficiencies, and we all want to see them, and Peter Jones has been talking about them. We all want to see operational efficiencies but the hard truth is that spending on household waste has got to go up. This is not a PFI question. The question is: how is it going to be paid for? Of course it has to be paid for, but you can go to variable or direct charging, for example: if that is as matter of public policy what the government of the day wants to do, it does get it out of the public finances. That is what is happening in a number of other European Member states.

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Q295 David Taylor: My final small question to Mr Gordon is this. A number of us, including Mr Tipping, have had the privilege of going to the Netherlands and elsewhere and we have had long conversations with you in looking at the sorts of services available there. Is there a lesson to be learnt from what the Netherlands and other north European countries do? Have they only recently turned to the level of expenditure necessary to deal with all this that is adequate?

Mr Gordon: I think the northern European countries are in advance of us on investment in waste management of all types. What we look at there in the equivalent to the WEEE Directive goods is in advance of this country.

Q296 David Taylor: And they have been for a generation?

Mr Gordon: Yes, I would think it is very fair to put the period of a generation on it.

Mr Jones: Mr Taylor's question does reflect a much broader malaise in the environmental debate in this country, which may go beyond the current inquiry. If you look at what we have signed up to in terms of European standards, then at Cabinet level there seems to be a refusal to confront this whole environmental issue and price it. One of the reasons why we fall out in terms of PFI, or funding and everything else, is that there is a great need, right at the heart of government, to price up real cost. Take the removal of CO₂ from cement kilns. The cement industry reckons that would cost about half a billion pounds. The water industry says that if you want the European Drinking Water Directive, it is going to be about another £5 billion a year on water bills (but the regulator is not charged to take account of that). If you want to clean up power stations, it is about £5 billion to £10 billion. If you want to put in abatement systems in the chemical industry, or in the food industry (in the IPPC framework), it may be £5 billion. We say it is about £5 billion to deliver the 2020 vision on waste. What we really should be saying, and we are putting the cart before the horse at the moment to the general public, is: "We have about £25 billion a year—it is not £40 billion and it is not £10 billion—or about a 2 to 3% price hike in the retail cost of living in this country to deliver a substantial improvement in the health of our nation". In part, we have signed up to it. In part, it is about graffiti and vandalism and chewing gum. You could get it for that. We should be having the debate about how we transfer that £25 billion cost and who is going to pick up the tab? Will it go through subsidies or will it go through increased prices? Will those increased prices be transparent and will they be audited by the Audit Office? What is the competition effect? Because we have not had that debate, we have all ended up having little turf wars on our separate buckets of cement/ the CBI/ the waste industry/ the water industry and the energy industry. I believe your question, Sir, does really go to the heart of that issue, that if we set the rules in that framework, we would then see the solutions, because the

technology exists, but the technology is a hell of a lot more expensive than just sticking it in a big hole in the ground—it has to be.

David Taylor: I think Mr Jones's last contribution is the most valuable contribution we have heard in this section of evidence. It should be enshrined in stone and put through the Chancellor's letterbox with the appropriate Christmas card.

Chairman: To avoid unnecessarily adding to the material waste, we will enshrine it in pieces of paper that can ultimately be recycled. I thought we might just have heard the birth of a new political party manifesto there, Mr Jones, in the way that you enunciated your aspirations. In the meantime, we will have some brisk questioning from Mr Simpson on landfill tax and other associated matters.

Q297 Alan Simpson: This ties in with the whole notion of using economic instruments to deliver environment outcomes and being clear and transparent about that. Would you say that the landfill tax is a good example of that transparency and is it working?

Mr Jones: I was a member of the Institute of Civil Engineers' group that came up with their verdict on the mid-term review of the Government's strategy, about four or five months ago when they did their annual report. I believe, and I have enumerated this before, that there are about 70 different initiatives. I think there is about £600 million of subsidies. One is never sure. There is little transparency in terms of the times over which these awards are made. An initiative starts life with one name, and then it gets changed mid-term and it magically is altered into something else. In your question to Alice Roberts about the balance in terms of whether or not local authorities have got their money back, probably they have. They pay £15 a tonne on about 25 million tonnes a year and they get that back in subsidies for plastic buckets and recycling. Whether it is good strategic funding or not is another matter. We are seeing some of that money being returned in the form of the WIP programme and there are some very good elements in that. Indeed, the data question is being addressed by WIP and it has received £2 million. This is very difficult. I have not read the detail in Defra's five-year review, but it would be very interesting to see how much detail they have put in about all these initiatives, because there are literally 70 or 80 of them, and it confuses all our members.

Q298 Alan Simpson: Do you have a view, just in respect of the landfill tax, on how quickly we should be moving to the £35 per tonne figure?

Mr Jones: I guess I was the lone voice years ago when I suggested that we go to it as quickly as possible because that would deliver these solutions. Our Association now concurs with that being a good idea. The fact is that you do not need to persuade 300,000 businesses to change their waste behaviour, or 25 million households. There are six major companies in this country that could divert 80% of all landfill waste next week if we had the economic incentives. Because we do not have those

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economic incentives, it is still cheap to landfill. There is no point doing it differently. That is why we do not invest in these new processes.

Q299 Alan Simpson: Would a rapid transition to the £35 per tonne figure improve the functioning of the landfill allowances trading scheme?

Mr Jones: I think it would cause more emotional pain, unless you set it up with transparent accounting. There are political issues, as you have suggested, over the impact on low income families, the transfer effects between rich and poor local authorities or, dare I say, Labour controlled authorities and Lib-Dems or Tory authorities, to which nobody really quite knows the answers.

Q300 Chairman: On this point, can I ask you about the use of resources. The Government tells us in its latest document *Delivering the Essentials of Life* that there is something called the New Business Resource Efficiency and Waste Programme, BREW, and they are spending £284 million, they tell us, over the next three years to help people to reduce and minimise waste production. Is that a good use of £284 million, in the light of what you have said?

Mr Jones: Because we have all been in industry all of our working lives we know that, frankly, subsidies never work. Given the choice between price signals and subsidies, then we are not going to invest as a company, none of our members would, on the basis of subsidies because they come and go. A £35 landfill tax would immediately equalise the cost advantage that landfill has and it would give us far more incentive to put forward these solutions and accept that risk of transfer. There are small elements in that £284 million, or whatever the figure in the document is, that are very good but, broadly, the Government is trying to correct market failure by throwing money at it, and, frankly, I do not think that is a good idea.

Mr Gordon: I was going to add, on the landfill tax issue, in answer to the question about needing a more rapid increase in the tax, that the current plan to have £35 by the end of the decade or thereabouts will help, but that will change. It will help local authorities, in particular, to invest more quickly in new infrastructure, but, if the increase was more rapid in the landfill tax, then the encouragement to invest more quickly would also clearly be there.

Q301 Mr Breed: I suspect planning is one of your biggest bugbears. You said in your evidence that the planning system as it affects waste needs to be improved. I think we would probably all agree with that, those that have worked on planning committees. What specific changes do your members want to see? Have the proposals on which the Government is now consulting in your view achieved the objectives?

Mr Hazell: We actually produced that in the summer. I can produce a table that is a full guidance of what the industry would like to see. You are quite right that there are serious problems in delays of planning applications. In 2002–03,

nearly half of the major waste applications took longer to be determined than the Government's target of 17 weeks.

Q302 Mr Breed: Could you indicate where you think the major delay lies within the totality of the period?

Mr Hazell: Frankly, a lot of the delay is on the major waste management applications. There is a major problem in being precise because the Government data in this area and others are not adequate. We do not even know from the Government's data if the planning system is causing a net increase in waste treatment infrastructure or a reduction. We certainly do not know from Government figures if sufficient treatment capacity is being granted from that data to enable compliance with Landfill Directive targets. PPS10, as the LGA said, came out a week ago. Like them, we still have to put in our views, but it falls short of what we would want to see. Perhaps, briefly, I could give you four bullet points. There is no hint in the draft PPS10 of the environmental business planning zones we wanted to see; there is no hint of additional resources to (RTABS); there is no hint of permitted development rights, and so we are discriminated against compared to other industries; and there is no hint of model policies for local authorities to be included in practice guidance, and I think that is something the LGA themselves mentioned. It might be a step in the right direction—it probably is a step in the right direction—but it has certainly come too late to be as useful as it could have been, and it does not go far enough.

Q303 Mr Breed: Focusing on where the major delays are, it seems to us, and certainly I have a just-in-case example, that the Environment Agency and the local planning authority seem to be working somewhat at odds with each other, rather than working in concert?

Mr Gordon: There is considerable duplication of effort in the planning process. Many elements of the planning application are then duplicated to get an operator's permit. That is not necessarily the case in other countries where we see that is a single process and it is much simpler as a result. That duplication of effort causes significant delays. You have to go through the process of getting your planning permission, and then you have to go through the process again.

Q304 Mr Breed: Do you find sometimes that when you go to the Environment Agency, they insist upon something, which means you then have to go back to the planning authority again to get an amendment?

Mr Gordon: I am trying to think if that has occurred to us. I do not think it has occurred to us, but it is certainly a possibility in the process.

Q305 Mr Breed: What is the average time between somebody making an application, in other words, having all the paperwork that they consider will be

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necessary to submit the application, and then getting something back with a rubber stamp on it saying, "Right, go ahead"?

Mr Gordon: It very much depends on the facility. If it is an incinerator, we are talking about years.

Q306 Mr Breed: If we have to do that for a house or something, there has to be a decision within so many weeks, but, as I understand it, there is no time period within which such an application has to be considered and you get an answer, as opposed to other planning applications?

Mr Gordon: There is a 17-week period but it is rarely ever determined in that period.

Q307 Mr Breed: After 17 weeks, you can ask for a determination?

Mr Gordon: We can assume non-determination, which means an appeal.

Mr Jones: We have had a case in Northern Ireland where I think we are now in our eighth year. We have a judicial review and we still have not got consent, and the local waste is still going to a site that effectively is on a dilute and disperse basis. That is an extreme case but on the bigger the issue, we are talking at least £1 million to £2 million, Queen's Counsel, and referral to the Secretary of State per site. The mathematics are that we are going to need for these 150 local authorities and 300 sites, about five years to put them in, so that is 60a year and that should be one a week of the significant sites of 100,000 tonnes that Marek Gordon mentioned. I think this year you can count on the fingers of one hand how many have gone in; certainly the figure is less than 10. We are shunting all this up against a guillotine that is fixed by the dates set by the Directives to which we have agreed.

Q308 Mr Breed: As we sit here on the cusp of 2005, the likelihood of meeting a 2013 Directive on landfill diversion as such on current progress is nil?

Mr Jones: You can read into it what you like. There is a suspicion, with the recent announcements, that the Treasury will not be allowing additional money beyond the minimum recycling requirements and that we are perhaps being softened up in fact to take this material elsewhere. Maybe it will be diverted to electricity generation, whether thermally or through gasification, and of course, via cement kilns, all of which are environmentally sound, provided the right regulatory framework for them is also in place according to the requirements. We would be faced with that if we were looking at pure waste processing plants. I think maybe there is a bit of manoeuvring going on now. The comment this week was quite prescient on that.

Mr Breed: I think we get the drift.

Q309 Mr Lazarowicz: On the specific question of cement kilns, there is a suggestion that this could be a way of disposing of waste. We have had evidence about the health impacts, apart from anything else, of that possible direction or activity

Have you any general comments on that type of Directive dealing with waste? What would the impact be on your industry of an increase in the range of waste that can be burnt in cement kilns? How would that affect the amount of hazardous waste your members would process?

Mr Hazell: I would be grateful, Chairman, for your guidance on how you want us to deal with the Environment Agency's comments on our evidence because we certainly want to respond to that one way or another, but, in very broad terms on the cement kilns, as long as they operate to the same standards in terms of emissions as any other facility that manages waste, have a legitimate place in the treatment infrastructure. There certainly have been specific instances where the two companies that operate high temperature incinerators feel that they have been discriminated against in terms of the use of cement kilns. I would suggest that those issues substantially are probably historic and that, as the European legal framework takes full effect, cement kilns will have a recognised place and a legitimate place because their emission standards will be stricter for waste treatment. They are not really going to impact negatively on the economic of our sector.

Mr Jones: We have a large unitary contract that is generating about 160,000 tonnes of waste from households. With, first, kerbside recycling and then mechanical and biological separation, you still end up with about 10% which, frankly, is best put through applications like cement kilns and so on, rather than just landfilling it. It is a mixture of chopped up plastics and fuel floc. I understand BP are looking at depolymerisation plants but that is some years in the future. It is basically within the context of the good old waste hierarchy.

Q310 Chairman: Gentlemen, colleagues have to be elsewhere soon and they will leave at 4.55, so you have two minutes on this rebuttal.

Mr Hazell: I think that is all we need, Chairman. If I could refer to it by questions, on question 1, and we provided the list which Mr Simpson described as the Christmas list, we have dealt with that. Question 2 deals with our comment on the permitting process and constantly having to reassess permit applications. We agree with the second paragraph of the Agency's response that they, like us, regulator and regulated, have essentially had to deal in that context with inadequate guidance from the Government, so we agree with that. As far as the third and final bit of that is concerned, on question 2, I will deal with it in response to their third paragraph. There is a discrepancy between our figures. It would appear, in an Environment Agency's response to you, which comes 10 weeks later than our written evidence, that the Environment Agency has managed to process 82 permits in 10 weeks. A cynic would say there is nothing like a select committee to secure acceleration, but it would not be entirely fair because the Agency is getting better at processing permitting in the sense that their strategic permitting groups are getting up to speed.

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The trouble is that there is a little bit of evidence that speed is possibly taking place at the expense of realism. There are some unrealistic permit conditions. There is undoubtedly, and this relates back to the final paragraph of their preceding section, paragraph 2, quite a lot of applications out for judicial review. One major and very reputable company, and it is not either of the two reputable companies on either side of me, is having to appeal 50 conditions on just one appeal. We, as an

industry, are having quite a difficult time in this context now in trying to assess whether this is best dealt with by ESA or by individual operators in judicial review. We will do financial provision in writing.

Chairman: Mr Hazell, time is up. Thank you for your evidence, delivered with your usual candour. We look forward to your further responses, particularly with reference to illegal disposals. Thank you very much.

Further supplementary submitted by the Environmental Services Association (X12b)

A. ILLEGAL WASTE ACTIVITY

As requested, specific examples are listed below of unlawful disposal of waste. As a result of lacunae in data, none of the Government, the Environment Agency or us are able to aggregate these incidences to provide a national picture known to be accurate. For example, fly tipping on privately owned land is not automatically caught by official data.

Mr Adrian Gabriel from Rotherham Metropolitan Council advised ESA in December 2004 that from 23 February 2004 to 15 July 2004 there were 30 reported incidents of fly-tipped asbestos waste within his authority. From 16 July 2004 until 21 December 2004, 44 incidents of fly-tipped asbestos waste were reported, an increase of nearly 50% within a year.

The report of the interim meeting of the Government's Hazardous Waste Forum on 11 October 2004 noted:

“Although there has been no significant increase in fly tipping that has been reported to the Agency it was noted that in the remediation sector there has been an increase in illegally tipped soil by a factor of four on their land which is financially hitting companies hard in order to dispose of it.”

Ms Fiona Plumridge from the London Borough of Islington advised ESA in December 2004:

“In Islington there were six reports of chemical drums, oil or fuel during November [2004]. Generally these are gas cylinders, which is slightly higher than has been usual.”

Earlier this year, Mr Tom Morrissey from the London Borough of Barnet told the GLA's Environment Committee Inquiry into Hazardous Waste:

“Any increase in costs of getting rid of muck and rubbish always puts up the amount of fly tipping that we get. One individual we know about is a scout. He goes out, he identifies sites for dumping—they could be locked up, they could be padlock secure, but he will identify them—and he will arrange on a given day that he will be there at 5.00–5.30am, he will open the site up, he will have a yellow coat on and a broom sweeping the street outside, and he will look official. He may even have a council jacket on if he can find one somewhere. He calls the lorries in by mobile phone and they come in from all over the place. They come in and they dump 60 or 70 lorry loads in the morning and they are away.

Mr Morrissey also told the committee:

“a large amount of waste was being dumped in several places around Birmingham city centre . . . a bunch of kids were playing on top of a pile of it, as they do, and they were clearly being exposed to asbestos waste.”

ESA is not alleging that the Environment Agency and the Government are failing to act on intelligence provided by ESA's Members and others on illegal waste activity. Our concern is that, even with £2 million allocated through the Business Resource Efficiency and Waste Programme, the Environment Agency does not have systems in place or sufficient resources to enable it effectively to detect and prosecute environmental criminals.

According to the Jill Dando Institute, the Agency had 11 investigators dealing with 442 incidents of fly-tipping in London in 2002 amounting to a workload of 40 crimes per investigator. By contrast, the Metropolitan Police had 128,000 officers dealing with 1,080,741 crimes in London in 2002–03 amounting to a workload of eight crimes per officer.

As mentioned in our oral evidence, real-time data on waste would enable the Government and the Environment Agency to know precisely what happened to hazardous waste streams before final management in landfill.

B. MEETINGS AND CORRESPONDENCE WITH DEFRA

We were asked to detail correspondence and meetings with Ministers and officials dating back to when the Landfill Directive was first agreed, and which shows that ESA has consistently:

- outlined to the Government the importance of WAC for investment in new hazardous waste treatment technologies; and
- encouraged the Government to introduce the Waste Acceptance Criteria from 16 July 2004 to avoid the problems created by an interim year.

As stated in our oral evidence, we believe the present Minister of State has been more responsive to our sector's concerns than his predecessor and the situation was already difficult by the time he assumed his present responsibilities.

16 April 1999	Landfill Directive agreed.	
16 July 1999	Landfill Directive appears in the Official Journal.	Deadline for transposition into UK Law is 16 July 2001.
16 November 2000	Meeting between ESA and Dinah Nichols, Director-General, Environment, Defra.	ESA outlines the conditions necessary to achieve compliance with the Landfill Directive.
10 January 2001	Meeting between an ESA delegation and Michael Meacher MP and his officials: Ms Ann Hemming and Mr Simon Hewitt.	ESA emphasises the importance of the Waste Acceptance Criteria (WAC) to investment in new infrastructure. Ms Hemming assures ESA that everything is in hand regarding the WAC.
11 January 2001	Meeting between ESA and Dinah Nichols.	ESA raises the implementation of the Landfill Directive including articles 8 and 10.
19 July 2001	Letter to Michael Meacher MP enclosing ESA's report on the Implementation of the Landfill Directive.	The report outlined ESA's interpretation of the Landfill Directive and set out ESA's position on aspects of the Landfill Directive such as from when the WAC should apply.
4 October 2001	Letter from ESA to Ms Anne Hemming on the implementation of the Landfill Directive by the Environment Agency.	The letter states that the Agency was "applying" the Directive to certain facilities even though the Landfill Regulations had not been laid before Parliament.
15 October 2001	Letter from Michael Meacher MP to ESA (responding to ESA's Letter 19 July).	Mr Meacher MP comments "I share your concern about the delays in agreeing waste acceptance criteria in Europe".
15 October 2001 (received 24 October 2001).	Letter from Richard Bird, Director, Environment, Defra to ESA.	The letter sets out Defra's position on the implementation of the Landfill Directive and states "subject to obtaining the necessary parliamentary powers, the Directive will be implemented well before 1 July 2002."
19 October 2001	Meeting with Defra officials: Ms Ann Hemming, Mr Tom Bastin, Mr David Short and an ESA delegation.	ESA emphasises that investment in new facilities required by the Landfill Directive was severely constrained by the absence of appropriate regulatory guidance.
24 October 2001	Letter from ESA to David Short.	At the meeting of 19 October 2001, Mr Short had commented that the industry should not wait until everything was signed, sealed and delivered. At this stage, WAC were not agreed in Europe and the Landfill Regulations had not been laid before Parliament. ESA offered Mr Short a secondment opportunity to understand better the commercial justification for investment.

10 December 2001	Letter from ESA to Richard Bird.	ESA emphasises the need for a single implementation date for PPC permits.
27 February 2002	Letter from ESA to Brian Bender, Permanent Secretary, Defra.	ESA outlines the problems experienced in implementing the Landfill Directive, and Defra's engagement of the waste management industry, and draws specific reference to Article 8 of the Landfill Directive.
13 May 2002	Letter from ESA to Michael Meacher MP.	ESA again urges the Government to issue quickly statutory guidance relating to the Landfill Directive.
15 May 2002	Meeting between ESA, CIA and Michael Meacher MP regarding the implementation of the Landfill Directive and hazardous waste.	ESA draws attention to the problems in hazardous waste management that could occur from 16 July 2004. Amongst, other recommendations, ESA proposes a dedicated hazardous waste strategy.
31 May 2002	Letter from ESA to Michael Meacher MP following the meeting of 15 May.	ESA reiterates that WAC should be implemented from 16 July 2004 and offers suggestions on how the Government could encourage investment in infrastructure, including fiscal incentives. ESA reiterates its support for a hazardous waste strategy.
10 June 2002	Letter from ESA to Michael Meacher MP.	ESA emphasises its preference for WAC to be introduced from 16 July 2004. The letter once again highlights the importance of WAC in determining the standards to which waste must be treated.
18 June 2002	Letter from Brian Bender to ESA.	Mr Bender responds to ESA's concerns regarding Article 8 of the Landfill Directive and on engaging stakeholders commenting "we place particular emphasis on engaging those likely to be affected by any proposals coming from Europe and take considerable steps to do so."
10 July 2002	Letter from ESA to Michael Meacher MP.	ESA again notes the importance of the WAC to the industry to enable ESA's Members to plan investment. ESA again repeats that Defra needs to produce promptly comprehensive guidance regarding the Landfill Regulations to enable consistent interpretation by the Agency and ESA's Members. ESA repeats the offer it had made orally to senior officials in Defra to explore with Defra the feasibility of jointly commissioning leading Queen's Counsel.
2 July 2002	ESA presents oral evidence to the House of Commons Efra Select Committee Inquiry into Hazardous Waste.	
17 July 2002	Letter from Michael Meacher MP to ESA in response to ESA's letter of 31 May 2002.	Mr Meacher MP does not set out the Government's policy on when the WAC would apply from.
24 July 2002	Meeting between ESA and Brian Bender.	ESA again comments on Defra's failure to engage effectively ESA and its Members.
26 July 2002	Efra Select Committee publishes its report on hazardous waste.	The Select Committee comments that "uncertainty" was the dominant theme surrounding this inquiry.

22 August 2002	Letter to Sue Ellis, Head of Waste Policy, Defra.	ESA sets out the tasks the Hazardous Waste Forum should address.
26 September 2002	Meeting with Sue Ellis.	ESA sets out the industry's views on the priorities for the Forum.
1 October 2002	Letter to Sue Ellis.	ESA again sets out the industry's views on the Forum and commits to nominating representatives who would bring the necessary expertise.
20 March 2003	Dinner with Bill Stow, Director-General, Environment, Defra.	
6 May 2003	Meeting with Jonathon Startup, DTI.	Mike Averill, a Member of ESA's Board of Directors outlines the potential problems following the banning of co-disposal.
29 July 2003	Meeting with Roger Sharp, Special Adviser, DTI.	ESA again emphasises the importance of WAC for investment and states that they should apply from 16 July 2004.
9 August 2003	Letter from ESA to Ray Alderton, Head of Landfill Policy, Defra.	ESA sets out its position regarding negotiation of WAC at European level. ESA emphasised its opposition to a risk assessment approach regarding WAC.
9 July 2003	Letter to Elliot Morley MP.	ESA reiterates its position of implementation of WAC from 2004 and raises industry concerns regarding the delays relating to Article 8 of the Landfill Directive.
20 October 2003	Letter to Elliot Morley MP.	ESA requests a meeting with the Minister.
17 November 2003	Dinner with Neil Thornton, Director, Environment, Defra and ESA's Board of Directors.	ESA reiterates the importance of WAC applying from 16 July 2004.
16 December 2004	ESA responds to the Defra's consultation on the draft Landfill Amendment Regulations.	ESA's response states: "with only seven months remaining until co disposal must cease, the UK Government has still not provided the waste management industry with the regulatory certainty it requires to invest in infrastructure for the treatment and final management of hazardous waste".
20 January 2004	Letter to Elliot Morley MP.	ESA requests a response from the Minister regarding the letter of 20 October 2003.
23 January 2004	Meeting with Stephen Crisp, Environmental Advisor, Defra.	
2 February 2004	ESA's representatives on the Hazardous Waste Forum meet Elliot Morley MP.	ESA delivers a presentation to the Minister outlining three priorities: regulatory certainty, adequate investigation and enforcement post July 2004 and an effective planning process.
27 May 2004	Meeting between Elliot Morley MP and ESA's Chairman and Chief Executive.	

C. ESA'S RESPONSE TO THE ENVIRONMENT AGENCY'S SUPPLEMENTARY EVIDENCE

We regret that, notwithstanding the unqualified tone of its assertions and particularly as regards its sections 3 and 4, the Environment Agency's response to questions asked of it by the Chairman is not as accurate as the Committee might feel entitled to expect.

Our comment follows the format adopted in the Agency's response.

1. Status of Environment Agency Guidance

This matter was addressed in oral evidence. Guidance and regulations relating to hazardous waste continue to be outstanding nearly three months after ESA submitted its written evidence.

REGULATIONS

<i>Title</i>	<i>Significance</i>	<i>Deadline</i>
Hazardous Waste Regulations	Specify what is hazardous and the procedures for consigning hazardous waste.	Deadline for transposition was 1 January 2001: Regulations expected to be implemented in July 2005.
2nd Landfill Amendment Regulations	Specify waste acceptance criteria for monolithic waste—expected to be sent to stable non-reactive hazardous waste cells.	Consultation launched on 14 December 2004: Regulations expected to be implemented in July 2005.

GUIDANCE FROM THE ENVIRONMENT AGENCY

<i>Title</i>	<i>Significance</i>	<i>Deadline</i>
Sampling and testing of waste to meet the Waste Acceptance Criteria	Producers have an obligation to characterise waste to determine waste acceptance at landfill from July 2005. It can take several months for waste producers accurately to characterise their waste and there is concern over the capacity of laboratories to respond to this requirement.	The guidance—to let waste producers know what to do—was expected in 2004. The Agency informed a Defra/EA seminar on 6 December 2004 on WAC that the guidance would not be available before February 2005.
National Interim Waste Acceptance Procedures	Specify requirements for treatment and management of hazardous waste for the interim year: 16 July 2004–16 July 2005.	The Agency consulted on draft procedures in August 2002 and final guidance was expected in Autumn 2004. Even though the UK is already halfway through the interim year, the Agency has confirmed to the Committee that the detailed guidance required by producers and managers of waste would not be ready before January 2005.
Guidance on the Waste Treatment Requirements of Article 6 (a) of the Landfill Directive	Sets out guidance for waste producers on what constitutes treatment of waste before landfilling.	The Agency consulted on draft guidance in October 2001. The final guidance is expected in January 2005 at the earliest.

ESA recognises that the Agency intends to produce a single document incorporating national interim waste acceptance procedures and guidance on the waste treatment requirements of Article 6(a) of the Landfill Directive. However, the fact remains that producers and managers do not have the full regulatory information they need in order to plan for the application of WAC.

2. Revisions to the Environment Agency's Guidance

In oral evidence we agreed with the Environment Agency's comment, in the second paragraph of this section of their letter, that the absence of clear interpretation by the Government on the Landfill, Groundwater and PPC Directives left a vacuum which the Agency has attempted to fill.

As the regards the third paragraph of this section of the Agency's letter, the high number of applications currently going through the Courts might suggest that the Environment Agency's policy may not be entirely sound.

3. Processing of PPC Applications

The Environment Agency's letter states that 132 PPC applications had been determined out of 422 received. Since giving oral evidence, we have sought to verify this figure with the Agency and the Agency's officer who directly manages this process has told us by email of 5 January 2005 that 89 permits for

landfills have been determined out of 349 received, equivalent to nearly 26%. While we recognise that there has been an improvement from 20% to 26%, this remains far below the Agency's own deadline of processing 80% of the applications submitted and is a lower percentage than the Agency asserted in its letter to the Committee.

The Committee may have its own view about being provided with incorrect data by the Agency. ESA's concern, as stated in oral evidence, is that in trying to meet targets the Environment Agency may not be giving due thought to the conditions included in permits: one major waste management company is currently appealing against 50 conditions included in a permit. The Agency should be improving both speed and quality of permitting, not offsetting one against the other.

4. *Financial Provision*

We are disappointed by the inaccurate terms of this part of the Agency's letter.

We have in fact been discussing financial provision with the authorities for a decade and we know from recent and more distant discussion with relevant and senior officers of the Agency that our concerns are understood and to some extent apparently shared. At the start of 2004, the Agency proposed in writing a wholly different scheme of financial provision (a levy) compared to that they proposed by the end of the year (escrow accounts).

The essence of the Agency's recent proposal—now delayed until at least May—would require financial provision to be made by deposit in escrow accounts to achieve a balance of £2 billion. Putting to one side the fact that the Agency's financial comparisons of costs of escrow accounts with those of bonds are seriously inaccurate, to require operators to put working capital into escrow accounts is manifestly to deprive the sector of the capacity to invest at precisely the time when investment of up to £1 billion a year in new infrastructure is required.

Neither banks nor shareholders invest in this sector in order to place money in escrow accounts (they might as well deposit money directly themselves) and, as a very broad rule of thumb, the gross funding cost of amounts in escrow accounts could be taken to be about 10% of the amount deposited, ie about £200 million a year once the balance was achieved. This would be a grossly inefficient way of providing financial provision when all that is needed is on-account provision for aftercare plus some form of provision against insolvency (for which hypothecation of £1 of Landfill Tax should prove more than ample).

D. NATIONAL PLANNING POLICY ON WASTE

The draft PPS10 is a step in the right direction but we do not believe it goes far enough to provide a framework capable of delivering the 2,000 new waste management facilities the Environment Agency estimates are needed over the next decade to comply with EU Law on waste. For example:

- the consultation outlines an enhanced role for regional planning bodies but, in a context where RTABs have been constrained by lack of resources, there is no specific reference to the new resources that would be made available;
- permitted developments rights consistent with those available to the minerals and water sectors do not apply in the waste management sector despite our similar activities. Permitted development rights would apply to minor and non-controversial development such as spray masts and vehicle cleaning equipment; and
- the consultation provides no specific encouragement for an environmental business planning zone which could deliver a range of economic, social and environmental benefits including:
 - reduced traffic movements and their associated environmental impact;
 - job creation;
 - development value in land;
 - wealth creation opportunities with local, regional and national benefits; and
 - reduced risk in investing in new facilities.

Enclosed is ESA's Report *Land-use Planning for Sustainable Waste Management*, published in May 2004, which sets out action that could be taken now at national, regional and local levels to improve the performance of the planning process [not printed].

January 2005

Written evidence

Memorandum submitted The Nappy Alliance (X1)

CONTEXT

The Nappy Alliance has recently been established by 14 independent providers of real nappies to act as the trade body for the commercial market of re-usable nappies. The Alliance has been raising the environmental and financial issues relating to the use of disposable nappies. Currently the NHS purchase 12 million disposable nappies a year at a cost of £150 million, this figure excludes waste disposable. In the home disposable nappies account for 4% of household waste.

WRITTEN EVIDENCE

As the recent Environmental Audit Committee report, “Greening Government” has heavily indicated, the procurement practices of government require significant improvement. Public bodies and authorities such as NHS Trusts, Local Authorities and the NHS Purchasing and Supply Agency could all play a more significant role in reducing the amount of disposable nappies used, and assist in promoting best practice of reusable nappies.

The majority of nappies are disposed of in landfill sites, which remains a growing concern for the government in light of tough EU targets on waste minimisation:

- nearly three billion nappies are thrown away in the UK every year—eight million nappies a day;
- the decomposition timescale for the materials and chemicals currently used in disposables is unknown, however it is estimated to be hundreds of years;
- landfill sites in themselves are an excessive use of land, potential sources of water pollution and the production of methane gas; and
- alternative routes for disposing of nappies along with other household waste, such as incineration, also come with environmental problems through the production of emissions.

Current practice amongst NHS Trusts varies considerably in terms of prioritising waste minimisation and clinical waste costs. The Alliance has been collecting such information, specifically on the use of disposable vs. reusable nappies on maternity wards, via supportive MPs. We would be happy to share such information if the committee would find this useful to see a cross section of policy and practice across the UK.

The issue of disposable nappies has been acknowledged across Westminster and Whitehall, and in a report on Waste from the Prime Minister’s Strategy Unit the promotion of real nappies was included as part of its four investment measures to reduce waste. DEFRA too in its Waste Implementation Programme outlines the development of reusable nappy services and support for start-up nappy laundering services. All welcomed by the Alliance.

Further action is still required to significantly reduce the contribution that disposable nappies make to filling landfill sites, and the Alliance would like to put forward the following suggestions:

- in hospitals—through best practice policy of using reusable nappies on maternity wards, achieved through policy guidance from the Department of Health;
- through local authorities funding and administering reusable nappy initiatives—examples of successful programmes include the Changing Nappies Scheme run by Kent County Council; and
- through the policy and practice of the NHS Purchasing and Supply Agency.

21 September 2004

Memorandum submitted by the Waste Recycling Group Limited (X2)

1. INTRODUCTION

1.2 Waste Recycling Group is one of the UK’s leading waste management companies and handles in excess of 15 million tonnes of household, commercial and industrial waste each year. More than 50% of Waste Recycling’s business is accounted for by waste management contracts with around 70 local authorities across England, Scotland and Wales. The Company operates facilities for the reception, recycling and disposal of waste, including a network of waste transfer and recycling centres and nearly 70 strategically situated landfill sites, and is one of the largest operators of civic amenity facilities on behalf of

local authorities for use by the general public. The Company operates an energy from waste (EfW) incinerator at Nottingham and is building a further EfW facility at Allington in Kent, which will substantially reduce that County's dependence on landfill.

1.3 Waste Recycling Group has gone from strength to strength since its founding in the early 1980s. In 1994 Waste Recycling was floated on the London Stock Exchange and was a member of the FTSE250 Index until July 2003 when the Company was acquired by the private equity investment organisation, Terra Firma Capital Partners Ltd. In June 2004 Terra Firma acquired the UK waste disposal and electricity generation business of the Shanks Group plc and has integrated it into the Waste Recycling Group.

1.4 The Group is Europe's leading generator of electricity from landfill gas, with an installed capacity of some 170 MW (enough electricity to supply the needs of around 170,000 homes) and, together with power generation from waste incineration, Waste Recycling now contributes very significantly to the Government's renewable energy targets and climate change objectives.

2. INDUSTRY SECTOR AND WASTE POLICY OVERVIEW

2.1 The UK waste management industry is marked out by its fragmentation—half a dozen large companies operating alongside a very substantial number of much smaller regional and local operators. As the waste business and regulatory framework has become increasingly demanding, few companies have the capital to respond to both business opportunities and ever higher regulatory standards. Consequently, consolidation of the industry has been taking place, with some larger companies seeking to exit the sector altogether.

2.2 Current political focus is on meeting short- and medium-term objectives; to deliver more sustainable waste management through increased levels of waste prevention, recycling and re-use, and to divert substantial proportions of biodegradable municipal waste (BMW) from landfill. However, there is a danger that the Government will miss the longer-term picture: that there is a continuing need for safe and effective incineration and landfill disposal capacity to cater for non-value waste residues.

2.3 Technologies such as mechanical biological treatment (MBT)—which appear attractive because of high landfill diversion capabilities—themselves produce a final residue that has to be dealt with—either as a refuse derived fuel (RDF) for incineration or by landfill disposal. There is currently very little thermal capacity for RDF in the UK and prospects for significant additional capacity are limited.

2.4 Waste disposal through incineration with energy recovery is in danger of becoming a lost opportunity. Incineration is the one waste management option that offers the best possibility of assisting the Government to meet its Landfill Directive commitments, yet its growth remains beset by low levels of public acceptance. This is based on a perception of human health risk that is not supported by latest scientific and epidemiological evidence, as well as an inefficient planning system.

2.5 It is reported¹ that capital investment of the order of £10 billion is likely to be required over the next 10 years to meet the Government's waste targets. The private sector is eager and prepared to play its part in delivering what the Government requires by engaging itself in this investment programme. However, those that underwrite such investment—invariably banks and financial institutions—demand to understand the level of risk that is involved in such investments. Currently, in some areas of Government policy (hazardous waste, for example), there are levels of uncertainty in the implementation and proper enforcement of regulation that are not helping the industry and its financial supporters to make the investment decisions that are required.

2.6 Public sector procurement—the process by which the industry can engage in meaningful and productive partnership with local authorities—is also becoming increasingly inadequate. The process of bidding for Private Finance Initiative (PFI) and PFI-type tenders is now cumbersome, costly and overly bureaucratic and constrained. This means that there will be few large waste management companies willing, or able, to bid for major tenders (the “pool” of companies capable of delivering such long-term and wide-ranging contracts is already quite small), which is consequently posing serious challenges for contracting local authorities, including the potential for not achieving “best value” for Council tax payers.

3. HAZARDOUS WASTE

3.1 The banning of co-disposal of hazardous and non hazardous wastes was first proposed in the 1980s and after much deliberation in Europe it was agreed as part of the EU Landfill Directive in 1999.

3.2 During a protracted period of negotiation government departments, their staff and agencies and MPs with responsibility for environmental matters all changed. While the Landfill Directive was agreed, the definition of what was hazardous waste was at the same time undergoing change, and was not finalised in its current form until 2002. Test protocols to determine what hazardous wastes could be landfilled (in a dedicated site) were not agreed until December 2002, and the actual tests to be used in the UK (which, for

¹ *The ENDS Report* No 354, July 2004, pp 24–27.

the most part, were published in the spring of 2004) have still to be completed. There is now the position where legislation is in place referring to test methods which are still drafts under development—Landfill Regulations 2004 SI 1375.

3.3 It has been a long and involved process that has allowed little time for waste producers and waste management companies to prepare. The Environment Agency, although involved in the negotiations, has also been poorly prepared resulting in delays to the permitting of hazardous landfills. At the same time standards are developed with a high degree of arbitrariness over what conditions are placed in permits, and as a consequence there has been a lack of uniform interpretation and enforcement across the Country.

3.4 As a whole there seems to have been little regard to the need of industries to have a disposal outlet for their wastes—wastes are unfortunately inevitable from some processes. Notwithstanding these issues, with the sensible approach of delaying the full implementation of the “waste acceptance” provisions of the Directive until July 2005, capacity has been available (in 2004) for the disposal of those hazardous wastes needing to be landfilled.

3.5 There is a belief that on a wide scale hazardous wastes are still being co-disposed. This is in part due to a lack of knowledge by waste producers (of the legislation and of their wastes) and by Environment Agency staff “on the ground”, as well as deliberate illegal practice by some companies which the Environment Agency is poorly equipped (in terms of staff skills and numbers) to tackle.

3.6 The lack of confidence in the Environment Agency to enforce the new standards will prevent waste management companies investing in the technologies required to meet the even more stringent rules that come into force in July 2005. As a result, the period after next July could prove to be very difficult and challenging.

3.7 Industries such as steel manufacture, waste treatment, oil processing and clinical/municipal waste incineration, also face serious issues in July 2005 with regard to meeting the requirements for wastes to be disposed. Without a rapid change in approach it is quite possible that some of these industries will be required to close or stockpile significant quantities of waste until suitable treatment facilities are established—a process which is likely to take longer than a year (even where planning permission is present).

3.8 While the establishment of bodies such as the Hazardous Waste Forum potentially offers a means for discussion and resolution of issues it would seem that the onus has been on talking rather than implementing real solutions. There is an urgent need to develop practical solutions and if this is to be undertaken by industry it requires a climate of confidence that the standards to be achieved are identifiable and robust, and that all parties will be required to adhere to them. Even with this scenario, time is very short, and it is unlikely that the capacity required will be available.

4. LANDFILL DIRECTIVE

Regulatory Guidance Notes

4.1 Regulatory Guidance Notes have no legal status. They are the Environment Agency’s interpretation of Directives and Regulations, often for internal use by Agency officers. They are not subject to peer review or any formal adoption process such as there exists with Waste Planning Policies. They do however assume a level of importance within the Agency to the effect that they become waste policy, which binds officers in their decision-making capacity. The most recent example of this is in respect of RGN 6 “*Interpretation of Landfill Regulations Engineering Requirements*”.

4.2 This Guidance Note attempts to interpret the engineering requirements of the Landfill Regulations. For new landfills this is relatively straightforward, in that all landfills where generated leachate presents a hazard to groundwater must have a specified geological barrier to base and side slopes and a basal artificial sealing liner. In respect of older landfills the issue is less straightforward as the guidance states that “any attempt to produce separation (between old non-compliant landfill and new compliant landfill areas) through engineering a barrier overlying previously deposited waste would not be acceptable”. As well as being contrary to the design by risk assessment principle, which is embodied in the IPPC regime, additional consequences may be:

- adverse and unsustainable environmental, management and land-use impacts due to partially completed sites;
- the loss of strategically important sites where there are no other waste management facilities to deal with arisings, particularly municipal solid waste from local authority contracts; and
- the significant loss in value of industry assets.

4.3 There is a clear need for Agency guidance to be subject to peer review to ensure that it does not “gold plate” European Directives and that the consequences of rigorous implementation are properly understood and not contrary to other Government and land-use planning policy.

The planning system

4.4 The biggest challenge for the Government lies in the huge increase in waste management infrastructure that will be necessary in order to send less waste to landfill and to recycle and recover more. A major report published by the Institution of Civil Engineers (ICE)² in June revealed that up to 2,300 new waste management facilities, large and small, would be required by 2020 in order to avoid a crisis. ICE claims that the introduction of these facilities—which could cost up to £30 billion, create thousands of jobs and take five years to come on-line—are being stalled by a combination of public animosity, Government prevarication and industry nervousness. Other bodies, such as the Environmental Services Association (ESA) and the Environment Agency, have also said that large numbers of facilities are urgently needed.

4.5 It is becoming increasingly difficult to secure planning permissions for the range of facilities necessary to deliver the Government's Landfill Directive objectives. A recent example of this relates to the provision of facilities to serve a local authority waste contract. Permission for the principal facility, an energy from waste incinerator, was refused on appeal while an application for a secondary facility, a materials recycling facility (MRF), has been withdrawn on two occasions in order to prevent refusal and currently remains undetermined. Even the provision of civic amenity sites (where members of the public can become actively involved in recycling and recovering their own household waste) is problematical with some local councillors bringing pressure to bear to have "unpopular" applications withdrawn. While this case may be to a degree extreme, it is by no means an isolated example and the experience is mirrored to a lesser degree elsewhere in the country.

4.6 The introduction of the new planning system in the Planning and Compensation Act should assist in ensuring the flow of necessary planning consents; however it is unlikely that the necessary Local Development Frameworks will be in place before 2007 and this creates a hiatus at a crucial time. Similarly, if land-use planning policy is to deliver the necessary step-change in waste management practice, there is an overwhelming case for extending municipal waste management strategies to cover all controlled wastes.

23 September 2004

Memorandum submitted by Cleanaway Ltd (X3)

1. EXECUTIVE SUMMARY

1.1 The Government and the Agency should establish the BPEO, the best practicable environmental option, for the management of hazardous waste as produced. It is this lack of clarity that is encouraging the unscrupulous operators to manipulate wastes at the expense of the environment.

1.2 Clearer guidance on the treatment requirements for municipal waste, particularly to meet the LATS targets, is recommended, as are improvements to the planning system and changes to the landfill tax rates to encourage more investment in the treatment systems.

2. INTRODUCTION

2.1 Cleanaway is a global waste management and recycling organisation employing 15,500 people, with operations spanning fourteen countries on three continents. It is a wholly owned subsidiary of Brambles, a global industrial services company dual listed on the London and Sydney stock exchanges. The services offered to local authorities and industrial and commercial clients cover a broad spectrum including waste recovery, recycling, collection, disposal, high temperature incineration and advice on Best Practice.

2.2 Cleanaway UK has a commercial and industrial customer base of over 70,000 and the municipal arm of the company holds 49 contracts with 46 local authorities, providing waste/recyclables collection, street cleansing and ancillary services. The recycling collection service diverts nearly 3,000 tonnes of material away from landfill every week.

2.3 The company has a technical waste business dedicated to the management of hazardous waste, which remains the largest hazardous waste business in the UK today, with access to the widest range of facilities for recovery, recycling and disposal. We operate a number of hazardous waste facilities including a solvent recovery plant, physico-chemical treatment facilities, bio-treatment plant and the UK's largest merchant high-temperature incinerator representing two-thirds—80,000 tonnes—of UK capacity. In total, the company handles over 300,000 tonnes of hazardous waste per annum. Cleanaway operated one of the country's largest co-disposal landfill sites until reclassification was required under the Landfill Directive in July 2002.

² *State of the Nation 2004*, an assessment of the state of the UK's infrastructure by the Institution of Civil Engineers, June 2004.

2.4 Cleanaway welcomes the establishment of this inquiry and is pleased that the Committee has recognised the importance of needing a robust Waste Policy, particularly in relation to meeting the requirements of the Landfill Directive. Cleanaway believes that Waste Strategy 2000 did not address important issues relating to hazardous waste and we have consistently asked policy makers to take proper account of the management of hazardous waste when developing waste strategies.

3. HAZARDOUS WASTE

3.1 The implementation of the Landfill Directive and other associated European legislation is introducing significant and complex changes to the management of hazardous waste. The cessation of co-disposal signalled the most significant change in waste management practices since the introduction of the Deposit of Poisonous Waste Act 1972. Industry is reluctant to invest in new facilities as there remains great uncertainty as to how the legislative changes will influence the production of the waste and methods of its management.

Impact of change

3.2 It is still too early to measure the real impacts of the changes to landfill practices. In the few weeks since the co-disposal ban and the significant reduction in available hazardous waste landfill capacity, the effects have not been as dramatic as might have been expected. Treatment plant operators have not seen a significant increase in throughput although prices charged for hazardous waste disposal to landfill have increased dramatically.

3.3 Agency data on waste statistics and tracking are not sophisticated enough to determine where the waste displaced from landfill is going. There are rumours in the industry that waste is being manipulated and continues to go to non-hazardous landfill. We know that some companies are stockpiling wastes to see what happens in the market place. Some are holding their waste to see whether the Agency's enforcement policy will permit them to use "low-tech" treatment options such as absorption; others are holding material in the hope that they can send it to cement kilns if the Agency's proposal to relax the Substitute Fuels Protocol comes into effect.

3.4 The ending of co-disposal in July 2004 and the necessity to use dedicated hazardous waste landfill sites (for the disposal of wastes not yet required to be treated to meet the Waste Acceptance Criteria (WAC)) caused most major waste management companies to withdraw from this market. Hence, the capacity for hazardous waste landfill disposal is now limited and probably inadequate, and the uneven distribution of the sites is leading to very significant increases in transportation of hazardous wastes around the country. This is increasing the overall disposal costs significantly and either no environmental improvements or even negative effects on the environment are occurring.

3.5 Regarding landfill disposal of hazardous wastes in the future, the trade association implored Government to adopt much higher standards so that the associated risks could be quantified and limited in terms of scale and duration. This would have allowed companies and their shareholders to be comfortable with the level of risk and limit the timescales of financial exposure. Regrettably, that approach was not adopted.

3.6 One immediate impact has been that there are a number of smaller new entrants into the hazardous waste business. It is of concern that some of these companies are saying that they do not intend to be around for a long time and they may leave an expensive legacy.

Adequacy of preparation

3.7 From Cleanaway's perspective, the UK's preparation for the Landfill Directive has been very poor. The Select Committee's Report following the inquiry into hazardous waste acknowledged that the UK was ill prepared for the significant changes that were about to come into effect. Industry had been explaining to Defra for many years that they would not have the confidence to invest without clarity.

3.8 There have been continued delays in the implementation of some of the legislative changes, such as the WAC for hazardous waste to landfill and these have further exacerbated the problems associated with uncertainty.

3.9 Even in this uncertain environment, Government has proceeded with the expectation that industry would necessarily provide facilities for the treatment and disposal of hazardous waste. This was despite the warnings given by the industry and its trade association that much greater degrees of certainty would be required before investment would be committed.

3.10 The changes to hazardous waste management will inevitably result in higher disposal/treatment prices. This, in turn, will encourage unscrupulous operators and producers to take the cheapest option. The Agency needs to be in a position to make sure that improper waste handling is not allowed but there are concerns that the Agency may not have sufficient resources to regulate effectively.

3.11 Cleanaway welcomes the establishment of the Hazardous Waste Forum and believes that this type of stakeholder group should have been established much earlier. The Forum has been able to offer a platform from which to raise concerns but has not yet been able to develop a sustainable hazardous waste strategy for the UK. For example, is it the Government policy to encourage all the hazardous waste to be blended so that it can be burned in cement kilns?

3.12 The Government needs to have a vision of the structure it wants for the management of hazardous waste in the future; it is not satisfactory to leave the market to decide. If left to its own devices, the market is likely to adopt the cheapest available technology not involving prosecution (CATNIP) and not the best available technology (BAT). CATNIP will always be cheaper, and usually more profitable than BAT. Experience has shown that investing in BAT facilities can prove uneconomic if the waste is allowed to continue to be disposed of at cheaper facilities. Waste will always migrate to the cheapest cost option.

What steps should now be taken?

3.13 The Government needs to be clear whether it wants industry to deliver CATNIP or BAT processes and then produce legislative support to encourage investment.

3.14 The Agency has produced some valuable guidance documentation and we would like to see more of these position statements setting out clear concise guidance for producers, particularly SMEs. We need clear statements on what the Agency regard as unacceptable practices and these activities should be stopped immediately.

3.15 We are concerned about what is happening to the hazardous waste that we expected to be diverted from landfill. The Agency should conduct a thorough investigation to establish if waste is being handled unlawfully.

3.16 The Government and the Agency should establish the BPEO, the best practicable environmental option, for the management of hazardous waste as produced. It is this lack of clarity that is encouraging the unscrupulous operators to manipulate wastes at the expense of the environment.

3.17 The Hazardous Waste Forum has initiated an educational drive to get the message across to the SMEs. This work must continue as a priority and be funded as appropriate.

3.18 Inevitably, waste producers are studying their hazardous waste production outputs very carefully and so the market is continually evolving. It has been difficult for the waste industry to plan given the inadequate or poor quality data on waste arisings but the legislative changes are causing the data to change very rapidly. The types and scale of plant needed to treat the wastes to meet the criteria thus remain uncertain and for the more difficult waste streams, there may not be viable processes available to treat the wastes to meet the WAC by July 2005. This could mean that high temperature incineration, at a cost, is the only technical solution and some industries may opt to transfer their production units abroad.

4. LANDFILL

4.1 Government chose to bring forward the implementation of the IPPC Directive and use PPC permitting to enforce the Landfill Directive. Whilst this offered advantages in terms of streamlining the effort needed by both industry and the controlling authorities, it appears to have led to confusion and complexities, which Government has been unable to resolve. Both pieces of legislation are highly convoluted and this needed a very early and strong lead from Government to give the industry and the Agencies clarity in the implementation. Such a lead has not been forthcoming in the way of Government guidance and most of the legislation needed has been late.

4.2 This forced the Agencies to write their own guidance, often causing consternation in the industry. The re-permitting process has consequently become slow, cumbersome, frustrating, delayed and is probably not leading to any significant environmental improvement or reassurance to the public.

4.3 As we try to move forward from re-permitting into the more significant changes required by the Directive, the problems and the divergence in views between the Government and the Agencies become more apparent. For example, the Environment Agency's draft guidance on the treatment requirements of the Landfill Directive was issued in 2001 and has still not been finalised. However, recent draft guidance issued by Defra does not concur with the Agency's.

4.4 Defra has been promising the Agency a direction on the dates required for implementation of the non-date-specific aspects of the directive, such as, when treatment prior to landfill at existing landfill sites will be needed and when the ban on the disposal of liquid wastes at existing sites will be applied. There is still no indication of when these changes will be required and so it is hardly surprising that the industry is not investing heavily in treatment facilities for wastes going to landfill or to divert liquid wastes from landfill. It is also unclear as to why Government has decided these two aspects of the implementation of the Directive should receive a specific direction. There are many other non-date-specific requirements that are being implemented by the Agency on the issue of new permits for existing sites, leading to competitive disadvantages for the operators of those sites compared with the sites that have not been re-permitted.

4.5 There is an overriding requirement in Article 5 of the Directive to reduce the amount of biodegradable waste going to landfills. This is an aspect that has been largely overlooked by Government and, therefore, is not receiving any attention by the industry. Article 5 required member states to produce a national strategy to reduce biodegradable waste going to landfill by 2003. The Government's Waste Strategy 2000 was intended to satisfy this requirement, stated at Part 2 paragraph 1.6. It is further acknowledged in Part 1 paragraph 3.48 that the general strategy to reduce biodegradable waste going to landfill will be achieved by proposals including the packaging regulations, the landfill tax and the target for reducing the amount of industrial and commercial wastes sent to landfill. It was stated that, by the date of the national strategy required in Article 5, the Government proposed to review the effectiveness of those measures in reducing the volume of non-municipal biodegradable waste sent to landfill. There does not seem to have been any impetus by Government to pursue this required objective.

4.6 The diversion of biodegradable municipal waste (BMW) from landfill to meet the Article 5 targets is required by the Waste and Emissions Trading (WET) Act and the Landfill Allowance Trading Scheme (LATS). Given that these targets relate to BMW production in 1995 and this has been growing at around 3% since, the targets will prove very difficult to achieve and if the growth rates continue, the eventual target in 2020 will stiffen from 35% to around 18% of the 1995 figure. The only way that this figure can be achieved nationally will be by a much greater use of incineration of municipal waste.

4.7 The focus of attention and the initial statutory performance targets of Waste Strategy 2000 referred to recycling and composting. Recycling and composting leads to the removal of the more easily accessible components of the municipal waste stream, many of which are not biodegradable. This means that there will have to be an intensification of the treatment of the residues after the removal of recyclables and compostables but, even then, it will have to be recognised that biological treatment methods are unlikely to meet the final target. However, Government has not provided any assistance to accelerate the provision of the large number of treatment facilities needed and is only now beginning to support research into treatment systems.

The Planning System

4.8 The planning system still injects very protracted delays into the development of facilities, particularly through the development plan process, and it is becoming increasingly difficult to find locations that can be used for waste management processes such as treatment. The planning system negates the use of existing facilities for treatment processes that are regarded as "sui generis", so requiring specific planning permission for a change of use. Most industries can move straight into premises that have permission for general industrial use. Existing warehouses, which are allowed to accommodate some light industrial use without requiring a new planning permission, would be ideal for in-vessel composting plants. Consequently, not only would the granting of permitted development rights for change of use from industrial or warehouse uses to waste operations accelerate the provision of such facilities, the costs involved would be reduced by avoiding the expense of specific planning applications, inquiries and the construction of dedicated buildings.

Landfill Tax

4.9 Government has signalled its intention to discourage the landfill of waste through the landfill tax escalator. It should recognise that the establishment of treatment processes will be very expensive and further encouragements will be necessary. The landfill tax has two rates, the full active rate, currently £15 per tonne and the reduced inactive rate for inert wastes, at £2 per tonne. There will always be residual wastes generated from the treatment of municipal solid waste (MSW) and the only way to take advantage of the reduced tax rate is through incineration to remove all biodegradable matter. This means that no matter how much treatment effort is put into MSW to divert the BMW by other methods, the residues will always incur the full rate of tax. This is discouraging investment in new processes and seemingly inadvertently pushing local authorities and industry towards incineration, a prospect which is still politically and socially unpopular.

4.10 The establishment of an intermediate tax level reflecting the large amount of effort and cost incurred in carrying out the treatment of BMW but still producing residues would give a much-needed encouragement to the development of such processes.

LATS

4.11 Though for England, the LAT Scheme has been delayed for a year, the development and planning of new facilities to treat the BMW is needed now to hit the first target in 2010. The development of methods and the large number of facilities has been delayed because no guidance has been issued on the methods to measure the biodegradability of the residuals. It will take some time before laboratories are established with a capability of carrying out the necessary testing once the methodology is released. Then the capabilities of the various systems will have to be compared before the investment in the facilities can be made and their construction can commence.

Memorandum submitted by David Levy (X5)

1. A nationwide problem has emerged since the closure of the landfill sites and with no government provision for the disposal of hazardous waste via alternative technologies, it has allowed existing co-incinerating companies to step in with the so called answer.

2. The British Cement Association has pressured the Government to apply a lighter hand in regulation so that they can swallow the mountains of waste in their cement kilns. This has materialized in hazardous wastes being reclassified as recovered fuel and therefore the strict standards applied to the hazardous waste incinerator are by-passed in the cement kilns.

3. This has meant three laws are being ignored by the delivering policy agency (Environment Agency).

(a) The Health and Safety Act requires that the company provide a hazard analysis and risk assessment of the hazardous waste, recycled liquid fuel (RLF). This has not happened.

(b) There has been no cement company that I know of, that has provided in their applications to burn these hazardous wastes, a full and detailed BAT assessment. This is a failure to provide the minimization that is part of the EPA 1990. To put it in easy language if the company are paid £millions for waste disposal even if it is reclassified as fuel, they have the finance to deliver filters and abatement equipment now.

(c) The Precautionary Principle enshrined in European Law has been avoided by our protecting agencies. It is only a matter of time before the Agency is challenged in law for failing to provide any of these aspects of protection.

4. Alongside of these failures are the Health and Environmental Impact Assessments which were also protective measures set for this industry, these are also ignored and will be challenged in law by our community groups. We have no choice when the Agency fail to act in our interest, and if fact see their role primarily, as facilitating industry.

5. I would remind the Committee that in the Select Committee Report on The Impact of Cement Manufacture on the Environment (1996), health studies were recommended prior to any trials of novel fuels. To date not one has been done.

6. The issue of BPEO for the disposal of RLF has not been tested in law. The Agency would wish for this not to be an issue but the disposal route to Hazardous Waste Incinerators is a proven environmental benefit, therefore this should be challenged.

7. The financial implications of the company being paid to dispose of the RLF, tyres and other hazardous wastes, brings into legal focus the point of whether this is disposal or these are fuels. If the latter, why do we gain no revenue from the sale of the fuel? If the former, why are the emission standards for hazardous wastes not applied? Also this would stop the trans frontier shipments as hazardous wastes are banned, whereas recovered fuels are not.

8. This appears as if the company is having its cake and eating it too.

9. I represent a community group of 524 residents who have requested the fitting of filters to the Lafarge Cement Company of Westbury, when the company were first given permission to burn 4,000,000 tyres a year. We got excuses and timetables, but not one extra filter. Now the company are to burn every hazardous waste and are to trial RLF. Again not one extra filter is being proposed. Would you allow a chemical company trial on peoples health without ample evidence based on science and testing? Yet here in Westbury we are to be the guinea pigs to this chemical cocktail of tyres and RLF in the air that we breathe. We are particularly concerned about ultra fine particulates piggy backing heavy metals and dioxin like materials into our environment.

10. Contrary to the statement made by the Agency that the burning of tyres was an environmental benefit, the increases in the substances such as lead, mercury, 1,3 butadiene, styrene and phosgene appear to us as being a net detriment to the environment. Can your committee review the data off the Agency website if you can find it, as it proves increases, not decreases and that needs explaining?

11. Why has the Agency arbitrarily increased reportable thresholds for lead, 1,3 butadiene, benzo-styrene to name a few. This goes against minimization and when the trial of RLF is being reviewed and assessed then increases in these substances will not be part of the overall results. Another example of a rigged trial and the obfuscation of the facts, where the public have been shafted with a policy that will impact on our future health when nobody will be accountable.

David R Levy

Chair—The Air That We Breathe Group

NGO—Wiltshire Waste Forum

Advisor—The Centre for Environmental Protection

5 October 2004

Supplementary memorandum submitted by David Levy

It is apparent that the Environment Agency have been presenting to the Efra Committee via Baroness Young's evidence a slanted perspective. The Committee will not have the evidence in full on which to make their conclusions.

The failure to answer the question about the missing million tonnes of hazardous waste should have raised the Committee's concerns and the failure by the Agency to instruct the Committee on the reclassification of hazardous wastes as recovered fuels, is an oversight that makes the rest of the conclusions pointless. This the Agency would know and should be made to account for. The Substitute Fuels Protocol Revision has led to an inadequate consultation including a failure to consult the Committee whose auspices first delivered the SFP, after public disquiet about health and safety matters. (1996 Select Committee on The Impact of Cement Manufacture on the Environment.)

As representatives of the Cement Community Network we have requested the opportunity to present our case to the Committee for balance, openness and accountability. We are distressed about the Agency's keenness to proceed in this matter without addressing the issues of filtration, BPEO, BAT, hazard analysis and risk assessment of the substances being burnt and being imported to our shores to be incinerated.

By addressing the latter point the Committee could provide the solution to the most hazardous wastes going to purpose built hazardous waste incinerators maybe grades 1 and 2, whilst the less hazardous wastes could be disposed of in cement kilns grades 3/4 and 5. That way the revised SFP will not end up being the death knell of the HW Industry.

David Levy,

Wiltshire Waste Forum/NGO, The Air That We Breathe Group/Chair, Viridor Liaison Group/NGO, Centre for Environmental Protection/Adviser

25 November 2004

Memorandum submitted by Dr C V Howard (X6)

Please note that the comments which follow are my personal opinion and should not be construed to be any policy of the University of Liverpool or any part thereof.

EXECUTIVE SUMMARY

As a medically qualified toxico-pathologist specialising in developmental toxicology, my research has made me very aware of the health impacts of the types of pollutants emitted during waste incineration and landfill. A number of these can affect the many ways in which hormones regulate development in the womb and early childhood, with effects which can last throughout life. I am of the opinion that there is no place for incineration in municipal waste management. It is a totally unsustainable use of resources and the inevitable emissions of particulates and toxic organic chemicals such as dioxin-like substances are likely to have harmful effects on health, especially the health of the most vulnerable members of society. These pollutants remain as a legacy for future generations. We should instead adopt two strategies. Firstly, the substitution of products which include potentially hazardous chemicals, by more harmless alternatives. Secondly, adopt a Zero Waste policy throughout the UK, thus avoiding the necessity for incineration or much landfill.

DETAILED COMMENTS

1. I am a medically qualified toxico-pathologist. I supervise the activities of the Developmental Toxicology Research Group at the University of Liverpool. For over 12 years, I have been studying human and mammalian fetal and neonatal development, ie the development of babies in the womb and young children. This has led to my becoming involved in investigating the effects of a number of global environmental pollutants which have their maximal impact upon the fetus. Many of these chemicals are persistent and bio-accumulative, ie they build up in our bodies over time. Mothers pass these chemicals to their babies in the womb and in breast milk, and many of them disrupt the action of the hormone systems, affecting babies' development in many different ways. All of these effects have been well documented, and many have been shown to be happening at current background levels of dioxins and PCBs, which are the most well studied of the hormone-disrupting chemicals.

2. The so-called "background" levels of dioxin-like compounds are almost totally caused by anthropogenic activities, mainly through combustion of organohalogenated products. Even the cleanest, most modern incinerators still emit an amount of dioxins and other products of incomplete combustion (PICs).

3. Even though the “background” levels of dioxins have been reducing in recent years, this does not mean that it is safe to add a little more into the environment, through new incinerators. Defra acknowledges in their recent dioxin consultation, that infants still receive many times the dose currently deemed “safe”. Unfortunately, further evidence seems to indicate that there may be no safe dose below which health effects will not occur. As the effects on the fetus occur at extremely low levels, always in combination with many other anthropogenic chemicals, policy should be to reduce dioxin levels to as low as possible, not just to below the current TDI. Certainly, safety limits have steadily been revised downwards in the past few years, as more becomes known about these chemicals mode of action.

4. There is general agreement that the fetus is the stage of life which is the most vulnerable to damage from hormone disrupting chemicals. Dioxins and similar compounds affect the many ways in which hormones regulate development in the womb and early childhood, with effects which can last throughout life. These effects can range from an increased likelihood of respiratory problems or allergies, to reduced IQ, less efficient kidneys, reproductive problems or a higher probability of contracting cancer.

5. Effects on the intelligence, immune status and hormonal status of infants have been related quantitatively to the amount of dioxin-like substance in the mother’s body, by Koppe *et al.*³ Furthermore, the effects, including altered latency times in brain function and altered lung function, appear to persist past the age of seven.⁴ Neurobehavioural and immune system deficits have been shown to be correlated with the level of PCBs and dioxins that infants receive from their mothers while in the womb.^{22, 20, 5, 6, 7, 8, 9} The documented neurobehavioural effects include altered play behaviour as well as general mental and psychomotor development. Other papers also document a variety of reproductive dysfunctions.^{10, 11, 12} There is general acceptance that male reproductive health is under threat.^{26, 13, 14, 15} Exposure to dioxin-like substances has also been related to changes in the proportion of boys to girls being born^{16, 17}, there being a decrease in the number of boys.

6. It is not feasible to do a realistic cost-benefit analysis of the health benefits arising from dioxin reduction, as the potential developmental health effects are so diverse, and can occur in synergy with other

³ Koppe, JG, ten Tusscher, G, and de Boer, P. (2000) “Background exposure to dioxins and PCBs in Europe and the resulting health effects” in P Nicolopoulou-Stamati, L Hens, and CV Howard (eds) *Health Impacts of Waste Management Policies*, Kluwer Academic Publishers, Dordrecht, the Netherlands, pp 135–154.

⁴ ten Tusscher, G (2002) “Later childhood effects of perinatal exposure to background levels of dioxins in The Netherlands”, PhD Thesis, University of Amsterdam, ISBN: 90-9016271-2.

⁵ Vreugdenhil, HJ, Slijper, FM, Mulder, PG, Weisglas-Kuperus, N. (2002) “Effects of Perinatal Exposure to PCBs and Dioxins on Play Behavior in Dutch Children at School Age.” *Environ Health Perspect.*; **110(10)**: A593-8.

⁶ Huisman, M, Koopman-Esseboom, C, Lanting, CI, van der Paauw, CG, Th Tuinstra, LGM, Fidler, V, Weisglas-Kuperus, N, Sauer, PJJ, Boersma, ER and Townen, BCL (1996). “Neurological condition in 18-month-old children perinatally exposed to polychlorinated biphenyls and dioxins.” *Early Human Development* **43**: 165–176.

⁷ Koopman-Esseboom, C, Weisglas-Kuperus, N, de Ridder, MAJ, van der Paauw, CG, Th Tuinstra LGM, and Sauer PJJ (1996). “Effects of Polychlorinated Biphenyl/Dioxin Exposure and Feeding Type on Infants’ Mental and Psychomotor Development.” *Pediatrics* **97(5)**: pgs 700–706.

⁸ Patandin, S, Lanting, CI, Mulder, PG, Boersma, ER, Sauer, PJ, Weisglas-Kuperus N (1999). “Effects of environmental exposure to polychlorinated biphenyls and dioxins on cognitive abilities in Dutch children at 42 months of age.” *J Pediatr.* **134(1)**:33–41.

⁹ Weisglas-Kuperus, N, Patandin, S, Berbers, GA, Sas, TC, Mulder, PG, Sauer, PJ, Hooijkaas, H (2000) “Immunologic effects of background exposure to polychlorinated biphenyls and dioxins in Dutch preschool children.” *Environ Health Perspect.* **108(12)**:1203–7.

¹⁰ Mably TA, Moore RW, and Peterson RE (1992) “In Utero and Lactational Exposure of Male Rats to 2,3,7,8-Tetrachlorodibenzo-p-dioxin”, *Toxicology and applied Pharmacology* **114**, 97–107.

¹¹ Gray, LE Jr, Kelce, WR, Monosson, E, Ostby, JS and Birnbaum, L (1995) “Exposure to TCDD during development permanently alters reproductive function in male Long Evans rats and hamsters: reduced ejaculated and epididymal sperm numbers and sex accessory gland weights in offspring with normal androgenic status.”, *Toxicol Appl Pharmacol.* **131(1)**:108–118.

¹² Johnston, P, Comhaire, F, Krumbiegel, P, Boerjan, ML, Hanf, V, Bock, KW, Abel, J, Gutzeit, HO, Groot, MJ, Fischer, B (1997). “Effects of environmental pollutants on reproduction”, Proceedings of conference held 11–13 April 1997, Halle (saale) Germany.

¹³ Swan, SH, Elkin, EP, and Fenster, L (2000) “The question of declining sperm density revisited: an analysis of 101 studies published 1934–96”, *Environ Health Perspect.* **108(10)**, 961–966.

¹⁴ Skakkebaek, NE, Rajpert-de Meyts, E and Main, KM (2001), “Testicular dysgenesis syndrome: an increasingly common developmental disorder with environmental aspects”, *Human Reproduction*, **16(5)**: 972–978.

¹⁵ Hardell L, van Bavel B, Lindström G, Carlberg M, Dreifaldt AC, Wijkström H, Starkhammar H, Eriksson M, Hallquist A, Kolmert T. (2003) “Increased Concentrations of Polychlorinated Biphenyls, Hexachlorobenzene and Chlordanes in Mothers to Men with Testicular Cancer.” *Environ Health Perspect.* doi:10.1289/ehp.5816. (Online 19 December 2002) available at <http://ehpnet1.niehs.nih.gov/docs/2003/5816/abstract.html>

¹⁶ Williams FLR, Lawson AB and Lloyd OL (1992). “Low Sex Ratios of Births in Areas at Risk from Air Pollution from Incinerators, as Shown by Geographical Analysis and 3-Dimensional Mapping.” *International Journal of Epidemiology*, **21(2)**: 311–319.

¹⁷ Mocarelli P, Gerthoux PM, Ferrari E, Patterson G, Kieszak SM, Brambilla P, Vincoli N, Signorini S, Tramacere P, Carreri V, Sampson EJ, Turner WE and Needham LL (2000). “Paternal concentrations of dioxin and sex ratio of offspring”. *The Lancet*, 27 May 2000, **355**: 1858–1863.

chemicals.^{18, 19} It will never be possible to develop an accurate algorithm to quantify the cost to society of, for example, a reduction in IQ levels²⁰, or the reduction in quality of life due to fetal kidney growth impairment²¹, immune system^{22, 23, 24} or reproductive system^{25, 26, 27} developing less than optimally, causing reduced potential, occasional illness throughout life or a higher risk of cancer.^{28, 29} A precautionary approach would be to reduce human exposure to all chemicals which persist and bioaccumulate or are capable of hormonal disruption, down to the absolutely unavoidable level, especially as mixtures of chemicals may have synergistic effects.

7. However good the pollution abatement equipment is, large quantities of particles will still escape from an incinerator; they will simply be smaller, consisting of large numbers of tiny particles known as ultrafine or nano-particles. Unfortunately, these prove to have a size-related toxicity regardless of what material they comprise. As well as publishing a recent book on the health effects of particulates in 1999³⁰, I more recently reviewed the potential health effects of nano-particles and participated in an EU workshop which produced a risk analysis of nanoparticles.^{31, 32} Many of the conclusions in these reports apply equally to the nanoparticles arising from the incineration of waste. There is strong human epidemiological evidence to show that chronic exposure to particulate aerosols through polluted air carries health consequences.³³ There is considerable evidence that inhaled nanoparticles can gain access to the blood stream and are then distributed to other organs in the body.^{34, 35, 36} Once internalised, nanoparticles appear to be able to penetrate more rapidly into interstitial sites than larger particles can, and therefore to be trans-located to distant sites within the body.³¹ There appears to be a natural “passageway” for them to travel around the body. This is through “caveolar” openings in natural cell membranes, which separate the body compartments. When environmental nanoparticles (such as from incineration or traffic pollution) gain unintentional entry to the body, it appears that there is a pre-existing mechanism which can deliver them to vital organs.³⁷ The body

¹⁸ Lang, L (1995) “Strange brew: assessing risk of chemical mixtures”, *Environ Health Perspect.* **103**, 142–145.

¹⁹ Howard, CV (1997) “Synergistic effects of chemical mixtures—Can we rely on traditional toxicology?”, *The Ecologist* **27(5)**, 192–195.

²⁰ Lanting, CI (1999) “Effects of Perinatal PCB and Dioxin Exposure and Early Feeding Mode on Child Development”, PhD Thesis, Printpartners Ipskamp BV, Enschede, the Netherlands, ISBN 90-367-1002-2.

²¹ Hinchliffe, SA, Lynch, MRJ, Sargent, PH, Howard CV, and van Velzen D (1992). “The effect of human intrauterine growth retardation on the development of renal nephrons.” *British Journal of Obstetrics and Gynaecology*, **99**: 296–301.

²² Baccarelli, A, Mocarelli, P, Patterson, DG Jr, Bonzini, M, Pesatori, AC, Caporaso, N and Landi, MT (2002). “Immunologic Effects of Dioxin: New Results from Seveso and Comparison with Other Studies.” *Environmental Health Perspectives* **110**:1169–1173.

²³ Koppe, J, and De Boer, P (2001) “Immunotoxicity by dioxins and PCBs in the perinatal period” in P Nicolopoulou-Stamati, L Hens, and CV Howard (eds), *Endocrine Disruptors: Environmental Health and Policies*, Kluwer Academic Publishers, Dordrecht, The Netherlands, pp 69–80.

²⁴ Weisglas-Kuperus, N, Patandin, S, Berbers, GA, Sas, TC, Mulder, PG, Sauer, PJ, Hooijkaas, H (2000) “Immunologic effects of background exposure to polychlorinated biphenyls and dioxins in Dutch preschool children.” *Environ Health Perspect.* **108(12)**:1203–7.

²⁵ Skakkebaek, NE, Rajpert-de Meyts, E and Main, KM (2001), “Testicular dysgenesis syndrome: an increasingly common developmental disorder with environmental aspects”, *Human Reproduction*, **16(5)**: 972–978.

²⁶ Toppari, J, Larsen, JC, Christiansen, P, Giwercman, A, Grandjean, P, Guillelte, LJ, Jr, Jegou, B, Jensen, TK, Jouannet, P, Keiding, N, Leffers, H, McLachlan, JA, Meyer, O, Muller, J, Rajpert-De Meyts, E, Scheike, T, Sharbe, R, Sumpter, J, and Skakkebaek, NE (1996) “Male reproductive health and environmental chemical xenoestrogen”, *Environ Health Perspect.* **104(4)**, 741–803.

²⁷ Gray, LE Jr, Kelce, WR, Monosson, E, Ostby, JS and Birnbaum, L (1995) “Exposure to TCDD during development permanently alters reproductive function in male Long Evans rats and hamsters: reduced ejaculated and epididymal sperm numbers and sex accessory gland weights in offspring with normal androgenic status.”, *Toxicol Appl Pharmacol.* **131(1)**:108–118.

²⁸ Mackie, D, Liu, J, Loh, Y and Thomas V (2003) “No Evidence of Dioxin Cancer Threshold” *Environ Health Perspect:* doi:10.1289/ehp.5730 Online 25 November 2002 (available at <http://dx.doi.org/>)

²⁹ Lichtenstein, P, Holm, NV, Verkasalo, PK, Iliadou, A, Kaprio, J, Koskenvuo, M, Pukkala, E, Skythe, A and Hemminki, K (2000) “Environmental and Heritable Factors in the Causation of Cancer—Analyses of Cohorts of Twins from Sweden, Denmark, and Finland” *New England Journal of Medicine*, **343**, 78–85.

³⁰ Maynard RL and Howard CV (1999). (Eds) *Particulate Matter: Properties and effects upon health*. Bios Scientific Publishers, Oxford. ISBN 1 85996 172X.

³¹ Howard CV (2003) Nanoparticles and Toxicity. Annex to *No Small Matter II: The Case for a Global Moratorium Size Matters!* ETC Group, Occasional Paper Series 7:1 April 2003, pp 15–20. Available on ETC Group website at http://www.etcgroup.org/documents/Occ.Paper_Nanosafety.pdf

³² Howard CV (2004) A briefing note on Nanoparticles, in *Nanotechnologies: A Preliminary Risk Analysis on the Basis of a Workshop Organized in Brussels on 1-2 March 2004 by the Health and Consumer Protection Directorate General of the European Commission*. Published on the EU website at http://europa.eu.int/comm/health/ph_risk/documents/ev_20040301_en.pdf

³³ Wichmann, HE, and Peters, A (2000) “Epidemiological evidence of the effect of ultrafine particle exposure.” *Phil Trans Roy Soc Lond.* **358**: 2751–2769.

³⁴ Kreyling WG, Semmler M, Erbe F, Mayer P, Takenaka S, Schulz H, Oberdrster G, and Ziesenis A. (2002) “Translocation of ultrafine insoluble iridium particles from lung epithelium to extrapulmonary organs is size dependent but very low.” *J Toxicol Environ Health A.* 25 Oct; **65(20)**: 1513–1530.

³⁵ Oberdrster G, Sharp Z, Atudorei V, Elder A, Gelein R, Lunts A, Kreyling W, Cox C. (2002a) “Extrapulmonary translocation of ultrafine carbon particles following whole-body inhalation exposure of rats.” *J Toxicol Environ Health A.* 25 Oct 2002; **65(20)**: 1531–43.

³⁶ Oberdrster G, and Utell MJ. (2002b) “Ultrafine particles in the urban air: to the respiratory tract and beyond?” *Environ Health Perspect.* Aug; **110(8)**: A440–441.

³⁷ Gumbleton M (2001) “Caveolae as potential macromolecule trafficking compartments within alveolar epithelium”, *Advanced Drug Delivery Reviews* **49**: 281–30.

is then “wide open” to any toxic effects that they can exert. The probable reason that we have not built up any defences is that any such environmental toxic nanoparticles were not part of the prehistoric environment in which we evolved and therefore there was no requirement to develop defensive mechanisms.

8. There are two fundamental approaches to handling waste—either try to reduce the amount and the toxicity of inputs to the waste stream or to attempt to deal with wastes once they have been produced. Clearly there is scope to combine the two.

9. Substitution of hazardous substances: Instead of simply considering how to dispose of waste, much of which is hazardous, we need to start by considering pollution from the beginning of each product lifecycle. We can only control the health hazards from toxic pollutants throughout the product lifecycle, and minimise the production of hazardous waste, by substituting the production of goods which use potentially hazardous chemicals, with alternatives that use more benign chemicals. For most of the known hormone-disrupting chemicals, there are substitutes which are less obviously problematic. The only effective way to make the necessary effective permanent reductions to environmental levels of dioxin-like chemicals, is by substitution of all major uses of organochlorine and other halogenated chemicals (eg pesticides and chlorinated plastics) with safer alternatives. Clearly, this is a major step to take, but the costs to society of allowing the continuing health consequences, which are evident already in the general population, is likely to far outweigh the apparent costs to industry. While these chemicals are still produced in bulk, there will be inevitable release of dioxins during their manufacture, use, accidental fires and disposal, a significant amount of which will eventually find its way into our food chain and hence our bodies. A good use of the Precautionary Principle is to avoid the use of any persistent bioaccumulative chemicals, as these often tend to be linked to health problems. There need to be regulatory changes so that the necessity for a particular process is considered as part of the authorisation process, together with a comprehensive life-cycle analysis of the potential emission dangers throughout the product lifecycle. This should include a realistic assessment of the likely emissions caused by its eventual disposal, whether via controlled disposal or through accidental fires or uncontrolled home bonfires.

10. Another concern is the major issue of the unsustainable use of resources if waste is incinerated or landfilled. Incineration is rather worse than landfill in that respect, as future generations could at least recover certain materials such as metals from a landfill, if the shortage of resources made this necessary. The planetary resources of many raw materials are finite, and the energy consumed in retrieving raw materials often outweighs the energy recovered by incinerating products, which could have been reused or recycled.

11. In summary, my researches have led me to the firm conclusion that there is no place for incineration in municipal waste management. It is a totally unsustainable use of resources and the inevitable emissions of particulates and dioxin-like substances are likely to have harmful effects on health, especially the health of the most vulnerable members of society.

12. Strong emphasis should be focussed on waste minimisation rather than concentrating wholly on the debate over what method to use for the disposal of waste. Many local authorities worldwide are starting to adopt “Zero-Waste” policies. The concept of Zero Waste may sound impractical, but California, Toronto, Canberra, and New Zealand have already adopted a Zero Waste policy. The first two local authorities to adopt Zero Waste policies in England were Bath and North Somerset and Braintree.

13. We need to adopt a policy of maximal waste minimisation, reuse and recycling, by adoption of a Zero Waste policy throughout the UK and developing suitable financial and regulatory incentives. This would thus avoid the necessity for any incineration or much landfill.

Dr C V Howard MB. ChB. PhD. FRCPath

Head of Research, Developmental Toxicology-Pathology Research Group

4 October 2004

Memorandum submitted by Sheffield City Council (X7)

EXECUTIVE SUMMARY

The City Council feels that it is particularly important that Government Policy is not so prescriptive that it removes the ability of local authorities to adopt appropriate strategies for their locality.

The Council fully supports the waste hierarchy save that it ranks waste incineration with energy and heat recovery above other technologies and believes that there is a viable balance between the use of waste as a resource and recycling.

The Council strongly believes that there needs to be a recognition of investment in waste treatment such as that made by Sheffield where such investment will lead to a demonstrable diversion from landfill.

The Council will see costs increase as a result of the separation of hazardous waste and is concerned that the introduction of the new system prohibiting co disposal was badly planned and could lead to future problems when separated waste is linked to the introduction of the WEEE Directive.

BACKGROUND

Sheffield produces some 240,000 tonnes of domestic waste of which 68% is deemed to be organic in nature.

The City Council has made a substantial investment in waste treatment and in meeting government targets for recycling. In 1969 the Council built an incinerator for burning waste. In 1974 this was modified to incorporate energy recovery. Some 43 km. of heating main have been laid below Sheffield's streets to provide heating to some 42 major buildings including the Town Hall, offices, University, housing and schools.

The energy from waste plant also converts spare heat into electricity, which is sold through a Non Fossil Fuel Obligation (NOFFO) agreement.

The old incinerator had its problems and to overcome these difficulties but also seeing the potential value of collaboration with the private sector, Sheffield entered into a long term, 30 year, contract with Onyx to manage all of its domestic waste and construct a new energy from waste plant.

The new plant will be fully compliant with the rigorous Waste Incineration Directive and will come on stream in 2006. Meanwhile the current plant has been improved and is managed to a high standard by Onyx.

In conjunction with developing energy from waste the Council has improved its recycling performance from less than 5% to an out-turn of 12.2% in 2003–04, bettering its statutory target of 10%. The next milestone is the statutory target of 18% by 2005–06 and the City has set a goal of 21% for this date with an interim target of 17% for 2004–05.

To accomplish this, the City's five recycling sites (civic amenity) have been refurbished and are achieving a recycling rate of 50%. There are 110 bring sites with more being planned. The major impact on recycling performance has been the introduction of some 190,000 blue, 140 litre bins for paper and card collection. This initiative was rolled out to all households in just eight months between April and November 2003. To support the "blue bin" scheme a purpose built materials recycling facility has been constructed which will handle some 20,000 tonnes of paper and card this year.

In September the Council introduced 30,000 green, 240 litre bins for green waste with a further 15,000 to go out in April 2005. This will divert a further 6,000 tonnes of organic waste from landfill and is supported by a composting network of nine sites operated by the voluntary sector, an on farm composting operation and a large scale composting initiative from the private sector which also offers community benefit.

Through these measures and a further rollout of the green waste scheme the Council intends to reach 30% recycling by 2010, most of which will be organic waste.

FINANCIAL AND INVESTMENT CONSIDERATIONS

The background to Sheffield's plans and its partnership with Onyx demonstrates the necessity for long term planning. We have taken waste and turned it into an asset that will enable the City to realise a financial benefit from use of the Landfill Allowance Trading Scheme, which will support the continuation of the plan. By 2010 less than 10% of Sheffield's waste will be going to landfill.

Such measures must be adequately funded. The introduction of the green waste scheme with DEFRA grant for the first two years will cost some £800,000 per year to run, with further roll outs multiplying this figure.

The City strongly feels that it should be recognised for its forward planning and sound management, which will enable it to support the government's landfill targets through performance driven landfill trading.

The Council believes that it is only by the balancing of technology with recycling and waste minimisation can the UK hit its landfill reduction targets. We believe that many authorities may be starting too late and that it will be necessary to fall back on tried and trusted technologies such as incineration with energy recovery if the UK is to achieve its obligations.

COMPARATIVE TECHNOLOGIES

Recent reports have shown that state of the art incinerators with energy recovery will be a safe, cost effective way of meeting landfill diversion targets. The experience of other countries appears to show that a balance of incineration with waste minimisation and recycling can deliver the required results.

Other technologies are much less certain. Mechanical biological Treatment, for example, is unproven in the UK with pilot schemes just now being introduced. It is hard to see how the treatment of waste using energy to produce a possible fuel, which is subsequently transported to other facilities where it is burnt, is a better environmental or cost option than local incineration. If one were to be cynical it could be seen that some of the outlets for refuse derived fuel such as cement kilns might make a reasonable income from importing such fuel to be burnt in a process which is no better and possibly not as stringent as a purpose built waste incinerator designed for the task.

It is also clearly unfair not to classify materials recovered post incineration such as cans and metals or use of ash for building materials as recycling, since none of this material goes to landfill.

Most EC countries have recognised that the goal is landfill diversion and this drives their policies. Not so the UK government which instead adopts a hierarchic approach putting recycling as a main priority, not only for organic but for all waste. Whilst the City Council would always wish to follow the waste hierarchy we are concerned with this skewed approach to policy. The setting of recycling targets is seen as the zenith of achievement, ignoring, it seems, the fact that by balancing recycling with the use of waste for energy recovery it is possible to virtually eliminate landfill.

The Council does accept that a small proportion of the waste burnt remains as hazardous waste to go to landfill but as it is now evident that large fractions of untreated domestic waste will be classed as hazardous once separated this does not pose an unmanageable problem.

The Council would, therefore, wish to propose a new emphasis on landfill diversion as a key indicator of success. To achieve this there needs to be recognition that policies such as that adopted by Sheffield with a balance of waste management should be supported and that the use of waste as a means of generating energy can be as important as the drive for recycling.

HAZARDOUS WASTE

Whilst this evidence has concentrated mostly on landfill, the Council is not satisfied that the issues of hazardous waste have been properly managed leading to a situation where there will be a major escalation in costs unless suitable facilities are brought on line to deal with such waste.

As part of the Council's function is dealing with abandoned cars, we experienced the problem at first hand when scrap dealers refused to accept cars when their components were classified hazardous and there was no available outlet. It is now clear that the Country was ill prepared for the introduction of the new rules from July 2004 and it remains unclear what will be the long term costs stemming from this mismanagement.

As more waste becomes classified and the impact of the WEEE Directive is felt, there is a real danger that once again the local authorities will be caught in the middle of an under funded, ill thought out scheme where we are expected to provide facilities with scant recognition of the operational and logistics of managing domestic waste.

SUMMARY

In summary, the Council believes it has demonstrated that a practical way of meeting landfill targets is by a combination of incineration with energy recovery and recycling. This strategy requires long-term planning and investment and this needs to be recognised for those authorities such as Sheffield who have committed to such measures.

Government policies should concentrate more on the output measures of successful landfill diversion and less on the input measures of recycling as key indicators of success.

Local actions need to be backed by strong national policies to reduce waste led by government and supported at local level by education and campaigning.

Sheffield can help to shape regional and national policy by acting as an example of best practice in the field of waste management.

7 October 2004

Memorandum submitted by the Food and Drink Federation (X9)

The Food and Drink Federation (FDF) represents the food and drink manufacturing industry, the largest manufacturing sector in the UK, employing some 500,000 people. The industry's annual turnover is over £67.6 billion. It purchases £11 billion worth of raw materials from UK farmers (equivalent to $\frac{2}{3}$ of their total output) and imports £12.6 billion of raw and semi-processed products for processing. UK food and drink exports in 2003 were nearly £9.8 billion.

FDF welcomes the opportunity to submit written evidence to the Environment Food and Rural Affairs Committee Inquiry into Waste Policy and the Landfill Directive. FDF's submission has been structured according to the issues identified in the Committee's Press Notice of 28 June 2004.

- *impact of the ban from 16 July 2004 on co-disposal to landfill of hazardous and non-hazardous waste, the adequacy and effectiveness of preparations for the ban and what steps should now be taken*

FDF members are committed to continuous improvement in waste minimisation and most off-specification products, by-products and co-products generated in association with the production of food and drink are put to beneficial use, either directly or by being further processed for food or feed use; in some cases these materials are spread onto agricultural land where this is of agricultural and/or ecological benefit. The food and drink manufacturing industry is not a significant producer of hazardous waste with more than 1% of the total amount of solid waste generated being of a hazardous nature³⁸.

Notwithstanding the above, landfill is an important means of disposal for hazardous and non-hazardous waste from the food and drink manufacturing industry and the ban on co-disposal will change the way in which the industry manages its waste. FDF is therefore extremely concerned that the ban on co-disposal has limited the capacity for hazardous waste disposal in that the number of landfill sites accepting such waste has been reduced from about 250 to less than 15 in the UK as a whole. Moreover we understand that there is only one such site available in the South East of England and none at all in the West Midlands or Wales. Consequently, waste producers might need to store the hazardous waste on their premises prior to collection for disposal and the waste will need to be transported over greater distances to the landfill sites, both of which have associated environmental and cost implications. The restrictions on hazardous waste disposal and the increase in costs are also likely to lead to more flytipping.

In addition, the revised Hazardous Waste List in the updated European Waste Catalogue (2001/532/EC) includes a significant number of additional items as hazardous waste including computer equipment and fluorescent tubes. This will significantly increase the quantity of waste classified as hazardous, resulting in up to 200,000 additional sites producing hazardous waste and nearly a million more consignments, and will compound the problems associated with the restrictions on hazardous waste disposal to landfill.

FDF has made several requests to DEFRA and the EA for an exemption to allow small quantities of hazardous waste material, such as fluorescent tubes, to be disposed at non-hazardous waste sites particularly given that hazardous waste material from the municipal waste stream is permitted to be disposed at non-hazardous waste sites. Such an exemption has not been forthcoming although FDF understands that separate cells are likely to be made available at non-hazardous waste sites for stabilised non-reactive hazardous waste.

- *whether the UK is on target to meet its commitments under the Landfill Directive and at what is needed—including extra resources and additional powers for local authorities and the Environment Agency—to address the challenges of the Directive.*

FDF fully supports the Government in taking advantage of the four-year extension to the targets, as provided for under the Landfill Directive, for Member States which landfill more than 80% of their municipal waste in the baseline year. This extension was provided to allow adequate time to change current waste disposal practices and to develop sufficient capacity for recycling, composting and energy recovery. FDF is concerned however that the delay in implementation of the Directive, with the Government yet to decide on the date for certain requirements to come into force and the delay in implementation of the Waste Acceptance Criteria, has led to uncertainty and hindered investment in the necessary waste management infrastructure. Furthermore, incineration with energy recovery should be an option available to meet the requirements of the Landfill Directive but the Government has yet to provide a clear steer on the role of energy from waste in the UK. The current planning system is also a major cause of delay in securing the much needed infrastructure.

In addition, FDF wishes to see an exemption for food and drink industry waste from the Waste Acceptance Criteria given that this waste is of a similar nature to municipal waste which is already exempted from the treatment requirements.

Finally, FDF considers that the recycling of biodegradable waste to land is a useful option for the diversion of such waste from landfill and initiatives taken by organisations such as the Sustainable Organic Resources Partnership should be encouraged and supported.

8 October 2004

³⁸ According to the FDF Members' Environment Surveys 1999 and 2000.

Memorandum submitted by Professor Chris Coggins (X10)

WASTE AND EMISSION TRADING ACT 2003

IMPLICATIONS FOR RECYCLING/COMPOSTING AND THE LANDFILL ALLOWANCES TRADING SCHEME

Article 5(2) of the Council Directive (99/31/EC) on the landfill of waste sets targets for the diversion of biodegradable municipal wastes (BMW) from landfill. For the UK, with a four-year derogation due to its reliance on landfill, the targets from Article 5 are:

By 2010 biodegradable municipal waste going to landfills must be reduced to 75% of the total amount (by weight) of biodegradable waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available.

By 2013 biodegradable municipal waste going to landfills must be reduced to 50% of the total amount (by weight) of biodegradable waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available.

By 2020 biodegradable municipal waste going to landfills must be reduced to 35% of the total amount (by weight) of biodegradable waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available.

Article 2 (m) : “biodegradable waste” means any waste that is capable of undergoing anaerobic or aerobic decomposition, such as food and garden waste, and paper and paperboard. The examples given are ‘indicative’ and are not exclusive.

The Government published a Consultation Paper *Limiting Landfill* in October 1999 defining “Biodegradable Household Waste” and its Biodegradable content. More recent data, based on Defra *Municipal Waste Management Survey 2001–02* by Parfitt for the Strategy Unit was published in 2002.

BIODEGRADABLE HOUSEHOLD WASTE

<i>Category</i>	<i>1999</i> <i>% of waste</i> <i>(% biodegradable)</i>		<i>2001–02</i> <i>% of waste</i> <i>(% biodegradable)</i>	
Paper and card	32	(32)	19	(19)
Textiles	2	(1)	2	(1)
Misc. combustibles	8	(4)	8	(4)
Misc. non-combustibles	2	(1)	4	(0)
Putrescibles	21	(21)	42	(42)
Fines (< 10 mm)	7	(3.5)	3	(2)
Others	28	(0)	22	(0)
Total	100	(62.5)	100	(68)

The overall figure of 68% has been used in the *Landfill Allowance Trading Scheme Consultation* for England. Note that in the above table, 1999 data refers to England and Wales and 2001–02 data refers to England. Scotland proposes to use a figure of 63% and Wales a figure of 61% or 65%—depending on final decisions concerning what to include under municipal waste.

At the Defra LATS Roadshows in July 2004, an additional category was introduced as biodegradable, partly replacing the figure for textiles:

Footwear, furniture, textiles 50% biodegradable

In the above Consultation Paper, a table summarises the Landfill Directive Targets for England and the Devolved Administrations, based on 1995 waste arisings. *Reducing Landfill: A Landfill Allowance Scheme Consultation Paper* published by the Scottish Executive Environment Group in December 2003 quotes BMW figure for the UK as 18.27 million tonnes. The 1995 waste arisings figure reported to Eurostat may refer to England and Wales rather than the UK. For England, the biodegradable municipal waste tonnages to be landfilled gives an overall diversion target between 2001–02 and 2010 of 2,680,000 million tonnes, based on 75% of 1995 tonnage.

The overall tonnage to landfill in England in 2000–01 was 22,317,000 tonnes (source: Defra *Municipal Waste Management Survey 2001–02*). The Consultation Paper quotes 13,880,000 as BMW landfilled in 2001–02, whilst 68% of the first figure gives nearly 15,000,000 tonnes. The growth in waste arisings has slowed from 2.6% per annum 1996–97—2000–01, to 2% and using this figure the overall figure projected to go to landfill in 2009–10 is over 26,000,000. Although simplistic, this emphasises the scale of the problem, with a potential decline in the percentage of waste to landfill but an increase in actual tonnage.

With reference to England, the table shows actual recycling and recovery targets for 2001–02 and aspirational targets for 2010.

WASTE TONNAGES FOR ENGLAND

	2001–02	2009–10	2013	2020
MSW	28,800,000 ¹	33,000,000		
Total landfilled	22,317,000 ²	26,000,000		
BMW landfilled ³	13,880,000	11,200,000	7,460,000	5,220,000
BMW landfilled ⁴	15,000,000	17,680,000		
Recycled/composted	3,900,000	9,900,000		
	(actual = 13.6%)	(target = 30%)		
Paper/card	1,899,000	4,950,000		
+ putrescibles	(48.7% of total)	(at 50% of total)		
Recovered	2,500,000	5,000,000		
	(actual = 9%)	(target = 15%)		

¹ Defra Municipal Waste Management Survey 2001–02.

² Defra Municipal Waste Management Survey 2001–02.

³ LATS Consultation Paper, and to be taken as the “maximum amount of biodegradable municipal waste to be taken as having been specified under Section 1 of the Waste and Emissions Trading Act for the year ending 30 June 2004” (from *The Landfill Allowances Scheme (Scheme Years and Landfill targets) Regulations 2004*). Also published in *Statutory Instrument 2004 No 1936 The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004*.

⁴ Calculated as 68% of 22,317,000 and 68% of 26,000,000.

NB With all figures in this Discussion Paper, caution is urged in their use and any extrapolation: baseline year(s), definitions of BMW, BMW v household waste, growth rates in waste arisings, data source(s) and any cross-referencing.

Provisional allocations for Local Authorities in England were published on 19 August 2004, with any responses/queries requested by 8 October 2004.

www.defra.gov.uk/environment/waste/localauth/lats/allocationsdata.pdf

The State of Composting in the UK 2001–02 was published by The Composting Association in December 2003. In order to meet the targets, it is estimated that based on an annual growth of 3% and no increase in incineration capacity, the UK will need to divert from landfill:

- 6 million tonnes of biodegradable municipal waste by 2010;
- 10 million tonnes of biodegradable municipal waste by 2013;
- 17 million tonnes of biodegradable municipal waste by 2020.

The figure for 2010 compares with 5.4 million tonnes quoted by an ODPM speaker at the Associate Parliamentary Sustainable Waste Group meeting on 2 December 2003. In work commissioned by the Waste Implementation Programme for the New Technologies Workstream “It is estimated that by 2010, depending on the rate of growth of the BMW stream, England will need to be diverting between 8.4 and 14.4 million tonnes of BMW”. In each case these estimates are considerably higher than the figure of 2.68 million tonnes in the above table and the figure of 3.3 million tonnes in the table below.

The Landfill Allowances Scheme (scheme Years and Landfill Targets) Regulations 2004 provides the following data for England in discussing the options of introducing landfill allowances with or without trading, and with either straight line or back-end loaded trajectories. Note the differences with the earlier table, and the use of a 3% annual growth factor:

LANDFILL ALLOWANCES IN ENGLAND

	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10
BMW arisings (growth of 3% pa)	19.8	20.4	21.0	21.7	22.3	23.0
<i>BMW diverted for 2004 and 2005 start dates (million tonnes)</i>						
BMW landfill—2004 start	14.5	13.8	13.2	12.5	11.9	11.2
BMW landfill—2005 start		14.6	13.8	12.9	12.1	11.2
<i>Target BMW as percentage of 1995 BMW arisings</i>						
BMW landfill—2004 start	97%	93	88	84	79	75
BMW landfill—2005 start		98	92	86	81	73
<i>Target BMW landfill as percentage of actual BMW arisings</i>						
BMW landfill—2004 start	73%	68	63	58	53	49
BMW landfill—2005 start		72	65	60	54	49

England will introduce the trading scheme with effect from April 2005, whilst the Welsh Assembly Government opted for an April 2004 (now to be October 2004) start and the Scottish Executive has proposed July 2004. England and Scotland propose to have a landfill allowances trading scheme, whilst Wales will not have such a scheme.

In the *Consultation on Implementation of the Waste and Emissions Trading Bill including the Municipal Waste Management (Wales) Regulations for Wales*, a table of data is given for 22 Unitary Local Authorities in Wales: total municipal waste arisings for 2000–01, municipal waste landfilled in 2001–01, landfill allowances 2004 and landfill allowances 2010. No such data has been provided for 40 two-tier Waste Disposal Authorities (including 274 Waste Collection Authorities) and 80 Unitary Local Authorities (having both waste collection and waste disposal functions) in England. Data is collected via the *Municipal Waste Management Survey 2001–02*, but is only published at a national and regional level. There is some concern that there is a greater range of growth rates in waste arisings in England than Wales, eg with North Somerset's 5.4% being criticised by the Audit Commission in January 2004 in comparison with the English average of 2.4%.

The provisional list of targets published for English Waste Disposal Authorities in August 2004 included several with significant increases in landfill allowances. The initial allowances, for 2005–06 are based on the amount each WDA landfilled in 2001–02, meaning that those sending waste to incinerators see an increase (rather than a decrease) during this period—thus being rewarded for having incinerators by having surplus allowances to potentially trade. The following table illustrates these allowances:

WDAS WITH INCREASING LANDFILL ALLOWANCES UP TO 2009–10

	Base year (2001–02)	2009–10
Birmingham	134,815	210,071
Coventry	13,349	71,480
Dudley	20,261	51,661
Greenwich	19,673	53,452
Hartlepool	6,594	19,601
Lewisham	12,561	49,955
Middlesbrough	6,410	27,047
North London	310,408	360,596
Nottingham	49,367	67,067
Redcar & Cleveland	24,013	31,198
Solihull	28,037	39,741
Stockton-on-Tees	3,433	36,597
Stoke-on-Trent	19,490	53,181
Westminster	62,147	88,329
Wolverhampton	46,987	62,149

East Sussex also sees its allowances rise, despite landfilling more than in the base year—due to the Pebsham RDF plant being closed in 2002.

In contrast, several WDAs must cut the amount of BMW it sends to landfill by 2009–10: Greater Manchester (by 300,000 tonnes), Merseyside and West London (200,000), Leeds and Western Riverside (100,000). The reductions facing many WDAs are in excess of 30%, because of the base year being 2001–02, whilst the Directive uses 1995. East London faces a cut of 100,000 tonnes but will send most of its waste to new MBT plants, due to open c 2007.

Landfill tax for active wastes will rise from £15 per tonne in April 2004 to £18 per tonne in April 2005. The annual escalator thereafter will be at least £3 per tonne in order to achieve a medium/long term target of £35 per tonne—by 2010, the first target year under the Landfill Directive to treat/divert 25% of biodegradable municipal waste away from landfill.

Important changes were made by HM Customs & Excise in March 2004 regarding the definitions of waste and re-processing and clarification/extension of landfill tax-free areas (see Annex 1).

With reference to proposals for the UK meeting Landfill Directive targets, waste management options using anaerobic digestion and/or in-vessel composting are being used to set likely penalties for breaching landfill allowances. The Welsh Assembly Government *Consultation on Implementation of the Waste and Emissions Trading Bill including the Municipal Waste Management (Wales) Regulations* quoted the figure of £200 per tonne as the penalty figure for failing to meet landfill allowances. This has been “chosen to exceed the highest likely cost of diverting BMW from landfill, eg through anaerobic digestion”.

The *Landfill Allowance Trading Scheme Consultation* for England uses the term “twice the cost per tonne of the most likely established method of diversion from landfill”, subject to further analysis and likely to be a waste management option such as in-vessel composting of kitchen waste. England will also use the figure of £200 per tonne.

In *The Landfill Allowances Scheme (scheme Years and Landfill Targets) Regulations 2004*, the penalty to which a Waste Disposal Authority is liable under Section 9(2) of the Act shall be the excess landfill for that waste disposal authority multiplied by the excess landfill penalty.

“Excess landfill” means, for a scheme year, the amount in tonnes by which biodegradable municipal waste sent to landfills by the waste disposal authority exceeds the landfill allowances available to the authority.

“Excess landfill penalty” means the cost per tonne of in-vessel composting of kitchen waste multiplied by two.

Supplementary penalties are allowed in *The Waste and Emissions Trading Act*, and will apply where a breach of allowances causes the UK as a whole to miss its Landfill Directive targets and are likely to be based on the fine the UK itself receives from the European Commission for missing the target. The supplementary penalty (SP) to which a waste disposal authority is liable under section 9(3) shall be calculated according to the following formula:

$$SP = F \times (T/E)$$

Where for the target year

F is the proportion of any fine imposed on the UK which relates to England.

T is the amount in tonnes by which biodegradable municipal waste sent to landfills by the waste disposal authority exceeds the landfill allowances available to the authority.

E is the amount in tonnes by which biodegradable waste sent to landfills in the UK exceeds the amount specified under section 1(1)(a) of the Act.

The supplementary penalty (SP) to which a waste disposal authority is liable under section 9(4) shall be calculated according to the following formula:

$$SP = F \times (T/E)$$

Where

F is, for the scheme year, the proportion of any fine imposed on the UK which relates to England.

T is, for the scheme year, the amount in tonnes by which biodegradable municipal waste sent to landfills by the waste disposal authority exceeds the landfill allowances available to the authority.

E is the amount in tonnes by which biodegradable waste sent to landfills in the UK in the scheme year exceeds the amount specified under section 1(1)(a) of the Act in respect of the last target year before the scheme year.

Some in the waste industry feel that the threat of fines is more likely than actual imposition, with any fines perhaps forcing a WDA to divert spending from other essential services. The commitment to impose penalties and/or fines on Local Authorities will be tested in terms of meeting Best Value Performance Indicators for recycling and composting for 2003–04 and 2005–06.

One issue that remains to be resolved is the definition of biodegradable municipal waste. The EU definition is based on the Landfill Directive:

Article 2 (b) : “municipal waste” means waste from households, as well as other waste which, because of its nature or composition, is similar to waste from households.

This means that municipal waste is based on composition and includes relevant wastes from households and commercial premises. This is the definition used in the waste strategy for Wales (*Wise About Waste*, June 2002) and for the calculation of recycling targets in Wales.

The Eurostat/OECD Joint Questionnaire 2002 states:

- municipal waste includes household and similar waste;
- the definition includes bulk waste (eg white goods, old furniture, mattresses) and yard waste (leaves, grass clippings, street sweepings, content of litter containers and market cleansing waste) if managed as waste;
- it includes waste from households, commerce and trade, small businesses, office buildings and institutions (schools, hospitals, government buildings);
- it also includes waste from selected municipal service (waste from park and garden maintenance, waste from street cleansing services—street sweepings, the content of litter bins, market cleansing waste);
- it includes waste from these sources collected door-to-door through traditional collection (mixed household waste) and fractions collected separately for recovery operations (through door-to-door and/or through voluntary deposits);
- municipal waste refers to waste defined as above collected by or on behalf of municipalities;

- the definition also includes waste from the same sources and similar in nature and composition which are collected directly by the private sector (business or private non-profit organisations) not on behalf of municipalities (mainly separate collection for recovery purposes) and which originate from rural areas not served by a regular waste service, even if they are disposed by the generator; and
- the definition excludes waste from municipal sewage network and treatment, and municipal construction and demolition waste.

In England the Strategy Unit Report, *Waste Not, Want Not. A strategy for tackling the waste problem*, November 2002 used the definition of municipal waste as in *Municipal Waste Management Survey 2000–01*, and yet also refers to “Failure to meet these targets (Landfill Directive targets for 2010, 2016 and 2020) could result in fines of up to £180 million per year”.

Chapter 2, “Municipal waste—includes all waste under the control of local authorities, whether or not they have contracted out services. It includes all household waste (89% of municipal waste)”. “Control” includes where a Local Authority uses its agent(s) to collect commercial waste. Local Authorities have a statutory duty to collect household waste, but no statutory duty to collect commercial waste—although if approached to do so it must make a reasonable charge.

The *National Waste Plan for Scotland* uses the same definition as England.

However in the *Waste Emissions Trading Act*, municipal waste is defined as:

“waste from households, and other waste that, because of its nature and composition, is similar to waste from households”.

This definition is the same as that used in the Landfill Directive.

In Defra Roadshows on the Landfill Allowance Trading Scheme (LATS) in July 2004 (see Annex 2) [not printed, available at <http://www.defra.gov.uk/environment/waste/localauth/lats/workshops.htm>], there still appeared some confusion. The WET definition of municipal waste was used, supported by:

“Commercial waste collected by a Local Authority falls under the definition of municipal solid waste”.

There appears to be some confusion concerning the issue of trade waste delivered to civic amenity sites—either illegally or where a site is licensed to receive trade waste with separate payment and data monitoring arrangements—and also fly-tipped waste picked up by a Local Authority and/or its agent(s).

There also still appears to be a grey area in terms of waste companies acting as agents of the Local Authority, either through formal arrangements or the Local Authority specifically referring any approach to collect commercial waste to a private waste management company not already acting as its agent (refer to the above Eurostat definition). With commercial waste representing c 11% of currently recorded municipal waste in England, some Local Authorities may divest contracts for commercial waste in order to reduce their obligations under LATS.

Such problems become more complicated when Waste Collection Authorities within a Waste Disposal Authority have different policies towards commercial waste, and supplying relevant data to the Waste Disposal Authority. Such commercial waste may be collected and disposed of by the private sector, without any formal “ownership” by the local Authority or its agent(s).

How these changes would fit with EU interpretations of the definition of municipal solid waste and diversion from landfill is very debatable.

In terms of tonnage, the figure quoted by DEFRA is c 28–29 million tonnes for municipal solid waste, but recent work by M-E-L Research Limited using Environment Agency data for industrial and commercial waste suggests this could be 18–33 million tonnes higher. On the other hand, as more recycling occurs with industrial and commercial waste (c 30% ?) the overall recycling rate would be much higher than the figure of 12.4% quoted for “household” waste and 13.5% for “municipal” waste for England in 2001–02 (using the English definition). Using this broader definition, but consistent with other Member States, might also raise the question of the UK’s option to use derogation powers of Landfill Directive targets into question.

Other issues raised included the potential role that home composting may play in meeting diversion targets (see Discussion Paper by the author *Home Composting: Definitions and Terminology*), changes in biodegradable content through different MBT technologies, and weight loss in drying wastes in MBT plants would not count towards the diversion targets (unlike in incineration plants). See later section for a fuller discussion of MBT.

With reference to landfill allowances, the Roadshows also indicated that many Local Authorities would be risk-averse to trading such allowances and would instead bank them (at no financial cost to the Local Authority) in case of unforeseen events which would cause them to miss their targets. Defra had already announced that penalties may be waived due to qualifying “extreme circumstances” such as delays in obtaining planning consent, refusal of planning permission and facility breakdowns.

In moving towards meeting BVPIs, many Local Authorities have focused on collecting newspapers and magazines, glass containers and garden waste, as these constitute heavier wastes—in contrast to aluminium and plastics. Newspapers and magazines and garden waste also constitute biodegradable wastes, contributing to Landfill Directive diversion targets, with glass containers contributing to the Packaging Directive recycling targets.

As explained earlier, the *Landfill Allowance Trading Scheme Consultation* of August 2003, with specific reference to England, uses the figure of 68% as the biodegradable fraction of municipal waste.

Another definition issue is the use of various terms for the material actually being targeted. Most Local Authorities target garden waste, although sometimes referred to as “green” waste. Some Local Authorities target only garden waste (eg Luton) and specifically exclude all kitchen waste, given the potential implications of the Animal By-Products (Amendment) (England) 2001 and the EU Animal By-Products Regulation (EC 1774/2003). Some Local Authorities, however, include kitchen green waste but not cooked food. A minority also collect cardboard for composting and the Isle of Wight only collects food waste. It would seem much better to give the simpler message of targeting “garden waste only”. Any comparisons with Europe should be treated with caution, with differences in waste definitions and the focus in Southern Europe of collecting food waste only—often five or six times a week.

A further complication is many household waste composition surveys until recently used the term “putrescible” to combine kitchen and garden wastes, making comparisons over time very difficult. Data by Parfitt, based on DEFRA municipal waste management data for 2000–01 is shown in the following table.

BIODEGRADABLE HOUSEHOLD WASTE IN ENGLAND

	<i>Bin waste</i>		<i>Civic amenity site waste</i>	
	<i>RCV residuals + kerbside</i> Kg/h/hold	%	<i>Total CA site residuals + composting</i> Kg/h/hold	%
Garden waste	134	15.3	98	37.6
Soil + other organic waste	10	1.1	30	11.3
Kitchen waste	106	12.1	1	0.3
Non home-compostable kitchen waste	88	10.1	0	0.0

Most Local Authority collection schemes focus on garden waste, with best estimates being that this waste stream accounts for c 20% of municipal solid waste with kitchen waste being 17%.

DETR/Defra data indicate that kitchen and garden waste, but almost certainly dominated by garden waste, from civic amenity sites rose from 117,000 tonnes in 1995–96 to 731,000 tonnes in 2000–01. Whilst kerbside collections rose from 10,000 tonnes to 85,000 tonnes, the proportion increased from 8% to 11%. Centralised composting contributed 10% of overall recycling-composting in 1995–96 and 28% in 2000–01.

In England, although there are separate recycling and composting Best Value Performance Indicators, they are combined for reporting purposes. In contrast, both Wales and Scotland have both set minimum composting rates within this overall target.

Wise About Waste in June 2002, used the Landfill Directive definition of municipal waste, and set recycling/composting targets of at least 15% for 2003–04, 25% for 2006–07, 40% for 2009–10—in each case with minimum composting targets of 5%, 10% and 15% respectively.

The *National Waste Plan for Scotland* in March 2003 includes a combined target of 55% by 2020, comprising a recycling target of 35% and a composting target of 20%.

An item in MRW of 7 November 2003 quotes WRAP as predicting green waste recycling could quadruple by 2006, alongside problems posed by pollution from composting sites: the Environment Agency banned composting at Welbeck landfill site in Yorkshire following complaints from local residents, complaints about a site in Nottingham and odour problems at a site in Somerset.

Bringing these data together with reference to the landfill allowance targets for England, the following table shows progress between 1995–96 and 2001–02. The overall contribution from these materials has risen from 51% to 61%, but the major growth has been with putrescibles.

THE RELATIVE CONTRIBUTION OF PAPER/CARD AND “PUTRESCIBLES” TO HOUSEHOLD WASTE RECYCLING PERFORMANCE (THROUGH LOCAL AUTHORITY SCHEMES)

	<i>England and Wales</i>				<i>England</i>	
	<i>1995–96</i>	<i>1996–97</i>	<i>1998–99</i>	<i>2000–01</i>	<i>2001–02</i>	<i>2002–03</i>
paper/card	39%	37	38	33	31	30
	507,000	555,000	874,000	910,000	981,000	1,125,000
putres	12%	16	23	29	30	32
	156,000	240,000	529,000	812,000	954,000	1,187,000
glass	21%	20	16	14	14	11
	276,000	299,000	368,000	396,000	426,000	471,000
Total recycling rate			9%	11.2	12.4	14.5

Sources:

1. 1995–96—2000–01 The environment in your pocket.
2. 2001–02, 2002–03 Municipal Waste Management Surveys.
3. 1995–96 Percentage figures from pie charts, and tonnages calculated.
4. Glass (packaging) has been included to show its decline in percentage terms, but growth in absolute terms. With revisions to the 1994 Packaging Directive, industry spokespeople indicate that the new material-based target for glass of 60% (from 15%) can only be met by expanding kerbside collections, and being heavy, increases in glass collection would also contribute to Local Authority BVPIs. Reported total glass recycling rates (including commercial sources) were 715,000 (29%) in 2000 and 869,000 (39%) in 2001. To meet 60% suggest a tonnage of 1.3–1.5 million tonnes.

With reference to markets, the following table illustrates the scale of exports of paper and plastics. Although paper packaging waste recovery figures for the UK were up in 2003, recovered paper consumption in the UK fell in 2003 for the second year running, suggesting that export Packaging Export Recovery Notes (PERNs) have been very important. The following table supports this assertion, although the data does not refer specifically to packaging, with data from the Environment Agency referring to Green waste as per Basel Convention definition:

TRENDS IN EXPORTS OF “GREEN LIST “WASTES FROM UK 1999–2003

(Source: Environment Agency)

<i>Waste</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>
Paper	6,812	13,468	694,355	1,226,862	1,997,316
Plastic	48,227	81,293	86,919	109,543	195,888

GREEN LIST EXPORTS FROM THE UK FIRST 6 MONTHS OF 2004

(Source: Environment Agency)

	<i>China</i>	<i>India</i>	<i>Indonesia</i>	<i>EU</i>	<i>Total</i>
Paper	265,564	169,005	143,871	471,775	1,059,215
Plastics	99,824	8,731	n/a	18,377	126,932

Parfitt’s work for the Strategy Unit also indicated the recyclable proportions of these materials, and the tonnages refer to total materials available in household waste in England for 2001–02 (based on a reported total of 25.6 million tonnes).

RELATIVE PROPORTIONS OF HOUSEHOLD, BIODEGRADABLE AND RECYCLABLE IN ENGLAND 2001–02

	<i>Household Waste (%)</i>	<i>Biodegradable (%)</i>	<i>Recyclable (%)</i>
Paper/card	19	19	12
	4,864,000	4,864,000	3,072,000
Putrescibles	42	42	38
	10,752,000	10,752,000	9,728,000

Comparing these two tables, the recognition/capture rates for paper and card (recycled) and putrescible (composted) in 2001–02 were 31% and 10% respectively, with an overall average of 15%.

These figures represent the total available materials in the household waste stream. Related to the table above they show that the “capture rates” are 31% and 10% respectively. With all kerbside collection schemes, the success will depend on household participation and the actual capture rate of targeted materials. Both will be influenced by the type of container used (re-usable bags, disposable bags or wheeled bins), the frequency of collection (weekly or alternate weekly, perhaps monthly in January/February) and the quality and effectiveness of education and publicity). As with the data quoted earlier, there is also evidence that these rates may increase over time, supported by on-going education, publicity and feedback to households, but adversely affected by residential mobility.

PARTICIPATION, RECOGNITION/CAPTURE AND DIVERSION RATES

<i>Participation Rate (%)</i>	<i>Recognition/Capture Rate (%)</i>	<i>“Diversion/Composting” Rate (%)</i>
90	90	81
80	80	64
70	70	49
60	60	36
50	24	12

Linking these data together with data reported earlier for biodegradable municipal waste (BMW) and household biodegradable waste (HW), shows the scale of change that is required, with the target percentages for 2005–06 and 2009–10 translated into tonnages.

POTENTIAL CONTRIBUTION TO TARGETS IN 2005–06 AND 2009–10 FOR ENGLAND

	<i>2001–02</i>	<i>2005–06</i>	<i>2009–10</i>
BMW arisings (growth of 3% pa)	19.6	20.4	23.0
HW recycling/composted	3.2 (12.4%)	5.1 (25%)	6.9 (30%)
of which, HW paper/card + putrescibles	1.9 (60%)	3.1 (60%)	4.1 (60%)
energy recovery	2.5 (9%)		5.0 (15.0%)

BMW diverted for 2004 and 2005 start dates (million tonnes)

BMW landfill—2004 start	13.9	13.8	11.2
BMW landfill—2005 start	13.9	14.6	11.2

— Work by OXERA for The Norlands Foundation and published in April 2004 *A Strategic and Economic Overview of Municipal Waste Management* published a table modelling kerbside collection practice in future years. The Author has taken this table and combined the data with kerbside provision and capture rates. The summary diversion rate is based on kerbside provision, assuming 100% participation—which is highly unlikely

	<i>Kerbside Provision Rate (%)</i>	<i>Recognition/Capture Rate (%)</i>	<i>“Diversion/Recycling” Rate (%)</i>
2002 Paper/card	47	16	7.5
Glass	15	19	2.9
Compost	15	21	3.2
Cans	21	2	0.4
2003 Paper/card	55	41	22.6
Glass	33	53	17.5
Compost	23	99	22.8
Cans	37	35	13.0
2004 Paper/card	62	59	36.6
Glass	52	62	32.2
Compost	32	80	25.6
Cans	54	47	25.4
2005 Paper/card	70	74	51.8
Glass	70	67	46.9
Compost	40	69	27.6
Cans	70	64	44.8
2010 Paper/card	80	68	54.4
Glass	70	71	49.7
Compost	50	58	29.0
Cans	70	58	40.6

Many Waste Collection Authorities are now moving towards a “three-stream” kerbside collection: co-mingled dry recyclables, green waste and residual wastes. This includes a mix of weekly and fortnightly collections to maximise capture rates and keep collection costs as low as possible, eg weekly collection of residual waste and alternate weekly collections of dry recyclables and green waste.

Residual Waste Management

Whilst most Local Authorities will develop policies based a three stream system of dry recyclables, compostables and residual waste, some will progress initiatives involving residual waste. These will involve one or more elements of Mechanical and Biological Treatment (MBT), best described as “technology systems”:

- waste inputs: municipal solid waste, household waste, commercial and industrial waste mixed (with no source segregation) or residual (with source segregation of dry recyclables and/or green wastes)
- pre-treatment: separating out bulky items
trommel for size separation
autoclaving/sterilising
- material outputs: dry recyclables (eg metals, glass, plastics)
wet fibre for biowaste treatment (eg anaerobic digestion, in-vessel aerobic)
dry fibre for refuse derived fuel (RDF) or solid recovered fuel (SRF)
dry fibre for secondary raw materials
- residual waste for landfill

A Consultation Paper is expected from the Environment Agency in Autumn 2004 setting down methodologies and criteria as to when material outputs from such technologies meet standards for being accepted as “non-biodegradable” in terms of the Landfill Directive and LATS. Initial research undertaken by WRc for Defra indicate that “MBT” may make contribute significant diversion of biodegradable waste from landfill.

This covers tests on newspaper, corrugated paper, grass clippings, woody twigs, cotton sheets (75% cotton), wool (57% wool), nappies, processed tinned meat, mixed vegetables, green waste compost and commercial pure cellulose. In addition tests are being conducted on raw biodegradable municipal waste feedstock and output from MBT processes, with early indications from a 3-stage in-vessel batch system showing significant reduction in biodegradability

The tests include:

- Physical and Chemical tests
 - loss on ignition
 - dry matter
 - Total Organic Carbon
- Biological Tests
 - Anaerobic—Biochemical Methane Potential (BMP)
 - Aerobic—Dynamic Respiration Index (DRI)

Additional guidance is required on future market scenarios, including land applications, landscaping and qualification for Renewable Obligation Certificates.

Annex 1

LANDFILL TAX-FREE AREAS

The landfill tax in the UK was introduced in October 1996 at £7 per tonne for active waste (wastes with the potential to undergo significant physical, chemical or biological changes, when deposited in a landfill) and £2 per tonne for inactive/inert waste. The rate for active waste was increased to £10 with effect from April 1999, and an escalator of £1 per tonne per annum to reach £15 with effect from April 2004. The escalator becomes £3 with effect from April 2005, with the medium/long term target to reach £35 per tonne.

On behalf of a client I raised the issue of landfill tax-free areas with HM Customs and Excise in April 1997, and the following is a transcript of their reply (I have the original correspondence):

“Where a Landfill site that is registered for the Landfill Tax (LFT) has our approval for a tax-free area to recycle organic/putrescible waste into compost; this is free from LFT at the time of disposal. It is only free from LFT because it is a Tax Fee Area and for no other reason. Once it enters into

the ‘Licensed area’ the original producers intention to dispose of the waste has been met, therefore with any subsequent removals from the tax-free area, it is the registered persons intention that counts. For example:

- (a) When the wastes subsequently become compost due to a process which fundamentally changes its properties, eg aerobic or anaerobic composting they become a material and when this is removed from the tax-free area it will NOT be subject to LFT.
- (b) Residues from the composting process (wood, glass, plastic, etc) removed from the tax-free area and taken to landfill are being discarded as waste and are therefore subject to LFT.

At present my Department has not defined ‘fundamentally changes its properties’, therefore it is the responsibility of the registered person to prove such a change has taken place.”

(Letter to P C Coggins from Peter Butt, Senior Officer HM Customs and Excise, Peterborough, 16 May 1997.)

A court case, *Parkwood Landfill v Commissioners of HM Customs and Excise*, resulted in a Court of Appeal decision in November 2002 concerning “discard”, “disposer” and “waste”.

A wholly owned subsidiary of Parkwood Landfill, Parkwood Recycling received waste from Sheffield City Council which was separated into waste for landfilling and recyclable material which was sorted into aggregates and fines which could be used as soil substitution. The waste went to a landfill site owned by Parkwood Landfill and landfill tax was paid. The company also bought a quantity of the recycled material for use as landscaping and road making at the landfill site. HM Customs and Excise claimed that this should be liable to landfill tax. Parkwood won an appeal before the VAT and Duties Tribunal, but this decision was overturned by the High Court.

The company appealed, and HM Customs and Excise argued that the use of an intermediary, as in this case, could avoid payment of landfill tax. The Court of Appeal considered in detail the provisions of Section 40(2) of the Finance Act 1996 which set four conditions for a landfill tax disposal:

- (a) there is a disposal of material as waste;
- (b) the disposal is made by way of landfill;
- (c) the disposal is made at a landfill site; and
- (d) the disposal is made on or after 1 October 1966.

Parkwood accepted conditions (b), (c) and (d) but disputed (a). The Court of Appeal took Section 64(1) of the Finance Act 1996 which provided a separate definition—“a disposal of material is a disposal of it as waste if the person making the disposal does so with the intention of discarding the material”. They argued that Sheffield City Council was the actual disposer of the waste, that Parkwood Recycling crushed, sorted and graded the waste into saleable materials, the intention of the legislation was that landfill tax was a tax on waste deposited at landfill sites and not a tax on recycling. “The critical factor is the intention of the disposer. “The tax bites upon the person who discards not who recycles”.

One notable feature of the decision was the extent to which the Court avoided getting embroiled in EU decisions on the meaning of “waste” and the term “discard”. In the Parkwood case, the Court of Appeal treated the landfill tax provisions as a self-contained legislative structure which include as one of its aims the promotion of recycling—instead of primary raw materials.

(Sources: *Wastes Management* February 2003 and *ENDS* January 2003)

Regarding the following transcript, readers are advised to read the original documents on the HM Customs and Excise website.

In Briefing Note 10/04 published on 19 March 2004, HM Customs and Excise announced a change in policy regulating to material used on landfill sites.

BACKGROUND

For landfill tax purposes, material is disposed of as waste, if, when disposing of it or having it disposed on his behalf, the producer intends to discard or throw it away. The fact that someone else uses it or intends to use it, or would done so is irrelevant. It is the original producer’s intention that determines if the material is waste. Only if the material is recycled is the original producer’s intention no longer relevant.

DETAILS OF THE CHANGE

Up to now, for the purposes of landfill tax, Customs’ guidance has been that material had to undergo a chemical change to be considered to have been recycled. With immediate effect, Customs will accept that if a material is processed, changing it to useable material, the process does not have to change the material’s chemical properties in order for it to be considered to have been recycled.

The tax liability will now hinge on the intention of the recycler, as evidenced by the nature of the transaction. If a landfill site operator can demonstrate to Customs’ satisfaction that the material he uses in site engineering is not discarded by its processor, it will not be subject to the tax.

Currently, one of the provisions for which landfill site operators can apply in order to operate as tax-free area is if they intend to carry out recycling of waste (which includes composting). Customs' revised interpretation of what constitutes recycling widens the scope of this qualifying use with immediate effect.

Further information from www.hmce.gov.uk and/or Customs National Advisory Service on 0845 010 9000.

HM Customs And Excise (May 2004) Notice LFT1 A general guide to landfill tax, See www.hmce.gov.uk/forms/graphics/lft1.pdf

2.2 What is waste?

2.2.1 General principle

For landfill tax, the original producer's intention determines if material is waste.

This is illustrated in the following decision table:

<i>If . . .</i>	<i>And . . .</i>	<i>Then . . .</i>
the waste producer disposes of waste	when disposing of it, they intend to discard or throw it away	the material is disposed of as waste; and it is irrelevant whether you or someone else uses it, or would have done
somebody else, such as a waste carrier, makes the disposal on behalf of the waste producer (either under a contract with, or at the request of, the producer)	when disposing of it, the original producer intended to discard it or throw it away	the material is disposed of as waste; and the carrier's intention is irrelevant

2.2.2 Recycled material

If waste is processed before its disposal to landfill and the process changes it into a useable material, the original producer's intention is no longer relevant. The landfill tax liability is determined by the intention of the recycler, as evidenced by the nature of the transaction.

The following table gives examples of the processes that may discount the original producer's intention.

If waste is subject to . . . composting, crushing, bailing, sorting or screening

Then the liability to tax is determined by the intention of the . . . producer of the new material

18. Extract from The Landfill Tax (Qualifying Material) Order 1996

For reference with qualifying uses involving qualifying materials (see over).

- Group 1 Rocks and soils including naturally occurring clay, sand, gravel, sandstone, limestone, crushed stone, china clay, construction stone, stone from the demolition of buildings or structures, slate, topsoil, peat, silt and dredgings
- Group 2 Ceramic or concrete materials including glass (includes fitted enamel, but excludes glass fibre and glass reinforced plastic), ceramics includes bricks and mortar, tiles, clay ware, pottery, china and refractories), concrete includes reinforced concrete blocks, breeze blocks and aircrete blocks but excludes concrete plant washings)
- Group 3 Processed or prepared (not used) minerals including moulding sands (excluding sands containing organic binders), clays (including moulding clays and clay absorbants such as Fuller's earth and bentonite), mineral absorbants, man-made mineral fibres (includes glass fibres, but excludes glass-reinforced plastic and asbestos), silica, mica, mineral abrasives
- Group 4 Furnace slags including vitrified wastes and residues from thermal processing of minerals where, in either case, the residue is both fused and insoluble
- Group 5 Ash comprising only bottom ash and fly ash from wood, coal or waste combustion, and excluding fly ash from municipal, clinical and hazardous waste incinerators and sewage sludge
- Group 6 Low activity inorganic compounds comprises only titanium dioxide, calcium carbonate, magnesium carbonate, magnesium oxide, magnesium hydroxide, iron oxide, ferric hydroxide, aluminium oxide, aluminium hydroxide and zirconium dioxide
- Group 7 Calcium sulphate includes gypsum and calcium sulphate based plasters, but excludes plasterboard. Disposed of either at a site not licensed to take putrescible waste or in a containment cell which takes only calcium sulphate

- Group 8 Calcium hydroxide and brine deposited in brine cavity
 Group 9 Water containing other qualifying material in suspension

TAX-FREE AREAS

7.1 *What is a tax-free area?*

If you intend to carry out any of the following qualifying uses within the boundaries of your landfill site, you may wish to apply for part of your site to be designated as tax-free area. Waste stored in that area would not bear tax for either up to 12 months or up to three years, depending on the qualifying use.

Qualifying uses:

- Recycle waste (which includes composting).
- Incinerate waste.
- Sort waste pending its use at a place other than a landfill site.
- Sort waste pending its disposal.
- Use waste (but it is not for use at a landfill site).

Period that waste can be stored for before bearing tax:

- Up to 12 months.

Qualifying uses:

- Store qualifying material for subsequent use in restoring the landfill site.
- Sort material to obtain qualifying material for subsequent use in restoring the landfill suite.

Period that waste can be stored for before bearing tax:

- Up to three years.

When you place waste in a tax-free area at your site the original producer's intention to dispose of the waste has been met. When you remove the waste from the tax-free area it is your intention that counts.

Note: Waste for subsequent use on any of your sites or any other landfill site which is not qualifying material for use in site restoration cannot be placed in tax-free area unless you are sorting it and accounting for tax on its final disposal. Any residue of material which is unsuitable for restoration purposes will incur tax if not removed from your site within the relevant period, as set out in the conditions of your tax-free agreement.

We recommend that you contact your environmental regulator to ensure that any changes you propose to make to your site, or the running of it as a result of the introduction of a tax-free area are acceptable under the terms of your waste management licence. You may also require planning permission.

You will need to keep a temporary disposal record of wastes entering and leaving the area. Where you store bulk waste in the tax-free area and you cannot get at or identify the earliest stored waste we will treat removals from the area as movements of that earliest stored waste.

Important: you cannot operate a tax-free area without our written approval and approvals cannot be backdated.

7.2 *Applying for a tax-free area*

You can apply:

- for more than one tax-free area (to allow storage of different types of waste or different activities such as sorting and recycling);
- to use a tax-free area for one particular qualifying use; or
- to use a tax-free area for a number of qualifying uses.

You must, however, be able to clearly identify the quantities and types of waste which relate to the different qualifying uses.

Your application should include:

1. The landfill site concerned (you must submit individual applications for each site).
2. The date you want the tax-free area to come into operation.
3. The qualifying uses for which waste temporarily deposited in the area(s) will be put.
4. The types of waste you expect to deposit in the area(s).
5. The length of time wastes will remain in the area(s).
6. The proposed boundaries of the area(s).

7. Note: any application to allow for storage of materials for use in restoration should be made no earlier than three years before the planned commencement date of restoration of the site or (where phased restoration is planned) the commencement of the first phase of restoration.

7.3 Boundaries

In any application to operate a tax-free area you will need to identify its boundaries. We do not require you to fence the area, but it must be clearly identifiable within your site. For example, boundary markers, site roads, buildings or landscape features may help you to identify the area. More than one tax-free area may be approved on a site.

You may also wish to change its boundaries periodically as your landfilling operations progress. So long as the temporarily stored waste is clearly identifiable we would not normally object to this, but you will require prior written approval from us before you can change the boundary of your tax-free area.

7.4 Weighing waste

To operate a tax-free area you will need to weigh waste entering and removed from the area. If you have weighbridge you must use it. If you do not, you may use a specified method or propose an alternative method for our approval.

5 October 2004

Memorandum submitted by Biffa Waste Services Ltd (X11(1))

Biffa Waste Services is the largest waste management company operating in the UK and can justifiably claim to be the most diverse in terms of its spread of interest in industrial/commercial and domestic collection, landfill, liquid waste and specialist hazardous waste management systems. The company has a turnover of around £760 million at a current annualised rate and is also in the top three waste management companies operating in Belgium. We are wholly owned by Severn Trent Plc with over 150 operating centres throughout the UK. We handle 14 million tonnes of material that is treated, landfilled or recycled on behalf of an extensive customer base exceeding 85,000 in the public, commercial and industrial sectors plus collection services to 1.3 million households.

One feels a sense of déjà vu in the sense that it is almost possible to resubmit our evidence to Select Committees on:

- Delivering Sustainable Waste Management (Ev 99–104, Section F), September 2000.
- Hazardous Waste HC911 (Ev 147–150), May 2002.
- The Role of Defra HC991 (Ev 120–123), May 2002.

with minor amendments in terms of nouns and dates. That said, however, the intervening four years have allowed the government to hone their skills in disintegrated decision making to still higher levels. It would, however, be churlish to lay this entirely at the feet of Defra—given the wider constraints of “the system”. This response would like to concentrate on the following key issues:

- (a) Scientific contradictions in the transposition of EU Directives.
- (b) The lack of accurate data.
- (c) Our experience since 16 July.
- (d) Associated issues—LATS/planning/funding.

Dealing with each of these in turn:

(A) SCIENTIFIC CONTRADICTIONS IN THE TRANSPOSITION OF EU DIRECTIVES

Given that hazardous waste is explicitly defined in listings agreed with the EU, the government has created paradoxes by applying these regulations to industrial and commercial materials whilst blithely exempting identical materials in identical containers of identical concentrations from the household stream. This demarcation is scientifically nonsensical, drives a coach and horses through the purpose of the entire regulations, and creates opportunities for criminal activity. It is not the first time that government sees the regulatory framework for household and industrial/commercial wastes (which are identical) as needing to be separate—and it reflects an attitude which demonstrates a legalistic rather than a practical approach to the entire waste management process.

We would refer your Committee members' attention to the conclusions and recommendations (as well as our evidence) to the House of Lords European Committee when it investigated this issue at length. Virtually all those conclusions are validated yet again with regard to the application of the Landfill Directive—two years later.

(B) THE LACK OF ACCURATE DATA

We are now well past the 10th anniversary date when the issue of creating a national integrated database for waste material flows—as well as parallel systems for material inputs throughout various supply chains—was raised, with Defra specifically and government in general. The good news is that Defra have now formed a Data Advisory Panel (of which I am proud to be a member). The bad news is that it is 10 years too late. This is especially to be regretted given the extremely good data collected by all waste management companies on hazardous waste as a result of specific legal requirements. Since the Control of Pollution Act, this data has been collected in paper form and distributed physically to six different parties—WDAs, the Environment Agency, producers and final processors. Five years ago the Agency looked at collecting this electronically online but for reasons best known to itself—presumably Treasury intransigence to provide additional funding for work of this nature—nothing happened. Had such a system been initiated and in operation now, the Agency would have known within a week, precisely where substantive percentage shifts had occurred by material, producer, disposer, geography and composition. Indeed, similar systems in general use in industry would list the biggest percentage shifts in descending order by whichever parameter is selected, enabling the Agency to manage its visit schedule/investigations on an exception basis—allowing efficient use of manpower resources. Such systems could have been initiated particularly easily due to the standardisation of the documentation across the entire industry.

Given the Agency's natural preference for risk based systems, Hazardous Waste would have been the obvious place to trial such software. This would have been particularly useful since identical systems will be needed if we are to avoid future fiascos with regard to waste electrical and electronic equipment, tyres, batteries, end life vehicles and other materials subject to future segregated management systems (such as on-farm plastics, pharmaceuticals, pesticides and agrochemicals).

The essence of such systems is that all participants in the “reverse logistics supply chain” are obliged to sign on to a password controlled relational database via the World Wide Web and record all transactions with all other parties for the specified material. Each day/week/month, inputs and outputs between all the parties are then matched and balanced out in much the same way that the National Banking Cheque Clearing System operates—thus enabling any imbalances from free riders/illegal disposers to be identified within days. Such systems will also be of material importance in developing a proper national framework strategy with regard to the provision of sufficient processing capacity in the context of planning and regional spatial strategies. It would also make Regulatory activities dramatically more efficient.

At the time of writing—10 weeks after 16 July—no-one seems to have a clue what is going where, compositionally, geographically or by industry sector. It is a complete replay of the liquid hazardous wastes that “disappeared” when the ban on liquids to landfills were introduced almost two years ago.

(C) OUR EXPERIENCE SINCE 16 JULY

If it helpful to the Committee, it might be worth relaying our own experience. Before 16 July—we landfilled around 8.5 million tonnes per annum—an average monthly run rate of around 700,000 tonnes per month. Post 16 July our run rate seems unaffected against trends in March/April/May before the pre July rush—but it is early days. We would have expected around a 30,000 tonne per month drop (equivalent to 1,500 large truck loads of contaminated soils). This stability in input tonnage would suggest one or more of the following possible scenarios at work:

- (i) Small, commercial hazardous waste generators (garages/spray booths/engineering companies/printers, etc) who separated hazardous waste or commingled it with other non hazardous waste and described the entire load as hazardous are now removing that material and taking it discretely to domestic civic amenity sites in the guise of private householders.
- (ii) Complete loads of inorganically contaminated soils (which do not smell or have otherwise telltale signs) are being delivered to unsuspecting waste transfer stations, put through trommel screens and commingled with other soils/rubble for onward transfer as recovered soils—or being disposed of direct to landfill as inert cover material at £2 per tonne landfill tax rate.
- (iii) Unscrupulous builders are “blending” organically contaminated soils which have been left to evaporate hydrocarbon residues and/or any inorganic contaminated soils on building sites by a form of “dilute and disperse”—taking contaminated skips from one site and sharing it around their other clean sites like some construction sector version of whiskey blending. The material is then consigned to waste transfer stations, rather than being left in-situ where there are risks of future identification.

I have personal knowledge of one case where a hazwaste “cake” producer in Bristol has been told the Agency allowed his regular landfill to reclassify this material as inert.

Some of this is pure speculation and is certainly not designed to question the character of the construction sector—which is generally making substantive efforts to green its supply chain. Nevertheless, temptations must exist where a landfill 10 miles away has closed and one of the eight currently registered sites is 150 miles away (Scotland being a prime example).

An online database would throw up information on these trends at the press of a button, of course. How could one otherwise form a view?

- (a) The first option is to examine the Customs & Excise tonnage data for the entire landfill sector although this is not perfect because—as usual—this system was set up by the Treasury without regard to any inter-relationship with Defra. Thus it will show trends in inputs for zero rated soils used as cover, £2 rated inert materials landfilled and £15 per tonne rated active wastes.
- (b) In considering the total tonnage inputs proven by the Customs data, it is necessary to abstract tonnages relating to household data. That is because the £400 million of subsidies given to local authorities to kick-start recycling programmes are beginning to make a dent in the historic upward trend line—removing those tonnages would give a better picture of the underlying industrial/commercial position. That could probably best be achieved by reference to the Municipal WasteDataFlow initiated by Defra from 1 April—a project commenced through the award of Biffaward Landfill Tax Credits. Unfortunately submission of data to this system is not compulsory—nor is there likely to be much historic data. Nevertheless, it might provide an indication, if one looks at the returns from Waste Disposal Authorities and Unitaries.
- (c) Returns from WDAs and Unitaries, however, are best distinguished between tonnages delivered in conventional collection trucks direct from household rounds and those tonnages originating from CA sites—it is the latter which is a possible Achilles heel in attracting in illegal industrial and commercial hazwaste. It is always possible that material is being put in domestic dustbins but this is a risky process—particularly where loader operatives are especially trained to guard against this possibility.
- (d) Reference to the Environment Agency fly tipping database would also be useful—if that is stable then probably the material is ending up in landfill.

The need for this detective work is simply the result of the way that different government departments independently collect data and formulate systems without cross communication between departments—very much like the fire engines operated by insurance companies in the 18th century who only put their own fires out! The problem for the legitimate operators in the waste industry is that we have lost around a third of a million tonnes a month at rates of £40–£60 and—in a worst case scenario—that material could be reappearing for landfill at anything from £12 gate fee plus £15 tax, or £5 gate fee plus £2 tax, or we could be buying it for daily cover plus zero tax!

(D) ASSOCIATED ISSUES—LATS/PLANNING/FUNDING

- (i) It is important that the tone of our response is seen as one of resignation rather than explicit critical attacks on Defra or the Environment Agency—it seems increasingly clear that both these departments suffer at the hands of insufficient financial resources to establish the necessary data infrastructure which would then possibly allow them to operate within a revised budget with considerably fewer people. That could be achieved because good management information systems would allow them to run their system by exception—rather than commit many people inefficiently to objectives where they have no means of knowing whether they are being directed in the right place at the right time and there is no system for quantifying the impact of past actions.
- (ii) Both departments are also victims of the distinctions between the Roman based mainland European legal systems (which emphasize aspirations rather than method) and the legalistic/litigation based Anglo-Saxon system (which emphasizes compliance and observation sometimes at the expense of the objective). Defra has made genuine efforts in other areas to cross communicate with other departments—the most recent being with regard to waste and the planning system in conjunction with the ODPM. Our industry was involved in that round-table consultation process with NGOs.

But there is a but . . . both Defra and the Environment Agency should be focused on outcomes based systems (adopting the recommendations in the Better Regulation Task Force report). Industrial and commercial waste streams are extremely sensitive to price and enforcement signals but the Defra approach to the wider issues of your consultation do reflect a certain lack of awareness of how both the commercial and the real world operates. This was most typified in the recent round of discussions on the Local Authority Trading Scheme (LATS). Yet again they find themselves being tied in knots as a result of seeking to differentiate organic waste from industry and commerce and organic waste from domestic households—despite the fact that the chemical properties, composition and potential for pollution of both source types is identical. The distinction between these two sectors is a hangover from the days when the majority of staff

in Defra and the Agency naively assumed that household waste was the only sort of waste that existed. To continue this distinction—which is not observed in Europe—will land them in continuing difficulties and make them look foolish. This already happened in the LATS consultation with local authorities:

- Implementation has been delayed by a year.
- Implementation is likely to coincide (in an election year) with the news that huge sums of credits will be sold for high sums by high recycling (often) Conservative or Liberal Democratic districts and counties to low recycling and impoverished Labour districts.
- In an open meeting with public sector bodies, they confirmed that organic waste collected from commercial premises (restaurants/hotels, etc) would not count towards Council diversion targets if it were recycled. The recommendation was for local authorities to ramp the price of commercial services undertaken by their fleets and effectively lose the business to the private sector. Of course this is good news for us because but—as one delegate pointed out—wouldn't it be a better idea to auction off the goodwill in those businesses to eager private sector companies such as ourselves who would actually pay local authorities for it!
- In response to the next question (that many commercial contractors legitimately or illegitimately bring organic waste to council civic amenity sites and a ruling would be needed as to how it would count in the targets), all the Agency could say was that they would have to consult with their lawyers.

CONCLUSION

Such a situation is symptomatic of what happens when bureaucrats try to create a framework without going back to the basics and investigating the primary vision of these regulations. The European legal approach ensures this is not a difficulty outside the UK—here it is a major obstacle. The emergent parallel rules we are developing between household and industrial/commercial streams must be ended forthwith—although it is questionable whether this is now a possibility given the way a number of regulations have already been implemented. In Europe “household waste” is simply a descriptor of the material characteristics regardless of origin—not the fact that it originates from places where people happen to sleep overnight.

Further manifestations of this lack of realism appear in the tendency to create tradeable permit regimes customised on a product by product basis—packaging, WEEE, ELV and so on. But that is another story . . .

Peter T Jones

Director—Development & External Relations

6 October 2004

Memorandum submitted by Biffa Waste Services Ltd (X11(2))

We welcome the opportunity to provide written evidence on the performance of the Government on the development of Waste Policy and particularly meeting the requirements of the Landfill Directive. As requested, our response deals separately with Hazardous Waste and Landfill more generally. Our comments relate primarily to the situation in England, but we have included comments where relevant on implementation in Wales, Scotland and Northern Ireland and where possible contrasted the approach of the relevant Regional Government and/or regulator.

1. The effect of the Landfill Directive is to alter fundamentally the management of all household, commercial and industrial waste streams generated in the UK, and with the UK's heavy reliance on landfill this is also impacting directly upon the majority of facilities used for the disposal of wastes. The scale of change required to fully implement the requirements should not therefore be underestimated and could better be described as a paradigm shift in practices.

2. Despite the scale of change required, implementation has been characterised by Government (including through the agencies of Defra and the Environment Agency) allowing uncertainty over specific requirements to pervade the waste management community; waste producers, local authorities, waste managers and contractors. This had led to confusion, uncertainty regarding investment decisions, and consequential delay, which will seriously jeopardise compliance with statutory targets and objectives.

3. The consequences to date are that an industry that successfully managed hazardous wastes for more than 20 years has been emasculated, landfill sites are being closed or void sterilised by the Agency without sound scientific justification, significant costs are being incurred with no resultant environmental benefit, and the likelihood of local authorities achieving biodegradable municipal waste diversion targets for 2010 and 2013 must be considered extremely remote.

4. We consider that these consequences are due primarily to:

- (i) a failure of Government to insist that the EU made all requirements of the Directive explicit before the timetable for implementation was set;

- (ii) a failure of Government, Defra and the Agency to undertake adequate regulatory impact assessments in accordance with the requirements of the Better Regulation Task Force, in order to fully understand and cost the consequences of the Directive and their decisions;
- (iii) a failure to provide guidance to the Environment Agency on the interpretation of the Regulations (the first guidance was published approximately two weeks ago and over four years after regulations came into effect—See Note 1);
- (iv) allowing the Agency to widely interpret (in the absence of any direction), “gold-plate” requirements (without consideration of cost) and repeatedly alter its interpretation greatly increasing costs, delays, uncertainty and disputes over requirements;
- (v) a failure to adequately resource Defra and the Agency with experienced and competent staff capable of appreciating the impacts of the Directive, which were all too often ignored, and addressing the technical requirements which has led to significant delays in the required permitting of existing and new waste management facilities;
- (vi) a failure of Government to heed the widely voiced concerns and warnings of the waste management industry and of the Hazardous Waste Forum established in response to Waste Strategy 2000; and
- (vii) a failure to provide adequate information and guidance to waste producers and to ensure that they were aware of their new responsibilities and obligations.

HAZARDOUS WASTE

5. The Directive was agreed by UK Government without fundamental technical annexes being finalised, namely Waste Acceptance Criteria (WAC). The Directive prescribed immovable dates for the implementation of the co-disposal ban and the subsequent introduction of WAC. Delays in the finalisation of the WAC by Technical Adaptation Committees at European level seriously eroded the remaining time available to design and build the necessary infrastructure to produce treated wastes to the required specification. The WAC for monolithic wastes has still not been finalised and will probably not be available until just before the date of implementation, allowing no time for the design, approval, construction and commissioning of plant, even if a market assessment were possible.

6. Delay in setting WAC has resulted in implementation 12 months after the co-disposal ban. This has led to an interim year post the ban but before implementation of WAC during which highly polluting hazardous wastes are landfilled together. There was no technical or environmental justification for this decision, which constituted a fundamentally retrograde step in environmental protection opposed by the majority of waste management contractors but promoted and supported by Government (See Note 2).

7. On 16 July 2004, a ban on the co-disposal of hazardous and non-hazardous waste was implemented. Of fundamental importance to this ban is clarity on the definition of hazardous waste in order to ensure offences are not committed. Currently, England and Wales operate in accordance with the Special Waste Regulations 1996. Special Wastes must be transported with Section 62 consignment notes. These Regulations are clear and understood. However, not all Special Wastes are hazardous, and some non-hazardous waste can be Special (see EA guidance WM2). Consequently, a non-hazardous site can accept s62 wastes post the ban on co-disposal. These anomalies should have been addressed prior to the ban by new regulations (and guidance), which have just been issued for consultation. The consequence is that wastes are likely to be being incorrectly classified.

8. There is considerable confusion as to the correct classification of a waste as Ecotoxic (Hazard Code H14). No guidance is available on how this requirement is to be addressed despite the fact that many wastes may be “ecotoxic”.

9. The European Waste Catalogue (EWC) was implemented on 31 August 2002 and includes the Hazardous Waste List; it therefore defines those wastes classified as hazardous and correct application is therefore fundamental to legal compliance. Despite a commitment to provide timely guidance, a pre-consultation draft was published by the Agency in September 2004, more than two years after implementation.

10. Chapter 20 of the EWC contains a list of wastes considered to be hazardous if “separately collected”. There is much confusion as to when an item is considered to be separately collected, and when a load is considered to be part of a “mixed load”, specifically with respect to fluorescent tubes, and TV screens and computer monitors (EWC codes 20 01 21* and 20 01 35* respectively—see Note 3).

11. It is unclear whether a hazardous waste may be treated in a stabilisation treatment process to produce a solid, non-leaching material that may be classified as non-hazardous because there is no appropriate code in the EWC. This is despite the fact that the treated waste may exhibit no hazardous characteristics (See Note 4).

12. Concurrent with the ban on co-disposal was the introduction of a requirement for hazardous wastes to be pre-treated. No guidance has been provided on pre-treatment, or what paperwork would provide a compliance audit trail. The Agency produced draft pre-treatment guidance approximately three years ago but then withdrew it. Guidance on pre-treatment is fundamental to the development of necessary treatment facilities (see Note 5).

13. The Agency has provided guidance in relation to the landfilling of asbestos wastes in stable non-reactive hazardous waste cells in non-hazardous landfill sites. The requirements have been imposed without consideration of health and safety impacts (the primary risk associated with asbestos) and have then failed to apply the requirements in a uniform manner (see Note 6).

LANDFILL MORE GENERALLY

14. There has been a serious lack of adequate guidance from Government to the Agency and industry, when implementing many of the requirements of the Landfill Directive through the Pollution Prevention and Control (PPC) regime. The Agency as lead regulator has formulated a number of regulatory guidance notes based on internal legal advice that it has consistently failed to publish. All too often limited consultation exercises were held and these were rarely in accordance with the Cabinet Office Code of Practice on Consultations. Industry has little or no confidence in Agency consultations, which normally ignore responses from the waste management industry.

15. Very many legal issues in Agency guidance remain in dispute including:

- The definition of a site boundary including the refusal of the Agency to accept three-dimensional boundaries.
- Reintroduction of certain best available technology (BAT) conditions in PPC Permits despite the Landfill Regulations excluding these requirements.
- The application of BAT to directly associated activities contrary to the Regulations.
- The use of inert soils for post closure restoration and landform creation allowed by the Regulations but not the Agency.
- What constitutes the pre-treatment of wastes.
- The retrospective application of the Groundwater Directive to completed areas of landfill and the consequential refusal of PPC Permits.
- Retrospective application of Financial Provision to previously completed areas of landfill contrary to a previous undertaking.

16. It is clear from the delays in progressing transitional PPC applications for landfill sites that the Agency is suffering a severe lack of suitable resource to facilitate transition into the new regime. Resource was simply moved internally within the organisation into the SPG's leaving serious shortfalls in some areas (and causing consequential delays in progressing applications for new facilities) despite the fact that many individuals were technically ill-equipped and insufficiently experienced for the permitting task. Coupled with constantly changing Agency guidance the delays that are now occurring were inevitable. The consequence is increased cost for industry with no discernable environmental benefit (see Note 7).

17. The Agency has recently sought to introduce new requirements relating to financial provisions (a consultation document has just been issued), in part justified by the Landfill Regulations, which it expects to implement from 1 January 2005. The Agency is proposing financial provision be made for all waste in the Permit area (contrary to a previous undertaking), an extension to the minimum term to 60 years, with no technical justification, and estimate that future provisions should be in cash. They estimate a cost of £2 billion for the existing landfill portfolio in England and Wales. The whole approach is fundamentally flawed and would tie up essential finance at a time when investment in new infrastructure required to deliver the Landfill Directive obligations is critical. Despite this industry will have to rigorously challenge their planned approach.

18. Article 12 of the Landfill Directive specifies the control and monitoring requirements required at landfills during their operational phase, including the monitoring of gas flares. Monitoring required by the Agency takes no account of the Health and Safety of either the personnel undertaking the monitoring or the general public at large. Annex I 4.2 of the Landfill Directive requires that landfill gas produced on sites receiving biodegradable waste must be treated and used where possible, however the Agency have imposed requirements that are reducing the generation of renewable energy.

19. Article 14 of the Landfill Directive requires that Member states take measures in order to close any existing landfill operation as soon as possible or within eight years after the relevant date in article 18(1). The Agency has given no regard to the need to practically complete landfill sites but has rigidly worked to a timetable that ignored this key aspect. Despite compliance with the end date in the Directive being possible, the Agency seeks premature closure of sites and ignores the consequences of an incomplete or inappropriate final landform and the potential environmental consequences.

20. Landfill operators were put to a great deal of expense in submitting site conditioning plans, which it is accepted is a requirement of Article 14(a). It would appear that this information was only used to set the tranche dates for PPC applications and not utilised any further. Only very crude and basic information was utilised from these documents to set the tranche dates—for example whether a site accepts special wastes. SEPA adopted a more pragmatic approach requiring less in the way of conditioning plans. Article 14(c) gave the relevant authority the power, where a site conditioning plan had been accepted and approved, to lay down a transitional period for the completion of the plan to meet the requirements of the Landfill Directive, within eight years of the relevant date. It was disappointing that the deadlines set by the relevant authority (the Agency) were as tight as they were, especially given the subsequent failure on the part of the Agency to process the resultant applications within the timetable devised by themselves.

21. The Agency were informed through the submission of detail in the site conditioning plans how each site was to be filled and the life expectancy of the site. There was a legitimate expectation on the part of landfill operators that for sites closing at some point near to, but prior to 2007, the Agency would allow the completion of the site without requiring a full PPC permit application. This clear benefit to both operator and regulator was ignored resulting in unnecessary costs being incurred (see Note 8).

22. An issue arising from the EWC is the definition of “municipal waste”. It is clear that the traditional definition of domestic waste differs considerably from that contained within the EWC classification of Municipal Waste; specifically 20 03 01 mixed municipal waste. The EWC definition includes Municipal waste (household waste and similar commercial, industrial and institutional wastes) including separately collected fractions. The consequences for the inclusion of other wastes in the definition of municipal wastes (including biodegradable municipal waste (BMW)) have potentially significant implications for compliance with the BMW landfill diversion targets.

23. The ability of Local Authorities to achieve their statutory targets, which have still not been finally specified by Government, particularly the targets for 2010 and 2013 must be highly doubtful. Whilst some progress will be made through the adoption of kerbside collection schemes and other householder recycling initiatives step change will only result from the development of waste treatment infrastructure. Contracts are typically taking 12 months to issue and two years to negotiate. With favourable planning and permitting, and consequential construction and commissioning, can take a further three to four years. Accordingly, for a local authority commencing today, even under favourable conditions treatment infrastructure will not be available until approximately 2011.

24. With a very significant number of contracts still to be let, there are genuine concerns about the waste management industry’s capacity to respond. Contracts are resource intensive to negotiate and whilst there has been some simplification and streamlining adopted through the PPP process, there is considerable scope for increased standardisation of contracts. Notwithstanding this, the capacity of the industry to resource the considerable amounts of infrastructure required is a key risk to achievement of the targets.

25. There are key issues regarding markets for recyclables, which even with the work of WRAP will not be developed quickly, and therefore capacity could become a serious issue as tonnages diverted from household waste increase. Markets remain very volatile, particularly for some materials.

26. There are issues concerning the management of waste floc from MBT plants, which is set to grow significantly over the next five years. Conditions which encourage the development of small scale CHP plants with simplified grid connection arrangements could address this issue, whilst making a further contribution to Government targets for renewable energy generation.

27. Direct experience with source separation of kitchen waste confirms that the majority of households find the approach problematic at best and participation rates remain very poor and insufficient to make a significant impact on BMW diversion rates. MBT may therefore provide the only viable solution but there are concerns about compost standards and the possible implications of a Biowaste Directive on MBT schemes that have been implemented ahead of any new requirements.

28. The absence of guidance on the methods to be adopted to measure BMW reduction in partially treated waste remains a problem. The Agency is about to issue a consultation document but the delay could seriously disadvantage those local authorities that have been pro-active with the adoption of landfill diversion schemes.

29. The situation with BMW diversion from landfill in Wales is similar to that in England. In Scotland it is generally accepted that significant progress will be made by local authorities divesting themselves of trade waste collections thereby reducing the tonnage of “collected” household waste. The situation in Northern Ireland is far more serious and whilst in recent months there has been some indication of progress with kerbside recycling schemes and composting, delays with the planning process as administered by Planning Services and the inexperience of the Environment and Heritage Service, together with the absence of any formal co-ordination between local authorities to create scale will seriously jeopardise the ability of the UK to achieve the BMW diversion targets, particularly for 2010 and 2013.

Note 1: There has been a recent consultation on “Government Interpretation of the Landfill (England and Wales) Regulations 2002 (as amended)”. It is clear from the content and by admission that this document is based largely on the Agency’s interpretation of the Regulations and not Defra’s. We consider this to be wholly unacceptable. The document contains issues that were subject to previous extended discussions between the Agency and waste management industry, with many concerns being raised but which have been

continued without comment in this consultation exercise. It is clear that the Agency has given no regard to the previous discussions with industry. Of note, this document is the only guidance so far issued by Defra to assist with the implementation of the Landfill Directive and has been issued (for consultation) four years after the Landfill Directive came into force. We note that there has also been no landfill specific PPC guidance notes issued to date.

Note 2: There is no definition or criteria to define stability within the WAC. Other than in the case of asbestos, it is unclear exactly what wastes are suitable to be disposed of in stable non-reactive hazardous cells within non-hazardous landfill sites. WAC for monolithic wastes is still awaited. Uncertainty in this area is hindering the development of hazardous waste treatment facilities. Industry has repeatedly requested clarity from Defra on this matter and time to respond. Article 1 of the Landfill Directive requires that waste is managed to reduce the negative effects on the environment, in particular surface water, groundwater, soil and air as well as reducing the risk to human health. It is clear that the interim arrangements for the 12 months following the ban on co-disposal post July 2004 and prior to the introduction of WAC in July 2005 is incompatible with this requirement. The operating practices allowed by this interim regime are a retrograde step. They were not permitted under the previous WML regime and will not be allowed post July 2005. It is clear therefore, that these practices do not represent the best environmental option.

Note 3: Because of the confusion regarding separately collected fractions, producers, carriers and disposal outlets are uncertain as to whether they are compliant with the requirements if, for example, one fluorescent tube is placed in a general waste bin. Without clarity as to the Agency's interpretation, waste producers are unclear about their legal obligations and it is very difficult for contractors to provide guidance to customers on their legal responsibilities or to confirm compliance or otherwise when receiving wastes at landfills.

Note 4: If it can be demonstrated through appropriate analytical testing that a treated hazardous waste does not display any of the 14 hazards, then it seems self evident that the waste should be classified as non-hazardous. However, the requisite (non-hazardous) code from EWC chapter 19, sub chapter 03 is not present ie there is no mirror entry. This has resulted in concerns about the Agency's interpretation and policy on this point ie should the Agency insist upon a hazardous EWC code being applied, regardless of the behaviour and nature of the resultant treated waste, and when other codes could be used. Clarity on this point is also fundamental to decision making regarding the design and location of hazardous waste treatment facilities. It would also seem self evident that when hazardous wastes have been treated to produce a benign product there is no benefit in continuing to refer to the waste as "hazardous". This terminology causes considerable public perception problems (SEPA have continued to use the term "Special") particularly post July 2005 when all hazardous waste disposed of to landfill will have to be treated to meet the stringent requirements of the Waste Acceptance Criteria and will effectively be free of significant hazard and in many cases will be benign. An example is a waste that contains lead. Even if the waste is vitrified and the lead is locked up and unavailable to the environment it would still be defined as hazardous.

Note 5: The requirement to pre-treat wastes also applies to the majority of non-hazardous wastes. Whilst compaction constitutes treatment in the Regulations (and the Directive) the Agency have sought to prevent compaction being employed as a treatment technique and to impose more onerous requirements. Waste management companies will not provide facilities meeting these more onerous and therefore more costly requirements whilst low cost "compaction" may be allowed by the Agency in the future. The date for the implementation of the pre-treatment requirements at non-hazardous sites has still not been confirmed, which further puts at risk the development of the requisite infrastructure.

Note 6: Certain hazardous wastes that meet the definition of stable and non-reactive (SNRH waste) may be landfilled in separate cells in a non-hazardous landfill site. Such waste streams include asbestos. The Agency has provided a Regulatory Guidance Note RGN 11. This provides advice on the design, build, construction and operation of such cells. Their guidance has been written in the absence of any advice from Defra. There has been no adequate consultation with landfill operators and the Agency has failed to acknowledge legitimate industry concerns, including health and safety issues. It was also the Agency's intention that RGN 11 would be applied consistently across the England and Wales. However, the Agency has failed to demonstrate any consistency; some SNRH cells have been built and operated under Operational Working Plan modifications under the Waste Management Licensing regime, others have required a Waste Management Licence modification along with the associated application fees and delays, whilst others have required very detailed submissions as part of the PPC re-permitting process. There is not even consistency between the 4 Agency SPGs. This has resulted in delays, loss of business, not to mention the lack of provision of safe landfill capacity for asbestos wastes.

Note 7: The timetable for implementation of the transitional arrangements for landfill sites was determined solely by the Agency. Deadlines were bought forward and streamlining and time saving opportunities were ignored. The Landfill Directive requires that the last date for implementation is 16 July 2007 hence sites close to closure (before July 2007) could have been excluded from the process but were not. The Agency devised overcomplicated application forms, a highly complex system of risk assessments as well as setting immovable, inflexible tranche dates (dates by which applications were to be submitted), and then imposed guidance which was then regularly subject to change. The PPC Regulations assume four months for determination of PPC applications but the Agency has consistently failed to achieve considerably longer than this period with consequential impacts on resources. The impact on industry is increased costs. The Agency annual report and accounts 2003-04 admits that the target for processing and issuing PPC permits has not been achieved. The target was 174 permits but the report states that only 25 permits were issued.

They attribute these poor figures mainly to delays in setting up the SPGs that issue permits. This is clearly unacceptable for the reasons set out above. At the current rate of progress it will take until 2030 to process the 800 PPC transitional applications.

Note 8: A site operated by Biffa had approximately two years remaining life but as a result of the Tranche date imposed by the Agency a PPC application was required to be made approximately eight months prior to closure. Despite representations being made to the Agency to shift the Tranche date, in order to protect the operation, a Permit application had to be made at an approximate cost of £100,000, and was withdrawn when the site closed eight months later.

David Savory
Director/Environment & Technical

8 October 2004

Memorandum submitted by the Environmental Industries Commission (X13)

INTRODUCTION

The Environmental Industries Commission (EIC) was launched in 1995 to give the environmental technology and services industry a strong and effective voice with Government.

With over 240 Member companies—over 150 of which are involved in sustainable waste management or land remediation—EIC has grown to be the largest trade association in Europe for the environmental technology and services industry. It enjoys the support of leading politicians from all three major parties, industrialists, trade union leaders, environmentalists and academics.

EIC supports the objectives of the Landfill Directive to reduce the landfilling of hazardous waste. EIC's Member companies provide a number of technologies and services to respond to this legislation by reducing the quantities of hazardous waste arising. However there are a number of key barriers to the successful take-up and use of these services and technologies which we have focused on below.

1. Implications of Landfill Directive for Contaminated Land Remediation

Effective mechanisms to clean up contaminated land are key to the Government's objectives to redevelop brownfield sites, including to the target to build 60% of housing on previously used land. This was recognised in the Urban Taskforce report published in 1999.

The type of clean-up solutions used are also crucial to the Government's objectives to reduce landfilling of waste—and hazardous waste in particular.

According to the Government's Hazardous Waste Forum, some 60% of all hazardous waste is contaminated soil produced when contaminated sites are cleaned up. However there are a number of alternative treatment techniques which can clean up contaminated soil either for re-use or disposal as non-hazardous waste. These solutions are vital to reducing the demand for landfill in general; demand for the very limited hazardous waste landfill capacity in particular; and also to reducing clean-up costs.

The Landfill Directive has led to a dramatic increase in gate prices for hazardous waste landfill. This has put under threat the Government regeneration objectives by adding significant cost to regeneration projects on contaminated land.

However it is a positive driver for alternative treatment techniques which can help minimise use of landfill. And these alternative technologies can play a key role in keeping land remediation costs down. EIC recognises that these alternative techniques are not suitable in all cases and other mechanisms, such as fiscal/financial support for the remediation of brownfield land will be needed to mitigate the impacts of the Landfill Directive. However we will concentrate on support for alternative technologies in this submission.

1.1 Alternative Treatment Techniques for Land Remediation

Alternative techniques for remediation of contaminated soils have an important role to play in filling the gap left by decreasing landfill availability and increasing landfill costs. Currently accounting for some 10–20% of remediation, most practitioners would agree that there is potential to increase this towards the much higher percentages seen elsewhere in Europe, given the right economic and regulatory framework. An illustration of the potential role of on-site remediation is given by the increasing numbers of licensed technologies under the current Mobile Plant licensing regime. (At beginning of 2004 there were 130 MPLs in place with 48 companies, covering some 20–25 techniques or variants).

Alternative techniques will not be able to help to significantly fill the landfill gap unless there is clarity and consistency in regulation of such technologies. EIC is aware of and has contributed to work in several areas carried out by EA and DEFRA to address these issues, but is increasingly concerned about the speed with which clear results are emerging. Below we have listed the key regulatory barriers to alternative treatment techniques for contaminated soils.

1.2 *Barriers to Reuse of Remediated Soils*

At present throughout the UK there is a rather confusing situation on the reuse of remediation soils which urgently requires clarification. Remediation of the soils is generally covered by a Mobile Plant Licence, but this does not cover the reuse of the soil on completion of the remediation to a risk-assessed standard. At present in England and Wales there is an enforcement position to the effect that the Environment Agency won't normally take enforcement action over the reuse of such soils. Clearly this is an unclear position and not one that developers investing millions of pounds in site redevelopment see as a risk-free solution.

The only alternative is to use an exemption to the Waste Management Regulations and these are awkward to use and none have been drafted specifically for the reuse of remediated soils. This uncertainty has been compounded by the recent ECJ Van de Walle case.

Clearly this is a confusing situation and, combined with the various other regulatory barriers, it is one of the main reasons why developers are reluctant to use alternative treatment technologies.

We would therefore urge Defra to clarify in the revised "11/94" guidance on definition of waste it is currently working on that, subject to assessment on a case by case basis, soil normally will be considered to have ceased to be waste in the following circumstances:

- (a) Soils remediated on-site to a risk-assessed standard agreed with the Environment Agency to be reused within the development.
- (b) Soils remediated at an off-site soil treatment centre to a risk-assessed standard agreed with the Environment Agency as suitable for their re-use at a specific receiving site (either the same site as removed from, or another development).
- (c) Soils stabilised on-site to an Environment Agency agreed risk-assessed leachability and permeability standard.

We would also urge that Defra clarify that clean soils moved and reused within a development project have not entered the waste stream.

1.3 *Lack of Exemptions*

Introduction of specific exemptions into waste management licensing to cover small remediation projects and the reuse of soils would also be a very helpful step forward.

We responded to the Defra consultation last year on amending non-hazardous exemptions to the Waste Management Licensing regulations (and indeed contributed to the thinking running up to this consultation).

We urge Defra to issue these exemptions without further delay.

1.4 *Remediation Permitting*

As you are aware, the EIC and the Brownfield industry have been lobbying since 1996 for a simple regulatory system under which beneficial soil remediation can be controlled.

Since 1998 the industry has been able to make some progress using the Mobile Plant Licensing system. However this has major shortcomings. The management time and cost of maintaining a number of Mobile Plant Licences for a typical small to medium sized remediation company can be in excess of £150,000.00 per year. As the EIC have been saying for many years, this is not the way to promote the sustainable re-use of soils.

EIC worked closely with Defra on the remediation permitting aspect of the Waste Permitting Review and were broadly happy with the approach they had developed. We were therefore very disappointed to hear that the Waste Permitting Review was suspended with seemingly no consideration as to the effect on this key aim of the Review.

We are very pleased, however, that Defra is now working with the Cabinet Office and ourselves to get work on this area restarted.

2. Hazardous Waste and Enforcement

A key concern for our industry is enforcement of Landfill Directive controls on Hazardous Waste. Violations can range from mis-description of waste to fly-tipping.

It is clear that this is a lucrative market for criminals and that the Environment Agency is ill-resourced to enforce controls on hazardous waste.

Failure to effectively enforce environmental legislation damages not only the environment but is also a major block to innovation needed to provide alternative solutions to disposal of hazardous waste. Our industry has painful experience of investing in developing solutions to environmental problems on the basis of there being a demand for those solutions, only to find weak enforcement means this demand turns out to be more illusion than reality.

Government must recognise that enforcement of environmental legislation is not a burden on industry but actually essential to innovation and the effective running of the market and, therefore, to the economic as well as environmental health of the country.

We therefore recommend that the Government uses some of monies raised from the increase in the Landfill Tax to support the Environment Agency's work to tackle fly-tipping.

3. Reducing Landfill More Generally

EIC has been closely involved in the work carried out by the Cabinet Office Strategy Unit and the Defra Waste Implementation Team to put this into practice. We welcome the measures in the Defra Waste Implementation Strategy and consider good progress is being achieved.

However, given the scale of the transformation in waste management required we believe measures will be needed in order to meet the targets in the Landfill Directive—and to tackle the UK's waste production more generally.

Most importantly the Government needs to increase the Landfill Tax more rapidly. The Government has announced this will be going up by £3 a tonne in 2005–06 and at least £3 a tonne annually following this to £35 a tonne. This is the key Government instrument to switch the market away from landfill. We consider that the rise needs to be steeper than £3 a tonne in future years in order to deliver on the Government's targets for reducing landfill.

This would also make the tax a greater driver for waste minimisation—particularly if a substantial part of the revenues are used to support waste minimisation initiatives, for example through the Envirowise programme.

8 October 2004

Memorandum submitted by Cyfeillion y Ddaear, Welsh Groups Network (X14)

PREAMBLE

We work with community groups in Wales, continuing the former FoE Cymru work on toxic waste issues. We helped Phoenix present a case at the Padeswood Cement Kiln Inquiry (opposing the use of hazardous waste fuels) and submitted an objection to the Environment Agency's proposals to revise the Cement and Lime Kiln protocol to facilitate fuelling with hazardous waste.

EXECUTIVE SUMMARY

We are concerned about the use of cement kilns as hazardous waste incinerators. We recall that predecessor environment committees conducted two inquiries into the regulation of chemical waste fuelling of the Ribblesdale (Castle Cement) kiln and were severely critical of the Environment Agency. While the committee's strictures caused a tightening up of the regulation, with introduction of a special Protocol for the authorisation process, the EA in 2004 is seeking³⁹ to virtually abolish that Protocol. There are two crucial points here:

- The EA's motivation is to promote the disposal of various wastes, including hazardous wastes, in view of the Landfill directive's restrictions on tyres and hazardous wastes that has created a shortfall in capacity.
- In proposing substantial weakening of the Protocol, the EA is withdrawing a promise made to the Commons Committee without submitting a case and without seeking parliamentary approval.

³⁹ Proposals to Revise the Substitute Fuels Protocol for use on Cement and Lime Kilns—Consultation Paper Env. Agency 2004, www.environment-agency.gov.uk/yourenv/consultations/743155/?version=1&lang=_e

We consider the EA motivation and promotion of cement kilns for hazardous waste disposal is misconceived and breaches adopted policies and legal processes. We therefore ask the Committee to tell the Agency to withdraw their current proposal and rethink their policy for waste co-incineration in cement kilns.

MOTIVATION FOR CHANGING THE PROTOCOL ON WASTE FUELS

1.1 We know that the British Cement Association have lobbied the DTI to direct the EA to change the SF Protocol, arguing costs of trials and competitiveness of the cement industry (eg letter of 13 September 2002 from the BCA to the DTI). Mike Gilbert, chief executive of the BCA, said in their statement of 9 June 2004:⁴⁰

“The Government, the Environment Agency and the waste industry itself all agree that the cement industry has an important role to play in the treatment of specific waste streams.

While we want the permission process to be speeded up, we are clear that that the protocol must continue to be rigorous in its evaluation of different fuels and in ensuring no net detriment to the environment.”

The EA agrees (3.1 below) and uses the phrase “no net detriment to the environment” as decision criterion. It amounts to the curtailment of a proper appraisal process—which should include the precautionary principle; waste policy with the requirement to determine the BPEO; the essential role of the public in decisions involving judgement, especially on risk assessment and health impact assessment (sections 4, 5, 6 below).

1.2 Standards for co-incineration of hazardous wastes in a cement kiln are worse than for waste incinerators—much less stringent limits for particulates, nitrogen oxides and sulphur dioxide. The less stringent standards imply an extra economic incentive for toxic waste producers to use co-incineration instead of the dedicated waste incinerators, getting away with extra pollution of the environment. Permitting hazardous waste as fuel would by-pass planning laws—those implementing the European EIA and COMAH legislation—and thus prevent local planning authorities exercising their responsibilities over hazardous industry (sections 4.3 and 8 below).

1.3 Laxity over particulate emissions is particularly serious, as the mass limit gives virtually no control of ultrafine particles which are relatively rich in toxic metals and halogens, avoid the bronchial filter, and penetrate deep into the human lung. Hazardous wastes used as fuel generate heavier loading of such toxins.

THE REASONS FOR THE EXISTING PROTOCOL ARE STILL VALID

2.1 The 2004 document reads (s 4.22):

The Environment Agency considers . . . substitute fuel for the first time or as an additional fuel does not warrant the automatic status of “substantial change”, as the proposals are not likely to entail significant negative effects for human beings or the environment.

Nowhere does the document explain why raising “nationally important issues” or, “influence (on) formation of Agency policies” of the existing protocol (s 3.4) are not now included as relevant.

2.2 The existing Protocol sets out arrangements for public consultation at a level above that which is provided for in statute in order:

- to facilitate a wider and better informed consultation process;
- to demonstrate to the public that a thorough and scientific consideration of the issues has been undertaken; and
- to show the public that a sound and lawful determination of each application has resulted.

The intention was “to ensure that Agency decisions are better informed and lead to greater public confidence in the decision making process” (s 3.5 of existing Protocol). Nowhere does the document explain why these intentions are invalid and to be disregarded.

2.3 The existing Protocol also states that the use of substitute fuel which is “waste” is an operation for the “recovery” of waste for the purposes of Waste Management Licensing so that decision-making should implement relevant requirements of the National Waste Strategy. This means in particular the determination of (site-specific) BPEO for the particular waste via an open systematic, consultative process.

2.4 The existing Protocol contains an Annex detailing extended consultation as a 3-stage process. In the new document, any such Annex or reference to an alternative has disappeared, leaving just the vague wording “extended consultation”.

2.5 The omission of all these points, reasons and assurances on extended consultation is highly objectionable and adds evidence that the consultation on changing the Protocol is not open and genuine.

⁴⁰ <http://www.cementindustry.co.uk/Docs/SFP%20BCA%20Press%20Release.doc>

NO NET DETRIMENT

3.1 In its consultation document, the EA argues (s 3.19) that:

An increase in the use of such fuels in kilns is likely to make a significant contribution to the achievement of targets identified in the Government's Waste Strategy. Experience has shown that the use of substitute fuels has resulted in no net detriment to the environment when compared to operation with conventional fuels.

However, the Agency failed to supply that information when asked, and failed to review it for the public consultation and in support of its proposed retraction of its promise to parliament. A European Commission study⁴¹ shows the claim of experience is seriously suspect; in particular, the Commission's report says cement kilns give higher emissions of mercury, a neurotoxin having significant adverse effects on infants' brain development.

BASIC ASSESSMENT

4.1 The Agency is required to use the Precautionary Principle when "science" is inconclusive, but in practice uses an outdated version. It should use the EC/Nice Treaty formulation of the Precautionary Principle (PP):

a precautionary approach must be paramount, as opposed to acting only where proof or very strong suspicion of harm can be demonstrated. The Precautionary Principle should be applied where the possibility of harmful effects on health or the environment has been identified and preliminary scientific evaluation proves inconclusive for assessing the level of risk. Account should be taken of social and environmental costs in examining the level of risk, but the protection of public health, including the effects of the environment on public health, must be given priority.

4.2 The parliamentary committee recommended in 1997 "The Government should carry out a survey of health effects in the vicinity of cement kilns."(s 124). The Agency has done some relevant studies since then, so should have summarised the results and given references on the critical health issues, particularly as the results have not been subject to public consultation. Independent studies using new bioindicators (eg Staessen *et al Lancet* 2001; 357: 1660–69) conclude that "current standards may not be protective".

4.3 The UK is in breach of the EIA (Environmental Impact Assessment) directive, for not including EIA in decision-making on licenses, with particular reference to waste-burning in the Ribblesdale cement kiln. The Commission announced this in their statement IP/02/1102 of 19 July 2002 Commission acts against UK . . . for non-compliance . . . which said "the failure to undertake an assessment in this type of case is in part a consequence of the United Kingdom restriction of application of the Impact Assessment Directive to land-use planning decisions, an approach which the Commission considers as too narrow". The decision to take infringement proceedings against the UK was confirmed in IP/03/1070 of 22 July 2003.

4.4 The Environment Agency gives a faulty, non-government version of the Waste Hierarchy, which it says⁴² it uses as a general guide to selecting the best option for dealing with waste. Equating recovery of materials with recovery of energy is contrary to the UK's Waste Strategy and ignores the toxic effects of emissions, products and residues, as well as the low efficiency of energy recovery.

4.5 The EA determines the BPEO via an internal technocratic evaluation, not via the Royal Commission's consultative stakeholder process, endorsed in the Waste Strategy 2000 (5.1, also 7.5 below). For the Westbury kiln decision on trialling Cemfuel, the EA refused any kind of BPEO evaluation. In a hazardous waste incinerator, the toxic ultrafine particles (1.3 above) tend to be trapped in activated carbon and/or ceramic filters, so this would constitute BPEO for disposal of the unrecyclable fraction of Cemfuel.

FAILURE TO IMPLEMENT NATIONAL WASTE POLICY

5.1 The existing protocol explained that the use of "waste" as substitute fuel is legally classed as "recovery" of waste, so that policies have to comply with the Waste Framework Directive and associated plans. These include Waste Strategy 2000 and Wales's Wise About Waste and have particular requirements on consultation (see below). In respect of hazardous waste, Waste Strategy 2000 is clear:

"Reducing the amount of hazardous waste produced is a key waste management priority."

5.2 The Environment Agency accepted this in Hazardous waste: A growing challenge (2004), saying it would work to:

"reduce the production of hazardous waste at source (and to) encourage re-use and recycling".

5.3 Yet the EA allows (even promotes) the burning in cement kilns of Cemfuel, composed largely of recyclable solvents (at Ribblesdale, in the new IPPC for Padeswood, in trials at Westbury kilns). The

⁴¹ as summarised in the ENDS Report (Environmental assessment of waste-derived fuel production and use, September 2003).

⁴² *ibid* s3.4.

Environment Agency's own Technical Report⁴³ asserts "recycling of solvents is environmentally preferable to incineration on almost every count." The only exception is waste chemical solvents contaminated with persistent pollutants, such as PCBs and CFCs, and then the recommendation is destruction in a Hazardous Waste Incinerator. The Report does not give incineration in a cement kiln as the BPEO for waste chemical solvents.

VITRIFICATION OF NON-RECYCLABLE TOXIC WASTES IS HELD BACK

5.4 High temperature vitrification is an alternative process for destroying hazardous waste and locking toxic metals into a leaching-resistant product. We know of a company (Glaztek) that has been trying to set up to use a Dutch glassification technology (Alkali Slag Cement Process Technology)⁴⁴ and producing useful building materials (tiles, cement alternative, etc). The Welsh Development Agency has been unhelpful, despite the potential and the obvious need, so did no technical assessment nor helped find a site. The company offered to deal with 150,000 tonnes of hazardous tarry waste on the derelict Phurnacite (ex-smokeless fuel) site, but the WDA failed to disclose this and pressed on with their plan to transport the wastes to landfills in England.⁴⁵ The EA participated in this decision and informed the planning authority it is the "BPEO".

PROPOSAL TO DROP ANY CV (CALORIFIC VALUE) CRITERION

6.1 The EA proposes to cease using calorific value as a criterion to prevent cement-makers taking wastes for disposal rather than as a fuel. The clauses proposed⁴⁶ readily allow this abuse:

- (iv) the main purpose is the generation of heat;
- (v) the amount of heat generated, recovered and effectively used is greater than the amount of heat consumed in its use; and
- (vi) the principal use of the waste is as fuel.

As the document's previous section (4.6) says

It is therefore important, when adapting (sic!) the Environment Agency's position on calorific value, to ensure that "disguised disposal" (making the kiln a Waste Incineration Directive "incineration plant") is not allowed.

6.2 We agree this is important. "Recovery" and "disposal" are legal categories and Directive 75/442/EEC Article 3 contains a preference for the recovery of waste compared to its final disposal. Without a CV criterion, disguised disposal is not prevented, indeed the cement kiln can take a lot of low CV wastes and/or can be run inefficiently in energy terms just in order to gain the income from disposing of those wastes. The EA's excuse—that its above criteria are based on the recent ECJ judgements—is unacceptable, as others in Europe have addressed the challenge of defining "credible recovery".

USE OF VALUE-BASED JUDGEMENT

6.3 Over-reliance on technical models and assessments is another fault of the Agency. EA Wales rely on a narrow toxicology approach to health impacts, which has false precision, ignoring what is unknown or cannot be measured. The National Assembly's report on the Nantygwyddon Investigation (Purchon report 2001) was critical (s.6.5) of the EA's claim to approach health impacts via "sound science" of pollutants. The EA ignored teratogenic harm (affecting the developing foetus) and hormone disruption (Purchon report s.5.1), which potentially result from trace chemicals and not from the standard air pollutants considered by the EA.

6.4 The EA not only claim spurious accuracy but also conceal the essential judgements that need to be made in consultation with the public via stakeholder processes. The EA virtually ignore their own "Risks and Values" (April 2000) which stressed the need to change from a technocratic to an open public-involvement approach, saying the following points expand out from the EA's legal duty of information provision:

- giving people more confidence in our decisions;
- finding out about public preferences and tapping into a wider knowledge base;
- allowing public debate to influence EA decision frameworks; and
- engaging in public debate about environmental issues.

⁴³ EA Technical Report P274 (*Substitute Liquid Fuels Used in Cement Kilns—Life Cycle Analysis*, ISBN 1 857 05079 7).

⁴⁴ Licensed by APM Consultants (www.apmconsultants.nl); process summary on http://www.irscotland.net/technology_trade/techalert_item.cfm?uuidTechAlert=CAC6429D-2B33-DE5E-D1177A23A92F8AB3

⁴⁵ report pre-Glaztek on <www.the-environment-council.org.uk/templates/mn_template.asp?id=22>

⁴⁶ *ibid* s4.7.

6.5 For the EA, health impact assessment is still a technocratic process (as is their BPEO determination—4.5) whereas the Welsh Assembly and the Department of Health both require an open deliberative process involving the public.⁴⁷

RETRACTION OF PROMISES TO PARLIAMENT ON CONSULTATION

7.1 The Agency's specific assurances, in the EA's June 1997 response to the House of Commons Environment Committee Report on the Environmental Impact of Cement Manufacture (5 March 1997) said (s 39–41):

“While each application must be judged in its own right, the Agency proposes to ensure that full public consultation is undertaken for all applications, whether or not they involve ‘substantial change’”.

7.2 The Parliamentary inquiry into the Environment Agency (House of Commons Environment, Transport and Regional Affairs Committee sixth report, May 2000) said:

We welcome the Agency's moves towards becoming more directly accountable to local communities by means of public meetings and the new Selected Licence Application Procedure. It is very important that where there is controversy over a site regulated by the Agency, or a new licence application to the Agency, that the Agency be active in meeting local concerns. The fiasco at Castle Cement in Ribblesdale must not be repeated elsewhere. Agency action in this area should therefore continue and be extended, particularly to ensure that mechanisms to consult and reassure the public are available for existing sites as well as for the new applications to which the Selected Licence Application Procedure applies. This should be an important part of the raising of the Agency's public profile and the gaining of public recognition and acceptance for the Agency, which we recommend at the beginning of this Report.

7.3 The Agency's response on this recommendation read (July 2000):

We share the Committee's recognition of the importance of responding to public concerns over controversial existing or new sites. We are pleased that the Committee acknowledges the steps the Agency is taking to provide better mechanisms for involving the public by means of the new procedure for selected licence applications.

7.4 Note the above references to SLAP (Selected Licence Application Procedure), the title then given to extended consultation. Its omission from the 2004 document confirms that the EA is retracting its promises to the Parliamentary Inquiry (7.2 above).

7.5 In the 2004 consultation document, the EA propose (4.32) “to apply the standard statutory requirements for consultation” which means reversion to the statutory minimum. This contradicts the Aarhus Convention on enhanced public participation to which the UK is a signatory. The offer of extended consultation in undefined “appropriate” cases is reversion to old authoritarian practice that fails the tests of openness and transparency.

- The criteria mentioned in the existing Protocol (2.1,2.2) are still valid; we picked out “nationally important issues”, “influence (on) formation of Agency policies”, “wider and better informed consultation process”, “ensure Agency decisions are better informed”, “and lead to greater public confidence in the decision-making process”.
- Since the use of wastes as fuel count as the “recovery” of waste for the purposes of the Waste Management Licensing legislation, it is covered by the English and Welsh waste plans (5.1). This means that, in considering the granting of an authorisation to use substitute fuel which is waste, the BPEO (Best Practicable Environmental Option) has to be determined via an open, systematic, consultative process (the Royal Commission definition).
- For hazardous wastes, decisions have to meet special planning legislation stemming from the COMAH Directive 96/82/EC (8.1). There is a requirement for public consultation where changes increase the risk or consequences of a major accident.

BYPASSING HAZARDOUS INDUSTRY LEGISLATION

8.1 Furthermore, for hazardous waste used in cement kilns, planning authorities must have regard to the objectives of COMAH Art.12, including prevention of major accidents and limiting their consequences, via legislation on:

- Unitary development plans, which should contain policies on siting where hazardous substances are used or stored (Planning Policy Wales 7.5.2).
- Emergency planning.
- Hazardous substances Regulations (issuing Hazardous Substances Consents).

⁴⁷ *Developing Health Impact Assessment in Wales*, National Assembly of Wales, 1999.

It would make nonsense if the EA were able to bypass all this legislation and decision-making by local authorities, by granting a license to use hazardous waste fuels. Apart from the dubious legality, it would be quite unacceptable for a new Protocol to deprive the public of their consultation rights under COMAH.

9.1 We believe the current Protocol for use of wastes in cement kilns, particularly hazardous wastes, should be retained. Any change breaks the promise to the House of Commons. We argue that the EA proposal should in any case go back to Parliament and the Welsh Assembly. We therefore ask the Committee to tell the Agency to withdraw their proposal and their whole policy to facilitate the co-incineration of hazardous wastes in cement kilns.

9 October 2004

Memorandum submitted by the British Cement Association (BCA) (X16)

EXECUTIVE SUMMARY

1. The cement sector has encountered difficulties similar to those experienced by most parts of UK industry in relation to the introduction of the Landfill Directive, *viz.*

- 1.1 Uncertainty regarding the waste acceptance criteria, (WAC).
- 1.2 Confusion as to whether on-site landfill was to be covered within the IPPC regulations and permits, or whether a separate landfill permit was required.
- 1.3 Delays, lack of communication, and absence of pragmatism in the process of applying for landfill permits.

2. The British Cement Association and its members believe that important components in the provision of new waste treatment facilities are:

- 2.1 certainty in the scope and applicability of new regulations, particularly in the UK implementation of EU provisions, eg the Waste Acceptance Criteria;
- 2.2 certainty in the ambit of the existing EU definition of “waste”, the associated definitions of “disposal”, “recovery”, and “recycling”, and the relative importance of the waste treatment options within the waste hierarchy;
- 2.3 securing funding for new plant in the United Kingdom from UK and foreign-controlled parent companies;
- 2.4 obtaining planning permission; and
- 2.5 obtaining operating permits from the regulatory authorities.

3. A major obstacle to the installation of new waste treatment facilities is a poor public perception of waste treatment, on the grounds of perceived health and environmental problems. The cement industry believes that both government and industry have an important part to play in allaying these concerns, and it is engaged in a wide number of stakeholder engagement initiatives.

4. The next two to three years will be critical, for although the Landfill Directive and new hazardous waste provisions will be effective, the waste industry will not have installed the requisite treatment capacity. It is therefore of the greatest importance that the EA’s proposed modifications to the Substitute Fuels Protocol are introduced as soon as possible, to enable the installed capacity with the cement industry to be employed.

BACKGROUND

1. *Wastes generated by the UK Cement Industry*

The British Cement Association is the trade and research organisation that represents the interests of the United Kingdom’s cement industry in its relations with Her Majesty’s Government, the European Union and relevant organisations in the United Kingdom. The members of the BCA (Buxton Lime Industries, Castle Cement, Lafarge Cement UK and Rugby Cement) are the major domestic manufacturers of Portland Cement producing over 90% of the cement sold in the UK.

2. A relatively small quantity of waste is generated in the cement manufacturing process. The major waste arisings are cement kiln dust, CKD, or by-pass dust, BPD. Kiln dusts from the cement manufacturing process are historically referred to as either cement kiln dust or by-pass dust, depending on the type of process.

3. Cement kiln dust is classified as non-hazardous waste, whereas by-pass dust is classified as hazardous waste on account of its higher content of calcium oxide, which categorizes it as an irritant.

4. Where feasible, CKD and BPD are recovered within the manufacturing process. If this is not possible due to quality or other constraints, then alternative uses are sought. The landfill of these dusts is used as a last resort.

5. The industry is proactive in reducing the quantity of CKD and BPD sent to landfill. In 1998 a total of 289,207 tonnes of these dusts were disposed of off-site by landfill, whereas in 2002, the figure was 110,069 tonnes.

6. Under the Environment Agency Sector Plan for the cement industry⁴⁸, the sector will set targets to further reduce the quantity of CKD, BPD and other dust sent to landfill⁴⁹.

7. The cement sector has encountered difficulties similar to those experienced by most parts of UK industry as a consequence of the introduction of the Landfill Directive, *viz.*

7.1 Uncertainty regarding the waste acceptance criteria, (WAC).

7.2 Confusion as to whether on-site landfill was to be covered within the IPPC regulations and permits, or whether a separate landfill permit was required.

7.3 Delays, lack of communication and absence of pragmatism in the process of applying for landfill permits, which has resulted in an additional, unnecessary workload for all concerned.

8. *Wastes Recovered by the UK Cement Industry*

BCA has presented evidence on the recovery of waste by the UK cement industry to this and other Select Committees^{50, 51, 52, 53} and to the Hazardous Waste Forum. Annex I updates and supplements this earlier information.

9. *Waste-derived fuels.* In the early 1990s cement manufacturers in the UK were among the first to burn waste-derived fuels, but as a consequence of the extra statutory Substitute Fuels Protocol, the rate of the substitution has fallen behind those in other European countries⁵⁴.

10. From a level of 3% substitution in 1990, the average rate in Europe rose sharply to 12.2% in 2001, saving 3.5 million tonnes of coal and resulting in significant reduction in stack emissions. However, in almost half of European countries, cement works burn extremely high levels of waste-derived fuel:

> 80%, Netherlands.

> 40%, Switzerland, Austria.

> 30%, Belgium, France, Germany, Norway, (Sweden 29%).

11. In 2001, 4,370,000 tonnes of waste were recovered in European cement kilns. Of these, 20% were liquid, 80% were solid, and about one-third were hazardous wastes.

12. In addition to the many different categories of waste-derived fuel recovered on a country basis—14 solid fuels and three liquids—in Europe it is common practice to burn four or more of these materials [up to nine at the Obourg plant] at a given kiln.

13. In contrast to European practice, the level of substitution within the United Kingdom is only ~7%, and the majority of plants using waste-derived fuels are permitted to use no more than two.

14. *Waste-derived substitute raw materials.* Waste-derived materials are also used as a substitute for other cement-making minerals, and in 2001 the European cement industry achieved a direct saving of 11.5% of its natural mineral raw materials usage, which is equivalent to almost 35 million tonnes of these materials.

15. Other EU countries have a lower reliance on landfill but a higher use of both co-incineration by cement kilns using alternative fuels and high temperature incineration. Cement kilns, therefore, have a very positive role to play within the UK's waste infrastructure.

16. These advantages cannot be fully realized due to substantial inertia within the regulatory regime, principally through the Substitute Fuels Protocol, (SFP), see section 24 & *seq.* Innovation is stifled and the inherent flexibility of the cement making process is thereby limited.

17. To realise the industry's potential, a more efficient process for granting PPC authorizations for using waste-derived fuels is required urgently, replacing the voluntary, extra-statutory SFP with a permitting process that reflects the considerable experience gained across Europe.

⁴⁸ To be published shortly.

⁴⁹ Tonnes landfilled per tonne of cement manufactured.

⁵⁰ House of Commons, Environment, Food and Rural Affairs Committee: "Hazardous Waste", Eighth Report of Session 2001–02, HC 919.

⁵¹ Environmental Audit Committee Inquiry into Waste, October 2002. House of Commons Environmental Audit Committee: "Waste—An Audit", Fifth Report of Session 2002–03, HC99-I and HC 99-II, page Ev 163.

⁵² EFRA Select Committee Inquiry on the Future of Waste Management, January 2003. House of Commons, Environment, Food and Rural Affairs Committee: "The Future of Waste Management", Eighth Report of Session 2002–03, HC 385-II, page Ev 207.

⁵³ House of Lords Select Committee on the European Union, Sub Committee D (Environment, Agriculture, Public Health and Consumer Protection)—"European Union Waste Management Policy, HL Paper 194, 18 November 2003, page 105.

⁵⁴ Data from CEMBUREAU.

 THE FUTURE CONTRIBUTION OF THE UK CEMENT INDUSTRY TO WASTE MANAGEMENT IN THE UK

18. The implementation of the Landfill Directive and the recent modifications to the regulation of hazardous wastes are changing the management of waste within the United Kingdom, placing more rigorous controls on those materials that continue to be disposed of by landfill, and requiring the development of a modern waste infrastructure in which a much greater emphasis is placed upon recovery and recycling.

19. With its large potential capacity for waste-derived fuels, Annex I, and its growing use of waste-replacements for traditional raw materials, the UK cement industry has an important role to play in the development of this new infrastructure.

20. In its report *The State of the Nation—2004*, the Institute of Civil Engineers estimates that up to 2,300 new waste treatment facilities must be operational by 2020 to avoid a major crisis involving millions of tonnes of untreated waste.

21. The British Cement Association and its members believe that important components in the provision of new facilities are:

- 21.1 certainty in the scope and applicability of new regulations, particularly in the UK implementation of EU provisions, eg the Waste Acceptance Criteria;
- 21.2 certainty in the ambit of the existing EU definition of “waste”, the associated definitions of “disposal”, “recovery”, and “recycling”, and the relative importance of the waste treatment options within the waste hierarchy;
- 21.3 securing funding for new plant in the United Kingdom from UK and foreign-controlled parent companies;
- 21.4 obtaining planning permission; and
- 21.5 obtaining operating permits from the regulatory authorities.

22. With regard to the developing the required infrastructure within the UK to treat wastes, the cement industry is in a strong position, *viz*:

- 22.1 a substantial part of the cement industry’s major capital expenditure is completed and the requisite planning permissions have been obtained; and
- 22.2 operations within the cement industry currently fall within the IPPC regime, with its strict requirements on the measurement and reporting of emissions.

Consequently, the introduction of the Waste Incineration Directive in 2005 is likely to be less problematic, compared for example with the burning of waste oils and meat and bone meal, (MBM), by the power industry and roadstone producers.

23. The next two to three years will be critical, for although the Landfill Directive and new hazardous waste provisions will be effective, the waste industry will not have installed the requisite treatment capacity. It is therefore of the greatest importance that the EA’s proposed modifications to the Substitute Fuels Protocol are introduced as soon as possible, to enable the installed capacity with the cement industry to be employed.

THE SUBSTITUTE FUELS PROTOCOL, SFP

24. The major barrier to realizing the industry’s potential waste treatment capacity is obtaining permission from the Environment Agency for burning waste-derived fuels. This falls within the voluntary, non-statutory Substitute Fuels Protocol, (SFP), a measure about which the British Cement Association has informed this and other Select Committees on a number of occasions^{50, 51, 52, 53}.

25. In its submission to this Committee’s inquiry into Hazardous Waste, BCA requested that the Environment Agency “review the operation of the Substitute Fuels Protocol and speed up the adoption of alternative fuels (by the cement industry)”. The Committee concluded⁵⁵:

The Committee believes that the primary consideration in allowing waste to be incinerated should be the overall environmental impact of doing so. It remains for the Environment Agency to decide how best to ensure that the environmental impact of waste management is minimized within the current regulatory regime.

26. The determining role of the Environment Agency in relation to the current proposed modification of the SFP has been further emphasized by the Prime Minister, who stated in response to a recent PMQ⁵⁶:

The Environment Agency explanation, of course, is that there will be sufficient controls [under the proposed revision to the SFP] to meet environmental objections. It is important to realise that the Agency’s position is not that it does not accept that there is a legitimate issue that must be dealt

⁵⁵ Reference 3 at paragraph 63, page 19, and Conclusion (o), page 26.

⁵⁶ Prime Minister’s Questions, 23 June. Prime Minister’s reply to Q4, [178979], Dr Andrew Murrison (Westbury) (Con).

with, but it has proposed safeguards and controls that it says are adequate to meet those objections. When we have an independent Environment Agency, it is important that we take account of what it says.

27. The Environment Agency has concluded recently its consultation into modification to the Substitute Fuels Protocol, details of which are to be presented to the EA Board on 13 October 2004.

PUBLIC CONCERN REGARDING THE POTENTIAL HEALTH RISKS OF WASTE TREATMENT PLANT

28. Whilst there is growing public enthusiasm for “recycling” (ie segregation of domestic refuse at source), this is at odds with its attitude towards plant for the treatment of this material.

29. An obstacle to achieving the goal of new waste treatment facilities is the perception of waste treatment as being inherently bad for the health of those living in the vicinity of an installation, and the translation of these fears into concerted action to shut down existing facilities and prevent new ones being built.

30. In a bid to inform the debate about waste policy, Defra commissioned Enviro and the University of Birmingham⁵⁷ to produce a report comparing the environmental impacts of various waste options⁵⁸. The report focuses on air quality and provides an indication to local communities that in comparison to other sources of pollutants encountered in daily life, the health risks associated with the treatment of municipal waste are minor.

31. The British Cement Association welcomes this report, and recognizes the importance of addressing stakeholder concerns in this area. The industry is committed to stakeholder engagement through its sustainable development initiatives, which include:

31.1 The concrete sector sustainability strategy.

31.2 The World Business Council for Sustainable Development, (WBCSD), Cement Sector Initiative, (CSI), in addition to company-specific initiatives.

32. In addition, a two-day master class for the CEOs of BCA’s Member Companies was recently run by Jonathon Porritt, following which the UK cement industry committed to the five year goal of becoming an industry leader on sustainable development through its goal directed plan UK Cement Industry: Creating Societal Value.

33. The local communities around cement factories are among the industry’s key stakeholders. UK cement producers have regular communications with local stakeholders as part of their normal day-to-day operations. Frequent community engagement is supplemented on a site-by-site basis focussing on key licence to operate issues, for example quarry extensions and waste-derived fuels trials.

34. Communications take the form of:

- Newsletters explaining plans and progress on such issues such as plant developments and the introduction of waste-derived fuels.
- Open Days allowing communities to see the working operations.
- Open Door Policies under which members of the community can telephone and request a meeting or a site visit.
- Liaison committees providing a regular forum for dialogue between companies and community representatives. (The Environment Agency is represented on these liaison committees.)

Targets relating to stakeholder engagement are incorporated in the EA Cement Sector Plan, Annex II.

35. To supplement these initiatives, the BCA is in discussion with the Environment Council, with a view to extending the effectiveness of its stakeholder engagement.

36. In response to a parliamentary question on the environmental impact of using recycled liquid fuels in cement kilns, Environment Minister Elliot Morley stated:

It is perfectly reasonable for people to raise questions about the impact of changes, in this case in relation to what is burned in cement kilns, but I am sure that the Hon. Gentleman would agree that, if one is to take people’s legitimate concerns seriously, it is not reasonable to distort the arguments or unnecessarily frighten or worry people when there are no grounds to do so. Such waste liquid solvents have been used in other cement works in the UK and elsewhere in Europe for over a decade, so the technology is not new and the risks associated with it are well known and understood⁵⁹.

⁵⁷ Mark Broomfield of Enviro and Professor Roy Harrison were the authors of this report, “The review of environmental and health effects of waste management—municipal waste and similar wastes”, which is available at www.defra.gov.uk/environment/waste/health-effects/index.htm

⁵⁸ “Probe clears waste emission”, Air Quality Management, June 2004, Issue 102, pages 1, 6–8.

⁵⁹ *Hansard*, House of Commons—Adjournment Debate, 27 November 2003: Columns 230–236.

37. The cement industry wholeheartedly supports the Minister's view.

38. Responsibility for waste policy is vested across many disparate parts of Government and its agencies. Policy needs to be drawn together into a clear framework and a coherent and complimentary strategy. It is imperative in order that industry and government can deliver the investment necessary to put in place an infrastructure that can deal with the UK's waste problem as the landfill directive is fully implemented.

Annex I

PRESENT AND FUTURE WASTE RECOVERY BY THE CEMENT INDUSTRY

<i>Fuel</i>	<i>2001 Permitted Capacity BCA Submission to EFRA Committee⁵</i>	<i>2001 Actual Hansard⁶⁰</i>	<i>2002 Actual Hansard⁶⁰</i>	<i>2002 Actual BCA data⁶¹</i>	<i>2003 Actual BCA data</i>	<i>2004 to 2007 Estimate BCA Submission to EFRA Committee⁵</i>
Waste-derived liquid fuels	110,000	83,502	98,345	118,474	115,665	200,000
Waste oils	0	0	0			90,000 to 345,000
Tyres	40,000	30,674	37,481	42,778	65,621	290,000
Paper, plastic, and packaging	0	0	7,890	8,200	0	500,000
Meat and Bone Meal, MBM	0	0	0	0	0	140,000
Processed Sewage Pellets, PSP	0	0	0	836	10,675	40,000
TOTAL	150,000	114,176	143,716	169,288	191,961	1,260,000 excl waste oils 1,515,000 incl waste oils

8 October 2004

Annex II

COMMUNITY ENGAGEMENT WITHIN THE EA CEMENT INDUSTRY SECTOR PLAN⁶²

OBJECTIVE 7: TO IMPROVE TRANSPARENCY, UNDERSTANDING AND ENGAGEMENT BETWEEN THE AGENCY, INDUSTRY AND OTHER STAKEHOLDERS

Background

It is important that all stakeholders know how environmental goals and objectives for the industry can be achieved and what barriers exist. In particular, the Agency and industry should look to build upon initiatives to engage with the public to achieve the environmental benefits of the use of waste resources.

Performance indicators

7.1 Number (and proportion) of plants with local liaison groups who were active during the year.

7.2 Number (and proportion) of environmentally significant proposals during the year that were pro-actively communicated by companies to local communities.

7.3 Number (and proportion) of local liaison meetings attended by Agency inspectors.

7.4 Number (and proportion) of substitute fuel decisions during the year for which an Agency Decision Document was issued.

⁶⁰ Elliott Morley, Hansard, 18 June 2003, Col 288W; Alun Michael, Hansard, 3 June 2003, col 18W.

⁶¹ The higher usage within the BCA data is possibly a combination of the omission of PSP at Cauldon, and the non-inclusion of Dunbar works, (which falls within the control of SEPA rather than the Environment Agency).

⁶² Environment Agency Sector Plan for the Cement Industry, in preparation. See "Greener Business is Good Business: Spotlight on Business, Environmental Performance in 2003", Environment Agency, July 2004, page 7; and "Performance: A corporate responsibility report from the UK Cement Industry", July 2004, page 10.

Memorandum submitted by Cory Environmental (X17)

INTRODUCTION

1. Cory Environmental, a subsidiary of Exel plc, is one of the UK's leading waste management companies. The Company has extensive interests and experience in all aspects of waste management, including collection, transportation, materials and energy recovery and landfill. Cory has pioneered innovative approaches to reducing the UK's traditional reliance on landfill, bringing forward integrated and sustainable solutions to the management of resources.
2. Cory operates at over 30 locations throughout the UK and handles over 3.5 million tonnes of waste each year. It currently manages over 17 local authority contracts and operates nine landfill sites.
3. The company welcomes the opportunity to respond to the Environment, Food and Rural Affairs Committee Inquiry into Waste Policy and the Landfill Directive.

LANDFILL DIRECTIVE

4. Cory Environmental considers that the Government has made some significant progress in responding to the waste management challenges created by the Landfill Directive. We call now for intensification in activity as the deadline for delivering real change in waste management approaches.
5. Under the obligations set out in the Landfill Directive, the UK needs to reduce the level of biodegradable municipal waste sent to landfill to 75% of that produced in 1995, by 2010. The latest waste management statistics published by Defra show the proportion of waste sent to landfill for disposal is declining, as is the amount of municipal waste generated. We congratulate the government on securing this positive change. However, despite the decline in waste arising for 2001–02 to 2002–03, we note that the trend for actual volumes of municipal waste generated since 1996–97 is an average of 3% per annum. This additional waste, around 1 million tonnes per annum, must also be diverted in accordance with the terms of the Directive.
6. Taking this growth into account, Cory Environmental estimate that the actual percentage of waste requiring diversion under the obligations set out in the Landfill Directive may well be as high as 56% in 2010 and 72% in 2013. We are therefore some way from achieving the 2010 target, while the longer term target continues to look unattainable. The government will need to adopt more radical approaches if it has the serious intent to meet the targets.
7. Following the publication of the Strategy Unit Report (Waste not, Want not), the Government has increased funding and strategic support for the research, development and delivery of many aspects of waste management solutions. We welcome these initiatives and their contribution to a long term sustainable future. The Government must now turn its attention to the areas and challenges where change and leadership are still required. In particular, we encourage the government to look more closely at the planning system.
8. The 5th report of the Environmental Audit Committee (2003) notes, “to meet the requirements of the Landfill Directive, the UK will need to deliver the equivalent of one new waste management facility processing 40,000 tonnes per annum every week for the next 14 years.” It is our experience that the current planning system and guidance do not facilitate a smooth passage for applications for waste processing infrastructure and that this is unachievable. Even if the most optimistic predictions for recycling take up and waste reduction are realised, many new, and often controversial, facilities will still be required. We encourage government to use all options available to it to ensure the resolution of the current barriers in the planning system, enabling longer term decisions by waste management companies on how to deliver the infrastructure required to realise government objectives.
9. Planning lead times on even small scale composting facilities and MRFs are in the region of two years. Larger scale facilities, which will be essential for the disposal of residual waste and the delivery of an integrated solution, have significantly longer lead times of up to a decade. Steps must be taken now if delivery of the facilities required is to be assured and a potential crisis averted. For example, the Government must work to ensure that waste local plans and development frameworks reflect national policies and should introduce requirements for site specific allocations for waste management.
10. The Minister of State for the Environment is to be applauded for the clear messages he has been delivering on waste management options since his appointment in Summer 2003. The recent Defra report on the health impacts of waste management has helped to develop a basis for the delivery of unambiguous messages on the hard choices which must be made by local and central government. Cory Environmental recognises that the development of waste management infrastructure is rarely popular amongst the local population. However, this report provides clear factual information enabling robust choices to be made by both local and central government and we urge central government to continue to support and deliver these messages as it has over the past 12 months.

11. The forthcoming review of PPS10 will be an opportunity for central government to lay out the guidelines upon which decisions on infrastructure must and will be based. This policy document will send clear signals and messages regarding government policy. For example, the statement should include clear guidance on the waste hierarchy and its priority as a key waste management principle. We call on government to make the most of this opportunity, ensuring companies such as our own are in a position to move forward on long term planning decisions.

12. The forthcoming review of Waste Strategy 2000 will mark a further opportunity for the government to assess the challenges it faces and to lay out the policies and guidance essential to their resolution. We look forward to contributing to this review and the delivery of its recommendations.

13. In the lead up to the review we call upon government to continue to take a clear lead in the delivery of the required infrastructure. The current tendency for local authorities to refuse difficult decisions, thus passing the buck to central government results in further cost and delays in the delivery of important alternatives to waste management facilities. Clear guidance on required facilities, unambiguous policy direction and supporting legislation will enable local authorities to take the decisions necessary. For example, government encouragement and support for positive planning in waste local plans via the identification of sites suitable for waste uses, even when this is locally unpopular.

14. We urge the Government to realistically assess what can be achieved through recycling and to consider what facilities are required to dispose of residual waste, in accordance with the best practicable environmental option. Government must then continue to deliver the clear policy messages necessary to achieve this.

15. We, once again, congratulate the Government on its achievements to date and look to Ministers to continue on the clear course they have set. We hope that in the important policy reviews of coming months, they will introduce even more radical measures to help industry in working with its partners in local government to deliver the step change in performance that is needed if ambitious but mandatory targets are to be met.

16. We look forward to the recommendations of the inquiry.

8 October 2004

Memorandum submitted by the Composting Association (X18)

1. EXECUTIVE SUMMARY

1.1 A substantial number of biological treatment facilities need to be established by 2020 to manage the projected quantities of biodegradable municipal waste diverted from landfill to meet the Landfill Directive Article 5 targets.

1.2 The development of new treatment capacity is severely impeded by the ability of the local Waste Planning Authorities, Environment Agency and State Veterinary Service to grant sequential permits in a timely manner. The processes are unacceptably long with often contradictory aims, as there is no co-ordination or centrally developed logic between them.

1.3 Provisional estimates suggest that there will be a short-fall in biological treatment capacity capable of processing catering wastes of three million tonnes a year by 2010. It is therefore probable that the UK will not only fail to meet its obligations under the Landfill Directive, but other Government initiatives, such as the development of Sustainable Communities, seem likely to suffer.

1.4 Delays to the introduction of revised licence exemptions have placed considerable uncertainty on small scale composting operations. Revisions have been due for almost five years. This delay is unacceptable and the Association strongly urges Government to introduce them as a matter of priority.

1.5 There is considerable legislative uncertainty, especially pertaining to the role mixed waste biological treatment facilities may play, and whether composted materials may be spread on land without falling under a waste framework. These are issues that require urgent clarification. Without it, they are impeding strategic waste planning as they are placing unacceptable risk on the private and public sectors.

1.6 There is an urgent need to translate Government's waste policies and strategies into practice. In order to facilitate this, The Composting Association proposes that Defra's Waste Implementation Programme be extended to enable it to act as a cross-departmental authority in order to streamline the different parts of Government involved in the waste permitting and delivery processes.

2. INTRODUCTION

2.1 The House of Commons Environment, Food and Rural Affairs Committee seeks evidence in its inquiry into whether the United Kingdom is on target to meet its commitments under the Landfill Directive. Its focus will be on the performance of the Government and what measures may need to be implemented to address the challenges of the Directive.

2.2 This paper sets out the response of The Composting Association. The Composting Association is the United Kingdom's membership organisation, promoting the sustainable management of biodegradable resources. It actively promotes the use of biological treatment techniques and encourages good management practices throughout the industry. By advocating a suitable regulatory and economic framework, the Association works to ensure the long-term sustainability of the biological treatment industry. It currently has over 700 members including compost producers, local authorities, consultants, technology suppliers, compost users, academics, other membership organisations and individuals. Given that it represents the majority of compost producers in England, it welcomes the opportunity to comment on the draft document.

2.3 In drafting this response, the Association has consulted with its members. It welcomes the opportunity to discuss any of the points raised in this response.

3. THE NEED FOR BIOLOGICAL TREATMENT CAPACITY

3.1 Over 60% of household waste is biodegradable (Strategy Unit, 2002). The majority is suitable for treatment in a biologically based process, including:

- Composting—a process that is well established and produces a valuable product: compost.
- Anaerobic digestion—a process that is widely employed in other industry sectors (eg sewage treatment) and is a source of renewable energy (methane) and a digestate that can be beneficially applied to land.
- Mechanical Biological Treatment (MBT)—a combination of processes that aims to recover value from, and reduce the quantity of, mixed residual wastes. The biodegradable wastes are subjected to a composting or anaerobic digestion type process, where the resultant material may be used in either a thermal treatment process, applied to land under certain circumstances, or landfilled.

3.2 A large range of composting and biological treatment systems exist in the market place. They will play an increasingly important role as the UK strives to divert substantial amounts of biodegradable municipal waste away from landfill. Large capital investments need to be made before 2010. As these have such long lead-in times, financing and planning decisions need to be made now.

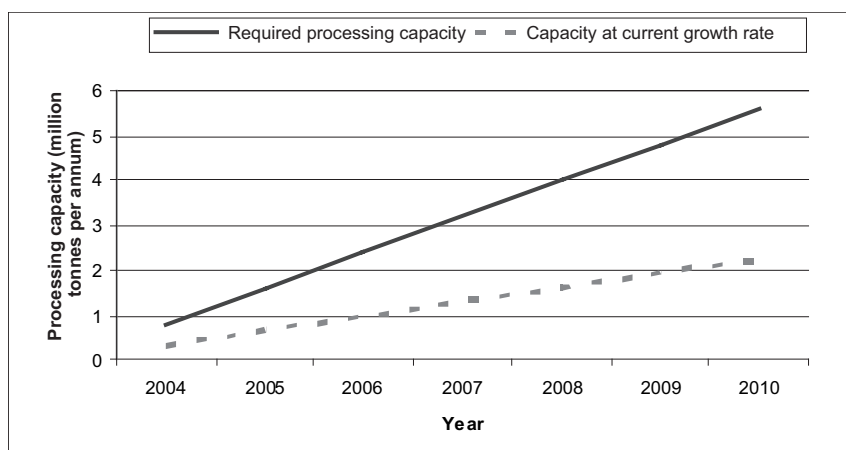
THE CHALLENGES AHEAD

3.3 At present, somewhere in the region of two million tonnes of organic materials are composted across the UK (Source: The Composting Association, based on 2001–02 survey), with the majority (80%) comprising green wastes at open-air windrow facilities.

3.4 In order to meet the Landfill Directive's Article 5 targets the Composting Association has provisionally estimated that somewhere in the region of 18 million tonnes per annum of additional biological treatment processing capacity will be required across the UK by 2020 to compost the food and green waste elements of the household waste stream⁶³. The majority of these new facilities will need to be in England.

3.5 Following the Foot-and-Mouth disease epidemic during 2001, the Animal By-Products Regulations (ABPR) mandate that biological treatment facilities processing catering (food) wastes be approved by the State Veterinary Service before the compost or digestate may be spread on land. Since its introduction in July 2003 only 14 facilities have been granted approvals (Source: SVS). Provisional estimates suggest there will need to be an estimated treatment capacity of around five million tonnes per annum by 2010. Given the current rate of consents there will be an estimated shortfall of three million tonnes per annum by 2010, or over 150 facilities.

⁶³ This excludes other biodegradable wastes, such as paper and card, fines and some textiles that cannot be recycled.

Figure 1—Estimated catering waste processing capacity required by 2010

4. CURRENT IMPEDIMENTS

Permitting new facilities

4.1 Establishing new facilities requires sequential approvals from more than one government body:

- Planning Permission by the Local Planning Authority.
- Waste Management Licence by the Environment Agency.
- Veterinary Approval by the State Veterinary Service (where catering wastes and animal by-products are treated).

4.2 In theory it should be possible to obtain all three consents in about 12 months if there are no objections, however, the actual timescales are often much longer (greater than two years). Reliable statistics do not exist within Government on the time taken to gain the respective consents, which makes strategic planning for both the public and private sectors difficult.

4.3 Sometimes the specific criteria demanded by the three regulatory bodies conflict with each other, therefore there is an urgent need for clarification and streamlining of the respective permitting processes.

4.4 Imminent revisions to land use planning guidance for waste (Planning Policy Statement 10) in England should provide an opportunity to address some of these issues, although on its own it will be insufficient to meet the challenges of the Landfill Directive.

4.5 At present, the State Veterinary Service is a function of DEFRA. Proposals are underway to change its status to that of an executive agency during 2005 in order to improve its ability to deliver Government's policies on animal health and welfare. However, there is a danger that permitting of biological treatment facilities will be under-resourced and there will be a discontinuity in waste policy development, specifically for those wastes that fall under the Animal By-Products Regulations (ABPR).

Delayed legislation

4.6 The biological treatment industry has been challenged over the past few years by changing legislation that has made the delivery of long term waste strategies difficult. There are a large number of small scale composting sites (estimated to be in excess of 300) that operate under an exemption to a waste management licence. Most of these are operated by farmers and community schemes, with some under contract to local authorities.

4.7 DEFRA has been conducting a review of the exemptions for approximately five years. To date, these have yet to be published, despite calls by previous Select Committee inquiries (Environment, Food and Rural Affairs Committee, 2001). Current proposals seem likely to affect the operation of a large number of exempt sites; therefore further delays are causing unacceptable uncertainties for composters and local authorities alike.

4.8 DEFRA has recently undertaken an informal review of waste permitting with a view to simplifying procedures and ensuring that regulatory control is proportionate to environmental risk. Although priorities have now changed, the biological treatment industry would still benefit greatly from a streamlined approach that improved waste permitting and provided a better interface between the land use planning and veterinary approval regimes. The Association therefore urges DEFRA to continue with its review of waste permitting to better facilitate the development of new waste facilities in order to meet the aims of the Landfill Directive.

LEGISLATIVE UNCERTAINTIES

Mechanical Biological Treatment

4.9 There is much current interest by Local Authorities in Mechanical/Biological Treatment (MBT) Plants. In many European countries they are employed solely to pre-treat residual wastes prior to disposal in landfill or thermal treatment plants (eg Germany). In some countries restricted applications to land are also allowed under a waste permitting scheme (eg in Italy for landfill restoration).

4.10 As MBT plants treat residual (mixed) wastes, the outputs are more likely to be contaminated with impurities such as glass, plastics and heavy metals. In developing its Thematic Strategy on Soils, the European Commission has proposed that MBT-derived material remains a waste with restricted end uses.

4.11 Some local authorities are viewing MBT plants as a “one stop shop”, to meet both their Landfill Diversion targets as well as their recycling targets, which has significant implications with regard to developing European policies.

4.12 The Scottish Environmental Protection Agency (SEPA) has recently announced that outputs from MBT plants will remain a waste and may only be used under a waste permit for the restoration of landfill sites or the reclamation of contaminated land (SEPA 2004).

4.13 The Association urges DEFRA to provide clear, unambiguous guidance to the biological treatment industry and local authorities as to whether the outputs from MBT (or other mixed waste treatment plants) may be applied to land, and if so, under what circumstances.

Recovery of wastes

4.14 The Composting Association and Waste and Resources Action Programme (WRAP) have done much work to assist the development of sustainable markets for composted materials, including the introduction of the British Standards Institution’s Publicly Available Specification for Composted Materials (BSI PAS 100). At present this is an area of legislative uncertainty: criteria to define when biologically treated waste ceases to be classed as a controlled waste and can be marketed as a product do not exist.

4.15 This impacts, not only on market development, but also on waste planning and permitting. The Association urges Government to establish clear guidelines to define when controlled wastes treated in biological systems can be classified as products.

Overlap between regulatory regimes

4.16 At present there is some uncertainty in the overlap between different regulatory regimes: for example, Integrated Pollution Prevention and Control and Waste Management Licensing; Land Use Planning, Licensing and Veterinary permitting. These grey areas are creating confusion as well as impeding the development of new treatment infrastructure. In implementing the Landfill Directive, Government needs to set in place mechanisms to resolve inconsistencies and provide clarity for industry.

5. POTENTIAL SOLUTIONS

5.1 DEFRA and the Office of the Deputy Prime Minister (ODPM) are working closely to co-ordinate the revision of Planning Policy Guidance for Waste and guidance on the development of Municipal Waste Management Strategies by local authorities. This is welcomed; however, on its own it is insufficient to address the challenges faced by the public and private sectors in meeting the Landfill Directive targets.

5.2 There is an urgent need to translate Government’s waste policies and strategies into practice.

5.3 Since its inception in June 2003, DEFRA’s Waste Implementation Programme (WIP) has done much good work in providing tools for local authorities to develop and execute their waste strategies, as well as providing a central waste data collection centre and the demonstration of new waste treatment technologies.

5.4 The WIP, in conjunction with WRAP, has a specific remit to assist England deliver *Waste Strategy 2000* and the recommendations stemming from the Strategy Unit report. It has a unique role in Government in that it translates waste policy into practice. At present it is addressing some of the problems faced by local authorities, but this does not extend to land use planning or the permitting procedures faced by the private sector.

5.5 The Composting Association proposes that WIP’s function is extended to enable it to act as a cross-departmental authority in order to streamline the involvement of different parts of Government in the waste permitting and delivery processes. This is shown schematically in Figure 2.

5.6 For example, it could develop the following:

- Tools for local authority planning officers and elected members to help them increase their knowledge and understanding of waste treatment technologies to enable them make informed decisions.

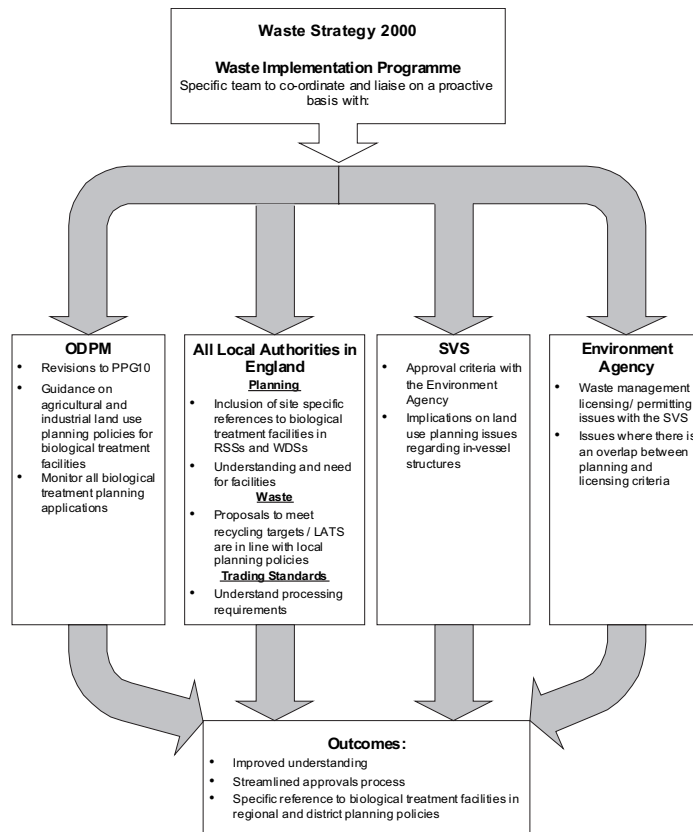
- Work with waste planners by providing support and advice to ensure specific reference to the appropriate waste treatment facilities are made in the development of the new Regional Spatial Strategies and Local Development Schemes.
- Data collection on the time it takes for sequential waste permits to be granted. This could be dovetailed into the existing data collection unit within WIP.
- A mechanism to ensure that guidance on the implementation of the three permitting regimes (land use planning, permitting and veterinary approvals) are congruent. Where inconsistencies and conflicts arise, the WIP should liaise with the regulatory authorities and industry on a proactive basis to identify problems and seek timely solutions. This may involve other Government departments, such as the Cabinet Office’s Regulatory Impact Unit.

5.7 Some of these functions could be modelled on the ROTATE programme set up within WRAP and form a part of WIP’s existing Local Authority Support Unit.

5.8 To achieve this, funding for WIP for a second three-year period will need to be secured.

5.9 Unless urgent and co-ordinated action is taken to translate waste strategies into practice it is probable that the UK will fail to meet its obligations under the Landfill Directive. Other Government initiatives, such as the development of Sustainable Communities, also seem likely to suffer.

Figure 2—Potential Role for the Waste Implementation Programme



6. REFERENCES

Davies, P (2003) *The State of Composting in The UK*. The Composting Association, Wellingborough. ISBN 0-9532546-6-6.

Environment, Food and Rural Affairs Committee (2001) *Fifth Report Delivering Sustainable Waste Management*.

Strategy Unit (2002) *Waste Not, Want Not*.

Scottish Environmental Protection Agency (September 2004) *Composting Position Statement*.

6 October 2004

Memorandum submitted by SITA UK (X19)

SUMMARY

While the UK Government can point to initiatives such as the Household Waste Recycling Act and the Landfill Allowance Trading Scheme as significant achievements, it has nevertheless failed to address the more practical bottlenecks that prevent the waste industry from investing in much needed treatment facilities. Poor delivery of regulations, guidance and processing of PPC applications by the Environment Agency, coupled with the complexities of our planning system and the perception of slack enforcement, continue to undermine investor confidence.

The year to July 2005 to some extent represents business as usual, with concessions made to producers of fragmentiser waste and the partial application of the waste acceptance criteria to landfilled waste. The full force of the waste acceptance criteria will only apply after July 2005. It is by no means certain that the UK will have sufficient treatment capacity post-July 2005 to handle the diverted hazardous or municipal wastes. Even with the appropriate policies in place and with the industry prepared to invest, the UK's complex and elongated planning delivery system will prevent Government from providing the large numbers of treatment facilities in time for the UK to meet its targets.

In order to move its domestic agenda forwards, we recommend that Government take the following actions:

- (a) Prioritise Biodegradable Municipal Waste (BMW). Government should develop a sub-strategy specifically addressing the BMW component of municipal waste. The UK faces far more serious consequences if it fails to meet its BMW landfill diversion targets, than if Local Authorities fail to achieve their broader recycling targets.
- (b) Prepare a cohesive national strategy for municipal and industrial/commercial waste. As the UK moves to a resource-based waste management system, the distinction between various sources of resource arisings will cease to have relevance in policy and planning terms. A key component of an integrated national strategy will be to develop a plan to reverse waste growth.
- (c) Streamline the waste planning and permitting regimes. We recommend that Government develop systems and procedures that conflate the planning and permitting process into a shorter timeframe, while retaining the checks and balances required to ensure appropriate scrutiny of the applications and protection of the environment.
- (d) Apply Producer Responsibility to householders. SITA has advocated direct charging as the most effective means of providing "up-front" financing of new collection and treatment facilities.

In concert, the UK should anticipate legislative trends in the EU. The direction in which recent EU initiatives on waste and resource management have moved is clear, and there is no reason why informed and farsighted policymakers cannot foresee their impact on the UK.

1. INTRODUCTION

1.1 *Background to SITA*

1. SITA is Europe's leading waste service operator and the third largest in the world. The Group's activities span the whole range of waste management, including collection, sorting, recovery and treatment and ultimate disposal of hazardous, domestic, commercial and industrial wastes.

2. SITA has provided waste management services in the UK since 1989. The Company has grown to become the country's largest service provider, operating more than 100 municipal service contracts, 103 landfill sites, several recycling and recovery facilities along with energy from waste facilities at Edmonton in North London, Cleveland on Teesside, Kirklees, and on the Isle of Man.

3. Landfilling within the context of the Government's waste management strategy and the Landfill Directive (LFD) has been a significant and critical component of SITA's portfolio of waste management services in the UK. SITA landfills approximately 6.5 million tonnes of waste per year in the UK in 40 operational landfill sites. Prior to 16 July 2002 SITA landfilled approximately 300,000 tonnes of special waste. A large proportion of this waste continued to be landfilled in our interim hazardous sites till 16 July 2004. Since this date landfilling of hazardous waste by SITA has virtually ceased—the company has not applied for hazardous status, and only one of the several PPC applications for stable non-reactive cells within SITA's non-hazardous landfills has been determined to date (for receipt of bonded asbestos).

4. SITA recycles 15% of the waste it handles, roughly in line with the national average recycling rate. The company is actively rolling out a business strategy designed to raise this rate in line with recycling and landfill diversion targets imposed on Local Authorities.

2. LOOKING BACK—HAS GOVERNMENT DELIVERED?

5. In the UK the provision of waste management services relies on the laws of supply and demand to allow the industry to find its equilibrium in terms of the types, numbers and locations of appropriate facilities. In this free market system it is the responsibility of Government to create an environment in which the private sector and its funders are prepared to invest the considerable sums necessary to move UK waste management away from its reliance on landfilling.

6. Has the UK Government delivered this degree of certainty? The industry view that it has not, is borne out by the fact that most of the major sector players have not opted for hazardous landfill status, while planning applications for alternative hazardous and municipal waste treatment facilities are well down on the numbers required to keep pace with national targets. Industry concerns have been repeatedly aired in fora such as the Hazardous Waste Forum, and the main issues will only be summarised here.

2.1 Hazardous Waste

7. The adequacy and effectiveness of preparations made for the management of hazardous waste (and landfill more generally) has been poor. Not wishing to weaken its negotiating position *vis-à-vis* co-disposal, the UK elected to mount a rearguard action in Europe to preserve the status quo—a battle it unsurprisingly lost—rather than spend the years from 1999 to July 2002 preparing the country for a LFD-compliant future. In the event, the two years from July 2002 to July 2004 offered the UK only a temporary respite, and insufficient time to effect orderly change.

8. Government should not take the absence of an overt “crisis” as the UK passed 16 July 2004 as reason for self-congratulation. The waste industry has expressed serious concerns over the inability of the Environment Agency to track the fate of liquid waste streams since the landfill ban was enacted in July 2002. Concern has also been expressed over the non-arrival of previously codisposed hazardous waste at either waste treatment facilities or at hazardous landfills, post-July 2004. The lack of effective regulation and accountability erodes business confidence among legitimate waste operators and further delays investment in new treatment facilities.

9. In evidence to the EFRA Committee’s Inquiry into hazardous waste (2001–02) the waste industry emphasised the need for certainty with respect to issues such as the Waste Acceptance Criteria and other forms of guidance required to interpret the relevant Regulations. As of October 2004 the industry still lacks key pieces of guidance, again impacting on investor confidence. Draft Waste Acceptance Criteria for monolithic waste forms were issued for consultation in May 2004, and are unlikely to be finalised before spring 2005. Consultation on the Hazardous Waste Regulations commenced in July 2004 while Defra’s interpretation of the Landfill (England and Wales) Regulations was published in September 2004. Both are two years behind schedule.

2.2 Municipal and Other Waste

10. Government has launched some welcome initiatives addressing municipal waste notably the Household Waste Recycling Act, the Waste and Emissions Trading Bill, and the Landfill Allowance Trading Scheme. However, Government has failed to address many inherent weaknesses:

- (a) The funding gap facing local authorities discharging their duties in a changing regulatory environment. Although expenditure on recycling services has increased year on year, it is still well short of the amounts required to bridge the gap between the present household waste recycling rate (15%) and the next target of 25% by 2005–06. Defra’s highly dubious claim that the UK is “on course” to meet the latter target may in fact prevent the adoption of appropriate policy and fiscal measures in the coming year, owing to a misplaced desire to demonstrate political steadfastness.
- (b) Key elements of Government guidance are awaited, for example on the testing of biodegradability, central to the operation of the Landfill Allowance Trading Scheme. Guidance on waste pre-treatment (consultation draft issued 2001) is still outstanding. Guidance from the Environment Agency on certain aspects of landfill operation under the PPC regime are also still in draft.
- (c) Government policy continues to be piecemeal. The present policies perpetuate the notion that resources, raw materials, products and waste are somehow separate entities and should be regulated separately. Waste can arise at any point along the value chain leading into product manufacture, and from there to product use and discard. The term “sustainable waste management” has little meaning, except from a narrow operational standpoint.
- (d) The UK strategic planning system is complex and a serious impediment to the timely provision of waste treatment facilities. The strategic framework for waste planning in the UK is caught in a web of waste local plans, municipal waste plans, regional plans, sub-regional plans, RTAB deliberations, etc, not helped by the fact that responsibility for collection and for disposal rests with different Authorities. The result is a log jam that has paralysed waste planning at all levels. There is also a disjoint in applying the concepts of the waste hierarchy and the Best Practicable Environmental Option (BPEO), which under some local circumstances can run counter to each other. Inappropriate and dogmatic insistence on the waste hierarchy has damaged the

development of sensible and cost-effective solutions in some areas of the UK, even though a BPEO analysis has manifestly pointed to a different solution as being environmentally preferable (for example, incineration with energy recovery).

- (e) Urgent action is also required on reform of the interminable process for gaining planning permissions and operating permits for waste management facilities of all descriptions. Presently, the planning and permitting processes in the UK are separate, unlike some systems in continental Europe. Thus, the developer has to prepare two sets of submissions and two sets of environmental and technology appraisals, respond to two sets of consultation processes, and thereafter potentially endure two sets of inquiries—a planning inquiry and a judicial review. Determination times currently can run to two to five years depending on the type of facility. This destroys any certainty in developing a robust business case, and has proved to be a serious hindrance to timely investment in the UK.

3. LOOKING FORWARD—WHAT GOVERNMENT NEEDS TO DO

11. SITA recommends that the UK Government sets its priorities along two strands: addressing the domestic agenda, and preparing for (and influencing) likely forthcoming EU legislation.

3.1 *The Domestic Agenda*

12. Specific recommendations are as follows:

- (a) Prioritise Biodegradable Municipal Waste (BMW). The UK faces far more serious consequences if it fails to meet its BMW landfill diversion targets, than if Local Authorities fail to achieve their broader recycling targets.

We recommend that government develop a sub-strategy specifically addressing the BMW component of municipal waste, how the targets will be met, how many facilities (of what type) will be required, the funding requirements, and how the Local Authority recycling targets tie in with the BMW diversion targets. The reliance on the Landfill Allowance Trading Scheme as a market mechanism to achieve compliance is not sufficient—of particular note is the potential for industrial and commercial waste “similar” to household waste to be included within the definition of municipal waste.

- (b) Prepare a cohesive national strategy for municipal and industrial/commercial waste. As the UK moves to a resource-based waste management system, the distinction between various sources of resource arisings will cease to have relevance in policy and planning terms. Separate legislative paths are presently followed—for example, the packaging waste regulations applying to paper and glass in the commercial sector, while the Best Value recycling targets apply to paper and glass in the domestic sector. Each waste stream is typically treated in separate facilities.

A key component of an integrated national strategy will be to develop a plan to reverse waste growth (see paragraph 14(c) below).

- (c) Streamline the waste planning and permitting regimes. The ultimate challenge facing government is to convert strategies and plans into operating facilities. As discussed above, the waste management industry has for many years faced inordinate delays in achieving planning and permitting for its facilities, be they incinerators or “greener” alternatives such as recycling and compost plants.

We recommend that government develop systems and procedures that conflate the planning and permitting process into a shorter timeframe, while retaining the checks and balances required to ensure appropriate scrutiny of the applications and protection of the environment.

SITA awaits the publication of the draft PPS10, which we hope will address the structural weaknesses inherent in the present system.

- (d) Apply Producer Responsibility to householders. SITA has advocated direct charging as the most effective means of providing “up-front” financing of new collection and treatment facilities. In previous evidence to this Committee, we have recommended commencing immediately with full cost recovery through the existing Council tax system by raising the waste management element of the charge by £1 per household per week. We then recommended designing a reward based variable rate system introduced in step with the technological, operational and administrative support structures and after public outreach programmes have laid the necessary foundations.

3.2 *Preparing for Likely EU Legislation*

13. It is apparent from observing the waste management scene in Brussels that environmental legislation is driven by those Member States with the most stringent and/or farsighted controls and policy initiatives. Environmental legislation from the European Commission tends to level upwards, while domestic UK legislation tends to gravitate towards the lowest common (cost) dominator (hence our overwhelming dependence on landfilling over the past four decades). Hence in areas where typically the Northern

European Member States have taken the policy lead, the UK has had to play catch-up. Waste management in general, and the Landfill Directive in particular, is a case in point. Germany, the Netherlands and Austria are already compliant with their 2016 BMW diversion targets.

14. With this in mind, we speculate on some the likely future issues that face the UK in the medium term, and for which we need to be prepared:

- (a) A requirement to stabilise biowaste prior to landfilling. This requirement currently applies in Austria and Germany as a waste acceptance criterion for MBT-treated biodegradable waste destined for landfill. Its incorporation into the proposed Biowaste Directive was contemplated before the latter was removed from the Commission's legislative agenda. However, it is widely believed to represent a logical progression to the present BMW diversion requirement contained in the Landfill Directive, when the latter is reviewed. Its impact on the UK waste management scene will be of seismic proportions, since biodegradable waste will need to be pre-treated almost to compost quality in order to remove biological activity.
- (b) Integrated Product Policy (IPP) and Producer Responsibility. Household hazardous waste is presently exempt from the Landfill Directive, but will eventually be addressed at EU level. The IPP initiative has stalled in the European Commission, but there is little doubt that the principle of Producer Responsibility will be extended beyond end of life vehicles and electronic goods, to other consumer items. The UK is ill-equipped to meet this challenge. Government should engage with trade associations and prepare the ground for such schemes, giving industry ample warning.
- (c) Anticipating the EU's thematic strategies. The thematic strategies on resource conservation, waste prevention and recycling will require a different response from Member States than the present highly compartmentised single-issue strategies can deliver. The UK should be planning for "sustainable resource management", integrating within a single policy framework the management of materials and energy across the entire value chain and across all economic sectors. Waste should be embedded within an overall strategy for cradle to grave resource and energy management. Coherent policies and economic instruments can then be designed along this value chain, so as to deliver results at that or any other point. For example, an environmental tax on raw materials could be designed so as to have the effect of reducing resource consumption and hence reducing waste production.

In formulating integrated policies, consideration should also be given to the rationalisation of the definitions of "waste", "product", "recovery" and "disposal" so that "waste" processes are not disadvantaged if they produce products of equal quality. The place of and shape of landfilling within a sustainable resource management agenda needs to be clarified.

4. CONCLUSIONS

15. The UK Government's performance in implementing the Landfill Directive has been patchy at best. While Government can rightly point to innovations such as the Landfill Allowance Trading Scheme as examples of its commitment to progress in moving waste management forwards, it has failed to address the more practical bottlenecks that prevent the waste industry from investing in much needed treatment facilities. Poor delivery of regulations, guidance and processing of PPC applications by the Environment Agency, coupled with the complexities of our planning system and the perception of slack enforcement, continue to undermine investor confidence.

16. The year to July 2005 to some extent represents business as usual, with concessions made to producers of fragmentiser waste and the partial application of the waste acceptance criteria to landfilled waste. The full force of the waste acceptance criteria will only apply after July 2005. It is by no means certain that the UK will have sufficient treatment capacity post-July 2005 to handle the diverted hazardous or municipal wastes. Even with the appropriate policies in place and investors toeing the start line, the policy muddle between BPEO, proximity and the waste hierarchy, and the planning system will prevent government from delivering facilities in time for the UK to meet its targets.

17. The true test of the Government's success in meeting its waste management obligations has yet to come.

7 October 2004

Memorandum submitted by the Institution of Civil Engineers (ICE) (X20)

The Institution of Civil Engineers (ICE) is a UK-based international organisation with over 75,000 members ranging from professional civil engineers to students. It is an educational and qualifying body and has charitable status under UK law. Founded in 1818, ICE has become recognised worldwide for its excellence as a centre of learning, as a qualifying body and as a public voice for the profession.

SUMMARY

The Institution believes the fundamental issue for meeting the UK's obligations under the Landfill Directive is the nation's ability to fund, construct and bring into operation upwards of 1,500 new waste management facilities between now and 2020. These facilities will be required for the pre-treatment, recycling, reprocessing and disposal of waste previously sent to Landfill.

The government's preferred route for securing facilities is through 25 year PFI contracts or PPP agreements for an integrated waste management service between Waste Disposal Authorities and the private sector. We believe that at present the allocation of risk in these contracts and the cost of bidding is creating a barrier to potential private sector players entering the market. This situation will lead to either limited competition (and poor value for taxpayers) or in the worst cases the failure to let contracts endangering the UK's ability to meet its Directive obligations.

Historically new waste facilities have taken between two and 10 years to move from conception to operation. The UK's obligations under the directive have to be met in 2010, 2015 and 2020 so action is required urgently to resolve these problems and ensure the necessary facilities are in place and operational. In practice the need for new facilities is even more acute as under the Landfill Allowance Trading Scheme (LATS), Waste Disposal Authorities (WDAs) have reducing annual limits on the volume of biodegradable waste they can send to landfill without attracting fines.

1. WHY IS THE CONSTRUCTION OF NEW FACILITIES THE FUNDAMENTAL ISSUE?

The central requirement of the Landfill Directive is to divert biodegradable municipal waste from Landfill. Whilst the reduction in absolute levels of waste sent to Landfill revealed in the 2002–03 Municipal Waste survey is welcomed, municipal waste arisings in England and Wales continue to grow at 1.8%. In these circumstances the alternative facilities will be required to deal with this material. We would like to stress that these facilities will include recycling, reprocessing, composting etc sites allowing the UK to recover value from surplus material and opening up job creation opportunities in the secondary materials economy. The Committee should also note that whilst its inquiry is focused on the Landfill Directive, other Directives including the Waste Electrical and Electronic Equipment Directive (WEEE) and the End of Life Vehicles (ELV) Directive, also require many new facilities to be brought on line.

2. HOW MANY FACILITIES WILL THE UK REQUIRE AND HOW MUCH WILL THEY COST?

As in many areas of waste management policy there is a lack of reliable data on the total number of facilities required to meet the UK's obligations. The most comprehensive study we are aware of is contained in Future Perfect (Biffa Waste Services 2002). Its findings are summarised in the table below.

<i>Profile/Scenario</i>	<i>High Landfill and Recycling</i>	<i>High Incineration with Energy Recovery and Recycling</i>	<i>High Composting and Recycling</i>	<i>High Incineration with Energy Recovery and Composting</i>
Number of Facilities	1,544	1,858	1,525	2,300
Capitalisation at Replacement Costs (£ billion)	10.4	20.2	12.6	33.6
Employment (000)	40	42	40	78
Hectares (000)	28.8	11.4	13.3	28.4
Potential Energy Generation (Mw)	2,800	4,700	3,000	7,400

This study implies that the UK will require between 1,500 and 2,300 new facilities costing between £10 billion and £33 billion.

Improvements to the data on future requirements for facilities would greatly assist the waste management industry and its partners in other sectors plan future investment. In this context we would like to see clear regional statements on the number, type, size and preferred location of facilities required.

3. POLITICAL WILL AND PRIVATE SECTOR PRIORITIES

A concern of the Institution is that whilst the figures quoted above are significant, waste is competing against other sectors including schools, hospitals and energy for private sector investment. In the electricity generation sector, Powergen have recently estimated that £70 billion will be needed over the next 10 years to replace ageing power stations and distribution infrastructure.

In these circumstances there is a danger that waste management will remain a low priority for politicians and that the private sector will channel investment into other less risky sectors.

A potential solution is for government to take a more holistic view of infrastructure provision. Private research conducted for the ICE by Fichtner Associates indicates that incineration with energy recovery of Resource Derived Fuel (RDF) produced from Mechanical and Biological Treatment (MBT) plants has the potential to provide 1% of the UK's energy generation needs (and 10% of its renewable energy generation commitment). This study is discussed in more detail below.

4. PFI AND PPP IN THE WASTE MANAGEMENT SECTOR

Over the next four years around half of the WDA municipal waste contract tonnage is to be let through 29 long term contracts requiring new infrastructure (see Annex A). Defra is making available £125 million in PFI credits to Local Authorities in 2004–05, rising to £285 million in 2007–08. Authorities not choosing to go down the PFI route are nevertheless seeking private sector investment through Public Private Partnerships (PPP) as the funds required for new waste facilities are well beyond the sums available in local authority capital expenditure budgets.

The UK has seven major waste management companies. These companies are relatively small and the waste management industry is currently only worth £5 billion pa. In addition four of these companies are owned by overseas parent companies with competing international investment priorities. The Institution believes that the number of contracts and level of investment is beyond the capacity of the waste industry and that other players, need to enter the market.

We acknowledge that the Waste Implementation Programme (WIP) at Defra does recognise this situation and is taking some positive steps but pressure needs to be maintained to ensure results are delivered.

5. RISK ALLOCATION AND OTHER BARRIERS TO NEW PLAYERS ENTERING THE WASTE MANAGEMENT MARKET

5.1 An obvious source of new players in the waste PFI Market is the construction sector, which includes a number of large, well-capitalised companies with a proven track record of delivering major PFI schemes. We would envisage these companies entering into consortia with waste management companies and the financial sector to form the Special Purpose Vehicles (SPVs) set up under PFI contracts. However to date these companies have not entered the market because, we believe, of serious concerns with the nature and allocation of risk in waste PFI contracts and the high upfront costs of bidding. Furthermore, contractors, leaving risk allocation as a matter for the local authority and the contractor, have financed many of the contracts let to date on balance sheet. However as the volume of facilities required rises, contractors will increasingly need to call on the project finance debt market. It is therefore essential to establish a risk transfer regime acceptable to senior lenders. Again we believe that Defra recognise this problem and are taking steps to seek a resolution.

5.2 The risks to be allocated in a waste management PFI include:

- (i) Site identification and planning permission: PFI contractors are being asked to identify sites and secure planning permission for waste facilities. Given the unpopularity of waste facilities this creates a major risk. ODPM reports that in 2002–03 86% of applications for waste facilities are approved, however we believe these figures do not adequately differentiate between new facilities and extensions or modifications of existing sites or highlight the lengthy delays often created by the planning process. An extreme example is The Riverside Resource Recovery project in Belvedere, London that has been through two public enquiries (1991 and 2003) since application in 1989 and on which the final outcome is still awaited. However there are plenty of less extreme examples of major problems with planning. A planning application for a proposed Energy from Waste Plant in Kidderminster which was central to a PFI contract let by Hereford and Worcester Council had to be withdrawn in August 2002 after facing initial refusal and a public inquiry following its submission in September 2000.

In addition the operation of the planning system is unhelpful to applications for waste facilities. As an example, we believe the use of the concept of Best Practical Environmental Option (BPEO) in relation to waste facilities requires revision and the forthcoming Planning Policy Guidance note 10 is a major opportunity.

- (ii) Term composition of the waste stream: The payment mechanism in waste management PFIs is normally linked to material specific recycling targets. However the composition of municipal waste over a 25 year period will be affected by social changes that are well beyond the ability of the waste industry to predict. As an example, would a company tendering for a waste management contract in 1979 have been in any position to predict the explosion in mobile phone and personal computer use in the last 10 years, items which now turn up in the municipal waste stream. This aspect of the payment mechanism therefore requires re-examination.

In addition PFI contractors are being tied to a particular treatment technology at the start of a 25 year contract, which as waste composition changes may cease to be suitable.

- (iii) Markets for recycled/residual material, specifically Resource Derived Fuel (RDF): PFI contractors face the task of finding markets for recycled and residual materials produced by their facilities. WRAP has been successful in stimulating the market for recycled paper there is little evidence of any new large scale markets emerging for other materials.

We believe that government is too complacent about the existence of a ready market for many materials. A key problem will be that of Resource Derived Fuel (RDF). The current limited bankability of Mechanical and Biological Treatment (MBT) has led to it going forward as the main component of a number of major waste PFIs including the contract recently let by the East London Waste Authority. A report *RDF Opportunities: Coal and Cement Industries* by Fichtner Associates for the Resource Recovery Forum in June 2004 suggested that should MBT become the dominant waste treatment technology in the UK, it will be necessary to recover energy from 3.4 million tonnes of RDF in 2013, rising to 4.6 million tonnes in 2020. The study also revealed that the opportunities to use RDF as a fuel in other sectors eg cement kilns was strictly limited. Using RDF as an alternative fuel in the UK's existing coal fired power stations looks, at first glance an attractive option. However to take RDF these facilities will need to be upgraded to meet the requirements of the Waste Incineration Directive (WID). ICE commissioned Fichtner to calculate the cost of this upgrade or the construction of new WID compliant energy facilities to take RDF. This cost was £1 billion or £1.125 billion respectively. Given the current financial constraints under which the UK energy industry is operating an investment in upgrading plants to take RDF appears unlikely, particularly as at present it does not qualify for Renewable Obligations Certificates (ROC).

- (iv) Construction timing and cost uncertainty. Typically a waste contract will require new plant to be phased in over periods of at least five years. As multiple facilities and therefore multiple planning permissions and PPC licences are required there is danger of construction being delayed beyond this point. At present there is no opportunity for a review of construction costs during the life of the project or an indexation of construction specific costs at the start of the contract.

5.3 Bidding Process/Costs of Bidding. The upfront costs of bidding for waste PFI are extremely high, with both private sector consortia and Local Authorities typically setting aside £2 million.

5.4 Local Authority Officers have little experience in letting contracts of this scale and there is a general lack of PFI experience and expertise in the whole sector. We therefore welcome the work of 4PS in creating its procurement pack but believe that further refinement is required to overcome the problems outlined above.

6. POTENTIAL SOLUTIONS—RECOMMENDATIONS

6.1 The Institution believes that the PFI model used for waste facilities needs to be altered to allow for a more equitable allocation of risk. This could be achieved in a number of ways including:

- (i) The introduction of a waste specific relief clause into 4PS' waste PFI contract document similar to a force majeure clause in a standard PFI contract. This would reduce the private sector's exposure in the case of events that could not reasonably be contemplated in advance and had a fundamental impact on costs. An example may be a significant change in the composition of waste.
- (ii) Local Authorities identifying specific sites for waste facilities in their local development frameworks.
- (iii) The introduction of a capital cost indexation mechanism for the construction element of waste management PFIs.

6.2 We also believe that much can be learnt from experience in other sectors, including schools, the NHS and transport in resolving problems in risk allocation in PFI/PPP arrangements.

6.3 We also propose the following as a means of improving the current situation:

- (i) Regional waste management plans to contain clear guidance on number, type, size and preferred location of waste facilities.
- (ii) Government to review the opportunity for synergy between waste management and energy policy. In particular we urge DTI to make RDF and other residual waste left after intensive recycling eligible for Renewable Obligations Certificates in the forthcoming Renewables Obligation Review.
- (iii) The forthcoming consultation on Planning Policy Statement 10 must clarify the role of BPEO in planning applications for waste management facilities or remove it altogether.

Memorandum submitted by Hampshire County Council (X23)

1. In broad terms Hampshire County Council supports with the Government's actions to date, and strongly supports the strategy work on sustainable consumption and production; where the need for decoupling of economic growth from environmental degradation has been recognized. However, the County Council would suggest that the debate needs to be refocused on the most efficient use of all material resources, not just municipal waste as covered by the Landfill Directive.

2. In particular, the County Council supports the fact that Government has recognized that long term progress in sustainable waste policy will require refocused thinking, in which the issue becomes one about good management of resources—so that we increase national resource productivity and manage waste in a way that underpins our goals for sustainable development and a cleaner environment.

3. With this in mind Hampshire County Council would wish to re-iterate the requirement for integrated strategic planning across all material streams in order to achieve long term sustainable resource management.

4. Whilst the targets for the Landfill Directive (1999/31/EC) apply to Biodegradable Municipal Waste, the discussion paper "Waste to Resource Management"⁶⁴ states that "A 'smart' resource management approach integrates the processing of household, commercial and industrial wastes to the benefit of both the council taxpayers and of commerce and industry".

5. Consequently, national change management effort must not be confined simply to the municipal/household waste streams, even though this is the area of concentration for current legislation.

6. In addition, the shift towards producer responsibility, to reduce the requirement for final waste disposal, is an area of significant societal change. The integration of resource management, economic development and societal change needs a "top-down and bottom-up" approach. There is a need for co-ordinate action at national, regional and local levels. However, the potential for Local Authorities to play a leadership role in this change management agenda should be assisted by the cascade of national policy. Local Authorities are well placed to provide local linkages on this agenda.

7. The current method of national policy, whereby finite legislation is enacted to satisfy the requirements of specific EC directives, could lead to fragmentation of effort, conflict of approach and non-integration of strategy. A combined, integrated approach must be followed in order to achieve consistent and inclusive sustainable resource management, and move away from the complexity of origin-based waste legislation. This would align UK policy with the EU Thematic Resource Strategy.

8. Hampshire County Council, in partnership with Southampton City Council and Portsmouth City Council, are progressing well with the development of a Material Resources Strategy. This not only aims to link material resources with minerals planning but also attempts to address the need to move from "end of pipe" recycling-type solutions, to addressing the need for societal change relating to consumption and the most efficient use of resources for goods and services from their design to disposal⁶⁵.

9. Longer term partnerships with the private sector, facilitated by linkages to the CBI and DTI, are suggested as the most effective method to provide both the funding and market development opportunities for resource management.

13 October 2004

Memorandum submitted by SecondSite Property Holdings (X24)

KEY POINTS

- SecondSite Property Holdings (SPH) is the business within National Grid Transco which has responsibility for managing the former gas manufacturing sites inherited from British Gas at the time of demerger, and still retained in the UK by the Group. It has extensive experience of the management of contaminated land and its Managing Director, Phil Kirby, was awarded an OBE in 2000 for his contribution to raising standards of brownfield regeneration.
- Most of the potentially hazardous waste in the UK is currently thought to be derived from the remediation of former industrial sites, which includes the former gasworks owned by SPH.
- SPH is concerned that the way in which the Landfill Directive has been implemented will act as a barrier to the reclamation of brownfield land. There is not at present sufficient infrastructure in place to cover the shortfall in landfill capacity. This in turn will increase the costs of remediation and may restrict the opportunities to redevelop brownfield sites.

⁶⁴ Lisney, BE, Riley, K and Banks, C, 2003. From Waste to Resource Management: A Discussion Paper. Hampshire Printing Services (for hard copies please contact Adrian Flavell 01962 845289). www.hnri.co.uk

⁶⁵ www.mrs-hampshire.org.uk

- The aim of the Directive—which SPH endorses—is “to prevent or reduce as far as possible the negative effects on the environment . . . as well as any resulting risk to human health, from landfilling waste during the whole life-cycle of the landfill”. The Directive therefore aims to reduce both the quantity and hazardous nature of waste disposed to landfill. Unfortunately, the Directive makes no distinction between waste streams from current operations and the management of the legacy of historic industrial processes. With ongoing waste streams there is potential to reduce the quantity and hazardous nature using end of pipe technologies or process controls. These options are clearly not possible for historically contaminated land.
- Whilst there are alternative technologies to landfill currently available or in development, SPH has estimated that these may be suitable for only 50% of the SPH portfolio due to constraints which include the small surface area of many sites, in-ground obstructions, proximity to local residential areas and the current waste permitting regimes. Some alternative technologies are unpopular and the public and regulators remain cautious. At present, economically viable alternative technologies do not exist in commercial form to handle some problem materials which are consigned as hazardous waste.
- The environmental impacts of the Directive as currently formulated will be positive in terms of reducing the quantity and nature of waste landfilled. However, there will be secondary negative environmental impacts which will include more greenfield development, less brownfield sites being brought back into beneficial use, and increased lorry movements which will, in turn, increase CO₂ emissions.
- The definition for hazardous waste has changed subtly but significantly changed from that applied to Special Waste. SPH have estimated that up to 50% of materials arising from its remediation projects which would previously have been consigned as Special Waste, will now be defined as Hazardous Waste. (This classification applies to materials derived from SPH sites but it cannot be assumed that a similar ratio would apply to other historically contaminated sites). However, the data presented in this paper is based on information using Special Waste statistics, which were the most current available.
- The Government should:
 - Recognise, in regulations or tax incentives, the difference between ongoing waste streams and historically contaminated land.
 - Consider what action may be necessary to ensure a better geographic spread of landfill sites to reduce lorry movements for those potential wastes where viable alternative methods of treatment do not currently exist.
 - Streamline the waste permitting system to provide a more stable and predictable regulatory environment for regeneration.
 - Provide positive encouragement to the application of alternative technologies such as thermal treatment and seek to ease the acceptance of these techniques by the general public.
 - Work with regulators and industry to provide much needed detailed technical guidance.

1. INTRODUCTION

1.1 SecondSite Property (SPH) is a business within National Grid Transco, a successor organisation to British Gas, and the owner of around 600 former gasworks sites. Its role is to provide strategic advice and effective property management to the rest of the group. In particular its aim is to tackle the historic legacy of gas manufacture, so that its remaining portfolio—around a third of that which it inherited in 1994—can be returned to beneficial use.

1.2 Over the years, SecondSite has helped to regenerate some 1,500 acres of former industrial land and has earned the respect of both industry and government for its responsible approach to this work. In 1998, its current Managing Director, Phil Kirby was appointed to represent the private sector on Lord Rogers’ Urban Taskforce and in 2000 he was awarded an OBE for his contribution to raising standards for the reclamation of brownfield land. He continues to advise DEFRA and ODPM both formally and informally on a range of remediation issues.

1.3 Our experience of brownfield regeneration is therefore substantial and our contribution respected. Our reason for responding to this consultation exercise is that, based on this experience, it is our judgement that the Government’s current approach to waste policy and, in particular, its approach to the implementation of the Landfill Directive will have a serious adverse impact on the reclamation of brownfield land.

2. AN OBSTACLE TO REGENERATION: THE UNINTENDED IMPACT OF THE LANDFILL DIRECTIVE

2.1 Why does this matter? Because land is one of the UK's scarcest resources and it is in huge demand. Government estimates that to meet the UK's housing demand, the country will need to build over 145,000 new homes every year for the next 10 years. Government policy is that in excess of 60% of these new homes should go on recycled land. This is a tough but achievable target, so long as further barriers are not added to the existing obstacles to brownfield regeneration, over the more straight forward option of building on greenfield sites.

2.2 Unfortunately, contaminated soil and other material from the regeneration of brownfield sites is thought to be the largest source of potentially hazardous waste to landfill. The way in which the Landfill Directive is currently being implemented is a serious obstacle to its reclamation. As a direct result of the ban on the co-location of hazardous waste introduced in the Directive, the number of sites able to receive hazardous waste since 16 July 2004 has fallen from over 200 to just 11.

2.3 While at time of writing that figure has climbed to just over 30 there is still a very serious shortfall in capacity. Latest Government figures show that in 2002, 4.8 million tonnes of special (or potentially hazardous) waste were produced across England and Wales. Of this, an estimated 2.6 million tonnes would be derived from contaminated soils. As a result of the Landfill Directive-led rule changes in July 2004, there is currently only capacity to deal with 1.4 million tonnes per annum in England and Wales, leaving a massive shortfall of 3.4 million tonnes, much of which will be derived from the remediation of contaminated land.

2.4 It seems inevitable that, with a shortfall of this scale, there will be a massive increase in illegal fly tipping of hazardous waste. This impact could be counter to the objectives of the Directive by discouraging the safe consignment of waste to a landfill site. This, however, is not SecondSite Property's area of expertise and others will be better placed to comment.

2.5 At the responsible end of the remediation industry, however, the problems caused by this lack of capacity are just as acute, if different:

- Less of the regeneration necessary to meet government housing targets: The lack of hazardous waste disposal capacity will make it significantly more difficult to manage the clean up of brownfield land or to find landfill sites able to take waste. Many projects will inevitably be put on hold, although the current impact is masked by companies which brought forward work into the first half of 2004, with the specific aim of avoiding the impact of the Directive. The real test of the Directive's impact will be in 2005–06.
- Much higher regeneration costs: Where landowners and developers have been able to identify sites to take waste, costs have significantly increased. Already SPH has seen landfill gate prices increase on average from £20 to £30 to £65 to £120 per tonne, throwing the finely balanced economics of regenerating many brownfield sites into the negative.
- Increased traffic congestion and pollution: Even where regeneration is pursued the distance which lorries will need to travel to appropriately licensed landfill sites will increase significantly—at time of writing there is not a single licensed hazardous waste landfill in Wales, with a severe capacity shortage in London and South East England. SPH is currently collating evidence on the increased mileage which this will require for our works alone, as well as the increase in carbon emissions which this will imply. In 2002–03, SPH estimated an average round trip of 88 miles from site to landfill. In 2004, for the same portfolio of projects, but taking into account the reduced number of hazardous waste landfill sites, this is estimated as having reason to an average round trip of 174 miles.

3. WASTE MINIMISATION AND NEW TECHNOLOGIES

3.1 Of course, the aim of the Landfill Directive is to create a powerful fiscal incentive to the producers of hazardous waste, to persuade them to change production methods to minimise unnecessary waste. Unfortunately, when it comes to tackling an historical legacy, such as contaminated land, avoiding the production of the hazard is not an option and minimisation of hazardous arisings is more limited. This seems to us to be an obvious distinction, but one that seems to have almost totally escaped those responsible for planning the implementation of the Directive.

3.2 The argument is made that the application of new and alternative clean up technologies can substantially reduce the quantities of material from historically contaminated land being consigned to landfill. Based on current evidence, the limitations in scope and capacity coupled with the current permitting regime required for these alternative technologies, would strongly suggest that this is wishful thinking.

3.3 SPH is widely acknowledged as an industry leader in the application of new technologies, mounting the first ever full scale soil washing project in Basford, Nottingham, deploying revolutionary new soil vapour extraction methods on the East Greenwich peninsula and making extensive use of bioremediation across the country, for example in Leeds, Portsmouth and Provan. It is our opinion that the potential impact of such technologies—while important options for a range of reasons—is exaggerated, at least in the short to medium term. We estimate that even their most extensive application over the next three years is unlikely to reduce the need for hazardous waste capacity by more than 30%.

3.4 Furthermore, there are other obstacles to the use of new technologies, which the Government needs to address first:

- It is at present significantly more difficult to gain regulatory acceptance for a remediation scheme using on-site alternative treatment technologies than it is for an equivalent design using disposal to landfill. The obvious solution would be to treat the materials from a number of small sites at one central “Hub” site. Unfortunately, the “Hub” site concept does not fit well with current regulations and it is this, rather than technological factors, that is proving to be the biggest barrier to the treatment of smaller sites.
- Some of the most developed alternative technologies, such as thermal degradation, are unpopular and considered by some to be a less environmentally attractive even than landfill.
- Many technologies do not have a track record of operating at full-scale under full contract conditions. Whilst organisations such as SPH and CL:AIRE are working hard to improve confidence in novel approaches to remediation, there is a perceived reluctance by regulators and developers to support such schemes.
- There are further trade-offs to be made, such as the need to control costs on regeneration projects, which are often marginal, and the time that it takes to reclaim land using new technologies, which may also affect both the economic viability and the environmental impact of a scheme.

3.5 The economics of brownfield land regeneration are finely balanced. In our view the commitment to waste reduction and recycling should extend to the waste reduction and recycling of land: the reuse of brownfield land for much needed housing is, in and of itself, minimising the waste of land.

4. JOINED UP THINKING

4.1 Some elements of Government thinking already recognise this. The problem is that policy in this area is not joined up:

- DEFRA is concerned with waste policy and regulation in this area, but only insofar as it relates to landfill.
- ODPM is concerned with land use, planning and urban regeneration.
- Treasury is responsible for creating fiscal incentives.

4.2 Government needs to create a permanent forum for debating policy in this area to ensure a consistency of approach and break out of the current silo mentality. In our opinion the regeneration agenda is the most pressing, combining environmental, economic and social objectives. At present, however, the policies of each department—not to mention those of the respective regulators (EHOs, Environment Agency)—are self-neutralising and this can be in nobody’s interest.

5. IMPACT OF SPH: A CASE STUDY

The results of the impact of the Landfill Directive on SPH are being carefully monitored. Since the second phase of its implementation has only recently come into force, however, the situation at time of writing is still changing rapidly. It would make more sense, therefore, to present this element of our evidence—either verbally or in writing as the Committee see fit—later in the year, when the situation has begun to stabilise.

6. RECOMMENDATIONS FOR REFORM

6.1 So bearing all these challenges and obstacles, what should government be doing? The Government should:

- *Encourage the development and use of alternatives to landfill and issue guidance for phase III as soon as possible.*

Some claim that industry had five years to plan for the implementation of Directive and should have been better prepared for its impact, perhaps by bringing forward more remediation and developing new technologies quicker. Industry has been working hard to test and accept alternative methods of remediation. The truth is, however, that although interim guidance was issued at the end of 2002, the final landfill regulations on which the Directive is based were not introduced until 19 May 2004, a mere two months before their implementation, and even now the final guidance on exactly what constitutes hazardous waste contains ambiguities which remain to be clarified. This has made it extremely difficult for responsible landowners, such as SPH, and developers to put in place future strategies for remediation or determine priorities. The sooner this guidance is finally clarified the better.

- *Recognise, in regulations or tax incentives, the difference between current and historically contaminated land.*

The precedent for differentiating between these two already exists in reliefs and exemptions from landfill tax for arisings from brownfield regeneration. This precedent should be used to consider ways in which the tax and regulatory regimes can be adapted to prevent waste policy interfering with regeneration. For example, it has been suggested that some landfill tax revenue should be recycled to provide fiscal incentives to support investment in onsite remediation and new technologies.

- *Consider what action may be necessary to ensure a better geographic spread of landfill sites to reduce lorry movements.*

The current availability of landfill sites licensed to receive hazardous waste is unsustainable. As a matter of urgency, the Government should review the available capacity and consider ways to encourage the development of further cells and facilities, especially in the South East.

- *Streamline the waste permitting system to provide a more stable and predictable regulatory environment for regeneration, including the requirements for permitting alternative technologies and reusing the materials treated by them.*

We welcome the decision of the Cabinet Office to refer plans to work towards a single remediation permit for brownfield land to the Better Regulation Taskforce. SPH looks forward to working closely with the Taskforce to developing a permitting system which offers much greater consistency of approach for industry, and which speeds up the process of obtain consent for remediation.

The implementation of the Landfill Directive has significantly changed the way in which potential wastes are being managed in the UK. This is a complicated issue that cannot be discussed in detail within this submission. We would therefore welcome the chance to present further information should the opportunity arise.

13 October 2004

Memorandum submitted by the Chemical Industries Association (X26)

INTRODUCTION

The UK Chemical Industries Association (CIA) welcomes the chance to comment on this important issue, following the Committee's press notice of 28 June 2004. We strongly support the adoption of transparent, efficient and practicable regulation for the control of chemical industry waste and are committed directly through our own voluntary programmes to the reduction in the generation of waste by the industry. Waste management is a challenging area for the sector at present as we are currently in a shifting regulatory framework, particularly as the Landfill Directive is implemented.

INDUSTRIAL WASTE: THE CHEMICAL INDUSTRY'S KEY MESSAGES AND AIMS

1. Implementation of the Landfill Directive is challenging manufacturing companies, particularly in the area of hazardous waste production. Prior to the 16 July 2004 deadline for the cessation of co-disposal, brought about by the Landfill Directive, we briefed our members on the likely implications of the Directive. To date, feedback from our members is that whilst there are certainly many remaining difficult local issues to tackle, implementation of the Directive is progressing relatively smoothly for the sector as a whole.

2. We are concerned and disappointed at the "just in time" approach of implementation adopted by Defra for the Directive. This led to considerable uncertainties for our sector in the run up to implementation and remaining uncertainties exist, particularly with regard to the longer-term sustainability of all waste disposal routes and their associated costs.

3. We remain concerned that the Government is not adequately addressing a number of higher-level, strategic issues. For example, we remain to be convinced that the existing land use planning system in the UK will deliver adequate waste treatment and recycling facilities for all classes of waste. Further, UK business needs a satisfactory definition or a better/more consistent interpretation of the existing definition waste. We wish to see the UK Government showing leadership in the EU on this issue.

HAZARDOUS WASTE

Resource use efficiency and recycling

1. The chemical industry accounts for around 12% of all "Special" (hazardous) waste generated in the UK and is working hard to reduce its production of waste through recycling and minimisation. The sector has already made large reductions in the amounts of waste sent for landfill for a number of reasons, including the improvement of overall performance under the industry's Responsible Care Programme and IP(P)C controls. Since 2002, our members have reduced hazardous waste production by 13% and have achieved a similar reduction in overall amounts of waste produced.

2. It is common good practice in the industry to have waste management strategies. The industry takes its Product Stewardship responsibilities seriously and we are working with our members to ensure that customers and those down the supply chain are aware of their waste responsibilities within this rapidly evolving policy area.

3. Moreover, the CIA has recently published, and the industry has embraced, a set of long-term sectoral performance/sustainable development goals for our membership to work towards. In particular, our members aim, collectively, to reduce hazardous waste production by 25% during the period 2000–10.

4. This has been a difficult aim to define given that the additional amount of such waste will increase as the UK adopts a new definition of “Hazardous Waste” in line with the Hazardous Waste Directive. It is also an ambitious target. We will monitor our progress against our goals closely and share that progress with all interested stakeholders.

5. To both highlight the recent changes in the law on waste and assist our Members in meeting the requirements of the Landfill Directive and to contribute to the sectoral goals set out in our sustainability strategy, we have issued a number of briefing notes, which offer practical guidance to companies, case studies and signpost them to other sources of advice.

The cost of waste disposal

6. The only certainty that faced the chemical industry during the implementation of the ban on co-disposal (the landfilling of hazardous and non-hazardous waste in the same landfill cell) was that the cost of landfilling was set to rise. Our members report landfill gate cost (the amount per tonne that waste producers are charged by landfill operators—this doesn’t include in-house costs of waste management prior to sending to landfill) increases of around 100–150% (sic) since April this year.

7. Whilst we acknowledge that UK waste producers have enjoyed relatively low landfill gate-costs in comparison to the rest of Europe, certainty of unit costs is important for business planning. Any price rises in operational costs for chemical manufacturers affects the “bottom-line” for companies as global competition for chemical industry products tends to prohibit companies from passing costs to their customers. Sudden, unquantified price-rises are unwelcome and quantification of the costs of the ban on co-disposal might have been easier had landfill operator had more certainty and clarity over the UK implementation plans for the Directive at an earlier stage.

LACK OF CLARITY AND DELAYS IN DECISION MAKING

8. There are a large number of European directives and regulations on waste that create a comprehensive legal framework for the management and disposal of waste. The debate seeking a clear definition of the terms “waste” and “product”, however has been going on for years in Europe, including the UK. Yet there is still no satisfactory definition of the point at which recovered waste once more becomes a product. We also lack clear criteria to distinguish between activities carried out to recover waste—and activities carried out to dispose of waste. This creates enormous barriers for waste producers wishing to recover, reuse or recycle waste or even operators merely wishing to manage their waste in the most sustainable way, as often operators become caught by expensive and burdensome waste regulation that would not apply to similar substances defined as “product”—putting UK business at a competitive disadvantage and possibly making less environmentally sustainable disposal routes more attractive.

9. With regards to landfilling of waste, the chemical industry, and other waste producers, has been operating in a period of uncertainty with regard to waste management since the Landfill Directive was first adopted in 1999. The development of Waste Acceptance Criteria for the various classes of landfill were seriously delayed in the UK leading to landfill operators being unable to clarify exactly which classes of landfill they would operate in future and in turn, waste producers not knowing if there was to be capacity for waste in future or what the cost of waste disposal would be (the assumption being that the more competition for landfill void, the higher the cost to waste producers).

10. There has also been a lack of adequate guidance on the implications of the Landfill Directive for waste producers. The “just in time” approach to transposing legislation into UK law has meant that there has been little or no time at all between drafting and enactment of legislation for appropriate guidance to be developed. We acknowledge that Trade Associations do have a role to play in providing practical guidance to their members and CIA has consistently offered advice to our members. The Government and environment agencies have a role to play however in providing early counsel to those affected by new legislation. Government interpretative text to meting the requirements of the Directive has only just appeared on the Defra website (ie in September 2004).

11. Our underlying message is that uncertainties in the area of waste policy make it difficult for waste producers to develop coherent medium to long-term strategies. Whilst this situation persists, it is difficult to envisage that, in the short-term at least, waste producers will truly be able to take responsibility for planning the final destination of their waste.

LANDFILL: GENERAL ISSUES

Long-term capacity and flexibility in hazardous waste disposal

12. In order to provide the increased capacity for waste testing, treatment and final disposal that the Landfill Directive is driving, the Environment Agency have estimated that 2,000 additional waste management facilities will be needed to meet the requirements of the EU landfill directive alone. In order to facilitate this, the land-use planning process (controlled by the ODPM) will need to provide the conditions within which the private sector can take investment decisions, obtain a waste management licence or a Pollution Prevention and Control permit from the Environment Agency and construct a site. The present planning regime is unlikely to deliver the required infrastructure and we would urge the Government to consider how to streamline and focus the present system, in order to deliver.

13. We support the concept of the waste hierarchy as set out in the Government's Waste Strategy 2000 for England and Wales. This suggests that the most effective environmental solution is to reduce the generation of waste. However, where further reduction is not practicable, products and materials can sometimes be re-used. Failing that, value should be recovered from waste through recycling or composting, or where that is inappropriate, other options further down the hierarchy should be considered. We believe that all disposal options should remain open and "Best Practicable Environmental Option" (BPEO) for waste streams should be taken into account. As best-practice and waste legislation pushes waste up the hierarchy, pressure is inevitably placed on disposal outlets higher up the hierarchy. It is important that strategic planning for all waste disposal options is high on the agenda of the Government and waste industry, in discussion with waste producers and local authorities to ensure adequate future provision of a variety of waste disposal outlets. We are concerned that Government is not seriously addressing these broader strategic issues of waste planning in a coherent way.

14. Certain chemical industry wastes require high temperature incineration due to their nature (ie are difficult to dispose of as they have hazardous/flammable/corrosive properties). Incineration remains an important final disposal option for our sector where recovery or recycling of wastes is just not practically or economically feasible. We note that Defra's own research ("Review of Health and Environmental Effects of Waste Management" published on 6 May 2004) acknowledges that properly managed modern incineration is safe and a viable option for waste management.

15. We are concerned that as landfill capacity for hazardous waste becomes limited, waste producers might become increasingly reliant on incineration. Whilst there is some capacity in the merchant high temperature incineration sector, careful consideration must be given to the impacts that other legislative changes in the waste arena, such as amendments to the Substitute Fuels Protocol, are having on the availability of a range of wastes for incineration. We would hope that the Government and Environment Agency are working together at a strategic level to secure a variety of disposal/recovery options for waste producers without inadvertently damaging the commercial viability of any option. We have no evidence that this "joined up" and strategic thinking is taking place.

16. As an industry that sends some waste for energy to cement kilns, we have welcomed the Environment Agency's draft proposals to amend the scope of the "Substitute Fuels Protocol". The retention of cement kilns as an alternative combustion option for our sector allows for flexibility of final disposal route for many wastes that have to be burned because of their nature. Chemical manufacturers have immediate commercial considerations with respect to disposal options for waste, particularly post 16 July Landfill Directive cessation of co-disposal. Cement kilns offer an economical outlet, which in many cases represents the Best Practicable Environmental Option (BPEO) for the circumstances. We would expect that the Government and Environment Agency, in their consideration of legislative requirements for burning of wastes as fuels or for disposal, offer a level-playing field for all players in the combustion market and that high environmental standards would apply.

17. We wish to see Government provide clarity on the role that it sees incineration playing in future as if it is to play an important role, the long lead-in time for incineration facilities to be provided points to the fact that planning for future capacity needs to be undertaken now, within a clear government strategy.

ADDENDUM: THE UK CHEMICAL INDUSTRY

Waste Production in the Chemical Industry: The Chemical Industry produces 1.75 million tonnes of waste per year, around 35% or 607 000 tonnes of which is Hazardous. This represents a reduction in total waste arisings of around 13% since 2002 and a reduction in Hazardous Waste produced of around 13%.

Chemicals' Contribution to Society: the industry's products form the basis for every manufacturing activity, underpinning transport, healthcare, food and drink, construction, textiles, IT—and indeed all other sectors of the economy. It is impossible to divorce a successful and responsible chemical industry from the colourful, diverse, clean and safe environment and high standard of living that we have come to take for granted.

In particular, industrial chemicals can proudly claim a major role in increasing human longevity and the quality of life—life expectancy at birth doubled in the 20th century. Not only can this be attributed to such recognisably chemically derived products as drugs and antibiotics but improved water treatment, detergents and pesticides have all played their part.

Key Contribution to the British Economy and Employment: the chemical industry in the UK employs 230,000 directly nationwide, and accounts for 2% of UK GDP and 11% of manufacturing industry's gross value added. (Within the EU as a whole, the chemical sector employs 1.7 million people).

It invests over £2 billion annually (plus £3.5 billion on R&D) and is the UK's top manufacturing export earner, with an annual trade surplus of nearly £5 billion on a gross output of £46 billion. It also provides a tax and national insurance contribution of nearly £5 billion a year to the UK national government and local authorities. The sector also invests approximately £400 million a year on training and, on average, full-time employee hourly earnings are 29% higher than in manufacturing generally.

Industry and the Environment: in 2001, the chemical sector spent more money on environmental protection than any other comparable British sector. An independent report for Defra estimates that the UK chemical industry spent a massive £713 million on environmental protection during 2001 or 18% of the £3.9 billion spent by the whole of UK industry.

This level of expenditure is indicative of the importance that the chemical sector places on protection of the UK's air, water and soil environments and, as such, is also a tribute to the success of the CIA's part in the global "Responsible Care" programme that commits all its members to continual improvement in all aspects of health, safety and environmental performance.

This expenditure has delivered impressive reductions in emissions from the chemical industry. For example, between 1998 and 2001 emissions of solvents, in the form of Volatile Organic Compounds, from CIA member companies reduced by a third—from 61,000 to 41,600 tonnes.

The Chemical Industries Association (CIA) & Sustainable Development: the CIA itself comprises 175 operating companies, based at 280 manufacturing sites nationwide. It is the predominant trade association and employers' federation for the industry, and embraces all trade sectors, product types and business activities. Based in Westminster, the Association employs 50 staff headed by the Director General, Judith Hackitt. The CIA's mission statement is:

"To represent the UK chemical and allied industries to all external stakeholders and to support our members in achieving economic, social and environmental sustainability".

In September 2003, CIA's governing Council adopted a new vision for the sector, based on "a competitive and economically sustainable industry, adopting innovative business solutions that help satisfy society's needs while:

- optimising the use of resources;
- ensuring that we have taken all reasonable steps to prevent harm to human health and the environment;
- demonstrating good practice in ethical behaviour;
- respecting the culture and rights of individuals; and
- adopting the highest standards of corporate governance and accountability", summarised as "meeting needs and expectations".

This followed the launch of a "Leadership Statement" on Sustainable Development in November 2000 and the setting of its first Responsible Care Performance Goals in January 2003. 2004 will see the publication of a full set of guiding principles and comprehensive sustainable development goals for CIA's members.

13 October 2004

Memorandum submitted by the Waste and Resources Action Programme (WRAP) (X27)

INTRODUCTION

1. WRAP welcomes the opportunity to submit evidence to this inquiry, which follows on from the Committee's previous inquiry in 2002–03 *The Future of Waste Management*.

2. WRAP was created as a result of actions to boost recycling and market development in the Government's *Waste Strategy 2000 for England and Wales*.⁶⁶ This strategy document and subsequent policy initiatives remain the primary strategic response in England to the demands of the EU Landfill Directive. In

⁶⁶ Department of the Environment, Transport and the Regions (2000), *Waste Strategy 2000—England and Wales Parts I and II*, London: Stationery Office. Cm 4693-1 & 4693-2.

Wales, this document was superseded in 2002 by the publication of *Wise about Waste*,⁶⁷ the Welsh Assembly Government's own waste strategy, alongside strategic waste plans for Scotland and Northern Ireland⁶⁸ which were also developed separately from that developed for England.

3. WRAP's mission is to accelerate resource efficiency through the creation of stable and efficient markets for recycled materials and products, and by removing barriers to waste minimisation, re-use and recycling.

4. We work across the United Kingdom, and are funded by Defra (through core funding, and through the Waste Implementation Programme), DTI and the Devolved Administrations. Our programmes today spread across market development, household waste minimisation, communications, and support for local authorities—some of which are delivered across the United Kingdom with others primarily applicable to England with varied contributions from the Devolved Administrations depending on their interest in the particular programme. Earlier this year, we published our second Business Plan,⁶⁹ setting out our objectives and targets for 2004–06 and describing our work in greater detail than space permits in this submission.

PROGRESS ON RECYCLING AND COMPOSTING ACROSS THE UK

5. WRAP believes that the United Kingdom is now making substantive and rapid progress towards the challenging recycling and composting targets we have set for ourselves, as part of our strategy for compliance with the Landfill Directive. In 2002–03 for England, local authorities recycled and composted 15.6% of municipal waste.⁷⁰ In our view, they are likely to exceed the 17% target set for 2003–04 and, although the higher 25% target is still challenging within the time available, local authorities do have a fair chance of meeting the 25% target set for 2004–05. Momentum is being gained rapidly by many local authorities, especially since further investment in new collection systems (funded locally as well as by Defra) have been introduced in many areas, combined with further investment in promotional activities and waste reducing activities such as home composting. This is making it easier for more people to recycle conveniently at home, with at least 65% of the UK population now having some form of kerbside collection scheme available to them—even if it is just for newspapers and magazines at this stage. Landfilling of municipal waste reduced in net terms in 2002–03 (by 300,000 tonnes) for the first time in many years, alongside the increasing percentage of material recycled. The English trends are positive, as illustrated in the graphs attached as Appendix 1.

6. In Wales, recent progress has been dramatic, with the *2003–04 Municipal Waste Survey for Wales*⁷¹ reporting a municipal recycling and composting rate of 17.6% for that year, compared to 12.7% for 2002–03. Again, this improvement corresponds with significant new sums of money being made available to councils and social enterprises for kerbside recycling schemes, and new composting schemes. Although progress has been less immediate in Scotland, the trend is still positive, with an increase in the municipal composting and recycling rate from 7.4% in 2001–02 to 9.6% in 2002–03, and again, this is expected to rise rapidly as new collection schemes come on stream, as they are now doing.

WRAP'S CONTRIBUTION—OUR FIRST THREE YEARS

7. WRAP's initial activities, focused on recycling market development, have contributed to the momentum now being generated in recycling and composting.

8. It is widely recognised that there is little point in collecting materials for recycling unless there is a market and an end use for that material. Recycling is a process, not a single event at the point of collection, and it requires industries to be capable and willing to utilise recovered materials, and industry, commerce and the public sector to buy and specify recycled and composted products. So, our work to remove market barriers to recycling, and create new markets for recovered materials has played a role in creating the climate within which more local authorities have invested in new collection and composting schemes. Greater detail on our approach to market development was outlined in our submission to your previous inquiry in 2002–03.

9. Our achievements against the targets set in our first Business Plan⁷² (published in 2001) are reported in detail in our *2004 Achievements Report*.⁷³ They are summarised here:

- the total tonnage of material targeted in our 2001 Business Plan (across all materials specified—paper, glass, plastics, wood, compost): **2,435,000 tonnes**;

⁶⁷ Welsh Assembly Government (2002), *Wise about Waste—the National Waste Strategy for Wales*.

⁶⁸ Scottish Executive (2003), *National Waste Plan for Scotland*.

Department of the Environment NI (2000), *Northern Ireland Waste Management Strategy*.

⁶⁹ Waste and Resources Action Programme (2004), *Resource + Action—Business Plan 2*, Banbury: WRAP.

⁷⁰ Department of Environment, Food and Rural Affairs (2004), *Municipal Waste Management Statistics 2002–03*.

⁷¹ Welsh Assembly Government (2004), *2003–04 Municipal Waste Survey for Wales*.

⁷² Waste and Resources Action Programme (2001), *First choice, second nature—the WRAP Business Plan*, Banbury: WRAP.

⁷³ Waste and Resources Action Programme (2004), *Achievements Report 2003–04*, Banbury: WRAP.

- total tonnage delivered (minus aggregates, which was a programme added part way through and not in the original plan): **2,484,000 tonnes**;
- **20 out of 23** targets set in the Business Plan were **fully or partially achieved**;
- **£123 million private sector investment leveraged**, a total of **£563** of private investment for every £1 from WRAP (noted in detail in Appendix 3).

10. Although, as in any three year plan, the tonnage delivered did not come from exactly the areas we originally expected, WRAP's programmes still delivered a small excess of 49,000 tonnes in relation to the accumulated total tonnage in our original Business Plan. If we include the additional work undertaken in aggregates recycling, which we commenced in 2002 following an allocation of funds from the Aggregates Levy Sustainability Fund, a total of **3,734,719 tonnes** of additional material will be recycled or composted annually as a result of WRAP's programmes. A breakdown of this tonnage, showing projects completed and operational, projects under construction, and projects in delivery which will be completed over the next few years is described in the tables attached as Appendix 2, together with a breakdown by material.

11. WRAP concentrated on improving the climate in which recycling businesses, and those using recycled materials, can thrive and flourish. To achieve this, we invested heavily in research, development and pilot projects (to demonstrate new uses of materials), as well as investing in new capacity for treatment and processing of recyclables. Our work also brought more formality and structure to markets for processed materials by the introduction of new standards.

12. Some highlights of projects that illustrate these key elements of our work so far include:

- in research and development, successful proving of the ability of finely ground glass cullet to be used as a fluxing agent in brickmaking, with the ability to save up to 20% energy savings in the brick industry, with consequent benefits for CO₂ emissions reduction;
- successful development of Panelplus, a recycled plastic panel using over 50% recycled materials with applications in commercial vehicle use, temporary buildings, floorboards. In vehicle panel use, this product is 60% lighter than conventional panels, with benefits accruing in energy saving or increased vehicle payload;
- investment in major new capacity in the newsprint industry to use recovered paper, with the conversion of the Shotton paper mill in North Wales to the use of 100% recovered fibre. This £17 million investment, approved by the European Commission, has led to an additional 321,000 tonnes of paper recycling every year, collected from up to an additional 4 million UK households; and
- development of a new British Standard Publicly Available Specification (PAS) for compost (BSI PAS 100), which provides a benchmark for the first time against which more users of compost can have confidence in the reliability of compost made from green waste. Over 60% of the UK's composting capacity is now accredited under this standard, bringing greater confidence to the marketplace in waste derived compost, with the potential to open up markets in landscaping and horticulture, hitherto untapped.

13. Our work in market development continues to develop, as it is clear that there is still much to do in this area. WRAP maintains constant dialogue with key stakeholders in the resource industries to ensure that our programmes remain close to business need and relevant to current challenges. In the next two years, as well as extended activity in our key materials of wood, plastics, paper, glass, organics and aggregates, we will be extending our market development work into other materials and products, such as tyres, batteries and difficult construction wastes (particularly plasterboard).

NEW CHALLENGES—HOUSEHOLD WASTE MINIMISATION, COMMUNICATIONS AND SUPPORT FOR LOCAL AUTHORITIES

14. WRAP's resource efficiency remit now extends to address the challenge of household waste minimisation, improving public awareness of recycling and waste reduction, and supporting local authorities in improving their recycling performance. These responsibilities were acquired with funding in 2003 from Defra's Waste Implementation Programme, as a result of *Waste Not: Want Not*, the review of waste strategy in England conducted in 2002 by the Prime Minister's Strategy Unit (SU) in the Cabinet Office.⁷⁴

15. The target on household waste minimisation, set through the recommendations of the SU report, is to reduce the rate of increase of household waste generation by 1%. To achieve this, WRAP is running a series of initiatives, all of which will contribute to this target:

- **Home composting.** WRAP is running a major programme in home composting which has so far distributed over 150,000 compost bins working with over 20 local authority partners. A

⁷⁴ Strategy Unit (2002), *Waste Not: Want Not—a Strategy for Tackling the Waste Problem in England*, London: Cabinet Office.

major feature of this work is the comprehensive approach developed to determine public preferences for different types of composter and ways in which support information is received and used, making it the largest study in the UK of the effectiveness of home composting. WRAP's Evaluation team is using the data generated by this initiative to create a diversion calculation methodology for home composting. This will be a first in Europe, as it will provide a method by which a minimum amount of diversion from home composting can be calculated, which has not been achieved before. It will be important that, once proven, Defra consider the use of this model to allow local authorities to claim an amount of waste diverted as a contributor to their overall recycling and composting performance—both in terms of councils' ability to comply with the new Landfill Allowance Trading Scheme (LATS) regime and through including home composting in their Best Value Performance Indicators, under BV82 on composting. The WRAP programme aims to divert at least 400,000 tonnes/year by 2006.

- **Real nappies.** WRAP's waste minimisation work is also targeting nappies as a measurable and tangible element of the municipal waste stream where there is some potential for reduction of the impact of disposable nappies in landfill. The theme of our programme is to offer choice to parents by raising awareness of the availability of real nappies, and also by investing in business support for SME's engaged in real nappy washing and service provision to parents. This programme has a target to divert 35,000 tonnes/year by 2006.
- **Work with major retailers.** The major supermarkets and high street retailers have a major role to play in helping to reduce the landfill burden created by consumer use of products sold by them. WRAP has created an Innovation Fund, which will make up to £8 million available for projects to do this, through minimisation of packaging, redesign, logistics change, or other ideas to achieve this challenging objective of reducing this waste stream by at least 300,000 tonnes/year by 2006.

16. Improvements in local authority recycling and composting performance will be a key element of success if the Government's Landfill Directive targets are to be achieved. WRAP's role is to provide technical and communications support to councils through a dedicated advisory service—ROTATE—the Recycling and Organics Technical Advisory Team. This is a team of practitioners, able to provide hands-on advice quickly to councils who need help with designing new collection schemes or improving the performance of existing schemes, an area where there is considerable additional scope for action.

17. Supporting this is funding specifically to improve recycling participation through communications work. Almost £20 million is being invested now in schemes to boost the performance of existing kerbside and other schemes. While some of this activity is relatively prosaic, such as doorknocking campaigns—this is what is needed to help raise the public profile of recycling and remind the public of the services already on their doorstep. Simple, effective campaigns can boost participation by anything up to 50% and are very cost effective ways of getting more out of existing investments in vehicles and boxes. This work is being evaluated comprehensively, and full reports on the success of this approach will be published as work is completed during 2005 and 2006.

18. Underpinning all of this activity is a new, £10 million national awareness campaign for England, *Recycle Now*. This features colourful TV and press advertising, backed up with a support package for councils and provision of a new, modern symbol for recycling which many councils are now using. Celebrity endorsements such as Eddie Izzard and Matthew Pinsent have helped to give the campaign a flying start this autumn, supported by Environment Minister Elliot Morley MP. A first review of the impact of this campaign will be undertaken in December 2004, and results will be made available to the Committee when complete.

19. This work is a key component of a package which includes local communications activity, extra collection services, and more market outlets for the collected material. Together they make up the main ingredients to WRAP's resource efficiency activities for local government and business.

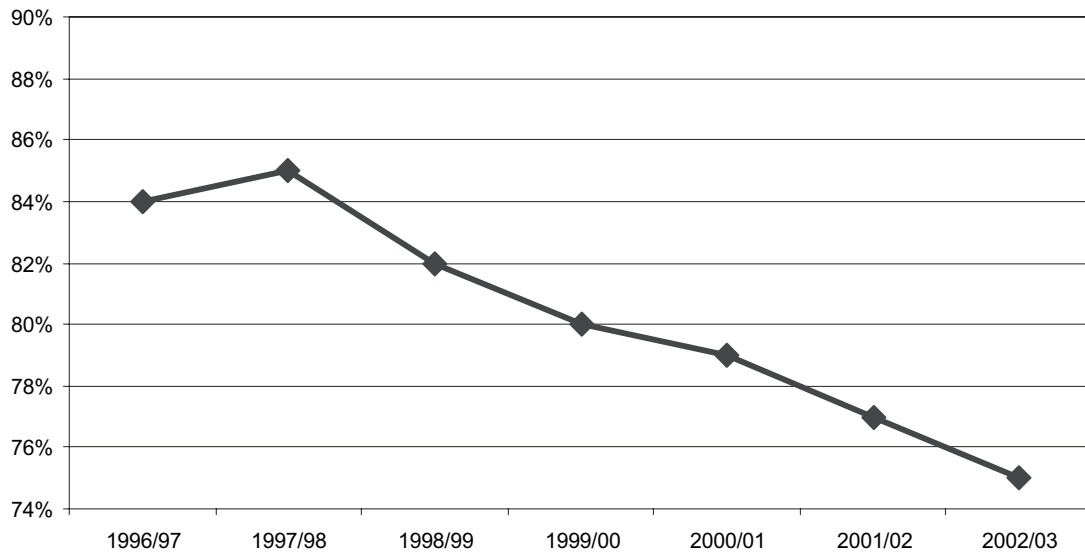
20. WRAP is conscious that much of this new activity in waste minimisation, collection support and communications is still relatively new—although they are all based on established good practice in other countries, where results have been delivered. Although well beyond start up phase, most of these activities are only now being delivered at full capacity. Most importantly, WRAP remains committed to sharing the learning of lessons which will be learned from all of this new work and its impact in the UK context. As this work develops in the coming months, we will be happy to share our experiences with the Committee as we all continue to deliver our commitment to resource efficiency in the United Kingdom.

APPENDIX 1

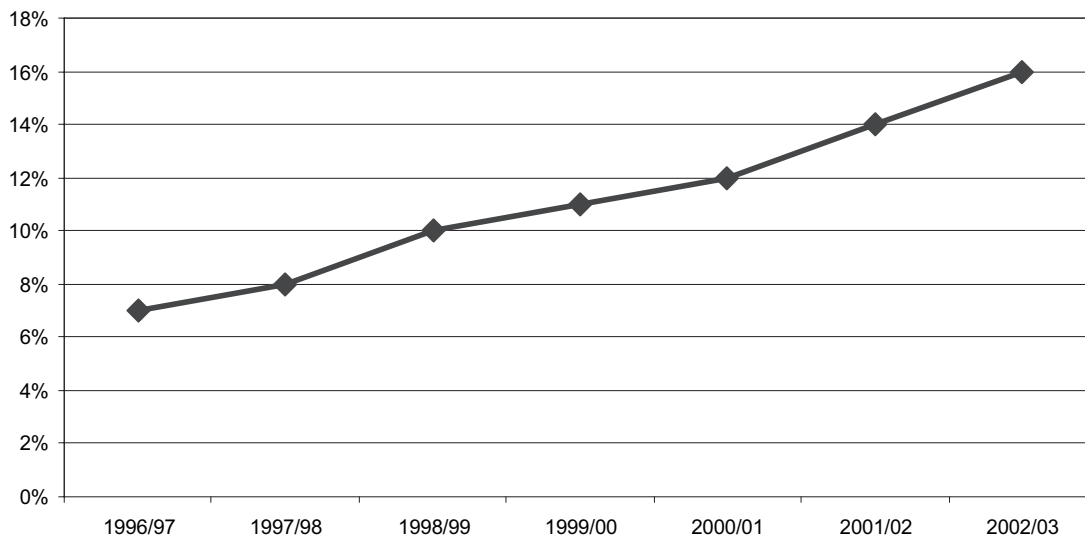
MUNICIPAL WASTE RECYCLING AND LANDFILLING IN ENGLAND

DATA FROM DEFRA MUNICIPAL WASTE MANAGEMENT SURVEYS

**Proportion of municipal waste landfilled (England)
1996/97 - 2002/03**



**Proportion of municipal waste recycled (England)
1996/97 - 2002/03**



APPENDIX 2

WRAP ACHIEVEMENTS REPORT 2004

TONNAGE—SUMMARY OF TONNAGE FROM ACTIONS 2001–04

<i>Material Stream</i>	<i>Tonnes</i>
Glass	864,242
Paper	378,070
Wood	577,501
Plastics	84,756
Aggregates	1,251,200
Organics	578,950
TOTALS	3,734,719

STATUS OF TONNAGE FROM ACTIONS 2001–04

<i>Completed and operational</i>	<i>Under construction or otherwise committed</i>	<i>In delivery</i>	<i>TOTAL</i>
954,449	737,200	2,043,070	3,734,719

APPENDIX 3

WRAP ACHIEVEMENTS REPORT 2004

PRIVATE INVESTMENT LEVERAGE

<i>Project</i>	<i>Tonnage /Year</i>	<i>WRAP Expenditure</i>	<i>Private Funding Leveraged</i>	<i>WRAP £ / Tonne over 10 years</i>	<i>Private Investment for each WRAP £1</i>
Shotton Paper Mill (Paper)	321,000	£17,203,760	£111,000,000	£5.36	£6.45
JFC Delleve (Plastics)	20,000	£1,150,000	£2,000,000	£5.75	£1.74
A W Jenkinson (Wood)	60,000	£120,000	£258,000	£0.20	£2.15
G I Hadfield & Son Ltd (Wood)	40,000	£500,000	£1,017,000	£1.25	£2.03
3 Organics Projects	35,000	£91,600	£519,200	£0.26	£5.67
16 Aggregates Projects	980,000	£2,413,000	£6,039,291	£0.25	£2.50
TOTAL	1,456,000	£21,478,360	£120,833,491	£1.51	£5.63

9 November 2004

Memorandum submitted by the Green Alliance (X28)

Green Alliance has been examining waste policy and practice since 1997. In 2002 we published *Creative Policy Packages for Waste: Lessons for the UK*⁷⁵ which reported on how other countries had gone about implementing radical waste strategies. We concluded that the UK has struggled to improve recycling rates, and has not made much impression on waste prevention, because it has failed to set ambitious targets, and, apart from the landfill tax, has not deployed sufficiently effective instruments.

We are currently examining the potential to move from producer responsibility to integrated product policy. Emerging from this work are some important lessons on how we can link traditional waste management policy and its focus on end of pipe disposal to a more ambitious desire to move to sustainable resource use. In our view, the Government should set an explicit goal of achieving a “closed

⁷⁵ Available for free download from the Green Alliance website at: http://www.greenalliance.org.uk/ourwork/CreativeWasteProject_page80.aspx

loop” economy and put in place the instruments that will deliver it. Government interventions to date have tackled diverse parts of the problem, but have not amounted to a coherent, target-driven package that will achieve the necessary change.

We feel there are six priority areas that need to be addressed:

1. The year-on-year rise in landfill tax is helping to shift investment decisions, but it needs to be higher and faster to overcome industry feeling that recycling is still essentially an uneconomic activity. There should be a combined “disposal” tax that also applies to incineration, especially without energy recovery. The aim of this tax should be to make the price of waste management reflect the waste hierarchy—on its own, “internalising costs” is not necessarily enough to change behaviour, particularly if the economics don’t stack up.
2. We are still missing market development measures that would create a pull for recyclates, helping to “close the loop”. Current initiatives collect materials for reprocessing but don’t create sufficient incentive for them to be used in the manufacture of new products. This lack of pull has been, and will continue to be, a problem for the producer responsibility initiatives. Government procurement is potentially a powerful driver and must continue to improve and to lead. A broader variety of fiscal instruments should be examined as part of reviving the Government’s Green Tax agenda. Consideration of virgin materials taxes should be a priority to level the playing field for secondary materials.
3. Local authorities must be given the powers to introduce economic incentives for householders to reduce waste if they are to take waste as seriously as they need to. Introduction of economic incentives is a vital step in raising public awareness of waste and broader consumption issues. These should be enabling powers, not a requirement to implement schemes, and should only be used after good quality kerbside recycling facilities are already in place.
4. The UK must take a positive stance on the Energy Using Products Directive (EUP), because this could create the foundation of a future framework for genuinely integrated product policy (IPP). Having lagged behind on recycling performance, EUP and IPP are areas where the UK has the chance to take a lead. The Defra/DTI joint working on this Directive is to be welcomed, and action should be seen as giving the UK competitive advantage, as few other countries have yet recognised the challenge and opportunities the agenda presents.
5. Better enforcement is needed on waste issues—from flytipping to the “Essential Requirements” of the Packaging Directive. The latter gives Trading Standards Officers the powers to prosecute producers in cases of overpackaging, but are currently under-resourced and under-used.
6. We are still waiting for a policy follow-up to the Review of Environmental and Health Effects of Waste Management published by the Government in May 2004. The Government’s assertion that the health impacts of waste are “minimal” will be counter-intuitive for most people, and, given the Royal Society’s concerns about the quality of the data, the Government must make it very clear how this report is informing policy decisions.

November 2004

Memorandum submitted by the Non Ferrous Alliance (X29)

The Non Ferrous Alliance (NFA) represents the member federations for the aluminium, cobalt, copper, lead, magnesium, molybdenum, nickel, titanium, tungsten and zinc industries in the UK. The UK non-ferrous metals industry turnover is about £4.5 billion and it employs about 36,000 people in some 330 firms. A few of these are large national and international companies, but the majority are small or very small.

1. The Non Ferrous Alliance has been lobbying on behalf of the members on this issue for some time and would make the following comments.
2. The recent landfill legislation was brought in very late and clarity on the full details of the Landfill Regulations was not available until one month before the end of co-disposal.
3. NFA held several meetings with Defra and the Environment Agency and made numerous and sometimes detailed submissions which appeared to make little difference to the final outcome in the form of the Regulations. Indeed it was apparent that those attending meetings had not always read our submissions.
4. Clarity on the requirements for monolithic Waste Acceptance Criteria (WAC) are still not available.
5. The Government has decided not to take up the option for WAC risk assessment and this may well be crippling for our industry. EC Decision 2003/33/EC allows for a risk assessment approach which could

alleviate difficulties in waste management whilst alternatives to landfill come on stream. The Government (Defra) have decided that because it would be a strain on Environment Agency resources, the risk assessment will not be allowed for (only for monofill landfills which would not help those with relatively small waste volumes—which, even though small, will cause serious difficulties faced with no landfill option in the short term). We find it infuriating that a lack of resource can be used as a reason to “Goldplate” the legislation, particularly where operations could realistically close if alternatives are not found and the risk assessment not allowed. Waste producers with potentially homeless wastes must be allowed the flexibility to produce risk assessments and bear the costs if necessary.

6. The Government must reconsider their decision and we will continue to lobby for a further consultation on the risk assessment option—maybe when the monolithic WAC is finally consulted on.

7. Defra recognises that the metals recycling industry is part of the solution in terms of waste management, but has not been willing to make any concessions to allow this industry to continue to manage the irreducible minimum waste from the recycling process, whilst alternatives to landfill are found. For example, the lead-acid battery recycler in our membership will take up to 8.5 million batteries out of the waste stream each year. The process, by its very nature, will produce a relatively small amount of waste which must be managed. Without a risk assessment approach to landfill then this operation may not have a suitable management option for its waste post 16 July 2005. Instead of having a small amount of process waste to manage, the UK would have very large numbers of batteries to deal with—through trans-frontier shipment.

8. NFA are concerned that the issues relating to the end of co-disposal may currently be masked and there is still a substantial level of uncertainty regarding the continuity of landfill options for those wastes from our industry where alternatives to landfill are being sought but have not been secured.

9. In the immediate run up to the 16 July 2004 deadline, several critical issues arose which may be masking the impact of the end of co-disposal.

- (a) No mention had been made, of a potential for wastes classified as H12 to be banned from landfill, during any discussion with the Environment Agency (EA) or Defra over the 18 months prior to the end of co-disposal. However a ban was sought in a draft PPC Permit for a landfill operator. Although the original ban issued in the draft permit was modified to an improvement condition, this still came “out of the blue” and is not a requirement contained within the WAC. NFA understand that several landfill operators now have three months to demonstrate that their Waste Acceptance Procedures will adequately accommodate H12 classified wastes. NFA cannot therefore be sure that those wastes from our industry with a H12 classification will have a route for disposal after once their three months is up.
- (b) The decision was taken to allow those landfill operators, with undetermined applications for PPC permits to landfill hazardous wastes, to continue to landfill under Waste Management Licences (WML). This may alleviate concerns in the short term but NFA have no way of determining which of these landfill sites will be available once their permits have been issued. The conditions of their permits may increase the scarcity of options for wastes from the non-ferrous metals industry.
- (c) A major landfill operation was closed on the weekend of the end of co-disposal. The NFA understand that this was because the EA required additional information from the operator. This caused additional confusion and chaos during the transition. Although this operation is now re-opened the NFA are concerned that similar closures could severely impact on our businesses, particularly with the very small number of options now available.

10. For the primary aluminium industry, the lack of monolithic WAC is prohibitive in determining acceptability in landfill for spent pot lining (SPL) post July 2005.

11. Difficulties are also apparent when considering Planning Applications for waste management operations. Unreasonably long delays can be encountered and without the availability of treatment options or landfill options then operations could close.

12. On the wider issue of “Waste Policy”, we are concerned that a joined-up approach is not being taken on waste. The current definition of waste, for example, makes utilising by-products as alternative raw materials prohibitively expensive and bureaucratic. Indeed for the primary aluminium sector, a possible use of SPL as fuel in cement kilns is made almost impossible by the secondary fuels protocol—a problem not encountered in other member states.

13. For Trans-frontier Shipment of waste, the UK prohibits the transfer of wastes for disposal from the UK—not a requirement of the EU Directive. This restriction is again creating additional difficulties for UK industry when compared with those in other Member States.

14. When considering the numbers and variety of waste regulations, it is easy to see that individually the impact on industry may not seem so bad—but the cumulative effect of all the waste and other regulations is very arduous.

15. The implementation of important controls on waste management must be done with full consideration of the true costs and benefits both to the environment and industry.

16. Industry must be given suitable timescales for compliance.

12 November 2004

Memorandum submitted by Safety in Waste and Rubbish Disposal (SWARD) (X31)

I write on behalf of our residents group to give a community perspective on the effects of the landfill directive.

Since July 2004 our village, Bishop's Cleeve near Cheltenham in Gloucestershire has been home to one of the few remaining hazardous waste sites in the UK. We also have three other landfill sites handling wastes ranging from household to non-hazardous along the same country lane.

We already receive 50% of the hazardous incinerator residues landfilled in the UK. The impact of the directive means that the company will now increase the quantities it handles. As residents of substantial housing developments beginning just 300 metres from the site we are very unhappy about the *current* landfill activities. We anticipated that the sites would be restored by 2009 in accordance with the original planning permission. However, due to the high importance now attached to this "strategic" site and its commercial potential, we know that the operators intend to apply to continue for at least another 20 years. We also know how many incinerators are planned for construction and how this will impact upon our situation. We believe that a major debate into how we can reduce the need for incineration and safer methods of dealing with its residues is long overdue.

In addition to the air pollution control residues being brought here, and all of the associated risks, asbestos is now also disposed of here. We have grave fears about this. We have suffered two serious incidents in the last year: two tonnes of incinerator ash leaked as the result of a mechanical failure in May and a consignment of hazardous waste engulfed the village in chemical odours in September. This is in addition to the constant nuisance we experience from HGVs, dust, noise, flies and landfill odours.

We find that the Environment Agency is, by its own admission, not in a position to work proactively. We feel no confidence in the permitting process that was supposed to be a more stringent monitoring regime. We feel that IPPC is a process which will force our village and its residents to bear an even greater toxic burden and for an even longer timescale.

We wish the inquiry to take into consideration the impact of reducing the number of hazardous waste sites so drastically and yet without an evident strengthening of accountability.

14 December 2004

Memorandum submitted by Beyond Waste (X32)

By way of background, Beyond Waste is a dynamic company working at the cutting edge of rapidly evolving waste and resource management policy. We specialise in providing market reconnaissance and regulatory surveillance services to waste operators and producers and are particularly active within the hazardous waste field. Having been represented on DEFRA's Landfill Directive Implementation Group we became aware of the apparent lack of coherent engagement between the small number of operators of merchant hazardous waste landfills and Government. As a consequence we facilitated a meeting between the operators and Government and the Environment Agency on the ending of co-disposal. This grouping has gone on to become the Hazardous Waste Landfill Operators Forum.

We offer this submission in an attempt to cast some light on the question of the destination of hazardous waste, the answer to which appears to have eluded the Committee in its examination of witnesses. We would however give a caveat that the data used is based upon the best information available reinforced by market intelligence and professional judgement and so should not be regarded as definitive or absolute. Nevertheless we trust it will be of assistance in drawing conclusions for the inquiry report.

If we can provide any further clarification please do not hesitate to get in touch.

Alan Potter
Managing Director

WHERE HAS THE HAZARDOUS WASTE GONE?

SUMMARY

July 2004 saw the ending of the co-disposal of hazardous and non-hazardous wastes in the same landfill and the introduction of a wider definition of what constitutes “hazardous” waste for the purposes of landfilling. Commonly quoted estimates are derived from data held by the Environment Agency on movements of “Special Wastes” for disposal at commercial, “merchant” landfills in 2003 (or prior years) but do not include that waste disposed of to in-house facilities and the wastes disposed of to landfill that were not Special but are now hazardous resulting from a change in definition of hazardous for landfill disposals. Combining data from the Environment Agency and that provided to the Hazardous Waste Forum provides an estimate of some 3 million tonnes/year of hazardous waste requiring landfill. We believe this is perhaps high and a more reasonable estimate is circa 2.75 million tonnes in a *typical* year. Our estimate of the current quantities of hazardous waste being landfilled in dedicated hazardous waste landfill sites or dedicated areas of non-hazardous landfills is, on an annualised basis, 1.16 million tonnes.

While some of the difference between that quantity currently being disposed and that expected can be explained, perhaps 694,000 tonnes of hazardous waste is unaccounted for. We believe it is continuing to be disposed at non-hazardous landfills. This practice arises from a general lack of understanding of the true nature of wastes by waste producers but also may reflect a significant degree of illegal activities encouraged by the high financial rewards achievable.

The continued co-disposal of hazardous wastes with non-hazardous wastes if conducted in accordance with proper practice is not considered to pose an immediate risk to the environment in most situations; co-disposal was an acceptable practice up until a few months ago. However, the deliberate use of illegal practices may, if not stamped out, result in the undermining of the hazardous waste control system with the resultant increasing risk of harm to environmental and, potentially, public health.

The failure to achieve the ending of co-disposal for a large quantity of hazardous wastes has detrimental consequences for UK industry as a whole and does not provide a business climate encouraging the change in waste management practices required by the law. In particular, there has been an understandable reluctance to invest in the required treatment capacity to meet new requirements for hazardous waste disposal that become effective in July—the much-publicised hazardous waste “crisis” of 2004 has therefore only been delayed for a year. If the illegal practices are to be clamped down, urgent action will be required to improve the current situation; this will require much more effective targeting of resources than has been witnessed to date.

1. HOW MUCH HAZARDOUS WASTE DESTINED FOR LANDFILL IS THERE?

Hazardous waste requiring disposal to landfill is made up of three elements:

- (i) Hazardous waste defined as “Special” under the 1996 “Special Waste Regulations” and *consigned* to commercially operated disposal sites remote from the production site (“merchant sites”). These are the quantities most understood and quoted by the Environment Agency (EA). For the year commencing April 2003 the quantity was 1,801 million tonnes of which 1.143 million tonnes arose from construction and demolition wastes (predominately soils and asbestos) and 91,000 tonnes were wastes that may be classed as hazardous liquids (oil/water mixtures, solvents).
- (ii) Hazardous waste defined as “Special” under the 1996 “Special Waste Regulations” and disposed at landfills within the curtilage of the waste producer for example, an “in-house” landfill operated by a chemical works. This quantity is less well understood but an EA report (reference 1) estimates the quantity at 0.5 million tonnes/year in 2001–02.
- (iii) *Newly* hazardous waste resulting from the widening definition of hazardous waste adopted by the EU in 2002, while not currently defined by Regulation in England and Wales it is banned from co-disposal with non-hazardous wastes under the Landfill Regulations of 2002 and 2003. The EA have produced detailed guidance (reference 3) on assessing wastes against this new definition. The consultancy Enviro working on behalf of the Hazardous Waste Forum estimated a quantity of 0.78 million tonnes/year (including 0.44 million tonnes/year of contaminated soils) of these *newly* hazardous wastes of which 0.75 may require landfill.

Combining the actual data from consigned Special Wastes (i) with the estimates of (ii) and (iii) gives a figure *c* 3 million tonnes/year of which 1.583 million tonnes is derived from construction and demolition wastes. Our view is that this figure seems high particularly with regard to “in-house” wastes and this view is supported by other evidence. *A more likely quantity of hazardous waste (Special plus newly hazardous wastes) requiring landfill is perhaps 2.75 million tonnes in a typical year.*⁷⁶

⁷⁶ The qualifier “typical” is important as the high proportion of wastes associated with construction and demolition operations may be significantly influenced by the occurrence (or not) in any one year of large land remediation projects. It is possible to get some feel for this from the applications to Customs and Excise for exemption for disposals to landfill from contaminated site clearance. This would capture disposals to hazardous and non-hazardous waste landfills of contaminated soil arisings.

Our estimate is derived as follows:

1.8	mT: consigned Special Waste data 2003
0.2	mT: in-house non-consigned ⁷⁷
0.75	mT: newly hazardous waste
2.75	mT

2. HOW MUCH HAZARDOUS WASTE IS CURRENTLY GOING TO LANDFILL LEGITIMATELY?

Our estimate of the current quantities of hazardous waste (Special and newly hazardous) being legitimately disposed to landfill is 1.16 million tonnes (on an annualised basis). This estimate includes disposal at:

- Operational Hazardous Waste Landfills (HWL) both in-house and merchant (either fully permitted, awaiting permitting, or appealing permit refusal).
- Operational Non-hazardous Waste Landfills with cells accepting only “stabilised non reactive hazardous wastes” either permitted or waiting permitting—merchant only.

And is made up of:

0.56	mT Permitted merchant HWL sites (final quarter 2004 data from the operators) ⁷⁸
0.2	mT Estimate of pending or refused permit HWL sites
0.2	mT Estimate of in-house deposits
0.2	mT Estimate of stabilised non- reactive wastes
1.16	mT ⁷⁹

This would suggest that there is on an annualised basis in excess of one and a half million tonnes of hazardous waste “missing” and which require accounting for.

3. ACCOUNTING FOR THE “MISSING” WASTE

3.1 2004 was not a “typical” year

Prior to the ending of co-disposal there was a surge in the disposal of Special Wastes arising from the construction industry as developers and demolition companies attempted to clear sites to beat the mid-July deadline and in effect brought forward work. It has not so far been possible to ascertain the quantity of extra Special Waste from these sources deposited above the norm in the first half of 2004 but finite capacity exists both for the removal of such wastes from the site of production and for their disposal at landfills due to constraints imposed by available plant/equipment/staff/haulage vehicles and licence/planning restrictions on receiving landfills. Under these circumstances and using the 2003 “consigned” data as a start point, assuming half the work intended for the latter half of 2004 was brought forward suggests an additional 244,000 tonnes⁸⁰ were deposited prior to the ending of co-disposal leaving a further 244,000 tonnes for disposal in the latter part half of 2004.⁸¹ Disposal of such waste has continued, albeit at a reduced level since the ending of co-disposal, reflecting the ongoing brownfield redevelopment.

On an annualised basis therefore, changes in the timing of waste generation associated with construction and demolition activities may account for an annualised shortfall in hazardous waste going to landfill of 488,000 tonnes post July 2004.⁸²

3.2 Waste is being held back pending market stabilisation

While generally waste producers do not have the capacity to store large amounts of wastes some industries, in particular those associated with metallurgical processes (eg steel manufacture) do have the ability to store large quantities of wastes to await either recovery or simply as a means of delaying costs. Market intelligence shows that much of the stored waste is *newly* hazardous. However the quantities involved are likely to be less than (an annualised) 100,000 tonnes. An inquiry of the Environment Agency

⁷⁷ The Hazardous Waste Forum Treatment and Capacity Task Force Final Draft Status Report (reference 2) suggests in-house landfill capacity is 0.4 million tonnes but likely to be underutilised (p 10) and a 2000 EA capacity database estimate gives a figure of 0.388 million tonnes of Special Waste disposed of to restricted user landfill sites.

⁷⁸ Based on survey of operators.

⁷⁹ This is in line with the Hazardous Waste Forum Treatment and Capacity Task Force report (reference 2) which suggests (p 3) input at June 2004 was around 1.1 million tonnes (Fig 7).

⁸⁰ Based on 1.143 million tonnes of construction and demolition wastes for disposal (as 2003) The season for the major part of such work is April to October averaging 163,000 tonnes/month, in the three months August to September 2004 we therefore would expect in a typical year 489,000 tonnes for disposal (3 × 163,00 tonnes).

⁸¹ Hazardous Waste Forum report (reference 2) states “we have seen a significant increase (–45%) in contaminated soils disposed to landfill, for the first half of this year compared to the same period in 2003.” (p 22).

⁸² With respect to non-construction/demolition waste from manufacturing and service industries there was little evidence of significant clearance of stocks prior to July 2004. These industries are regular, ongoing producers of wastes and stocks of waste are generally kept low due to space and legal constraints. It is unlikely that 2004 was materially different from 2003 with respect to the timing of waste disposal.

might reveal whether producers are seeking licences to store significant quantities of waste. On an annualised basis we believe that no more than 100,000 tonnes of predominately *newly* hazardous waste is in storage awaiting recovery or future disposal.

3.3 Reduction in hazardous waste generation: minimisation

It is difficult to identify significant genuine waste minimisation effort that has occurred in 2004 as opposed to say 2002 or 2003. Some wastes formerly landfilled are now being recycled/recovered for instance, as replacement raw materials for cement manufacture, but conversely the growth of incineration capacity for municipal wastes, improvements in pollution control practices required for existing incinerators (clinical, municipal, chemical and sewage) are actually increasing the quantities of Special Wastes being produced. All told it is unlikely that arisings of non-construction/demolition Special Wastes have fallen more than 10%⁸³ and quite possibly not at all.

Assuming a 10% fall from the 2003 quantities of consigned non-construction/demolition wastes suggests the quantity of such wastes for landfill may have fallen by 60,800 tonnes on an annualised basis.

3.4 Reduction in hazardous waste generation: reclassification

Given that the movement of Special Waste between a production site and its disposal point (where separated by a road)⁸⁴ without a consignment note is illegal it has long been the practice by some waste producers with complex or variable waste streams to consign what are technically non-Special wastes as Special on a precautionary basis. The scale of this is unknown but our belief is that it is probably not significant and as such the scope for the *legal* reclassification of previously “precautionary” Special Wastes into non-Special/hazardous wastes is very limited. The oft stated remark, particularly associated with contaminated soils, that the producer consigned as Special “just in case” is perhaps fanciful as in doing so the producer could incur significant additional costs.⁸⁵ In practice producers took a precautionary approach because the sampling and testing of wastes is difficult and that the rules determining whether a waste was Special or not are technically complex. If there were a real prospect of being caught for misdescribing waste it could be argued that a prudent waste producer would actually now be *more* likely to take a precautionary approach. All told it is hard to account for a significant reduction in hazardous wastes quantities through the *legal* reclassification of wastes.

3.5 Treatment of hazardous wastes to produce non-hazardous wastes

Hazardous wastes deposited at landfill prior to July 2004 were solids and capacity for the treatment of such wastes in the UK is limited. Waste treatment facilities that do exist are mostly dealing with hazardous *liquid* wastes that were not being landfilled.⁸⁶ Such facilities are themselves potentially significant producers of newly hazardous wastes for landfill. On this basis it is not reasonable to account for a *genuine* significant reduction in hazardous waste quantities for landfill due to treatment.

3.6 Newly hazardous wastes

The more stringent definition of hazardous was forecast (reference 4) to generate an additional 780,000 tonnes of hazardous waste per year. Of this it has been estimated that 746,000 tonnes may require disposal to landfill.⁸⁷ For that portion of these *newly* hazardous wastes associated with construction and demolition activities it could be assumed that, as with the Special Wastes from these sources, the period prior to July 2004 saw a bringing forward of work. Employing the same assumptions as previously and bringing forward 50% of this work would result in a post July reduction of some 134,000 tonnes (on an annualised basis).

For *newly* hazardous wastes derived from non-construction/demolition sources it is likely that the 2003 quantity estimate of these wastes is still reasonable albeit with some allowance needed due to the shrinking of UK manufacturing industry output and perhaps some waste minimisation efforts. We would suggest a

⁸³ This figure is borne out by analysis of sector returns under the Pollution Inventory, which shows an annualised percentage reduction of Special Waste going to landfill of 10% across 2001 and 2002.

⁸⁴ It is not necessary to complete consignment notes for movements between a production site (say treatment plant) and landfill if they are adjacent. Table 4 of the Hazardous Waste Forum Treatment and Capacity Task Force report (reference 2) identifies four landfill sites as having treatment capacity adjacent, movements from which may not be recorded as Special Waste consignments. This could represent a significant gap in the Special Waste to landfill disposal data.

⁸⁵ The contradictory nature of these claims is recognised in the Hazardous Waste Forum Treatment and Capacity Task Force report (reference 2) p 21.

⁸⁶ Table 4 of the Hazardous Waste Forum Treatment and Capacity Task Force Final Draft Status Report confirms this.

⁸⁷ Note that this forecast was derived from extrapolation of quantities consigned for disposal in 2001–02 and overlooked wastes disposed in-house.

10% fall from initial estimates ie 24,000 tonnes on an annualised basis; however in reality the unknown quantities of *newly* hazardous waste being dealt with by in-house landfills may more than offset this reduction.

Thus we estimate, at best, that *newly* hazardous waste requiring disposal may be some 158,000 tonnes below initial forecasts.

4. THE BALANCE SHEET

The table below illustrates a balance sheet based on our estimates of the current position with regard to hazardous waste being landfilled, that originally expected and that portion of the difference between these two values we can account for. We are unable to account for **694,000 tonnes of hazardous wastes**. If the higher EA/consultancy estimates of the expected quantity of hazardous wastes are used then unaccounted for hazardous wastes is in excess of 1 million tonnes. **This quantity of waste has not simply “gone away”**.

BALANCE SHEET

	<i>Million tonnes/year</i>
Expected quantity of hazardous wastes for landfill:	2.75 ⁸⁸
Ending of hazardous liquid disposal to landfill	(0.09)
Current inputs of hazardous wastes to landfill	(1.16)
Early disposal of construction and demolition wastes	(0.488)
Storage of wastes	(0.1)
Waste minimisation: Special Wastes	(0.060)
Revised estimate arisings—newly hazardous wastes	(0.158)
To be accounted for waste	0.694

5. THE UNACCOUNTED FOR WASTE

The predominant source of unaccounted for hazardous waste is likely to be the continued co-disposal of *newly* hazardous wastes through misdescription (through ignorance of their true nature). This results from a historically poor degree of waste characterisation (sampling and analyses) and a genuine lack of understanding by waste producers of what is required. There is unfortunately little incentive on waste producers to undertake the required degree of waste characterisation as this is expensive and if a waste is found to be *newly* hazardous this will result in higher disposal costs.⁸⁹

While the “Duty of Care” requires that producers accurately describe their wastes this is a duty not well understood by many, indeed full compliance with the requirements has been recently estimated at below 5% (reference 5). Waste management companies, both treatment and landfill operators, may also suffer from the same difficulties in understanding the new requirements and also may be disinclined to look too closely at wastes as discovering a waste is *newly* hazardous may prevent them accepting the wastes (and gaining the associated revenues). While legal sanctions exist for the misdescription of waste and the disposal of hazardous waste at non-hazardous landfills, to date there is little evidence to suggest that the EA has undertaken a rigorous programme of inspection and sampling. Their current efforts appear to be more directed towards the regulation of the permitted hazardous waste landfills and in identifying those producers whose declared consigned waste outputs have fallen. It is also unfortunately the case that some EA officers themselves seem to be unclear on what is required under the new regulatory regime and there are examples of inconsistency between applying the requirements and the advice offered by EA staff for example over the treatment of “absolute” hazardous wastes.

While “ignorance” of the new requirements is significant there may have also been an increase in the practice of describing hazardous wastes as non-hazardous. We believe there has always been a degree of this but the significantly higher costs resulting from the ending co-disposal and low risk of detection imply that the risk/reward balance has shifted to encourage operators engaging in such practices. Describing a skip containing a mixture of hazardous waste and non-hazardous waste as non-hazardous could save £500, similarly misdescribing a lorry load of drummed wastes may save £1,600 and many, many such skips/loads are disposed of each day.

⁸⁸ 1.8 million tonnes Special Waste movements data, 0.2 million tonnes intended in house, 0.75 million tonnes newly hazardous waste (Enviros, reference 4).

⁸⁹ This is borne out by the statement in the Hazardous Waste Forum Treatment and Capacity Task Force Final Draft Status Report (reference 2) “The definition with regard to landfilling of waste changed in July 2002 as a result of the Landfill Regulations 2002 (ie landfills should have been accepting hazardous waste after that date), however it is considered that this change was not reflected in the wastes consigned to landfill” (p 16). This lack of rigour is attributed to the continuation of co-disposal sites (p 21).

Misdescribing wastes may involve:

- Withholding information on waste components and their hazards.
- Mixing of hazardous waste with non-hazardous (a practice expressly prohibited by the Directive) and describing the resultant waste as “non-hazardous”.
- Failure to undertake adequate assessment of a waste—assuming a waste is “non-hazardous” without justification.

All of which allow the disposal of hazardous wastes at non-hazardous landfills without attracting the public or regulatory attention associated with “fly-tipping”.

6. WHAT DOES ALL THIS MEAN?

6.1 *To the Environment*

The UK has for many years co-disposed wastes without significant instances of damage to the environment and while the continuation of co-disposal “in ignorance” is wrong it is unlikely to result in risks to the environment above those acceptable a few months ago. There is however a risk that once the deliberate misdescription of wastes becomes established, driven by the significantly higher rewards available, greater quantities of more and more hazardous wastes will be diverted from legitimate routes.

6.2 *To UK industry*

Those waste producers and waste management companies correctly disposing of wastes are at a commercial disadvantage to less scrupulous competitors and in practice **the non-polluter pays** and the waste management market becomes distorted. With reliance on the provision of waste management facilities being dictated by the market this is a matter of great concern.

6.3 *To the Advancement of Waste Management:*

July 2005 sees further restrictions on hazardous waste being landfilled; these will result in significantly higher costs and hence greater incentives to find ways to avoid the full compliance costs. This prospect discourages the provision of new treatment facilities to ensure wastes are treated to meet the new standards—a provision of facilities already beset by difficulties in establishing what quantities of which wastes actually require treatment.

7. CLOSING REMARKS AND SOME RECOMMENDATIONS

To move the current position forward it needs to be recognised that:

- There is significant uncertainty of the total quantity of hazardous wastes that requires to be dealt with and their current fate, this is particularly so with regard to the *newly* hazardous wastes. Lack of knowledge of the true quantity of hazardous wastes and their characteristics works against the timely planning and construction of new treatment facilities by waste producers or waste management companies.
- On a conservative estimate perhaps 694,000 tonnes (on an annualised basis) of hazardous wastes are still being co-disposed despite the banning of this practice in July 2004. This waste has not just simply gone away.
- There is widespread ignorance of and confusion about, the new requirements and of the true characteristics of wastes and that reliance on the “Duty of Care” to resolve these issues is not sufficient.
- Higher costs are a driver for a significantly higher level of environmental crime whether it is a failure to describe wastes correctly or the misdescription of wastes.
- The imminent tightening of requirements concerning the landfilling of wastes at hazardous waste landfills will create significant difficulties for the country for which there is no legally compliant quick solution.

It is therefore recommended that:

- The EA simplifies current technical guidance on characterising wastes and in particular, defining hazardous waste and this information be widely and quickly disseminated to waste producers, waste management companies and within its own organisation.
- The EA significantly increases its efforts with regard to detecting failures of companies to meet the existing “Duty of Care” requirements and in detecting those who deliberately set out to break the law for financial gain. Wrongdoers should face a genuine fear of being caught.
- The EA clarifies whether wastes identified as absolute entries as hazardous on the EWC can in fact be transformed into non-hazardous waste and if so how far such treatment needs to go.

- DEFRA recognises that the EA is under-resourced both in staff number and skills to meet the challenges of the new hazardous waste legislative regime.
- DEFRA recognises that the capacity “crisis” averted in 2004 through a limited number of companies investing in specialist landfills has only been postponed. A robust contingency plan is required. This may involve a limited time delay in implementation to allow data to be gathered and suitable treatment facilities constructed.
- The Hazardous Waste Forum be activated again with representation from the key players in the hazardous waste landfill and treatment market fully engaged.
- DEFRA considers modifying proposals for the tracking arrangements for hazardous waste so that waste is properly accounted for from cradle to grave.

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