



13 October 2009

CONSULTATION ON A STRATEGY FOR HAZARDOUS WASTE MANAGEMENT IN ENGLAND

INTRODUCTION

1. The UK Environmental Law Association (**UKELA**) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study and formulation of environmental law in the UK and the European Union. UKELA attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the Waste Working Party.
3. UKELA makes the following comments on DEFRA's Consultation on a Strategy for Hazardous Waste Management in England.

GENERAL COMMENTS

4. UKELA notes that industry has, in many areas, delayed making investment decisions because of uncertainty in the interpretation of the Hazardous Waste Regulations and the frequent changes to hazardous waste guidance over the past few years. An example of a current issue facing industry is that of deciding whether or not incinerator bottom ash constitutes hazardous waste, which has serious implications for the Waste to Energy sector and in turn affects Government strategy. In order for industry to move forwards in the manner the Government intends, some certainty is needed to fall out of the Strategy for Hazardous Waste Management in England, and UKELA remains to be convinced that the Strategy will provide this certainty.

QUESTION 1: DO YOU SUPPORT PRINCIPLE 1? IF NOT PLEASE EXPLAIN, AND WHAT CHANGES, IF ANY, YOU THINK ARE NEEDED.

5. UKELA supports the principle that hazardous waste should be managed in accordance with the EU waste hierarchy. However, the statement on page 10 of the consultation document that "*Prevention includes measures that reduce the adverse impact of hazardous waste on the environment and human health and reduce the content of harmful substances in materials and products*" should be amended to fully reflect the definition of "prevention" in Article 3(12) of the EU Waste Framework Directive 2008/98/EC:

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“prevention’ means measures taken before a substance, material or product has become waste, that reduce:

- (a) the quantity of waste, including through the re-use of products or the extension of the life span of products;*
- (b) the adverse impacts of the generated waste on the environment and human health; or*
- (c) the content of harmful substances in materials and products;”*

6. The statement on page 10 contains no mention of reducing the quantity of waste, or of the fact that the measures must be taken before the substance, material or product becomes waste.

QUESTION 2: DO YOU SUPPORT PRINCIPLE 2? IF NOT PLEASE EXPLAIN, AND WHAT CHANGES, IF ANY DO YOU THINK ARE NEEDED.

7. While the market will ultimately provide the solution it will need the support of Government and the public sector generally to deliver such significant infrastructure. Market investment requires clear signals of Government support. Therefore it is important that this principle specifically includes a statement of the Government’s (and its agencies’) intent to support the achievement of the objective of delivering the necessary new infrastructure. A particular concern is that while a hazardous waste NPS may eventually assist in streamlining the consenting process for larger facilities, the planning system is not fit for purpose for smaller facilities. This could impact, in particular, in achieving the proximity objective.

QUESTION 2A: DO YOU AGREE THAT THE NEEDS FOR HAZARDOUS WASTE INFRASTRUCTURE IN ENGLAND IDENTIFIED IN WASTE STRATEGY 2007 AT ANNEX 1 CONTINUE TO EXIST AND IF NOT, HOW SHOULD THEY BE AMENDED?

8. UKELA is surprised that DEFRA is asking this question. It is apparent from Annex I to the Waste Strategy 2007 what hazardous waste infrastructure existed in England in 2007 and DEFRA should be able to identify what new infrastructure has been consented and constructed since then. While it is for the market (with Government support) to deliver such infrastructure as may be required, it is for DEFRA to set the policies that determine what the need for that infrastructure is.

QUESTION 3: DO YOU SUPPORT PRINCIPLE 3? IF NOT PLEASE EXPLAIN, AND WHAT CHANGES, IF ANY, YOU THINK ARE NEEDED.

9. UKELA suggests that it would be helpful to expand on this principle by giving some examples of situations where, overall, there is no better recovery or disposal option for hazardous waste, such as the disposal of asbestos.

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QUESTION 4: DO YOU SUPPORT PRINCIPLE 4? IF NOT PLEASE EXPLAIN, AND WHAT CHANGES, IF ANY, YOU THINK ARE NEEDED.

10. The principle of controlling the mixing and dilution of hazardous waste through Environmental Permits is appropriate. Care needs to be taken to ensure that its implementation does not result in the stifling of appropriately-controlled hazardous waste treatment with the risk of inadvertently encouraging inappropriate or illegal disposal.

QUESTION 5: DO YOU SUPPORT PRINCIPLE 5? IF NOT PLEASE EXPLAIN, AND WHAT CHANGES, IF ANY, YOU THINK ARE NEEDED.

11. Yes.

QUESTION 6: DO YOU SUPPORT PRINCIPLE 6? IF NOT PLEASE EXPLAIN, AND WHAT CHANGES, IF ANY, YOU THINK ARE NEEDED.

12. Yes. However, UKELA would urge DEFRA to move forward and set out the timetable for the phasing out of the derogations in order to provide legal certainty to operators who need to make investment decisions to achieve full compliance with WAC.

QUESTION 7: DO YOU SUPPORT PRINCIPLE 7? IF NOT PLEASE EXPLAIN, AND WHAT CHANGES, IF ANY, YOU THINK ARE NEEDED.

13. Yes. It goes without saying that the treatment of hazardous waste for landfill must comply with all the requirements of the revised Waste Framework Directive.

QUESTION 8: DO YOU THINK THAT THE DECISION TREES SUPPORT (A) THE PRINCIPLES OF THE STRATEGY FOR HAZARDOUS WASTE MANAGEMENT IN ENGLAND AND (B) THE REVISED WASTE FRAMEWORK DIRECTIVE HIERARCHY?

14. Yes. The decision trees appear to reflect the Principles and the revised Waste Framework Directive hierarchy.

QUESTION 9: THE REVISED WASTE FRAMEWORK DIRECTIVE REQUIRES WASTE PRODUCERS TO CONSIDER THE HIERARCHY WHEN CONSIDERING THE MANAGEMENT OF THEIR WASTE. DO YOU THINK THE DECISION TREES WILL AID YOU IN THIS RESPECT?

15. Yes. The decision trees follow the hierarchy correctly.

QUESTION 10: ARE THE DECISION TREES EASY TO FOLLOW OR IS MORE CLARITY NEEDED?

16. UKELA suggests that some commentary and guidance notes on the decision trees would assist those seeking to apply them in practice.

QUESTION 11: VARIOUS GENERIC WASTE PROCESSES HAVE BEEN CONSIDERED IN THE DECISION TREES. ARE THESE THE RIGHT PROCESSES? HAVE ANY SIGNIFICANT PROCESSES BEEN MISSED?

17. UKELA has no comments on this question.

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QUESTION 12: ARE YOU AWARE OF ANY WASTE STREAMS THAT WOULD NOT BE APPROPRIATE FOR THE DECISION TREES? ARE YOU ABLE TO DESCRIBE WASTE STREAMS AND PROVIDE ESTIMATED QUANTITIES?

18. UKELA has no comments on this question.

QUESTION 13: HOW DO YOU THINK WASTE STREAMS THAT ARE NOT APPROPRIATE FOR THE DECISION TREES SHOULD BE MANAGED?

19. UKELA has no comments on this question.

QUESTION 14: DO YOU THINK THAT A DEFINITION OF 'ORGANIC' AND 'INORGANIC' IS NEEDED, AND IF SO HOW DO YOU THINK THIS SHOULD BE DEFINED?

20. Yes. The distinction between 'organic' and 'inorganic' waste is not at all clear from the consultation document. UKELA notes that paragraphs 51 and 55 of the consultation document refer to the importance of distinguishing between organic and inorganic waste and mention that guidance may be considered helpful. The definition of 'organic waste' could be based on the definition of 'biodegradable waste' in the EU Landfill Directive, for example "*any waste that is capable of undergoing anaerobic or aerobic decomposition*".

QUESTION 15: DO YOU THINK ADDITIONAL GUIDANCE FOR USE OF THE DECISION TREES IS REQUIRED? SHOULD THIS GUIDANCE BE BASED AROUND WASTE STREAMS?

21. Yes. Please see response to Question 10.

QUESTION 16: DO YOU SUPPORT THIS TIMELINE FOR IMPLEMENTATION?

22. Yes.

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