

## **Consultation Response – Proposal for a Directive of the European Parliament**

This response is sent on behalf of the National Association of Waste Disposal Officers, NAWDO. NAWDO is the primary network for senior waste managers in unitary and upper tier local authorities and is an association of approaching 100 Waste Disposal Authorities across England and Wales.

NAWDO broadly supports the aims and objectives of the revision of the Waste Framework Directive. NAWDO also supports the aim of simplifying the legal framework for wastes management. Clearer definitions should help to facilitate a change in emphasis from management of wastes to management of resources. Thanks to legislation stemming from the 1975 WFD (75/442/EEC), wastes are now generally dealt with without significant risk to public health or to the local environment. It is therefore appropriate to consider wastes management now more in relation to wider environmental effects, especially global warming and the management of soils.

Our responses to the questions in the consultation paper are as follows:

### **Q1 (Do you consider that Article 1 fulfils the Commission’s intentions?)**

NAWDO considers that Article 1, at best, only partly fulfils the Commission’s intentions and it is open to interpretation in different ways by individual member states. It should be made more specific with respect to timing and definition and strengthened by making direct reference to subsequent Articles where these reinforce the objectives of the Council (e.g. Article 7). However, the greater emphasis on Life Cycle Assessment (LCA) as against the strictly interpreted waste hierarchy probably gives more scope to develop practical, cost-effective and environmentally sound solutions for waste management.

### **Q2 (What are views on the revisions to the list of wastes excluded from Article 2 proposed by the Commission?)**

The proposed list of excluded wastes appears to be logical and necessary for the avoidance of duplication where other legislation already applies, and unnecessary bureaucracy where no change is indicated in the management of non-hazardous resources (agricultural production or biomass) or unexcavated contaminated soil.

To “other community legislation” could be added “other national legislation” where the level of environmental protection and other environmental outcomes are better than that specified in community legislation. The article could be re-written to allow for specific exclusions on this basis whilst achieving the original objective of reducing duplication. Other than this, we can recommend no additions or deletions. We are not qualified to pronounce on the management of decommissioned explosives.

**Q3 (what are views on proposed revisions to the list of terms defined in Article 3?)**

The definition of “re-use” is, indeed, problematical and the proposed changed definition is not an improvement on the definition given in the Packaging and Packaging Waste Directive: re-use for the same purpose for which it was conceived regardless of whether materials have been designated as waste in the mean time. It could be difficult to determine whether an article of clothing donated to a charity shop, or other goods (or even money) given for charitable purposes, is waste. The definition of re-usable packaging described in the consultation document is another instance where the proposed new definition of “re-use” does not help.

“Treatment” should include for the separation of wastes for recovery or disposal.

**Q4 (views on the definition of “recovery” proposed in Article 5)**

The draft Article 5 doesn't state that member states would be required to ensure that all waste undergoes waste recovery operations, merely to ensure that all wastes undergo operations that result in it serving a useful purpose . . . We would add “wherever practicable”. This should be formulated in such a way that recovery doesn't take precedence over recycling and re-use, or when disposal is, in fact, the least environmentally damaging option, as would probably be the case for asbestos. The distance that waste has to be transported to a facility for recovery may also determine “practicality”

The substitution of resources should be the main, if not the sole, criterion in the classification of an operation as a recovery operation. On occasion, products made from recovered material may have technical advantages over products made from primary raw materials, in which case simple “substitution” may not be a rigorous enough definition of what has taken place.

Moreover, “Resources” must explicitly include fuel and energy. It is important that this is understood as the substitution of resources in the economy as a whole (as opposed to substitution in a specific plant).

To rely on comitology to determine efficiency criteria for deciding whether operations are waste disposal operations or recovery operations would remove this aspect of waste policy from direct democratic control. On the other hand, to rely on elected representatives to decide what these criteria should be could lead to the process being unnecessarily long-winded and inefficient when some decisions may be made on primarily technical grounds. Criteria should be set not only to encourage the development of new plant that is highly efficient, but also to encourage a wider emphasis on developing processes involving the treatment of residual waste for recovery that meet local needs. The best approach may be to allow a compromise whereby there would be an initial review of efficiency criteria, and then periodic further reviews, that are subject to the political processes. However terms of reference could be agreed for comitology to be used to determine efficiency criteria in between formal reviews, under an agreed framework for decision making. A lower efficiency hurdle than proposed may be appropriate where source separated material

is used to generate energy and plant otherwise meets environmental criteria. “Source separated” could, initially, include mixed wastes from which an appreciable proportion, say 30% or more, has been removed at source for recycling and composting. We anticipate that standards for “source separation” may be raised in time as well as efficiency.

Technically, it is possible that comitology by itself may produce lower environmental standards (overall) than solutions based on national or local processes.

**Q5 (views on the definition of “disposal” proposed in Article 6)**

NAWDO believes that the definition of “disposal” in the proposed revision (Annex I) is too broad and the definition of “recovery” too narrow. Whenever possible, the Directive should enable incineration, treatment of contaminated land and Mechanical Biological Treatment leading to the production of a stabilised biowaste material to be accounted as “recovery” and not disposal. This means allowing existing energy recovery operations to be defined as “recovery” (whilst raising the efficiency threshold for new plant), and the same in respect of remediated soils and biowaste from residual municipal waste (where they can be specified as “fit for purpose” for substituting for other soil-making materials in applications such as landscaping and treatment of contaminated land).

**Q6 (views on the revision of the “polluter pays” principle proposed in Article 9)**

We consider that the “polluter pays” principle should be retained in the revised Directive, although it should be extended to include all of the environmental liabilities entailed by disposal or treatment of the waste. It would also be reasonable to extend “polluter pays” to waste recovery operations.

The application should be limited to “anyone whose activities produce waste” because to extend it to “the producer of the products from which the waste came” would add complexity to the interpretation of regulations without gain in environmental benefit. “Producer responsibility” should, separately (through targeted legislation aimed at specific waste streams), be retained for end-of-life treatment or disposal of products. Producers should not necessarily be held to be responsible for pollution resulting from the life-time consumption or use of materials or products. Economic instruments and market mechanisms will be more effective at reducing lifetime pollution.

**Q7 (Views on the proposed change from BATNEEC to BAT proposed in Article 10)**

NAWDO believes that BATNEEC (not BAT) should be the guiding principle for developing an adequate network of recovery and disposal operations. Raising output or efficiency standards required in order for new installations to be classified as “recovery” instead of “disposal” should be sufficient incentive to raise technological standards. BAT, rigidly applied, would add cost to wastes management without significant benefit at a time when waste management costs in the UK are already rising steeply. There are already sufficient choices in technologies and processes for markets, combined with appropriate economic and regulatory drivers, to determine which process should be selected. Communities and municipalities must be allowed to select technologies that are appropriate to enable them to meet their own needs.

**Q8 (views on the end of waste provisions proposed in Article 11)**

NAWDO considers the proposed changes to the “end of waste” provisions to be one of the most important proposed changes in the WFD. Potentially, these could send a strong signal about the change from wastes to resources within the economy. They should also remove barriers against the beneficial use of secondary resources in place of primary products, raw materials or fuel.

NAWDO agrees with the proposed conditions to be met for waste to be classified as a secondary product, material or substance, and would add that the development of markets will depend on the continuing development of both national standards and, in time, internationally recognized standards (CEN or ISO) that define “fit for purpose” for particular applications. The aim should be, wherever possible, to create a level playing field for products or fuels derived from wastes to be considered as alternatives to primary materials.

It is most important that the new WFD carries the clear intention of enabling secondary materials and fuels to be recycled within the economy whenever possible, and that the enabling provision proposed in Article 11 provides a clear mechanism for achieving this.

**Q9 (views on the repeal of the Hazardous Waste Directive and its incorporation into the revised WFD)**

Further clarification is needed about when collected (household) material becomes hazardous and whether mixed municipal waste will be classified as hazardous at any stage before treatment or disposal. NAWDO’s response to Q7 above refers in relation to BAT and BATNEEC. Subject to the above, NAWDO agrees with the proposal and considers that the derogation to the mixing ban should be continued.

**Q10 (views on the repeal of the Waste Oils Directive, in conformance with Articles 7, 18 and 38)**

NAWDO supports the proposal to repeal the requirement to give priority to the processing of mineral oils by regeneration, as opposed to recovery as a secondary fuel. The principal effect on local authorities and (small) businesses of the requirement to regenerate oils has been substantially to increase the cost of oil recovery by reducing the available markets, without bringing about a significant improvement in overall environmental outcomes. This is one instance where following the waste hierarchy inflexibly has not led to better waste management practice.

**Q11 (views on the proposal in Article 19(4) that all permits covering energy recovery should include a condition that energy recovery should take place with high efficiency)**

NAWDO would support a proposal requiring permits covering new installations to specify that a recovery operation should achieve high levels of efficiency. However it should not be a requirement that existing installations be re-permitted in order to

qualify as recovery operations. Where options exist for existing plant to be modified to operate at higher levels of efficiency (for example through retro-engineering to deliver steam for CHP as well as electricity), this should be supported, but this should not be made a requirement.

NAWDO also believes that a process of review should be instigated, so that the availability of improved technologies may be taken into account in implementing regulations in the longer term. Such a process of review might be similar in principle to that proposed in our response to Q4 above.

**Q12 (views on the proposal for EU-wide minimum standards for waste disposal and recovery operations)**

It seems reasonable for the Commission to set minimum standards for permits for waste disposal and recovery operations. It also seems reasonable for the floor standards initially to be subjected to the political process and not just determined by comitology. The setting of minimum standards would send a strong signal about what is acceptable in the EU, would improve consistency of approach and help the single market to operate better. The competent authorities in member states would still be expected to determine standards within their jurisdictions that would in most cases be higher standards than the minimum determined by the Commission and would take into account national or local conditions and risks.

This approach would not be expected to have a significant negative environmental or economic impact on businesses in the UK unless floor standards were set unnecessarily stringently. Because it would in some instances contribute to the development of markets for the efficient utilisation of wastes as secondary products and fuels, we imagine that it might have a positive impact on recovery and recycling targets in the UK.

**Q13 (views on proposed permit exemption provisions proposed in Articles 22-24)**

NAWDO would support the Government's view that exemptions are for low risk, and usually small scale, recycling and recovery operations and that these shouldn't be subject to BAT criteria. We are concerned that BAT could add to the bureaucratic burden and expense of small-scale installations (for example where waste is dealt with at the place of production) and community and voluntary sector operations, and could discourage this sector that has a significant part to play both in developing more sustainable resource management practices and in engaging communities. It is also important that small processes aren't "double-regulated" under both the WFD and the IPPC Directives.

**Q14 (views on registration provisions for professional collectors of waste as proposed in Article 25)**

Similarly to our view expressed in the answer to Q12 above, NAWDO believes that minimum EU standards are helpful, but that the floor standards should, initially, be subject to the democratic process. In general, the current provisions (e.g. standards set by the UK as a member state) are sufficient. Member states should be required to ensure that their national systems of waste collection and transport deliver waste to appropriate installations.

**Q15 (views on proposals in Articles 26-28 widening the scope of waste management planning requirements)**

More planning doesn't, by itself, deliver more sustainable waste management practices.

In the past, the planning system has not helped enough to develop the infrastructure needed to meet the challenges of the immediate and medium term future. The Government has introduced measures, including PPS10, intended to remedy this situation. However it will take many years for the culture of planning to adjust to what is required of it.

There is also a clear need for better information and business planning practices in wastes management, including delivery planning, for the better management of risk and monitoring of investment. However, from the point of view of local authorities, the monitoring and planning requirements attached to investing in wastes management (most notably through PFI) do appear to be excessively onerous. Increased costs would have to be borne through increased support from central Government.

It is not clear to us whether and how increasing planning requirements would contribute to fulfilling the revised WFD's objectives.

**Q16 (views on proposals in Articles 29-31 to require member states to draw up waste prevention programmes)**

The lack of policies and targets for effective waste prevention is one of the weaknesses in the current national waste strategy. A strengthened WFD in this respect is potentially helpful.

NAWDO believes that member states should be required to assess (and evaluate) all of the measures set out in Annex IV to the revised WFD. We understand that to assess does not necessarily mean to implement. The list of measures should provide an impetus to carry out systematic and thorough research into the effectiveness of as wide a range of measures, including economic instruments, as possible. Without effective waste minimisation strategies pursuing challenging targets and predicated on high quality information, it is less likely that the link between economic growth and the environmental impacts of waste will be broken.

On the whole, the lack of policies for waste prevention in the current UK National Waste Strategy and lack of instruments promoting waste prevention are seen as evidence that a more directive approach from the EU is needed to make progress. NAWDO hopes that the Government will meet these concerns in its current review of the Waste Strategy.

**Q17 (views on the proposal in Article 32(2) to require competent authorities to collect information about the origin and destination of all waste collected and transported)**

NAWDO supports this measure that will be very useful in improving the quality of information about waste flows. However increased powers and duties for the competent authorities will also entail additional costs, for which financial provision will have to be made available.

**Q18 (views on the proposal in Annex II to classify incineration facilities for municipal solid waste as waste recovery operations when they meet a specified energy efficiency threshold)**

NAWDO supports any measures that will promote the recovery of value from waste with the greatest possible efficiency. We would distinguish between energy efficiency thresholds applied to new installations and those applied to existing plant.

Both thresholds may be too high. For new installations, the criteria should allow for energy conversion plant to comply even where recovery of heat is not practicable. Other measures (for example the Renewables Obligation) may be used to promote CHP.

Initial proposed thresholds exclude nearly all the EfW Plant currently operating in the UK. Most or all existing installations should be able to be classified as recovery and not disposal. To do this would not increase pollution or reduce damaging outcomes, but it would send out a strong signal that local authorities and other organizations that invested early in sustainable technology for treating residual waste are not to be held at a disadvantage on account of their pro-active and often innovative approach.

Thresholds for new plant could be reviewed periodically to assess whether they should be raised in the future.

We believe that the practical implications for the UK of classifying most or all municipal waste incinerators as recovery operations would be an increased rate of development of municipal waste incineration, especially for CHP, potentially an increased generation of renewable energy, and increased impetus given to the development of efficient municipal waste incinerators. It would probably reduce the overall cost of achieving the targets for reducing landfill set by the Landfill Directive, particularly at 2009/10 and 2012/13.

In the public view this would also help establish the position of municipal waste incineration, and waste management as a whole, as being about resource management as opposed to waste management.

**Q19 (about subsidiarity and proportionality)**

**Q20 (does the revised WFD fulfil the objectives set by the Commission)**

We are not well qualified to pronounce on these questions, but the revised WFD appears to achieve these purposes.

Andrew Craig  
For NAWDO Policy & Advisory Committee

Tees Valley Joint Strategy Unit  
Melrose House  
Melrose Street  
Middlesbrough  
TS1 2XF

Tel. 01642 264830  
e-mail [andrew.craig@teesvalley-jsu.gov.uk](mailto:andrew.craig@teesvalley-jsu.gov.uk)