

House of Commons
Environment, Food and Rural Affairs
Committee

HAZARDOUS WASTE

**GOVERNMENT'S REPLY
to the Committee's Eighth Report of
Session 2001-02**

Eleventh Special Report
of Session 2001–02

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ELEVENTH SPECIAL REPORT

The Environment, Food and Rural Affairs Committee has agreed to the following Special Report:

HAZARDOUS WASTE: GOVERNMENT'S REPLY TO THE COMMITTEE'S EIGHTH REPORT OF SESSION 2001-02

The Environment, Food and Rural Affairs Committee reported to the House on *Hazardous Waste* in its Eighth Report of Session 2001-02, published on 26 July 2002 as HC 919. The Government's Reply to the Report was received on 25 September 2002 and is appended.

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APPENDIX

This reply to the Committee's report is submitted on behalf of the Government by the Department for Environment, Food and Rural Affairs. The response addresses the points as they are laid out in the report's conclusions and recommendations (report text shown in bold below).

The management of hazardous waste is complex, and the raft of legislative changes due over the next two to three years will mean significant changes. A comprehensive assessment of the issues, drivers for change, and way forward was provided in DEFRA's memorandum to the Committee. All these issues have previously been considered as part of the UK Waste Strategy, which itself is the subject of further study by the Cabinet Office Strategy Unit.

Waste Acceptance Criteria

a) This delay [in determining the Waste Acceptance Criteria] should not have occurred (paragraph 18).

b) We are concerned that landfill operators are required to make crucial decisions about the future designations of their sites without the Waste Acceptance Criteria having been agreed. We can only reiterate our previous recommendation, made in relation to the disposal of refrigerators, that in cases such as this, which require radical changes in the practices of an important industry, any new item of European legislation should not be agreed until all the practical implications of implementation are well-understood (paragraph 21).

We share the Committee's concerns and agree that determining the waste acceptance criteria (WAC) has taken far too long. The Government appreciates that the absence of agreed criteria at the European level, has caused uncertainty for some and made operators' decisions about the type of site to operate difficult, as well as possibly delaying decisions about investing in alternative treatment facilities. We argued that the Commission should allow sufficient time for Member States to implement the criteria in order to ensure that the necessary infrastructure is in place. The UK did all it could to drive the process forward and compensate for absence of agreed European WAC. The Landfill regulations have provided interim criteria; we led and funded much of the modelling work that is informing the criteria development; we have hosted meetings; and have emphasised to the Commission the importance we attach to securing criteria as soon as possible.

Despite the lack of agreed WAC, we note that the majority of landfill operators were able to submit site conditioning plans by the deadline of 16 July 2002. The Environment Agency have worked with the remainder to ensure their plans can be finalised as soon as possible.

DEFRA will continue to adhere to Cabinet Office guidance on Regulatory Impact Assessments for European proposals, which says that Departments should consider at the earliest possible stage how the proposed measure(s) will be implemented in the UK.

c) We recommend that the Minister takes this discussion forward and instigates a thorough review of the process by which environmental legislation is arrived at in the European Commission (paragraph 22).

While it is for the Commission to determine its own procedures, the Government has lobbied consistently and effectively for improvements to the drafting quality of European legislation across the board, and specifically in the field of the environment. A clear commitment has been secured from the Commission to improve the quality of environmental legislation. Through the 6th Environment Action Programme, adopted on the 11th June, the Commission undertakes to:

- * consult widely and extensively at all stages in the policy development process;
- * conduct a prior evaluation of the possible impacts of new policies including the alternative of no action;
- * appraise the effectiveness of existing measures in meeting their environmental objectives

Thanks to focused lobbying efforts from the UK Government and other Member States, we now also have a clear commitment from the Commission to improve the quality of future European regulatory activity across the board. The Commission's Action Plan on Simplifying and Improving the Regulatory Environment ('the Action Plan') was adopted on the 5th June 2002. It was accompanied by Communications on impact assessment and minimum standards for public consultation. The Action Plan provides a clear strategy and timetable for simplifying and improving the regulatory environment, detailing 16 actions to be put in place, either individually or jointly by the institutional actors, without the necessity of changes to the Treaty. The key elements of the Action Plan include:

The introduction by the Commission of a two-stage impact assessment process covering the economic, social and environmental aspects of policy proposals - to be implemented gradually from the start of 2003;

- * A commitment by the Commission to establish minimum standards for consultation to improve the openness and transparency of the policy-making process. These include a minimum 6 week period for consultations (although the Government will be pressing for this to be extended), the creation of a single access point on the Internet for all consultations and a commitment to ensure the acknowledgement of responses and improve feedback;
- * The creation of a programme of simplification aimed at reducing the volume of Community law;
- * The establishment of an internal better regulation network within the Commission involving all the Directorate-Generals and co-ordinated by the Secretariat General.

The Government welcomes the production of the Action plan, which contains most of the key recommendations of the Mandelkern Report. It was acknowledged by the Seville European Council on 21/22 June.

d) When fundamental aspects of legislation are left to be developed after a Directive is signed, as in this case, we urge the Government to lobby vigorously for the implementation date of the Directive to be tied to the date when all the criteria are finalised and not to the date on which the Directive was agreed (paragraph 23).

There should always be sufficient lead-in time to allow smooth introduction of new legislation and we would always argue strongly for this. For introduction of the WAC for example, the UK has argued that given the delay in agreeing the standards, member states should be given a realistic timescale for transposing and implementing them. The Commission have proposed that these standards should come into effect in July 2005. This means we have 3 years to ensure that the necessary facilities are in place. We are discussing with industry to see if this proposed timescale is feasible.

Data on the amount of hazardous waste

e) The Environment Agency and DEFRA must work with the waste management industry to provide timely high-quality data on the amount of hazardous waste produced each year and to develop management methods to assist in planning for future capacity (paragraph 24).

Currently the Environment Agency holds data, provided by the waste management industry, on the movement of hazardous waste in the UK through the requirements of the Special Waste Regulations. The review of these Regulations currently underway, should enable more accurate data to be collected and handled. This information will be vital for assessing future capacity requirements.

Environment Agency and DEFRA guidance

f) The lessons learned from the fridge crisis also apply here and, as the Government suggested then, it remains up to the Government "to create a policy framework that stimulates innovative and market-led solutions" (paragraph 29).

g) This needs to be provided well before implementation dates and part of this policy framework must include ensuring sufficient regulatory certainty to encourage waste management companies to invest at an appropriate time (paragraph 29).

DEFRA and DTI have always striven to work closely with stakeholders, including the Environment Agencies, throughout the negotiation and implementation of European waste legislation. We aim to provide as much contact, as early as possible, in the development of domestic legislation. We consider it vital to continue to do so.

The Performance and Innovation Unit Waste Study

h) We recommend that the Performance and Innovation Unit consider the issues surrounding the provision of new hazardous waste management facilities in the light of the Government's aim to move waste up the waste hierarchy and adhere to the principles of proximity of disposal and self-sufficiency in waste management (paragraph 33).

The Strategy Unit is looking at the whole issue of the delivery of the Waste Strategy 2000 and of sustainable waste management more generally. The issues around the provision of facilities for hazardous waste management are part of this strategic assessment.

i) The Government should clarify its position on the specific role of incineration in the disposal of hazardous waste (paragraph 34).

Incineration is an important disposal route for hazardous waste, and will remain so as controls under the Landfill Directive come into effect over the next few years. Incineration processes are strictly regulated and DEFRA has published a consultation paper on draft Regulations and Directions to transpose the Waste Incineration Directive in England and Wales.

j) Consultation process

We recommend that the Government takes the utmost care to ensure that such consultations occur as early as possible, are of the right kind and are at the right level (paragraph 41).

k) It is vital that stakeholders are adequately consulted while the Directive is being developed and negotiated as well as when it is implemented into United Kingdom law. The consultations should be tailored to the role of those being consulted. For example, the basic implications for waste producers and local government should not be lost in a mass of technical data. Finally it seems clear to us that if private industries are to provide the solutions to waste management problems, they should be involved in the development of any strategy to achieve such solutions (paragraph 42).

We have thoroughly consulted stakeholders on all forthcoming waste issues, and will continue to do so:

* Landfill Directive: We issued two consultation papers on implementing the Landfill Directive. We held a series of regular meetings for stakeholders on implementing Annex II of the Directive, as well as various ad hoc meetings. Even before the consultation papers were prepared, a series of seminars for stakeholders was held. In addition, the Environment Agency has done much consultation on technical and regulatory aspects;

* Hazardous Waste Regulations: A first round of consultation was held in March 2001 to seek views on options for reviewing the Regulations. More than 100 responses were received from a wide range of stakeholders. DEFRA will shortly issue a second consultation paper - our current mailing list for this runs to more than 400 individuals and organisations. DEFRA and the Environment Agency will widely publicise the consultation, and the new regulations when they are finalised.

* Waste Electrical and Electronic Equipment Directive: Government has consulted informally with all main stakeholders since the Directive was proposed. Formal consultation was issued in the summer 2000 and 70 responses were received covering approximately 340,000 individuals and organisations. DTI/DEFRA working with the Small Business Services and Devolved Administrations have so far organised 14 seminars at locations around the country. Attendance is free of charge and open to all. DTI have a database of over 300 contacts giving regular information update.

* End-of-Life Vehicles Directive: Again, Government has consulted with all main stakeholders since the Directive was proposed. DTI leads on the main issues, while DEFRA is taking forward proposals on permitting sites. Meetings with stakeholders took place regularly during negotiations in Europe and since the Directive was agreed in October 2000.

DEFRA will continue to adhere to the Cabinet Office guidance on Regulatory Impact Assessments for European proposals, and the Cabinet Office Code of Practice on Consultation

Environment Agency role and resources

l) We therefore recommend that, as a matter of urgency, the Government re-examines the funding available to the Environment Agency and ensures that it can adequately enforce legislation and prevent and respond to illegal disposal (paragraph 46).

With the conclusion of Spending Review 2002 and the allocation of budgets to individual Departments, the Government is now considering the detailed funding for the Environment Agency for the period 2003/04 to 2005/06. Discussions are in progress and the Agency's Corporate Plan for 2003/04 to 2005/06 will set out details of future funding and what the Agency expects to deliver. We expect the Plan to be published at the end of the year.

In 2002/03, the Agency is due to receive £131.9m grant-in-aid from Government, of which £40.1m is to be spent on waste regulation. A further £38m is to be raised through charges, making a total £78.1m spending related to waste. It is for the Agency to prioritise these resources to secure the maximum benefit and deliver its statutory obligations.

Risks associated with hazardous waste only sites

m) We recommend as a matter of urgency that the Government formally assesses the risks posed by the landfill of hazardous waste between the date that the ban on co-disposal comes into force and the introduction of the Waste Acceptance Criteria. If, as the Environmental Services Association believes, these risks are unacceptable, contingency plans should be made for that period (paragraph 55).

The final decision on the WAC and when to implement them has not yet been taken. Whenever the WAC are introduced, we agree with the Environmental Services Association the changeover from one regime to the other represents a difficult practical problem. We are in discussion with both industry and the Environment Agency on the issue.

If the WAC are not brought in until 2005 or later, hazardous waste disposal by landfill will only be permitted if it poses no unacceptable risk to the environment and human health. The Environment Agency would have to impose appropriate conditions on those sites for that interim period.

n) High Temperature Incineration

It is the Committee's view that there should be a diversity of management options for hazardous waste and that high temperature incineration is part of this. The continued existence of such a diversity is called into question by the lack of demand for high temperature incineration for high calorific value wastes. We recommend that if the Government wishes to sustain diversity in this sector, it must recognise the problems faced by high temperature incinerators and should look again at the equivalency of use of high calorific values wastes as fuel in high temperature incineration and cement kilns (paragraph 60).

Government agrees that there should be a diversity of management options for hazardous waste, including incineration processes, and also other technologies such as plasma-arc. We recognise the need for a 'level-playing-field' across the processes in order to achieve this. We have met with operators of High Temperature Incinerators to discuss their situation and will want to consider the position taken in other Member States and the European Commission's on-going review of this issue. Of particular importance, is the European Court of Justice's current case against the Netherlands about their application of high calorific values.

Incineration during the cement-making process

o) 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 minimised within the current regulatory regime (paragraph 63).

The Environment Agency strictly regulates waste management facilities under the various permitting regimes in place in England and Wales. All facilities, including incineration processes, must be operated in accordance with the relevant regulatory regimes designed to protect human health and the environment.

Future capacity

p) We urge the Government and the PIU to address ways of better informing the public about hazardous waste management issues and addressing their concerns (paragraph 72).

Over the past decade, health risks from waste management have become important concerns to the public as a result of increasing sensitivity to the possible environmental impacts. There is the need to address legitimate public concerns while providing new facilities to meet the requirements of EC Landfill Directive and Waste Framework Directives. Government and the PIU Strategy Unit are looking at issues of education and information on all aspects of waste.

A National Hazardous Waste Forum

q) We recommend that the Government consider how waste streams occurring at a domestic level should be handled, particularly in the context of the Waste from Electrical and Electronic Equipment (WEEE) Directive and the End of Life Vehicles Directive where new streams of waste are emerging (paragraph 79).

Domestic waste can be classified as hazardous although it is exempt from the requirements of the Hazardous Waste Directive. This will be particularly important when the current review of the Special Waste Regulations reclassifies waste streams including WEEE containing hazardous components (for example TVs or computer monitors) or ELVs containing hazardous components, as hazardous waste. The consultation will cover this issue in detail as we will wish to minimise the burden on local authorities and others that handle domestic wastes. Government is producing guidance for vehicle dismantlers on depolluting ELVs to a level whereby they would no longer be classified as hazardous. This is being done in consultation with the industry.

r) The Government must make clear what specific targets, if any, it has set for hazardous waste reduction and what positive steps it has taken to achieve those targets (paragraph 81).

The implementation of the European Waste Catalogue, which incorporates the Hazardous Waste List, through the current review of the UK Special Waste Regulations is likely to lead to a significant increase in the volume of hazardous waste produced. The reclassification of a number of familiar waste streams as hazardous makes it difficult to predict with accuracy how much additional waste will be produced. Without a reliable baseline it is unrealistic to set targets for reducing the waste streams. We see this as a key issue for the Forum (see below) to advise on when Environment Agency data on new waste streams become available.

s) While we do not believe there is a need for a formal strategic plan, we recommend that the Government should produce a framework paper that draws together, in a single document, the issues that must be addressed for hazardous waste management. This should outline:

- * t) **the demands on industry;**
 - * u) **targets for hazardous waste reduction and recovery;**
 - * v) **how the uncertainties discussed in this report can be resolved; and**
 - * w) **how the Government is looking ahead**
- x) to the implementation of forthcoming EC Directives to guard against the delays and confusion that have so far attended the implementation of the Landfill Directive (paragraph 83.(d)).**

The Government regards many of these issues important ones for the Forum to address.

y) The Government should encourage the development of a national hazardous waste forum to address the issues outlined in the framework document. The forum must involve waste producers, the waste management industry, the regulators and local government and should take care to have regard for the public's view of waste management. (Paragraph 84).

Government has already expressed a desire for such a Forum, and DEFRA is taking steps to establish one. We anticipate a membership selected from Government Departments, the Environment Agency and the devolved administrations; local authorities; hazardous waste producers; waste management industry. In its Terms of Reference, the Forum will undertake to produce advice for Government outlining a possible way ahead within 6 months, and to provide advice on suggested targets for hazardous waste reduction based on Agency data within 18 months. The work of the Forum should be reviewed after 2 years to ensure it is delivering as requested.

z) What is clear is that the Government and industry must form a partnership for the management of hazardous waste to ensure that, in 2004 and beyond, we have an adequate and environmentally appropriate hazardous waste management infrastructure (paragraph 85).

Government has always striven to work closely with industry and will continue to do so. We are keen to work in partnership with industry and local authorities to provide an environmentally acceptable way forward for the management of hazardous waste.

Department of Environment Food and Rural Affairs
25 September 2002

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