



House of Commons

Committee of Public Accounts

Protecting the public from waste

**Twenty-fifth Report of
Session 2002–03**



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Session 2002–03**

*Report, together with formal minutes and
minutes of evidence*

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The Committee of Public Accounts

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The following was also a member of the Committee during the period of this inquiry.

Angela Eagle MP (*Labour, Wallasey*)

Powers

Powers of the Committee of Public Accounts are set out in House of Commons Standing Orders, principally in SO No 148. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at http://www.parliament.uk/parliamentary_committees/committee_of_public_accounts.cfm. A list of Reports of the Committee in the present Session is at the back of this volume.

Committee staff

The current staff of the Committee is Nick Wright (Clerk), Leslie Young (Committee Assistant) and Ronnie Jefferson (Secretary).

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Summary

176 million tonnes of waste are produced by households and industry in England and Wales each year. The waste processing and disposal industry employs some 90,000 people and has an annual turnover exceeding £4 billion. Waste represents a potential health risk and irresponsible handling of waste can cause adverse environmental effects such as pollution, litter, smells and unsightliness.

The Environment Agency (the Agency) currently spends £78 million a year regulating the production, movement, recycling, treatment and disposal of waste. It sets standards, issues licences and registers operators, inspects waste facilities and takes action against breaches and offences. Nearly half of this spending is funded by the waste industry through licence fees. The remainder is funded by grant-in-aid from the Department for Environment, Food and Rural Affairs (the Department) and the National Assembly for Wales.

On the basis of a Report by the Comptroller and Auditor General,¹ we took evidence from the Agency and the Department on the regulation of waste in England. We draw the following main conclusions from our examination:

- Since taking over from 83 separate authorities in 1996, the Agency has become a single organisation of some 10,500 people, and a budget of £760 million. It has provided consistent and professional waste regulation across the country. The Agency is, nevertheless, still required to work within detailed guidance from the Department governing, for example, the targeting of its site inspections and the circumstances in which it can refuse a licence application, a situation which takes insufficient account of the Agency's experience and resources. The Department and the Agency should therefore consider revising their respective responsibilities, giving the Agency greater scope to implement legislation, propose draft regulations and decide operational matters to best achieve objectives set by the Department, with the Department retaining its key role in advising Ministers, negotiating with Europe and co-ordinating environmental issues across government.
- Waste sites and activities vary in the hazard they pose to the public and the environment. European directives require higher risk sites and activities to be licensed while exempting lower risk activities. Current Departmental guidance and regulations, however, exempts some sites which pose risks to the environment and requires other activities such as some waste recycling and recovery activities to be licensed even though they present little risk. The Department needs to review the boundaries between exempt and licensed sites and on the basis of risk to the public and environment, simplify the licensing of sites posing an intermediate level of risk, for example by developing standard permits.
- In 2000–01, significant or major pollution incidents involving waste occurred at just 218 out of the 7,700 licensed waste sites. Nevertheless, the Agency aimed to carry out

¹ C&AG's Report, *Protecting the Public from Waste* (HC 156, Session 2002–03)

some 120,000 inspections a year of licensed waste sites and activities, an average of 15 visits to each licensed site and a minimum of 4 for any one site. The Agency should carry out fewer routine inspections, substituting more in depth inspection of sites posing greatest risk. In assessing the relative risks of sites, the Agency should consider the adequacy of the operator's own compliance regimes.

In granting new licences, the Agency effectively operates a presumption, based on Departmental guidance, against refusing licences to applicants who have been convicted for environmental offences at other waste sites. This presumption can hinder the Agency's ability to make operators remedy persistent breaches of their licence conditions. The Department's guidance should therefore make clear that there is no such presumption and require operators with a record of poor waste management to demonstrate how they have remedied past deficiencies before allowing them to expand or continue their businesses.

1 The respective roles of the Agency and the Department

1. The Agency regulates waste within a framework established by the Department. This framework sets out the responsibilities of producers and handlers of waste, and requires more significant waste sites and activities, such as landfill sites, to be licensed. Smaller sites and other waste activities are exempt from licensing. They must be registered with the Agency, but this provides much less control than a licence.²

2. Since its formation in 1996, the Agency has faced a growing range of responsibilities from new environmental legislation. This process is likely to continue for the foreseeable future, putting increased pressure on the Agency's resources. Next year, for example, the Agency will become responsible for regulating some 180,000 farms, a task which it estimates will require between 900 and 1,300 staff at an additional cost of some £30 million a year.³

3. The Agency employs 10,500 staff and spends £760 million a year across its environmental responsibilities, but nevertheless is subject to detailed guidance from the Department on waste matters, for example on the targeting of the Agency's inspections of waste operators. On whether such a level of oversight was necessary, both the Agency and the industry believed that the Department had an important role in, for example, negotiating and interpreting European policy, maintaining relations with Parliament through Ministers and in overseeing the Agency's operations and performance. However, the Department's involvement with detailed guidance on operational matters or in drafting regulations in areas where the Agency had greater expertise was less necessary, although the Department's final approval was relevant.⁴

4. The Agency has provided more consistent and professional regulation, and secured better standards of waste management by waste operators, since its set up. However, waste sites and activities vary greatly in their complexity and the hazard they pose to the public and the environment, for example from bottle banks to large landfills handling millions of tonnes of waste, including toxic waste. The existing framework and guidance provides some flexibility for the Agency to respond to the level of risk by allowing a range of exemptions from the licensing regime. However, a large number of sites which currently require a full licence do not justify the same level of regulation as, for example, sites handling hazardous waste. Many recovery and recycling activities pose a low risk to people and the environment, and these sites could be regulated effectively through a standard and simple permit rather than a bespoke licence. At the same time, there is also considerable evidence that some exempt activities pose significant risks to the environment, and of abuse of exemptions by unscrupulous operators.⁵

2 C&AG's Report, para 4

3 Qq 37, 101–104

4 Q 13; Ev 1

5 C&AG's Report, para 7, 3.30; Qq 14, 69, 74, 97–98, 101, 163

5. The Department has been reviewing the current list of exempt activities since 1998. It regretted that the review had taken so long, and intended to issue a consultation paper on exemptions shortly. The Department and the Agency had also agreed on the need for a more fundamental review of waste licensing, and the Department planned to review its guidance to the Agency on waste management licensing.⁶

6. The Agency lacks reliable data on fly-tipping because most incidents are the responsibility of local authorities. Nevertheless, the Agency considered that fly-tipping had increased since 1996. The Agency also predicted that incidents involving toxic wastes were likely to increase further because of new restrictions on the combined disposal of hazardous and non hazardous waste, and the requirement for the treatment of all waste prior to disposal. These restrictions would limit the number of disposal sites handling hazardous waste and substantially increase the costs of legitimate disposal. In some cases the Agency believed that hazardous waste would cost £1,000 a tonne, or more, to treat and dispose of legally. Following the Cabinet Office Strategy Unit report on waste, the Agency had put forward proposals to increase its activity on fly tipping.⁷

6 C&AG's Report, para 22; Qq 11, 80, 138-143

7 Ev 20; Qq 36, 66, 68, 86-87, 147-150

2 The licensing of waste sites and activities

7. Licences set minimum standards for the operation of waste sites, for example, the types and quantities of waste to be accepted, security arrangements, ground engineering, emissions monitoring requirements, amenity management (dust, odours and pests) and the keeping of records.⁸

8. The Agency has been processing just 20% of new licence applications within its target of four months. The Agency planned to process applications more quickly by, for example, issuing model applications for operators to use as a guide to reduce errors at the application stage and by increased use of standard licences for low risk sites. However, processing times on applications were still not as fast as the Agency would like, and a backlog had already built up on relicencing sites under the new pollution, prevention and control regime.⁹

9. Prospective operators of new waste sites must obtain permission from the relevant planning authority before the Agency can issue a licence. The need to obtain planning permission before a licence could be issued contributed to the long delays in the issue of new licences.¹⁰

10. The Agency confirmed that its role in issuing a licence was to protect human health and the environment. Proximity to housing was considered by planning authorities and the Agency when deciding whether to issue or amend licences. However, the Agency considered that poor planning decisions in the past could make it difficult to solve the problems of nuisance sites, for example where housing developments had grown up after the site. The Agency also confirmed that in considering a licence application, it considered financial provisions and the technical competence of the proposed operator, and successful prosecutions for waste site offences but not breaches of a permit.¹¹

11. The Agency had not, however, used its power to refuse licences to applicants with previous convictions for environmental offences. The Agency wanted to keep criminals out of the industry, and where existing licensees were convicted, to demand of the licensee why they should continue at the site or, if the problem was more endemic to the company, to be satisfied the problem had been overcome. The Agency noted that the Department's guidance, however, created a presumption in favour of the applicant, and required the Agency to take mitigating circumstances and future intent into account. The Department intended to amend its 1994 guidance to the Agency to emphasise that the test should be based on the "desirability" of granting a waste license to an applicant with relevant convictions. It nevertheless considered that the current guidance did not prevent the Agency from protecting or revoking licences. The Department recognised that the Agency

8 C&AG's Report, para 3.2

9 *ibid*, para 3.17; Qq 161–162

10 C&AG's Report, para 1.5, Figure 4; Qq 16, 20–29, 63

11 Qq 2, 28

might have difficulty applying the test in a fair and consistent manner that targeted the frequent offender without disadvantaging larger companies with many sites.¹²

12. On large scale composting activities the Agency said that its approach to regulation was based on the potential impact on local residents with breathing difficulties of fungal spores emitted during the process. The Agency required operators to demonstrate that they could control that risk. The Agency had not, however, considered the potential for spores to affect food crops growing near the site, which might result in economic loss to the farmer and the possibility of spores entering the human food chain.¹³

12 C&AG's Report, para 2.26; Qq 15–19, 26–27, 129–130, 142–3, 156–157; Ev 20

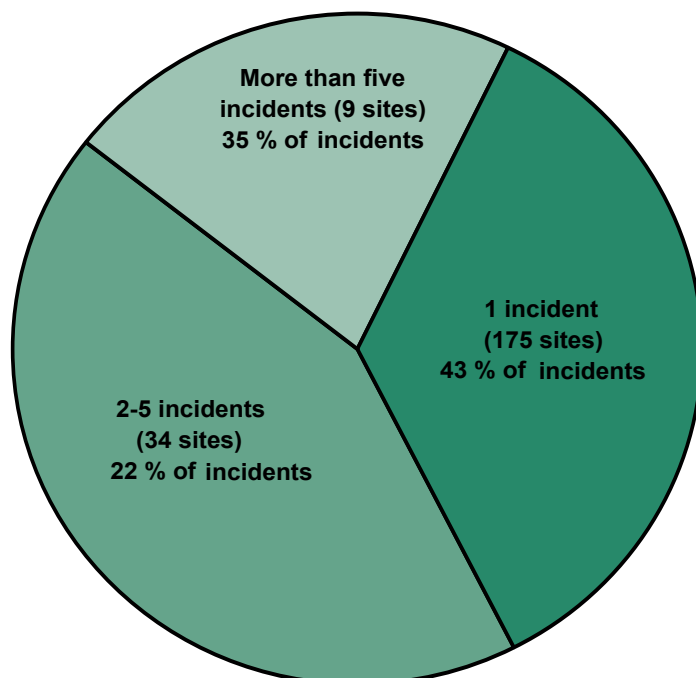
13 Qq 21, 59

3 The Agency's inspections of waste sites and activities

13. The Agency spends around £18 million a year on inspections and related enforcement activities at licensed waste sites. It carries out this work in accordance with guidance from the Department, which since 2000 has allowed the Agency to determine inspection frequencies according to an assessment of risk at individual sites. The bulk of the Agency's inspection effort comprises short visual ("routine") inspections of a site but it also carries out around 60 in-depth audits of sites a year and plans to increase this number to 600 a year.¹⁴

14. In 2000–01, major or significant pollution incidents involving waste occurred at just 218 out of the 7,700 licensed waste sites, including some sites with multiple incidents (**Figure 1**). Nevertheless, the Agency planned to carry out some 120,000 inspections of licensed waste sites and activities in the following year, an average of 15 visits to each licensed site. The Agency said that high risk sites were visited up to twice a week, equating to 100 inspections a year. In 2000–01 inspection activity had led to 227 enforcement notices, the suspension of 15 licences, 31 prosecutions for breach of licence conditions, and, more recently, the first ever revocation of a waste licence.¹⁵

Figure 1: Nine waste sites accounted for a third of major and significant incidents in 2000–01



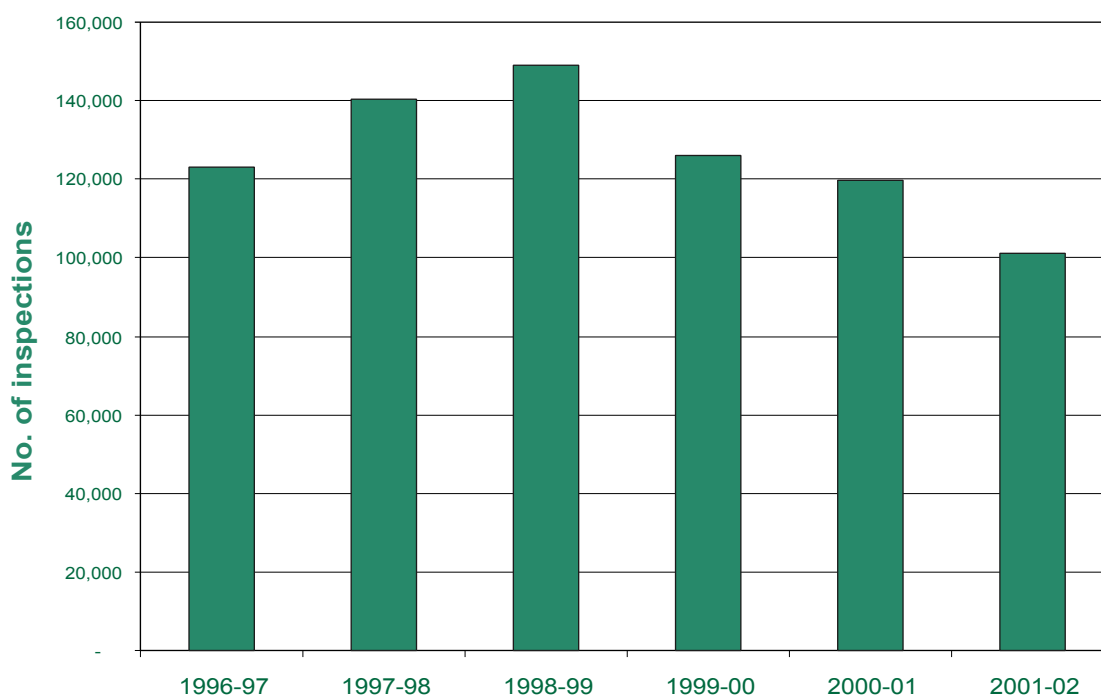
Source: C&AG's Report, Figure 13

14 C&AG's Report, paras 8–10, 14, 3.51; Q 30

15 C&AG's Report, paras 3.58; Qq 94, 111

15. In the past, the Department and the Agency had regarded frequent inspections as desirable to provide reassurance to the public. In recent years, however, the Agency had introduced a risk based system (OPRA) for targeting inspections on particular sites and had reduced the total number of inspections being carried out (**Figure 2**). OPRA allocated the Agency's available inspection staff according to the relative risk of sites, but did not determine the absolute number of inspections required. There was no scientific basis for current inspection frequencies, therefore, to show, for example, that eight visits a year was more effective than the minimum of four required by the Department, even for closed sites. The Agency agreed that some guidance on inspections was out of line with the underlying risks currently, but considered that the OPRA system would allow it to base judgements about the number of visits required on better information in the future.¹⁶

Figure 2: Environment Agency inspections of licensed waste sites 1996–97 to 2001–02



Source: C&AG's Report, Figure 27

16. The Agency and the Department accepted that the current frequency of inspections resulted in too detailed and excessive regulation for some low risk sites. For example, the Agency had inspected a small pet cemetery six times a year when the Home Office has only carried out six inspections of human cemeteries since 1995. The Agency considered that its inspection regime had been instrumental in keeping the number of prosecutions low. The Agency did not monitor, however, how many major and significant incidents, or breaches of licence conditions, were detected by routine inspections rather than reported by members of the public.¹⁷

¹⁶ Qq 3, 112–113

¹⁷ 8th Report from the Environment, Transport and Regional Affairs Committee, *Cemeteries* (HC 91, Session 2000–01); Qq 69, 111–113; C&AG's Report, paras 3.57–3.58

17. The Agency's routine inspections of licensed sites are criticised by the industry for being limited in scope and relying mainly on passive observation. The Agency was introducing more in-depth inspections of problem sites, using resources released by reducing the number of routine inspections. These in-depth inspections included examination of operators' control systems and a detailed review of the licence. They might include inspection teams from outside the area to provide a new perspective. In depth inspections of this kind would enable the Agency to determine whether it could place more reliance on the operator's own systems or to work with the operator to reach that point.¹⁸

18. Some activities currently exempt from licensing can have a substantial environmental impact, especially if the exemptions are abused, for example dumping waste on land under the pretext of constructing agricultural buildings. Currently the Agency inspects around 7,000 exempt activities out of around 120,000 known operations. The Agency would like to devote more resources to inspecting exempt sites but considered that it was limited by the lack of income from fees levied on such sites. The European waste directive requires that all waste sites be subject to appropriate periodic inspection irrespective of whether they are licensed or exempt. As part of its review of exemptions, the Department was considering a charging mechanism for some exempt sites, which would allow the Agency to carry out more regular inspections of those sites.¹⁹

18 C&AG's Report, para 3.65; Q 4

19 Article 13 of Council Directive 75/442/EEC as amended by Council Directive 91/156/EEC of 18 March 1991; Qq 83-85

4 Enforcement and prosecution

19. It is a criminal offence to dispose of, or treat, waste without a licence, or to break the conditions of a waste licence. Prosecutions for waste offences have increased by over 90% since 1996, with 466 successful prosecutions in 2001–02. The Agency believed that the increase was mainly due to improvements in its enforcement and prosecution policy, and not because standards in the waste industry had fallen. Under the policy, prosecution was pursued where problems had resulted in actual or possible environmental harm, but otherwise, only where there was a history of non-compliance.²⁰

20. Well run waste sites will experience minor problems from time to time but environmental groups, residents' associations and the Environment Select Committee have suggested that the Agency can be reluctant to prosecute licensed operators for poor performance. The Agency recognised that its inspectors had not generally considered an operator's previous history when deciding on enforcement action. As a result only some 30 operators a year were prosecuted for failure to comply with licence conditions, usually after an incident which had resulted in environmental harm. The Agency had, however, recently introduced a system to improve the consistency of its classification of licence breaches.²¹

21. The Agency said that it had a range of enforcement options open to it, from enforcement notices to prosecution, but that a power to levy a spot fine would be a useful addition. The Agency also saw benefits in applying spot fines to minor fly-tipping cases and abuse of exempt sites.²²

22. The Agency could, nevertheless, do more with its existing powers. The Agency rarely revoked a licence for example, particularly for landfill sites, because of the need to provide for long-term care to minimise the risks of pollution from abandoned sites. The Agency had not considered, however, whether other waste operators might be willing to take over a profitable licensed site from an unsatisfactory company.²³

23. Illegal waste disposal can be highly profitable, especially if the landfill tax and other taxes are also evaded, and the fines imposed by the courts are low. Each year the Agency spends £14 million of its £78 million waste budget on investigating and prosecuting alleged offences. The Agency could only begin the process of removing licences from unacceptable operators if it secured a conviction for an environmental offence. Despite some improvements in the time taken to complete prosecutions, there were still long delays in processing prosecutions.²⁴

24. Since 1997, a range of sentencing guidance has been issued to magistrates but not to the Crown Court. The Home Office was currently working with the Magistrates' Association and with District Judges on revised guidance. The average fine imposed by the courts since

20 C&AG's Report, paras 2.16–2.18, 2.23; Q 70

21 6th Report from the Environment, Transport and Regional Affairs Committee, *Sustainable Waste Management* (HC 484, Session 1997–98) para 242; C&AG's Report, paras 2.33–2.34, 2.38, 2.42, Figures 14–15; Qq 5, 88, 122–123

22 Q 6; C&AG's Report, Figure 29

23 Qq 89–92

24 C&AG's Report, paras 2.21, 2.28; Qq 27, 30, 36

1997 had increased but the average fine in 2001–02 was still only £3,000. The Agency were concerned that courts did not always take into account the significant profits derived from deliberate breaching of waste legislation.²⁵

25. The “polluter pays” principle underpins environmental regulation. The *Environmental Protection Act 1990* requires operators to make adequate financial provision for the long-term management of waste sites. Unlike other government departments such as the Inland Revenue and the Redundancy Payments Service, the Environment Agency is not a preferred creditor following bankruptcy. The current system of financial provisions allows unscrupulous operators to avoid their statutory responsibilities by going into receivership, and the Agency has no powers to make sites safe once the licence has been disowned by the receiver, or to recover its costs. The Agency recognised the need to enter into financial provision agreements fairly and consistently with all operators, particularly as it undertook re-permitting of all landfill in the next three years. Nevertheless, the risk was that financial provision might not be available. The Department considered that this problem might need to be resolved by primary legislation if a regulatory route was not possible.²⁶

25 C&AG’s Report, para 2.20; Qq 124, 144–150, 152–155, 164–165; Ev 20

26 18th Report from the Committee of Public Accounts, *The Department of Trade and Industry Redundancy Payments Service: The Management and Recovery of Debt* (HC 426, Session 1997–98) para 7; C&AG’s Report, para 3.47, Figure 25; Qq 40–41, 165

Conclusions and recommendations

The respective roles of the Agency and the Department

1. The Department's review of exemptions, waste licensing and guidance to the Agency, which started in 1998, should now be completed promptly and a system of regular review of the waste regime put in place to maintain its effectiveness.
2. The Agency lacks reliable data on fly-tipping incidents to enable trends to be identified and addressed. The Agency and the Department need to consult with the Local Government Association and other interested parties to develop common reporting conventions and systems for monitoring the frequency, type and significance of fly-tipping incidents nationwide. The Agency should also work with the Department and local authorities to develop plans to combat the increase in fly-tipping predicted by the Agency in the next few years.

The licensing of waste sites and activities

3. The Agency's target for processing licence applications within four months of receipt may not be achievable in complex or controversial cases, but the Agency should deal with more straightforward applications within this timescale. To better assess its performance the Agency should set separate targets for processing different types of applications.
4. The Agency should review its relationship with planning authorities, clarifying for the public the extent to which it will, when considering applications for waste licences, take into account factors also considered by planning authorities, such as the proximity of proposed waste sites to housing.
5. The Department should consult with the Agency and the Food Standards Agency on the need for research into the potential for fungal spores from licensed composting sites to contaminate nearby crops.

The number and value of the Agency's inspections of waste sites and activities

6. The Agency should review the risks inherent in exempt sites, and implement a programme of inspection of the riskiest sites, particularly when illegal waste disposal at exempt sites has been reported to the Agency. It should encourage members of the public to report problems at all waste sites, for example through a special telephone line.

Enforcement and prosecution

7. The Agency should be transparent with operators and the general public about the enforcement action it will take in response to different types of licence breaches and offences.

8. The Department should consider whether the introduction of spot fines for less serious breaches of licence conditions and minor offences should be recommended, to allow the Agency to take action where offences are not serious enough to warrant the cost of a full prosecution.
9. Where an operator is convicted for deliberately or persistently breaching licence conditions or environmental legislation, the Agency should consider revoking or suspending all the operator's existing waste licences. Judicious use of the threat of revocation or suspension might enable the Agency to secure improvements in the operators' management practices, and if necessary to bring about a change of operator.
10. The Department should discuss with the Department of Trade and Industry whether the Agency should be given preferential creditor status so that if an operator becomes bankrupt, funds remain available for future maintenance of closed waste sites.

Formal minutes

Monday 19 May 2003

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon

Mr Nick Gibb

Mr George Howarth

Mr Brian Jenkins

Mr David Rendel

Mr Gerry Steinberg

The Committee deliberated.

Draft Report (Protecting the public from waste), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 25 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Twenty-fifth Report of the Committee to the House.

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

Ordered, That the provisions of Standing Order No 134 (Select Committees (Reports)) be applied to the Report.

[Adjourned till Wednesday 4 June at 3.30 pm]

Witnesses

Wednesday 22 January 2003

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Mr Brian Bender CB, Department for Environment, Food and Rural Affairs;
Baroness Young of Old Scone, and **Mr Steve Lee**, Environment Agency

Ev 2

List of written evidence

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Fourth Report	Private Finance Initiative: redevelopment of MOD Main Building	HC 298 (<i>Cm 5789</i>)
Fifth Report	The 2001 outbreak of Foot and Mouth Disease	HC 487 (<i>Cm 5801</i>)
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The reference number of the Treasury Minute to each Report is printed in brackets after the HC printing number