



Department
for Environment
Food & Rural Affairs

T: +44 (0)20 7238 4407
helpline@defra.gsi.gov.uk
www.gov.uk/defra

Our ref: RFI 6220

Date: 20 February 2014

Dear _____,

REQUEST FOR INFORMATION: The regulation of the landfilling of asbestos waste.

Thank you for your request for information about the regulation of the landfilling of asbestos waste which we received on 27 January 2014. As you know we have handled your request under the Environmental Information Regulations 2004 (EIRs).

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

For the sake of simplicity I have reproduced your original questions and Defra's response below:

Question 1

“Does DEFRA believe that? EU Landfill Directive compliant dedicated asbestos waste cells, in the UK can be surcharged with biodegradable waste, without breaching the EU Landfill Directive? If so please supply documentation that permits the UK government to do so.”

Response to Question 1

Asbestos waste should only be disposed of in cells in non-hazardous landfills that are specifically dedicated for the disposal of asbestos waste. Interaction between asbestos waste and biodegradable waste should be prevented.



Wastes that contain asbestos and that are also hazardous by virtue of other constituents can only be disposed of at a landfill for hazardous waste permitted to accept both the asbestos and the other hazardous waste. These wastes, including the asbestos waste, can be disposed of within a defined area but not necessarily a separate cell.

Please refer to Defra Guidance on this subject, specifically page 31 sections 4.116 and 4.117. "Environmental Permitting Guidance: The Landfill Directive" (Version 2, October 2009)

<http://archive.defra.gov.uk/environment/policy/permits/documents/landfill-directive.pdf>

There is also relevant guidance published by the Environment Agency on the acceptance of asbestos waste at landfills, specifically Chapter 7- Special Provisions. "Waste acceptance at landfills: Guidance on waste acceptance procedures and criteria" (November 2010)

<http://a0768b4a8a31e106d8b0-50dc802554eb38a24458b98ff72d550b.r19.cf3.rackcdn.com/geho1110btew-e-e.pdf>

EU legislation (specifically the annex to Council Decision 2003/33/EC), does not specify what materials the operators of landfills must use to cover asbestos wastes, referring only to 'appropriate material'. The material used to cover asbestos waste will be agreed between the Environment Agency and the operator on a case by case basis to achieve the outcome of covering the asbestos to prevent the dispersion of fibres.

Question 2

"It is unlawful for the Environment Agency to permit a dedicated asbestos waste cell to be created in a waste site in breach of the given planning consent. This activity took place at the Horton Waste site at Small Dole. Does DEFRA agree this EA activity is unlawful? If otherwise please provide documented evidence to the contrary."

Response to Question 2

Currently under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) the EA can only grant a permit where relevant planning permission is in place. However, the EA may vary a permit irrespective of the planning status. If separate planning permission is needed that is always a matter for the operator of the landfill and the planning authority.

(Please refer to the answer provided in response to your final question for details of forthcoming changes in legislation.)

Question 3

“Please supply documentation giving the number of non-hazardous waste sites in the UK that contain a dedicated asbestos hazardous waste cell.”

Response to Question 3

In December 2013 there were 49 landfills for non-hazardous waste in England that were permitted to have a separate cell for stable non-reactive hazardous waste. The majority of these will be permitted to accept asbestos. However, precise figures cannot be determined without checking each permit.

Question 4

“Please supply an estimate of the number of non-hazardous waste sites in the UK that were permitted to accept captured asbestos since the EU Landfill Directive came into force in 2002.”

Response to Question 4

172 landfill sites in England were designated as ‘interim hazardous’ following the implementation of the Landfill Directive. These sites were permitted to accept both hazardous waste (including asbestos) and non-hazardous waste until the ban on co-disposal of hazardous waste with non-hazardous waste came into force in July 2004.

Beyond that date these sites were required to become either landfills for hazardous waste, landfills for non-hazardous waste, or landfills for non-hazardous waste with a separate dedicated asbestos cell (approximately 50 of these have been permitted).

Question 5

“Please confirm CQA clay capped and restored waste cells in the UK, that are permitted to have the clay capping and restoration removed for the purpose of further surcharging.”

Response to Question 5

There is no formal requirement under environmental permitting to apply for permission to remove a cap to allow surcharging. Consequently the Environment Agency does not issue any formal permit for such activities in England.

Landfill site final levels are controlled by the planning permission. Pre-settlement contours are included in the environmental permit as a measure of the sites capacity, as required by Article 7 (c) of the Landfill Directive. Where tipping operations have not yet reached these levels or waste settlement leaves a depression in the site surface, the Environment Agency may allow cap removal and surcharging, provided the risks from this operation are controlled. Surcharging may occur where a landfill cell has been closed early for some reason, or where an operator has varied their permit to raise the permitted pre-settlement contours.

The Environment Agency do not 'permit' sites to have caps removed and would assess any such proposal on a site by site basis.' The Environment Agency does not keep central records of this type of activity.

Question 6

"Please confirm how many finished completed and closed waste sites in the UK are permitted to have a piggyback development on top after closure."

Response to Question 6

No data on the number of sites in England subject to piggy back development is held centrally by either Defra or the Environment Agency.

In considering any application to deposit waste on top of an existing landfill the Environment Agency would need to consider the impact this activity might have on the existing waste mass. This activity would create particular technical challenges as leachate may be forced out of the existing waste, increasing leachate heads and the risk to groundwater. Furthermore over tipping existing waste creates difficulties in managing landfill gas from the underlying wastes.

Question 7

"What regulation is in place to ensure CQA clay capping and restoration is not called temporary cover and removed from waste cells containing Asbestos?"

Response to Question 7

The Environmental Permitting (England and Wales) Regulations 2010 (as amended) provide the regulatory framework for the permitting of the disposal of waste in landfills in England and Wales.

The aforementioned regulations implement the requirements of the Landfill Directive (1999/31/EC) and Council Decision 2003/33/EC on the acceptance of waste at landfills.

The specific requirements for capping and restoration of landfills are contained in the environmental permit for each landfill site. Permit conditions covering capping and restoration should ensure compliance with the requirements of the Landfill Directive (1999/31/EC) and Council Decision 2003/33/EC. The Council Decision makes specific reference for the need for both temporary and permanent cover for those landfill cells that are used for the disposal of asbestos waste and states that "no works are carried out on the landfill/cell that could lead to a release of fibres". This prohibition on any works that could lead to the release of fibres is covered in the previously cited Environment Agency guidance on the acceptance of asbestos waste at landfills (see above).

As explained above, a landfill cap can be removed. Where this occurs the Environment Agency would require that this is done in accordance with procedures that ensure that the risks posed by this operation are assessed and controlled. Where waste beneath the cap contained asbestos it would be standard practice to leave a protective layer of cover material in place, so that asbestos waste is not disturbed by the cap removal.

The Environment Agency has also produced guidance on the use of earthworks in landfill engineering and this covers the capping and restoration of landfills, "LFE4 – Earthworks in Landfill Engineering" (February 2011).

Question 8

The EU Landfill Directive has no partial hazardous waste site designation. A waste site is or is not hazardous. Therefore, a site containing asbestos a hazardous material is not non-hazardous in the eyes of the EU Landfill Directive. Why are the non-hazardous waste sites containing dedicate loads of asbestos under the dual disposal or dedicated asbestos waste cells, not re designated hazardous waste sites and regulated accordingly?

Response to Question 8

The Landfill Directive (1999/31/EC) should be read in conjunction with the Council Decision of 19 December 2002 establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC.

The Council Decision states that:

"Construction materials containing asbestos and other suitable asbestos waste maybe landfilled at landfills for non-hazardous waste in accordance with Article 6(c)(iii) of the Landfill Directive..."

There is no requirement under the Landfill Directive to reclassify a landfill that has been permitted to receive asbestos waste as a "landfill for hazardous waste" as the Council Decision allows for asbestos waste to be deposited in landfills for non-hazardous waste.

Question 9

"What is the difference in regulation for reopening a closed restored hazardous waste cell in order to further surcharge and a closed restored non-hazardous waste cell."

Response to Question 9

There is no difference in the regulatory approach adopted by the Environment Agency in relation to opening a closed cell in a hazardous landfill and a closed cell in a non-hazardous landfill.

The operator would need to satisfy the regulator that the activity of reopening a closed area of site would not result in pollution. The Council Decision annex, section 2.3.3, prohibits any works on a former asbestos cell that results in the dispersion of asbestos fibres.

Question 10

"When the Environment Agency permits activity in breach of the demands of other protective law, such as the Control of Asbestos regulations or the Health and Safety at Work Act 1974 through an IPPC. What is the mechanism used that prevents a prosecution under the Health and Safety at Work Act 1974 by the Health and Safety Executive."

Response to Question 10

The Control of Asbestos Regulations 2012 covers the prohibition of asbestos products, the control of asbestos at work and the licensing of any work with asbestos. They prohibit the import, supply and use of all types of asbestos and ban the second hand use of asbestos products such as asbestos boards and tiles. The regulations require mandatory training to be given to anyone who may be exposed to asbestos whilst at work.

The Health and Safety at Work etc Act 1974 (c 37) defines the fundamental structure and authority for the encouragement, regulation and enforcement of workplace health, safety and welfare within the United Kingdom. The 1974 Act defines general duties with respect to health and safety at work on employers, employees, contractors, suppliers of goods and substances for use at work, persons in control of work premises, and those who manage and maintain them, and persons in general

Environmental permits issued by the Environment Agency place requirements on the operators of landfill sites to manage the disposal of waste in landfill sites in compliance with the requirements of the Landfill Directive (1999/31/EC) and Council Decision 2003/33/EC in order to protect human health and the environment. Environmental Permits issued by the Environment Agency do not free the operators of landfills from their legal duties in respect of other legislation governing the health and safety of their workers or the public.

Question 11

“The control methods for the prevention of asbestos release demanded by the Health and Safety at work act 1974 and The Control of Asbestos Regulations are set aside by the Environment Agency. The EA replace the risk assessment control methods with a diminutive sampling regime after the event. On what grounds does the British government set aside all recognised Health and Safety procedures to accommodate a dangerous and unacceptable landfill industry activity, at the expense of the general public?”

Response to Question 11

Council Decision 2003/33/EC (as interpreted by the Environmental Permitting Regulations) states:

‘Construction materials containing asbestos and other suitable materials may be landfilled at landfills for non-hazardous waste in accordance with Article 6(c)(iii) of the Landfill Directive without testing.’

This means that wastes that are only hazardous because of their asbestos content can be disposed of at landfills for non-hazardous waste in separate landfill cells that only accept asbestos wastes and other suitable materials without testing. This approach is intended to reduce exposure to asbestos by those handling these wastes.

Loads containing asbestos destined for disposal in a landfill for hazardous waste must be tested to ensure they meet the Waste Acceptance Criteria limits for hazardous waste.

During the operation of a landfill, the operator is required to put control measures in place to prevent or reduce emissions. The Environment Agency requires monitoring by the operator to confirm these control measures are effective. If the measures are robust/sound, the Environment Agency will require less monitoring.

The Environment Agency does not monitor compliance with the two pieces of legislation mentioned in the query. Questions on compliance with health and safety legislation should be directed to the Health & Safety Executive.

Question 12

“Government guidelines demand that waste planning applications and IPPC licences is decided in tandem. This procedure prevents councils agreeing dangerous activity with their financially linked waste partners and it also prevents an unlawful IPPC licence in breach of the given waste planning consent, both of which we have recorded. Why does DEFRA permit these important government guideline to be disregarded?”

Response to Question 12

The Environment Agency and, in limited circumstances, local authorities determine applications for waste management activities under the Environmental Permitting (England and Wales) Regulations 2010. For certain waste activities that were previously regulated through the waste management licensing system up until 2007, including the landfill of waste, an environmental permit could not be issued unless the relevant planning permission was in place. This maintained an arrangement that had existed since waste licensing was first introduced and reflected the complementary roles of planners and the Environment Agency in delivering the health and environmental objectives of the Waste Framework Directive.

The ‘parallel-tracking’ of applications is not statutory, just recommended. Most landfill operators like the comfort of having the planning permission determined before they make an application for an environmental permit. Permit applications can be very expensive and operators do not want to spend money on an application that cannot be granted where planning permission is refused.

Planning and permitting are two separate activities – the former to decide the appropriate use of the land, the latter to control the environmental consequences of the activity taking place on that land. Defra and the Department for Communities and Local Government have closely examined the interface between the planning and environmental permitting regimes in order to develop a protocol on the considerations for the sequencing of applications under the current legislation.

It is erroneous to state government guidelines demand that planning applications and decisions on the determination of environmental permit applications are decided in tandem. The Environmental Permitting (England and Wales) Regulations 2010 as they currently stand do not allow for the grant of an environmental permit until a decision to provide planning permission has been granted.

In February 2013 Defra issued a formal public consultation on proposals to provide greater flexibility around the requirement for waste businesses to have to secure relevant planning permission for certain waste operations as a pre-requisite to the grant of an environmental permit. Following this consultation exercise the Environmental Permitting (England and Wales) Regulations 2010 were amended and as of 4 March 2014 the requirement to have planning permission in place before the Environment Agency can grant an environmental permit for certain waste operations will be removed. This amendment will provide the operators of waste management facilities with greater flexibility to sequence their planning and permitting applications in the way they believe most appropriate in the circumstances.

There were no further questions.

In keeping with the spirit and effect of the EIRs, and in keeping with the government's Transparency Agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on www.gov.uk together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

I attach Annex A, which explains the copyright that applies to the information being released to you.

I also attach Annex B giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact me.

Yours

Waste Regulation and Crime Team

BY EMAIL

T: +44 (0)20 7238 4407

Annex A

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Annex B

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If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF