



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

**Summary of responses to the
Consultation on a Draft Hazardous Waste
National Policy Statement
(14 July 2011 – 20 October 2011)**

6 June 2013

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Contents

Background	4
Responses to public consultation	5
Draft Hazardous Waste NPS	6
Question 1:	6
Do you think this draft Hazardous Waste NPS clearly establishes the need for such infrastructure for those considering developing proposals for nationally significant infrastructure projects for hazardous waste?	
Question 2:	6
Do you think that the types of infrastructure outlined by the draft Hazardous Waste NPS capture the need for nationally significant infrastructure to help implement the Strategy for Hazardous Waste Management and drive the management of hazardous waste up the waste hierarchy? If not, what else should be included?	
Question 3:	7
Do you think the draft Hazardous Waste NPS adequately sets out for the Infrastructure Planning Commission the key assessment principles to inform the assessment of future hazardous waste infrastructure development applications?	
Question 4:	8
Do you think the draft Hazardous Waste NPS adequately sets out for the Infrastructure Planning Commission how it should consider alternatives when it comes to particular projects?	
Question 5:	9
Do you think the draft Hazardous Waste NPS gives appropriate guidance to decision makers on how they should assess the need to consider 'Good Design' for hazardous waste infrastructure?	
Question 6:	9
It is a requirement of the Planning Act 2008 that an NPS must include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change. Do you think the draft Hazardous Waste NPS adequately fulfils this requirement?	
Question 7:	10
Have all potential environmental impacts of hazardous waste development and options for mitigation been identified in the Assessment Principles and Generic Impacts part of the Hazardous Waste NPS (this is Part 4 and Part 5)?	
Question 8:	10
Do you think the draft Hazardous Waste NPS considers all the significant impacts of hazardous waste development? If not, what do you think is missing and why? (This is Part 5.)	

Question 9:	11
Do you think that the Government should formally approve ('Designate') the draft Hazardous Waste NPS?	
Question 10:	12
Do you believe that the appraisal identifies the likely significant sustainability effects associated with the draft Hazardous Waste NPS? If not, what effects do you feel are not correctly identified and why?	
Question 11:	12
Do you believe that the appraisal identifies the reasonable alternatives to the policy contained within the draft Hazardous Waste NPS? If not, what others should have been considered and why?	
Question 12:	12
Do you believe that any further measures are necessary to prevent, reduce or offset likely significant effects of the draft Hazardous Waste NPS? If so, what further mitigation do you think should have been covered in the AoS? Please provide comments on your response, along with any relevant data or analysis that supports your view.	
Question 13:	12
Do you believe that the AoS correctly describes the cumulative impacts that may occur? If not, what is missing? (Please provide comments on your response, along with any relevant data or analysis that supports your view.	
Question 14:	12
Do you consider the monitoring proposals set out in Section 9 of the AoS to be appropriate and sufficient to monitor the significant effects of implementing the draft Hazardous Waste NPS? If they are not sufficient, what measures do you think should be adopted? Please explain why you consider these additional/alternative measures are needed.	
Question 15:	13
Do you agree with the conclusions and recommendations of the Report of the Appraisal of Sustainability of the draft Hazardous Waste NPS? Please provide comments.	
Question 16:	13
Do you have any further comments on the AoS Report or the appraisal described therein?	
Question 17:	13
Do you agree with the preferred option, which is to produce a Hazardous Waste NPS that allows for market led infrastructure development with no specification of location or suitable technologies? If not, please provide information as to why.	

Question 18:	14
Do you consider that the costs and benefits stated in the Impact Assessment are valid for your business? If not, please provide whatever evidence you can to enable a more accurate assessment to be made. Any information you provide will be used in the Impact Assessment that will be produced following consultation.	
Question 19:	14
Do you consider that the split of applications against the type of Panel commissioned to deal with it is likely to accurately reflect the nature of applications coming from the Hazardous Waste sector? If not, please provide information as to why.	
Question 20:	14
Do you agree with the assumption in the IA that there are no transitional costs that would fall on business from this proposal? If not, please provide information as to why.	
Question 21:	14
Do you have any comments on the fee estimates in the Impact Assessment?	
Question 22:	14
Do you have any comments on the assessment of the impact on small and medium enterprises?	
Question 23:	15
Do you have any data on costs for ship recycling facilities?	
Question 24:	15
Are you able to provide any information on the number of applications that you expect to submit for consent approval over the next five years?	
Question 25:	16
Do you have any comments on the Habitats Regulations Assessment Report on the draft Hazardous Waste NPS?	
Question 26:	17
Do you have any comments on the Equalities Impact Assessment Report for the draft Hazardous Waste NPS?	
Next steps	18
Annex 1 – List of respondents	19

Background

1. The purpose of the consultation was to give stakeholders the opportunity to comment on the draft Hazardous Waste National Policy Statement (NPS) and the framework it sets for planning decisions on nationally significant hazardous waste infrastructure projects. This is to ensure that the policy as outlined in the Hazardous Waste NPS is both clear and correct.
2. The consultation ran from 14 July 2011 to 20 October 2011. The consultation document was issued by email to statutory consultees (as set out in the Infrastructure Planning NPS Consultation Regulations 2009) and to key interest groups. The consultation documents were placed on the Gov.UK website. Planning Aid also produced a short summary of the draft Hazardous Waste NPS, which was placed on its website. In addition to publishing the consultation on the draft Hazardous Waste NPS on the Gov.uk website, arrangements were made with the Society of Chief Librarians to advertise the consultation by placing posters in approximately 4000 libraries. In addition, consultees were offered the opportunity to attend an event to discuss aspects of the National Policy Statement for Hazardous Waste. One event was held in London. Those planned for other areas were cancelled due to lack of interest.
3. The draft Hazardous Waste NPS aims to assess the need for the development of nationally significant hazardous waste infrastructure, and the framework for addressing its social, economic and environmental impacts. It is intended to aid the Planning Inspectorate in its assessment of any applications for development consent for nationally significant hazardous waste infrastructure projects. Subject to the consultation, continuing Parliamentary scrutiny and final ratification by Parliament, the UK Government intends to finalise and then formally designate a Hazardous Waste NPS in the spring of 2013.
4. The Hazardous Waste NPS will not be location specific. The consultation therefore covered the generic elements of the Hazardous Waste NPS which apply to any Nationally Significant Infrastructure Projects (NSIPs).
5. The proposals in the consultation document apply to England in accordance with the scope of the Planning Act 2008. In addition to the draft Hazardous Waste NPS the consultation included an Impact Assessment, an Appraisal of Sustainability Report, a Habitats Regulations Assessment Report and an Equalities Impact Assessment Report.
6. Defra received 28 responses to the public consultation; the types of respondents break down as follows:

Responses to Public Consultation

Responses to Public Consultation		
Organisation Type	Number of Respondents	%
Local authorities and planning-related bodies (e.g. Infrastructure Planning Commission)	7	25
Hazardous waste management companies	4	14
Public bodies	3	11
Environment-related bodies (e.g Environment Agency)	4	14
Trade Associations	9	32
Non-Governmental Organisations	1	4
Total	28	100

7. A full list of respondents is attached at Annex 1

Draft Hazardous Waste NPS

8. The public consultation asked specific questions on the draft Hazardous Waste NPS. A summary of the main points raised against each question and the Government's response is detailed below. Occasionally, where it is appropriate to do so, responses are treated under a different question from the one under which they were made.

Question 1:

Do you think this draft Hazardous Waste NPS clearly establishes the need for such infrastructure for those considering developing proposals for nationally significant infrastructure projects for hazardous waste?

Consultee responses

Generally consultees felt the NPS clearly established the need for hazardous waste infrastructure, particularly since the indications are that arisings of hazardous waste will increase. However, some consultees questioned the use of 2008 data in the assessment, given that more recent data from 2010 was available.

Government response

The NPS has been updated to show 2010 data. This does not fundamentally change the assessment of the need for infrastructure as trends remain similar.

Question 2:

Do you think that the types of infrastructure outlined by the draft Hazardous Waste NPS capture the need for nationally significant infrastructure to help implement the Strategy for Hazardous Waste Management and drive the management of hazardous waste up the waste hierarchy? If not, what else should be included?

Consultee responses

Consultees felt the NPS gave a useful indication of the types of facility needed. However, there was a concern that the NPS was too prescriptive and failed to recognise the volatility of the hazardous waste market. There were some suggestions that APC residues may be managed in a number of different ways rather than at specific facilities as set out in the NPS and that the need for facilities for Thermal Desorption might have been over-estimated.

Government response

Some amendments have been made to the NPS with a view to making it clearer that it is not intended to be particularly prescriptive on technologies. For example, the section on Thermal Desorption has now been renamed “Facilities to treat oily wastes and oily sludges”. We have looked again at the need for that type of facility and facilities to treat APC residues and still consider that in order to move the management of such waste up the waste hierarchy there is a potential need for more facilities of these types.

Question 3:

Do you think the draft Hazardous Waste NPS adequately sets out for the Infrastructure Planning Commission the key assessment principles to inform the assessment of future hazardous waste infrastructure development applications?

Consultee responses.

Consultees felt that the assessment principles appeared broadly sound. However, some consultees suggested that, as the National Policy Statement is not site-specific, it might not be appropriate to apply all the assessment principles to every application.

There was also some concern that the NPS referred to Planning Policy Statements and Planning Policy Guidance Notes which would soon be obsolete; that there was less emphasis on social and economic impacts than on the environmental impacts and that it was questionable whether whole life costing assessments were appropriate.

Some consultees felt the NPS could have done more to address the public’s negative perception of hazardous waste facilities.

Government response

It is true that it might not be appropriate to apply all the assessment principles to every application. In such cases it will be for the applicant to provide justification of why a particular assessment is not considered appropriate.

The NPS has now been updated to reflect the fact that many Planning Policy Statements and Planning Policy Guidance Notes disappeared when the National Planning Policy Framework was introduced and so that the NPS is consistent (in so far as is appropriate) with that Framework.

We consider that there is sufficient emphasis on social and economic impacts and that this NPS is consistent with other NPS regimes in this regard. The intention in requesting whole-life costing had been to require applicants to demonstrate, through provision of an assessment of the impacts, that the proposed development would be beneficial to the local, regional and national economies. The intention was that the assessment would take a “whole-life” approach by looking at the potential impacts during the whole lifespan of the project from the construction phase through the operational phase to decommissioning. We consider that this type of assessment is appropriate, but the text of the NPS has been amended to make it clearer that this is what we mean.

Modern, well regulated facilities will offer high levels of protection to the environment and to health. The Government agrees that there is merit in improving public awareness and perceptions of hazardous waste facilities and will produce a guide which developers could use when consulting local communities on their plans and which could set out the need and benefits of hazardous waste infrastructure as well as briefly explaining that such facilities are subject to strict control to protect both human health and the environment.

Question 4:

Do you think the draft Hazardous Waste NPS adequately sets out for the Infrastructure Planning Commission how it should consider alternatives when it comes to particular projects?

Consultee responses

There were some concerns about whether the NPS should give more detail on the consideration of alternatives. However, most felt that the level of guidance given is consistent with the Environmental Impact Assessment Regulations.

Government response

The NPS and the Appraisal of Sustainability (AoS) have shown that there is no alternative to meeting the need for new hazardous waste infrastructure. However, the NPS also clearly states that it must not be assumed that there will be no alternatives for individual projects. The Environmental Statement for each project should include an outline of the main alternatives studied by the applicant and an indication of the applicant’s choice, taking into account the environmental, social and economic effects.

Question 5:

Do you think the draft Hazardous Waste NPS gives appropriate guidance to decision makers on how they should assess the need to consider 'Good Design' for hazardous waste infrastructure?

Consultee responses

Consultees appeared broadly content with the criteria for good design and felt that design is a theme introduced where relevant throughout the assessment sections of the document.

Some suggested that design issues are more for individual applications and cannot easily be addressed by generic text and some consultees commented that there is a need to balance design with functionality.

Government response

Clearly there is a balance between design and functionality and the NPS recognizes that there may be a limit to the extent to which hazardous waste infrastructure can contribute to the enhancement of the quality of the area. However, it should nevertheless be possible to provide infrastructure sensitive to "place" with the application of "good design".

Question 6:

It is a requirement of the Planning Act 2008 that an NPS must include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change. Do you think the draft Hazardous Waste NPS adequately fulfils this requirement?

Consultee responses

Consultees felt that the draft Hazardous Waste NPS explains adequately Government policy on adaptation to climate change. However, it was felt that the NPS could have said more about how *mitigation* of climate change should be taken into account.

Government response

The text is consistent with that used for other NPS regimes and there appears to be no justification for saying more in relation to mitigation of climate change for hazardous waste infrastructure than for other types of Nationally Significant Infrastructure Projects.

Question 7:

Have all potential environmental impacts of hazardous waste development and options for mitigation been identified in the Assessment Principles and Generic Impacts part of the Hazardous Waste NPS (this is Part 4 and Part 5)?

Consultee responses

Some felt that mitigation would very much need to be geared to the individual application and that the NPS could not easily address this. However, consultees generally felt that due consideration had been given to the potential environmental impacts of hazardous waste development and options for their mitigation identified in the Assessment Principles and Generic Impacts sections of the document.

A number of consultees made specific suggestions for amendments to the text.

Government response

The exact nature of suitable mitigation will vary according to the exact nature of the project. Applicants will need to satisfy the decision maker that they have included sufficient provision for mitigation. However, the NPS sets out some general points of principle.

Some specific comments from consultees have been taken into account, but in other cases they have not because to do so would have resulted in different requirements for hazardous waste infrastructure than for other types of nationally significant infrastructure project, without any clear justification for taking a different approach.

Question 8:

Do you think the draft Hazardous Waste NPS considers all the significant impacts of hazardous waste development? If not, what do you think is missing and why?
(This is Part 5.)

Consultee responses

Consultees generally thought that the NPS considered all the significant impacts of hazardous waste development. However, there was some concern about the presumption in favour of this type of development when the local community is likely to take a different view and will have little or no knowledge of the process until the developer comes forward with a specific proposal.

The need to consider insect infestation in respect of hazardous waste facilities was also queried.

A number of consultees made specific suggestions for amendments to the text.

Government response

The Planning Act system offers the opportunity for local concerns to be taken into account at an early stage. Under the Planning Act, applicants are required to publish a statement setting out how they will undertake consultation in the local area and consult on that basis before they submit any applications for development consent. They must tell the decision maker the results of the consultation and the decision maker will refuse to accept the application if it considers that the consultation has not been adequate.

Having reconsidered the issue of insect infestation, we believe that the likelihood of such nuisance is extremely remote for hazardous waste infrastructure and less relevant than for some other types of nationally significant infrastructure. In view of this and the fact that potential insect infestation would be one of the factors considered before issuing an environmental permit, we have concluded that insect infestation is not relevant to the consideration of an application for development consent for nationally significant infrastructure for hazardous waste.

Some specific comments from consultees have been taken into account, but in other cases they have not because to do so would have resulted in different requirements for hazardous waste infrastructure than for other types of nationally significant infrastructure project, without any clear justification for taking a different approach.

Question 9:

Do you think that the Government should formally approve ('Designate') the draft Hazardous Waste NPS?

Consultee response

Most consultees agreed that the Government should formally approve the draft National Policy Statement for Hazardous Waste once valid comments made during consultation had been taken into account.

Appraisal of Sustainability

A number of consultees made comments on the Appraisal of Sustainability and these are largely addressed in the separate Post Adoption Statement. However, a general summary for questions 10-16 is given here after question 16.

Question 10:

Do you believe that the appraisal identifies the likely significant sustainability effects associated with the draft Hazardous Waste NPS? If not, what effects do you feel are not correctly identified and why?

Question 11:

Do you believe that the appraisal identifies the reasonable alternatives to the policy contained within the draft Hazardous Waste NPS? If not, what others should have been considered and why?

Question 12:

Do you believe that any further measures are necessary to prevent, reduce or offset likely significant effects of the draft Hazardous Waste NPS? If so, what further mitigation do you think should have been covered in the AoS? Please provide comments on your response, along with any relevant data or analysis that supports your view.

Question 13:

Do you believe that the AoS correctly describes the cumulative impacts that may occur? If not, what is missing? Please provide comments on your response, along with any relevant data or analysis that supports your view.

Question 14:

Do you consider the monitoring proposals set out in Section 9 of the AoS to be appropriate and sufficient to monitor the significant effects of implementing the draft Hazardous Waste NPS? If they are not sufficient, what measures do you think should be adopted? Please explain why you consider these additional/alternative measures are needed.

Question 15:

Do you agree with the conclusions and recommendations of the Report of the Appraisal of Sustainability of the draft Hazardous Waste NPS? Please provide comments.

Question 16:

Do you have any further comments on the AoS Report or the appraisal described therein?

Consultee response

In general the overall conclusions of the AoS were supported by consultees, but they raised a number of issues on some of the detailed points raised in the AoS. Some consultees made comments in response to the questions on the AoS that related more to the level in the guidance and a number of suggestions were made as to how this guidance could be supplemented.

Government response

These points were carefully considered and have been addressed in the Post Adoption Statement as appropriate.

In the case of the comments that related to the level of guidance in the NPS, in some cases, we continued to consider that the guidance in the NPS was sufficient or felt that there was no justification for setting requirements for hazardous waste infrastructure that would be different to those for other types of nationally significant infrastructure. However, in some cases we considered it was appropriate to make some changes to the NPS to reflect comments and have done so.

We have produced a separate Monitoring Strategy, taking into account consultee comment as appropriate.

Question 17:

Do you agree with the preferred option, which is to produce a Hazardous Waste NPS that allows for market led infrastructure development with no specification of location or suitable technologies? If not, please provide information as to why.

Some consultees offered comment on the alternatives assessed in the Appraisal of Sustainability and these comments are discussed in more detail in the Post Adoption Statement. However, there was no strong opposition to the option selected.

Impact Assessment

A relatively small number of consultees offered comment on the Impact Assessment. Their comments are summarised below question 24.

Question 18:

Do you consider that the costs and benefits stated in the Impact Assessment are valid for your business? If not, please provide whatever evidence you can to enable a more accurate assessment to be made. Any information you provide will be used in the Impact Assessment that will be produced following consultation.

Question 19:

Do you consider that the split of applications against the type of Panel commissioned to deal with it is likely to accurately reflect the nature of applications coming from the Hazardous Waste sector? If not, please provide information as to why.

Question 20:

Do you agree with the assumption in the IA that there are no transitional costs that would fall on business from this proposal? If not, please provide information as to why.

Question 21:

Do you have any comments on the fee estimates in the Impact Assessment?

Question 22:

Do you have any comments on the assessment of the impact on small and medium enterprises?

Question 23:

Do you have any data on costs for ship recycling facilities?

Question 24:

Are you able to provide any information on the number of applications that you expect to submit for consent approval over the next five years?

Consultee Response

While some consultees seemed happy with the overall conclusions of the Impact Assessment, there were some who thought that the benefits might be overestimated since they had been compared with the overall benefits of the Planning Act regime. That regime took account of much larger projects such as airport developments and which would have incurred huge costs under the Town and Country Planning regime. The assumption that under the Town and Country Planning regime most applications for planning permission for nationally significant hazardous waste infrastructure would go to appeal was also queried and it was suggested the administrative savings had been overstated in the IA in part because it failed to take account of the costs of preparing for an application. It was also suggested that it was not correct to assume SMEs would be unlikely to submit applications for development consent for Nationally Significant Infrastructure.

The fees regime under the Planning Act was considered to be complicated and expensive. However, consultees recognised that this was a function of the Planning Act and the related Regulations rather than of the NPS itself.

Government Response

A draft Impact Assessment was produced for the National Policy Statement and issued as part of the consultation package. However, we have since confirmed with the Better Regulation Executive that the National Policy Statement does not change the existing Regulatory requirements, which were brought in by the Planning Act. The associated fees were established by the Infrastructure (Planning and Fees) Regulations in 2010 and an impact assessment was produced for those Regulations. This NPS makes no changes to that fees regime or to the procedure by which applications are determined under the Planning Act. Given this, we have received written confirmation from the Better Regulation Executive that the hazardous waste NPS does not require RRC clearance.

Habitats Regulations Assessment

Question 25:

Do you have any comments on the Habitats Regulations Assessment Report on the draft Hazardous Waste NPS?

Consultee Response

Very few consultees offered comment on the HRA. Of the comments received, some were on points of detail such as correct references to the Habitats Regulations.

Another query was whether the HRA had properly considered the impacts on sites in the Devolved Administrations and we were also asked whether a case for Imperative Reasons of Overriding Public Interest (IROPI) is appropriate given the lack of spatial context and the failure to establish strategic site criteria.

Government Response

We have been able to take some of the comments received on board. In the case of sites in the Devolved Administrations, we believe that as the NPS is not locationally specific, it and the HRA assessment we carried out should be sufficiently generic to apply equally to sites in the Devolved Administrations.

In terms of the justification for the IROPI case, we do not believe that it is correct to say that the plan could not be approved in the overriding public interest because it is possible to say, that at a theoretical level, compensation for irreplaceable habits might not be available. Rather were that the case in relation to a particular proposal which can be fully assessed, that proposal should not be approved following the project level HRA. It is highly improbable that each and every possible proposal that might come forward and would otherwise meet the criteria in the plan would fall at this same hurdle.

Question 26:

Do you have any comments on the Equalities Impact Assessment Report for the draft Hazardous Waste NPS?

Consultee Response

Very few consultees offered comment. There was a suggestion that the assessment did not adequately take into account those with cardio-vascular conditions, but nevertheless it was felt that the guidance given in the NPS was sufficiently comprehensive.

Government Response

Given that we and the few consultees who offered comment consider that the guidance in the NPS is sufficient to ensure that vulnerable groups interests are taken into account, there seems to be no need for further action.

Next steps

9. Having considered the responses to the consultation and the results of the Parliamentary scrutiny process, the Government intends to lay the National Policy Statement for Hazardous Waste before Parliament for approval on 6 June. Subject to that approval process, the Secretary of State intends to designate the NPS.
10. In line with the Planning Act 2008, the draft Hazardous Waste NPS was drafted on the basis that once designated the Infrastructure Planning Commission (IPC) will be the decision making body. However, following the election in May 2010, the Government announced that it will abolish the IPC and that applications for development consent would be dealt with by the Planning Inspectorate. Examination of applications will be carried out by the Planning Inspectorate, which will make recommendations to Ministers, who will take the final decisions on applications. Both the Planning Inspectorate and Ministers must follow the policy framework provided in NPSs, subject to exceptions set out in the Planning Act 2008 as amended by the Localism Act 2011.

Annex 1 – List of Respondents

Augean
British Veterinary Association
Campaign for National Parks
Chartered Institute of Environmental Health (CIEH)
Chartered Institution of Wastes Management (CIWM)
Chartered Institution of Water and Environmental Management (CIWEM)
City of London Law Society
Countryside Council for Wales
Department for Environment Northern Ireland (Doeni)
Derbyshire County Council
Devon County Council
Environment Agency (EA)
Environmental Services Association (ESA)
Forestry Commission
Hampshire County Council
Health Protection Agency
Infrastructure Planning Commission (IPC)
Lancashire County Council
Natural England (NE)
Northamptonshire County Council
Oil Recycling Association (ORA)
Peel Environmental
Royal Town Planning Institute
SEPA
Tradebe
Trinity House
UK Environmental Law Association
Whitemoss Landfill



Department
for Environment
Food & Rural Affairs