

**Augean Landfill – 28 April 2011**

Sir/Madam

Please find attached Augean's response to the consultation on the proposed implementation of the amendments to the above.

Regards

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## **Implementation of Changes to the Paris and Brussels Conventions on Nuclear Third Party Liability**

### **Introduction**

Augean PLC is a market-leading UK based specialist waste and resource management group delivering a broad range of services particularly in the hazardous waste sector. The business owns three landfill sites accepting hazardous waste and eight hazardous waste treatment and transfer operations.

Augean is one of the few businesses in the UK seeking to offer disposal facilities for Low Level Waste (LLW) hence the changes to the Paris Brussels Conventions on nuclear third party liability are of particular interest. Augean has made significant investment in the delivery of suitable treatment and disposal facilities for the management of LLW based on the Government Policy for the Long Term Management of Solid Low Level Radioactive Waste in the UK (March 2007) and the NDA UK Strategy for the Management of solid Low Level Radioactive Waste from the Nuclear Industry. We have serious concerns that despite the issue of insurance having been identified over 12 months ago and continued assurances that the matter will be resolved insurance and financial assurance appear to be significant hurdles to overcome if the supply chain is to deliver the benefits envisaged in the 2007 policy statement and the NDA LLW Strategy.

Augean is encouraged that the Government recognises the potential issues facing the commercial waste sector if it is to effectively implement the Government's policy for LLW disposal. The Government appreciates that the level of risk from landfill waste disposal facilities used for LLW is low and that there is a need to prevent a disproportionate impact on the potential savings available by the use of landfill.

#### **Chapter 4 Question 1**

We understand that questions remain as to whether the insurance market will pick up the new risks required by the Convention amendments. This will be an issue for all operators caught by the Convention requirements. We assume this will be the subject of continuing dialogue with the insurance market.

#### **Chapter 7 Question 4**

It is likely that in some circumstances disposal operators will be responsible for undertaking or arranging packaging and transportation of wastes to their disposal sites. Prior to any exemption that may be obtained operators would require the 80m Euros level of cover for their operations as low risk transport operations.

At the present time Augean would envisage non-stop movement of wastes from SLCs to the Augean site. It may however arise that certain wastes may be assembled for packaging and transportation at a particular site but at the moment we have no details of such proposals.

### **Chapter 8 Question 5**

Augean would hope that on any basis transportation of LLW would be considered to be low risk and that liability would be limited to the 80M Euro limit pending any exemption. If there is any doubt about this then alternative criteria may be needed.

### **Chapter 9 Question 6**

Initial indications are that insurance cover up to the 80M Euro level would be available in the market for waste disposal operators but there remains the issue as to whether all Convention risks would be covered and the actual cost has yet to be clarified.

The UK landfill business has been used to putting in place bonding or undertakings and deposits to cover landfill aftercare requirements but these are for relatively modest amounts and to use the same types of instrument for heads of Convention liability would be prohibitively expensive.

The Government presumably negotiated and agreed new heads of liability upon the basis that the insurance market would respond. If this is not the case then it is reasonable that Government assumes those liabilities itself.

Whilst alternative financing schemes may be a viable option for the SLCs with much higher levels of cover required and significant liabilities to assume the same cannot be said of waste operators accepting relatively small volumes of low risk wastes.

For waste disposal operators a levy per tonne of waste accepted may be a reasonable way to proceed because the volumes of waste going to landfill are

unpredictable. Alternatively this could be expressed as a percentage of cost of disposal received by the operator. It does however seem a pointless exercise for Government to recoup a cost which then gets added to a disposal cost which it is paying as well through NDA funding.

### **Chapter 11 Question 8**

Augean welcomes the opportunity to provide third-party facilities for the disposal of LLW outside the nuclear licensed estate. This is essential for the effective implementation of the Government Policy of 2007 and the NDA Strategy of 2010 for Low Level Radioactive Waste. However it needs to be recognised that the economic basis for commercial waste disposal is very different to that of nuclear facilities and that the risks associated with the material the nuclear sector is passing to the commercial waste disposal sector are very small. The liabilities should be proportionate to the risks.

We welcome the proposal not to include commercial waste disposal facilities in the nuclear licensing regime. We agree as stated in 11.7 that commercial waste disposal facilities are adequately regulated through the Environmental Permitting regime. The imposition of the nuclear licensing regime would be disproportionate to the risk of the disposal of relatively small quantities of low level waste at the lower end of the spectrum.

We support the Government's view that LLW disposal facilities and specifically landfill sites accepting the lower range of LLW should not be the subject of the Convention liability regime. Augean currently holds normal Public Liability cover for its landfill sites accepting hazardous waste and such levels should be more than

adequate for risks associated with LLW. The imposition of 70/80M Euros liability during the operational is grossly disproportionate to the risks that such sites present. We have serious concerns that the costs of insurance/assurance will be prohibitive in providing the disposal service envisaged by the Government 2007 policy and the NDA 2010 Strategy for LLW particularly if the requirement to insure this liability continues into the post closure period. We therefore welcome the government's proposal to apply for formal exclusion from the convention for LLW disposal facilities as low risk. Indeed we would suggest that the Government reconsiders the possibility of immediate exclusion based on the criteria set out in paragraph 11.18 of the Consultation Paper.

Augean is seriously concerned that the Convention liability regime will be applied in the interim period between the implementation of the Convention and formal approval of the exclusion. In particular Augean has the following concerns:

- Insurance/assurance will represent a serious barrier to entry to the market which is likely to undermine the NDA Strategy for LLW.
- The level of insurance/ assurance required will not be available
- The insurance available will be cost prohibitive. The costs will be passed to the consignor and ultimately paid by the Government.
- The regime is in conflict with the NDA Strategy aim of reducing the costs of decommissioning. There is a serious risk that the predicted cost saving will be largely passed to the insurance market
- The cost of insurance/ assurance is site based and will not reflect the quantity of waste accepted and the level of risk. The cost will be the same whether the site accepts one ton of waste or tens of thousands of tons.

This is likely to reduce the number of sites providing the service particularly

given the uncertainty regarding the quantities of waste to be received by such sites.

In addition a major concern relates to the requirement for post closure insurance where it is unclear what period is envisaged by Government or the Convention. Any requirement for post closure insurance at Convention levels for landfill sites for any significant period would make landfill disposal economically unviable because such cost would have to be reflected in the disposal cost. It is unclear what constitutes a post closure period and this needs to be clarified.

## **Conclusion**

The delivery of the NDA LLW strategy is a critical element of the decommissioning programme. The liability regime proposed is likely to seriously undermine the delivery of the strategy.

Augean considers that the optimum approach to delivering this strategy while ensuring that the liabilities are appropriately addressed is for liability for LLW going to landfill to be retained by the SLCs and/or the Government pending the exclusion being granted by the NEA. During such period some fixed levy relating to tonnage accepted could be applied to the disposal cost to reflect the assumption of liability by the SLCs/Government but it is in fact self defeating as it would simply be reflected in the disposal cost agreed by waste contractors.