Consultation outcome

Non-hazardous and inert waste: appropriate measures for permitted facilities

From: Environment Agency (/government/organisations/environment-agency)

Published 14 September 2020

Last updated 1 August 2022 —

Applies to England

This consultation has concluded

Detail of outcome

We've published the guidance Non-hazardous and inert waste: appropriate measures for permitted facilities (https://www.gov.uk/guidance/non-hazardous-and-inert-waste-appropriate-measures-for-permitted-facilities).

Feedback received

Detail of feedback received

We consulted with stakeholders to get their views on our appropriate measures technical guidance. Our aim was to help operators understand the appropriate measures relevant to regulated facilities permitted to treat or transfer (or both) non-hazardous and inert waste.

We had 61 responses to the consultation:

- 28 from site operators
- 8 from trade associations
- 10 from consultants
- 9 from local authorities
- 3 from other organisations and groups
- 2 were anonymous
- 1 from a member of the public

53 of the responses were from an organisation or group, whereas 8 responses were from individuals.

Original consultation

Summary

The Environment Agency is consulting on new guidance about appropriate measures for permitted facilities that take non-hazardous and inert waste for treatment or transfer.

This consultation was held on another website.

This consultation ran from
9am on 14 September 2020 to 5pm on 18 November 2020

Consultation description

The purpose of this consultation is to get stakeholder views on our proposed new guidance. The guidance sets out appropriate measures for permitted facilities that take non-hazardous and inert waste for treatment or transfer.

We will review the responses to the consultation and use them to revise the proposed guidance. We will publish the revised guidance on GOV.UK. We have published similar guidance for the healthcare waste sector (https://www.gov.uk/guidance/healthcare-waste-appropriate-measures-for-permitted-facilities), and will also be publishing guidance for other waste sectors, for example biowaste and hazardous chemicals.

We have produced this guidance to improve the design and operation of permitted facilities in the non-hazardous and inert waste sector. We want to make sure that standards are clear, consistent and enforceable.

The guidance will apply to existing and new facilities like:

- household waste recycling centres
- waste transfer stations
- materials recycling facilities
- sites producing soil and aggregates

Existing facilities will be given time to implement the new standards.

Unless specifically stated, the guidance will apply to all permitted waste management facilities in the sector, whether operating under an installation or waste operation permit.

Documents

Published 14 September 2020
Last updated 1 August 2022 - hide all updates

1 August 2022

Updated the consultation outcome to link to the 'Non-hazardous and inert waste: appropriate measures for permitted facilities' guidance.

16 March 2021

We have published our consultation response.

16 November 2020

We have extended the closing date of this consultation until 18 November 2020.

14 September 2020

First published.

Explore the topic

Environmental permits (/environment/environmental-permits)

Waste and environmental impact (/environment/waste-environment)

Waste management (/environment/waste-management)

Business and the environment (/business-and-industry/business-and-the-environment)

Business regulation (/business-and-industry/business-regulation)

Environment Agency

Consultation outcome

Non-hazardous and inert waste: appropriate measures for permitted facilities summary of consultation responses

Updated 1 August 2022

Contents

This publication is available at https://www.gov.uk/government/consultations/non-hazardous-and-inert-waste-appropriate-measures-for-permitted-facilities/public-feedback/non-hazardous-and-inert-waste-appropriate-measures-for-permitted-facilities-summary-of-consultation-responses

1. Introduction

We consulted with stakeholders to get their views on our appropriate measures technical guidance. Our aim was to help operators understand the appropriate measures relevant to regulated facilities permitted to treat or transfer (or both) non-hazardous and inert waste.

The guidance is not definitive and it does not replace an operator's obligation to assess appropriate measures fully.

Currently, the measures and standards for permitted installations that accept non-hazardous wastes are in Sector Guidance Note S5.06: recovery and disposal of hazardous and non-hazardous waste. (https://www.gov.uk/government/publications/sector-guidance-note-s506-recovery-and-disposal-of-hazardous-and-non-hazardous-waste) Other guidance, for example on developing management systems, fire prevention plans and controlling and monitoring emissions is also relevant to permitted sites within this sector.

The appropriate measures technical guidance aims to improve the design and operation of permitted facilities in the non-hazardous and inert waste sector. It will ensure that appropriate measures are applied consistently.

The guidance also incorporates the relevant requirements of the waste treatment 'best available techniques' (BAT) conclusions document, made under the European Industrial Emission Directive (2010/75/EU). This applies to waste installation facilities permitted under the Directive. Waste installations need to meet BAT and the Associated Emission Limits (BAT AELs). Existing operations must meet BAT AELs by August 2022. New installations must meet the standards from the start of operations.

There is clear overlap between BAT for waste installations and necessary measures for waste operations. The Environment Agency uses the term 'appropriate measures' to cover both sets of requirements.

When we publish the new guidance, it will replace the non-hazardous waste parts of S5.06 guidance note. It will apply to new and existing permitted waste facilities that treat, transfer and/or store non-hazardous or inert waste (unless specifically stated in the guidance).

Some measures may not be suitable or relevant depending on the operator's risk assessment, including the:

- activities being carried out
- size and nature of the activities
- location of the facility

We will implement the guidance for new permitted facilities through the environmental permit application process. For existing facilities, we will do this

through staged permit reviews, starting with waste installations in 2021. We are also reviewing the existing standard rules that apply to operations involving non-hazardous and inert waste. This review will make sure those standard rules provide an appropriate level of environmental protection and include the appropriate measures and standards. We will consult on revised standard rules in the first half of 2021.

2. How we ran the consultation

We ran the consultation for 9 weeks from 14 September to 18 November 2020. We invited you to comment using our Citizen Space online consultation tool, but we also received responses using the consultation response forms and by letter.

We asked 31 questions in this consultation. This document sets out the questions we asked in the consultation. It also has a summary of the main points from the responses we received and what we will do.

We reviewed all the comments and suggestions and will be amending the guidance where appropriate, taking into account the points made.

There is a list of the names of the organisations that responded to the consultation at the end of this document.

We would like to thank all the respondents for their time and contributions to this consultation.

3. Summary of the main findings and our actions

Many respondents told us the guidance adopted ‘a one size fits all’ approach and in reality there are differing levels of risk within the sector. We agree and acknowledge the need for flexible approach in paragraph 9 of the guidance which states:

Some measures may not be suitable or relevant for your operation. Appropriate measures will depend on the:

- activities being carried out
- size and nature of the activities
- location of the facility

Paragraph 11 of the guidance also states that operators can propose alternative measures that achieve the same level of environmental protection or explain why a measure is not relevant.

The guidance applies to over 4,000 permitted facilities, operating a variety of waste activities of varying complexities and scale. For that reason we acknowledge that some sections may not apply in full to some permitted facilities. The guidance provides a framework for how we expect permitted facilities in the sector to operate. We will however review the guidance, where appropriate, to make it clearer that risk assessment is critical when determining appropriate measures.

Many respondents told us they had serious concerns with the enclosed buildings section of the guidance, particularly paragraph 177 of the guidance which states:

“Enclosing activities within buildings is an appropriate measure for preventing and minimising emissions of pollution. For waste treatment activities, we consider this to be the default control measure, given that an appropriately designed building will reduce a range of types of pollutants.”

Respondents were concerned about the:

- financial implications
- feasibility
- timeframes
- cost/benefit
- overall environmental impact

We explain in further detail the actions we will take in the enclosed buildings section.

Some respondents questioned the lawfulness of the guidance as they considered the guidance seeks to impose BAT obligations to all sites within the sector, when BAT only applies to waste installations. We consider this in more detail in our response to question 13.

Some respondents told us they were concerned with the proposed implementation timescales. Through permit reviews, we will assess the current operating techniques of facilities against the relevant appropriate measures. We would incorporate the timescales for making improvements into the permit. We would do this using a permit variation and improvement conditions, where we consider it appropriate. Operators can input into agreeing improvement condition timescales as we correspond with them during the permitting process. In exceptional circumstances, we will consider changing the deadlines after the permit has been varied, and if we agree, we will do this in writing.

Some respondents told us the guidance was disproportionate for exemptions. For a waste activity carried out under an exemption, the operator must comply with the objectives which underpin exemptions, set out in Article 13 of the Waste Framework Directive. The operator must not:

- cause a risk to water, air, soil, plants or animals
- cause a nuisance through noise or odours
- adversely affect the countryside or places of special interest

We consider the use of appropriate measures (such as management systems), which are proportionate to the risk posed, are essential and of benefit to both businesses and the environment. Exempt operators may find it useful to refer to the guidance as it will help them make sure they comply with the exemption conditions and the Waste Framework Directive objectives.

Many consultation responses included specific technical points to each paragraph in the guidance. We will not respond to each individual point raised within this response document, but we will consider addressing those points in the final guidance.

We will produce a business impact target (BIT) assessment as a result of the guidance. When we carry out BIT assessments we are guided by the BIT methodology published by the Secretary of State under the Small Business, Enterprise and Employment Act 2015. The impact is primarily assessed on the basis of its ‘equivalent annual net direct cost to business’. Only direct impacts on business are scored for the BIT. These are impacts that can be identified as a direct result of implementing the guidance.

4. Responses to ‘about you’ consultation questions (1-4)

Q1. Are you responding as an individual or on behalf of an organisation or group?

We had 61 responses to the consultation:

- 28 from site operators
- 8 from trade associations
- 10 from consultants
- 9 from local authorities

- 3 from other organisations and groups
- 2 were anonymous
- 1 from a member of the public

53 of the responses were from an organisation or group, whereas 8 responses were from individuals.

Q2 Keeping up to date

Where appropriate we will now make changes to our guidance. We believe changes to the guidance will provide greater transparency on how and when the guidance applies. This will result in improved environmental performance and reduce impacts on the wider environment, whilst minimising the impact on business.

We aim to publish the revised guidance in Spring 2021.

Q3. Can we publish your response?

We were given permission to publish 56 of the responses. 5 responses either did not give permission or did not answer this question.

Q4. If you operate a permitted waste facility (or facilities), please tell us what kind it is (they are).

We received a broad range of responses from operators of waste transfer stations, materials recycling facilities, household waste recycling centres and soils and aggregates processing facilities. We also received responses from waste wood operators, Refuse Derived Fuel or Solid Recovered Fuel producers, Incinerator Bottin Ash processors, dredging operators and operators of exempt facilities.

5. Responses to consultation questions (5-13)

Here is a summary of responses for all the questions within each section of the consultation, followed by our responses.

Q5a to Q5d Management systems

Q5a. The draft guidance (sections 27 to 44) sets out the standards we expect of management systems. What are or would be the practical and financial implications of meeting these standards?

Q5b. Please describe any alternative approaches or additions to these standards that we should consider.

Q5c. Please identify any parts of these standards that you feel are unnecessary and explain why.

Q5d. How do you think meeting these standards would benefit your business, the environment or human health?

Summary of responses

a) Some respondents told us they had existing management systems that met the guidance, including ISO 14001 certification. Respondents told us the guidance did not give consideration to operators who had achieved ISO14001 and that many of the management system requirements in the draft guidance are different to those necessary to meet the standards of ISO 14001.

b) Some respondents told us the management systems part of the guidance is only appropriate for installations, rather than a ‘catch all’ for all permitted operations. Respondents thought the guidance was disproportionate to the risks from their part of the sector or their site. They thought developing a management system would be significant for smaller operators who do not have the in-house capability to develop one.

c) Some respondents told us there was inconsistency with existing management system guidance and that the draft guidance was introducing additional management plan requirements.

d) One respondent told us they were still implementing management systems at their sites, which meant the 12 month timescale for implementation was unrealistic. The respondent told us there were resource implications in reviewing existing and producing new management system documentation.

e) Some respondents told us that having management systems for exempt sites was disproportionate and that management system requirements should be determined on a risk based approach.

f) Some respondents highlighted the different layers of control in management systems, fire prevention plans, accident management plans, for example. This was in the context of overlapping plans and clarity between the various plans.

g) Some respondents told us their costs would increase in order to develop and maintain the management systems.

h) Some respondents told us they wanted further clarity on reviewing cleaner technologies, as this could have significant financial implications.

Our response

a) We acknowledge that a certified management system that is independently checked should result in greater confidence in how permit compliance is managed. However, having a certified management system is not a guarantee that operators will comply with their permit conditions. It is essential that management systems are implemented effectively. Certified management systems do not replace assessing the site specific risks. The guidance reflects the documentation that an operator may need as part of their management system to identify and minimise the risks of pollution.

b) Certain permits for waste operations already have a management system condition, implemented directly by Schedule 9 Part 3 of the Environmental Permitting (England & Wales) Regulations 2016 and the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2019. The management system can be proportionate and appropriate to the type of operation and environmental risk posed by the facility. So for example we are unlikely to expect a pest or odour management plan at an aggregates processing site, as these risks will have been screened out by risk assessment.

c) The existing develop a management system (https://www.gov.uk/guidance/develop-a-management-system-environmental-permits) guidance on GOV.UK is for all permitted activities that require management systems, including non-waste sectors. This guidance will be reviewed and revised in 2021. We expect you to produce additional management system documents where they are needed to identify and minimise the risk of pollution from your permitted facility.

d) Operators should carry out requirements like updating management systems as soon as possible and in any event within 12 months of us publishing the guidance. Management system reviews should be prioritised on a risk basis.

Operators should continually assess their management systems to reflect, for example, changes to operations and to monitor whether it is effective.

e) For a waste activity carried out under an exemption, the operator must register that exemption and comply with the conditions in full. However, the operator must also comply with the objectives which underpin the use of exemptions, set out in Article 13 of the Waste Framework Directive. The operator must not:

- cause a risk to water, air, soil, plants or animals
- cause a nuisance through noise or odours
- adversely affect the countryside or places of special interest

We consider management systems which identify and minimise the risk of pollution, and are proportionate to the risk posed, benefit both business and the environment. Exempt operators may find it useful to refer to the guidance as it will help make sure they comply with the exemption conditions and the Waste Framework Directive objectives.

f) There will be some overlap between different plans that are part of the operator's management system as they are often interlinked. Operators can manage this overlap by reviewing and updating the management system and through continual improvement. We will also work to eliminate any unnecessary overlaps or duplication when we review our guidance for operators.

g) An effective management system helps improve business performance, achieve permit compliance and protect the environment and human health. We expect management systems to be proportionate to the permitted activities. This helps minimise costs for lower risk site operators.

h) BAT 1 within the BAT conclusions refers to 'the continuous improvement of the environmental performance of the installation'. For all types of waste facility, we would expect cleaner technologies to be considered:

- as a result of substantiated pollution incidents
- when reviewing management systems
- when planning investment decisions, for example new items of plant

Q6a to Q6d Accident management plans

Q6a. The draft guidance (sections 50 to 72) sets out the standards we expect of accident management plans. What are or would be the practical and financial implications of meeting these standards?

Q6b. Please describe any alternative approaches or additions to these standards that we should consider.

Q6c. Please identify any parts of these standards that you feel are unnecessary and explain why.

Q6d. How do you think meeting these standards would benefit your business, the environment or human health?

Summary of responses

a) Some respondents told us that accident management plans had benefits in reducing the risk of harm to the environment and human health. Other respondents told us the guidance was too onerous.

b) Many respondents told us there was overlap and inconsistency on what is required for accident management plans, fire prevention plans and contingency plans and this may affect how these plans work together and cause a risk to the environment.

c) Respondents told us that the security measures were too onerous for some sites.

d) One respondent told us that provision to contain surges and storm water flows would be costly to retrofit and may not be possible within the constraints of site boundaries, for example. The respondent told us measures for containing surges and storm water flows were not beneficial at most sites. Another respondent told us there may be scenarios where containing surges and storm water flows is not entirely within the operator’s control.

Our response

a) Accident management plans are important when identifying and minimising pollution, for example from equipment breakdowns, flooding and vandalism. Accidents can cause irreparable damage to the environment, human health, business reputation and may also result in costly enforcement action. We expect accident management plans to be proportionate to the risk of the permitted activities. Not all elements of the accident management plan section of the guidance will be relevant to every site, but they should be considered and screened out as appropriate.

We make it clear in the guidance that some measures may not be suitable or relevant for particular operations and we stated in paragraph 53 that the depth

and type of accident risk assessment will depend on the characteristics of the facility and its location.

b) We will review our existing guidance on management systems and accident management plans (https://www.gov.uk/guidance/develop-a-management-system-environmental-permits#accident-prevention-and-management-plan) in 2021. We will check and remove any unnecessary or overlapping content, taking account of the appropriate measures guidance we are producing for various waste sectors (for example biowaste and chemical waste).

c) The guidance on security measures makes it clear that facilities must use an appropriate combination of the measures listed. What security measures are appropriate will depend on the environmental risk posed by the facility (see paragraph 9 of the guidance). Site security is an important factor in preventing environmental incidents, including fires, theft of fuel, damage to plant and machinery, for example.

d) Incidents of tidal surges and storm water flows will increase in frequency and severity as a result of climate change. In some locations this is a risk which businesses need to manage. This can be achieved by adequate site design at the outset. For many types of permitted facility covered by the guidance there will be no formal drainage arrangements due to the low risk nature of the facility. During the permit review process we will ask you about your plans for adapting to a changing climate. Any capital intensive costs associated with changes to drainage systems would be addressed through permit improvement conditions and discussed with operators.

Q7a to Q7d Contingency plans

Q7a. The draft guidance (sections 73 to 81) sets out the standards we expect of contingency plans. What are or would be the practical and financial implications of meeting these standards?

Q7b. Please describe any alternative approaches or additions to these standards that we should consider.

Q7c. Please identify any parts of these standards that you feel are unnecessary and explain why.

Q7d. How do you think meeting these standards would benefit your business, the environment or human health?

Summary of responses

There were generally fewer responses to the questions on contingency plans.

a) Some respondents told us contingency plans were essential for all sites, but they should be proportionate to the risk. Other respondents told us they had contingency plans and viewed them as essential, whilst noting that they could not cover all eventualities and there needs to be some flexibility.

b) Some respondents told us they were concerned over needing to reproduce separate, site-specific contingency plans, which would add costs and management time without increasing protection for the environment or human health.

c) One respondent told us there wasn't a need (on the basis of cost, operational disruption and environmental benefit) for identifying, decommissioning and removing non-productive or redundant items such as tanks and pipework.

d) One respondent told us it was unnecessary for contingency plans to be regulated through the environmental permit and it is for the permit holder to make sure their site complies with the environmental permit. The respondent stated that contingency plans may need to change at very short notice and seeking approval for any changes is impractical.

e) One respondent told us operators should have allowances for exceeding permitted limits (following a discussion with the Environment Agency) if the cost to dispose of or recover a material becomes excessive.

f) Some respondents (including various local authorities) told us it is impractical to make customers aware of site contingency plans, and of the circumstances in which you would stop accepting waste from them.

g) Some respondents told us they had contingency plans and they would be duplicating effort to incorporate them into the management system.

Our response

a) We agree contingency plans are essential. They should be proportionate to the scale of the risk, taking into consideration factors such as the type and scale of the activities being carried out and where they are located. We understand contingency plans may need to be revised depending on site or incident specific circumstances. This can be addressed on an incident or case by case basis.

b) Whilst a generic contingency plan may be appropriate company-wide, there are still site specific elements that must be accounted for.

c) Identifying, decommissioning and removing non-productive or redundant items is important to avoid incidents, for example filling redundant tanks that have not been inspected and maintained. Decommissioning will ensure any residual pollution risk has been removed and will help return the site to a satisfactory state.

d) Contingency plans are required as part of the overall management system condition. We do not approve management systems but do approve parts of them (for example fire prevention plans). We will assess elements of management systems when carrying out our compliance activity, particularly where shortcomings in management systems may negatively affect people and the environment.

e) Operators are legally required to comply with their permit. We have a process for dealing with incidents when they arise.

f) Making customers aware of contingency plans is appropriate where commercial contracts are in place.

g) Contingency plans can be a separate document but still form part of the overall management system without duplicating effort.

Q8a to Q8d Enclosed buildings

Q8a. The draft guidance (sections 177-187) requires that waste treatment activities that are likely to pollute sensitive receptors, or have done so, must be undertaken within an enclosed building, unless the operator can demonstrate that alternative measures are equally effective or better. The draft guidance then explains the requirements for an enclosed building, for example containment with extraction to abatement. Further, it requires that non-treatment activities like loading and unloading are also undertaken in an enclosed building if they produce significant emissions that cannot be controlled by alternative measures. What are or would be the practical and financial implications of meeting these requirements?

Q8b. Please describe any alternative approaches or additions to these requirements that we should consider.

Q8c. Please identify any parts of these requirements that you feel are unnecessary and explain why.

Q8d. How do you think undertaking waste handling activities within an enclosed building would benefit your business, the environment or human health?

Summary of responses

Many respondents told us the enclosure within buildings section of the guidance (particularly the reference to a building being the default control measure for waste treatment activities) was of significant concern. Respondents also told us that the implementation timescales were unrealistic.

Respondents told us they were concerned about:

- financial implications (build cost, potential loss of earnings during construction, building and maintenance running costs) and the potential for site closures
- feasibility (planning permissions, physical constraints on existing sites, issues retrofitting, leased sites, power supply to operate abatement equipment, buildings limit fire prevention plan options)
- timeframes (3 years for capital intensive improvements was unrealistic, with the timeframe being planning application dependent)
- cost/benefit (other measures may be equally effective for less cost)
- overall environmental impact (carbon emissions, use of raw materials in construction)

Some respondents told us they were unsure what methods for enclosure within a building might be considered equally effective for controlling emissions. Some respondents wanted clarity on how they would be required to demonstrate their alternative measures were equally effective.

Some respondents questioned whether there was evidence to support enclosure within a building. Other respondents told us that they operated rail hub sites (some of which are located in Air Quality Management Zones) and therefore the cost of enclosed buildings for unloading trains would be significant.

Some respondents told us they did not know what significant emissions were.

Our response

We acknowledge that the section of the guidance on enclosed buildings led to respondents raising significant concerns.

Operating waste management activities within a building is clearly an appropriate measure. When designed properly, buildings help with a wide range of emissions. This has been demonstrated through studies involving particulate monitoring at sites with and without buildings and is a specific BAT conclusion. We are seeing an increasing number of waste management facilities operating within buildings through the planning and permitting process.

If waste activities are likely to cause or are causing pollution at sensitive receptors then putting those activities in a building may be appropriate. For many sites within this sector, the risk will be low because of the activities carried out and because other appropriate measures are already in place to manage the pollution risk.

If there is a risk of or an ongoing impact from a waste activity on people and the environment which cannot be addressed through alternative measures, then a building must be considered. Risk assessments will be an important component in determining what is required.

In higher risk areas, for example in an Air Quality Management Zone, or in heavily populated areas, an enclosed building with abatement is more likely to be an appropriate measure when compared to waste activities taking place away from sensitive receptors. For example, various local plan policies for London and the London Plan 2021 follow the same approach we will be taking within the guidance.

Some respondents told us they wanted clarity on how they would be required to demonstrate their alternative measures manage the pollution risk from their waste activities.

When assessing appropriate measures we expect operators to review their risk assessment. Operators should continually review the effectiveness of their measures. Substantiated complaints and pollution incidents indicate that measures are not working.

Our policy paper on assessing and scoring environmental permit compliance (https://www.gov.uk/government/publications/assessing-and-scoring-environmental-permit-compliance/assessing-and-scoring-environmental-permit-compliance) explains when we would consider emissions to be significant.

Q9a to Q9d Waste pre-acceptance, acceptance and tracking

Q9a. The draft guidance (sections 86 to 130) sets out standards for waste pre-acceptance and acceptance procedures. In particular, it requires that loads which have not been through pre-acceptance or properly characterised are rejected, except in an emergency or if the facility is a household waste recycling facility. Further, it requires a computerised system to manage waste pre-acceptance, acceptance, inventory and capacity.

What are or would be the practical and financial implications of meeting these standards?

Q9b. Please describe any alternative approaches or additions to these standards that we should consider.

Q9c. Please identify any parts of these standards that you feel are unnecessary and explain why.

Q9d. How do you think meeting these standards would benefit your business, the environment or human health?

Summary of responses

Waste pre-acceptance

a) Some respondents told us they had concerns with the use of WM3 (https://www.gov.uk/government/publications/waste-classification-technical-guidance) for the classification and assessment of waste. The use of WM3 to assess soils and excavated wastes (particularly from householders, smaller sites, for example) was deemed impractical and a WM3 assessment is unlikely to be carried out in those instances. Other respondents questioned how WM3 could be applied to mixed construction and demolition wastes.

The guidance states that if mirror entry wastes have not been properly assessed they should be deemed as the hazardous entry as a precautionary measure. Respondents told us this could lead to increased fly tipping and increased costs as a result of the resources needed to assess the waste. They said that smaller customers would be unlikely to provide a WM3 assessment, or the necessary information to carry out one. Respondents suggested this could result in waste being diverted to poor performing or illegal sites.

Two respondents told us that ongoing projects on waste classification (waste wood and excavated waste from utilities installation and repair) will result in industry-wide guidance which would be a WM3 assessment at an industry level. As a result those waste streams would not require separate testing of waste.

b) Some respondents told us waste transfer notes were sufficient for waste pre-acceptance, acceptance and tracking.

c) One respondent told us that although the guidance removes assessment and classification requirements for wastes from domestic properties, it should cover similar commercial wastes and mixed loads from commercial collection rounds with multiple producers.

d) One respondent told us that the pre-acceptance requirements (paragraphs 86 to 95) went far beyond current legal requirements. Another respondent stated that the Statutory Code of Practice does not require the producer to

undertake the level of testing, analysis and classification contained in the guidance.

e) One respondent told us paragraphs 86 and 87 of the guidance effectively ruled out waste received on an ad hoc basis (in the context of construction and demolition waste).

f) Some respondents considered determining the age and nature of wastes was impracticable.

Waste acceptance

g) Some respondents told us that clarity was needed on pre-booking of waste. Pre-booking was considered unfeasible in circumstances like council collection rounds. Some respondents wanted clarity on whether a waste load had to be booked each time a load was delivered.

h) Some respondents told us self-contained drainage requirements for quarantine areas was an excessive measure.

Quarantine

i) Respondents told us that storing quarantined waste for 5 working days was not practical for every waste type (for example gas cylinders, where collection on a bulk basis is needed or preferred). Some respondents wanted flexibility in quarantine location.

Waste sampling and analysis

j) Respondents told us a blanket approach to sampling, pre-acceptance and tracking does not reflect the individual risk of each location.

k) Respondents told us they were concerned about the requirements for testing results and that this would delay construction projects or cause scheduling problems. We were told that sampling and analysis can take weeks, leading to delays in waste collection and issues that may arise from that.

l) Respondents told us the requirement to sample incoming waste streams needed to be clearer on frequency, and the competency of those carrying out the sampling.

Waste tracking

m) Some respondents told us there was no need for computerised waste tracking systems. Respondents commented that these systems would be costly to implement, not compatible with existing systems and that paper systems can achieve the same outcome. Some respondents considered the guidance was pre-empting the requirements of the Environment Bill provisions for mandatory

electronic waste tracking and it would make sense for operators to incorporate changes to their systems in one go.

Our response

Waste pre-acceptance

a) Waste assessment and classification is set out in WM3 and is therefore out of scope of this consultation. WM3 will be reviewed and changes will be consulted on at the appropriate time. We acknowledge the ongoing projects on waste classification and encourage industry to carry out further projects on other waste streams.

b) Waste transfer notes (or alternative documents such as an invoice with all the required information) are used when waste is transferred to another person. Waste transfer notes alone cannot satisfy pre-acceptance, acceptance or waste tracking. Pre-acceptance checks are important in making sure waste ends up at the right place.

c) WM3 states “You need to ensure the material is waste, and needs to be classified. Nearly all household, commercial and industrial wastes do need to be classified. This includes waste from domestic households”. In the case of household and similar non-household waste (including skip waste) the waste is essentially pre-accepted by the terms and conditions of the contract in place (for example skip waste companies excluding fridges and freezers or hazardous wastes). There should also be a visual pre-acceptance check before waste is removed from the producer’s premises.

We will consider revising the guidance to reflect the specific circumstances for domestic and similar non-domestic waste (including construction and demolition type waste).

d) The guidance contains appropriate measures to make sure waste duty of care and environmental permit requirements are met. The guidance is not statutory, it provides appropriate measures, which are the minimum standards that operators must meet to comply with their environmental permit requirements.

e) We understand some waste will be received at permitted sites on an ad hoc basis. The guidance was not written to stop ad hoc waste deliveries. Our response to c addresses this point.

f) We will revise the guidance accordingly. For example, identifying the age of an inert waste stream is less important than for degradable wastes, which are more likely to produce odour as they degrade.

Waste acceptance

g) We acknowledge there will be certain types of waste collections or deliveries where pre-booking will not be feasible. The key objectives of pre-booking are to make sure wastes have been adequately pre-accepted and are consistent with the pre-acceptance information. Pre-booking is also needed to allow the operator to continually assess the waste storage and process capacity for their site.

h) The guidance already stipulates that this requirement does not apply if the permit allows only inert wastes and does not require impermeable surfacing with self-contained drainage. For other permitted sites the waste that would be quarantined may be combustible or potentially polluting, therefore control on the drainage in the quarantine area is necessary. We will review the guidance and consider further appropriate measures which can be used as an alternative to self-contained drainage.

Quarantine

i) We agree a 5 day storage limit for quarantined wastes is arbitrary. You may need to store quarantined waste for longer so you can do further waste characterisation or to facilitate collection arrangements. In other instances, a shorter quarantine period could be appropriate, depending on the nature of the waste. We will revise the guidance accordingly.

Most sites have one dedicated quarantine area away from other wastes to minimise the environmental risk and make sure it is not confused with waste that has been accepted. We agree more than one quarantine area can be provided on a site, provided the quarantine parts of the guidance are followed.

Quarantined wastes are wastes that the permitted site is not authorised to accept, therefore the quarantine area needs to have robust infrastructure in place in order to prevent any polluting emissions. An impermeable pavement with self-contained drainage provides the necessary protection from quarantined wastes if, for example, there is an accidental spillage or a fire.

The guidance allows for flexibility, stating that this requirement does not apply if the permit only allows inert wastes and does not require impermeable surfacing with self-contained drainage. An operator can justify why a particular measure does not apply in their particular case or why their alternative proposal is equivalent.

Waste sampling and analysis

j) We do not agree that the guidance on pre-acceptance, acceptance and tracking is a blanket approach. For example, paragraphs 86 and 97 refer to a risk-based approach and paragraph 114 on waste sampling states that waste sampling procedures must be risk based.

k) In many cases waste produced from construction projects (for example soil and stones from brownfield sites) will have been characterised before the construction project starts. Waste can be stored at the place of production until it has been fully assessed by the producer. This is to prevent the unauthorised or harmful deposit, treatment or disposal of waste.

l) The guidance is clear that before sampling waste, operators must have sampling procedures. Those procedures must be risk-based, depending on:

- the type of waste
- knowledge of the waste producer and their process
- possibilities for treatment

We therefore cannot prescribe a sampling frequency for operators to follow. Sampling must be carried out by staff who have been trained to follow the sampling procedures. They must take representative samples and be able to interpret the results obtained from the sample analysis and what this means for waste acceptance and treatment.

Waste tracking

m) There is currently no single or comprehensive way of tracking the approximately 200 million tonnes of waste that the UK generates each year. The Environment Bill contains a power that will enable the introduction of an electronic waste tracking system and Defra expects to be consulting on this later in 2021.The aim is to:

- improve the quality and accuracy of waste data
- make waste tracking more user friendly for businesses, regulators and the government
- improve compliance and enforcement work to combat waste crime

This system will not capture all the records needed in the guidance, for example on pre-acceptance and acceptance, waste inventory and stock control. We will revise the guidance to clarify the requirements for waste tracking.

Q10a to Q10d Emissions inventory and monitoring

Q10a. The draft guidance (sections 254 to 259) includes a requirement for an inventory of point source emissions to air and water, and that monitoring is undertaken to demonstrate the effectiveness of abatement of point source emissions. Further, it requires that monitoring should be undertaken where fugitive dust/particulate pollution at sensitive receptors is likely or has occurred.

What are or would be the practical and financial implications of meeting these standards?

Q10b. Please describe any alternative approaches or additions to these standards that we should consider.

Q10c. Please identify any parts of these standards that are unnecessary and explain why.

Q10d. How do you think meeting these standards would benefit your business, the environment or human health?

Summary of responses

a) Some respondents told us emissions monitoring was useful to check operations are satisfactory and to demonstrate compliance. However, some respondents told us the guidance for emissions would affect their costs and have operational impacts. They felt it was not based on the environmental risk and was overly prescriptive and inappropriate for inert waste facilities.

b) Some respondents told us paragraph 255 of the guidance on identifying numerical limits from point source emissions (for example for odour and particulates), where the permit did not specify any limits, was inappropriate. This is because operators should not determine limits. It was suggested this should be determined by the regulator to ensure a level playing field.

c) One respondent told us characterising emissions to sewers (paragraph 258 and 259) is not practical in all locations and the guidance does not reflect the risk from the discharge. There is cross over with the water industry, as the discharge may be subject to a trade effluent consent from the sewerage undertaker.

d) Two respondents told us that paragraph 219 (using masking agents) has been accepted as an appropriate measure to control odour and is agreed within a number of odour management plans.

e) Two respondents told us that carrying out an annual smoke test of buildings is not risk based and could be an unnecessary cost. It was suggested that simple checks on building integrity should be enough.

f) One respondent told us the requirements to seal concrete and semi porous surfaces are not practical or financially viable.

Our response

a) Paragraph 9 of the guidance is clear that some measures may not be suitable or relevant. A risk assessment is needed to identify emissions from sites. The operator's management system will detail how operators monitor and control their emissions.

b) We will revise the guidance to provide greater clarity. Where we are referring to appropriate numerical limits, we are referring to action limits. When an action limit is exceeded, this will trigger action by the operator to prevent off-site pollution (for example carrying out maintenance of an abatement system).

c) We will consider further clarification in the guidance. Point source emissions to water (including sewer) need to be characterised and understood to prevent downstream impacts.

d) Odour control spray systems are used to disguise an odour problem and do not resolve it. Odour control spray systems do not address the root cause of the odour pollution.

e) Simple building checks may be sufficient for a well operated or low risk site with no amenity issues. However, a more detailed assessment is likely to be needed where amenity issues such as odour are substantiated. A smoke test is an effective visual way to check for building leaks and air flows within and outside buildings.

f) Requirements to seal concrete and semi porous surfaces apply to areas where potentially odorous waste is handled. This is an appropriate measure to reduce odorous emissions and will help with cleaning surfaces.

Q11 Omissions

Are there any omissions from the draft guidance that you have not already described? If so, please suggest how the guidance should be changed to address them.

Summary of responses

Respondents generally left this question blank or used this consultation question to reiterate previous points or suggest alternatives to the guidance structure. Some respondents used this question to tell us that the guidance was vague and should more explicitly recognise and enable appropriate risk-based alternatives to some of the 'default' requirements specified in the guidance.

Our response

We have considered a risk-based approach at the beginning of the guidance and this applies to all the measures in the guidance.

Appropriate measures are the standards that operators should meet to comply with their environmental permit requirements. This guidance sets out what you must consider when you assess the appropriate measures for your site. It is not definitive and it does not replace your obligation to assess appropriate measures fully.

Some measures may not be suitable or relevant for your operation. Appropriate measures will depend on the:

- activities being carried out
- size and nature of the activities
- location of the site

Where a measure is not suitable, an operator can propose alternative measures that achieve the same level of environmental protection. Or they can provide an explanation of why the specific measure is not relevant.

Alternative measures can also be used where they provide the same level of environmental protection as the measures presented in the guidance. This should provide reassurance that there is flexibility in how operators meet the required standards.

Q12 Unnecessary requirements

Are there any requirements in the draft guidance that you feel are unnecessary, and that you have not already discussed? If so, please identify them and explain why they are unnecessary.

Summary of responses

Respondents generally left this question blank or used this consultation question to reiterate previous points. One respondent used this question to tell us that the implementation timeframes in the guidance were unrealistic.

Some respondents told us the guidance was unnecessary for exemptions and small companies and the default requirement for buildings and extraction systems on all sites was unnecessary.

Our response

The guidance includes appropriate measures that are relevant to facilities permitted to treat or transfer non-hazardous and inert waste. This includes small scale sites. Exempt sites may also find it useful to refer to the guidance. The main point is that the appropriate measures needed will depend on the activities being carried out, the size and nature of the activities and location of the facility. So the measures need to be considered on a site by site basis. The guidance sets out what must be considered when assessing appropriate measures. The guidance is not definitive and we do not anticipate that all measures within the guidance will be applied at lower risk sites.

A 12 month timescale for implementing standard improvements is reasonable. Many of these requirements are already common practice within the waste industry. Three years for implementing capital intensive projects will be reasonable in many circumstances. In any case, capital intensive projects will be required through permit improvement conditions and after discussion with the Environment Agency on a case by case basis.

Q13. Further comments

Please provide any other comments you wish to make about the draft guidance.

Summary of responses

Some respondents left this part of the consultation blank or reiterated previous points. Some respondents told us they supported the raising of standards within the waste industry. Others told us the guidance was too broad and separate practical guidance was needed for the large number of lower risk facilities.

a) Two respondents told us the guidance was unlawful as it seeks to impose BAT obligations to all sites within the non-hazardous and inert sector when BAT is only applicable to waste installations. Others responded that the guidance is seeking to apply waste treatment BAT to all waste operation facilities.

b) Respondents provided further comments throughout their responses. Some respondents referred to the guidance being unclear or vague. One respondent stated the guidance did not have a clear route for appeal, unlike permit applications. Other respondents asked how the Environment Agency will implement the guidance.

c) Some respondents told us the guidance would result in increased waste crime and was an over-regulation of compliant businesses.

d) Some respondents told us they were concerned about the capacity of the National Permitting Service and how the implementation of the guidance will affect their service.

e) In parts of the consultation responses respondents told us they were concerned by how the guidance would be applied by Environment Agency staff.

Our response

We welcome industry led sector specific guidance to help inform our regulatory approach.

a) We apply BAT to installations and ‘necessary measures’ to waste operations and exemptions, generically being described as ‘appropriate measures’. Article 13 of the Waste Framework Directive requires Member States to take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:

(a) without risk to water, air, soil, plants or animals;

(b) without causing a nuisance through noise or odours; and

(c) without adversely affecting the countryside or places of special interest.

As required by the Environmental Permitting Regulations 2016, the Environment Agency must exercise its relevant functions, including implementing Article 13 of the Waste Framework Directive (WFD), amongst other provisions.

Through our guidance we are taking the necessary steps to satisfy the requirement to comply with Article 13 of the WFD. Operators are already required to have a management system in place. The guidance explains the appropriate measures that may be suitable or relevant in order to satisfy Article 13 and environmental permit conditions.

b) The guidance is non-statutory. Through permit reviews, the Environment Agency will assess the current operating techniques of facilities against the relevant appropriate measures. The permit review process is likely to include Environment Agency initiated permit variations, which an operator can appeal.

Where an operator is not using appropriate measures, we will expect them to provide improvement plans and timetables for implementing the relevant appropriate measures.

We will review these proposals and set formal timescales for making the improvements needed. We will do this by varying the environmental permit to include improvement conditions.

For waste installations within the non-hazardous and inert sector (approximately 45 permitted facilities) we will begin the permit review process in 2021. This will begin with an information notice served under Regulation 61(1) of the Environmental Permitting (England and Wales) Regulations 2016. The notice will ask the operator to consider the relevant BAT conclusions and provide a response for our assessment.

Changes to standard rules for the non-hazardous and inert sector will also take place in 2021. This will make sure the standard rules provide an appropriate level of environmental protection and where relevant refer to appropriate measures and standards.

Further permit review work will take place in future years. Operators will be notified in advance of their permit review. These reviews will be prioritised on, for example, the compliance performance of the operator or site and age of permit. Permit reviews will be carried out in a staged manner to balance the resources of both industry and the National Permitting Service. The Environment Agency is duty-bound to review environmental permits periodically.

c) We take robust and proportionate action against illegal activity. The guidance sets out measures to ensure waste is managed correctly and its impacts on the environment are minimised.

d) The guidance sets out appropriate measures. This helps industry produce quality permit applications which will support the permitting process. This will help avoid Schedule 5 notices and returned permit applications.

e) Officers apply a risk based and proportionate approach. There are well established routes for our officers to raise technical queries on site specific issues. Decisions likely to have a major impact on business will not be taken in isolation. Operators are able to challenge our decisions, for example following the process on the back of our Compliance Assessment Report forms.

6. Next steps

Now we have considered the consultation responses received, we will finalise the guidance document for publication. We will publish the finalised guidance on GOV.UK.

We will convert the PDF document that was used for the consultation to HTML format so that the guidance is fully accessible.

7. Annex: list of consultation respondents (by name)

360 Environmental

Aggregate Industries

Amey

B & E Transport

Berry BPI Group

Biffa

Blue Phoenix

Brett Group

British Plastics Federation

Buckinghamshire County Council

Cambridgeshire County Council

Canal and Rivers Trust

CH Middleton

City of Wakefield Councils

Chartered Institution of Wastes Management (CIWM)

Devon County Council

Ellard Associates

Enva England Ltd

Environmental Services Association (ESA)

FCC

FCC (FCC RECYCLING UK LTD SMS)

Grundon

Hampshire County Council

Keynvor MorLift

Land and Mineral (2 responses)

Leicestershire County Council

Member of the public (x1)

Mineral Planning Group

Mineral Products Association

MJCA - Environmental Consultancy

MTS Environmental

National Association of Waste Disposal Officers (NAWDO)

Network Rail

Oxfordshire County Council

Oxfordshire Resources and Waste Partnership

P.H Hull & Sons Ltd

Renewable Enegry Association (REA)

Road Haulage Association Ltd

Roberts Waste

Severn Trent Water

Somerton Environmental

Stobarts

SUEZ

Tarmac

Terra Consult

Towens

United Resource Operators Consortium (UROC)

Veolia

Viridor

Wessex Water

Wiser Environmental

Wood Recyclers Association (WRA)

Yorwaste

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