



Revenue Scotland guidance on how to determine the rate of Scottish Landfill Tax chargeable on contaminated soils.

Consultation Response Form

Please complete this form and email to the address below no later than 15 July 2015.

info@revenue.scot

If you wish to submit your response in PDF format please also provide a version in Word. This will help us with collating and analysing all responses.

Alternatively, you can request a hard copy of this form by writing to us at the address below or phoning 0300 0200 310. Hard copy responses should be sent to:

SLfT Guidance Consultation
Revenue Scotland
PO Box 24068
Victoria Quay
EDINBURGH EH6 9BR

1. Name/Organisation

Organisation Name (Leave blank if responding as an individual)

W. H. Malcolm Limited

Main business activities of organisation

Construction, Logistics, Haulage, Waste Management, Recycling, Quarrying, Plant Hire and Rail Logistics

Title Mr Ms Mrs Miss Dr other

Surname

Balmer

Forename

David

2. Postal Address

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3. Permissions - I am responding as...

<input type="checkbox"/> Individual	/	Group/Organisation
<input type="checkbox"/>	<i>Please tick</i>	<input checked="" type="checkbox"/>

(a) Do you agree to your response being made available to the public (on the Revenue Scotland website)?

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

Yes, make my response available, but not my name and address

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (on the Revenue Scotland website).

Are you content for your **response** to be made available?

Yes No

(d) Are you content for Revenue Scotland to contact you again in relation to this or any similar consultation exercises?

Yes No

4. Revenue Scotland seeks to operate to Adam Smith's principle of certainty for the taxpayer about their tax liability. Compared to the current guidance, how easy will it be to be sure of the tax due on each load of soil disposed of to landfill under:

(a) Option 1 (Current guidance plus WM2)

Waste can be classified in one of two possible categories; a WM2 (WM3) assessment will classify a waste as either **hazardous** or **non-hazardous**. Non-hazardous can then be further classified as *inert* in compliance with its legal definition.

Waste Classification:

Waste may be classed in one of two ways:

a) Hazardous

Hazardous is essentially any waste with hazardous properties which may render it harmful to human health or the environment. Hazardous Waste is defined in the revised the Waste Framework Directive as any waste which displays one or more of the 15 hazardous properties listed in Annex III to the Directive.

In Scotland, hazardous waste is also known as "Special Waste".

b) Non-hazardous

Non-hazardous waste is all other waste which is not assessed as hazardous.

Inert waste is not a waste classification (but it is a commonly used term and has a definition in law)

"Inert waste" is waste which –

- does not undergo any significant physical, chemical or biological transformations;
- does not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm to human health; and
- has insignificant total leachability and pollutant content and ecotoxicity of its leachate are insignificant and, in particular, does not endanger the quality of any surface water or groundwater)

Waste is classified as either hazardous or non-hazardous using the WM2 (3) assessment methodology and WAC can be used to further classify the soils as inert, if it is not naturally occurring or falls outside the Qualifying Materials Order (QMO).

Landfill sites are classified as per a different set of regulation that also use the definitions hazardous, non-hazardous and inert.

Operators today and many of the Consultants that advise them and the construction Industry are already aware of the requirements for WM2 (WM3) testing and undertake a basic degree of characterisation to allow the soils from proposed development sites to be assessed for degrees of contamination. Granted much of this soil chemical assessment is driven by the requirement to fulfil planning obligations, environmental health and building control obligations for the safety of the end user/occupier of the property once the development is complete – these investigations lead to the development of "remediation plans", where the land is identified as contaminated. Often these plans require the off-site disposal of waste/surplus contaminated soils and they often advise to check with the landfill operator as a WAC (Waste Acceptance

Criteria) test may be required. Many routinely undertake the WAC tests during the initial site investigation and therein lies many of the problems. We have experienced numerous mis-interpretations of the WAC standards and how they apply them to the classification of waste soils – often leading to the wrong materials going to the wrong sites – i.e. hazardous going to inert and inert going to hazardous – all because people don't interpret the WAC tables correctly or the regulations that apply them.

WM2/3 is a UK universal assessment methodology and gives clarity to the industry for the testing requirements. It accounts for a wide range of potential contaminants including contamination not covered by Inert WAC and given the tax differential it would incentivise the treatment of hazardous soils and would reduce the incentive to mis-manage non-hazardous soils through spurious waste management exemptions and should promote improved industry compliance as the financial implications will be more palatable.

This approach is likely to facilitate a more regular supply of daily cover at active non-hazardous landfills and it is likely that landfill operators will 'self-regulate' the landfilling of soils, as most landfill operators are not likely to fill available void with soils as most landfills rely on the revenue from gas generation for income. Soils are typically not conducive to landfill gas generation. It should also lead to a better restoration of the landfill site requiring such works as with more soils available there will be better opportunity to manage the correct soils to the correct areas of the site, instead of "robbing-Peter-to-pay-Paul" when limited soils are available.

(b) Option 2 (Current guidance plus WM2 plus Inert WAC)

Comments

Waste Acceptance Criteria (WAC)

Waste Acceptance Criteria testing is designed to determine whether **waste is suitable for a particular type of landfill.**

It **does not** act as a classification tool for the waste; it determines how a waste will behave in a landfill environment and whether it is suitable to be included in a landfill site which has been engineered to a certain defined standard.

The testing involves assessing the leachability of the waste. This is to mimic how the waste will behave in a landfill and what contaminants may leach from the waste when it is immersed in water.

Inert WAC is an **inappropriate** test and sets too high a requirement for many Scottish soil types (because of inherent organic content many soils would fail inert WAC criteria when they can be legitimately re-used without further treatment such as coal bearing soils, blaes (shale including oil shales) and soils rich in fluoride (think Scottish water and toothpaste!) will all routinely fail inert WAC but are naturally occurring uncontaminated soils....!.)

This approach would and does lead to more landfilling of the cleanest waste soils and the retention on site/burial of contaminated soils, thereby adding future risk, liability and potential health and environmental hazards to properties once constructed where the contamination has been moved to an unsuitable location within the construction site. There would be a very strong (and some might say, current) incentive to remove

the clean soils from development sites to landfill, and leave contaminated soil in situ thereby **not** reducing the potential for harm to end users or the environment.

The existing problem of mis-management of waste soils (criminal behaviour) is likely to be further amplified as this approach would incentivise the “creation or invention” of waste management exemptions in order to avoid landfill tax, which would be in receipt of the more contaminated soils to the detriment of the surrounding environment.

This is likely to result in a shortage of soils for use as daily cover at active landfills (when they require these materials with regularity – i.e. “daily”).

It retains the present status quo that soils that fail or marginally fail inert WAC and attract higher rate are going to exempt sites, to the detriment of the industry and legitimate operators as many exemptions are in essence monetary generation or tax avoidance schemes – few are legitimate and a few are absolutely illegal in nature.

It is a system failing already and the use of WM2/3 and WAC will not alter that position.

5. Compared to the current guidance, how would the volume and type of material being disposed of to landfill change under?

(a) Option 1 (Current guidance + WM2)

Comments

It is our opinion that the volumes of materials going to landfill will increase above current levels, subject as ever to the level of development in the wider economy, as the costs for management of the soils correctly will be more palatable to the construction industry and their clients. That combined with more enforcement on the sham exemptions should lead to an increase in the tonnage of soils going to the correct landfill, and therein potentially an increase in SLfT Revenue.

The types of materials will be not significantly different in nature, but their destination should be altered where contamination is involved.

(b) Option 2 (Current guidance + WM2 + Inert WAC)

Comments

It is our opinion that the volumes of materials going to landfill will remain as they are or reduce, as this system, we believe, **is** currently in place and open to the present widespread abuse which is solely determined by cost; driving materials to the existing inappropriate non landfill end points to avoid the higher taxation.

6. How would each option impact on you administratively and in terms of your day to day operations? Do you see any advantages or disadvantages from either of the options? If so, please explain these.

(a) Option 1 (Current guidance plus WM2)

Comments

We do not foresee any significant change to the administrative burden of either option, given the procedural requirements that exist within our business presently and the requirements of our landfill permits.

(b) Option 2 (Current guidance + WM2 + Inert WAC)

Comments

We do not foresee any significant change to the administrative burden of either option, given the procedural requirements that exist within our business presently and the requirements of our landfill permits.

7. Do you have any other comments you would like to make about our guidance on this particular area?

Yes No

If you ticked 'yes', please provide your comments or suggestions:

Comments

We would be pleased to receive the revised clarified guidance as soon as practicable at the end of this consultation, as there is much confusion in the industry presently, and the financial implications for businesses, such as ours, could be overly onerous and very significant – and, every day that passes increases that risk.

On the whole we support the guidance published presently and welcome the opportunity to comment further on the guidance in relation to the anomalies that arise occasionally in this industry and would be pleased to participate in the workshops proposed for further defining the guidance, going forward.