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)

Soilutions Ltd

Main business activities of organisation

Soil and Water Remediation Contractor and Soil Treatment Centre

Title **Mr X** ☐ **Ms** ☐ **Mrs** ☐ **Miss** ☐ **Dr** ☐ **other**

Surname Curran

Forename John

2. Postal Address

26		
New Broompark		
Edinburgh		
Postcode EH5 1RS	**Phone** 0131 538 8456	**Email** john.curran@soilutions.co.uk

3. Permissions **- I am responding as…**

Individual ☐ **/** **Group/Organisation** ***Please tick*** *x*

(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?

x ☐ **Yes** ☐ **No**

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

x **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)

Current guidance is vague with terminology that is open to exploitation through words such as 'small amount', 'incidental', etc. WM2 is exact.

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

Inert WAC closes the vagueness of the current guidance, as above, by providing certainty through the use of the tabulated contamination levels, which are in current use within the construction and waste sectors.

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)

Since the end of the landfill tax exemptions in 2012, exploitation of the HMRC guidance began which has now become the norm. Through simply using WM2 the HMRC loophole now Revenue Scotland guidance will be made legal. Thus there will be an increase of material being disposed of to landfill, as those previously not wanting to exploit the tax loophole will now be able to do so legally.

Environmental consultants are known to miss classify contaminated soils to satisfy their clients budget constraints. There will be an increase in the current practice of Hazardous soils being disposed of in to Non-Hazardous landfills as a result.

As Non-Hazardous landfill gate fees are approx. £14.00 per tonne, on site remediation techniques will no longer be financially viable, hence the cost effective option will be to dispose of material to landfill rather than treat and reuse on site. This will also cause an increase in material being required to 'fill the hole' that has been created thus causing greater environmental damage through increased haulage.

Soil treatment centres recycling non-hazardous soils will no longer be able to compete

with the cheaper landfill alternative and will be forced to close. Please note that our award winning treatment centre is presently mothballed.

It will provide certainty that the old 'dig and dump' regime has returned and is legal. Not what LFT was introduced for.

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

In line with the European Waste Frame Work Directive and Scotland's Zero Waste Policy there would be less material going to landfill as there would be clarity as to the application of the standard rate of landfill tax. This will prevent the exploitation of the current guidance. It is worth noting here that LFT was introduced to reduce waste to landfill and not to encourage it.

By introducing Inert WAC this would reduce the amount of Hazardous soils being disposed of in to Non-Hazardous sites, as a second tier of clarification/proof of contaminate evidence will have to be demonstrated prior to disposal.

Contaminated soils that are illegally disposed of in to Paragraph 19 sites will be prevented from doing so as a second tier of clarification/proof of contaminate evidence will be available prior to disposal thus making the illegal deposition a far riskier option than it would be simply under WM2 alone.

After the removal of the application for a LFT exemption for contaminated soils in 2010 there was an increase in the amount of contaminated soils being remediated on sites or sent to soil treatment centres. After the cut-off date for the use of the exemptions in 2012 the exploitation of the HMRC guidance began and this has now become the norm. Through the introduction of Inert WAC this should reverse this anti recycling trend.

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)

Due to the current guidance lacking clarity, such as a table of figures as in Inert WAC, where a soil is classified as being of a Non-Hazardous nature the uncertainty of the tax position will still remain. Thus we will have to constantly seek clarification from Revenue Scotland/SEPA as to the correct taxation position to adopt. Hence an increase in the administration to all parties concerned.

It is widely accepted in the waste soils industry that the miss classification of

contaminated soils is common practice to reduce landfill costs. With only the use of WM2 and the current guidance it is inevitable that further exploitation will ensue to exploit the use of land fill sites

Without the introduction of certainty through the use of Inert WAC we will continue to have to seek further information to determine the tax position.

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

As Inert WAC is provided as a matter of routine together with soil analysis data there will be no extra administration. In fact it will reduce our admin burden as per the comments above.

WAC is simple to use and easy to administer.

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

Yes x☐ No ☐

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

- The use of Inert WAC aligns with the EU Waste Framework Work Directive and Scotland's Zero Waste Plan.

- The contaminated soil remediation/recycling industry began as a direct result of the introduction of LFT, as with all the other waste recycling industries, glass, paper, wood, etc. If the lower rate of LFT is applied to contaminated soils then why not to all other waste streams…?

- The use of either proposed approach will require a definition of contaminated soils to ensure clarity and avoid the creation of a further loophole in the legislation, this would be especially true for option 1 whereby it would be advantageous to class other materials such as trommel fines or sludges as contaminated soil to avoid other classification tests such as LOI.

  To ensure the use of WAC is appropriate we would suggest that only materials falling under Group 1 of the Qualifying materials order 2015 would be considered under this approach.

  Furthermore we understand there is concern within industry sectors that this regime would result in additional testing to be carried out on uncontaminated soils from Greenfield sites, to this end we would suggest the application of the existing guidance under 'The Criteria And Procedures For The Acceptance Of

Waste At Landfills (Scotland) Direction 2005' Criteria for landfills for inert waste, sections 9, 10 & 11.

- It is widely accepted that the prior exploitation of the HMRC guidance was contrary to the intentions of LFT and HMRC have confirmed this position.

- Through not introducing a simple metric that provides certainty for determining LFT, in line with the reasons why LFT was introduced, the old practice of 'dig and dump' will return legally. 'Waste Tourism' from south of the border is inevitable.

- With the reduction of bio-degradable waste in to landfill there is less of a requirement for daily cover. There are other waste streams that can be used in lieu of soils for this purpose.

- There are tens of thousands of hectares of brownfield land in Scotland which require restoration material. The vast majority of contaminated soils can be recycled and used for this purpose, but this is only possible if LFT is applied to contaminated soils at the initially intended standard rate.

- Our VIBES award winning soil treatment centre will be forced to close. Quite embarrassing for SEPA and Zero waste Scotland who presented us with the award only last year.

- The United Nations have declared 2015 as the International Year of Soil. If soil is being recognised as a scarce resource which we need to protect then why is this consultation taking place…? Surely, the standard rate of LFT should be applied to all soils to prevent them ending up in landfill sites where they cannot be recovered.

- It is acknowledged that there is a problem with the illegal deposition of contaminated soils into Paragraph 19 sites. By introducing the lower rate of LFT for Non-Hazardous contaminated soils, so as to make landfill appear to be an affordable option, this is not going to stop this practice as evidenced by the recent court cases where SEPA have prosecuted when exploitation of the lower rate LFT position was available.

  Paragraph 19 sites apply a disposal fee of approximately £1 - £2 per tonne. With landfill sites charging £12-£14 per tonne, plus the lower rate of LFT, the illegal deposition of contaminated soils in to Paragraph 19 sites will still be more appealing to those who wish to exploit the rules. With the introduction of Inert WAC, evidence to prove the suitability of soils for disposal will be available which will greatly assist SEPA to reduce this sham practice.

- On site remediation is only economical when the standard rate of LFT is applied. With the current practice of miss classifying contaminated soils so as to attract

the lower rate of LFT there will not be a sufficient amount of Hazardous material on sites to make on site treatment a viable option.

- From academia through to industry a considerable amount of resource has been expended in developing a soil remediation and recycling industry sector. By the introduction of the lower rate of LFT this industry will collapse with certain job losses. To date we have reduced our work force by 40% due to the exploitation of LFT and the resulting reduction of onsite treatments and use of our soil treatment centre.

- Through allowing soils to attract the lower rate of LFT making landfill the cheaper remediation option, haulage to landfill sites will increase. If the standard rate is applied onsite treatment will return and the haulage will reduce considerably.

- With regard to the Criteria used by Scottish Ministers when setting the list of Qualifying Materials. (Appendix A of this consultation) and it's polluting potential within the landfill environment:

  WAC was derived to determine the polluting potential of a soil in terms of the mobility of contaminants and the polluting potential of the leachate. Failing inert WAC illustrates that contaminants are mobile.

  Contaminated soils would not be required to be disposed of in mono-fill landfill sites or cells under current legislation and their polluting potential would not be reduced by doing so.

  The only measure for assessing engineering requirements through a risk assessment process is to measure the leachability of the waste, this is in essence a WAC test as proposed in option 2.

  Aftercare of a landfill is based on it's polluting potential, precisely what WAC is designed to assess.