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
EDINBURGHEH69BR

1. Name/Organisation

Organisation Name (Leave blank if responding as an individual)

Scottish Environment Protection Agency

Main business activities of organisation

Environmental Regulator for Scotland

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

Surname Dailly

Forename Chris

2. Postal Address

SEPA Stirling Office		
Strathallan House		
Castle Business Park		
Stirling		
Postcode FK9 4TZ	**Phone** 01786 457752	**Email** chris.dailly@sepa.org.uk

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

Individual ☐ **/** **Group/Organisation** ☒

Please tick

(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)

As part of statutory duty of care, waste producers must classify the waste they produce. Waste should be classified and assessed using the Waste Management 2 (WM2) guidance before it is collected, disposed of or recovered. This is in order to identify the controls that apply to the movement of the waste, to complete waste documents and records, to identify suitably authorised waste management options and to prevent harm to people and the environment.

In short, except for some specific exclusions, there is already an existing obligation on waste producers to classify waste using the WM2 guidance and this should already be widely used within the waste industry.

All waste can be classified as either hazardous or non-hazardous and the WM2 guidance allows the user to arrive at one of these two classifications. The complexity of the waste determines the level of assessment required to assess the waste. More complex wastes require more detailed assessment whereas, if a waste has inherent hazardous properties or is inherently non-hazardous, it may be assessed in either of those categories without any detailed assessment. That is, the WM2 guidance will produce a clear output of either of two options. A non-hazardous output (subject to meeting the "General Guidance" criteria in SLfT2006) would result in tax being liable at the lower rate and a hazardous output (subject to meeting the "General Guidance" criteria in SLfT2006) would result in tax being liable at the standard.

Given the above, if using Option 1 it will be clear to waste producers, landfill operators and Revenue Scotland what rate of tax is due on each load of soil disposed of to landfill.

SEPA notes here that WM2 is being replaced by updated guidance, WM3, from 1st June 2015 onwards.

(b) Option 2 (Current guidance plus WM2plus Inert WAC)

Wastes can only be accepted at a landfill if they meet the waste acceptance criteria (WAC) for that class of landfill. There are no numerical WAC limits on landfills for non-hazardous waste but there are numerical limits for hazardous and inert landfills and these are specified in legislation.

Inert WAC should not be used to classify waste; classification of waste as either hazardous or non-hazardous using the WM2 guidance continues to be mandatory requirement.

However, Inert WAC is a prescriptive test and if using Option 2 it will be clear to waste producers, landfill operators and Revenue Scotland what rate of tax is due on each load of soil disposed of to landfill.

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)

During 2011 and 2012 (the most recent published data) 1.2 million tonnes of soils arising in Scotland was disposed of to landfill. All but a very small proportion of this was landfilled in

Scotland. This figure (equivalent to approximately 60,000 tipper vehicle movements) is likely to indicate that there is not sufficient market demand for the soil arising.

Option 1 is closer to the current Revenue Scotland position and therefore is likely to result in less change in the volume of waste soils disposed of to landfill than would Option 2.
However, it is not clear how landfill operators have interpreted the previously applicable HMRC position on small amount and so it is not possible to quantify this change. Also, it is not clear how operators are currently interpreting the Revenue Scotland guidance, particularly the 'General Guidance' condition which states that waste may only qualify for the lower rate of tax where "it is subsequently unreasonable, or there is no practical way, for these contaminants to be removed".

Generally, it is expected that, compared to the current guidance, Option 1 would create an incentive to treat hazardous soils as there would be a financial motive to treat soils classed as hazardous to non-hazardous in order to benefit from the lower rate of tax. Therefore, Option 1 may result in less hazardous soils being disposed of to landfill.

It is expected that Option 1 will see a greater proportion of soil arising which qualifies for the lower rate of tax. It is not clear whether this will result in a significant increase in the quantity of soil being disposed of to landfill. Actual disposal to landfill will be influenced by a number of factors including the market demand for non-hazardous soils, the cost of transport, the proximity of the site of origin to alternative uses and how landfill gate fees respond to any changes. As above, the significance of any change will also be affected by how landfill operators have interpreted the previously applicable HMRC position on small amount. Whilst it is not clear whether Option 1 will result in a significant increase in the quantity of soil being disposed of to landfill SEPA considers that an increase in the quantity of soils sent to authorised landfill sites may occur.

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

Option 2 is less close to the current Revenue Scotland position and is likely to result in a greater change in the volume and type of waste soils disposed of to landfill than would Option 1.
However, it is not clear how landfill operators have interpreted the previously applicable HMRC position on small amount and so it is not possible to quantify this change.

However, it is expected that under Option 2 a relatively small proportion of waste soil would qualify for the lower rate of tax without further treatment. As above, during 2011 and 2012, 1.2 million tonnes of soils arising in Scotland was disposed of to landfill. The majority of this 1.2 million tonnes would not meet the Inert WAC criteria and would therefore be unlikely to be disposed of to landfill without further treatment.

Option 2 is likely to result in alternative outlets being sought for the soil disposed of to landfill which does not meet the Inert WAC criteria. This would constitute the majority of the 1.2 million tonnes landfilled in 2011 and 2012. These alternative outlets are likely to include both legal and illegal routes. It is considered that Option 2 would create a significant incentive for illegal disposal.

Option 2 is likely to create an incentive to landfill the 'cleanest' soils as the category of soils meeting Inert WAC standards (arguably the most valuable resource) will be those which benefit from the lowest rate of tax.

Option 2 is likely to result in a shortage of low quality non-hazardous soils being available to landfills for daily cover.

Option 2 is unlikely to affect the volume of hazardous waste being disposed of to landfill.

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)

SEPA considers that Option 1 is closest to current situation and therefore we do not anticipate an appreciable difference in workload.

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

It is expected that Option 2 would create an economic driver for waste crime. Therefore, Option 2 is likely to require greater regulatory effort from SEPA to address illegal disposals, sham waste management exemptions and the misclassification of waste disposed of to landfill.

In addition, should Option 2 be followed there is the potential for increased resource requirements from SEPA in relation to SEPAs Part IIA contaminated land powers and duties (and also in relation to River Basin Management Planning – risks to water body status). Option 2 provides a stronger incentive for developers or owners of land containing contaminants to demonstrate that contaminated soils remaining in situ on site are suitable for use (and do not pose an unacceptable risk to human health or the water environment). Under Option 2 there is likely to be a greater driver to 'manipulate' site investigation, risk assessment and remediation reports to this end and to argue site specific remediation standards more aggressively. The result would be that SEPA would be likely to carry out increasingly detailed and iterative reviews of reports and engage in lengthier dialogue with developers and their consultants.

In terms of SEPA's Scottish Landfill Tax work, Option 2 would present an additional stage of analysis to assess for compliance purposes. In some cases, additional sampling and analysis would have to be undertaken by SEPA.

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:

As above, both Options 1 and 2 deliver a prescriptive test which would give clarity to waste producers, landfill operators and Revenue Scotland.

Under Option 1, a greater proportion of soil arising will qualify for the lower rate of tax. This could

result in an increase in the quantity of soil being disposed of to landfill. However, it is not clear if, and to what extent, this may occur given the other factors influencing this, including market demand for non-hazardous soils and the response of the landfill sector.

SEPA is aware that Option 1 may have an adverse impact on the soil treatment sector in that there may be less non-hazardous soil available for the sector to treat (that is, non-hazardous soil may instead either be recovered through waste management exemptions without further treatment or disposed of to landfill at the lower rate of tax). However, under Option 2 there is no guarantee that the majority of non-hazardous soils would move towards treatment; adoption of Option 2 may result in greater use of waste management exemptions, both legitimate (which do not attract tax) and illegal (which may be liable for tax).

Option 2 could create an incentive to treat a proportion of non-hazardous soils to Inert WAC standards in order to benefit from the lower rate of tax. However, the wider benefit of this treatment is limited in scope:

- Where the treated soil is to be sent to a non-hazardous landfill site (to benefit from the lower rate of tax) the treatment step is un-necessary from an environmental perspective and would not appear to represent sustainable practice.
- Where treated soil is to be used under a waste management exemption, in most cases treatment will not be necessary. A significant proportion of non-hazardous soil which does not meet Inert WAC can be used legitimately in waste management exemptions without any form of treatment. It should be noted that the landfill data does not suggest an undersupply of non-hazardous soils for construction/engineering/restoration purposes.
  Where the soil is at the more contaminated end of the non-hazardous spectrum it would benefit from treatment, however, the majority of non-hazardous soil arising would not fall into this category.
- Where the end destination of soil is an Inert landfill, the treatment to Inert WAC standards would be a regulatory requirement and should happen under Option 1 or 2.

Option 1 would create a new incentive to treat hazardous soil.

Option 2 would discourage a significant proportion of waste soil from being disposed of in authorised landfill sites. However, SEPA considers that Option 2 sets the bar too high and that adopting this option would be likely to result in unwelcome consequences. As above, these include:

- creating an incentive to landfill the ‘cleanest’ soil;
- creating an opportunity and powerful economic driver for waste crime
  (that is, illegal disposal or sham waste management exemptions where disposal takes place outwith authorised landfill sites and without adequate levels of environmental protection);
- creating an incentive for waste tourism (Scotland to England) where non-hazardous soils failing Inert WAC could be disposed of at the lower rate where practice appears to permit this;
- a shortage of soils available to landfill site operators for daily cover;
- creating a strong financial incentive to manipulate ‘site investigation and risk assessment reports’ for redevelopment sites (and potential contaminated land sites) in order to argue that the site is suitable for use with contaminated soils left in situ (where the risk may in fact be unacceptable). This could pose an increased risk to human health and the water environment;
- the potential for more contaminated land cases such as Blanefield where the government is approached by local authorities for financial assistance (where hazardous and non-hazardous material sent for disposal would be chargeable at the higher rate of tax unless treated to Inert WAC standards)

SEPA has not commented in detail on tax policy in this response as this is a matter for Scottish Government and Revenue Scotland. However, SEPA believes that Option 1 is aligned with Scottish Landfill Tax policy and Option 2 is not.

It is noted that neither Option present a wholly satisfactory set of outcomes or potential outcomes. Although there is a potential risk that Option 1 could result in an increase in the quantity of soil being disposed of to landfill it is not clear if, and to what extent, this may occur. Given the

potential adverse impacts associated with Option 2, SEPA supports the adoption of Option 1 in Revenue Scotland guidance.

If Option 1 is adopted, SEPA suggests that the Revenue Scotland guidance should clarify how the 'General Guidance' condition on "subsequently unreasonable, or there is no practical way, for these contaminants to be removed" should be interpreted.

END