



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
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1. Name/Organisation

Organisation Name (Leave blank if responding as an individual)

Levenseat Ltd

Main business activities of organisation

Waste Management, Recycling, Treatment & Landfill.

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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)

Comments

It should be understood that WM2 is a classification open to individual interpretation within certain parameters and therefore cannot give certainty in the correct classification. It is also a complex assessment process with limited transparency.

Interpretation of Small Amount and Low Polluting Potential in the current guidance leaves significant uncertainty and is open to different interpretations. As the requirement remains within Qualifying material guidance document to assess the polluting potential of soils, then there is significant uncertainty and lack of clarity as to what this requires.

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

Comments

We believe this provides the industry with a clear and concise framework which addresses the issues around the interpretation of terms such as 'Polluting Potential' and 'Small Amount' in the guidance document which are currently unclear in this context.

A WAC test is straightforward to interpret and therefore transparent for audit purposes.

This approach would be aligned with existing industry practice and guidance whilst providing clear unambiguous thresholds to all parties. Thus Option 2 would better align the tax regime with the waste classification process.

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

We envisage a significant increase in disposal of soils to landfill and reduction in

materials classed as active rate tax will occur for the following reasons:

- Those operators who previously used a tight interpretation of the current guidance will be able to classify all soils at lower rate.
- It will encourage misclassification of hazardous soils under WM2 as non-hazardous, as this would be a significantly cheaper disposal route.
- Soil treatment centres and on-site remediation will be unable to compete with a cheaper landfill cost base, removal of soils from site will become the norm.
- It would signify a return to the old 'dig & dump' regime which landfill tax was intended to deter.

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

Comments

Where current guidance has been liberally interpreted by certain operators it is likely that there would be a significant reduction in volumes of soil going to those landfills, however this would bring the industry back to where it was in 2010 before the exploitation of the current imprecise guidance started to grow.

Having a clear process for clarifying the status of soils will ensure that these procedures are followed, therefore avoiding the scenario where such soils remain unclassified and are disposed of in unsuitable paragraph 19 exemptions. It would provide SEPA with a clear framework to inspect and classify soils leaving sites to disposal facilities therefore encouraging the use of fully licensed sites for contaminated soils. It would also discourage the misclassification of Hazardous soils, as WAC would help highlight any potential exceedences and act as a further check.

This would be a driver for more soils to be treated to address contamination and ultimately be suitable for reuse, in line with the European Waste Framework Directive and Zero Waste policy.

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

Assessment of WM2 status is a highly complex process and open to interpretation, this requires 3rd party expertise or highly trained in-house resource. If this is the only hurdle

to achieving lower rate tax, more effort will go into devising creative interpretations of the data. Carrying out checks on these assessments would require significant time & resource.

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

Comments

Whilst interpretation of WM2 remains as a complex and lengthy process, the interpretation of WAC is straightforward and easy to carry out in a matter of minutes. As it does not encourage reinterpretation of WM2 the administrative burden is potentially reduced. As a Landfill operator we would favour WAC as a more straightforward and transparent method of classification which is widely used to classify disposal options for soil.

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

The use of WAC is fully aligned with policy such as the European Waste Framework Directive and Scotland's Zero Waste Plan.

With regard to the Criteria used by Scottish Ministers when setting the list of Qualifying Materials. (Appendix A of this consultation) and its 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 leaching characteristics of the waste; this is in essence a WAC test as proposed in option 2.
- Aftercare of a landfill is based on its polluting potential, precisely what WAC is designed to assess.

Treatment methods for contaminated soil are widely considered to be Practical and

Reasonable methods of removing contaminants. (as per test set out in SLfT2006)

The use of landfill tax is a key driver in developing recycling, treatment and reuse activities within the industry, without it or landfill bans in place the treatment and recycling industry would largely collapse.

It appears to be a widely held belief that contaminated soils are a key source of cover material for landfill, in reality they cannot be relied upon for this purpose due to the inconsistent nature of these opportunities due to location, timings and volumes. Typically a large volume contaminated soil disposal will end up in the main landfill mass as it is not practical to store separately for later use. In reality there are many other options for cover materials such as trommel fines, ash and frag waste. With significant decline in landfill volumes being experienced and the Zero Waste target of less than 5% to landfill by 2025 the amount of cover material required by operators will decline significantly. To use this as a justification for lower rating contaminated soils is therefore short-sighted.

The use of either proposed approach will require a definition of contaminated soils to ensure clarity and avoid the creation of a loop hole 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 alternative classification threshold tests such as LOI.

To ensure that the use of WAC under option 2 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 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. This would clearly define which soils required testing, although the disposal of clean soils into non-hazardous landfill should not be encouraged.

The use of option 2 would assist in addressing the potential for contaminated soils being disposed of in Paragraph 19 exemptions. Whilst it may appear counter intuitive, having a clear classification system using WAC would ensure that all soils are assessed through a structured approach and disposed of appropriately. Clearly if a soil fails WAC it is not appropriate for an exempt site. However if WM2 is the only test used by the industry then this clarity is lacking and highly polluting non-hazardous waste soils will inevitably end up being disposed in exempt sites due to the significantly lower disposal costs. Typically soil is disposed of in an exempt site at a load price circa £30 per 20 tonne load (£1.50 per tonne), disposal of soil in an engineered landfill typically attracts a gate fee of £14.00 per tonne plus landfill tax. Therefore it is evident that savings of over £15 per tonne (£300 per load) can be made by illegally disposing in exempt sites against a lower rate tax and this is evidenced by current issues within the sector. To address this, the

correct classification of soil must be a priority action alongside greater regulation of exempt sites.

There is a risk of Waste tourism under option 1 whereby Scotland would clearly have a more lenient regime encouraging the import of soils from England where current guidance still requires the justification of a material's tax status through polluting potential and responsible operators follow this regime. This same position was held in Scotland by HMRC except by certain operators who sought to exploit it. By lowering the threshold in Scotland to only WM2 with no clear definition of contaminated soils this would open up a significant loophole for further exploitation.

Although the application of Standard rate tax would act to deter the disposal of contaminated soils to non hazardous landfills there is significant existing capacity within the industry for the treatment and reuse of these soils, alongside remediation contractors offering on site treatment to avoid haulage and loss of materials off site. Confidence in the classification regime would act to strengthen investment in this sector therefore providing cheaper treatment solutions for both non-hazardous and hazardous contaminated soils in the long term, building a sustainable industry.

Treated soils would be an ideal material for the restoration of vast areas of brownfield sites in Scotland resulting from minerals extraction and other heavy industry, this is a sustainable and progressive approach to soils management helping to manage a scarce land resource.

In order to put this issue in context it is worth reviewing the Partial Business and Regulatory Impact Assessment (BRIA) written for the Landfill Tax Bill 2012, this clearly outlines the objectives of the Landfill Tax mechanism in relation to sustainable waste management. It is also worth noting under section 3 the significant increase in volume of materials being classified as inert since 2009, this clearly illustrates a growing trend within the industry to down-classify wastes as inert due to the tax differential.

Whilst a previously exploited loophole has been addressed by the introduction of LOI for trommel fines, failure to adopt option 2 for contaminated soils will leave a further loophole open which can be exploited by those wishing to reclassify other wastes as 'Contaminated Soils'. This will lead to further exploitation of the system.

Option 1 would result in the short term filling of strategic landfill void with contaminated soils from both sides of the border, with the simultaneous loss of resource, jobs and knowledge from the remediation and recycling sectors. Once lost it would take years to rebuild the industry back to this point, which would put at risk the continued long term development of this counties infrastructure. As well as the lost opportunity to develop and export a strong knowledge base in both the industry and academia. It would inevitably result in the closure of businesses and loss of jobs in the remediation sector such as our own soils treatment facility.

By adopting option 2 it would provide the industry with a clear sustainable direction aligned with the original policy intent of Landfill Tax and the position taken by HMRC.

This would allow the sector to invest with confidence and build a progressive and sustainable industry going forward creating jobs and knowledge. Clarity in this area will also discourage the misclassification and use of Paragraph 19 exempt sites for illegal disposition of soils by using a clear easy to understand metric in WAC, which unfortunately WM2 does not provide on its own.