



# The Deposit of Inert wastes

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## Summary

With inert waste use in quarry restoration currently considered "waste disposal", producers are more inclined to take the material to disposal sites where regulation is less restrictive. As a result some quarry operators find that effective restoration is becoming increasingly difficult to carry out with inert wastes going elsewhere. This in turn makes it more difficult to secure new mineral permissions, which need agreed restoration plans when mineral extraction is complete.

The permanent deposit of inert wastes may be carried out in three ways;

- An exempt activity
- A recovery activity under a Waste Management Licence
- A disposal activity under a PPC Permit

*Exemptions:* The simplest approach with the least regulation is where the activity meets the conditions for registering it with the EA as exempt from licensing. The industry has historically deposited waste under Para 9 (now 9A) land improvement and reclamation schemes and under Para 19 (now 19A) recreation, drainage etc schemes. The conditions to be met for these types of activities have been tightened since July 2005 particularly for Para 9A activities and are now limited to 12 months and carry a fee.

*Recovery under a Licence:* If it can be demonstrated that the inert waste is a genuine suitable replacement for other natural non- waste materials in a particular activity (including restoration works) it may qualify as a recovery operation operated under a Waste Management Licence. The EA will judge the activity on this and other very specific measures and will make a decision on a site by site basis. Although this was heralded as the "third way", particularly for quarry restoration; to date the industry has had little success with this approach.

*PPC Permit:* If the activity doesn't qualify as a recovery operation the deposit of the inert wastes will have to be carried out under a PPC Permit which carries the heaviest regulatory burden.

Future proposals for a new programme of Environmental Permitting based upon the level of risk associated with the activity may help to create a more level playing field between the relatively unregulated exemptions and the arguably over regulated Permits.

There is a BAA members inert waste sub-group of Steve Cole (Raymond Browns), Martin Layer, Peter Lemon (Middletons') who participate in the industry meetings with EA and DEFRA to look for a better deal – supported by John Weetman. Members looking for assistance and guidance should approach this group.

The Davidson Review published 28th November recommends that "DEFRA and the EA should conduct a full review of the regulation of inert waste with the aim of adopting a more proportionate and risk-based regulatory landscape. As part of this review, stakeholders should be formally consulted by the end of 2007 on options for reform." Lord Davidson has confirmed Gordon Brown accepted all recommendations and the Government is committed to delivery. One of the findings of the Review is that the regulatory burden associated with managing inert waste is "unnecessary". [www.cabinetoffice.gov.uk/REGULATION/reviewing\\_regulation/davidson\\_review](http://www.cabinetoffice.gov.uk/REGULATION/reviewing_regulation/davidson_review)

## **The regulation, and options, for the deposition of inert waste materials in or on land.**

The legislation relating to the deposition of inert wastes in or on land is complex. Subject to a legal test<sup>1</sup> the activity comprising the permanent deposition of inert waste in or on land can be either a disposal activity or a recovery activity. A disposal activity will comprise either an exempt activity or be the subject of a PPC permit application. A recovery activity which does not satisfy the conditions for an exemption will be the subject of a Waste Management Licence application. The regulatory burden increases in the order:

- An activity exempt from licensing
- A recovery activity needing a Waste Management Licence
- A disposal activity requiring a PPC permit application.

The simplest approach is to see if the proposed activity is one exempt from permitting.

The responsibility for regulation of the deposition of inert waste in or on land either as disposal or recovery activities is by:

- England and Wales - Environment Agency (EA)
- Scotland - Scottish Environment Protection Agency (SEPA)
- Northern Ireland - Environment and Heritage Service.

This paper notes matters that should be considered in deciding whether an activity is a disposal or a recovery activity and whether it can be considered exempt or requires a PPC permit or a Waste Management Licence. It considers the issues primarily from the legal position in England and Wales.

The comments are relevant to Scotland and Northern Ireland as qualified. Whilst this summarises the regulatory and provides general guidance members should discuss specific case details with the relevant regulatory authority.

### **Exempt from Waste Management Licensing?**

The current exemptions are specified in The Waste Management Licensing (England and Wales) (Amendment and Related Provisions) Regulations 2005 which came into force on 1 July 2005 in respect of England and Wales<sup>2</sup>. The exemptions from waste management licensing<sup>3</sup> are mainly for small-scale waste storage and waste recovery operations and are subject to certain limitations generally in respect of the type of waste, the quantity of waste or time limits in respect of the exempt activity, the methods of disposal or recovery and pollution control measures. It is assumed that the main activity of interest in relation to the use of inert waste is the spreading of the waste on land. The relevant paragraphs for inert wastes are paragraph 9A and paragraph 19A for England and Wales, paragraphs 9 and 19 for Scotland and paragraphs 11 and 19 of Schedule 2 for Northern Ireland. Applications to register the exemptions are subject to an application fee and an annual renewal fee should the activity not be completed within one year.

#### **Paragraph 9A<sup>4</sup>**

Paragraph 9A is relevant to the reclamation or improvement of land. The activities permitted under paragraph 9A are:

- The spreading of wastes of a type and from a source as specified in the schedule where that activity results in benefit to agriculture or ecological improvement

<sup>1</sup> Environment Agency Guidance: Deposit of waste in land as a recovery activity No 292 05 Version 1 dated 21/07/05.

<sup>2</sup> The Waste Management Licensing Amendment (Scotland) Regulations 2003 and The Waste Management Licensing Regulations (Northern Ireland) 2003.

<sup>3</sup> Schedule 3 "Activities exempt from waste management licensing" of The Waste Management Licensing Regulations 1994 as amended. Schedule 2 in Northern Ireland.

<sup>4</sup> Paragraph 9 in Scotland and paragraph 11 in Northern Ireland.

- The waste is spread for the purpose of reclamation, restoration or improvement of land which has been subject to industrial or other man made development
- The activity is the subject of a valid planning permission as necessary
- The deposit is limited to a maximum depth of 2m<sup>5</sup> and a maximum volume of 20,000 m<sup>3</sup> of waste per hectare.

## Paragraphs 19A<sup>6</sup>

Paragraph 19A is relevant to the storage and use of building waste. The activities permitted under paragraph 19A are:

1. The storage on a site of wastes of any of the kinds of waste specified in the schedule if:
  - the waste in question is suitable for use for the purposes of relevant work which will be carried on at the site;
  - no more than 50,000 tonnes<sup>7</sup> of such waste are stored at the site; and
  - in the case of waste which is not produced on the site, it is not stored there for longer than six months<sup>8</sup>.
2. The use of waste of any of the kinds of waste specified in the schedule for the purpose of relevant work if:
  - the waste is suitable for use for those purposes;
  - The activity is the subject of a valid planning permission as necessary and
  - the waste is placed to a depth which is limited to the dimensions of the final cross sections on any plan submitted to the registration authority.
3. The storage on a site of waste comprising road planings and roadbase that will be used for the purposes of relevant work carried on elsewhere if:
  - no more than 50,000 tonnes<sup>9</sup> of such waste are stored at the site and
  - the waste is stored there for no longer than six months<sup>10</sup>.

In this paragraph relevant work means work for the construction, maintenance or improvement of

- a building, highway, railway, airport, dock or other transport facility;
- recreational facilities; or
- drainage<sup>11</sup>

but does not include work involving land reclamation.

## Recovery activity?

Following a ruling in the European Courts<sup>12</sup> an activity comprising the deposition of waste in or on land may be described as a recovery activity if the purpose is to conserve natural resources<sup>13</sup>. That is where the purpose is to use the waste materials as a substitute for natural materials to achieve the

<sup>5</sup> Paragraph 19A (2) (c) limits the depth to which the waste may be placed to the dimensions of the final cross sections on any plan submitted to the registration authority.

<sup>6</sup> Paragraph 19 in Scotland and in Northern Ireland.

<sup>7</sup> No tonnage limit in Northern Ireland.

<sup>8</sup> 3 months in Northern Ireland.

<sup>9</sup> 20,000 tonnes in Northern Ireland.

<sup>10</sup> 3 months in Northern Ireland

<sup>11</sup> Drainage means drainage carried out for the purposes of the Land Drainage Act 1991, the Water Resources Act 1991 or the Environment Act 1995.

<sup>12</sup> Environment Agency Guidance: Deposit of waste in land as a recovery activity, No. 292\_05 Version 1 dated 21/07/05.

<sup>13</sup> Its "principal objective is that the waste serves a useful purpose in replacing other [non waste] materials which would have to be used for that purpose".

specified objective in or on the land rather than simply to dispose of the waste. This is referred to in the guidance as the recovery test. Central to this is that the waste must be **suitable** for the proposed purpose, if the waste is not suitable for the proposed purpose it cannot comprise a genuine substitute for a raw material. The **suitability** of the waste as a replacement for non-waste is the **overriding test**. With the exception of the overriding test there is no set of rules which can be applied in all cases.

Whether or not a particular waste material is suitable is dependent on the site specific circumstances. The suitability of a waste is determined by assessing the nature of the material that will be deposited in respect of the proposed purpose and the properties of the waste material compared with the properties of the raw material which it is proposed will be substituted by the waste material. Whether or not the waste material is suitable as a replacement for non-waste can be assessed by comparing the engineering or quality specifications of the waste and the non-waste materials. At the very least in order to satisfy the suitability test the waste material should have similar properties and similar if not lesser hazards than the non-waste material. If it is established that a waste material is suitable the proposed activity may comprise a recovery operation. When it is established that a waste material is suitable it will be necessary for the operator to specify the natural resources that it would be necessary to use if the waste material is not used and to demonstrate that the proposed activity and use of waste material presents a real net benefit independent of the aim of depositing the waste to fill a void. In addition it is necessary for the operator to demonstrate that the benefit is proportionate and significant to the scale, duration and costs of the activity and that the quantity of waste that will be used is proportionate to the benefit derived in using the waste.

Demonstrating that the quantity of waste used is greater than is necessary to achieve the stated benefit or that the stated benefit is insignificant or out of proportion to the scale and duration of the activity is consistent with a principal purpose of the activity being disposal rather than achieving the stated benefit. The existence of a planning permission is not a contributory consideration in determining whether or not a proposed activity comprises a recovery operation. Similarly the exchange of payments between the operator and the producer or holder of the waste materials is not a contributory consideration in determining whether or not a proposed activity comprises a recovery operation.

Examples of waste material deposition operations that may qualify as recovery operations are:

- The infilling of hollows including significant depressions in the ground by farmers to improve drainage or to ease the cultivation of farm land.
- The use of waste materials to stabilise other land for example quarry walls or mine shafts.
- The use of waste materials in construction for example the construction of bunds.
- The small scale deposition of waste materials for landscaping or similar purposes in order to make the land more useful, examples include forming landscaping or noise attenuation bunds.

The Environment Agency will consider potential recovery activities on a case by case basis with reference to a central panel of legal, policy and process management staff that will provide guidance and make recommendations.

It is understood that it is unlikely that activities previously classified as disposal activities for example an inert waste landfill will be re-classified as recovery activities for example following the issuing of a closure notice.

## **PPC Permitting**

In accordance with the PPC Regulations landfill sites are classified as hazardous, non-hazardous or inert. Most quarries and mineral extraction sites where inert waste is deposited for the purpose of disposal of the waste must be the subject of a PPC Permit.

## References

### Legislation:

Statutory Instrument 1994 No. 1056: The Waste Management Licensing Regulations 1994 (as amended).

Statutory Instrument 2005 No. 1728: The Waste Management Licensing (England and Wales) (Amendment and Related Provisions) Regulations 2005.

Scottish Statutory Instrument 2003 No. 171: The Waste Management Licensing Amendment (Scotland) Regulations 2003.

Scottish Statutory Instrument 2004 No. 275: The Waste Management Licensing Amendment (Scotland) Regulations 2004.

Statutory Rule 2003 No. 493: The Waste Management Licensing Regulations (Northern Ireland) 2003.

Statutory Instrument 2000 No. 1973: The Pollution Prevention and Control (England and Wales) Regulations 2000 (as amended).

Scottish Statutory Instrument 2000 No. 323: The Pollution Prevention and Control (Scotland) Regulations 2000 (as amended).

Statutory Rules of Northern Ireland 2003 No. 46: The Pollution Prevention and Control Regulations (Northern Ireland) 2003 (as amended).

### Regulatory bodies:

Environment Agency: [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

Scottish Environment Protection Agency: [www.sepa.org.uk](http://www.sepa.org.uk)

Environment and Heritage Service: [www.ehsni.gov.uk](http://www.ehsni.gov.uk)