

## DEFRA CONSULTATION ON TRANSFRONTIER SHIPMENTS OF WASTE

Defra Consultation on the review of the Transfrontier Shipment of Waste Regulations and the UK Management Plan for Exports and Imports of Waste – March 2007

### Response of the Environmental Services Association

1. The Environmental Services Association ("ESA") is the sectoral trade association representing the UK's managers of waste and secondary resources, a sector with an annual turnover of around £8 billion. ESA's Members seek to align economic and environmental sustainability through delivering compliance with relevant EU waste and environmental legislation.
2. ESA welcomes the revisions to the Transfrontier Shipment of Waste Regulations 1994 and the UK Waste Management Plan for Exports and Imports of Waste, as part of a wider move to reduce opportunities for the illegal shipment of waste which could result in damage to human health and/or the environment, and which can damage businesses that work to ensure their waste is dealt with lawfully and in an environmentally sound manner. ESA believes that this should be achieved without placing additional financial burden on our Members.

### Consultation Questions

#### Transfrontier Shipment of Waste Regulations

##### Enforcement of controls for shipments of green list waste

Question 1: Do you think charges for notifiable shipments should be increased to include an element for enforcement activities for shipments of 'green list' waste?

3. It would be inappropriate for charges for notifiable shipments to be increased to include an element for enforcement activities for shipments of 'green list' waste. Such an approach would be inequitable as those paying charges for notified waste shipments may not be involved in the shipment of 'green list' waste, and therefore effectively be required to fund activities which are of no benefit to them.

Question 2: Would a registration scheme be an equitable way of funding enforcement of these controls? Or are there other feasible options?

4. ESA considers that the establishment of a registration scheme for those shipping 'green list' waste could be a sensible approach to increasing confidence in the legitimate export of such materials, if there were entry requirements beyond the payment of a fee. The purpose of the registration scheme would need to be made clear; ESA believes that best value would be achieved if the purpose was to raise standards. A registration fee could be an equitable way of funding the administration of a registration scheme for the legal export of waste, but should not be used to fund enforcement of the regulations against illegal operators.
5. A distinction should be made between the funding of the monitoring of regulated activity within the regulated industry, and the monitoring and enforcement of illegal incidents which are committed by unscrupulous operators. The second category is a subset of wider environmental crime that affects not only the industry, but also impacts on the environment for the wider public and should therefore be funded through the public purse.

### Liability for non-compliance

Question 3: Do you agree with this extension of liability for non-compliant shipments? If not, why not?

6. ESA agrees that extension of liability for non-compliant shipments could assist the competent authorities' enforcement activities against illegal waste shipments by enabling them to identify and prosecute offenders more easily. It is also likely to increase transparency and the use of written formal contracts between handlers of waste, and would be in line with ESA's Recycling Registration Scheme. However, clarity should be provided on appropriate defences to ensure that operators perceived to have 'deep pockets' are not unfairly pursued by the authorities.

Question 4: Although the list in regulation 5 is not exhaustive, are there any other people that should be included in the list for clarity?

7. No comment.

### Competent authority for the offshore marine area

Question 5: Do you agree with the proposed arrangements for a competent authority for the offshore marine area? If not, why not?

8. No comment.

Question 6: Do you have any information on the costs and benefits of making such movements and wastes subject to the requirements of the revised Waste Shipments Regulation?

9. No comment.

### Transitional charges/fees

Question 7: Do you agree with the proposed structure, based on banding by the number of shipments for the revised charges in Great Britain?

10. ESA welcomes confirmation in the Partial Regulatory Impact Assessment that the proposed new banding structure for Great Britain has been developed to be cost reflective and administratively simple to administrate. Further detail of how the proposed charges reflect actual cost would assist our understanding here.

Question 8: Do you agree with the proposed bands? Or should the system be simplified by merging some of the bands? If so, which?

11. ESA agrees with the proposed banding by shipment number.

Question 9: Does the partial RIA correctly identify the impacts of the new WSR on notifications received in the UK?

12. ESA agrees that it is difficult to predict how the current spread of notifications will change as a result of the new WSR, and therefore we do not feel able to comment.

Question 10: Do you have any information on the likely impacts of the proposed transitional changes?

13. ESA Members working in different parts of the EU have indicated that administrative charges tend to be higher in the UK than in other Member States.

Question 11: Does the proposed changed approach to refunds cause you any concern? If so, can you explain, given the wide bands proposed, why it is not possible to predict the approximate number of likely shipments on a notification at the time of notification?

14. The proposed changed approach to refunds is a cause for concern. We would like to see the retention of the ability to apply for refunds, as this provides flexibility for operators. The ability to notify shipments based on an upper estimate and apply for refunds for unused shipments is of great use, as it avoids the time and expense of a separate notification for any excess material. The deduction of an administrative fee by the Agency to cover costs, as is currently the case, would be acceptable, as would a restriction on the time period within which refunds can be applied for.

#### Financial guarantees

Question 12: Do you agree with the proposed changes to the system for putting in place financial guarantees?

15. ESA welcomes the proposals to allow financial guarantees to be submitted after notification, and to allow signed declarations to be submitted in place of the actual financial guarantee. These changes will provide additional flexibility in the notification process.

Question 13: Are the costs and benefits in the partial RIA for the draft Regulations an accurate reflection of the likely impacts of these proposed changes?

16. ESA agrees with the predictions in the partial RIA.

#### Powers of competent authorities

Question 14: Do you agree with the proposed strengthening of competent authorities' powers for enforcing transfrontier shipment of waste controls? If not, why not?

17. ESA supports the effective enforcement of waste regulation, to ensure there is a level playing field among waste management operators and opportunities for unscrupulous operators to undercut legitimate operators are minimised. The proposed strengthening of the regulators' powers is welcomed for these reasons. They could be strengthened further by defining in the regulations the offences for which fixed penalty notices are appropriate, to ensure that penalties are commensurate with the offence.

Question 15: Do you think their powers could be strengthened further? If so, how?

18. No comment.

#### Role of HM Revenue and Customs

Question 16: Do you support increasing the three day detention period of HMRC to five days? If not, why not?

19. We support this proposed increase to five days.

Question 17: Do you have information/data on the impacts that this proposal would result in?

20. No comment.

Question 18: Or do you think the detention period should be higher than five days? If so, why?

21. ESA considers the increase to five days to be proportionate and reasonable, and that the effectiveness of this increase should be assessed before any further changes are proposed.

Exports of recyclables – reporting information that accompanies shipments of 'green list' wastes

Question 19: How do you think Government can best obtain better data on the scale and trend of exports of non-notifiable wastes?

22. The establishment of a registration scheme for those shipping 'green list' wastes could facilitate the collation of data on the trend of exports of non-notifiable wastes if administered effectively. We note that ESA's Recycling Registration Scheme requires scheme members to provide data on the waste and its destination.

Question 20: Do you support option 1, 2 or 3? Why?

23. ESA agrees that it would be advantageous for the purposes of waste management planning to know, as a whole, what wastes are being shipped overseas for recovery/recycling, in what quantities, where they are destined for, and what trends there are in such shipments over time. Collection of certain information relating to the shipment of 'green list' wastes from the Annex VII movement form would provide this information.

24. A requirement on operators to submit copies of Annex VII forms to the relevant UK competent authority would result in the transfer of unnecessary data and could be burdensome. For this reason ESA supports option 3, which would facilitate the submission of relevant Annex VII information by means of an electronic reporting system; however we would wish to be involved in determining the nature and detail of the data to be submitted.

Question 21: Do you have any information on the costs and benefits associated with each of the options?

25. No comment.

**UK Plan for Shipments of Waste**

Shipments in Emergency Situations

Question 22: Is the definition of an emergency too narrowly drafted? If so, how should it be changed?

26. No comment.

Question 23: Should the UK permit shipments out of the UK in emergency situations or should the prohibition in the current Plan be maintained in support of UK self-sufficiency?

27. We believe that shipments out of the UK in emergency situations should be permitted in the Plan where the technology to treat the waste is not available in the UK.

Shipments for trial runs

Question 24: Do you agree with the proposal to allow shipments of waste, to and from the UK, for trial runs for specialised disposal technologies? What types of wastes and technologies might they be used for?

28. ESA agrees in principle with the proposal to allow shipments of waste for trial runs, but believes that a cautious approach should be taken to prevent the abuse of any relaxation of the regulations. We note that waste treatment technologies are being developed worldwide.

Question 25: Do you think there should be any limitations placed on such shipments, e.g. tonnage?

29. ESA believes that there should be limitations placed on such shipments to prevent such a route being used to avoid regulated disposal in the UK. However, we believe it is currently unclear what form these limitations should take and that further investigation is required.

Shipments between Northern Ireland and the Republic of Ireland

Question 26: Do you agree with the proposal to allow shipments of hazardous waste between Northern Ireland and the Republic of Ireland for the specialist disposal operations D5, D9 and D10?

30. ESA agrees with this proposal.

Question 27: Should this proposal be extended to include other disposal operations, such as biological treatment (D8) prior to D10?

31. No comment.

Shipments to the UK from member States, or EFTA countries, of hazardous waste produced in small quantities in the country of dispatch

Question 28: Do you agree with the proposal to better align exceptions from the general prohibition for shipments into the UK with the requirements of the Waste Shipments Regulation?

32. ESA agrees with this proposal.

Question 29: Should the disposal operations for which waste can enter the UK for disposal be limited within those that apply best available techniques, e.g. to high temperature incineration? If so, which disposal operations should be allowed?

33. We agree that the available disposal operations should be limited to those that apply best available techniques, for example through a PPC permit.

Shipments from the UK to other Member States, or EFTA countries, of hazardous waste produced in small quantities

Question 30: Do you agree with the proposal to better align exceptions from this general prohibition with the requirements of the Waste Shipments Regulation?

34. ESA agrees with this proposal, which would allow the Government to make exceptions to the prohibition on exports in limited circumstances. It is essential that such exceptions are permitted only where they represent the preferable environmental option, and where the disposal facility applies best available techniques.