

**EXPLANATORY MEMORANDUM TO THE
WASTE MANAGEMENT LICENSING (ENGLAND AND WALES) (AMENDMENT
AND RELATED PROVISIONS) (No.2) REGULATIONS 2005**

2005 No. 1528

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument revokes before coming into force and remakes with minor amendments the Waste Management Licensing (England & Wales)(Amendment & Related Provisions) Regulations 2005 (S.I.2005/883) (the Earlier Regulations).

- 2.2 The Earlier Regulations were laid in March 2005 and were due to come into force on 1 July. Their main focus was to tighten up six exemptions from waste management licensing which have been the subject of allegations that they have been used as a means to illegally dispose of waste. The accompanying Explanatory Memorandum to the Earlier Regulations is annexed to this Memorandum. This includes a Regulatory Impact Assessment and a short summary of consultation responses.

- 2.3 Following publication of the Earlier Regulations, Defra received several comments and it was agreed to make changes in the light of these. Although the changes are minor, it is felt the simplest way to proceed is to revoke the Original Regulations before they come into force and remake them with minor amendments.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The instrument includes corrections to an earlier instrument and as a consequence the Department agrees to provide copies of the amending instrument free of charge to all known recipients of the earlier instrument.

- 3.2 The Department has started work on a project to consolidate the Waste Management Licensing Regulations 1994 (S.I. 1994/1056) (“the 1994 Regulations”) in England and expects to make the consolidating regulations by the end of April 2006.

4. **Legislative Background**

- 4.1 The Regulations are made under section 2(2) of the European Communities Act 1972 (1972 c.68).

- 4.2 The Waste Framework Directive (Directive 75/442/EEC) controls the recovery and disposal of waste. The Directive requires undertakings carrying out disposal or

recovery operations to obtain permit, but Article 11 of the Directive enables Member States to provide exemptions from the requirement for a permit in some circumstances. Exempt activities must be carried on in accordance with general binding rules that meet the objective to ensure protection of the environment set out in Article 4 of the Directive. Undertakings must be registered with the competent authority.

4.3 The principal regime for regulating the recovery and disposal of waste is the waste management licensing system set up under Part 2 of the Environmental Protection Act 1990. A range of exemptions which meet the requirements of Article 11 of the Directive is provided under regulation 17 of and Schedule 3 to the 1994 Regulations. A system of registration of exempt activities is provided by regulation 18.

5. Extent

5.1 This instrument extends to England and Wales but regulation 6 only applies to England (equivalent changes have already been introduced in Wales).

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State (Mr Ben Bradshaw) has made the following statement under section 19A(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Waste Management Licensing (England and Wales) (Amendment and Related Provisions) (No. 2) Regulations 2005 are compatible with the Convention rights.

7. Policy background

7.1 The Regulations re-enact the Earlier Regulations and as such the Explanatory Memorandum annexed to this Memorandum sets out the policy background. Minor changes made to the Earlier Regulations are explained below.

7.2 In paragraphs 8A and 8B of Schedule 3 to the 1994 Regulations we have amended the time limit for storage of sewage sludge prior to spreading from six months to twelve months. This change will allow operators to store waste until they can spread it at appropriate times of year in accordance with crop cycles.

7.3 Changes made to paragraph 10A of Schedule 3 to the 1994 Regulations will ensure that Sewage Treatment Works will be able to accept waste from Water Treatment plant. This means that water undertakers will be able to recover this waste at sewage treatment plant without the need for a waste management licence. This waste stream poses fewer risks than others already exempted from licensing at sewage treatment plant and hence it makes sense to exempt it. Other changes clarify the interface between exempt activities which do not need a waste management licence and excluded recovery operations carried out at sewage treatment works as an integral part of the operation of those works.

7.4 Changes made to paragraphs 9A and 19A of Schedule 3 to 1994 Regulations have clarified the requirement on operators to ensure that operations under these exemptions are carried out in accordance with all planning law requirements.

7.5 The remaining changes are drafting changes intended to clarify the meaning of the Regulations.

8. Impact

8.1 The additional changes made by this instrument are minor and will not affect business any further than the Earlier Regulations. The RIA attached to the original Explanatory Memorandum and included in the Annex therefore still applies.

9. Contact

Sally Kendall at the Department for Environment, Food and Rural Affairs Tel: 020 7082 8767 or e-mail: sally.kendall@defra.gsi.gov.uk can answer any queries regarding the instrument.

Annex 1

EXPLANATORY MEMORANDUM TO

THE WASTE MANAGEMENT LICENSING (ENGLAND AND WALES) (AMENDMENT AND RELATED PROVISIONS) REGULATIONS 2005

2005 No. 883

- 1.** This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Description**

2.1 This instrument amends the Waste Management Licensing Regulations 1994 (S.I.1994/1056) (the 1994 Regulations). It amends six exemptions to waste management licensing which have been the subject of allegations that they are being used as a means to illegally dispose of waste. The regulations tighten these exemptions to prevent any such abuse. The Regulations also introduce a new exemption relating to the burning of waste at docks; extend the definition of existing mobile plant that can be licensed under the waste management licensing regime; and require OPRA (performance related) scores for licensed sites to be added to the public register.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The regulations introduce a charge for registration of the amended exemptions. This will be included in a charging scheme made under the Environment Act, though the Regulations also provide for transitional charges until a scheme is made.

3.2 Exemptions, with one exception, have to date been free to register. The charge has been introduced to enable the Environment Agency to recover the costs incurred in regulating these exempt activities. In addition to inspections of sites, the Agency is required to assess notifications of these activities made under the Regulations. The charge only applies to those exemptions dealt with by this SI.

3.3 The 1994 Regulations extend to Great Britain. Similar amendments to those made in these Regulations have been made in Scotland, although the drafting is quite different. The numbering in the Regulations has been adjusted so that provisions in the Regulations in England and Wales have a different number than the Scottish equivalent. The Department acknowledges that the Regulations are due for consolidation and proposes to carry out this task in England as a separate project later this year.

- 4. Legislative Background**

4.1 The Regulations are made under section 2(2) of the European Communities Act 1972 (1972 c.68) and, in relation to regulation 5, sections 29(10) and 64(1) and (8) of the Environmental Protection Act 1990.

4.2 The Waste Framework Directive (Directive 75/442/EEC) (the Directive) controls the recovery and disposal of waste. The Directive requires undertakings carrying out disposal or recovery operations to obtain permit, but Article 11 of the Directive enables Member States to provide exemptions from the requirement for a permit in some circumstances. Exempt activities must be carried on in accordance with general binding rules that meet the objective to ensure protection of the environment set out in Article 4 of the Directive. Undertakings must be registered with the competent authority.

4.3 The principal regime for regulating the recovery and disposal of waste is the waste management licensing system set up under Part 2 of the Environmental Protection Act 1990. A range of exemptions which meet the requirements of Article 11 of the Directive is provided under regulation 17 of and Schedule 3 to the 1994 Regulations. A system of registration of exempt activities is provided by regulation 18. This instrument amends the Regulations to tighten the conditions which apply to certain exemptions (defined as “notifiable exempt activities”) and introduces a new notification procedure for undertakings which wish to register for these exemptions. There are new record keeping requirements for these exemptions. The maximum penalty for failing to register one of these exemptions or a paragraph 45 exemption is increased to level 3 on the standard scale (maximum currently £1000) (at present the penalty for failure to register a paragraph 45 exemption is level 2 on the standard scale (maximum currently £500) and for all others £10).

4.4 At present, there is only one exempt activity subject to charging. This is achieved by including that activity in the definition of “environmental licence” in section 56 of the Environment Act 1995 (1995 c.25). This means that the Agency is able to recover its costs of regulation under the charging scheme powers in sections 41 and 42 of that Act. A similar approach is followed for the charges introduced for notifiable exempt activities under these Regulations.

4.5 Other changes relate to exempt activities more generally. The Regulations clarify the circumstances when the Agency is under a duty to remove entries from the register. The Secretary of State is given power to issue guidance in relation to the registration authorities in relation to the carrying out of their functions under the Regulations. The maximum penalty for failure to register exempt activities other than those referred to above is increased to level 2 on the standard scale.

4.6 The amendments made by regulation 5 relate to separate matters. The Agency currently conducts risk assessments at regulated sites under its functions under section 42(1) of the 1990 Act. The amendment requires these assessments to be included on the public register. Certain types of plant are specified as mobile plant. The treatment or disposal of controlled waste by mobile plant requires a licence under the 1990 Act.

5. Extent

5.1 This instrument extends to England and Wales but regulation 5 only applies to England (equivalent changes have already been introduced in Wales).

6. European Convention on Human Rights

The Minister of State (Environment and Agri Environment) (Mr Elliot Morley) has made the following statement under section 19A(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Waste Management Licensing (England and Wales) (Amendment and Related Provisions) Regulations 2005 are compatible with the Convention rights.

7. Policy background

7.1 A House of Commons Select Committee Report on Sustainable Waste Management (published in 1998) questioned whether current controls for a number of exempt activities were sufficient to ensure protection of the environment and human health. It also highlighted a number of exemptions for the recovery of waste, in particular, the land treatment, construction waste and land reclamation exemptions, that have been subject to abuse and used as a means of waste disposal.

7.2 The purpose of this review has been to look at options for amending the regulations to improve the regulation of these activities. The aim has been to ensure that the exemptions are being used to support valuable waste recovery options that are available to industry as a sustainable, economically attractive and environmentally sound waste management alternative to more expensive and less environmentally sound disposal options.

7.3 The regulations amend those exemptions considered to be higher risk, and those exemptions subject to abuse, in terms of the risk they pose to the environment. These include land spreading and use of waste for construction and land reclamation. The Regulations have also amended other exemptions to extend their use for waste recovery, for instance the paragraph 12 (now 12A) composting exemption. This is in line with the government commitment to divert waste from landfill, where this is possible. The Regulations apply appropriate risk-based controls to ensure protection to the environment and human health.

7.4 The Agency receives thousands of notifications for these amended exemptions per year. The regulations should enable the Agency to ensure those activities which are carried out under the amended exemptions are regulated effectively. Those which do not meet the revised terms of the exemption must either cease operation or apply for a waste management licence.

7.5 Consultation for the changes included options for converting the highest risk exemptions into licensable activities. It was decided to continue with exemptions for these activities, albeit with new requirements, in order to promote the recovery of waste in the most economic way, and to ensure that the level of regulation was not too onerous for business. This is in line with the governments approach to better regulation as it is proportionate and uses the most appropriate level of regulation for the inherent risk of the activities in question.

7.5 There has been interest in these regulations from the sectors affected by them. In particular, the community composting sector have expressed concern about the impact of the regulations on them. The Regulations have been amended to ensure that this sector are not disproportionately affected by them. This issue attracted some minor press attention.

7.6 A detailed summary of consultation responses is available on the Defra website. A shorter synopsis has been added to this memorandum. The consultation has, in general, received support from stakeholders across the board, appreciating the need to ensure protection of the environment and human health for these activities. The main area of concern was with the community composting sector. We have met with representatives of this sector and have arranged an amendment of the regulations to which they should be happy. Please see the section on paragraph 12A in the RIA for more detail of the changes made. Officials met with stakeholders from other areas of industry and in the main, their concerns have been dealt with, where this has been possible. Please see annex 2 of this memorandum for a summary of responses. A more detailed summary is available on the Defra website.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is minimal. The charges that this SI introduce will take pressure off the Agency's government grant-in-aid. The Agency will be able to carry out the appropriate level of regulation deemed necessary for these 'higher risk' exemptions through the charge payable to it by establishments and undertakings. The Agency is the primary delivery agent for these regulations, they are not expected to impact on local authorities or other government departments.

9. Contact

Sally Kendall at the Department for Environment, Food and Rural Affairs Tel: 020 7082 8767 or e-mail: sally.kendall@defra.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

THE WASTE MANAGEMENT LICENSING (ENGLAND & WALES) (AMENDMENT & RELATED PROVISIONS) REGULATIONS 2005

FINAL REGULATORY IMPACT ASSESSMENT

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INTRODUCTION

The Government and the National assembly for Wales have reviewed a number of exemptions to the waste management licensing system. This document provides a final Regulatory Impact Assessment (RIA) for each exemption that has been reviewed. It discusses the policy options outlined that were laid out in the consultation paper for each exemption, and recommends the options to be adopted. This document outlines the risks, costs and benefits for each proposal. In many cases, quantification of the wider costs and benefits has not been possible due to their intangible nature. Each exemption has its own RIA, which can be read independently of the others.

The Government and the National assembly for Wales also consulted on new mobile plant prescriptions as part of the review of exemptions. An RIA for the mobile plant proposal was not produced. As the proposal is an extension to the existing mobile plant that can be licensed, it represents no further cost to industry. It should be noted that the mobile plant prescriptions consulted on as part of this exercise have already been amended in Wales.

A competition assessment is provided at the end of this document. The competition assessment has been used to determine whether the proposed changes to the regulations will have any significant impact on competition in the market. The competition assessment shows that this review is unlikely to have any significant impacts.

LEGAL BASIS FOR THE REVIEW

The legal basis on which this review is founded is the same for all of the exemptions under review. The amendments will be covered by one statutory instrument entitled the 'Waste Management Licensing (England and Wales) Regulations 2005'.

Background

Domestic legislation on waste permitting stems from the Waste Framework Directive (WFD). This has been transposed into UK law mainly through the Environmental Protection Act 1990 and the Waste Management Licensing Regulations 1994 (the 1994 regulations).

The principal objective of the WFD is to ensure that waste management activities do not cause harm to the environment or human health. The relevant objectives are set out in Article 4 which states that:

'Member states shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

- without risk to water, air, soil, plants and animals;
- without causing a nuisance through noise or odours; and
- without adversely affecting the countryside or places of special interest'.

Articles 9 and 10 of the WFD state that any establishment or undertaking that carries out waste disposal or recovery operations must obtain a permit from the competent authority. The competent authority for England and Wales is the Environment Agency (the Agency).

Under domestic legislation, permits (waste management licenses or pollution prevention & control permits) may be granted for a specific period, they are renewable and contain conditions and obligations that the operator must meet. There is, for example, a requirement for any operator to demonstrate that they are 'fit and proper' for the purpose of managing the facilities. This includes a requirement for the operators to show that they are technically

competent, lack relevant convictions and can provide adequate financial provision to cover the requirements of the licence.

Exemptions

Article 11 of the WFD states that Member States may exempt certain waste recovery activities, or disposal activities involving non-hazardous waste where disposal is carried out at the place of the production, from the need for a permit under Articles 9 & 10. Article 11 states that exemptions may apply only:

- if the competent authorities have adopted general rules for each type of activity laying down the types and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements;
- if the types and quantities of waste and the methods of disposal or recovery are such that the conditions imposed in Article 4 are complied with;
- if the establishment or undertaking is registered with the competent authority, and;
- if the Member States inform the Commission of the general rules adopted pursuant to the activities exempt from licensing.

Regulation 17 of the 1994 Regulations uses the Secretary of State's powers under Section 33(3) of the Environment Protection Act 1990 to prescribe specific exemptions from control by waste management licensing. Regulation 18 of the 1994 regulations implements the WFD's requirement for registration by the competent authority.

The intention of this review has been to ensure that the conditions and requirements imposed by Articles 4 and 11 of the WFD are met.

DRIVERS FOR THE REVIEW

A House of Commons Select Committee Report on Sustainable Waste Management (published in 1998) questioned whether current controls for a number of exempt activities were sufficient to ensure protection of the environment and human health. It also highlighted a number of exemptions for the recovery of waste, in particular, the land treatment, construction waste and land reclamation exemptions, that have been subject to abuse and used as a means of waste disposal.

The purpose of this review has been to look at options for amending the regulations to improve the regulation of these activities. The aim has been to ensure that the exemptions are being used to support valuable waste recovery options that are available to industry as a sustainable, economically attractive and environmentally sound waste management alternative to more expensive and less environmentally sound disposal options.

The review has proposed amendments to those exemptions considered to be of a higher risk, and those exemptions with a tendency to be abused, in terms of the risk they pose to the environment. The proposals made suggest appropriate risk-based controls to ensure protection to the environment and human health.

BUSINESS, CHARITIES AND OTHER ORGANISATIONS AFFECTED

The costs and benefits to industry of this review will be spread across a wide variety of industries. The exemptions under review, particularly the land treatment exemptions (paragraph's 7A, 8A & 8B & 9A), are used by many different industries & sectors, which include:

- the water industry;
- food and drinks industry;
- garden, park & forestry (including public land looked after by local authorities);
- dairy products industry;
- composting sector (including voluntary organisations);
- landowners and farmers;
- paper manufacture and recycling;
- textile industry;
- tanneries;
- cement, lime and plaster production;
- concrete, brick, tile and ceramics manufacture;
- the construction industry;
- the power station industry;
- ports and docks;
- wood processing & furniture industry;
- zoo's, animal parks and livestock markets;
- packaging industry;
- the iron and steel industry;
- specialist waste management treatment contractors;
- abattoirs and poultry preparation plants; and
- inland waterways maintenance.

As such a range of sectors may be affected by the proposals, the potential costs borne by each affected sector, to a lesser or greater effect, will be small in proportion to the cumulative cost all affected sectors as a result of the proposals (figures are shown in sections relating individually to each revised exemption).

STURUCTURE OF THIS RIA

This RIA is structured in six separate sections. The proposed amendments break down into changes to 6 different activities undertaken by operators under an exemption from waste management licensing. We have provided a separate analysis for each exemption as they each describe a different activity, in turn affecting different industry sectors. Figures supplied in the separate analyses attempt to show how much it will cost singular operators over the period of time they are, on average, likely to carry on the exempt activity in question. The amount of time an average operator will carry on an exempt activity will vary from exemption to exemption, for instance, a composting activity may carry on for 10 years or more, whereas, a land treatment activity is more likely to continue for around 3. The figures, therefore, give an idea of how much the different options will cost operators for the duration that they continue them.

A separate section at the back outlines average per annum figures of the costs involved for industry. These are provided to give an idea of the on-going costs to the industry of the proposed options. Agency registration data shows that demand for exemptions (not withstanding changes to the general rules) is continuous and steady. As some operator's cease to continue their activity, others apply to register a new activity.

1 – LAND TREATMENT – PARAGRAPH 7A OF SCHEDULE 3

TITLE OF PROPOSED MEASURE

Amendments to the waste licensing exemption for the treatment of land with suitable industrial waste.

ISSUE

The Government's Waste Strategy issued in 2000 recognised that:

“The land treatment of industrial wastes represents an economical and - when properly controlled – environmentally safe way of recovering value from a variety of organic wastes.”

Many wastes can be spread on land beneficially, including industrial wastes such as food processing wastes, paper waste sludge and lime. These wastes can provide valuable nutrients and lead to improvements in soil structure, allowing farmers to reduce the amount of inorganic fertiliser applied. The land treatment of waste is a recovery operation under the WFD. However, the inappropriate application of waste to land may lead to soil contamination, deterioration of soil structure, water pollution and offensive odours.

The introduction of the exemption for the land treatment of certain wastes in 1994 has led to a large increase in the quantity of wastes being recovered to land. Quantities of waste recovered to land include, for example, 520,000 tonnes per annum of paper waste sludge and 70,000 tonnes per annum of vegetable and food waste. Other major contributors include waste from the sugar and water treatment industries.

Since 1994, water pollution incidents from land treatment have increased by an estimated 80 to 100 events per year and complaints from the public have been received. The Environment, Transport and Regional Affairs Select Committee took up these concerns, and questioned whether the land treatment exemption, as outlined in the current regulations, provided sufficient protection of the environment and human health. The Government carried out research to develop further the criteria to determine whether or not the land treatment of particular wastes benefits agriculture or results in ecological improvement. Following publication of the report, the Government and the Agency promised to consider the report's findings and carry out a consultation on proposed amendments to the land treatment exemption. This proposed legislative amendment is a result of that commitment.

OBJECTIVE

The objective of the proposed amendment is to ensure that land treatment results in ecological improvement or agricultural benefit, and is carried out in a way which protects the environment and human health (to comply with Article 4 of the WFD). A further objective is to ensure that these aims are met with the minimum level of regulation and burden on operators.

The proposals include a new requirement on operators to pay a charge made by the Agency for the registration of paragraph 7A exemptions. The charge will cover the Agency's costs of annual inspection and the analysis of information provided in the notification to them. This will enable the Agency to regulate the exempt sites more effectively and is in line with the general policy of charging operators on a cost recovery basis. The proposed regulations include a requirement for the establishment or undertaking to produce a certificate proving agricultural benefit or ecological improvement. Agricultural benefit or ecological improvement has always been a requirement of the exemption. However, abuse has occurred where the Agency has not previously had the power to require appropriate evidence. The certificate will require a robust assessment, including sample testing of both the soil and the waste type spread, ensuring the waste type will confer benefit or improvement to the soil. The certificate must also include evidence showing that the activity will be in compliance

with Article 4 of the WFD. The certificate must be completed by a person of appropriate technical expertise and guidance on assessing the certificate will be given in Statutory Guidance to the Agency. The types of waste allowed to be spread under the exemption are amended in the proposed regulations to more tightly specify the types of waste permitted to be spread to land. These waste types have been amended further since consultation.

It should be noted that the Government is currently consulting on bringing agricultural waste within waste management controls required by the WFD. These proposals will include a separate exemption for the land treatment of manure and slurry.

RISK ASSESSMENT

Abuse of the current exemption, together with the need to provide more stringent criteria to protect the environment and human health in line with the WFD, have led to these changes being proposed. The risks associated with land treatment if it is not properly regulated are difficult to quantify. However, a number of examples can be provided to highlight some of the potential problems.

In 2002, a registered exemption for spreading of paper pulp caused a category 2 water pollution incident on a 1.5 - 2 km stretch of a stream. This resulted in black, anoxic odorous pollution causing unsightly sewage fungus, fish avoidance and problems for cattle finding clean drinking water.

Harm to animals has also resulted from the spreading of blood and gut content to land. In the case in question, the material contained unauthorised bone meal and some mammalian protein. As a result, 300 animals were slaughtered and 0.5 metres depth of soil removed from at least 3 hectares of land in order to protect the human food chain.

Odour nuisance is one of the more common complaints about land treatment operations. During one week in October 2002, 11 odour complaints were received regarding one particular land treatment operation near Chesterfield.

These examples show that the current system can cause nuisance and damage to animals and the environment. The proposed amendments aim to minimise the potential for such harm, through increased levels of inspection and tighter controls on the materials that can be spread.

OPTIONS

OPTION 1 Do nothing. Land treatment activities will continue to be regulated under the current exemption or require a waste management licence.

OPTION 2 Provide a revised exemption with enhanced general rules to ensure land treatment results in ecological benefit or agricultural improvement.

OPTION 3 Remove the exemption altogether and require all land treatment activities to obtain a waste management licence.

BUSINESS, CHARITIES AND OTHER ORGANISATIONS AFFECTED

The proposed amendments will principally affect the following groups:

- specialist land treatment contractors;
- landowners and farmers;
- abattoirs and poultry preparation plants;

- paper manufacturing and recycling;
- the food and drink industry;
- inland waterways maintenance;
- textile manufacture;
- tanneries;
- water treatment.

Unfortunately, the total number of organisations affected cannot be quantified as the data is not available.

While land treatment operations take place on or around many farms in England and Wales per year, in many cases the farmer will not be the operator of the treatment activity and so will not pay the charges. If they do carry out the activity themselves, they should ensure the cost of regulation is reimbursed by the company who's waste is being spread to the land.

It is estimated that each land treatment exemption will last up to 3 years. The operators will be required to notify the Agency every 12 months that the operation is continuing and to provide details of where it is taking place, etc.

ISSUES OF EQUITY AND FAIRNESS

There is a minor issue of equity and fairness with option 2. Under the UK's regulations, the WFD has not yet been applied to agricultural waste and so farmers are not charged for the disposal of waste under the waste management licensing system. However, the Government is currently consulting on bringing agricultural waste within WFD controls. As part of this, the Prime Minister has made a commitment as part of the Government's Farming Strategy to:

“make full use of powers to provide licensing exemptions - especially for the re-use and recycling of waste - **without charges.**”

No charges are levied on the land treatment exemption under current regulations, although the review will bring in charges for registration of the exemption. However, as noted above, farmers should not directly bear any costs as a result of this particular measure.

BENEFITS

OPTION 1

The main benefit for the operator is that no regulatory charges are imposed. Furthermore, no additional costs are imposed on the operator through the analysis of wastes to be spread as would be required under options 2 and 3. Option 1 is the least burdensome option for operators. However, the current exemption has been subject to abuse and does not provide assurance that the activity confers agricultural benefit or ecological improvement. Nor will it reduce the potential risks to the environment and health as required under article 4 of the WFD.

OPTION 2

The revised exemption will further encourage protection of the environment and human health through tighter controls on the land treatment activity. As such, it is likely that most of the 80-100 complaints received by the Agency per year would be avoided. The exemption will provide clearer guidance to the Agency and, through charging, will provide it with the resources necessary to carry out the required level of inspection and regulation.

Specifically, the main benefits are:

- Full compliance with the WFD through the provision of clear criteria and the requirement within the regulations to provide a certificate to demonstrate that the activity leads to agricultural benefit or ecological improvement as well as compliance with Article 4 of the WFD. The criteria will enable the Agency to ensure that the activity is a legitimate recovery activity under the exemption.
- The exemption will help ensure consistency with other legislation e.g. the Sludge (Use in Agriculture) Regulations 1989, through the banning of septic tank sludge (to be spread) under the exemption.
- The exemption will define more clearly the types of waste that can be spread. The exemption will exclude certain wastes which are inappropriate because of associated risks, and will include other wastes which can be spread beneficially. This will help maximise use of the exemption whilst preventing environmental damage. Clear guidance will be given of what is and what is not exempt.
- Introducing charging will provide the Agency with the resources necessary to carry out appropriate levels of inspection (once annually) and help ensure that activities do not harm the environment or human health.
- The requirement for operators to provide the Agency with 35 days notice before spreading commences will give the Agency time to fully consider the activity, consult other bodies where necessary (e.g. English Nature) and arrange pre-inspection, if this is necessary. This will ensure the legitimacy of the activity and ensure that the general rules of the exemption are followed.
- Operators will be required to keep records (for 2 years) of their land treatment activities and the Agency may require to see them. Access to these records will help the Agency to regulate the activities more effectively.

OPTION 3

More stringent application requirements and increased site monitoring offered by waste management licences would provide a greater degree of confidence in protecting the environment and human health. Waste management licences contain site specific conditions which depend upon the types and quantities of waste, and the nature of the activity. This option would guarantee compliance with the WFD.

COSTS

OPTION 1

There are no additional costs with this option as it represents the base case. Current costs are estimated as follows:

Regulatory Costs

The Agency currently incur costs from considering whether notifications comply with the general rules of the exemption and for carrying out periodic inspections along with the general administrative costs of registering the exemption. These costs are currently covered by grant-in-aid from central Government and are estimated to be **£112 per notification**. Given 2,100 notifications per year, this gives a **total regulatory cost of £235,200 per year**.

Operator Costs

The operator incurs costs from providing information to the Agency. The costs cover demonstration of compliance with the general rules of the exemption before the activity can be formally put on the register. Operational costs will vary and are estimated to fall within the range £100 - £200 per operator. While specific costs are not available, table 1 shows the potential impact of this range on total costs to the industry.

Table 1

number of notifications (p.a.)	costs to operator (£)	total cost (£)
2,100	100	210,100
2,100	150	315,000
2,100	200	420,000

Total Cost

Taking the mid range operator costs (£150 per annum), this gives:

Total Cost (regulatory costs borne by government + operator costs) = £550,200

OPTION 2

Under this option, the current limits will be maintained and operators will be allowed to spread a maximum of 250 tonnes per hectare (or 5,000 tonnes in the case of dredgings). Therefore, the amount of operations eligible for an exemption is expected to remain more or less the same. Each operation will be subject to an annual charge. This will cover the Agency's costs of considering the information required in the notice; the cost of administering registration and annual inspections for each site.

Two levels of fee will be levied. Operations registering an operation for the first time will be charged **£546** per exemption. This initial notification charge will last for 12 months.

Where the spreading of the same type of material on the same land continues beyond one year, the operator will need to re-notify the Agency and pay a renewal charge. The charge payable to the Agency will be **£412** per (re)notification. The level of assessment required by the Agency when the same activity continues after 12 months is less than for initial notification. The reduced effort is reflected in the lower charge payable by the operator.

Costs for exempt sites

The exact number of first time registrations compared with annual renewals is not available. However, table 2 provides some scenarios to indicate the impact on costs for the industry. If operators pay the initial registration charge in the first year they will need to pay the annual renewal charge for the following years the activity continues. It is likely that previously unregistered operators will decide to undertake activities permitted under the exemption, contributing to those in the industry paying the initial renewal charge each year. It should be noted that either establishments or undertakings can register this exemption. It is usual practice for the undertaking to register the exemption. However, in the case of the 'establishment', this is usually the farmer where waste is spread to agricultural land. If the farmer is registering the exemption then we would expect the cost of registration to be passed to the waste undertaker or producer. The producer will be benefiting financially from the spreading activity where otherwise they would need to send their waste product to landfill or other, more expensive, waste disposal options. It is therefore in the producers interest to cover the cost of registration.

Table 2 – scenario's for exempt sites in the case of option 2 – based in a total of 2,100 registrations

simulated number of registrations (p.a.)		total cost (£)
initial registration (£546)	annual renewal (£412)	
2,100 (100% of registrations)	0 (0%)	1.146,600

1,575 (75%)	525 (25%)	1,076,250
1,050 (50%)	1,050 (50%)	1,005,900
525 (25%)	1,575 (75%)	935,550

Other Costs

Operators will also incur costs for providing the information required under the regulations to the Agency. This information includes a certificate providing an assessment of impact to the environment and human health and to demonstrate that the activity results in agricultural benefit or ecological improvement. Unfortunately, exact costs are not available. However, the Agency and industry have provided an estimated range of between £200 to £1,000 per notification. This will depend, for example, on the location of the site or whether the activity will be one off or regular. The £1,000 figure includes the costs of a person of appropriate technical expertise visiting the site, sampling, analysis of the samples, obtaining the consent of the landowner, preparation of material for the Agency and submission of the notification. The Agency estimate the average cost to be £300, based on half a day's consultancy charges. The total costs for exempt operations over a three year period under option 2 are provided in table 3 based on an approximate figure of 1,900 sites who will still require the exemptions registration.

Table 3 – Maximum costs for a 3 year land treatment exemption

	year 1 (£)	year 2 (£)	year 3 (£)	total (£)
initial registration	546	-	-	546
annual renewal	-	412	412	824
notice preparation	200 to 1000	200 to 1000	200 to 1000	200 to 1000
administration	100	100	100	300
total per operator	846 to 1,646	712 to 1,512	712 to 1,512	2,270 to 4,670
total for Industry (based on 1,900 notifications)	1,607,400 to 3,127,400	1,352,800 to 2,872,800	1,352,800 to 2,872,800	4,313,000 to 8,873,000

NB. The notice preparation costs in years 2 and 3 will be lower than in year 1, as most information would already be available to the operator. However, these costs are not available and so have not been estimated.

Costs for licensed operations

Under option 2, of the 2,100 operations that currently register as exempt each year, a small number would be required to obtain a licence. We have estimated this to be approximately 200 sites out of 2,100 currently registered. Unfortunately exact figures of the amount of sites that will need a licence as a result are unknown, but will be very small as no change has been made to the spreading limits (as was originally consulted on) and few waste types have been removed all together from the exemption (septic tank sludge being the main removal). The costs of this are shown in table 4 below, and are described under option 3 below (based on licence fee's calculated for the year 2004-05).

Table 4 - Costs of licensing for activities not able to register as exempt (assuming a 3 year operation)

	year 1 (£)	year 2 (£)	year 3 (£)	total costs
application fee*	500	500	500	1,500
subsistence charge	1,561	1,561	1,561	4,683
licence preparation	8,077	-	-	8,077
surrender of application	-	-	2,692	2,692
total per operator	10,138	2,061	4,753	16,952
total for industry (based on 200 licence applications)	2,2027,600	412,200	950,600	3,390,400

*This is a one off cost which has been annualised at 3.5% over 3 years.

N.B. Blood and gut contents must be treated as required by the Animal By-Products Order. As this is a separate requirement under a different regime, the costs of such treatment have not been included.

OPTION 3

Waste management licences will be required for each land treatment operation. The operator would cover all costs to the Agency through charging. The Agency levies both an initial application fee and an annual subsistence fee on operators. The operator will also incur costs in obtaining the information required by an application for a licence. This will include the costs of obtaining planning permission (a condition of licence), site investigations, environmental assessments and the preparation of the licence application. Furthermore, when the operation is completed the operator will be required to surrender the licence (or continue to pay the subsistence fee). This incurs a charge payable to the Agency and administrative costs in preparing the surrender application which may include pollution risk assessments. A site licence may not be surrendered without a certificate of completion which shows that the site is not contaminated. The total cost of option 3, based on a spreading operation lasting 3 years, is shown in table 5. The costs for the licence preparation and surrender are estimates based on figures given by industry for the cost of providing pollution risk assessments.

Each operator will additionally need to demonstrate they are ‘fit and proper’ persons to hold the licence, including the provision of technically competent management. This will increase the costs of option 3. We have not included these figures because the cost will vary according to the size of the organisation.

Table 5 – Total costs of option 3 for a 3 year operation

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Total Costs
Application Fee*	500	500	500	1,500
Subsistence charge	1,561	1,561	1,561	4,683
Licence preparation	8,077	-	-	8280
Surrender of application	-	-	2,692	2,692
Total per operator	10,138	2,061	4,753	16,952
Total for Industry (based on 2,100 notifications)	21,289,800	4,238,100	9,981,300	35,599,200

**This is a one off cost which has been annualised at 3.5% over 3 years.*

Other Costs

It can take several months to obtain a waste management licence. This is partly because there is a statutory requirement on the Agency to consult certain bodies on the proposals.

The high cost of this option is likely to provide a disincentive to spread. The waste would be diverted to other outlets, e.g. landfill. This would run counter to Government targets to reduce waste disposal at landfill. The costs of disposal to landfill are large. Two Agency area offices have each estimated that approximately 75,000 tonnes of waste is being spread for land treatment per annum. The disposal cost of this waste to landfill, if typical nationwide, would be in the region of £50 million per annum.

The financial cost of landfill may move the waste outside of a regulated environment and result in fly tipping. A knock-on effect would then be felt by the Agency and by local authorities as enforcement costs would increase. The Agency, local authorities and land owners would also bear the brunt of removal costs, where perpetrators are not caught. The above mentioned charges would not cover enforcement on behalf of the Agency as funding must only cover services provided by the Agency and issues of a level playing field would apply.

RECOMMENDATION

There has been increased concern about the environmental impact of land treatment activities. However, the activity can be a beneficial waste recovery operation, and we wish to encourage such activities as long as they are properly controlled. The controls and costs imposed by waste management licences are likely to represent too great a disincentive to operators. Doing nothing is also undesirable as the current situation does not tackle the risks appropriately. Option 2 is recommended and has been incorporated into the draft regulations as the most appropriate option. It provides the most cost effective and proportionate measure for dealing with the concerns encountered.

OTHER RELEVANT GUIDANCE

Code of Good Agricultural Practice for the Protection of Water
Code of Good Agricultural Practice for the Protection of Air
Code of Good Agricultural Practice for the Protection of Soil

2 – RECLAMATION AND IMPROVEMENT OF LAND – PARAGRAPH 9A & 19A OF SCHEDULE 3

TITLE OF PROPOSED MEASURE

Amendments to the waste licensing exemption for the use of waste for land reclamation, land improvement and construction.

ISSUE

The exemptions for reclamation, land improvement and construction work (paragraphs 9A and 19A), have been subject to allegations of abuse where they have been used as a means of waste disposal to avoid paying landfill tax. The Agency estimates there are around 75 prosecutions in relation to this in the pipeline nationally at any one time, with approximately 300 warning letters issued per year. Some of these are the result of inappropriate material being spread for construction purposes (e.g. for golf course construction). Such material may degrade and form landfill gas, which can be explosive and a danger to human health. Equally, in other cases, inappropriate amounts of materials have been used and this can be a risk to the environment and human health.

These allegations were taken up by the Environment Transport and Regional Affairs Select Committee, who expressed concerns about the effectiveness of the Agency's monitoring of exemptions. The Government's response to the Select Committee made it clear that exemptions were only valid for waste recovery operations and that the Agency has a duty to carry out appropriate periodic inspections. Research was commissioned to establish whether there was, indeed, any evidence of abuse (the Ecotec consultants' report). In light of the report's findings, the Government asked the Agency to make recommendations for the revision of these exemptions.

OBJECTIVE

To ensure that exemptions comply with the WFD through the provision of controls to ensure they are only used for genuine waste recovery activities whilst preventing harm to the environment and human health. The Government also wishes to encourage waste recovery where possible and wishes to ensure that the proposals represent an appropriate level of regulation and cost for industry.

The proposals included a new requirement on operators to pay a charge to the Agency for the registration of these exemptions. The charge will cover the Agency's cost of (annual) inspection and analysis of information provided in the notification to them. For paragraph 9A(1)(b) specifically, a requirement is made in the regulations for proof of agricultural benefit or ecological improvement. It will also be necessary to include within that certificate an assessment of the activities compliance with Article 4 of the WFD. The certificate will need to be completed by a person of appropriate technical expertise. This will enable the Agency to regulate the exempt sites more effectively. The charge is in line with the general policy of charging operators on a cost recovery basis.

RISK ASSESSMENT

The potential risks associated with use of wastes under the terms of the paragraph 9A and 19A exemptions include:

- damage to the environment through abuse of the exemptions. For example, contaminated soils have been used in the construction of a play area under the auspices of exemption paragraph 19A. Contaminated water from the site was discharged into a watercourse resulting in elevated levels of lead and cadmium;

- in another case, around 35 complaints were received when 60,000 tonnes of waste were used in the construction of a golf course. 3,000 tonnes of this was unsuitable material which resulted in sulphide contamination. The Agency estimates that there are around 100 –150 allegations of abuse made each year;
- nuisance (e.g. through odours and dust) resulting from deposits of inappropriate waste; and
- non-compliance with the WFD through waste used for disposal rather than recovery operations. This raises the possibility of infraction proceedings against the Government.

BUSINESS, CHARITIES AND OTHER ORGANISATIONS AFFECTED

The main types of businesses affected by the measure are the construction industry, demolition contractors, road building and repair contractors, British Waterways, Network Rail, rail maintenance contractors and British Sugar. The leisure industry and organisations improving local amenities may be affected where they use industrial wastes to form recreational facilities. Farmers may also be affected under paragraph 9A or 19A where they import industrial waste for land reclamation or improvement.

OPTIONS

OPTION 1 Do Nothing. Continue to rely on the current exemptions.

OPTION 2 Repeal the existing exemptions under Paragraphs 9A and 19A and require all activities to obtain a waste management licence.

OPTION 3 Amend the exemptions as drafted in order to tighten their control to prevent abuse.

ISSUES OF EQUITY AND FAIRNESS

There are no perceived issues of equity and fairness with the options proposed. Each option will treat similar operations in the same way.

BENEFITS

OPTION 1

No regulatory charges are imposed on the operator. However, this option will not solve abuse of the exemptions or the potential pollution risks that occur each year.

OPTION 2

Enhanced scrutiny and site monitoring offered by waste management licences will ensure protection of the environment and human health, and therefore compliance with Article 4 of WFD.

OPTION 3

Tighter controls will minimise abuse as only genuine waste recovery activities will be permitted to register an exemption. The revised exemption will help to ensure, in accordance with the WFD, that the environment and human health are protected. It will also provide a level playing field for operators. Specifying more clearly the types of waste permitted under the exemptions will provide clarity and encourage recovery of appropriate waste types. The objectives will be achieved through:

- a requirement for waste spread under paragraph 9A(1)(b) to provide a certificate proving that the spreading will result in agricultural benefit or ecological improvement and that it complies with Article 4 of the WFD will be required;

- the widening of activities permitted under paragraph 9A to include restoration of land will promote further recovery of appropriate waste types;
- the addition of a depth limit of no more than 2 metres to which any of the wastes may be spread will prevent the spreading of waste to a depth constituting waste disposal;
- specific registration requirements on the operator, including a 35 day pre-notification to the Agency and record keeping;
- defining more accurately the wastes that are permitted under the exemptions.

COSTS

OPTION 1

This option represents the current case. Current costs are estimated as follows.

The Agency currently incurs costs from considering the notifications received to ensure legislative compliance and from carrying out inspections. These costs are covered by grant-in-aid from Government, and are estimated in table 6:

Table 6 – Costs To The Agency

Number Of Notifications (p.a.)	Average cost per notification (£)	Total cost p.a. (£)
(paragraph 9A) 202*	112	22,624
(paragraph 19A) 2063*	112	231,056
Total (2,265)	112	253,680

*Based on the number of notifications received in the year 2004-5.

Table 7A provides costs to the operator of providing information to demonstrate compliance with the exemption, before the activity can be put on the Register.

Table 7 – Costs To The Operator

Number of Notifications (p.a.)	Costs Per Notification (£)	Total Cost p.a. (£)
(paragraph 9A) 202	215	43,430
(paragraph 19A) 2,063	215	443,345
	Total	486.775

*NB These are the estimated average costs, which include staff time and vary in practice depending on the size and scale of the activity.

Total Cost of Option 1:

Agency costs + Operator costs = **£740,455 per annum.**

OPTION 2

Waste management licences would be required for each activity currently covered by paragraph 9A and 19A exemptions. It is estimated that most activities registered under these exemptions usually continue for between 1 – 3 years.

The operator would cover all the costs to the Agency via an initial application charge plus an annual subsistence charge. The operator would also incur costs in putting together the licence application. This would include obtaining planning permission and pollution risk

assessments. If the operators wished to cease the operation they would need to surrender the licence (or continue to pay the subsistence charges). Licence surrender includes a charge made by the Agency for the issue of a certificate of completion. This shows that the site is not contaminated as a result of the activity. Industry has provided an estimate of these costs. Tables 8 and 9 below show the total costs for this option.

Table 8 – Total costs for operators using less than 5,000 tonnes of waste p.a.

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Total (£)
Application Fee*	452	452	452	1,356
Subsistence Charge	1,750	1,750	1,750	5,250
Licence Preparation	8,077	-	-	8,077
Licence Surrender	-	-	2,692	2,692
Total per Operator	10,279	2,202	4,894	17,375
Total for Industry (assuming 1,133 operators)	11,646,107	2,494,866	5,544,902	19,685,875

*This is a one off cost which has been annualised at 3.5% over 3 years.

The application and subsistence charge figures are based on the 2004/5 Fees and Charges Scheme.

Table 9 – Total costs for operators using more than 5,000 tonnes of waste p.a.

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Total (£)
Application Fee*	881	881	881	2,643
Subsistence Charge	4,092	4,092	4,092	12,276
Licence Preparation	8,077	-	-	8,077
Licence Surrender	-	-	2,692	2,692
Total per Operator	13,050	4,973	7,665	25,688
Total for Industry (assuming 1,133 operators)	14,785,650	5,634,409	8,683,312	29,104,504

*This is a one off cost which has been annualised at 3.5% over 3 years.

The application and subsistence charges are calculated in line with the 2004/5 fees and charges scheme and are an average, taken from three bands of 5,000 tonnes or more.

To be eligible for a licence, each operator will need to demonstrate they are 'fit and proper' persons. This includes a requirement to show the operator is technically competent, including the requirement to present a certificate of technical competence. The cost of obtaining a

certificate of technical competence can vary depending on the operation, and some operators may already have a relevant certificate, so this cost has not been included here.

The cost of this option will lead to a reduction in spreading and diversion of the materials to other outlets, for example, landfill. Evasion of the regulations could also increase. This would impact on levels of fly tipping which could in turn impact on enforcement, prosecution and clear-up costs for the Agency and local authorities. Enforcement costs for the Agency remain paid for by grant-in-aid and are unaffected by charges paid by operators to the Agency as these cover services provided in the regulation of those particular activities. Clear up costs may also increase for land owners. It is not possible to quantify the likely scale of this effect and impact, so figures are not given here.

OPTION 3

Costs would be levied against the operator by way of a charge to cover the Agency's cost of regulation, inspections and assessing compliance with the terms of the exemption. The initial registration cost is higher than any subsequent annual renewal costs.

In addition to the registration charges, operators will incur costs for providing the information required in the notice to the Agency and for keeping records. We estimate these costs will be around £112 per notification for paragraph 19A exemptions. For higher risk exemptions under paragraph 9A(1)(b) (exemptions using sludge for instance) the notification will also require a pollution risk assessment and the demonstration of agricultural benefit or ecological improvement, based on properly qualified advice. The total administrative costs for these exemptions is estimated to be between £200 and £1,000 per notification depending on site specific conditions. Table 10 outlines the costs of option 3 for paragraph 9A exemptions and table 11 outlines the total costs for the paragraph 19A exemption.

Table 10 – Total costs of a 3 year paragraph 9A exemption

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Total (£)
Initial Notification	546	-	-	546
Re-notification	-	412	412	824
Notice preparation*	200 to 1000	200 to 1000	200 to 1000	600 to 3000
Total per operator	746 to 1,546	612 to 1,412	612 to 1,412	1,970 to 4,370
Total for Industry (based on 202 notifications)	150,490 to 312,292	123,624 to 285,224	123,624 to 285,224	397,940 to 882,740

* Only higher risk paragraph 9A exemptions under 9A(1)(b) of the regulations will be required to show agricultural benefit or ecological improvement. However, it is unclear how many this will be and so for the purposes of this calculation, all paragraph 9A activities have been included.

Table 11 – Total costs of a 3 year paragraph 19A exemption

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Total (£)
Initial Notification	546	-	-	546
Re-notification	-	412	412	824
Notice preparation	80	80	80	240
Total per operator	626	492	492	1610
Total for Industry (based on 2063 notifications)	1,291,438	1,014,996	1,014,996	3,321,430

Other Costs

The costs for Agency inspection are covered in the above charges (options 2 & 3). However, enforcement costs, such as those required to take action against those who are found in breach of the regulations, are covered by grant-in-aid funding. It is inappropriate to fund enforcement action against a few by charging the compliant majority. The level of enforcement action is very difficult to estimate and so no quantification of the costs has been made.

RECOMMENDATION

Option 1 does not provide sufficient means to ensure that the exemptions are undertaken without abuse. While this would be provided by option 2 – i.e. the requirement for all operations to have a waste management licence, this option would be over-regulatory and over burdensome, given that the recovery operation can be safely undertaken within the terms of a waste management licensing exemption.

Option 2 would discourage such waste recovery operations, thus resulting in more waste being diverted to disposal routes such as landfill.

Option 3 is recommended as the Government feels it represents the best value response to tackling the risks identified. The option gives the most balanced approach and is proportionate to the risks posed to the environment and human health. Option 3 is reflected in the regulations.

3 – COMPOSTING – PARAGRAPH 21A of SCHEDULE 3

TITLE OF PROPOSED MEASURE

Amendments to the waste licensing exemption (paragraph 21A) dealing with the small scale composting of biodegradable waste.

ISSUE

The Waste Strategy 2000 sets a target for the increase of organic waste which is composted as one of the Government's key objectives. Over the next few years, composting will have a significant contribution to make in ensuring compliance with the Landfill Directive and its targets for the reduction of biodegradable municipal waste which is currently landfilled. Composting can benefit the environment by returning organic matter to the soil and aids plant growth.

Composting does however have the potential, where it is not properly controlled, to cause environmental pollution, harm to human health and nuisance through odours, leachate and potentially harmful bioaerosols.

The current exemption for composting as detailed in Paragraph 21A of Schedule 3 of the Waste Management Licensing Regulations 1994, restricts the composting activity to the place where the waste is produced, or at the place where the compost is to be used. This is commonly known as the import/ export restriction. Composting schemes that wish to take waste from various sources, compost it, and then supply the resultant compost to a number of users should currently be covered by a waste management licence. The costs involved in this are much higher than the cost of registering an exemption and are generally considered to be disproportionately onerous for such undertakings.

N.B. It should be noted that householders wishing to compost their own waste material for use in their own garden do not need to be registered with the Agency.

OBJECTIVE

To encourage community composting through the provision of an exemption which covers all general small scale composting activities, regardless of the initial source of waste and the final destination of the compost. Achievement of this must ensure continued protection of the environment and human health.

The proposals include a new requirement on operators to pay a charge to the Agency for the registration of the exemption.

The charge will cover the Agency's cost of appropriate periodic inspection and analysis of information provided in the notification to them. Sites composting 5 tonnes or more of compost at any one time will also be required to supply to the Agency a certificate assessing the sites compliance with Article 4 (WFD) objectives. This will enable the Agency to regulate the exempt sites more effectively and is in line with the general policy of charging operators on a cost recovery basis.

RISK ASSESSMENT

Unregulated composting poses potential risks to human health and the environment.

In one case, leachate from a registered composting activity entered field drains and a watercourse. This caused a category 1 pollution incident (the most serious) with 1km of a watercourse polluted. The pollution resulted in fish avoidance, fungal growths and nuisance through odour.

Other problems associated with composting sites include:

- release of airborne micro-organisms (including bacteria and fungi);
- risks from litter which may attract vermin to the sites;
- risks of disease via vectors such as gulls and flies.

The Agency's data indicates that there are 80 licensed composting facilities and last year these gave rise to 147 incidents requiring investigation, i.e., 1.8 incidents per licensed facility. There are 7,500 other licensed waste facilities and last year, these gave rise to 2057 incidents requiring investigation i.e., 0.27 incident per licensed facility. It is evident that composting facilities have a greater potential for nuisance/pollution raising concerns about the current level of abuse. The list below is a summary of incidents at composting facilities that occurred during the period August 2003 to July 2004. These are taken from the Agency's national incident recording system and provide information on the nature and severity of incidents at composting facilities. Whilst the Agency receives a significant number of complaints that require investigation, not all of these result in pollution. In many cases the impact is reduced by Agency action, highlighting the need for regular inspection at larger exempt sites.

Common Incident Classification Data on Composting Incidents

Data for 01/08/03 - 31/07/04	
Incidents	Total
Total Waste Incidents	2507
Licensed Composting Sites	147
Unauthorised Composting Sites	10
Odour Problems at Composting Sites	74
Fires at Composting Sites	22
Water Pollution at Composting Sites	218

As well as the environmental risks involved, a further risk in continuing with the current import/ export exclusion is that it may contribute to missing Government set targets on reducing levels of biodegradable municipal waste sent for disposal at landfill.

BUSINESS, CHARITIES AND OTHER ORGANISATIONS AFFECTED

Organisations affected include small scale voluntary and community groups who often compost waste on a not-for-profit basis. An effort, in light of consultation responses, has been made to minimise the impact of introducing a charging scheme on these groups.

This exemption may also affect a number of commercial operations. The majority of commercial operators produce more than 400 tonnes of compost at any one time and would therefore already be required to have a waste management licence. The proposals include the conversion of the weight limit from 1,000 cubic metres of compost at any one time to 400 tonnes at any one time. It is expected that this may cause a number of the larger exempt sites to fall within the licensing regime. However, 400 tonnes was considered to be an appropriate limit and this change is likely to affect very few sites as the majority of commercial sites are already composting in excess of the current 1,000 cubic metres level.

OPTIONS

OPTION 1 Do nothing and continue to rely on the current exemption covering composting at the place where the waste is produced or is to be used. All other sites would be required to obtain a waste management licence (if they have not already done so).

OPTION 2 Provide a revised composting exemption with amended general rules that allow waste material to be transported to another location for composting and allow the composted material to be transported to a third location for use. The Agency advise that an exemption may safely allow for this, as long as appropriate conditions are applied.

A number of other issues would be addressed by this revised exemption. These include the need to provide temporary storage of waste prior to composting; allowing for the chipping, shredding and cutting of the waste; and providing for the screening of the waste.

ISSUES OF EQUITY AND FAIRNESS

There are no issues of equity and fairness with the proposed approach. All composting facilities registered under the exemption will be subject to the same requirements, except for facilities composting less than 5 tonnes of waste at any one time, which will not be subject to fees or required to provide a certificate detailing a risk assessment. This reflects the lower level of risk these facilities present, and the fewer inspections required of them by the Agency. The proposed sliding scale of charging for sites in the chargeable bands are designed to ensure that sites pay an appropriate charge in relation to their size and the risk they pose to the environment and human health.

BENEFITS

OPTION 1

Operators of composting activities that currently use an intermediate location for the composting activity should hold a waste management licence. The level of scrutiny and site monitoring offered by waste management licences would ensure protection of the environment and human health, and compliance with the WFD. This would be achieved through the application of specific conditions relating to the activity, and the requirement to pass the fit and proper persons test. However, it is unlikely that any composting operators would obtain a licence for such operations as the requirements to obtain one are uneconomical and onerous for such small scale operations. Therefore, it is likely that the requirement for a waste management licence will deter such composting activities, or encourage evasion of the regulations. This may mean that biodegradable municipal waste may be unnecessarily landfilled or that sites operate in breach of section 33 of the Environmental Protection Act, constituting illegal waste disposal.

OPTION 2

There are several benefits resulting from providing a revised exemption:

- The exemption will encourage community composting schemes who might otherwise be discouraged by the cost and other licensing requirements. Increased composting will contribute to a reduction in waste sent to landfill and would increase waste recovery;
- ensure protection of the environment and human health by requiring details of the composting site and surrounding area, the types and quantities of waste to be composted and the method of composting. For larger sites (5 tonnes at any one time or more) this will include the production of a certificate showing compliance with Article 4 of the WFD;

- the exemption will provide clear guidance on what materials can be composted under the exemption;
- allowing the ‘all-round’ composting activity to be exempt will further encourage recovery. The revised exemption will allow for the chipping, shredding, cutting and pulverising of waste where it is part of the composting process, and for the screening of the waste. The exemption will also allow for the waste to be stored at a temporary site (for up to 48 hrs) before it is taken to the place where it will be composted.

COSTS

The proposed measures will principally affect the 150 members of the Community Composting Network (CCN) who operate around 90 sites. Typically these are non-commercial schemes reliant voluntary labour and grant funding in some cases. Other establishments or undertakings not part of the CCN may also be affected, but it has not been possible to estimate their number. It is expected that the number of sites will increase, partly due to the Landfill Directive which imposes targets for the diversion of biodegradable waste (amongst others) from landfill.

In calculating the costs, we have based the numbers of composting sites on the existing 90 Community Composting Network sites. These activities vary in length although the Agency estimate that they operate for a number of years.

OPTION 1

All sites importing waste to be composted will require a waste management licence to operate. The Agency levies an initial licence application fee and an annual subsistence charge. Significant costs are also incurred in preparing an application for a waste management licence. These include, for example, obtaining planning permission and conducting pollution risk assessments. Furthermore, once the activity has ceased, the operator must pay the Agency a surrender fee to cover their costs of issuing a certificate of completion. We do not have full costs here, although one estimate provided for a different exemption under review suggests that these may be up to £10,000 per application. These have been divided into licence surrender and licence preparation costs based on industry estimates of the cost of pollution risk assessments and also the costs of surrender taken from the Agency’s charging scheme. The costs of obtaining and maintaining a waste management licence for composting activities are shown in table 12:

Table 12 – Total Costs For Operators Over A 10 Year Period

	Year 1 (£)	Years 2 - 9 (£)	Year 10 (£)	Total (£)
Application Fee*	145	145	145	1,450
Subsistence Charge	1,454	1,454	1,454	14,540
Licence Preparation	8,077	-	-	8,077
Licence Surrender	-	-	2,692	2,692
Total per Operator	9,676	12,792	4,291	26,759
Total for Industry (given 90 operators)	870,840	1,151,280	386,190	2,408,310

**This is a one off cost which has been annualised at 3.5% over 10 years.*

Each operator will also need to demonstrate they are ‘fit and proper’ persons, including provision of technically competent management. This will increase costs, although the amount will vary according to the size of the organisation.

Other Costs

Obtaining a waste management licence is a long process. It takes a minimum of 2 months for the Agency to process an application due to the statutory consultation requirements. This time commitment could also act as a disincentive.

OPTION 2

It is estimated that a third of the 90 sites (30) will compost under 5 tonnes of waste at any one time and will therefore be exempt from the charges and from having to provide a certificate assessing the risks involved with undertaking the activity to the Agency. They will still be required to register, notifying their, name, address and location only.

Charges for this exemption are on a sliding scale dependant on the amount of waste an operator intends to compost at any one time. A charge of **£252** for initial registration and **£174** for annual renewal will be applicable to operators who intend to compost between 5 and 50 tonnes of compost at any one time. A charge of **£484** for initial registration and **£402** for annual renewal will be payable to operators who intend to compost between 50 and 400 tonnes of compost at any one time. The sliding scale reflects the risks associated with different sized sites. Table 13 provides the costs for the 5 – 50 tonne band within option 2, for a 10 year project. Table 14 shows the costs for a 50 – 400 tonne band within option 2, for a 10 year project.

Table 13 – Total costs of a 10 year composting project – 5 – 50 tonnes at any one time

	Year 1 (£)	Years 2-10 (annual £)	Total (£)
Initial Notification	252	-	252
Re-notification	-	174	1,566
Notice preparation	52	52	520
Total per operator	304	2,034	2,338
Total for Industry (based on 40 operators)	12,160	81,360	93,520

Table 14 – Total costs of a 10 year composting project – 50 tonnes + at any one time

	Year 1 (£)	Years 2-10 (annual £)	Total (£)
Initial Notification	482	-	482
Re-notification	-	402	3,610
Notice preparation	52	52	520
Total per operator	534	4,086	4,612
Total for Industry (based on 20 operators)	10,680	81,720	92,240

The charges for different sized sites will be reflected in the amount of regulatory activity undertaken by the Agency. For sites composting 50 tonnes or more at any one time, the Agency will carry out annual inspection. For establishments in the 5 – 50 tonnes band, the Agency will inspect 40% of sites per year. This will ensure that each site in the band will receive an inspection at a minimum regularity of 2 ½ years. Sites in both bands will be required to submit a certificate containing the results of a risk assessment of the site in the

form of a certificate showing compliance with Article 4 of the WFD. The Agency's charges include analysis of the risk assessment in both cases.

CONSULTATION WITH SMALL BUSINESS

The Government consulted with small businesses and industry associations, including the Community Composting Network, On-Farm Composting Network and the Composting Association.

RECOMMENDATION

Composting has an important role to play in diverting waste from landfill, but the activities need to be properly controlled. We recognise it is appropriate to exempt community composting activities from the requirements of licensing and that licensing may act as a sizable disincentive to the activity. We recommend option 2 as the most appropriate, proportionate and cost effective measure.

4 – STORAGE AND SPREADING OF SEWAGE SLUDGE – PARAGRAPH 8A & 8B OF SCHEDULE 3

TITLE OF PROPOSED MEASURE

Amendment to the waste management licensing exemption for the storage of sewage sludge prior to spreading under the Sludge (Use in Agriculture) Regulations; and for the spreading of sludge to non-agricultural land.

ISSUE

Following Agency recommendations, the Government has reviewed the exemption for the storage of sewage sludge to ensure that it continues to protect the environment and human health. This is in light of changes to industry practice and to the nature and quantity of sludge that may be stored as a result of proposed revisions to the Sludge (Use in Agriculture) Regulations 1989 (the 1989 Regulations). There has been a separate consultation exercise on these latter changes.

Recognising that sludge can be recovered beneficially to non-agricultural land, the Government proposes to continue to allow this activity to occur where it results in ecological improvement. Additionally, the 1989 Regulations do not allow the spreading of sludge to industrial or non-food crops. Amendments to the exemption would also allow the spreading of sludge to industrial and non-food crops, providing that agricultural benefit is shown. Industrial crops are used mainly for the production of energy from biogas. This is a growing industry and the Government wishes to support it.

It should be noted that this exemption provides operators with an exemption from waste management licensing for the storage of sludge prior to spreading under a) the 1989 Regulations as storage is not permitted under those regulations and b) the storage of sludge for spreading under the paragraph 8A spreading exemption.

OBJECTIVE

To encourage waste recovery activities through the provision of an exemption from waste management licensing. However, general rules are required to ensure that these waste recovery activities continue to meet the objectives of Article 4 and Article 11 of the WFD.

The proposals include a new requirement on operators to pay a charge to the Agency for the registration of the exemptions where the sludge is to be spread. The charge will cover the Agency's costs of inspection and analysis of information provided in the notification to them. This will enable the Agency to regulate the exempt sites more effectively and is in line with the general policy of charging operators on a cost recovery basis.

It should be noted that this cost is not extended to operators who are storing sludge for spreading under the 1989 Regulations. No charge is currently made under the 1989 Regulations for the spreading of sludge – a charge here would mean that operators would be charged to store the sludge, but would not be charged to spread it under the 1989 Regulations.

Operators storing sludge intended for spreading under the paragraph 8A spreading exemption will be required to pay the charge, as they are storing it in anticipation of spreading it under a waste exemption rather than under the 1989 Regulations. This arrangement was agreed after consultation with the industry.

RISK ASSESSMENT

If an exemption from licensing for the storage and spreading of sludge was not provided, the activity would require a waste management licence where it is not covered by the 1989 Regulations. This is a costly activity (see below) and further licensing costs would act to deter those who store and spread the sludge from the activity. This would result in much of the 1,200,152 tonnes (dry solids) of sewage sludge recycled to land annually, being diverted to incineration or landfill. This is not a sustainable option and goes against Government policy to divert waste from landfill and encourage recovery.

If provision is not made, under an exemption, to allow the spreading of sewage sludge to industrial crops, it is likely that much of the 44,878 tonnes of sludge used for this purpose will be diverted to other outlets. This figure represents 4% of the amount of sludge applied to land, and this proportion is expected to increase, particularly when changes to the 1989 Regulations come into force.

A number of water companies have indicated to the Agency and Government that they intend on buying farms to cultivate substantial areas of land for the production of non-food crops using sewage sludge. If an exemption was not provided, the costs involved in obtaining a licence would probably make the activity unworkable. This in turn would impact on the production of energy from biomass which is a resource the Government wishes to promote.

While the Government wishes to encourage these activities, care must be taken to ensure they do not cause harm to the environment and human health. The risks of not properly regulating the storage of sewage sludge cannot be quantified in terms of costs, but include water pollution incidents and nuisance as a result of odour and dust.

OPTIONS

Option 1 Retain the current exemption to allow for the storage of sewage sludge and the spreading to non agricultural land where it confers ecological improvement. This will require those that do not meet the conditions of the exemption to obtain a waste management licence.

Option 2 Provide a revised exemption with enhanced general rules which will more clearly specify the conditions that will contribute towards meeting Article 4 objectives. This will include a separate provision to allow the spreading of waste to industrial crops.

Option 3 Repeal the existing exemption so that all undertakings storing or spreading the waste under the current exemption would be required to obtain a waste management licence.

ISSUES OF EQUITY OR FAIRNESS

Option 2 will mean that the storage of sludge will be subject to a charge if it is intended for spreading to industrial crops under the paragraph 8A spreading exemption. This will create a disparity between those storing sludge under paragraph 8B for spreading under the 1989 Regulations, who will not have to pay the charge (this charge will be covered by Government grant-in-aid).

However, spreading under the 1989 Regulations is a separate policy area and the charges in the case of spreading under waste management controls are made in order that the Agency can ensure the activities are properly regulated under the paragraph 8A exemption. The intention is to maximise use of this exemption without discouraging spreading activities under the 1989 Regulations. Those spreading under the 1989 Regulations will have to comply with the requirements of those regulations but may need to store the sludge prior to spread under paragraph 8B – they will not be charged to do this.

BENEFITS

Option 1

There are no additional benefits with this option as no change would be made to the current situation. There will be no additional impact on the prevention of harm to human health and pollution of the environment. This option involves no additional charges on operators who spread sludge to land under the exemption.

Option 2

Enhanced storage requirements help to ensure prevention of harm to human health and pollution of the environment, especially given the increased use of de-watered sludge. The exemption will also ensure that the storage requirements pending use on non-agricultural land are consistent with the storage requirements pending use on agricultural land (under the 1989 regulations).

Many water companies fail to register the current exemption with the Agency as they do not consider the material to be controlled waste. The revision clarifies this requirement and allows the Agency sufficient time to consider the notification. The information requirements assist the Agency in their assessment, and ensure that the storage of sludge is properly regulated.

The time limit on storage will ensure that the exemption is used to encourage waste recovery rather than disposal.

Specifying the definition of “ecological improvement” achieves consistency with the exemption for the spreading of industrial waste for ecological improvement (see RIA for the paragraph 7A exemption), and provides more control over the exemption so that the only recovery (rather than disposal) operations may take place.

Introduction of common standards for the storage of the sewage sludge and spreading on non-agricultural land will enhance consistency and clarity between activities.

The requirement on the Agency to inspect will help to ensure the legitimacy of the activity.

Option 3

Enhanced scrutiny and site monitoring through waste management licences would ensure that the operations are carried out in a way that protects the environment and human health. A waste management licence would meet the requirements of EU and national legislation.

BUSINESS, CHARITIES AND OTHER ORGANISATIONS AFFECTED

This exemption could affect anyone involved in sludge production and the recycling of sludge to land. This will include the 10 water companies and any owners of private sewage treatment works and contractors for the de-sludging of septic tanks. Unfortunately, numbers of these operators are unavailable.

In relation to the spreading for ecological benefit and for industrial crops, the exemption will affect those who conduct the spreading, together with those who grow the crops. There were approximately 44 notifications for the spreading of sludge in 2004/ 05.

It is anticipated that many of these operations will last around 5 years, with some operating on a semi-permanent basis.

COSTS

Operators who fall outside the terms of the exemption are currently required to have a waste management licence. As this situation will remain constant no matter which option is chosen, these operators have not been included in the calculations. In 2004/ 0 5, approximately 352 notifications were received for the storage of sludge, 44 of which were for the spreading of sludge to non-agricultural land. These 44 include both spreading to industrial crops and spreading to other non-agricultural land for the purposes of ecological improvement. This gives a total of approximately 396 notifications for this exemption in 2004/ 05.

Option 1

There are no additional costs with this option as it represents the base case. Current costs are detailed as follows:

The Agency currently incurs costs through considering whether the notification received complies with the general rules of the exemption, and for carrying out periodic inspections. The costs do not vary depending on whether the exemption is for the storage or for the spreading of sludge and are currently covered by grant-in-aid from Central Government, and are estimated as follows:

Number Of Notifications (p.a.)	Average Cost Per Notification (£)	Total Costs p.a. (£)
396	340	134,640

The operator also incurs costs through providing information to the Agency to demonstrate compliance with the general rules of the exemption. These costs will vary depending, for example on whether water companies have GIS systems to assist them with the task. We do not have access to exact figures, although the Agency have stated that they will be in the region of £150 per notification. Therefore:

Number Of Notifications (p.a.)	Average Cost Per Notification (£)	Total Costs p.a. (£)
396	150	59,400

Total cost for option 1 = £134,640 + £59,400 = £194,040 per annum

Option 2

In option 1, the Agency's costs for carrying out inspections and considering the information provided in the notification were all covered by Central Government through grant-in-aid. Under option 2 this will remain the case where an exemption is registered for the storage of sludge intended for spreading under the 1989 Regulations.

A charge will be imposed on the operator where the sludge is to be stored or spread for ecological benefit or to industrial crops for agricultural benefit under paragraph 8A. It should be noted that a singular registration charge will be made for both storage and spreading in this case (i.e., no additional charge other than that made for registering paragraph 8A (see table 16) will be made for storage if the operator intends to spread the sludge under the Waste Management Licensing Regulations 1994.

The cost per notification is higher than under option 1 as there will be a specific requirement for the Agency to inspect the site in addition to the requirement to carry out appropriate periodic inspection. Furthermore, the information required in the notice will involve more

analysis, particularly where there is a requirement to show agricultural benefit or ecological improvement.

Each registration will last for one year after which the operator must re-notify the exemption if the activity continues. A charge (where relevant) to the Agency must be paid on annual renewal of the exemption.

The cost for those operations using the exemption for the storage of sludge will be approximately the same as under option 1 – i.e. £150 per notification. Although operators would be required to keep records which they do not do at present, the costs of such activities is anticipated to be minimal.

For operations using the exemption for the spreading of sludge for ecological improvement or to industrial crops for agricultural benefit, new requirements will be imposed. This is mainly through the requirement to provide information to demonstrate that the activity confers agricultural benefit or ecological improvement. This information must be based on properly qualified advice. The costs of these assessments and providing the necessary information to the Agency are estimated to be in the range of £200 - £1000 per notification.

The regulatory costs for storage and spreading operations are shown in tables 15, and 16:

Table 15 – Maximum costs for a 5 year storage exemption where storage is undertaken before spreading under the Sludge (Use In Agriculture) Regulations 1989

	Year 1 (£)	Year 2 - 5 (£)	Total (£)	Payable By
Initial Notification	546	-	546	Agency
Re-notification	-	412	1,648	Agency
Notice preparation	150	600	750	Operator
Total cost to Agency	546	1648	2,194	
Total cost to operator	150	600	750	
Total (based on 352 notifications)	244,995	791,296	1,036,288	

Where the activity continues for more than a year an annual renewal will be payable, in this case, it is likely that the administrative costs of providing information to the Agency will be lower than in the first year. This is because much of the information will be the same and therefore already available. It has not been possible to estimate how much these reduced costs will be.

Table 16 – Maximum costs for a 5 year storage/ spreading exemption (where the sludge will be spread under paragraph 8A of schedule 3 to the Waste Management Licensing Regulations 1994)

	Year 1 (£)	Year 2 - 5 (£)	Total (£)
Initial Notification	546	-	546
Re-notification	-	412	1,648
Notice preparation	200 – 1,000	200 – 1,000	1,000 – 5,000
Total cost to operator	746 – 1,546	2,448 – 5,648	3,194 – 7,194
Total (based on 44 notifications)	295,416 – 612,216	969,408, 2,236,608	1,264,824 – 2,848,824

OPTION 3

Repealing the exemption would mean that a waste management licence would be required for each exempt activity. All costs would be borne by the operators.

The operator would be required to pay an initial inspection fee and an annual subsistence charge. Significant costs are also incurred in preparing an application for a waste management licence. These include obtaining planning permission (where required) and conducting pollution risk assessments. Once the activity has ceased, the operator would need to pay the Agency a surrender charge to cover their costs of issuing a certificate of completion and for final inspection. We do not have exact costs for these, however estimates based on information given by industry are provided in table 18.

Given 396 registered exemptions, the costs of licensing are provided in table 18.

Table 17 - Licence costs for 396 operators

	Year 1 (£)	Years 2-4 (£)	Year 5 (£)	Total
Application Charge*	388	388	388	1,940
Subsistence Fee	2,154	2,154	2,154	10,770
Licence Preparation	8,077	-	-	8,077
Licence Surrender	-	-	2,692	2,692
Total per Operator	10,619	7,626	5,234	23,479
Total for Industry (given 396 operators)	4,205,124	3,019,896	2,072,664	9,297,684

*This is a one off charge annualised over 5 years at 3.5%

In addition to the costs outlined above, each operator will need to demonstrate they are 'fit and proper' persons including provision of technically competent management. This will act to increase further the costs of option 3. The cost will vary between sites, and so an estimate has not been provided here.

Other Costs

Obtaining a waste management licence is a long process. It takes a minimum of 2 months for the Agency to process an application due to the statutory consultation requirements. This may act as a further disincentive to operators.

RECOMMENDATION

Option 1 does not fulfil the recommendations for improvement as suggested by the Agency. While enhanced controls would be provided by option 3 (the requirement for all operations to have a waste management licence) this option is over regulatory and over burdensome, given that the operations under this exemption can safely be provided within the terms of a waste management licensing exemption. Option 3 would discourage such waste recovery operations, resulting in more waste being diverted to disposal routes such as landfill.

Given this, Government recommends option 2. The option provides the most appropriate regulatory approach, being proportionate to the risks to the environment and human health. This option is reflected in the regulations.

5 – SEWAGE TREATMENT WORKS – PARAGRAPH 10A OF SCHEDULE 3

TITLE OF PROPOSED MEASURE

Amendments to the waste management licensing exemption (paragraph 10) allowing the recovery of sewage sludge at sewage treatment works

ISSUE AND OBJECTIVE

The import of sewage sludge is currently an exempt activity under paragraph 10A(1) of Schedule 3 to the Waste Management Licensing Regulations 1994. This exemption allows the import for recovery of sewage sludge, screenings and septic tank sludge to a sewage treatment works (STW) without the need for a waste management licence. The current exemption applies to STW's importing less than 10,000 cubic metres of sewage sludge. All works importing more than 10,000 cubic metres are required to apply for a licence. This currently equates to 244 sites.

The original limit for this exemption was set following consultation with the water and sewage industry. Since then demand for increased capacity in order to allow the import for increased recovery of sewage sludge at STW's has grown and water companies have requested that this limit is increased.

There are over 5,000 STWs in the UK of which some 436 have the capacity and capability of receiving and recovering imported sewage sludge. It is these 436 sites that are the subject of this RIA and consultation.

Proposed changes to paragraph 7A also ban the spreading of untreated septic tank sludge to agricultural land. This policy is in line with wider government policy on un-treated septic tank sludge and an increase in the import of this waste is likely as a result of the ban.

Water UK, the representative of the water companies, has submitted a case to increase the limit on the quantity of sewage that may be imported to a treatment works for recovery under an exemption from licensing from 10,000 cubic metres to 100,000 cubic metres per annum.

The objective of any proposed measure is to ensure that the legislative framework is complied with and that appropriate and proportionate limits and conditions are placed on the treatment of sewage and sludge imported to STWs, in order to encourage the effective and safe recovery of the waste.

The proposals include a new requirement on operators to pay a charge to the Agency for the registration of the exemptions. The charge will cover the Agency's costs of inspection and analysis of information provided in the notification to them. This will enable the Agency to regulate the exempt sites more effectively and is in line with the general policy of charging operators on a cost recovery basis.

RISK ASSESSMENT

STW's are already heavily regulated and facilities should have the capability of recovering sludge in an effective manner, the management/ audit systems in place to cater for tankers of imported waste, and the infrastructure to collect any spillages and protect surface and ground waters. As a result, the risks to human health and the environment are considered to be small.

The recovery of sewage sludge in an uncontrolled manner has the potential for causing pollution of the environment and harm human health. Untreated sewage carries a potential

risk to human health through the transfer of pathogenic organisms and can cause nuisance and harm through obnoxious odours. There has been a great deal of public scrutiny of sewage treatment and recovery options in recent years and it is important that these wastes are handled in a responsible fashion to minimise risk.

There are estimated to be 436 STWs in the country capable of recovering imported sewage and sludge. Once the ban on untreated sewage and septic tank sludge being spread to land comes into effect it is estimated that an increased amount will wish to import more than 10,000 cubic metres of sewage per annum. The full breakdown is given in table 19.

Table 18

Volume of Sludge Received (cu.m per annum)	Number of STW's
<10,000	192
10,000 – 50,000	168
50,000 – 100,000	56
>100,000	20
Total	436

If this amendment is not made to the regulations, the Agency will be forced to require all STW's importing over 10,000 tonnes to obtain a waste management licence which may deter the recovery activity taking place, encouraging the waste to go to other less sustainable outlets for disposal.

OPTIONS

Option 1 Maintain the current exemption to allow up to 10,000 cubic metres of sewage sludge to be recovered under the exemption and require waste management licences for activities above that limit. Approximately 79 waste management licences are in place for those sites importing over 10,000 cubic metres of sewage out of a potential of 244 [32%]. This situation would prevail in the short term, and in the longer term, all 244 sites would need to be licensed.

Option 2 Provide a revised exemption with a 100,000 cubic metres limit on imported sewage and sludge. Waste management licensing would apply to those who import above this level. At this limit, only 20 of the largest STW's would require a waste management licence. It is possible that some, if not all, of these 20 STWs would be subject to PPC regulation.

ISSUES OF EQUITY & FAIRNESS

Option 1 – In 1996, representations were made to the Government about raising the limit from 10,000 cubic metres to 100,000 cubic metres. Given this, a number of former Waste Regulation Authorities (now the Agency) did not insist on licensing with the result that only 79 waste management licences have been issued to date. The lack of a consistent approach to regulation has led to some operators facing regulatory costs, where others of the same nature do not. The industry are concerned that such uncertainty has affected development and investment plans to date. In the absence of change, the Agency will be duty bound to seek applications for licences for all facilities importing over 10,000 cubic metres per annum. Given there is no sliding scale of charges, disproportionate regulatory costs will fall on smaller operators.

Option 2 – Increasing the limit to 100,000 cubic metres per annum would satisfy industry requirements. It is unlikely that there would be any issues of equity and fairness.

BENEFITS

Option 1

Licensing for sites receiving over 10,000 cubic metres would provide site specific risk based controls, and would provide protection of the environment and human health in line with the WFD.

Option 2

All sites would be subject to common standards of environmental control, with only 20 of the very largest sites requiring a waste management licence. This option would also comply with the WFD. Most sites would not, however, be subject to the extra cost and time taken to apply for a waste management licence

BUSINESS, CHARITIES AND OTHER ORGANISATIONS AFFECTED

The proposed measures exclusively affect water and sewage companies. The recovery operations can extend over many years, becoming effectively semi-permanent.

COSTS

OPTION 1

The cost of licensing all sites which import over 10,000 cubic metres of sewage and sludge are provided in tables 19 - 21. Under the Agency's charging scheme, there are three sets of charges for sludge recovery operations depending on the amount of waste recovered. These costs are presented in 3 separate tables. The licensing costs include both the application and subsistence charges payable by the operator to the Agency.

The licence preparation and surrender costs are additional costs to the operator. These costs include the preparation of the information required to be included in the licence application. This would include pollution risk assessments. Planning permission (if required) must also be in place before a licence can come into force and there are additional costs associated with obtaining this. Furthermore, once the operation ceases, an application for surrender of the licence must be made to the Agency. This involves further administrative costs together with a charge payable to the Agency. This charge includes site assessment and the issue of a certification of completion.

Table 19 - Licence costs for 79 sites for recovery of 10,000-25,000 tonnes p.a.

	Year 1 (£)	Years 2-9 (£)	Year 10 (£)	Total
Application Charge*	136	136	136	1,360
Subsistence Fee	1,212	1,212	1,212	12,120
Licence Preparation	8,077	-	-	8,077
Licence Surrender	-	-	2,692	2,692
Total per Operator	9,425	10,784	4,040	24,249
Total for Industry (given 79 operators)	744,575	851,936	319,160	1,915,671

*This is a one off charge annualised over 10 years at 3.5%

Table 20 - Licence costs for 115 sites recovery of 25,000-75,000 tonnes p.a.

	Year 1 (£)	Years 2-9	Year 10 (£)	Total
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		(£)		
Application Charge*	174	174	174	1,740
Subsistence Fee	1,588	1,588	1,588	15,880
Licence Preparation	8,077	-	-	8,077
Licence Surrender	-	-	2,692	2,692
Total per Operator	9,839	14,096	4,454	28,389
Total for Industry (given 115 operators)	1,131,485	1,621,040	512,210	3,264,735

*This is a one off charge annualised over 10 years at 3.5%

Table 21 - Licence costs for 50 sites recovery of over 75,000 tonnes p.a.

	Year 1 (£)	Years 2-9 (£)	Year 10 (£)	Total
Application Charge*	226	226	226	2,260
Subsistence Fee	2,127	2,127	2,127	21,270
Licence Preparation	8,077	-	-	8,077
Licence Surrender	-	-	2,692	2,692
Total per Operator	10,430	18,824	5,045	34,299
Total for Industry (given 50 operators)	521,500	941,200	252,250	1,714,950

*This is a one off charge annualised over 10 years at 3.5%

Cost for exempt sites

Under this option there are currently 192 exempt sites. The costs to the Agency in terms of registering the exemption are estimated to be in the region of £385 per notification. As this is a one off notification, there are no re-notification costs. These would continue to be covered by grant-in-aid from Central Government. Administrative costs for the operator of putting the information together for the notification to the Agency are difficult to estimate, but the costs of putting together the necessary information is likely to be in the region of between £200 to £1000 (although for existing exemptions, this is likely to be at the lower end of the scale).

Therefore the maximum total costs for exempt sites:

$$192 \times (\text{£}385 + \text{£}200) = \text{£}112,320$$

$$192 \times (\text{£}385 + \text{£}1000) = \text{£}265,920$$

Total Cost Range For Option 1

Total costs of licensed sites plus the costs of the exempt sites

$$= \text{£}7,007,676 \text{ to } \text{£}7,161,276$$

OPTION 2

Under this option it is estimated that 416 STWs will be exempt from licensing, with 20 licensed sites.

The total costs for the licensed sites are shown in table 22.

Table 22 - Licence costs for 20 sites recovering over 100,000 tonnes p.a.

	Year 1 (£)	Years 2-9 (£)	Year 10 (£)	Total
Application Charge*	226	226	226	2,260
Subsistence Fee	2,127	2,127	2,127	21,270
Licence Preparation	8,077	-	-	8,077
Licence Surrender	-	-	2,692	2,692
Total per Operator	10,430	18,824	5,045	34,299
Total for Industry (given 20 operators)	208,600	376,480	100,900	685,980

*This is a one off charge annualised over 10 years at 3.5%

Costs For Exempt Sites

224 sites could register as exempt from waste management licensing. Table 23 gives the associated costs.

Table 23 – Costs of registering an exemption over 10 years

	Year 1 (£)	Years 2-10 (annual £)	Total (£)
Initial Notification	385	-	385
Re-notification	-	321	2,889
Notice preparation	200 - 1000	200 - 1000	2,000 – 10,000
Total per operator	585 - 1385	4,689 – 11,889	5,274 – 13,274
Total for Industry (based on 224 operators)	131,040 – 310,240	1,050,336 – 2,663,136	1,181,376 – 2,973,376

Total costs for option 2

The cost of licensed activities plus the costs of the 224 exempt activities

= £1,867,356 to £3,659,356

Other Costs

Option 1 - This is unlikely to provide any further environmental benefits that are not already provided for by existing controls and legislation. The measure may result in companies considering importing sewage to smaller centres, with a result that tankers would travel greater distances to remote rural sites. These sites, by their nature, have less ability to withstand large loads of ammonia or Biological Oxygen Demand that may be associated with imported sludge, and as such, any measure should not encourage their use. The Agency would continue to pay for regulation of the exemptions through grant-in-aid.

Option 2 - 79 sites are currently licensed with 20 in the >100,000 cubic metres category. On this basis, 59 of these licences will no longer be required as the operators would be able to operate under an exemption. They would still be subject to the surrender provisions of the EPA 1990, however. It is possible that some companies may wish to retain their licence to enable them to continue to import other industrial wastes, and so it is not possible to say what these costs might be.

For all options, capital costs of impervious pavements and drainage systems, where required, and other licensing or exemption requirements have not been assessed. Nor have the costs involved with obtaining the certificate of technical competence required to fulfil the 'fit and proper person' test under the Waste Management Licensing Regulations 1994.

RECOMMENDATIONS

The Government considers that, for most STWs, the recovery of imported sewage and sludge can be adequately controlled through the general rules provided in an exemption from waste management licensing. We consider that only the largest works require additional measures under a waste management licence, and that a cut off at 100,000 cubic metres per annum establishes the correct balance. The Government recommends that option 2 represents the most proportionate option to be brought forward.

6 – DUNNAGE – PARAGRAPH 46A OF SCHEDULE 3

TITLE OF PROPOSED MEASURE

To provide an exemption from waste management licensing for the burning of dunnage at a port.

ISSUE & OBJECTIVE

On rare occasions, wooden packaging material (dunnage) from the import of plants and plant products is designated by the Forestry Commission for destruction at the port under the Plant Health Order 1993, to prevent the introduction of pests and diseases into the country.

Due to the threat of introducing such pests and diseases, some of which can travel considerable distances in order to find new territory, the only practicable and effective method of destruction is to have the suspect material burnt as quickly as possible as close as possible to the dockside.

This activity currently requires a waste management licence under the Waste Management Licensing Regulations 1994. However, time restrictions in disposing of the waste make this impractical. The current practice entails 'ad hoc' burning arrangements at various locations and docksides. The proposal will provide a more appropriate level of control through an exemption for the burning of such material, ensuring the activity is carried out in accordance with the WFD.

The proposals include a new requirement on operators to pay a charge to the Agency for the registration of the exemptions. The charge will cover the Agency's costs of inspection and analysis of information provided in the notification to them. This will enable the Agency to regulate the exempt sites more effectively and is in line with the general policy of charging operators on a cost recovery basis.

RISK ASSESSMENT

The burning of waste materials in an uncontrolled manner has the potential to cause pollution of the environment or harm to human health, and may create nuisance from smoke and odours.

In theory, dunnage could be required to be burnt at any of the points of entry to the country, but the Forestry Commission consider that the actual number will be relatively small. In 1998 the burning of dunnage was required on twenty occasions at 15 separate locations. Port authorities are also becoming increasingly aware of landing requirements and so the need for destruction of dunnage should decrease in time. It is therefore estimated that of the 200 ports of entry, 50 may require the on-site destruction by burning of dunnage.

OPTIONS

Option 1 Do nothing. Continue with 'ad hoc' burning at various locations.

Option 2 Port Authorities could set up a voluntary scheme to control these activities.

Option 3 Provide an exemption from waste management licensing. The Port Authorities will be allowed to burn dunnage provided they meet some general rules as detailed in paragraph 46A of schedule 3 of the Waste Management Licensing Regulations 1994.

Option 4 Full waste management licensing requirements. Burning would have to be carried out in a dedicated incinerator for which a waste management licence or authorisation under

Part I of the Environmental Protection Act 1990 (PPC) would be required. If no suitable facility existed nearby, a waste management licence would need to cover a purpose built incinerator burning waste <50 kilograms per hour. The licence would also need to include provision for related storage.

ISSUES OF EQUITY & FAIRNESS

Options 1 and 2 provide no guarantee that any one port will control the burning and it is possible that local people may be placed at a disadvantage through suffering nuisance and odours. These options would also represent an infringement of WFD requirements. Option 2 represent a voluntary agreement so those who joined would be subject to higher costs (through the provision of burning facilities where those who decide not to join the scheme would not need to pay).

Options 3 and 4 provide no issues of equity and fairness as all port authorities would be subject to the same options and would have to provide similar facilities where they are required to burn dunnage. They would also ensure compliance with WFD requirements.

BENEFITS

Option 1

This option will have no benefits in reducing the burden of nuisance, pollution and public complaint. However, there will be no requirement on the Port Authorities to spend any capital on providing facilities for burning.

Option 2

If the scheme is adhered to, it is likely to reduce the burden of nuisance or pollution on local residents. However, it is unlikely to provide the level of security or standards as would be provided under options 3 and 4, as it is unlikely that all ports would partake fully in the scheme (although the level of uptake cannot be estimated). The lower the uptake, the higher the level of actual and potential nuisance and pollution. Such a scheme may be more responsive to changing circumstances and impose lower administration costs than a regulatory option.

Option 3

The exemption will reduce the risks associated with uncontrolled burning of dunnage by introducing common standards of environmental control at relatively low cost. It will meet the requirements of the WFD and national law for the prevention of pollution and harm to health. The Agency has made an assessment of these practices in conjunction with the Port Authorities and the Forestry Commission. They have recommended to the Government that limited and controlled burning under general binding rules of an exemption from waste management licensing represents the Best Practicable Environmental Option (BPEO) for the destruction of this waste.

Option 4

The requirement for a waste management licence will significantly reduce the risks associated with uncontrolled burning of dunnage by the use of purposed built and licensed/ authorised incinerator. These facilities will also meet the requirements of EC and national law for the prevention of pollution and harm to health.

BUSINESS, CHARITIES AND OTHER ORGANISATIONS

The proposed measures will principally affect Port Authorities who are charged with the burning of dunnage. Of the 200 ports of entry into the UK, it is estimated that 50 will require on-site destruction by burning of dunnage. It is anticipated that the Forestry Commission would continue to carry out inspections no matter which option is applied and the proposals will not impact upon the Plant Health (Forestry) (Great Britain) Order 1993. It is likely that the costs associated with this practice may be passed on to the shipping company who produce the waste.

COSTS

OPTION 1

No additional costs would apply under this option. Burning is not currently regulated and incurs no regulatory costs.

OPTION 2

Additional costs would arise for those setting up and taking part in the voluntary scheme. Given the uncertainties about up-take and what the scheme would look like, these costs cannot be quantified. A voluntary agreement would not be supported by Government or the Agency as burning such material without a waste management licence or relevant exemption from licensing is an unlawful activity.

OPTION 3

Notification Costs

It is estimated that ports will continue to operate under an exemption on a semi- permanent basis.

The Agency would charge an estimated £417 for initial notification of the exemption. This would cover all burning activities for a year after which re-notification would be required. The re-notification charge would be lower at £353 per annum per site. This lower charge reflects the reduced regulatory effort required to assess similar information year on year.

Capital & Maintenance Costs

There would be some capital and maintenance costs to the Port Authorities for providing suitable hard standing as well as other equipment. The exact figure for these will vary depending on local circumstances, but would typically be in the order of £0 – 1000 per site, although £800 has been provided by the Agency as the most realistic figure.

Annual maintenance of the hard standing and any related requirements is estimated to be around £300 per year.

Administrative Costs

Administrative costs to each Port Authority registering an exemption is estimated to be £50 per annum (based on just over 3 hours at £16 per hour). This includes time taken to notify the Agency of the requirement to burn dunnage and to provide the necessary information. Some initial training for burning the material on the hard standing may be required and this is included in the cost.

The total costs of option 3 are provided in table 244 below.

Table 24 – Costs of registering a dunnage exemption over 10 years

	Year 1 (£)	Years 2-10 (annual £)	Total (£)
Initial Notification	417	-	417
Re-notification	-	353	3,177
Notice preparation	50	50	500
Capital Costs	800	-	800
Maintenance Costs	-	300	2,700
Total per operator	1,267	6,327	7,594
Total for Industry (based on 50 operators)	63,350	316,350	379,750

OPTION 4

This option would require the provision of purpose built incinerators for the burning and full waste management licensing regulatory costs.

Regulatory Costs

In order to obtain a waste management licence for the burning of waste in incinerators with a capacity of less than 50kg per day, the Agency charges an initial application charge and an annual subsistence charge (see below figures in Table 25).

Capital & Maintenance Costs

Capital and maintenance costs include the cost of construction, hardware, maintenance and additional administration of a small scale incinerator. It is not possible to provide accurate figures, but typically these costs would be in the order of £5,000 + per site. The annual maintenance cost of the incinerators is dependant on site conditions and individual incinerators, but an estimate of £500 per year per site has been provided.

Administrative Costs

It is difficult to estimate the total administrative costs as these activities as they are not currently licensed. However, an incinerator is likely to need planning permission, which must be in place before a waste management licence is granted. Putting together this application and the waste management licence application (which will include pollution risk assessments) can be resource intensive. There are also the costs to the operator for the surrender of the site licence when the operation finishes. These costs have been estimated for another exemption under review to be up to £10,000 per site. Total costs for this option are shown in table 25.

Table 25 – Total costs for licensed sites over a 10 year period

	Year 1 (£)	Years 2 - 9 (£)	Year 10 (£)	Total (£)
Application Fee*	120	120	120	1,200
Subsistence Charge	727	727	727	7,270
Licence Preparation Administrative	8,077	-	-	8,077

Licence Surrender	-	-	2,692	2,692
Capital Costs	5,000			5,000
Maintenance Costs	-	500	500	4,500
Total per Operator	13,924	10,776	4,039	28,739
Total for Industry (given 90 operators)	1,253,160	969,840	363,510	2,586,510

*This is a one off cost which has been annualised at 3.5% over 10 years.

Other Costs

In addition to the costs outlined above, waste management licensing requires the operator to show that they are a 'fit and proper person' (FAPP). The criteria for the FAPP test involve providing technically competent management, demonstrating a lack of relevant convictions, and the provision of sufficient financial provision to cover the costs of the conditions imposed in the licence. The costs of such requirements have not been assessed due to the wide variety of potential costs involved. In addition, applying for a waste management licence is a long process both in preparing the application and in processing the application. The Agency has a statutory obligation to process all claims within 4 months which includes a minimum consultation period of 35 days that is required for each application.

RECOMMENDATIONS

Option 1 – zero additional cost but does not deal with the risks associated with uncontrolled burning and the potential pollution and harm to human health. It does not comply with WFD requirements for the permitting of waste management activities.

Option 2 – low additional cost but may not deal with the risks associated with uncontrolled burning. There is no evidence to suggest that the Port Authorities would welcome or adhere to a voluntary scheme. This option does not comply with the WFD or national waste management legislation.

Option 3 – This option provides common standards of environmental and public health control and minimises the risk of pollution or harm to human health. The exemption complies with EU and national waste management legislation at reasonable cost to business. The Agency considers that controlled burning under an exemption represents the Best Practicable Environment Option (BPEO) for the destruction of the waste in question.

Option 4 – this option poses very high costs, especially for the provision of purpose built incinerators. These costs are considered far too onerous and could lead to evasion of the law and continued uncontrolled burning.

The Government recommends Option 3 as the most appropriate measure for dealing with this issue.

SUMMARY OF PROPOSALS

The proposals, if taken up, will improve the way in which these higher risk exemptions are regulated. It is expected that the new provisions will protect the environment and human health against abuse of the exemptions and address the points brought up by the 1998 Select Committee Report. The options chosen avoid the need to licence the activities which would be substantially more onerous on operators than a chargeable exemption.

The proposed provisions will also ensure that the UK have sufficiently transposed the Waste Framework Directive (WFD), guaranteeing protection of the environment and human health under Article 4 of the WFD. Amendment of the current regulations is, therefore, necessary in this instance. Other alternatives, such as incentivising best practise in operators, were not considered suitable in this case because non-legislative options would not properly transpose the WFD and would continue to leave a legal loophole for illegitimate operators to take advantage of, as is currently the case. In the land spreading and land remediation exemptions, a tougher test for agricultural benefit or ecological improvement will ensure that suitable waste will be spread to land in the first place and the increased frequency of inspections will ensure that operators comply with the general rules of the exemption.

As well as tightening the Regulations to ward against current abuse, the proposals will also allow certain additional waste operations to take place under exemption, where previously a licence was needed. In the case of composting, the proposals should aid local authorities in meeting Government set recycling targets and allow community operations to carry on their activity without the need for a licence which would be uneconomical for smaller scale groups. Changes to paragraph 10A will encourage an increasing number of sewage treatment works to take in untreated septic tank sludge. This move will ensure that capacity is available for treatment of this waste when the ban on spreading untreated septic tank sludge comes into force under amendments to the Sludge (Use in Agriculture) Regulations 1989.

As a result of these changes, a further efficiency saving should be found on behalf of the Agency. It will no longer be obliged to fund regulation of these exemptions through Grant-in-Aid, a practice which is not in line with the “polluter pays” principle. The Agency will now have sufficient funding to step up the regulation of these exemptions. Less public money should, therefore, be spent on enforcement in the long run. The Regulations will make it harder for operators to attempt to operate outside the terms of the exemptions, reducing enforcement action where this is a result of operators abusing the regulations.

It should be noted that Industry have generally welcomed the recommended changes and are now awaiting their coming into force. The Regulations will bring clarity to the regime; contribute towards eliminating the rouge element; produce a fairer playing field for legitimate operators; allow certain new waste activities to take place and encourage best environmental practise. Various delays to these particular regulations have made them much anticipated. The department have and continue to receive pressure from Industry to bring them on-line as soon as possible.

SUMMARY OF COSTS FOR EACH PROPOSAL

Approximate total costs per annum have been calculated below for each of the recommended options. It should be noted that each amended exemption will usually affect different industry sectors and most sectors will only be affected by changes to one of the six exemptions under review.

1 – LAND TREATMENT – PARAGRAPH 7A OF SCHEDULE 3 (option 2 recommended, see pg. 10-12):

Total average cost per year to industry for registration of the exemption (based on approx 1,900 sites registering a 3 year exemption) = £2, 197, 667

*Costing taken from Table 3 above, based of an average per annum figure and an average of the highest and lowest cost to industry given in the table.

Total average cost per annum of sites requiring a licence (based on approx 200 sites affected) = £1,130,133

*Costing taken from Table 4 above, based on an average per annum figure.

Total cost per year to Agency = £0

Total average cost to industry of recommended option = £3,327,800

TOTAL COST PER ANNUM OF PROPOSAL = £3,327,800

2 – RECLAMATION AND IMPROVEMENT OF LAND – PARAGRAPH 9A & 19A OF SCHEDULE 3 (option 3 recommended, pls. see pg. 20-21):

Total average cost per year to industry registering a paragraph 9A exemption (based on 202 sites registering a 3 year exemption) = £426,893

*Costing taken from Table 10 above, based of an average per annum figure and an average of the highest and lowest cost to industry given in the table.

Total average cost per year to industry registering a paragraph 19A exemption (based on 2063 sites registering a 3 year exemption) = £1,107,143

Total cost per year to Agency = £0

Total average cost per year to industry of recommended option = £1,534,036

TOTAL COST PER ANNUM OF PROPOSAL = £1,534,036

3 – COMPOSTING – PARAGRAPH 21A of SCHEDULE 3 (option 2 recommended, pls. see pg. 26-27)

Total average cost per year to industry registering a paragraph 21A exemption (based on 30 sites registering a 10 year exemption in the 0-5 tonne charging band) = £0

Total average cost per year to industry registering a paragraph 21A exemption (based on 40 sites registering a 10 year exemption in the 5-50 tonne charging band) = £9,352

Total average cost per year to industry registering a paragraph 21A exemption (based on 20 sites registering a 10 year exemption in the 50 + tonne charging band) = £9,224

Total cost per year to the Agency (for basic registration of composting facilities in the 0-5 tonne band, based on 30 sites) = £3,360 (based on £112 per notification)

Total average cost per year to industry of recommended option = £18,576

Total cost per year to Agency = £3, 360

TOTAL COST PER ANNUM OF PROPOSAL = £21,936

4 – STORAGE AND SPREADING OF SEWAGE SLUDGE – PARAGRAPH 8A OF SCHEDULE 3 (option 2 recommended, pls. see pg. 33-35)

Total average cost per year to industry registering a paragraph 8A storage/ spreading exemption (based on 44 sites registering a 5 year storage/ spreading exemption) = £252,965

Total cost per year to industry for notice preparation of a paragraph 8B storage exemption, based on 352 sites (for spreading under the Sludge (Use in Agriculture) Regulations 1989, registration of which will be paid for by the Agency) = £52,800

Total cost per year to Agency for registration costs of paragraph 8B storage exemptions, based on 352 sites registering a 5 year storage exemption (for spreading under the Sludge (Use in Agriculture) Regulations 1989) = £154,458

Total average cost per year to industry of recommended option = £305,765

Total average cost per year to Agency for recommended option = £154,458

TOTAL COST PER ANNUM OF PROPOSAL = £460,223

5 – SEWAGE TREATMENT WORKS – PARAGRAPH 10A OF SCHEDULE 3 (option 2 recommended, pls. see pg. 41-42)

Total average cost per year to industry registering a paragraph 10A storage/ treatment exemption (based on 416 sites registering a 10 year exemption) = 1,529,715

*Costing taken from Table 22 above, based of an average per annum figure and an average of the highest and lowest cost to industry given in the table.

Total cost per year to the Agency = £0

TOTAL COST PER ANNUM OF THE PROPOSAL = £1,529,715

6 – DUNNAGE – PARAGRAPH 46A OF SCHEDULE 3 (option 3 recommended, pls. see pg. 46-47)

Total average cost per year to industry registering a paragraph 46A burning exemption, including notice preparation and capital costs (based on 50 operators registering a 10 year exemption) = £37,975

Total cost per year to the Agency = £0

TOTAL COST PER ANNUM OF THE PROPOSAL = £37,975

OVERALL COSTS FOR ALL RECOMMENDED PROPOSALS (PER ANNUM)

Table 26 below shows the overall costs for each proposal along with the cost of the proposals put together.

Table 26 – Total cost per annum of recommended options

	Paragraph 7A	Paragraph 9A & 19A	Paragraph 21A	Paragraph 8A	Paragraph 10A	Paragraph 46A	Proposals in Total
Total cost to Industry (per	3,327,800	1,534,036	18,576	305,765	1,529,715	37,973	6,753,867

annum)							
Total cost to Environment Agency (per annum)	-	-	3,360	154,458	-	-	157,818
Total Cost of Proposal (per annum)	3,327,800	1,534,036	21,936	460,223	1,529,715	37,973	6,911,685

Per annum costs are shown here (rather than costs over the duration of an average exemption, as shown above) because it is anticipated that industry will continually utilise the exemptions. Agency figures on paragraph's 7A, 9A & 19A show that registration figures have remained relatively constant since around 2000, meaning that as some operators discontinue the use of an exemption, others are apply.

DISTRIBUTIONAL ISSUES

There may be some redistribution of costs and transfer of income. In the main, the cost currently borne by the public purse for regulation of exempt sites will be transferred to establishments and undertakings registering an exemption. This is in line with the policy for environmental protection that should ensure that those who are regulated should cover the costs involved in that regulation. The cost will therefore be fed back to the producer rather than burdening the public purse. Other effects may be that some sites currently exempt may need to apply for a licence. This will be more costly for those operators. However, the revisions are made in order to ensure protection of the environment and human health in line with the Waste Framework Directive and the number of sites potentially affected are thought to be very small. Equally, in some cases, currently licensable activities will be able to take place under the terms of an exemption rather than under the more costly option of a waste management licence. This is thought to be the case for some establishments and undertakings carrying out activities under paragraph's 10A and 21A in particular. Distributional effects would also be seen if the option to licence the activities in question was pursued entirely, instead of choosing to revise the terms of the exemption. Rendering the activity licensable may make the activity economically unviable or unattractive. This may lead to the increased landfill of waste or other waste disposal activities. This may in turn affect the sectors undertaking exempt activities who would lose the work, and the waste producer, because landfilling is a more expensive option. Not least, the effect would be on the environment as the revised exempt recovery activities generally offer sustainable alternatives to other waste disposal options.

UNINTENDED CONSEQUENCES & INDIRECT COSTS

No unintended consequences have been identified. In terms of indirect costs, the new requirements for registration under the regulations will increase operation costs for establishments and undertakings. These will include production of certificates where this is necessary and will involve an assessment by an appropriately competent person. The record keeping requirements may also slightly increase operating costs. The majority of the costs are expected to be incurred by putting together the initial registration papers and would be expected to decline for the preparation of renewal notifications where operations continue past one year. The charging scheme will reduce costs for the Agency who will no longer need to channel Grant-in-Aid to the day to day regulation exempt sites covered by these changes.

CONSULTATION WITH SMALL BUSINESS

The Agency took some limited ‘industry soundings’ before the public consultation took place. The Government also consulted a range of small businesses as part of its consultation on the proposals. This has included meetings with a number of industry groups on specific areas of interest or concern, including small businesses, and with organisations who represent small businesses and voluntary organisations.

ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW

The Agency, as the competent authority, will be responsible for ensuring compliance with the proposed new exemptions. Operators will need to submit a notification detailing how they would comply with the general rules of the exemption they are registering. This will include the submission of a certificate to prove agricultural benefit/ ecological improvement in the case of paragraph’s 7A, 8A and 9A(1)(b) and of compliance with Article 4 of the WFD in the case of 7A, 8A, 9A(1)(b) and 21A. The Agency will undertake an annual inspection of all sites (with the exception of smaller composting sites composting under 50 tonnes at any one time, where the frequency will be lower). The operator will be required to maintain records and make these available to the Agency on request. The Government will issue Statutory Guidance to the Agency on the exercise of its functions in relation to the revised regulations. The Agency will issue guidelines to its officers once the proposed new exemptions are introduced to ensure that the new regulations are implemented, monitored and enforced consistently. When the proposals are introduced, the Government, in close consultation with the Agency, will keep the effectiveness of the regulations under review.

In the case of all exemptions the regulations will increase fines for failure to register an exemption. In the current regulations this stands at £10. This will be raised to £500. Failure to register one of the exemptions included in this review (paragraph’s 7A, 8A, 9A, 10A, 21A, 19A, 46A) will be raised further to £1000. A major concern over abuse of exemptions has been the lack of a sufficient deterrent, to date, for failure to register. The new record keeping requirement for the exemptions included in this review carries with it a fine of £500 for failure to keep proper records. Enforcement costs, where these are taken up by the Agency, will continue to be borne by Government Grant-in-Aid.

GUIDANCE

The Government has produced Statutory Guidance to the Agency. It will offer guidance to the Agency of the exercise of its functions under the new regulations. The Agency will be issuing guidance to its own officers.

SOCIAL IMPACTS

The changes are not expected to have direct or significant social impacts. Revisions have been made to the exemptions to tighten the conditions under which undertakings and establishments carry on their activities. The changes have been in reaction to allegations of abuse of the exemptions. The tighter general rules should improve quality of life for those living in proximity to exempt sites. Tighter controls around proximity to buildings and ground water etc., will be brought in as part of the provisions. One of the most common complaints made about exempt sites, in particular for land spreading and composting activities, is nuisance through odour and dust. The new regulations should ensure tighter control which should in turn impact on the number of odour complaints annually received by the Agency. In addition to this, the charging scheme will further ensure more frequent inspection of the sites by the Agency. Overall, the tighter and more frequent regulation as a

result of the regulations should minimise pollution incidents and nuisance complaints in relation to exempt sites, which will in turn impact positively on local populations.

RURAL IMPACTS

In the case of paragraph 21A, Defra received a high number of responses arguing that the proposed changes would impact unfairly on small scale community composting groups, a large proportion of which were from rural areas. In reaction to this the proposals for this exemption have been amended to accommodate the smaller groups, who may have been economically disadvantaged by the original proposal. The current proposal reflects changes made to improve issues of equity and fairness in this area (see section on composting).

On the whole, the changes proposed are not expected to have a significant impact on rural communities and are not expected to have a different impact in rural areas than they will in other areas. The changes are, however, made to activities that often take place in rural areas. It is expected that tighter controls should improve local quality of life as they will increase protection of the environment and human health. The removal of some waste types from exemptions, such as untreated septic tank sludge from the paragraph 7A landspreading exemption, is likely to have some effects as this waste type will need redirecting to other waste disposal options. However, complaints about the spreading of this type of waste have been high.

RACE EQUALITY IMPACT ASSESSMENT

There are no known impacts from these changes on race equality.

COMPETITION FILTER

Question	Answer
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No

Q8: Is the market characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

COMMENTS

Questions 1, 2 and 3:

The type and size of businesses affected by the proposals tends to vary. In many cases, the operators tend to be small and local. To take the land spreading exemption as an example, farmers on whose land the waste may be spread would tend to be supplied with waste from a wide range of businesses including, for example, local abattoirs, poultry preparation plants, or businesses concerned with paper manufacturing or food preparation. It is extremely unlikely that any one of these will have a large share of the market.

Another example is the composting exemption. This exemption is used by farmers and, in the main, by community composting groups. The latter are local, voluntary, non-profit making operations. They collect waste, compost it and sell or give away the resultant compost. No one group dominates the market in this case.

There will be negligible impact for firms outside the UK.

Question 4:

As is noted in the sections on “Equity and Fairness”, there are no substantial differences in the effect of the measures on firms. Where charges are being levied, or additional information required prior to notification, these requirements will impact on all those operators conducting the same activities.

Whilst some of the requirements may involve investment in capital, for example, to provide a hard standing for the burning of dunnage, these requirements will impact on all the firms equally.

Question 5:

It is not perceived that there will be any significant impact on the structure of the markets.

Questions 6 and 7:

There will be a transitional period of three months (from the commencement date) to allow operators currently registered to comply with the new requirements. New operators will have to comply with the regulations as soon as they come into force. Once the six month transition period is ended, all exempt activities will have to comply with the terms of the exemption.

Question 8:

The market is not characterised by rapid technological change.

Question 9:

The revised exemptions will not impact directly on the choices available to operators and cannot be said to prevent firms from providing products or services which they might do otherwise.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed by the responsible Minister

Elliot Morley

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Mr Elliot Morley MP
Minister for Environment and Agri-Environment

Date.....22nd March 2005.....

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Annex B

Summary of consultation responses

Paragraph 7A - Land Treatment

1. The Environment Agency asked for a longer period of determination in light of the need in some cases to consult relevant authorities. An extension to 42 working days from 21 has been agreed. The Agency has informed us that most determinations will be completed within the 21 day
2. The Agency also asked that some of the definitions of permissible waste in Table 2 needed tightening. Quite a lot of work has been undertaken post consultation to ensure that the definitions allow the spreading of safe waste, whilst at the same time ensuring that inappropriate waste types are spread to land.
3. The Agency, Innogy and RWE pointed out that waste gypsum from uncontaminated sources can be of benefit to land. We have now included waste gypsum in Table 2.
4. The Agency requested the addition of equine waste to table 2. Defra agrees in principle with this addition. However, in light of response from the British Horse Industry Confederation, we have not included this waste type at this stage. The cost of spreading for small horse owners would be significant and needs further consideration. The inclusion of this waste type will be properly considered as part of the impending review of all exemptions.
5. Some comments were made that the analysis requirements for proving agricultural benefit were too onerous. This comment was made by Welsh Water amongst others. However, other comments were made by the Waste Recycling Group to the contrary. The requirements for microbiology testing have been removed from the Statutory Guidance and will appear in the Agency's guidance to its officers. It has been more generally agreed that it is the Agency's responsibility to decide on the appropriate level of tests to be carried out to ascertain agricultural benefit or ecological improvement.
6. Snowie Ltd., and Transorganics Ltd., asked for pulp from virgin timber to be added to table 2. This has been added. The main reason to exclude certain waste type under this category was to prohibit the spreading of inked paper pulp to land and virgin timber will not contain ink.
7. A number of respondents, including British Waterways, stated that the limit on waste per hectare to be spread should not be reduced as recommended in the consultation document. We have agreed not to decrease the limits on the basis that tests for agricultural benefit/ ecological improvement will ensure that inappropriate amounts of waste are not spread to land.
8. British Waterways also wanted dredging spoil to be added to part 1 of table 2 to allow it to be spread to operational land as well as agricultural land. Advice from the Agency was that this would be a potential source of pollution because tests for ecological improvement are not as rigorous as tests for agricultural benefit. Dredging spoil is permitted to be spread under part 2 of the table which allows spreading to agricultural land. Dredging spoil is not currently permitted to be spread to operational land under a paragraph 7A exemption.

9. The consultation asked whether a limit on the amount of land spread with waste under a single registration should be applied. Shanks and Welsh Water both argued that this would have cost implications for the industry. However, the Agency strongly argued for such a limit in order that they may properly assess land areas for agricultural benefit. It was felt that land treatment of waste was still considerably cheaper than land filling and therefore would still be cost effective.

10. The Waste recycling group made comments that the suggested fines were not high enough given the harm some activities could cause to the environment and that the annual inspection rate of one year was not rigorous enough.

11. Comments were made by the Federation of small businesses that the costs of assessing agricultural benefit would impact on small businesses. However, other respondents were pleased that this new assessment was included as the spreading of inappropriate waste to land was one of the most significant forms of abuse of the exemptions.

12. CSG felt that a storage time limit was not necessary or this exemption. However, a storage limit has been maintained to ensure that waste is not stored indefinitely.

Paragraph 9A - Uses of waste for land reclamation

13. Powergen asked for Pulverised fuel ash to be added to the waste types listed in table 3. This has been included.

14. A number of respondents including Powergen, and AGA, argued that the 2m spreading depth limit was too restrictive and would be prohibitive to some activities. However, other respondents including the Peak District National Park Authorities and Mike Wood MP argued that the 2m limit was too generous and that the level should be reduced to 1m. The level has been left at 2m. The level was suggested in the first place to ensure that the exemption was not used as a cheap alternative to landfill. Abuse in the past has occurred where the 'average' limit currently in force was taken advantage of and impossible to properly police.

15. FPS asked for bentonite to be added to the list of wastes allowed to be spread. There are serious questions over the effect this particular waste type has on the environment. It has been agreed to assess how appropriate this waste type is in the next review of exemptions.

Paragraph 10A - Waste recovery at a sewage treatment works

16. Water UK asked for the inclusion of waste water from sewage cleaning and borehole flushings to be added to the table. These wastes have been added to the table.

Paragraph 12A - Small scale composting

17. A large proportion of respondents felt that the proposed charges were disproportionate for smaller voluntary sites. This concern has been addressed in post consultation changes to the regulations.

18. Comments were also made by the On-Farm Composting Network, amongst others, about the weight limits. Though it was felt that the upper weight limit for the exemption was appropriate (larger commercial operations should apply for a waste management licence), it was agreed to amend the variable weight limits of between 250 and 400 tonnes to a blanket limit of 400 tonnes.

19. A number of respondents argued that voluntary / charity organisations should be exempt from the charging scheme. Because the Agency must recover its costs, this has not been possible, though changes to the charging scheme have been made to ensure that these organisations are not disadvantaged.

20. Comments were made by the Community Composting Network amongst other organisations that the threshold for charging should be raised. Others suggested a sliding scale for the charges. This threshold has been raised as well as the introduction of a middle charging band.

21. Culm Valley Recyclers argued that finished compost should not be included in the limit. This has not been changed because all waste needs to be included in the limit.

22. A number of respondents asked for the inclusion of animal by products in the list of wastes permitted. Category 3 animal by products have been included in the table.

23. Water UK requested that waste water treatment plants not otherwise specified to be added to the list of waste able to be open windrow composted. This has not been added as it is not desirable because of the potential odour and danger of possible groundwater pollution.

24. Cornwall County Council argued that tighter controls were necessary than those specified for the control of leachate and liquor emissions.

25. The Composting Association asked whether paper and card from the mechanical & biological treatment plants would be permitted. This has not been permitted because of potential chemicals found in this waste type from this source.

Paragraph 19A - Use and storage of building waste

26. Powergen asked for the inclusion of pulverised fuel ash and gypsum to the list of wastes. Given that paragraph 19A does not include the test of agricultural benefit or ecological improvement, we have not included gypsum here as this requires extra regulation to ensure that contaminated gypsum is not used. PFA has been added to the table.

27. A number of respondents, including Water UK, Thames Water, Wessex Water and AGA believed that the storage time limit should be extended for projects running beyond 6 months.

28. AGA, EIC and QPA asked whether land reclamation could be included under this exemption. Land reclamation is dealt with under paragraph 9A and has not been included here as there is no test to prove benefit to agriculture or ecological improvement.

29. Shanks, AGA and Wastefile UK argued that the proposed quantity limits would restrict potential waste recovery. However, the quantity limits are there to ward against potential abuse and very large projects would be able to operate under a waste management licence.

30. FPS asked for the inclusion of bentonite under this exemption. For the same reasons given in response to their request under paragraph 9A, it has not been included on this occasion.

Paragraph 46A - burning of dunnage at a dockside

31. The Forestry Commission welcome the inclusion of this new exemption and believe that the proposed maximum limits are adequate.