

12 April 2012

Amendment to Waste Regulations Consultation
Department for Environment, Food and Rural Affairs
Area 6D Ergon House
17 Smith Square
London
SW1P 3JR

household.waste@defra.gsi.gov.uk

RE: Consultation on amending the Waste Regulations 2011 on the separate collection of recycling

Dear Sir/Madam,

Thank you for providing the North London Waste Authority (NLWA) with the opportunity to respond to the consultation on amending the Waste Regulations 2011 with regard to the separate collection of recycling.

The NLWA is responsible for managing the waste from seven north London boroughs, namely, Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest. We handle nearly 900,000 tonnes of material per annum making us the second largest waste disposal authority. Whilst the consultation is of most direct relevance to collection authorities, the way in which recyclable material is collected also has a significant impact upon the NLWA as a disposal authority. We are currently in the process of procuring waste services and facilities for the next 25 – 35 years to replace aging existing treatment capacity, namely a 1970's built incinerator, and to ensure that we have the necessary capacity to enable us to move away from landfill disposal as a solution for managing the area's waste and to recycle more.

The level of investment necessary to ensure that we meet our targets is estimated to be £500-£600 million. The constituent boroughs have provided the Authority with projections for their future waste arisings and details of the way in which they will present their recyclable material for processing. All but one of our constituent borough councils currently collect at least some of their recyclable material commingled. We would therefore be concerned if this opportunity to collect recyclable material in this way was in any way restricted, not least because of the significant investment decisions that will shortly be made in north London. (We expect to have a Preferred Bidder in place for our waste services contract in December 2012).

From the collection perspective too it is also essential that the ability to collect commingled is not restricted. The importance of commingled collections to inner-city collection authorities in particular that struggle with the congestion caused by kerbside sorting and need the benefits of commingling to raise participation e.g. in flats where space for separate collection containers for different materials is at a premium should not be under-estimated. The regulations and accompanying guidance must work for these authorities in particular and not set up expensive challenges, particularly in such currently difficult financial circumstances.

Our detailed response provides more discussion of our concerns but in summary they are as follows:

- In the absence of draft guidance, it is impossible to consider this consultation properly and the possible impact of the proposals in the absence of guidance on the interpretation of what is TEEP (technically, environmentally and economically practicable).
- The Authority does not believe the proposed amendment reflects the Directive's requirement. In particular we are concerned that the removal of specific reference to the acceptance of different collection methods endorses source separated collections only. The regulation should include a specific statement regarding the acceptability of commingled collection systems within the regulations themselves.
- Government is opening up the possibility of legal challenges to local decisions from commercial interests who are immune from the logistical and cost consequences of different collection methods.

So, whilst the Authority welcomes the recognition that the proposed amendment to the regulations does not represent any change in the existing policy position from Defra we remain concerned that the new regulations as currently drafted would provide insufficient comfort to authorities seeking to expand commingled collections or invest in recycling processing of commingled materials in order to increase recycling rates.

The NLWA has previously provided responses to both stages of the Waste Framework Directive transposition in 2009 and 2010 and the points we made then still hold.



north london waste authority

The following response is subject to Member approval and comment. We will update the response if there are any changes as a result of consultation with Members. Please do not hesitate to contact me should you require any further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Judson', is written above a solid black horizontal line.

Tim Judson

Director of Procurement

NLWA Comments

Question: Do you agree that the amendments proposed to the Regulations adequately transpose the requirements of the rWFD? If not, please identify the specific requirement of the rWFD and give reasons to support your view that it is not adequately transposed in the proposed amendments.

The Authority understands the need to amend the Regulations and we welcome the recognition in the consultation document that the proposed amendment to the regulations does not represent any change in the existing policy position from Defra regarding the acceptability of commingled collections to meet Waste Framework Directive requirements in relation to separate collections of paper, metal, plastic and glass. However we disagree that the amendments proposed to the Regulations adequately transpose the requirements of the Directive. Specifically the Authority is concerned that the new regulations as currently drafted would provide insufficient comfort to authorities seeking to expand commingled collections or invest in recycling processing of commingled materials in order to increase recycling rates. The Authority recommends some changes to the proposed amendments as set out in the consultation document as a result. Our concerns and recommendations are set out below.

1. Absence of guidance

- 1.1 The Authority considers that it is almost impossible to consider this consultation properly and the possible impact of the proposals in the absence of guidance on the interpretation of what is TEEP (technically, environmentally and economically practicable). In the face of a challenge it is essential that sufficient supporting guidance is provided regarding the interpretation of TEEP and without sight of this it is difficult to provide a meaningful response regarding the interpretation of how different collection approaches, and in particular commingled collection, would be assessed to decide if it was TEEP in a particular area.
- 1.2 Whilst the Authority understands the reasons for consulting on the proposed amendments to the regulations now in the absence of accompanying guidance we urge the production of the draft guidance for consultation at the earliest opportunity.

2. Removal of explicit reference to the acceptability of commingled collections

- 2.1 Defra refers in the summary of responses to the Part 1 consultation on the transposition of the Waste Framework Directive requirements¹ that it “considers both source-segregated and co-mingled collection systems to be capable of contributing to the requirement for ‘separate collections’:

“...‘separate collection’ for these purposes includes both source segregated collection (e.g. kerbside sorted collection) and co-mingled collection for subsequent separation”.

(Consultation document paragraph 2.68) “

This support for commingled collections was also included in the UK government’s Minutes Statement included in the Waste Framework Directive and has also been brought forward into the current consultation document text.

- 2.2 The Authority welcomes the recognition that the proposed amendment to Regulation 13 does not represent any change in the existing policy position from Defra, allowing local authorities and waste management companies the ability to choose the most appropriate collection system to suit local circumstances, providing that it meets the requirements of the Directive.

- 2.3 However the removal of the current Regulation 13 wording at (2) which states that

“For the avoidance of doubt, co-mingled collection (being the collection together with each other but separately from other waste or waste streams intended for recycling with a view to subsequent separate by type and natures) is a form of separate collection.”

casts uncertainty again on the acceptability of commingled collections to meet the necessary TEEP requirements, particularly in the absence of the accompanying guidance on the acceptability of commingled collections and how assessment of TEEP in this regard would be carried out.

- 2.4 With the above in mind, the Authority is concerned that by removing reference to the acceptance of other collection methods the proposed amendment endorses source separated collections on the presumption that this collection methodology promotes a better quality of recycle. By doing so, the Authority perceives the

¹ Summary of responses to the Stage One: Consultation on the Transposition of the revised Waste Framework Directive (Directive 2008/98/EC) A Consultation document issued jointly by Defra and the Welsh Assembly Government March 2010

proposed change as a move towards mandating a particular form(s) of collection rather than placing focus on enabling the right outcome to deliver the overall principles of the Directive.

- 2.5 As noted in the summary of consultation responses to the Part 1 consultation on the transposition of the Waste Framework Directive, many respondents writing in support of the inclusion of commingled collections at that time mentioned the investment that has been put in to developing MRF technology and capacity in recent times in order to sort material collected through commingled collections. Many supporters also mentioned the long-term partnering contracts that many local authorities have entered into to attract this investment from the private sector. This investment would be lost should 'separate collections' be defined to exclude commingled collections, and therefore force a move away from commingled collections and the associated MRF facilities.
- 2.6 The importance of commingled collections to inner-city collection authorities in particular that struggle with the congestion caused by kerbside sorting and need the benefits of commingling to raise participation e.g. in flats where space for separate collection containers for different materials is at a premium should also not be under-estimated. The regulations and accompanying guidance must work for these authorities in particular and not set up expensive challenges, particularly in such currently difficult financial circumstances.
- 2.7 However, the revised wording proposed for Regulation 13 means that it would not longer be clear that the practice of commingled collections of recyclables will be in compliance with the revised Directive. Instead each collection authority will effectively need to justify why it is not operating 'separate' collections. Given the importance of commingled collection systems to authorities across the country including north London and the fact that it is understood that the European Commission has confirmed that there is no intention in the Directive to prohibit commingling we consider that this level of uncertainty is unwelcome.

3. Risk of Challenge

- 3.1 The NLWA recommends that the amended wording to Regulation 13 includes an alternative phase which specifically refers to the acceptability of commingled collections e.g. "for the avoidance of doubt commingled collection is permissible as a method of separate collection where it can be shown to be TEEP".

- 3.2 Particularly given the current absence of the guidance which will include more detail about how TEEP is assessed, the risk of not making such an explicit reference now creates the potential risk of expensive challenge to local authorities and undertakings/establishments.

4. Conclusion

- 4.1 Whilst the Authority understands the need for a change to Regulation 13 and welcomes the recognition that the proposed amendment to the regulations does not represent any change in the existing policy position from Defra we remain concerned that the new regulations as currently drafted would provide insufficient comfort to authorities seeking to expand commingled collections or invest in recycling processing of commingled materials in order to increase recycling rates. As detailed above we disagree that the amendments proposed to the Regulations adequately transpose the requirements of the Directive as it is understood that the European Commission has confirmed that there is no intention in the Directive to prohibit commingling however, for commingling to be accepted as a legitimate derogation from the requirement to set up separate collections it would have to be shown that high quality recycling is being achieved and the choice of collection method was based on technical, environmental and economic factors connected with the local situation. Defra intend to produce guidance on how this assessment can be achieved but in the absence of guidance at this stage the Authority strongly suggests that in transposing the Directive the regulations recognise that commingling is a permissible as a collection method subject to justification in line with the (intended) guidance. The risk of not doing so creates the potential of expensive challenge to local authorities and establishments/undertakings.

