



"Working for our members to be the voice of government on waste minimisation and recycling issues"

LOCAL AUTHORITY RECYCLING  
ADVISORY COMMITTEE

Consultation On The Legal Definition Of Waste  
Waste Framework Directive Unit  
Department for Environment, Food and Rural Affairs  
Area 6D Ergon House  
17 Smith Square  
LONDON  
SW1P 3JR

8<sup>th</sup> April 2010

Dear Sir or Madam,

**Consultation Response – Consultation on The Legal Definition Of Waste**

I am writing to present the LARAC response to the **Legal Definition Of Waste** Consultation, which is contained below, and I thank you for the opportunity to respond to the above consultation.

The comments below are sent on behalf of the Local Authority Recycling Advisory Committee (LARAC). LARAC is an association of well over 400 local authorities across England, Scotland Wales and Northern Ireland whose waste management and recycling professionals' co-ordinate and operate waste management services. Membership is drawn from all types of authority including statutory Waste Collection (WCA), Waste Disposal (WDA) and Unitary.

If you have any queries on this response or would like to discuss the matter further then please contact me on (01495) 766745 or [roger.mills@torfaen.gov.uk](mailto:roger.mills@torfaen.gov.uk).

Yours faithfully,

Roger Mills  
LARAC Policy Team

Cc: Waste Regulation Policy Branch  
Welsh Assembly Government  
Cathays Park  
CARDIFF CF10 3NQ.

## **Consultation Response – Legal Definition Of Waste**

In answer to the questions in the consultation document:

### **Part 1 – A Practical Guide For Businesses And Other Organisations (page 24)**

**Q1:** Do you consider that the practical guide provided in this part of the draft guidance accurately summarises the wide range of factors that need to be taken into account in determining when substances or objects are discarded and become waste; and when waste ceases to be waste? If not, what factors do you consider should be set out in this summary – replying by reference either to the detailed guidance in Part 3 (page 49) or your answers to questions 5-13?

1<sup>st</sup> sentence (G1.1) refers to WFD – perhaps a brief explanatory paragraph would be helpful here - maybe the paragraph G3.8 on P50 explaining the key objectives.

**Q2:** Do you consider that the practical guide is helpful? If not, what do you suggest should be included to make it helpful?

Yes the guidance is useful. Perhaps a brief 2 page summary of the main points would improve the utility of the guidance for busy senior managers.

**Q3:** Do you consider it helpful to set out the practical guide in textual and/or diagrammatic formats?

Diagram on P25 is confusing without referring to the textual information on P26.

Diagram on P28 is useful as it can be read stand-alone.

Diagram on P117 is more illuminating and should be included here.

### **Part 2 – Background And Rationale (page 34)**

**Q4:** Do you consider that this is part of the draft guidance fully explains the background to and the rationale for the guidance? If not, what further explanation do you think should be provided?

Yes the guidance fully explains.

P34 footnote refers to an incorrect page – should be P93.

### **Part 3 – Detailed Guidance On The Legal Definition Of Waste And Its Application (page 49)**

#### **Section One: Background (page 49)**

**Q5:** Do you agree with the proposed answer to the question "Why Regulate Waste"? If not, what is your answer to this question and what are your reasons?

Yes.

**Q6:** Do you agree with the proposed explanation of the types of waste controlled under (a) the WFD or (b) "other legislation" (i.e. the distinction between "waste" and "Directive waste")? If not, what issues do you consider need to be addressed to ensure that the explanation is full and accurate?

Yes.

**Q7:** Do you consider that there are any other issues that should be addressed in this section of the revised guidance? If so, what are those issues and why do you consider it is necessary to address them?

No other issues.

#### **Section Two: General Principles of ECJ Case Law (page 62)**

**Q8:** Do you consider that this section of the draft guidance fully and accurately identifies the principles established by the ECJ in its case law on the interpretation of the definition of waste? If not, what are the principles established by that case law that you consider should be addressed?

Yes.

**Q9:** Do you consider that this section of the draft guidance fully and accurately identifies the factors that need to be taken into account, and the criteria that need to be satisfied, when deciding whether or not a substance or object is discarded within the meaning of the WFD and is, as a consequence, waste? If not, what are the factors and criteria identified by the ECJ that you consider should be taken into account?

Yes.

### **Section Three: By-Products (page 75)**

**Q10:** Do you consider that this section of the draft guidance (a) accurately analyses the concepts of (i) products, (ii) residues and (iii) by-products; and (b) accurately identifies and explains the principles set by the ECJ to distinguish between (i) production residues classified as non-waste by-products? If not, what are the factors and criteria identified by the ECJ that you consider should be taken into account?

- a) Yes
- b) Yes

### **Section Four: End-Of-Waste (page 83)**

**Q11:** Do you consider that this section of the draft guidance fully and accurately identifies the principles established by the ECJ and national Courts to determine that the objectives of the WFD, and other EU waste legislation, have been achieved and, as a consequence, substances or objects cease to be waste? If not, what are the principles established by the ECJ and national Courts that you consider should be taken into account?

Yes

### **Davidson Review (page 40)**

**Q12:** The Davidson Review recommended that:-

"b) The guidance should adopt a purposive, risk-based approach and utilise criteria of similar style to the Dutch to help businesses and regulators decide when a substance is a product or by-product. The guidance should be clear, concise and make use of the examples to aid understanding."

Do you consider that the draft guidance fulfils this recommendation? If no, bearing in mind the need for the guidance accurately to reflect ECJ case law on the definition of waste's interpretation, what changes to the guidance do you suggest should be made to fulfil the Review's recommendation?

Yes

### **Content Of The Guidance**

**Q13:** Are there issues of factors other than those dealt with in the guidance that you think the guidance should cover? If so, what are those issues or factors and why do you think they should be included?

No