

10th April 2010Consultation On The Legal Definition of Waste
Waste Framework Directive Unit
Department for Environment, Food and Rural Affairs
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Dear Sir/Madam,

Consultation on Draft Guidance on the Legal Definition of Waste and its Application

This response to the consultation document is made on behalf of the Confederation of Paper Industries (CPI). CPI has within its membership mill-owned and independent recovered paper merchants and exporters, paper manufacturers, tissue manufacturers and corrugated converters. All Members of CPI are involved with waste at some stage of their processing and in this respect have a significant interest in the legal definition of waste and its application.

The UK recovered paper industry is responsible for moving over 8 million tonnes of recovered waste paper each year for recycling (currently defined as waste at all stages), either in the UK or overseas, and on many occasions this material is managed by several different parties prior to final recycling; CPI Members handle around 67% of this volume. The 8.1 million tonnes of recovered waste paper sent for recycling in 2009 provided up to 10.7 million tonnes of carbon benefits¹ to the UK in comparison to disposal through current UK landfill and incineration waste management options.

There is also likely to be around 4 million tonnes of waste paper being handled as residual waste in the UK going for landfill or incineration mixed with other waste streams, of which around 2.0 million tonnes is recyclable into new paper and board products. This 2.0 million tonnes of potential recyclable waste paper offers potential carbon benefits to the UK of up to 2.6 million tonnes but can only be realised if the material is recovered in a way that makes it suitable for efficient paper recycling.

In 2009, just under 3.8 million tonnes of recovered waste paper was recycled domestically in the UK with around 4.4 million tonnes exported for recycling overseas and around 89,000 tonnes imported to the UK for domestic use. In order to allow recyclable waste paper to be effectively recovered from the UK residual waste stream the regulatory drivers for recovery must be maximised while the regulatory costs of managing this material must be minimised but ensuring the recovery systems employed provide a suitable quality of material for effective, economic recycling. Recycling paper waste offers a far better carbon option than disposing of the material through incineration and landfill, as demonstrated in the 2006 WRAP global life cycle impacts of recycling analysis², and the definition of waste through the recovery process may well have a significant role to play in this.

¹ http://www.paper.org.uk/information/factsheets/greenhouse_gas.pdf

² [http://www.wrap.org.uk/downloads/Recycling_LCA_Report_Sept_2006 -
Final.a5628227.2838.pdf](http://www.wrap.org.uk/downloads/Recycling_LCA_Report_Sept_2006_Final.a5628227.2838.pdf)

General response:

CPI supports the provision of regulatory guidance in the area of the definition of waste and its application and in this respect we feel the draft document is a good step in achieving this aim. There are a couple of points we would like to raise within the proposed document and these are concerned with the “Practical Guide for Businesses and other Organisations” rather than the “Detailed Guidance”. We also have an interest in the definition of “By-Products” and “End of Waste” which we feel will have significant impacts in future efficient resource management.

LIST OF QUESTIONS IN THE CONSULTATION PAPER**Part 1 – A Practical Guide For Businesses And Other Organisations (page 24)**

Question 1: 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 to the detailed guidance in Part 3 (page 49) or your answers to question 5 – 13?

CPI Response: The draft guidance appears accurate and useful however CPI would draw your attention to one issue raised in answer to question 2 below.

Question 2: Do you consider that the practical guide is helpful? If not, what do you suggest should be included to make it helpful?

CPI Response: The guidance appears to be a good summary of the important factors in determining if something is waste in the first place or indeed has ceased to be waste afterwards. One point that CPI would raise however is with the “cease to be waste” diagram on page 28 and the text on page 29 associated with “Q.11 Have all unwanted substances (i.e. Contamination) been removed from the waste?” For a substance like recovered paper there will never be a situation where “ALL” unwanted substances are removed as in some cases the unwanted substance is physically attached to the surface of the paper and can only be removed chemically or mechanically at a paper mill. Trying to remove attached materials prior to the wet end chemistry of the paper mill may well have negative environmental impacts and would not be economically viable. To overcome this issue recovered paper sellers and paper mill buyers have agreed tolerances on unwanted substances (such as the [European List of Standard Grades of Recovered Paper and Board](#)) and this should be reflected in the guidance at point Q.11 to avoid confusion between stakeholders.

Question 3: Do you consider it helpful to set out the practical guide in textual and/or diagrammatic formats?

CPI Response: Both should be used as different stakeholders prefer different formats. They must however be consistent.

Part 2 – Background And Rationale (page 34)

Question 4: Do you consider that this 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?

CPI Response: We think this part of the guidance explains the background satisfactorily.

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

Section One: Background (page 49)

Question 5: 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?

CPI Response: We agree with the proposed answer.

Question 6: 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 and why do you consider it is necessary to address them?

CPI Response: No comment.

Question 7: 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?

CPI Response: No comment.

Question 8: 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?

CPI Response: No comment.

Question 9: 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?

CPI Response: No comment.

Section Three: By-Products (page 75)

Question 10: 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 waste and (ii) 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?

CPI Response: No comment.

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

Question 11: 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?

CPI Response: No comment.

Section Five: Davidson Review (page 40)

Question 12: The Davidson Review recommended that:- “b) The guidance should adopt a purposive, risk-based approach and utilize criteria of a similar style to the Dutch to help businesses and regulators decide when a substance is a product or a by-product. The guidance should be clear, concise, and make use of examples to aid understanding.” Do you consider that the draft guidance fulfils this recommendation? If not, 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 recommendations?

CPI Response: The guidance appears to be clear and concise apart from the issue raised in answer to question 2 above. Also CPI would point out that the Dutch guidance set out on page 41 is far from clear as the first 3 points make reference to a substance being equivalent to its primary raw material in order to be designated as “Not being a waste” when in fact most materials going through a recovery phase into a secondary raw material will contain some degree of unwanted substances that will not be present in primary raw material due to their nature of use. This is why secondary raw materials have separate specifications (such as the [European List of Standard Grades of Recovered Paper and Board](#)) from primary raw materials which allow a degree of content of materials that can be managed appropriately through the actual reprocessing stage.

Content Of The Guidance

Question 13: Are there issues or 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?

CPI Response: No comment.

Kind regards,



Peter Seggie
CPI Recovered Paper Sector Manager