

Response to HMRC consultation: Landfill Tax: Whether to bring illegal waste sites within the scope of Landfill Tax

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About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 90 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 26 million homes and every business in Britain. Over 619,000 people in every corner of the country rely on the sector for their jobs with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry adds £83bn to the British economy, equivalent to 5% of GDP, and pays over £6bn in tax annually to HMT.

Background

We welcome the opportunity to respond to this consultation issued by HMRC on proposals to extend the scope of Landfill Tax to material disposed of at illegal waste sites.

Energy UK represents an industry which consistently aims to achieve the highest standards of environmental performance. Therefore, we support the aim of this proposal to deter non-compliance by making waste crime less profitable, and to reinforce the principle of 'the polluter pays'.

However, it is recognised that HMRC wishes to ensure that the proposals do not inadvertently bring sites that operate legitimately without a permit or licence into the scope of the tax. Energy UK therefore considers that it is important to draw attention to areas where there is the potential for unintended consequences of the proposed changes to result in outcomes which would contradict the primary aim of the Landfill Tax.

By-products from the electricity generation industry have for many years been used for beneficial purposes. The utilisation of combustion by-products, such as Pulverised Fuel Ash (PFA) and Furnace Bottom Ash (FBA), in line with the primary aim of the Landfill Tax, diverts material, which may otherwise have been disposed of in landfill, towards beneficial uses.

It is important to recognise that currently, there are regulatory mechanisms which facilitate the beneficial use of these materials without the requirement for an environmental permit. For example:

- Environment Agency Regulatory Position Statement 172 (RPS 172) allows unbound PFA and FBA to be used in construction under specified conditions without the need for an environmental permit; and
- Environment Agency 'Quality protocol: pulverised fuel ash (PFA) and furnace bottom ash (FBA)' sets out end of waste criteria for the production of PFA and FBA for use in bound and grout applications in specified construction and manufacturing uses.

Whilst Energy UK is certain that HMRC would not seek to deter the beneficial use of these materials via the above regulatory mechanisms, we consider that the proposed approach discussed in the current

consultation raises a risk of potential unintended consequences for these legitimate activities. For clarity, our concerns in this respect are set out in the responses to the applicable questions below.

Consultation Questions

Our responses to selected consultation questions are set out below. Information requested in Q1-Q3 is covered in the preamble above. We have no comments to make in response to Q6, or to Q8-Q19.

Q4) Are you aware of any circumstances where it would be difficult to distinguish between a site that is illegally operating without a permit or licence, and a site that is exempt?

Energy UK is of the opinion that there could be potential risks in a reliance on too narrow a set of criteria to determine the legality of an activity. For example, if the term “exempt” used above refers to a waste exemption where a waste operation is exempt from needing an environmental permit and that exemption is registered with the Environment Agency, then this would risk a failure to recognise the legality of activities being carried out under other regulatory mechanisms, such as those mentioned in the “Background” section above. That is, the term “exempt” must include legitimate activities that are carried out under other forms of regulatory approval, such as in accordance with a Regulatory Position Statement and a Quality Protocol.

The Environment Agency uses the following definition of an illegal waste site:

“A site operating without the appropriate permit for the activity being carried out where multiple loads of waste are deposited, treated, stored or disposed of, and where activity is, or appears to us to be taking place in an organised manner. The activities at the site will generally (but not always) be known to the landowner or the legal occupier of the site and will often be run as a business.”

Q5) Do you agree the above definition would provide a good starting point for HMRC? Can you suggest any other hallmarks that should be included?

As indicated in our response to Question 4 above, Energy UK is of the opinion that whilst providing a good starting point in relation to defining an illegal waste site, the above definition does not take into account other regulatory approaches. Energy UK advocates that care should be taken to ensure that unintended consequences are avoided and activities which are carried out legally and legitimately without a permit are not inadvertently brought within the scope of the Landfill Tax.

Q7) Are there any risks or wider consequences we should be aware of with this “deemed disposal” approach?

Energy UK is of the opinion that there are potential risks associated with this “deemed disposal” approach. For example, where material is being stored prior to use or subsequently being deposited in a ‘deposit for recovery’ activity under the conditions of RPS 172, the activity is not a disposal and therefore outside the scope of Landfill Tax. As outlined in the response to Question 4, it is vital that other agreed regulatory approaches are recognised in determining the legitimacy of activities. Furthermore, should this approach be adopted, the burden of proof imposed upon operators should be clearly defined in order to avoid the potential for confusion.

Any uncertainty resulting from a lack of clarity on this matter may result in the wider consequences of deterring the beneficial utilisation of materials such as PFA and FBA.

Q20) Are there any unintended consequences that we need to be aware of to help inform our understanding of the impacts?

Energy UK is of the opinion that care should be taken to ensure that activities which are carried out legally and legitimately, yet without a specific environmental permit, are not inadvertently brought within the scope of the Landfill Tax. We consider that a failure to recognise all agreed regulatory approaches and provide clarity on this matter may result in the unintended consequences of deterring the beneficial

use of by-product materials. Should this occur, the demands on natural resources, with the associated environmental impacts, would increase.

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