Communities and Local Government

EU Directive 2006/21/EC on the Management of Waste from Extractive Industries (the 'Mining Waste Directive')

Summary of consultation responses on the approach to transposition of the Directive in England

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Communities and Local Government

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Summary of responses to the consultation and subsequent decisions by the Government on the approach to taking forward transposition of the Directive in England

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Introduction

i) On 17 January 2008 the UK Government and the Welsh Assembly Government published a joint consultation paper, seeking views on options for transposing the European Union (EU) Mining Waste Directive into UK law in England and Wales. The Governments' preferred option was to transpose the Directive through the new Environmental Permitting Programme with the Environment Agency as principal competent authority.

ii) Views were also sought on a number of detailed issues concerning the transposition of the Directive, as set out below (questions 3–12), as well as on the initial Impact Assessment published with the consultation paper.

iii) The consultation paper was placed on the Communities and Local Government website and brought to the attention of a number of stakeholder bodies, including representatives of the mining and quarrying industries, mineral planning authorities, professional representative bodies and Wildlife and Countryside Link, by means of an e-mail. The consultation period ran for 12 weeks until 11 April 2008.

iv) This summary and analysis focuses on the responses received from bodies based in England, and on issues relevant to transposition of the Directive in England. The subsequent UK Government decisions set out below relate to transposition in England. The Welsh Assembly Government is responsible for assessing consultation responses and for taking decisions on transposition in Wales.

Overall Response to the Consultation

1. Thirty-eight responses were received to the consultation paper, including two late responses. (In addition, two responses were received from Welsh bodies and one – which offered no comments – was received from a Scottish body).

2. The proportion of the responses from different sectors was as follows:

39 per cent	–	Extractive industries* (15 responses)
29 per cent	–	Mineral planning authorities (11 responses)
13 per cent	–	Other national representative bodies (5 responses)
11 per cent	–	Other public sector or public/private partner bodies (4 responses)
8 per cent	–	Other private sector (3 responses)

* Includes industry representative bodies & individual companies

3. It should be noted that in the above summary and in the numerical analyses below, a response from a body representing a number of companies, organisations or individuals has been counted in the same way – ie, as a single response – as one from any other body. In the case of industry responses, some views have been expressed both through a particular sector's affiliate body and through a minerals industry umbrella response, and in one or two instances, also in individual company responses.

4. On the following pages the questions included in the consultation paper and a summary of the views expressed are set out in turn, together with the Government's response, (Note that 'planning authorities' and 'mineral planning authorities' (MPAs) mean one and the same thing in the context of this consultation and summary of responses).

Response to the Principal Issues

Question.1 Do you agree that the Environmental Permitting Programme (EPP) offers the best option for transposing the Mining Waste Directive? If not, would you prefer to see the planning and existing consents option or the hybrid option used as the means of transposing the Directive?

5. 28 respondents (74 per cent) favoured transposition through EPP.

5 respondents supported the planning & existing consents option.

2 supported the hybrid option.

3 respondents did not express a clear preference for any specific option.

(NB: The two responses from Welsh bodies also favoured transposition through EPP).

6. The level of support for transposition through EPP varied. Those clearly in support, including a number of planning authorities, noted that the Directive was concerned with waste management which was principally a matter for environmental protection controls, for which EPP provided the most appropriate regulatory regime. Some respondents' support for EPP was more cautious. Most of the responses from the extractive industries described EPP as 'the least-worst' option, but only with the mineral planning authority as the principal competent authority.

7. Those supporting the planning and existing consents option (two planning authorities, two industry respondents, one private sector consultant) and, to an extent, the hybrid option, did so on the basis that existing spatial planning, environmental protection and safety legislation exercised by mineral planning and other relevant regulatory authorities already delivered many of the aims and requirements of the Directive, and could be adapted to fully implement the Directive without the need to introduce a new regulatory regime to mineral extraction sites.

8. If, as implied by the responses, conditional industry support expressed for the EPP option is withdrawn in the event that mineral planning authorities would not be made the principle competent authority, the number of responses in support of EPP could fall to around 15 (39 per cent). Some industry responses have indicated that they would be likely to favour the hybrid option or the planning and existing consents option as an alternative in these circumstances. But it is not possible to provide a precise indication, based on the responses, of where the possible levels of support for alternative options might lie.

Q. 2 If you agree that the Environmental Permitting Programme offers the best option, do you also agree that the Environment Agency should act as the competent authority (or regulator), or do you think that the planning authority should be the principal competent authority under this option?

9. Of the 28 respondents expressing a preference for transposition through EPP (question 1), the breakdown in favour of either the Environment Agency (EA) or the mineral planning authority (MPA) acting as competent authority was:

EA – 15 (54 per cent)
MPA – 12 (43 per cent)
One response did not express a clear preference on this issue.

(NB: The two 'Welsh' responses also favoured the EA as competent authority).

10. The main sources of the support in each case were:

Supporting EA as competent authority:

- planning authorities 8
- industry/other private sector 2
- others 5

Supporting MPA as competent authority:

- planning authorities 0
- industry/other private sector 12
- others 0

11. Those supporting the EA as competent authority largely agreed with the Government's views set out in the consultation paper, including that the main purpose of the Directive is to prevent environmental pollution and harm to human health and safety, which are matters currently handled principally by the EA and the Health & Safety Executive (HSE); that by and large, MPAs are not skilled or equipped to implement the Directive's requirements and would be heavily reliant on the EA and HSE; that having MPAs as competent authority would be contrary to the Government's aim to streamline planning.

12. In contrast, in supporting the MPA as competent authority, the mining and quarrying industries do not accept that MPAs lack the required technical expertise, or ability to acquire it. The industries believe that it is essential to consider extractive waste management as an integral part of all other processes which together make up a mineral operation. MPAs already have considerable experience of regulating these operations. The EA was not seen as having the awareness and experience of mining/quarrying operations, and doubts were expressed over whether it has the expertise and resources to take on this role.

13. Industry responses also considered that most of the elements required in a waste management plan under the Directive are already addressed, or could easily be incorporated, as part of a planning application. It was felt that there would be major confusion and fragmentation of regulatory control if the same authority (i.e. the MPA) does not administer both planning controls and the Directive's requirements.

14. Some responses commented that the Impact Assessment cannot be taken as giving a clear cost advantage to EPP administered by the EA, given the uncertainty over how many, and to what extent, sites in this country will be affected by the Directive, and the assumptions made in the IA costings.

15. More generally, industry expressed concerns that transposition was being rushed through under the Government's preferred option before key requirements and technical guidelines have been decided through the European Commission (EC) comitology process, as these will have a fundamental effect on the Directive's impact.

The Government's Decision

16. The Government has considered all the responses received to the consultation paper. It notes and welcomes the majority support for transposing the Directive through the Environmental Permitting Programme – a "better regulation" approach. But it has also taken account of the differing views expressed over the question of which regulatory authority would most appropriately act as the "competent authority" for implementation of the Directive. Taken overall, the Government does not think that the consultation responses have provided any significant evidence to cause it to change its original view on the preferred option for transposition.

17. The Consultation Impact Assessment (IA) which provided a comparison of the costs and benefits between the different transposition options, showed that the Government's preferred option was likely to be the least-costly overall. However, the Government recognises that the IA shows only marginal differences between the different options in terms of costs to industry, and no realistic alternative analysis was put forward through the consultation that challenges the basis on which the IA was prepared. Accordingly, the Government considers that other issues are decisive in reaching a view on how transposition is taken forward.

18. The Government remains of the view that adding non-planning matters to the responsibilities being handled by planning authorities would be contrary to its objectives of simplifying and speeding up the planning system. Although industry concerns about the need to consider waste management as part of the overall operation of a minerals site are recognised, it should be possible to ensure that this is taken into account through timely and effective liaison between the mineral planning authority and the Environment Agency.

19. The key aims of this Directive are to prevent environmental pollution and harm to human health and safety arising from the management of wastes from extractive industries. In other areas of business, these are matters where Parliament has already given specific responsibilities to the Environment Agency and the Health and Safety Executive. Both these agencies have extensive experience of mineral and quarrying issues because of their existing statutory roles for managing environmental and health and safety matters for these types of operations. The Government believes that the same approach should be taken with mineral wastes.

20. **The Government therefore intends to transpose the Mining Waste Directive into UK law in England through the Environmental Permitting Programme, with the Environment Agency as the principal competent authority for implementing the Directive's requirements.** Regulations to this effect will now be brought forward and, subject to Parliamentary process and approval, brought into force as soon as possible.

21. Separate regulations dealing with external emergency plans will be similarly brought forward to transpose aspects of Article 6 of the Directive relating to major accident prevention.

Responses to Other Consultation Questions

Q.3 Do you think that:

(a) the prerequisite for planning permission should be applied to Article 7 permits as proposed in the draft transposing Regulations; or

(b) there are alternative ways of ensuring that the competent authority complies with the requirements of Articles 7(3)(b) and 11(2)(a) of the Directive?

22. Of the 30 responses that expressed a view on this issue, numbers supporting or opposing a prerequisite for planning permission were:

Support	22
Oppose	8

23. The strongest level of support (10 responses) came from mineral planning authorities (MPAs) and planning representatives. Industry responses were mixed; with seven supporting a prerequisite and six expressing opposition. Other respondents largely support the proposal, but it is opposed by the Environment Agency.

24. Those in favour felt that such a prerequisite would rightly ensure that (permitted) extractive waste operations could not be carried out without planning permission; and that it would be unwise to deal with an Article 7 permit for the waste management element in advance of determining the suitability of a site (in spatial planning terms), as there are other spatial planning factors to take into account which influence the decision.

25. Views opposing the proposal included concern that a prerequisite may cause significant risks for potential developers as the planning process for a "waste facility" will involve significant investment, but if the Article 7 waste facility permit was not granted the development could not go ahead. Also that this may conflict with the proposal for an EPP permit to take precedence over planning conditions (see question 11), with the potential for the subsequent permit to necessitate changes to the planning conditions.

26. Another respondent was concerned that such a prerequisite would unnecessarily result in appreciable delays and increased costs in the permitting process, requiring a parallel consultation process; and would be contrary to one of the main purposes of EPP, that is to provide a uniform procedure for all environmental permits.

27. In response to the secondary question (b), alternative approaches included the view that the Directive's requirements are best met through the planning system, and that MPAs would address the issues by giving them specific consideration in the context of the Article 7 permit through appropriate consultation arrangements; and that if the MPA was made the competent authority, the risk of any conflict would be removed.

28. Having taken account of the consultation responses, **the Government considers** that for new operations, there should be a prior requirement for planning permission to be obtained before a permit is issued for a new extractive waste facility. This will ensure that the principle of the use of the land is established in advance of other considerations. Existing consultation arrangements will ensure effective engagement between the MPA and the Environment Agency at an early stage in the planning process.

Q.4 Do you agree that the local fire and rescue authority for the area would be best placed to act as the 'competent authority' for the purposes of the emergency external plan under Article 6? If not, who would be best placed to act as competent authority for the external emergency plan?

29. There were mixed views on the proposal to make the local fire & rescue authority the competent authority and some alternatives suggested, but no clear preference expressed. Broadly, the balance of views was:

In favour of, or no objection to the proposition: – 10 responses
Not in favour/ preference for an alternative body: – 15 responses

30. The main alternative put forward was for local authority emergency planning officers to be given a central role in fulfilling this function. Another view was that the competent authority (for the purposes of the external emergency plan) should be designated on a site-by-site basis, depending on the particular risks identified, with local authority emergency planning officers co-ordinating other relevant bodies.

31. **The Government has been reconsidering its view** on this issue. It now considers, on a provisional basis, that local authority emergency planners may be better placed to fulfil the competent authority role for the external emergency plans required by Article 6 of the Directive. It is anticipated that there will be a very small number of mineral operations requiring such plans. But the Government needs to hold further discussions before the role of competent authority for this issue is finalised.

Q.5 The Government would welcome views on the proposals for implementing Article 6 requirements on major accident prevention. Do you think the draft regulations at Annex E of the Consultation Paper are appropriately based on the 'COMAH'* model, and are they sufficiently clear?

32. Only a small number of respondents commented on this issue. Those that did were generally content with the basis and clarity of the draft regulations, though there were some suggestions for amending points of detail.

33. Industry respondents were concerned to ensure that the regulations should be applied in a proportionate way to reflect the level of risk posed by extractive waste facilities, which was generally considered to be lower than the risks that the COMAH regulations were designed to address. Duplication of, or potential inconsistency in control should be avoided at any site already covered by COMAH; so the regulations should only apply to 'COMAH' sites to the extent necessary to implement additional requirements of the Mining Waste Directive.

34. Another respondent commented that the explicit requirement to assess and minimise the extent of actual and potential damage in the proposed regulations was fundamentally different from the COMAH regulations which seek to limit their consequences for persons. This would be reflected in the approach to formulating a plan and who is consulted.

35. **The Government** will take account of the comments received in finalising the regulations, following a final decision on the 'competent authority' issue covered by question 5 above.

Q.6 The Government would welcome any further views on the best approach, or approaches, to financial guarantees (or equivalent), as required under Article 14 of the Directive.

36. General comments on introducing financial guarantees under the Directive were made by a number of respondents. Some MPAs suggested that the existing guarantee arrangements administered by the Environment Agency under the EU Landfill Directive appeared to provide a suitable mechanism. The Agency itself indicated that should it assume responsibilities for the Mining Waste Directive, it would like to ensure a flexible approach to financial guarantees and that there may be scope to take account of existing guarantees made under planning requirements, and to make use of existing industry mutual funding arrangements.

* The Control of Major Accident Hazards (COMAH) Regulations 1999

37. Industry responses drew attention to mutual guarantee funds operated for many years by the aggregates sector that could be adapted to meet the Directive's requirements. Another industry respondent commented that any bond or guarantee arrangements made or required under other legislation should be taken into account to avoid duplication, or excessive financial requirements being imposed.

38. A particular issue of concern raised by industry respondents related to the suggestion in the consultation paper (paragraph 3.72) of a 'high level test' for operator competence being applied under EPP, which would appear to encompass adequate financial provision at sites where Article 7 does not apply. This was seen as unnecessary ('gold-plating') as there was no such requirement in the Directive, and industry requested that the proposal be deleted.

39. **The Government** has noted the views expressed and anticipates further discussions involving the Environment Agency and the minerals industry over the issue of guarantees (or equivalent) required under the Directive.

40. With regard to the particular concerns of industry about the suggestion of a 'high level test' for operator competence being applied under EPP, the Government confirms that it has no intention of 'gold plating' on this issue. The approach adopted will be the minimum necessary to demonstrate to the European Commission that the requirements of the Directive are being delivered.

Q.7 Do you have any views on which authority (or authorities) would be best placed to prepare and maintain the inventory of closed waste facilities required under Article 20 of the Directive?

41. There was no clear consensus on this issue. Some MPAs commented that either the Environment Agency or MPAs would be in a position to maintain an inventory. Some tended to favour the Agency as being best placed, suggesting that it would have a complete list of relevant facilities. But others considered that local authorities should be responsible for the inventories, given their similar duties in maintaining contaminated land registers.

42. Industry views were that MPAs in consultation with the British Geological Survey would be best placed for this role, given they already hold extensive databases on mineral extraction operations, including a register of disused spoil heaps under Mines and Quarries legislation.

43. Some other representative bodies considered that it would be more appropriate for the Environment Agency to have this responsibility, noting it would have to keep an operational site's EPP permit on its public registers

and could just as easily keep details of when the site was closed. Similarly, if the Agency were the competent authority (under EPP), it would be logical for the same body responsible for granting permits for active sites to be responsible for the inventory. The Agency itself asked for any decision to await publication by the European Commission of further guidelines on this matter, suggesting it could potentially be an extensive and costly exercise to prepare and maintain the inventory.

44. **The Government considers** that, on a provisional basis, responsibility for the inventory of closed facilities (that is required by 2012) is given to the Environment Agency as overall competent authority under EPP, but that this should be reviewed once guidance on appropriate methodologies has been brought forward by the Commission.

Q.8 Do you have any comments on the proposed implementation of the transitional provisions for existing waste facilities? In particular, do you agree that 1 May 2010 should be specified as the date by which operators of existing waste facilities are required to submit their applications for permits under the EPP and hybrid options, in order to ensure that the competent authority has sufficient time to process these applications by 1 May 2012?

45. Twenty responses expressed a clear view on the proposed 1 May 2010 deadline as follows:

Support:	5
Do not support:	15

46. Four MPAs and a national body thought that 1 May 2010 was appropriate to allow sufficient time for applications to be processed.

47. However, the clear response from industry was that this deadline would be unduly early. It was noted that the proposal would allow two years, both for operators to submit applications and for the competent authority to process them. The view was that operators should be given more time to prepare and submit applications, taking into account the relative work involved. A similar view was expressed by a national representative body, commenting that the heaviest burden is on the operators in drawing up applications which, in many instances, would have to involve specialist contractors.

48. Another respondent could see no benefit in setting a deadline for the submission of all applications if determination might not be for a further two years. It suggested allowing for staged permit applications, based on the nature and risk levels of particular waste facilities. The Environment Agency also asked for scope for some phasing of the applications, and to make full use of the timescale available in the Directive.

49. Alternative suggestions put forward for the deadline ranged from November 2010 to October 2011.

50. **The Government has decided** to extend the proposed deadline for the submission of applications for permits for existing waste facilities to 1 May 2011.This will help meet concerns expressed by the minerals industry and the Environment Agency over the deadline proposed in the consultation paper.

Q.9. Do you agree with the Government's proposals for applying transitional provisions to existing operations which do not involve waste facilities, in particular, the establishment of a 12-month time limit for approved waste management plans for such operations to be in place?

51. Whilst there was some confusion over precisely what date was being proposed in the consultation paper for the submission of waste management plans in these cases, a number of responses and particularly those from the minerals industry expressed a clear view on the proposed 12-month time limit, as follows:

Support: 7
Oppose: 14

52. Support came from the three MPAs who commented on the issue, and some other bodies, though in one case, support was dependent on process-related guidance being made available. In contrast, most industry responses were strongly opposed to the proposal. A 12-month timeframe to put the necessary waste management plans in place was seen as administratively and technically unrealistic, placing a totally unreasonable burden on the industry.

53. Other critical comments expressed included the lack of justification to bring in such measures in advance of those specifically provided for in the Directive; that it was perverse to require all low risk sites requiring only a waste management plan to be permitted three years ahead of potentially higher risk sites, and an extremely over-precautionary interpretation of the Directive's requirements; and proposals that the compliance date should be May 2012, or even post-2012.

54. The Environment Agency considered a May 2009 deadline to be unrealistically short and prefered the date to be put back as far as possible. One non-industry representative body accepted that the transitional provisions in the Directive do not apply to existing operations which do not involve waste facilities, but thought that it would be sensible to allow a two year timescale for these operations to mirror the timescale proposed for submitting permit applications for waste facilities (see Q.8).

55. **The Government has decided** to extend the proposed time limit for submission of waste management plans where there is no waste facility as defined by the Directive, to 18 months from the date the regulations come into effect. This will help meet concerns expressed by the minerals industry and the Environment Agency over the deadline proposed in the consultation paper.

Q.10 Do you have any views on the Government's proposals for applying the transitional provisions in respect of waste facilities closed before 1 May 2008 and certain waste facilities that will be effectively closed by 31 December 2010?

56. Some MPAs commented that the proposed process for reviewing existing planning permissions in respect of facilities that stopped accepting waste before May 2006 and which would be closed by end-2010 was unclear, including who will have overall responsibility for ensuring notification of any such facilities to the Government, as required by the Directive; and also how operators would be made aware of the requirement to notify the relevant authorities. The proposed 8-week timescale for this notification was seen as very tight and difficult to meet.

57. Industry generally supported the proposal not to make any legislative changes to cover after-closure procedures for facilities closed before May 2008, noting this is already adequately covered by existing planning legislation. Industry also considered that existing legislation covered the Directive's requirements applying to facilities effectively closed by December 2010.

58. One respondent was concerned over the proposed power for MPAs to impose additional planning conditions where necessary in respect of any facilities that will be closed by December 2010, wondering under what circumstances this power would be exercisable, what rights of appeal operators would have, and whether any compensation would be payable to operators on whom additional conditions were imposed.

59. **The Government intends** to rely on the existing legislative framework to deliver the Directive's transitional provisions applying to waste facilities covered by this question, as proposed in the consultation paper. However, it has decided that it will not be necessary to impose any new obligations on, or provide any new powers for MPAs (as proposed in paragraph 5.12 of the consultation paper), for the purposes of ensuring compliance with the Directive's requirements applying to these particular waste facilities.

60. **The Government has also decided** not to introduce a requirement (as proposed in paragraph 5.13 of the consultation paper) for operators to notify the competent authority of the existence of any such facilities closing by end - 2010. The Government has taken action to ensure it will be notified of such facilities (in order to meet an obligation to notify the European Commission) by other administrative means.

Q.11 Do you consider that there are specific circumstances in relation to mining and quarrying activities that would justify the inclusion of a provision in the Regulations, so that the conditions in the EPP permit take precedence over any conflicting conditions that may arise in the planning permission for the site? What problematic inconsistencies do you envisage arising that might justify such a provision?

61. Twenty five responses expressed a clear view on the issue, as follows:

Support:	11
Oppose:	14

62. All MPAs expressing a view (8 out of 11) disagreed that the EPP permit should take precedence. There was a strong view that EPP permits should only be granted where planning permission exists, and it should therefore not be possible to issue permits which conflict with planning conditions. It was unacceptable for a permit to potentially override any planning conditions imposed, as such a situation would lead to confusion. Another comment was that a planning permission addresses all the issues involved in mineral developments, not just the management of extractive waste. If there are conflicts then the permission should be varied taking into account all the factors, including the impacts on the local community.

63. Other respondents opposing the proposal commented that as well as being unnecessary, such a precedence could reduce the enforceability of planning conditions and result in arguments about whether or not there was inconsistency. One response proposed instead a clear delineation between the EPP and planning regimes, if necessary by amending planning legislation at the same time as extending the EPP regime to implement the Directive.

64. In contrast, industry responses were generally in favour of the EPP permit being given precedence. There was a clear view that the significance of the interface between the EPP and planning regimes had been grossly under-estimated, and industry questioned the view that inconsistencies between environmental permit and planning permission conditions which cause confusion are rare in other controlled waste activities.

65. Having carefully considered the views expressed, **the Government has decided** that provision should be made for an EPP permit to take precedence over existing consents in cases of any conflict between an existing consent and an EPP permit. Such conflicts are not expected to occur, but if they do, there needs to be some clarity as to which consenting regime has precedence.

Q.12 If provision is not made in the Regulations to give precedence to the EPP permit over planning conditions, do you think there should be a requirement for planning authorities to conduct a review of all relevant permissions, as and when EPP permits are issued?

Alternatively, do you think that mining and quarrying operators should be able to request that the planning authority review the planning conditions in a particular case, and that at the same time, a power should be provided for planning authorities to be able to conduct a review where they considered it necessary?

66. Again, most MPAs and some other respondents did not support these propositions, commenting that if EPP permits are only granted where planning permission exists, there should be no need for any of these special review provisions. Another response commented that such provisions had not been required before implementation of any other pollution control directive and this had not led to any apparent difficulties. Some respondents felt that it was more important to ensure proper consultation between the relevant regulatory bodies in drafting EPP permit and planning permission conditions to avoid any inconsistencies arising.

67. Some MPAs made the point that if such requirements were to be introduced, it would be essential to ensure that compensation liabilities would not arise for MPAs. Another view expressed was that it would be more effective for any such reviews to take place as part of the periodic reviews of mineral planning permissions required under the 1995 Environment Act.

68. Industry responses were generally in favour of the proposed review provisions. As expressed by an industry representative group, inconsistencies between the planning and EPP regimes would need to be resolved, and a new provision needed to allow operators to seek the removal or variation of planning conditions which were at odds with the EPP Permit. Changes to planning legislation would be required for this to happen, without the risk of wider changes being made to the original planning permission beyond those necessary to enable the EPP permit requirements to be met.

69. Having taken account of the views expressed and following its decision in relation the the previous question, **the Government does not intend** to introduce provisions that allow limited reviews of planning permissions where there is conflict between EPP permits and conditions attached to a planning permission. Whilst noting industry views on this issue, given the precedence being given to EPP permits (see Government intentions under question 11 above) such provisions are considered unnecessary to transpose the Directive.

Q.13 Do you have any views or comments on the Impact Assessment that accompanies this consultation?

70. Only a few respondents commented on the provisional Impact Assessment (IA). A key point for industry was that the cost differences between the options were marginal. Given also the uncertainty over key parameters, including whether certain residues will be classified as 'extractive waste' and the interpretation of the definition of inert waste, industry respondents considered that the conclusions drawn on the comparative costs of the different options had to be viewed with caution, and could not be given weight in deciding the preferred option.

71. Some concerns were expressed about the assumptions made on the number of low cost, 'standard' EPP permits that could be issued, in comparison with the numbers of higher cost, bespoke permits that may actually be required, for example, because of proximity to a Natura 2000 or other environmentally sensitive site.

72. One or two other respondents were also concerned about assumptions made in the IA, including in relation to the additional costs to a particular industry sector of the number of 'Article 5' sites being classified as 'Article 7'; and whether the IA had properly considered whether waste tips currently notifiable to the HSE as constituting significant hazards under Quarries legislation would automatically become Category A facilities under the Directive. Another industry response thought that the IA had not considered non-mining and quarrying operations, such as onshore oilfields.

73. However, these responses did not include any alternative cost/benefit analysis or cost figures.

74. One private sector response suggested that the additional costs to an operator of having to prepare a permit application in addition to a planning application for a waste facility involving an Environmental Statement could amount to a further £50,000. They also thought there would be additional monitoring costs and permitting fees for the operator if the Environment Agency was the regulator under EPP. Based on landfill controls and the Agency's guidance in this area, it was suggested that additional costs for annual monitoring and permit revision could be £15-20,000.

75. Very few responses from MPAs/planning representatives commented directly on the IA, other than a general view that additional resources would be required by the regulatory authority to undertake any new duties and responsibilities imposed by the Directive, though no quantification of these additional resources was provided.

76. **The Government recognises** that the IA has had to be based on a number of assumptions, particularly in the absence of final European Commission proposals on a number of important implementing and amending measures under the Directive. However, the Government considers that these measures are likely to have equivalent impacts on transposition under any of the options considered and, accordingly, will have little or no bearing on the relative costs and benefits of the different options.

77. **The Government also recognises** that the IA shows only marginal differences between the different options in terms of costs to industry, and no realistic alternative analysis was put forward through the consultation that challenges the basis on which the Consultation IA was prepared.

78. A Final Proposal IA will now be prepared to accompany the transposing regulations.

Questions specifically related to transposition in Wales

79. The consultation paper included three questions (14-16) concerning the introduction of financial guarantees under Article 14 of the Directive in Wales. These questions did not apply to transposition in England. It is for the Welsh Assembly Government to consider the responses to these questions.

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