



# Consultation on Materials Facilities charges and Definition of Waste Panel charges from 2014

April 2014

We are the Environment Agency. We protect and improve the environment and make it a better place for people and wildlife.

We operate at the place where environmental change has its greatest impact on people's lives. We reduce the risks to people and properties from flooding; make sure there is enough water for people and wildlife; protect and improve air, land and water quality and apply the environmental standards within which industry can operate.

Acting to reduce climate change and helping people and wildlife adapt to its consequences are at the heart of all that we do.

We cannot do this alone. We work closely with a wide range of partners including government, business, local authorities, other agencies, civil society groups and the communities we serve.

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# Executive summary

The Environment Agency has powers under legislation to recover the costs of some of its services. Under these powers people and organisations that require an environmental permit or specific services pay for the cost of the service, rather than it being funded from general taxation.

The purpose of this consultation is to set out two new charging requirements which, if approved, would come into effect later in 2014; these are charges relating to the monitoring of Materials Facilities, and our National Definition of Waste Panel.

Firstly we are seeking your views on charging for the monitoring of certain Materials Facilities following a recent amendment to the Environmental Permitting (England and Wales) (Amendment) Regulations 2014.

The regulations relate to some operators who sort 1,000 tonnes per year or more of mixed dry household or household-like waste material, to produce glass, metal, paper or plastic recycle. Operators are required to sample, record and report on a quarterly basis to the Environment Agency. A role of the Environment Agency as the regulator is to conduct inspections, assess compliance and if appropriate take enforcement action.

The purpose of the regulation is to help stimulate the market conditions necessary to improve the quality of the material produced by Materials Facilities so that it can be more readily recycled. The regulations affect approximately 200 existing waste permit holders in England.

The charge (£2,240 per annum), proposed in this consultation, is to cover the additional regulatory costs of a planned annual inspection, an unannounced annual inspection and to take any follow up action with operators who need help with compliance. This is in line with the requirements of the regulations. The charge will also fund management of operators' reported data. This charge is in addition to the current annual permit subsistence charge.

This consultation also covers a separate proposed new charging arrangement in respect of the provision of advice from our Definition of Waste Panel. The Panel supports business by helping to identify where end of waste has been demonstrated and therefore when waste regulatory controls no longer apply.

The work of this Panel is currently unfunded which is unsustainable. This proposal will require people who submit future requests for advice to enter into a charging agreement with us which will involve a charge at an hourly rate of £125, with a capped maximum of £5,000 for each waste derived product or by-product.

# 1. Material Facilities

## 1.1. Introduction

We are required by Government to recover the costs of our regulatory services from the businesses we regulate.

An amendment to the Environmental Permitting Regulations setting mandatory sampling and reporting requirements for certain qualifying Materials Facilities has been laid in Parliament. The amendment, the Environmental Permitting (England and Wales) (Amendment) Regulations 2014 became law in March 2014, with the Schedule covering Materials Facilities requirements coming into force from October 2014.

The Regulations require qualifying Materials Facilities to sample the incoming material and the recycling streams they produce, assess the quality and report the data to us. This is an enforceable condition imposed by the Regulations. We will make inspections to check sampling. We will also publish the data reported to us.

## 1.2. What changes does the new legislation introduce?

The amendment varies permits of qualifying Materials Facilities to impose the new requirements. We do not need to vary the permit ourselves. It will require Materials Facilities' operators to self assess whether their facility qualifies.

For each quarterly reporting period commencing after 30 September 2014, the operator of a Materials Facility must assess the amount of mixed waste material that facility is likely to receive during an annual reporting period having regard to:

- the amount of mixed waste material received at that facility during the preceding 12 months, and
- the anticipated amount of mixed waste material that will be received by that facility during the next 12 months.

The operator must assess whether their facility qualifies at the start of a quarterly reporting period and is responsible for notifying us no later than the end of the quarterly reporting period. Notification continues until withdrawn so an ongoing notification will not require repeated notification to the Environment Agency.

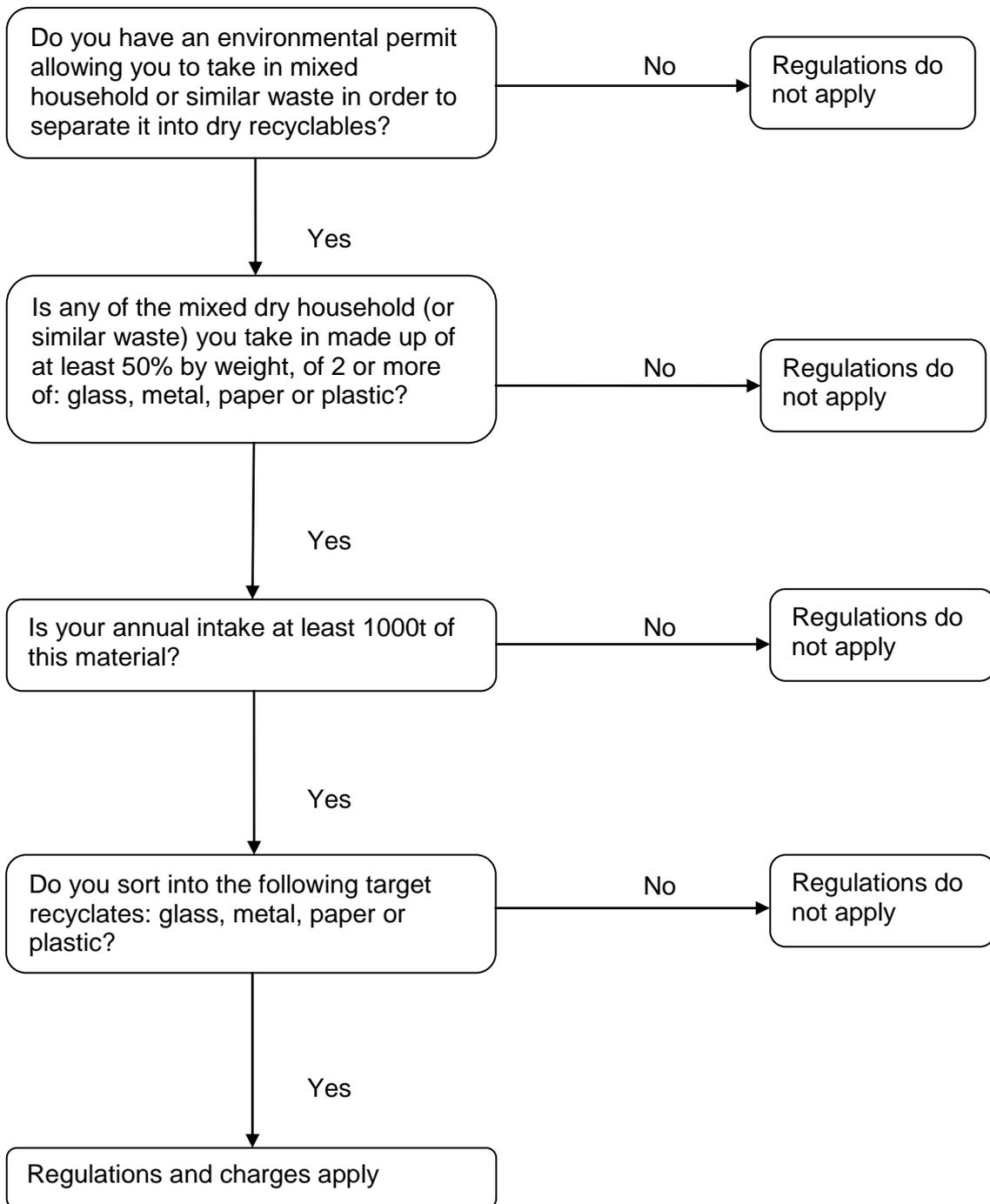
An operator may withdraw notification at any time if circumstances change and the operator is not likely to fulfil the applicable conditions in the 12 month period that commences on the first day of the reporting period.

If a facility qualifies, the operator must notify us and sample the waste, record results and report quarterly data to us. From October 2014 operators will have to sample and measure mixed waste inputs and recycling output streams, in accordance with requirements set in the regulations amendment and explained in forthcoming guidance to be published by the Waste Resources Action Programme (WRAP).

Operators who do not comply with the new requirements for Material Facilities will be advised of their responsibilities and may face enforcement action if there is continued non-compliance as they would for any other requirement of their permit. We will check quarterly reports have been made as required.

### 1.3. Which Materials Facilities qualify?

The following flowchart will show whether the new regulatory requirements apply to you.



## 1.4. Which Materials Facilities are unaffected?

You will not be affected by the regulations if your operation is limited to:

- Waste transfer or bulking activities not involving sorting.
- Sorting just one stream, for example, paper does not qualify as a mixed waste.
- Incoming waste is unlike household waste (i.e. contains trade or industrial waste of a type clearly not present in significant quantities in waste from a household) or does not contain the target materials.
- Household waste recycling facilities (civic amenity sites). Placing incoming waste in specific piles/bays is not sorting for the purpose of these regulations.
- An industrial material recovery facility taking large sized waste (e.g. in skips), not comprising household or household-like waste.
- Only treating residual waste ('dirty' Materials Facilities), tending to be black bag mixed and wet waste - not dry recyclables.
- Mechanical Biological Treatment (MBT) unless Mixed Waste Material is accepted for any Materials Facilities operations that form part of the process.
- A Refuse Derived Fuel plant without a sorting facility.
- Waste Electrical and Electronic Equipment, waste batteries and accumulators.
- Separating only materials from construction and demolition waste (i.e. C&D Materials Facilities)

The requirements only apply to permitted Materials Facilities; they do not apply to exempted facilities.

## 1.5. What does the Material Facility charge cover?

The charge will be levied annually at a rate of £2,240 per annum. It has been set at a level to recover our regulatory costs, i.e. the extra time required for specific compliance and data handling activities in addition to our existing work associated with these sites.

These additional activities are planned to be:

- maintaining records of who has notified as qualifying,
- one pre-arranged inspection per site each year to check sampling, measuring and recording systems to ensure reported data is representative,
- one unannounced inspection per site each year for the same purpose,
- a small number of short additional visits to underperformers,
- receipt of reported data, chasing missing submissions, putting it on public registers, dealing with data queries and forwarding the combined data set for publication on the web,
- administrative and IT system support costs associated with the above.

The charge of £2,240 is more than the originally envisaged figure of £2,000 because we now have a clearer understanding of the amount of data that will have to be handled and will need more resources and a system to manage it.

Question1: Given that we have to recover our costs, do you support the activities listed and therefore a charge for applicable facilities of £2,240 per annum?
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## 1.6. When does billing take place?

Charges will be raised in arrears and billed in February of each year, for all reporting periods of the previous calendar year that were covered by a notification. Notifications may be withdrawn by operators at any time if they consider that their facility is no longer likely to qualify under the Regulations. Where a notification is withdrawn, charges will terminate from the start of the reporting period immediately following the date of receipt of the withdrawal notice.

In the first year of charging (invoices issued February 2015, relating to the period ending 31 December 2014) the charge will be one third of the annual rate (£750) to reflect the regulations coming into effect late in the year - we have set up costs but a lesser number of inspections. From February 2016 we will charge at the full annual rate applicable, currently proposed to be £2,240. Charges would be levied on a pro-rata quarterly basis reflecting those quarters covered by a notification in the relevant calendar year. We have to do our work even if a site then failed to meet the criteria, so there will be no refunds.

## 1.7. How to notify

Operators of Materials Facilities must assess whether they qualify and, if they do, must notify us at [MFregs@environment-agency.gov.uk](mailto:MFregs@environment-agency.gov.uk) as soon as possible and at the latest by the end of December 2014. The obligation to notify is a permit condition imposed by the Regulations. Our local staff can advise on the criteria if operators are in any doubt.

We have produced an email template to help you notify. Click this link: **MF Notification Email** to open the e-mail, complete the required information and send it to us. Alternatively you can create your own e-mail. If you do this, when notifying please put "Notification" followed by the site name in the subject line. In the text you must give: permit number, operator name, site name, site address including post code and your contact details, including a telephone number in case we need to check anything with you.

## 1.8. Links

The EP Regulations amendments can be found at:

<http://www.legislation.gov.uk/ukxi/2014/255/contents/made>

The final impact assessment can be found at:

<http://www.legislation.gov.uk/ukxi/2014/255/impacts>

Defra's consultation, including initial impact assessment, on the regulations can be found at:

<https://www.gov.uk/government/consultations/draft-materials-recovery-facility-mrf-regulations-for-insertion-into-environmental-permitting-england-and-wales-amendment-regulations-2013>

Summary guidance on who qualifies, sampling and reporting can be found at:

[www.wrap.org.uk/content/sorting-materials-materials-recovery-facilities-mrfs](http://www.wrap.org.uk/content/sorting-materials-materials-recovery-facilities-mrfs)

Detailed guidance should also be published there shortly.

# 2. National Definition of Waste Panel

## 2.1. Introduction

The Environment Agency has an established National Definition of Waste (DoW) Panel. Its role is to provide advice upon request on the definition of waste on a consistent basis. The Panel supports business by helping to identify where end of waste has been demonstrated and therefore when waste regulatory controls no longer apply. The work of the Panel makes a significant contribution to our corporate commitment to support businesses to use resources wisely.

There is no statutory obligation to provide the current service in relation to advice on the definition of waste, though it is clearly helpful for business if we do and it is within our powers to give that advice. We believe the Panel is the most effective way of providing consistent, expert advice for contentious or nationally significant submissions.

The Panel is an advisory service and there is no income to fund this work. We currently receive around 50-60 submissions per year. Given the increasing rate of submissions over the past few years and the increase in high profile challenges, the costs to continue to run the Panel as it is, are likely to rise.

We calculate that the current staffing costs are in excess of £200,000 per year.

## 2.2. New charging proposal to fund the work of the National Definition of Waste Panel

We propose to introduce a new charging arrangement to fund the ongoing work of the National Definition of Waste Panel. This will involve introducing a charge to support the assessment of individual applications for end-of waste status and will not affect those meeting end-of-waste criteria already laid down at European or national level. On the basis that operators are seeking advice about putting a product as a non waste onto the open market and not seeking a determination for the purpose of deciding whether a permit is required, we propose to set this charge under our general charging powers (section 43 of the Environment Act 1995).

If a customer would like the opportunity to seek our view on whether their material meets end of waste or if it is a by-product, we will require them to enter into a charging agreement with us at the hourly rate of £125. To provide certainty for applicants, a cap of £5,000 will be placed on each submission seeking advice on one waste-derived product or by-product. For advice on multiple waste-derived products arising from one waste stream, we propose that there will be a maximum cap of £5,000 for each waste-derived product.

## 2.3. Who will be affected by the proposed charge?

The types of businesses that seek our opinion on end of waste are predominantly small and medium enterprises, although we have given advice to large multinational companies.

For the calendar year 2013 the panel received 49 submissions. These submissions can be broken down as follows into the 4 main types based on the use to which the waste-derived product is destined for:

- Materials to land (e.g. fertilisers and soil conditioners): 14 new submissions (29%).
- Use as a fuel: 9 new submissions (18%).
- Use in construction (e.g. as an aggregate): 14 new submissions (29%).
- Use in manufacturing (e.g. recovery of chemicals to use in another manufacturing process): 12 new submissions (24%).

## 2.4. How customers benefit from using this service

The cost of this chargeable service to industry should be insignificant compared to the potential financial gains through increased market value of the material and removal of permitting costs.

Every submission to the Panel is different and the benefits are wide ranging. Here are two examples to show the benefits that an end of waste decision can bring:

1. The National Definition of Waste Panel has given a positive end of waste view for a national plastic pipe manufacturing firm supplying the construction industry. This has provided regulatory clarity for the operator and has enabled waste plastics to be sourced locally to the pipe manufacturer. This will end the current need for the company to import plastic flake from across, and even outside, the UK.
2. Another positive view from the National Definition of Waste Panel in 2013 has been given to a large rendering plant which processes animal by-products to produce tallow (used as a fuel) and meal (used in pet food). The view means that about 30,000 tonnes per year of tallow can now be used as a replacement for heavy fuel oil in certain applications without the need for compliance with duty of care and waste incineration requirements.

For those customers who did not wish to incur a charge we will be offering free web tools and guidance for them to make their own determinations. These should be available from April 2015.

If the decision is made that a particular waste does not meet end of waste criteria and its treatment/use requires a permit, the customer would then be eligible to access up to 15 hours of free pre-application advice in accordance with our Environmental Permitting Charging Scheme.

The cost recovery will speed up the review process, as every Panel member would be resourced to spend dedicated time on reviewing submissions. Discussions with industry at a number of events including an Environmental Services Association Regulators meeting in September 2013 suggested support in principle for such a charge, particularly if it helped to ensure this service remained and that the speed of response improved.

Question 2: Do you support our proposal to recover our costs of continuing to administer the Definition of Waste Panel by introducing charges?

Question 3: Would you use the service provided by the Panel following the introduction of these charges?

## 3. Invitation to consultees

We welcome comments from consultees on the proposals outlined. Your comments, and our responses, will form part of our formal submission to Defra for approval.

Please respond to the consultation no later than 20 June 2014.

### 3.1. Responding to this consultation

#### How to respond

As part of government's Digital First approach, we would encourage you to respond online – please copy and paste the following link to your browser:

<https://consult.environment-agency.gov.uk/portal/ho/finance/recoveryfacilities/recoverycharges>

However, if you would rather respond by post, please send your completed response form to:

Alan Day  
Head of Charges  
Environment Agency  
Horizon House  
Deanery Road  
Bristol  
BS1 5AH

Or e-mail your completed response form by the closing date to:

[eacharges\\_consultations@environment-agency.gov.uk](mailto:eacharges_consultations@environment-agency.gov.uk)

To request a hard copy of the consultation documents and/or response form, please contact us on 03708 506 506 (Monday - Friday, 8am - 6pm).

### 3.2. Publishing our consultation results

We will publish our full response to the consultation by the end of August 2014. It will include summary comments and queries we received in responses and will outline our recommendations taking these into account. The report will be on our website and circulated to all consultees and other interested parties.

#### How we will use your information

Throughout the consultation we will look to make all comments (excluding personal information) publicly available on the gov.uk website. This includes comments received online, by email, post and by fax, unless you have specifically requested that we keep your response confidential. We will not publish names of individuals who respond, but will publish the name of the organisation for those responses made on behalf of organisations.

If you respond online or provide us with an email address, we will acknowledge your response. After the consultation has closed we will publish a summary of the responses on our website. We will contact you to let you know when this is available. We will also notify you of any forthcoming consultations unless you tell us otherwise.

In accordance with the Freedom of Information Act 2000, we may be required to publish your response to this consultation, but will not include any personal information. If you have requested your response to be kept confidential, we may still be required to provide a summary of it.

### 3.3. Consultation principles

We are running this consultation in accordance with the guidance set out in the [government's consultation principles](#)<sup>1</sup>.

If you have any questions or complaints about the way this consultation has been carried out, please contact:

Monica Maya  
Consultation Co-ordinator  
Environment Agency  
Horizon House  
Deanery Road  
Bristol  
BS1 5AH

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<sup>1</sup> <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

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