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Consultation on a Strategy for Hazardous Waste Management in England

A consultation document issued by the Department for Environment, Food and Rural Affairs

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Introduction

Purpose of the consultation

1. This consultation is published by the Department for Environment, Food and Rural Affairs (Defra) to gather views on the publication of a strategy for hazardous waste management in England. The proposed strategy has been conceived to underpin the practical application of the revised Waste Framework Directive 2008/98/EC (WFD) and in particular the requirements that apply to hazardous waste.

Why do we need a strategy?

2. **Clarity** is needed on how the requirements of the revised WFD should be implemented, particularly the revised waste hierarchy with respect to the management of hazardous waste. The revised hierarchy has five steps which shall apply as a priority order in waste prevention and management legislation and policy: a) prevention; b) preparing for re-use; c) recycling; d) other recovery, e.g. energy recovery; and e) disposal. Defra is consulting separately on how the revised waste hierarchy should be transposed in England, as part of the first stage consultation on the transposition of the revised WFD.
3. The strategy is also intended **to facilitate the provision of infrastructure for the management of hazardous waste**. The Waste Strategy for England 2007 identified infrastructure and capacity needs for the treatment and disposal of hazardous waste. A table summarising facility needs for hazardous waste management in England was included¹, and a summary of that table is included at Annex 1. To a large extent those needs would appear to continue to exist, although **we would welcome comments on whether and if so how the identified needs should be updated**.
4. Discussion with the Environment Agency and the waste sector in 2008 and 2009 has made it clear that there is still a need to steer waste producers and waste managers on the appropriate treatment for certain hazardous waste streams – especially those traditionally landfilled before the Landfill Directive (1999/31/EC) provisions came into force such as oil and solvent contaminated waste residues, contaminated soils, air pollution control residues, acids and sludges. The figures in Annex 2 show the recent trend is for less hazardous waste to be landfilled and more treated and recycled. Further information on hazardous waste arising and trends is at Annex 2 and on the Environment Agency's website².
5. It is recognised that investments in new treatment technologies require some **certainty** that the facilities will be used, and although in recent years there has been investment in above ground treatment systems, more may be possible with greater certainty of use. Furthermore, waste producers and waste managers have tended to put in place the minimum level of treatment required and have not always sought to push waste up the hierarchy – even where ultimately this can

¹ See: <http://www.defra.gov.uk/environment/waste/strategy/strategy07/pdf/waste07-annex-c9.pdf>

² See: <http://www.environment-agency.gov.uk/research/library/data/97801.aspx>

lead to cost savings such as in the prevention of hazardous waste, or in gaining value from recovered material. This is particularly important in the current economic downturn.

6. The principal aim of the proposed strategy is to deliver sound and, where necessary, improved hazardous waste treatment. It is expected that associated hazardous waste management practices and new infrastructure will meet existing regulatory requirements, including those of the revised WFD, the Integrated Pollution Prevention and Control Directive (2008/1/EC), and the Landfill Directive, and as a result help to secure **environmentally sound management of hazardous waste**³, a concept set out in the UN Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Of particular note is the clear signal in the strategy to waste producers, waste holders and waste managers to adopt the revised waste hierarchy in the WFD and **to secure protection of the environment and human health**.
7. The proposed strategy envisages that, in line with the Government's wider policies on resource recovery, there is **a determined need to tackle climate change, and to take the opportunity to encourage the recovery of material or energy from hazardous waste** thus further reducing England's reliance on landfill.
8. The proposed strategy for hazardous waste management in England complements Defra's approach to commercial and industrial waste more generally. It does not cover waste classified as nuclear/radioactive waste under the Radioactive Substances Act 1993 (except in the limited circumstances where such waste do not meet the criteria set out in Section 2 of the Radioactive Substances Act (RSA)), as they are dealt with separately by the RSA and Managing Radioactive Waste Safely MRWS programme.

Proposed structure of the strategy

9. The strategy comprises:
 - Seven high level **principles** for the management of hazardous waste.
 - A set of **outline decision trees** to assist waste producers and waste managers to make the right decisions about the management of their waste and the investment in infrastructure to help move hazardous waste management up the waste hierarchy.
 - A **timeline** of action on issues relating to the introduction and implementation of the strategy.
 - A list of **guidance** relating to the treatment of hazardous waste.

³ Environmentally Sound Management means taking all practical steps to minimize the generation of hazardous wastes and strictly controlling its storage, transport, treatment, reuse, recycling, recovery and final disposal, the purpose of which is to protect human health and the environment. See: <http://www.basel.int/convention/basics.html>

10. The different parts of the strategy should be complementary. The principles are overarching, set the broad framework and should be the first point of consideration in decision making. The outline decision trees provide examples for the management of specific hazardous wastes and are intended to provide a supporting tool for decision making on hazardous waste management. It is recognised that supplementary guidance could be needed to add specific detail.
11. This strategy does not seek to prescribe or set out in detail the treatment technique for every individual hazardous waste stream. Instead it seeks to set out a framework to help hazardous waste producers and hazardous waste managers find the best solution for their waste streams. It seeks to encourage a programme of facility development over the next 5-10 years. It is recognised that the strategy could be complemented by the production of more detailed guidance for specific sectors, which would be worked up by Defra and the Environment Agency.
12. As already noted, it is not envisaged that the strategy will increase costs for hazardous waste producers or the hazardous waste sector more generally. This is because hazardous waste currently has to be treated in accordance with EU and domestic legislative requirements anyway. Furthermore, hazardous waste that is disposed to landfill is subject to the Landfill Tax, which currently imposes a cost on hazardous waste producers. There will be potential savings where hazardous waste is diverted from landfill. In addition, evidence shows that techniques that lead to waste prevention, lead to costs savings. See for example work undertaken by the National Industrial Symbiosis Programme (NISP) in relation to hazardous and problematic waste streams⁴.

Who has an interest in the consultation?

13. The strategy is aimed at the environmentally sound management of hazardous waste. The fulfilment of this objective is of interest to everyone - members of the public, local authorities, trade associations, businesses, non-governmental organisations and consumer groups. Virtually all businesses produce some hazardous waste.
14. A list of those who are being consulted is available on the Defra website at <http://www.defra.gov.uk/corporate/consult/hwm-strategy/index.htm>. If you are aware of anyone or any organisation that might be interested in seeing and commenting on the consultation paper but is not listed, please let us know and a copy will inform them. Any such suggestions should be sent to the contact point shown in paragraph 21 below.

How to respond

15. The closing date for the submission of responses is 13 October 2009. Responses should be sent by post, email or fax to:-

**Hazardous Waste Strategy Consultation
Hazardous and International Waste Unit
Department for Environment, Food and Rural Affairs**

⁴ See: <http://www.nisp.org.uk>

Area 6D Ergon House
17 Smith Square
LONDON SW1P 3JR

E-mail: hiwu@defra.gsi.gov.uk
Fax: 020 7238 4860

16. Respondents are requested to explain who they are and, in the case of representative groups, to give a summary of the people and/or organisations they represent. Defra will send an acknowledgement to confirm receipt of each response.

Publication of responses

17. When this consultation ends, we intend to put a copy of the responses in the Defra library at Ergon House, London. This is so that the public can see them. Also, members of the public may ask for a copy of responses under freedom of information legislation.
18. If you do not want your response - including your name, contact details and any other personal information – to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that will not count as a confidentiality request.
19. Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, we cannot promise that we will always be able to keep those details confidential. We will summarise all responses and place this summary on our website at <http://www.defra.gov.uk/corporate/consult/default.asp> . This summary will include a list of names of organisations that responded but not people's personal names, addresses or other contact details.

Outcome of consultation

20. Defra will consider all of the responses to the consultation and will publish a report summarising the consultation responses as soon as possible thereafter.

Consultees' Questions

21. The address to which responses to the consultation paper should be sent is at paragraph 15 above. Any **questions** about the consultation may be addressed to:-

Olu Ogunbadejo
Hazardous and International Waste Unit
Department for Environment Food and Rural Affairs
Area 6D Ergon House
17 Smith Square
LONDON SW1P 3JR

E-mail: olu.ogunbadejo@defra.gsi.gov.uk
Tel: 020 7238 4335
Fax: 020 7238 4860

Comments or complaints

22. Comments or complaints about the consultation process (as opposed to comments about the issue which is the subject of the consultation) should be addressed to:-

Marjorie Addo
Consultation Coordinator
Department for Environment, Food and Rural Affairs
Area 7C Nobel House
17 Smith Square
LONDON SW1P 3JR
Email: consultation.coordinator@defra.gsi.gov.uk.

Consultation criteria

23. The consultation paper has been prepared in line with the principles set out in H.M. Government's "Code of Practice on Consultation" (July 2008)⁵. The Code's consultation criteria are reproduced in Annex 4.

⁵ Available at: <http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>.

Draft Strategy for Hazardous Waste Management in England

24. The following section of this consultation paper seeks comments on the draft strategy, which is formed of four parts: Part 1 lists a set of seven principles for the environmentally sound management of hazardous waste; Part 2 contains outline decision trees to help waste producers and waste managers find the best management solution for their hazardous wastes; Part 3 is a timeline for implementation and Part 4 is a list of relevant Defra, Environment Agency and other guidance and proposed further guidance.
25. Each principle is based on a legal requirement stemming from European Directives, or a combination of these. Each principle is taken in turn and the justification is set out and how each principle will be achieved in practice. **Consultees are invited to comment on whether they support each principle and its justification, and if not to offer reasons why not.** A consultation question follows each principle. Text from relevant parts of EU Directives and Decisions which support each of the principles is reproduced in Annex 3.

Part 1: Principles for the Environmentally Sound Management of Hazardous Waste

The following principles are set out to encourage the continued investment in England in new and more effective technology to manage hazardous wastes in an environmentally sound manner, as defined by the Basel Convention, and in particular to help waste producers and the waste industry to meet waste legislative requirements. The Government considers that the principles provide a framework promoting the best overall environmental option for hazardous waste management consistent with the Waste Framework Directive (2008/98/EC). They are supported by the Environment Agency who will use them to guide their approach on the permitting and enforcement of hazardous waste treatment facilities, and the application of other hazardous waste controls.

Principle 1 – the waste hierarchy

a. Hazardous waste should be managed by waste producers and waste managers in accordance with the EU waste hierarchy. In applying the hierarchy, hazardous waste producers and waste managers shall opt for hazardous waste management that takes into account the resource value of hazardous wastes, and the need for

health and safety to be maintained and delivers the best overall environmental outcome. This may require specific hazardous waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

b. The hierarchy shall apply as a priority order in line with the Waste Framework Directive (2008/98/EC):

- a. Prevention
- b. Preparing for re-use
- c. Recycling
- d. Other recovery, e.g. energy recovery and
- e. Disposal.

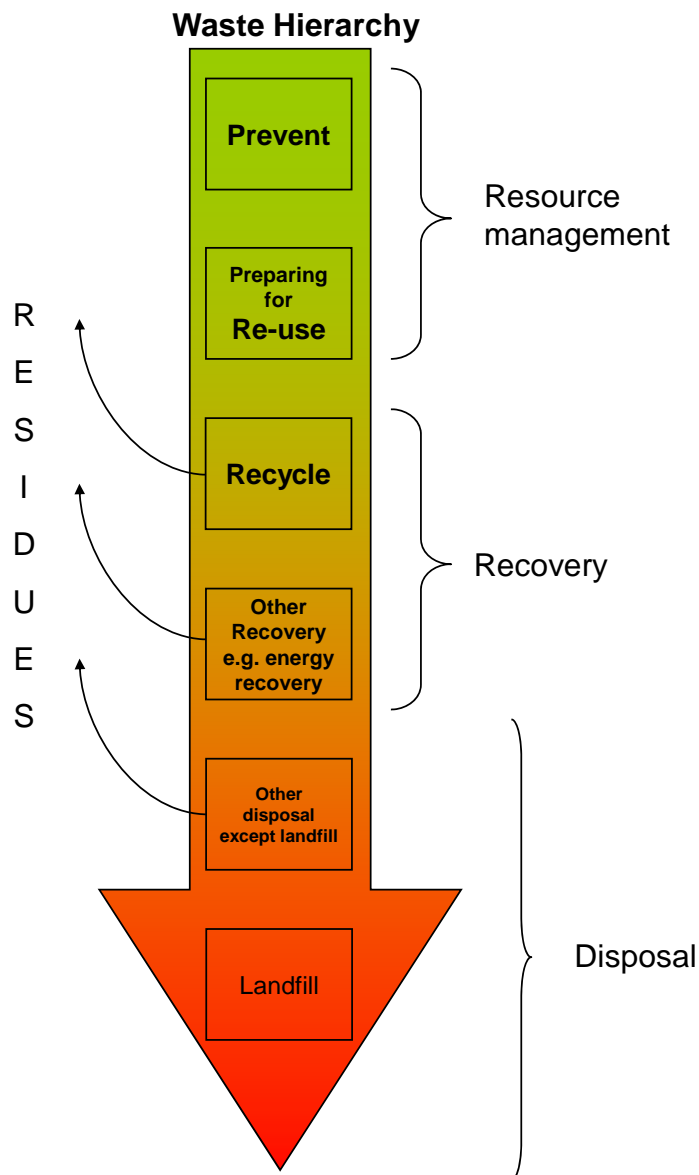
Prevention includes measures that reduce the adverse impact of hazardous waste on the environment and human health and reduce the content of harmful substances in materials and products.

Justification for Principle 1

26. This principle is based directly on the agreed waste hierarchy in article 4 of the revised Waste Framework Directive (2008/98/EC) (“the WFD”). Article 4 requires the hierarchy to apply as a priority order in waste prevention and management legislation and policy. Furthermore, Article 15 of the revised WFD requires Member States to ensure that any original waste producer or other holder treats waste himself, or has the treatment handled by an establishment or undertaking in accordance with the waste hierarchy. Article 3 of the Integrated Pollution Prevention and Control Directive (IPPC) also requires competent authorities to ensure that the permits of installations subject to IPPC apply the hierarchy.

27. Figure 1 shows the waste hierarchy for hazardous waste management as supported by the principles, with prevention at the top and disposal at the bottom. Certain processes in the hierarchy can produce residues, which in turn should be managed in accordance with the hierarchy.

Figure 1 The Waste Hierarchy



28. When applying the waste hierarchy, Member States are required to take measures to encourage options that deliver the best overall environmental outcome (BOEO) for all waste, including hazardous waste. In order to deviate from the hierarchy, robust evidence would have to be provided that showed in life-cycle thinking that there were benefits in terms of the impacts on the generation and management of such waste. The BOEO is thus seen as a broad concept steering overall waste management, and is only applicable to an individual waste stream when deviating from the established hierarchy.

How will this be achieved?

29. Government is in the process of consulting on transposition of the revised Waste Framework Directive. The target for putting in place the required legislation is 12

December 2010 – in line with the Directive's requirements. Article 4 of the revised Directive requires Member States (MS) to apply the hierarchy in waste prevention and management legislation and policy, and Article 15 requires MS to ensure that waste producers apply the waste hierarchy to the waste they produce. The way this will be achieved in England and Wales is the subject of the first stage consultation on the transposition of WFD published in July 2009. Possible options include embedding the hierarchy more clearly in legislation and in the waste permitting and waste planning processes, such as already exists for IPPC installations.

30. In terms of hazardous waste, where the production of hazardous waste cannot be prevented, opportunities for recycling and recovery should be fully investigated with disposal being the last resort.
31. Where prevention (in the hierarchy) refers to the reduction of harmful substances, it is only applicable to materials and products other than waste.
32. The outline decision trees for the management of hazardous waste (see Part 2 below) are based on the hierarchy, and these give further assistance to waste producers and managers.

Question 1: Do you support principle 1? If not please explain, and what changes, if any, you think are needed.

Principle 2 – Infrastructure provision

We look to the market for the development of hazardous waste infrastructure, which implements the hierarchy for the management of hazardous waste and meets the needs of the UK to ensure that the country as a whole remains self sufficient in hazardous waste disposal and the proximity principle is met.

Justification

33. Article 10 of the revised WFD requires Member States to ensure that waste undergoes recovery operations in accordance with the waste hierarchy in Article 4 and without endangering human health or the environment (Article 13). The revised WFD also restates the principles of proximity and self sufficiency. Article 16 requires that a network of waste disposal installations is available to enable the Community as a whole to be self-sufficient in waste disposal, including hazardous waste disposal, for MS to move towards that aim individually, and to enable waste to be disposed of in one of the nearest appropriate installations. The UK applies this principle of self sufficiency through the general prohibition on

shipments of waste to and from the UK for disposal which is set out in the UK Plan for Shipments of Waste⁶.

34. The Waste Shipments Regulation ((EC) No 1013/2006) (WSR) provides grounds for competent authorities (EA for England and Wales) to raise objections to shipments of waste. There are stronger grounds for refusal of shipments for disposal (Article 11), for example where such shipments are contrary to a waste management plan under the WFD – such as the UK Plan for Shipments of Waste.
35. For shipments for recovery, under certain circumstances, competent authorities can object to shipments where the planned recovery would be in a facility which has lower treatment standards for the particular waste than those of the country of dispatch (Article 12(1)(c)), or where the waste is proposed for treatment in a facility subject to IPPC but which does not apply best available techniques (Article 12(1)(i)).
36. In terms of the proximity principle, the Waste Strategy for England 2007 acknowledges that the regional distribution of hazardous waste facilities is not matched to regional arisings, and that whilst there are facilities serving national need, and that hazardous waste has always travelled across regional boundaries, there is scope for reducing the number and length of these movements with a regional distribution of facilities more closely matched to regional arisings. Waste Strategy 2007 also made an assessment of facility needs for hazardous waste management in England⁷, and a summary of that table is included at Annex 1. Those needs would appear to continue to exist, although we would welcome comments on whether and if so how the identified needs should be updated.

How will this be achieved?

37. Market investment in the provision of infrastructure for the treatment of hazardous waste requires some certainty that the facilities will be used. This comes to some extent from the application of all the principles in this strategy, especially the waste hierarchy, but also through the permitting process, enforcement activity of the Environment Agency and, for new infrastructure, the planning system.
38. EA is also the competent authority for the waste shipment controls in England and Wales, and the UK Transfrontier Shipment of Waste Regulations 2007 require UK competent authorities to object to shipments for disposal thus providing for UK national self sufficiency in the disposal of waste.
39. For shipments of hazardous waste for recovery, facilities in the UK compete with those in Europe and the rest of the OECD⁸, as hazardous waste can be exported for recovery to the EU and other OECD countries. Such shipments are subject to prior notification and consent from the competent authorities of destination and despatch. Where evidence is presented to a competent authority concerning a proposed shipment of hazardous waste for recovery that shows grounds for objection exist under Article 12 of the WSR (see paragraph 35 above), then the

⁶ See: <http://www.ni-environment.gov.uk/waste-shipments.pdf>

⁷ See: <http://www.defra.gov.uk/environment/waste/strategy/strategy07/pdf/waste07-annex-c9.pdf>

⁸ Organisation for Economic Cooperation and Development

competent authority can raise an objection to that shipment to prevent it happening.

40. Whilst waste may be exported for recovery, in general there will be additional transport and shipping costs involved, as well as the costs of complying with the waste shipment and dangerous goods controls. Any recovery must be in plant which meets EU requirements – that means environmentally sound management and in practice a plant that applies best available techniques.
41. The planning system is pivotal to the adequate and timely provision of facilities for hazardous waste recovery and disposal close to where that waste arises, although hazardous wastes are required to be moved between regions to facilities that support national or multi-regional need. National planning policy for waste is set out in Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10), which contains guidance for regional authorities and waste planning authorities on searching for and deciding which sites and areas to identify for waste management facilities.
42. Under the Planning Act 2008, Government is developing a National Policy Statement on hazardous waste to assist the new Infrastructure Planning Commission (IPC) to consider applications for facilities that provide for the recovery or disposal of hazardous waste in England. In the case of hazardous waste, this means plant whose main purpose is the final recovery or disposal of hazardous waste, with a permitted hazardous waste throughput capacity in excess of 30,000 tonnes per annum or, in the case of hazardous waste landfill or deep storage facility for hazardous waste, a permitted hazardous waste throughput or acceptance capacity in excess of 100,000 tonnes per annum.
43. Whilst National Policy Statements will set out national policy on nationally significant infrastructure development, applications for developments below the thresholds will continue to be considered by waste planning authorities under the existing planning system. However, NPS principles may ultimately feed through to the consideration of planning applications for facilities below the thresholds.

Question 2: Do you support principle 2? If not please explain, and what changes, if any, you think are needed.

Question2a: Do you agree that the needs for hazardous waste infrastructure for England identified in Waste Strategy 2007 at Annex 1 continue to exist and if not, how should they be amended?

Principle 3 – Reduce our reliance on landfill

We must continue to reduce our reliance on landfill for hazardous waste, which should only be used where, overall, there is no better recovery or disposal option.

Justification

44. This principle is based on the agreed waste hierarchy in Article 4 of the revised WFD. Landfill is bottom of the hierarchy. It represents a lost opportunity for the recovery of materials or energy. It can lead to increased climate change impacts, and to longer term contamination of air, land and water. Recital 8 of the Landfill Directive also calls for a reduction in reliance on landfill. Although there is a place for a relatively small amount of landfill in hazardous waste management, for most wastes, other methods of hazardous waste management provide a better environmental outcome.

How will this be achieved?

45. As for principle 1, this will be achieved through the application of the waste hierarchy in waste management legislation and policy. Other drivers include the landfill tax and the associated escalator which discourage landfill. The removal of the landfill tax exemption for contaminated soils is likely to be already driving an increase in planned treatment. The stringent technical requirements that apply to hazardous waste landfill are also a driver to divert hazardous wastes from landfill, for example through the application of the waste acceptance criteria. The planning system already has a role in restricting the availability of landfill.

Question 3: Do you support principle 3? If not please explain, and what changes, if any, you think are needed.

Principle 4 – No mixing or dilution

Where hazardous waste cannot be prevented, waste producers and waste managers:

- a. shall not mix⁹ different categories of hazardous waste, or mix hazardous waste with other waste, substances or materials, unless under the terms of an environmental permit, and the mixing operation conforms to Best Available Techniques, (as identified in Article 2 of the Integrated Pollution Prevention and Control Directive)
- b. shall not treat hazardous waste by the dilution of hazardous substances and,
- c. must keep organic hazardous waste fractions separate from other streams to assist with their subsequent management in line with the hierarchy.

⁹ Mixing includes the dilution of hazardous substances

Justification

46. This principle stems directly from provisions in the revised WFD. Article 18 restates the ban on mixing hazardous waste, except under the terms of a permit.
47. Dilution is expressly prevented by the revised WFD (Articles 7(4) and 18) which states that “the reclassification of hazardous waste as non-hazardous may not be achieved by diluting or mixing the waste with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.”
48. Article 18(1) prohibits the mixing of different categories of hazardous waste. Organic and inorganic hazardous wastes by their nature will be different categories, so should be kept separate. Organic constituents in hazardous waste landfill mobilise other substances, and thus could be regarded as harmful. Where organic wastes are biodegradable, LFD Art 5(1) applies to require their diversion from landfill.

How will this be achieved?

49. Hazardous waste producers and managers must consider hazardous waste prevention and where hazardous waste is produced, keep it segregated from non-hazardous waste as well as keeping different categories of hazardous waste separate, such as inorganic and organic hazardous wastes. The Hazardous Waste (England and Wales) Regulations 2005¹⁰ put in place the mixing ban, including obligations on hazardous waste producers.
50. Compliance with and enforcement of the Hazardous Waste Regulations will help achieve this principle, and the Regulations will need to be amended to fully reflect the requirements of the revised Waste Framework Directive. Hazardous waste producers and managers are responsible for meeting the requirements of the regulations and waste operators can identify concerns about management of hazardous waste to the regulator to help improve compliance. The Environmental Permitting Process will also provide the means for achieving the principle including through the regulation of existing and new permits and licences, and for example ensuring the application of best available techniques.
51. It is important to distinguish between organic and inorganic waste in the context of this principle and guidance on this point may be considered helpful. This will also be relevant for the outline decision trees in Part 2 of the strategy and to principle 5.

Question 4: Do you support principle 4? If not please explain, and what changes, if any, you think are needed.

¹⁰ S.I. 2005 No 894

Principle 5 – Treatment of organic hazardous wastes

Organic hazardous wastes that cannot be reused, recycled or recovered shall be subject to thermal treatment, where possible with energy recovery, or be treated using other best available techniques. No hazardous organic waste shall be landfilled unless the requirements of the Landfill Directive are met.

Justification

52. The main justification for this principle is to encourage the management of organic hazardous wastes higher up the waste hierarchy. Thermal treatment with energy recovery, even where this is a disposal operation, is higher up the hierarchy than landfill. However, it is recognised that not all existing thermal treatment plant currently employ energy recovery. Thus the principle encourages all new thermal treatment to use energy recovery and all existing thermal treatment to have it retrofitted. Where there is no energy or material recovery from the thermal treatment, then such treatment falls further down the hierarchy. Thermal treatment in this context is not meant to refer exclusively to high temperature incineration, but includes other alternative thermal treatments, including for example pyrolysis, gasification, vitrification, thermal desorption, or thermal depolymerisation. Other best available techniques could include biological treatment.

53. In addition to the application of the waste hierarchy, certain organic wastes are banned from hazardous landfill as a result of the waste acceptance criteria and the limits on total organic carbon. Thus there are legal requirements stemming from the landfill WAC.

54. Organic constituents in hazardous waste landfill mobilise other substances, and thus could be regarded as harmful, which would contravene the fundamental aim of the LFD (Article 1) and Article 17 of the WFD which requires storage and treatment of hazardous waste to be carried out in conditions protecting the environment and human health. Where organic wastes are biodegradable, LFD Art 5(1) applies to require their diversion from landfill. This principle is linked to principle 4c.

How will this be achieved?

55. The permitting of hazardous waste treatment plant and hazardous waste landfills will be a central element of this principle. In addition, the way that the waste hierarchy is applied as a priority order in waste management legislation is the subject of the separate first stage consultation on the revised WFD, and is also relevant. As for principle 4, a definition of organic in guidance may be considered helpful to support this principle.

Question 5: Do you support principle 5? If not please explain, and what changes, if any, you think are needed.

Principle 6 – End reliance on the use of Landfill Directive waste acceptance criteria derogations

The practice of relying on higher Landfill Directive waste acceptance criteria (derogation for 3x WAC) to enable hazardous waste to continue to be landfilled must end.

Justification

56. The Council Decision establishing the waste acceptance criteria (2003/33/EC) provides for derogations for up to three times WAC for specific parameters. Defra and EA have stated that use of such derogations is temporary, and that reliance on them should be phased out over time (statement of 23 July 2008).
57. Continued use of the derogations is a disincentive to alternative treatment being put in place and continues to encourage the landfilling of hazardous waste, which is contrary to proper application of the waste hierarchy.

How will this be achieved?

58. It is not envisaged that the current use of the three times WAC derogation would stop immediately, but instead would be a phased process to coincide with the development of alternative treatment. It is recognised for example, that too sudden a change might lead to the production of “problematic wastes” that have neither an alternative treatment available nor a place in landfill. EA lead on the process whereby WAC derogations are granted, and would phase them out using the permitting process. It is considered that use of all derogations should cease within at least 2 years from the proposed publication of the strategy (i.e. from December 2011), and sooner where alternative treatment is made available.
59. In some circumstances, it may be preferable to store wastes temporarily, under conditions that protect the environment and human health, in cases where a new treatment technology is being developed and implemented, rather than to continue landfilling such waste under the 3x WAC derogation. Any storage would have to be carried out under conditions that protected the environment and human health, and would have to be assessed on a case by case basis.

Question 6: Do you support principle 6? If not please explain, and what changes, if any, you think are needed.

Principle 7 – Treatment and landfilling of hazardous waste

Hazardous wastes treated for landfill should be assessed against all hazardous properties, including property H15 in the revised Waste Framework Directive

Justification

60. This principle is supported by changes to the list of hazardous properties listed in Annex III of the revised WFD. The new hazard property H15 (previously H13) requires that any waste that is capable of producing a substance (e.g. a leachate) with any of the H1-H14 hazards should be classed as hazardous waste. Thus the principle is emphasising the importance of the new H15 property to wastes that are treated for landfill.

61. To help define the H15 property, the European Commission-led review of the European Waste List has proposed that the method for measuring H15 be related to the waste acceptance criteria for stable non-reactive hazardous waste (SNRHW). If agreed in Europe, this would mean that any hazardous wastes treated to non-hazardous status would have to meet the SNRHW WAC if destined for a non-hazardous landfill.

How will this be achieved?

62. Hazardous wastes that cannot be prevented, re-used, recycled or recovered must undergo appropriate treatment to determine onward fate. These treatment operations are permitted, as are the receiving landfills for treated hazardous waste. Waste that remains hazardous under property H15 would not be able to be deposited in a non-hazardous landfill.

Question 7: Do you support principle 7? If not please explain, and what changes, if any, you think are needed.

Part 2: Outline Decision Trees for the Treatment of Hazardous Waste

63. Decision trees have been developed to support the Strategy for Hazardous Waste Management in England. They support the strategy objective of raising the bar of hazardous waste management through using the waste hierarchy to encourage recycling and recovery, and reducing reliance on landfill.

64. The foundation of improved waste management is the segregation of waste streams to facilitate recycling and recovery. This must start at producer level with source segregation on-site, and in the absence of this, must be the first step of any treatment. As noted above, Article 15(1) of the revised WFD requires Member States to ensure that **“any original producer or other holder carries out the [waste] treatment himself or has the treatment handled by a dealer or an establishment or undertaking which carries out waste treatment operations...in accordance with Article(s) 4... (the waste hierarchy)”**. Article 3(14) defines “treatment” as “recovery or disposal operations, **including preparation prior to recovery or disposal**”. Thus it is recognised that without stream segregation, compliance with the waste hierarchy is more difficult to achieve and will not deliver the best overall environmental outcome.

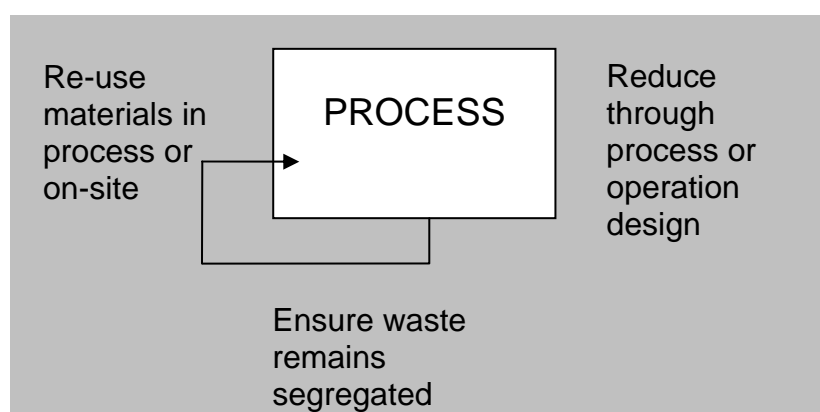
65. There are four decision trees for:

- All hazardous wastes (Figure 2)
- Hazardous Articles (Figure 3)
- Organic waste streams (Figure 4)
- Inorganic waste streams (Figure 5)

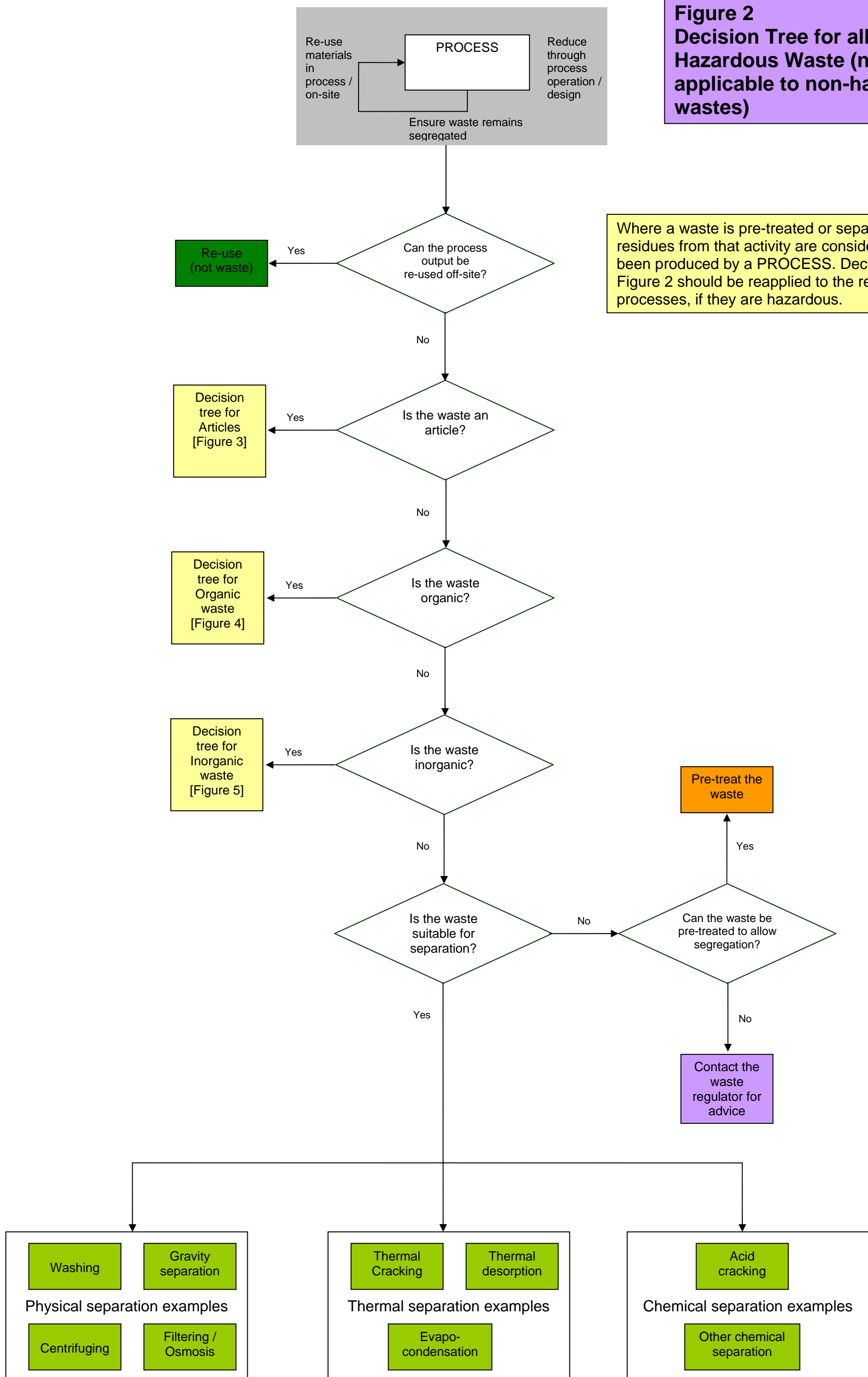
66. The decision trees should be applied to a waste stream on a case by case basis. They are not intended for the **direction** of waste, but are intended to help with the implementation of the waste hierarchy.

It may be necessary to develop associated guidance to facilitate the use of the decision trees (see consultation questions below).

67. For all operators of processes (including waste management processes), the prevention and reduction of wastes, and efficient segregation must be a primary consideration.(see box below):



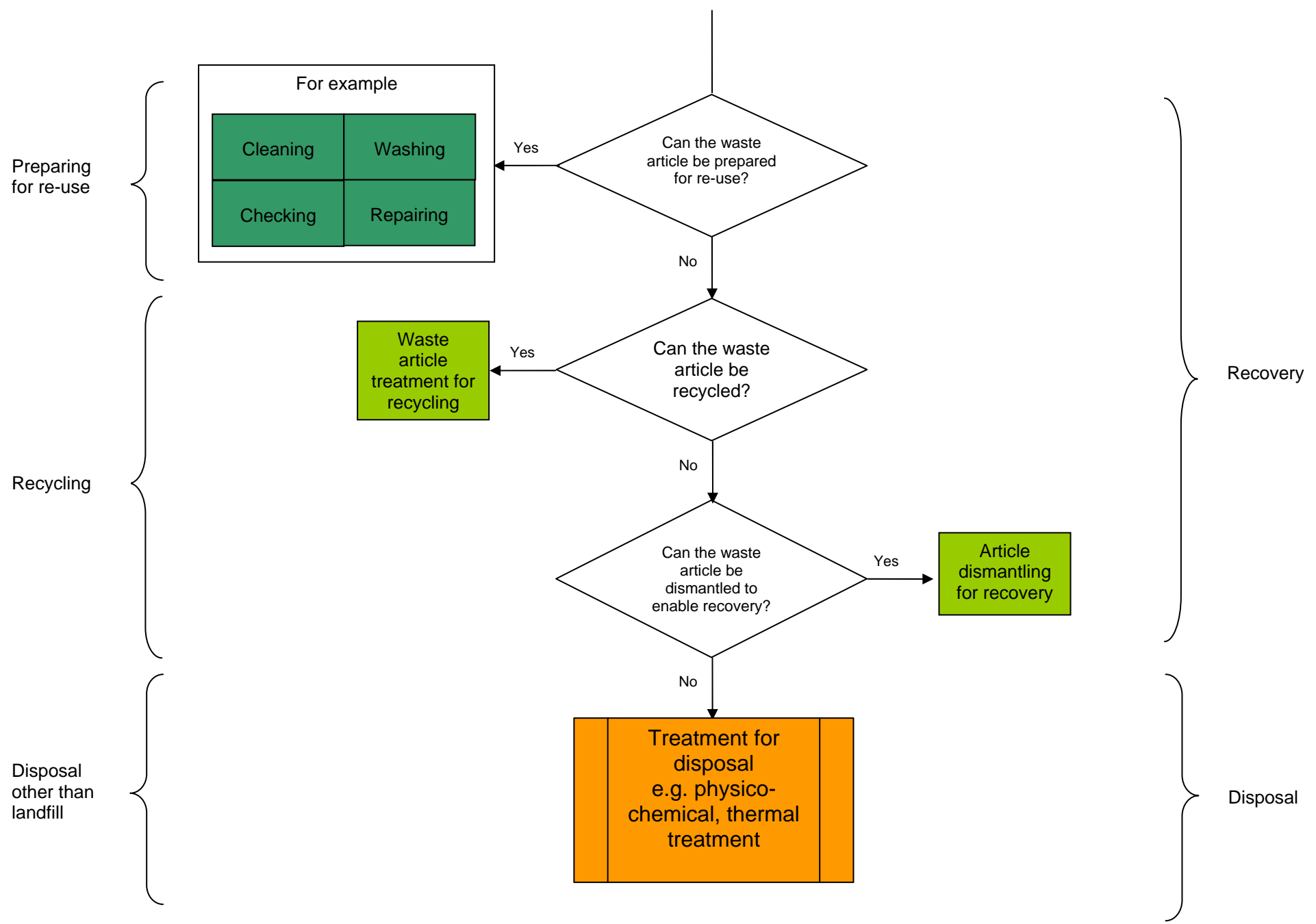
**Figure 2
Decision Tree for all
Hazardous Waste (not
applicable to non-hazardous
wastes)**



Where a waste is pre-treated or separated, the residues from that activity are considered to have been produced by a PROCESS. Decision tree Figure 2 should be reapplied to the residues of these processes, if they are hazardous.

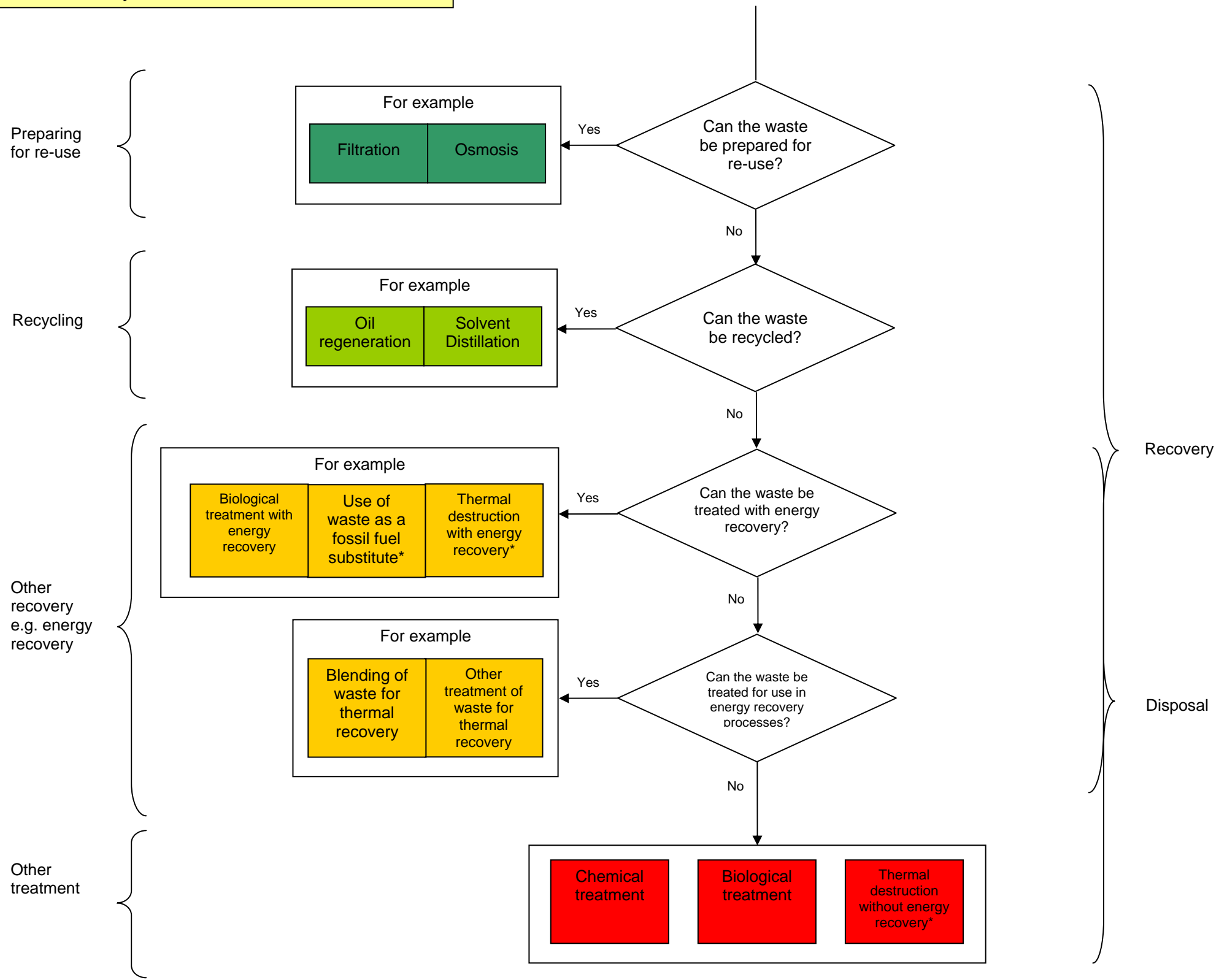
Where a waste is prepared for re-use, recycled, or treated for disposal, the residues from that activity are considered to have been produced by a PROCESS. Decision tree Figure 2 should be reapplied to the residues of these processes, if they are hazardous.

**Figure 3
Waste Decision Tree for
Hazardous Waste Articles**



Where a waste is prepared for re-use, recycled or blended / treated for recovery or disposal, the residues from that activity are considered to have been produced by a PROCESS. Decision tree Figure 2 should be reapplied to the residues of these processes, if they are hazardous.

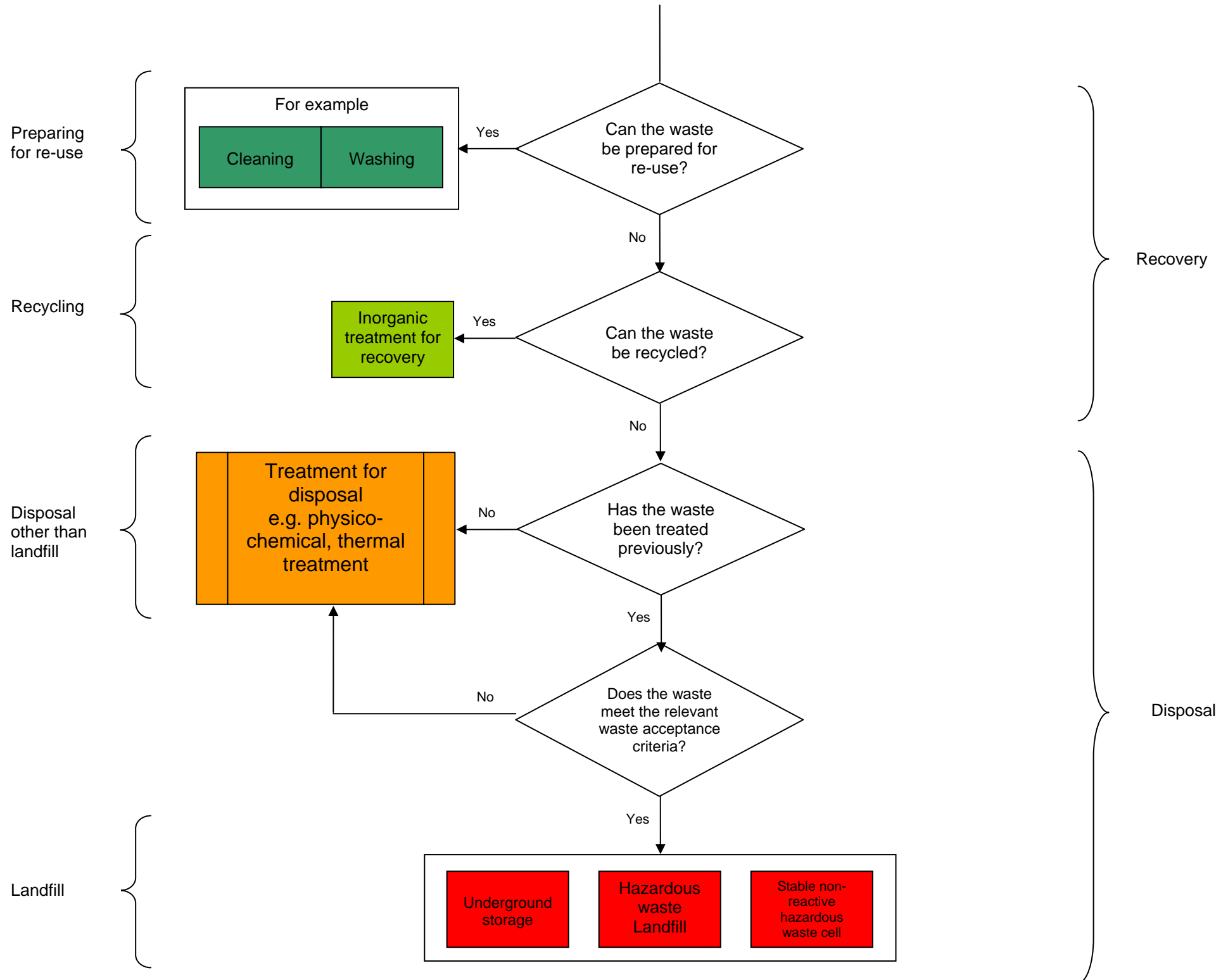
**Figure 4
Waste Decision Tree for
Hazardous Organic Waste**



* Thermal recovery and disposal treatment processes, such as use of waste as a fossil fuel substitute, thermal destruction with energy recovery and thermal destruction without energy recovery must be compliant with the requirements of the Waste Incineration Directive.

Where a waste is prepared for re-use, recycled, or treated for disposal, the residues from that activity are considered to have been produced by a PROCESS. Decision tree Figure 2 should be reapplied to the residues of these processes, if they are hazardous.

**Figure 5
Waste Decision Tree for
Hazardous Inorganic Waste**



Decision Trees Consultation Questions

Question 8: Do you think that the decision trees support a) the principles of the Strategy for Hazardous Waste Management in England and b) the revised Waste Framework Directive hierarchy?

Question 9: The revised Waste Framework Directive requires waste producers to consider the hierarchy when considering the management of their wastes. Do you think the decision trees will aid you in this respect?

Question 10: Are the decision trees easy to follow or is more clarity needed?

Question 11: Various generic waste processes have been considered in the decision trees. Are these the right processes? Have any significant processes been missed?

Question 12: Are you aware of any waste streams that would not be appropriate for the decision trees? Are you able to describe waste streams and provide estimated quantities?

Question 13: How do you think waste streams that are not appropriate for the decision trees should be managed?

Question 14: Do you think that a definition of 'organic' and 'inorganic' is needed, and if so how do you think this should be defined?

Question 15: Do you think additional guidance for use of the decision trees is required? Should this guidance be based around waste streams?

Part 3: Timeline for Implementation of the Strategy for Hazardous Waste Management in England

68. EU Member States are required to transpose the revised Waste Framework Directive (WFD) by 12 December 2010. As noted above, Defra is consulting separately on how that transposition should proceed in England for significant and key aspects of the revised Directive in a first stage consultation published this month. There are questions in that consultation on how the revised waste hierarchy should be applied to waste producers, to permit applications for the treatment of waste and also to existing waste permits and authorisations. Responses to that consultation will also inform how this proposed strategy is realised. There is no doubt, however, that the waste hierarchy is required to apply in those circumstances.
69. Subject to the results of this consultation it is envisaged that the strategy be published in final form in late 2009, in order to guide decision making and investment from the earliest possible date. It is recognised that it will take time for the strategy to be fully realised, for example for new infrastructure to be put in place. Again this relates closely to the application of the hierarchy to waste producers and to new and existing waste permits, which as noted above is subject to separate consultation.
70. It is proposed that the impact of this new strategic approach be assessed after 5 years, in 2014, to see if further action or refinements are needed to ensure the continued provision of infrastructure and the successful management of hazardous waste. This is not envisaged to be a fundamental review or lead to a reduction in the requirements but a “temperature check” to ensure that the strategy is working.

Key dates

First formal consultation on revised WFD transposition in England – July 2009

Consultation on Strategy for Hazardous Waste Management in England -- July 2009

Strategy for Hazardous Waste Management in England published – Late 2009

Second detailed consultation on revised WFD transposition – Late 2009

Deadline for transposition of the revised WFD – 12 December 2010

Progress check on the Strategy for Hazardous Waste Management in England – Late 2014

Question 16: Do you support this timeline for implementation?

Part 4. Defra, Environment Agency and other guidance

Existing guidance

Hazardous Waste - Interpretation of the definition and classification of hazardous waste (see: <http://www.environment-agency.gov.uk/static/documents/GEHO0603BIRB-e-e.pdf>)

HWR06 Classifying and coding wastes from physico-chemical treatment facilities (version 4.0 June 2008). (see: http://www.environment-agency.gov.uk/static/documents/Business/cctreatment_jun08_2064465.pdf)

Gives advice on how to classify and code wastes from some of the methods used to treat hazardous waste.

HWR08 How to classify waste oils and waste that contain oil (Version 3 June 2007) (see: <http://publications.environment-agency.gov.uk/pdf/GEHO0607BMTW-e-e.pdf?lang=e>)
EA made a minor amendment version 3 issued at the beginning of June 2007. This clarifies the threshold for total carcinogenic PAHs that are used to determine whether an oil is a carcinogen or not.

See <http://www.environment-agency.gov.uk/business/topics/waste/104765.aspx> for further guidance on the classification and coding of wastes

Guidance for waste destined for disposal in landfills (see: http://www.environment-agency.gov.uk/static/documents/Business/wacv2_1006008.pdf)

Guidance for waste producers and waste managers. (see: http://www.environment-agency.gov.uk/static/documents/Business/wacv2_1006008.pdf)
Information on the practical implications of the Landfill Directive on the types of waste that can be sent to landfill.

Use of Higher Landfill Waste Acceptance Criteria Limit Values (see: http://www.environment-agency.gov.uk/static/documents/Business/higher_wac_version_2_1122307.pdf)

Guidance on mixing under the Hazardous Waste (England and Wales) Regulations 2005 (see: <http://www.defra.gov.uk/ENVIRONMENT/waste/special/pdf/hwrmixing-guide.pdf>)

National planning policy for waste: Planning Policy Statement 10: Planning for Sustainable Waste Management (PPS10)

Guidance: Planning for Sustainable Waste Management: A Companion Guide to PPS10
<http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/mineralsandwaste/wastemanagement/pps10/>

Possible guidance to be developed

Guidance on factors to be considered when considering best overall environmental option (BOEO) in the waste hierarchy.

Guidance on definition of organic waste

Supporting guidance on use of the decision tree tool for specific waste types

Glossary of terms

Dangerous substance – is as defined in Council Directive 67/548/EEC of 27 June 1967

Hazardous waste - is defined in Regulation 6 of the Hazardous Waste (England and Wales) 2005 Regulations. These controls and this strategy do not cover waste classified as nuclear/radioactive waste under the Radioactive Substances Act 1993 (except in the limited circumstances where such waste do not meet the criteria set out in Section 2 of the Radioactive Substances Act (RSA)), as they are dealt with separately by the RSA and Managing Radioactive Waste Safely MRWS programme.

Hazardous property – Hazardous properties are listed in Annex III to the revised Waste Framework Directive. To be hazardous, a waste must display one or more of these listed properties.

Leachate – means any liquid percolating through deposited the waste and emitted from or contained within a landfill

Mirror entry – One of two alternative entries in the European Waste List for a specific waste stream, one hazardous, one non-hazardous depending on the the the concentration of dangerous substances within the waste.

Stable non reactive hazardous waste – means waste where the leaching behaviour of the waste will not change adversely in the long-term in the waste alone or under the impact of water, air, temperature, or by other wastes including leachate or gas.

Annex 1

Summary of Facility Needs for Hazardous Waste Management in England (Waste Strategy for England 2007, Annex C9)

The priority needs are for:

- high temperature incineration (HTI) for waste diverted from landfill – (e.g. oily filter cakes). It remains to be seen whether current capacity in the two existing dedicated commercial HTI plant in England will be sufficient, but indications are that additional capacity may be needed;
- a new small waste incineration plant has recently been commissioned in Colnbrook, Middlesex, which is designed to take specific types of hazardous waste. In addition, some municipal waste incinerators are allowed by their Waste Incineration Directive (WID) permit to take specified hazardous wastes such as contaminated packaging, but further capacity is likely to be needed for this waste stream and others. However, in many cases the planning permission and waste permit for the plant would require modification;
- solidification plant or other acceptable treatment to enable certain hazardous waste to meet the requirements for deposit in hazardous waste landfill or in separate cells for stable non reactive hazardous waste at non-hazardous waste landfill sites;
- at least one oil regeneration plant with a minimum capacity of 35,000 tonnes per annum to be viable, although a larger plant is possible, to enable the UK to broaden its management options for used oil;
- outlets for the combustion of waste oil which are able to comply with the requirements of the WID;
- dismantling and pre-processing facilities for hazardous waste electrical and electronic equipment (WEEE), mainly cathode ray tubes (televisions and computer monitors), refrigeration equipment and fluorescent tubes;
- the Battery Directive means a priority need exists for further treatment capacity in existing or new battery recycling plant. Development of specialist facility for NiCd's, lithium ion and NiMH batteries would obviate need for export;
- facilities to treat contaminated soils and oily sludges including treatment hubs, bioremediation, soil washing, and thermal desorption;
- upgrade of some household waste recycling centres to take household hazardous waste; and
- facilities for the environmentally sound recycling of end-of-life ships which are required as a priority in the OECD, with the UK being well placed to provide a significant proportion.

Annex 2

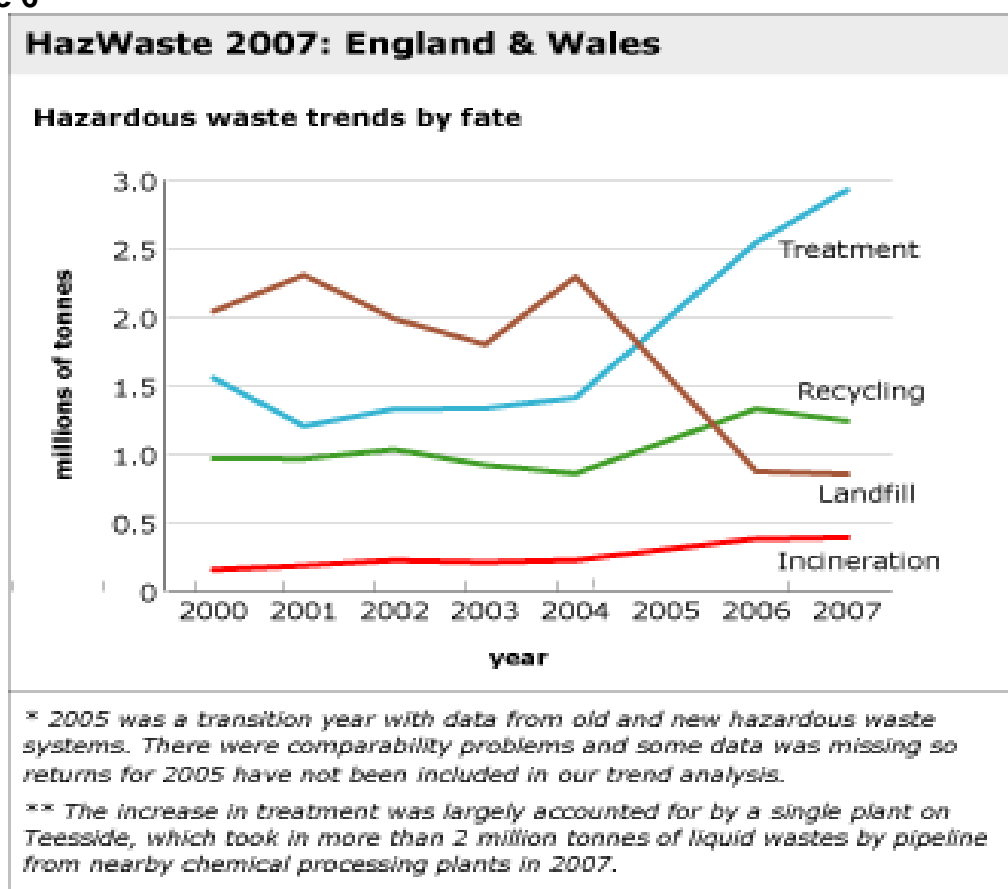
Hazardous Waste trends, England and Wales 2007¹¹

Figure 6 shows a big increase in recycling and re-use in 2006. This was partly due to some treatment activities (particularly in oil recovery) being re-assigned in the review of disposal and recovery codes, and partly due to the re-classification of some waste electrical equipment, particularly fridges, as hazardous waste under the Hazardous Waste Regulations 2005. In 2007 there was a 7% decrease in waste going for recycling and re-use.

There was a major reduction in landfill deposits between 2004 and 2006 showing the impact of the requirements of the Landfill Directive to stop co-disposal. In 2007 the amount of landfilled hazardous waste showed little change from 2006, perhaps indicating that a new baseline for hazardous waste to landfill has been established.

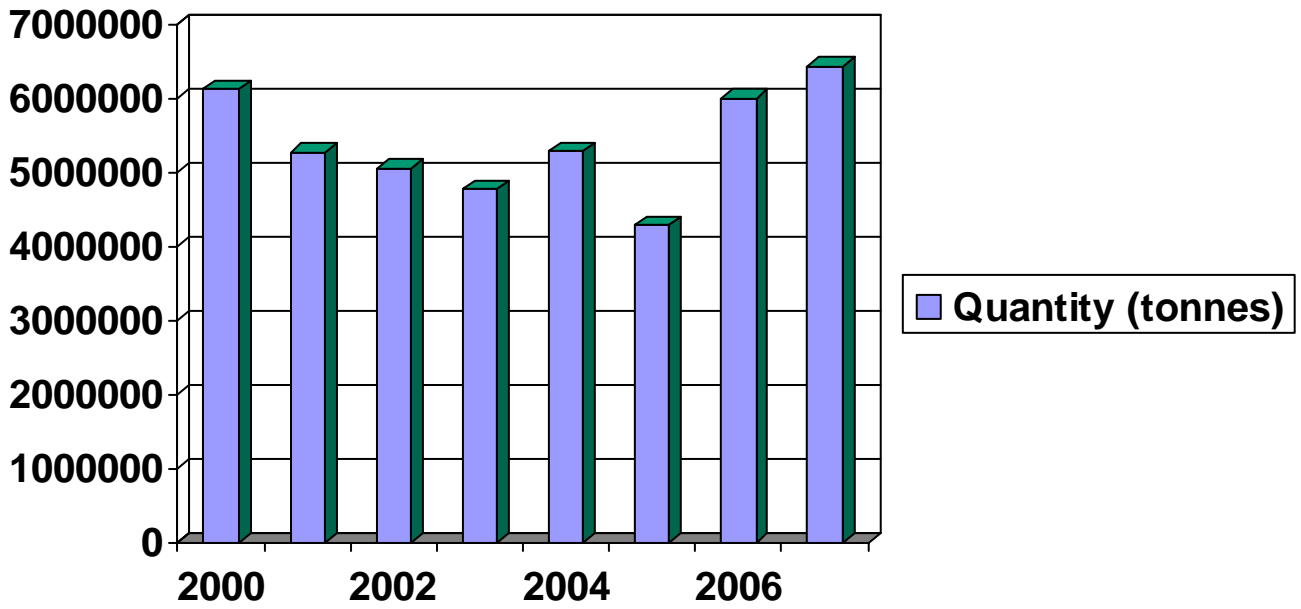
The very large increase in treatment since 2004 was due to a single waste treatment plant on Teesside, where liquid waste, formerly disposed of to the estuary under a consented discharge, is now treated. Over 2 million tonnes of this waste was consigned in 2007, a third of all the hazardous waste consigned in England and Wales.

Figure 6



¹¹ <http://www.environment-agency.gov.uk/research/library/data/97801.aspx>

Figure 7: Arisings of Hazardous Waste in England and Wales



Annex 3

Relevant EU Directive/ Regulation wording

WFD Article 4

Waste hierarchy

1. The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery, e.g. energy recovery; and
- (e) disposal.

2. When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome.

This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

Member States shall ensure that the development of waste legislation and policy is a fully transparent process, observing existing national rules about the consultation and involvement of citizens and stakeholders.

Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts, in accordance with Articles 1 and 13.

WFD Article 7(4)

List of waste

4. **The reclassification of hazardous waste as non-hazardous waste may not be achieved** by diluting or mixing the waste with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.

WFD Article 15(1)

Responsibility for waste management

1. Member States shall take the necessary measures to ensure that any original waste producer or other holder carries out the treatment of waste himself or has the treatment handled by a dealer or an establishment or undertaking which carries out waste treatment operations or arranged by a private or public waste collector in accordance with Articles 4 and 13.

WFD Article 16

Principles of self-sufficiency and proximity

1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers, taking into account best available techniques.

By way of derogation from Regulation (EC) No 1013/2006, Member States may, in order to protect their network, limit incoming shipments of waste destined to incinerators that are classified as recovery, where it has been established that such shipments would result in national waste having to be disposed of or waste having to be treated in a way that is not consistent with their waste management plans. Member States shall notify the Commission of any such decision. Member States may also limit outgoing shipments of waste on environmental grounds as set out in Regulation (EC) No 1013/2006.

2. The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal as well as in the recovery of waste referred to in paragraph 1, and to enable Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

3. The network shall enable waste to be disposed of or waste referred to in paragraph 1 to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.

4. The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State.

WFD Article 17

Control of hazardous waste

Member States shall take the necessary action to ensure that the production, collection and transportation of hazardous waste, **as well as its storage and treatment**, are carried out in conditions providing protection for the environment and human health in order to meet the provisions of Article 13....

WFD Article 18

Ban on the mixing of hazardous waste

1. Member States shall take the necessary measures to ensure that hazardous waste is not mixed, either with other categories of hazardous waste or with other waste, substances or materials. Mixing shall include the dilution of hazardous substances.

2. By way of derogation from paragraph 1, Member States may allow mixing provided that:

(a) the mixing operation is carried out by an establishment or undertaking which has obtained a permit in accordance with Article 23;

(b) the provisions of Article 13 are complied with and the adverse impact of the waste management on human health and the environment is not increased; and

(c) **the mixing operation conforms to best available techniques.**

3. Subject to technical and economic feasibility criteria, where hazardous waste has been mixed in a manner contrary to paragraph 1, separation shall be carried out where possible and necessary in order to comply with Article 13.

IPPC Article 2(12)

Definitions

12. 'best available techniques' means the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole:

(a) 'techniques' shall include both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;

(b) 'available techniques' means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator;

(c) 'best' means most effective in achieving a high general level of protection of the environment as a whole.

In determining the best available techniques, special consideration should be given to the items listed in Annex IV;

IPPC Article 3

General principles governing the basic obligations of the operator

1. Member States shall take the necessary measures to provide that the competent authorities ensure that installations are operated in such a way that:

- (a) all the appropriate preventive measures are taken against pollution, in particular through application of the **best available techniques**;
- (b) no significant pollution is caused;
- (c) **waste production is avoided in accordance with Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste; where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment**;
- (d) energy is used efficiently;
- (e) the necessary measures are taken to prevent accidents and limit their consequences;
- (f) the necessary measures are taken upon definitive cessation of activities to avoid any pollution risk and return the site of operation to a satisfactory state.

2. For the purposes of compliance with this Article, it shall be sufficient if Member States ensure that the competent authorities take account of the general principles set out in paragraph 1 when they determine the conditions of the permit.

LFD Recital 8

(8) Whereas both the quantity and hazardous nature of waste intended for landfill should be reduced where appropriate;...

LFD Recital 17

Whereas the measures taken to reduce the landfill of biodegradable waste should also aim at encouraging the separate collection of biodegradable waste, sorting in general, recovery and recycling.

LFD Article 1(1)

Overall Objective

1. With a view to meeting the requirements of Directive 75/442/EEC, and in particular Articles 3 and 4 thereof, the aim of this Directive is, by way of stringent operational and technical requirements **on the waste** and landfills, to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment, in particular the pollution of surface water, groundwater, soil and air, and on the global environment, including the greenhouse effect, as well as any resulting risk to human health, from landfilling of waste, **during the whole life-cycle of the landfill**.

LFD Article 5(1), (4)

Waste and treatment not acceptable in landfills

1. Member States shall set up a national strategy for the implementation of the reduction of **biodegradable waste** going to landfills, not later than two years after the date laid down in Article 18(1) and notify the Commission of this strategy. This strategy should include

measures to achieve the targets set out in paragraph 2 by means of in particular, recycling, composting, biogas production or materials/energy recovery. Within 30 months of the date laid down in Article 18(1) the Commission shall provide the European Parliament and the Council with a report drawing together the national strategies.

4. The dilution of mixture of waste solely in order to meet the waste acceptance criteria is prohibited.

Council Decision 2003/33/EC on waste acceptance criteria

Annex – Criteria and procedures for the acceptance of waste at landfills

2. Waste Acceptance Criteria

This section sets out the criteria for the acceptance of waste at each landfill class, including criteria for underground storage.

In certain circumstances, up to three times higher limit values for specific parameters listed in this section (other than dissolved organic carbon (DOC) in sections 2.1.2.1, 2.2.2, 2.3.1 and 2.4.1, BTEX, PCBs and mineral oil in section 2.1.2.2, total organic carbon (TOC) and pH in section 2.3.2 and loss on ignition (LOI) and/or TOC in section 2.4.2, and restricting the possible increase of the limit value for TOC in section 2.1.2.2 to only two times the limit value) are acceptable, if

- the competent authority gives a permit for specified wastes on a case-by-case basis for the recipient landfill, taking into account the characteristics of the landfill and its surroundings, and
- emissions (including leachate) from the landfill, taking into account the limits for those specific parameters in this section, will present no additional risk to the environment according to a risk assessment.

Member States shall report to the Commission on the annual number of permits issued under this provision. The reports shall be sent to the Commission at intervals of three years as part of the reporting on the implementation of the Landfill Directive in accordance with the specifications laid down in Article 15 thereof.

Appendix B

Non-hazardous waste landfill, including subcategories

Member States may define subcategories of landfills for non-hazardous waste in accordance with their national waste management strategies as long as the requirements of the Landfill Directive are met. **Three major subcategories of non-hazardous waste landfills are shown in figure 1:** landfill for inorganic waste with low organic/biodegradable content (B1), landfill for organic waste (B2), and landfill for mixed non-hazardous waste with substantial contents of both organic/biodegradable and inorganic materials. Category B1 sites can be subdivided further into sites for wastes that do not meet the criteria set out in section 2.2.2 for inorganic non-hazardous wastes that maybe co-disposed with stable, non reactive hazardous wastes (B1a) and sites for wastes that do meet those criteria (B1b). Category B2 sites may, for

example, be further subdivided into bioreactor landfills and landfills for less reactive, biologically treated waste. **Further subclassification of non-hazardous landfills may be desired by some Member States**, and monofills and landfills for solidified/monolithic waste maybe defined within each subcategory (see the footnote below table 1). **National acceptance criteria may be developed by the Member States** to ensure proper allocation of non-hazardous waste to the various subcategories of non-hazardous waste landfills. If subclassification of non-hazardous waste landfills is not desired, all non-hazardous waste (subject of course to the provisions of Articles 3 and 5 of the Landfill Directive) may go to a landfill for mixed non-hazardous waste (class B3).

Waste Shipments Regulation Article 12(1), (5), (6)

Objections to shipments of waste destined for recovery

1. Where a notification is submitted regarding a planned shipment of waste destined for recovery, the competent authorities of destination and dispatch may, within 30 days following the date of transmission of the acknowledgement of the competent authority of destination in accordance with Article 8, raise reasoned objections based on one or more of the following grounds and in accordance with the Treaty:

- (a) that the planned shipment or recovery would not be in accordance with Directive 2006/12/EC, in particular Articles 3, 4, 7 and 10 thereof; or
- (b) that the planned shipment or recovery would not be in accordance with national legislation relating to environmental protection, public order, public safety or health protection concerning actions taking place in the objecting country; or
- (c) that the planned shipment or recovery would not be in accordance with national legislation in the country of dispatch relating to the recovery of waste, including where the planned shipment would concern waste destined for recovery in a facility which has lower treatment standards for the particular waste than those of the country of dispatch, respecting the need to ensure the proper functioning of the internal market;

This shall not apply if:

- (i) there is corresponding Community legislation, in particular related to waste, and if requirements that are at least as stringent as those laid down in the Community legislation have been introduced in national legislation transposing such Community legislation,
- (ii) the recovery operation in the country of destination takes place under conditions that are broadly equivalent to those prescribed in the national legislation of the country of dispatch,
- (iii) the national legislation in the country of dispatch, other than that covered by (i), has not been notified in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, where required by that Directive, or
- (d) that the notifier or the consignee has previously been convicted of illegal shipment or some other illegal act in relation to environmental protection. In this

case, the competent authorities of dispatch and destination may refuse all shipments involving the person in question in accordance with national legislation; or

- (e) that the notifier or the facility has repeatedly failed to comply with Articles 15 and 16 in connection with past shipments; or
- (f) that the planned shipment or recovery conflicts with obligations resulting from international conventions concluded by the Member State(s) concerned or the Community; or
- (g) that the ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non-recoverable fraction do not justify the recovery, having regard to economic and/or environmental considerations; or
- (h) that the waste shipped is destined for disposal and not for recovery; or
- (i) that the waste will be treated in a facility which is covered by Directive 96/61/EC, but which does not apply best available techniques as defined in Article 9(4) of that Directive in compliance with the permit of the facility; or
- (j) that the waste concerned will not be treated in accordance with legally binding environmental protection standards in relation to recovery operations, or legally binding recovery or recycling obligations established in Community legislation (also in cases where temporary derogations are granted); or
- (k) that the waste concerned will not be treated in accordance with waste management plans drawn up pursuant to Article 7 of Directive 2006/12/EC with the purpose of ensuring the implementation of legally binding recovery or recycling obligations established in Community legislation.

5. Objections raised by competent authorities in accordance with paragraph 1(c) shall be reported by Member States to the Commission in accordance with Article 51.

6. The Member State of dispatch shall inform the Commission and the other Member States of the national legislation on which objections raised by competent authorities in accordance with paragraph 1(c) may be based, and shall state to which waste and waste recovery operations those objections apply, before such legislation is invoked in order to raise reasoned objections.

Annex 4

H.M. Government Code of Practice on Consultation

THE SEVEN CONSULTATION CRITERIA

Criterion 1 - When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 - Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 - Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 - Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 - The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 - Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 - Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.