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14 April 1989

Dear Lord President

ENVIRONMENT COMMITTEE REPORT ON TOXIC WASTE: GOVERNMENT RESPONSE

The Environment Committee published their report on 8 March with a highly emotional press release accusing the Government of complacency and inaction on waste policy which they insisted have brought us perilously close to disaster. The Report itself however, viewed dispassionately, contained little that was new. Indeed a great number of their recommendations endorse Government policy and proposals for legislation. The main area of disagreement is the Committee's belief that waste regulation should be removed from local authority control with an interim regional system of regulation authorities created pending the introduction of an Environmental Protection Agency to take over all pollution control functions from central and local government. In January I issued a consultation paper which discussed these issues and concluded that no such changes were necessary. I am currently considering the responses.

It is clearly necessary to respond to the Report quickly and firmly, emphasising all the Government are doing in this area. I enclose a draft response for your consideration. The foreword is the essence of the Government's position, followed by Chapters analysing waste management practices in the UK and the Government's comprehensive policies for improvement. A chapter is devoted to refuting any need for an Environmental Protection Agency and the Committee's recommendations are responded to in detail in the final chapter.

A response within the usual two months would support the Government's case that there is little of substance in the Report. It would therefore be most helpful to have your agreement to the publication of this response, in the form of a Command Paper, by 18 April to allow publication by 27 April.

I am copying this letter to other members of H Committee, the Prime Minister, John MacGregor, David Young and Cecil Parkinson.

CEJ Bush

pp NICHOLAS RIDLEY

(Approved by the Secretary of State and signed in his absence)

DOE has  
changed to  
20 April  
Dm



## ENVIRONMENT COMMITTEE : GOVERNMENT RESPONSE

### FOREWORD

1. The Environment Committee sat for a period of some 9 months before submitting their report on Toxic Waste. Inevitably they were unable to confine their work to toxic waste and their report addresses rather wider issues concerning all waste management. Similarly the Government found when they began to review the legislation on waste a much more comprehensive review was needed than many had envisaged. That review was well underway when the Committee began its inquiry. Three consultation papers on legislation have been issued since 1986 and the Government have given firm commitments to introduce legislation.

2. Thus the Government welcome the opportunity afforded by the publication of the Environment Committee report to set out the record on policy for waste management in the UK, and to re-state their clear commitment that standards of all waste disposal in the UK should be of the highest quality.

3. As the Committee recognise, in this their first inquiry in this area, the UK is one of the few countries not to have developed its policy for waste management in the wake of environmental disaster. The Government made the Committee fully aware at the outset of their enquiry of their own concerns at the limitations of present waste disposal law. While the Committee repeat the Government's concerns, they also make substantial allegations about the consequences of continuing to rely on the existing Control of Pollution Act 1974 (COPA) which are not supported by the evidence presented to the Committee, as contained in their report. The Committee found little evidence of pollution from landfills. The Committee's allegations are based more on



the fears generated by failures of other systems in other countries than on any evidence that present UK standards of disposal pose a substantial threat. The Committee acknowledge the adverse effects on practical waste management that over reaction to past pollution from waste has caused in the USA. It remains true that there have been no comparable incidents in the UK and it would not be of any benefit to this country if the Committee's report were to foster a similar over-reaction here.

4. The Government do not accept that waste management standards in the UK present a serious risk to the public or to the environment. They do however propose to improve the existing basically sound system. The Government firmly believe that potential hazards must be anticipated and it is for this reason that a wide ranging set of measures for improvement is proposed. As the detailed response in Chapter 4 will show, the Government had already taken action on the majority of the recommendations put forward by the Committee. These measures are the result of a long programme of work at the Department of the Environment. They are not a sudden response to the work of the Committee. Indeed the first consultation paper was issued 18 months before the Committee began its work. The Government cannot believe that the Committee would have preferred them to suspend this work for the duration of the inquiry.

5. There is one major area in which the Government disagree with the Committee. The Committee believe that local authorities cannot be trusted with the important task of regulating waste disposal and instead wish to invoke a new national Environmental Protection Commission. The Government, on the contrary, believe that local authorities can regulate disposal to the highest standards provided they apply themselves to the task. For the reasons explained in Chapter 3 the Government do not believe an Environmental



Protection Commission is either necessary or desirable. The creation of HM Inspectorate of Pollution (HMIP) is proof that the Government are ready to bring together regulation authorities wherever there are benefits from doing so. There is however little to be gained from amalgamating organisations with different objectives and outlooks simply to make an administratively tidy arrangement. There are also very real problems of accountability in the type of Commission the Committee propose. It is surely right for the Secretary of State to account directly to Parliament for the generality of his waste management policies. This is not a responsibility that should be devolved to an independent Commission as the Committee propose.

6. In the course of their report the Committee have seen fit to allege neglect and inaction on waste management since 1974 and serious neglect on the part of those advising Ministers throughout. Speaking, as they can only do, for their own term of office, the Government reject this sweeping charge and wish to reaffirm their confidence in their officials and to take full responsibility for the conduct of policy.

7. Nevertheless the Government are pleased that, with the exception of the issue of who the regulatory authorities should be, the Committee are in virtually complete agreement with the Government's proposals to improve the present system of waste management. However the Government regret that the Committee have chosen to give little credit for this major reform covering the whole of waste legislation which they have undertaken starting with the first of series of consultation papers in 1986. These papers, together with three major waste management papers, and the secondary legislation of the Collection and Disposal of Waste



Regulations and the Transfrontier Shipment of Hazardous  
Waste Regulations, fully refute the accusation of Government  
inactivity made by the Committee.



## CH. 1 WASTE MANAGEMENT IN THE UK

1.1 Waste and waste disposal have always been a fact of human life but with industrialisation the volume and nature of waste began to change radically. This change gathered pace with the post-war growth in chemical industries. These industries contribute substantially to our high standard of living but also generate wastes which require special attention to ensure that they do not endanger that very quality of life that the industries support. Chemical wastes have a high potential for damage but can be managed and disposed of in ways that reduce risks to a very low level. In terms of volume, such wastes are a small proportion of the wastes produced by human activity. They require careful management but it is equally important to ensure the safe and environmentally benign management of all other forms of wastes.

1.2 Since the rapid growth of manufacturing and chemical industries began in the 1950s, industrialised countries have become increasingly aware of the need to create new legal systems of control over the wastes produced by our society. In some countries this recognition has come through a painful and costly process where previous uncontrolled disposal had led to massive pollution incidents requiring extensive remedial work. In the UK, as the Committee acknowledge, we have had few major pollution incidents from waste disposal facilities. This is not a co-incidence. Our planning and public health laws had already afforded a framework for control which prevented the indiscriminate dumping of industrial waste that had happened elsewhere.

1.3 Nevertheless the UK was at the forefront of development of waste legislation in the early 1970s. The Deposit of Poisonous Waste Act 1972 was one of the first laws in the



world dealing specifically with waste disposal and this was rapidly succeeded by the Control of Pollution Act 1974. The 1974 Act set up a whole new system of licensing of waste disposal backed up by local authority planning and extra controls over the more dangerous or difficult to dispose of chemical wastes. This was indeed the system that was adopted in most other industrialised countries and became the foundation of European Community law.

1.4 As the 1980s draw to a close, waste disposal is of undiminished importance. Throughout the world Governments are re-appraising their waste disposal strategies and laws. As more waste is generated by affluent economies Governments are moving towards waste minimisation and recycling strategies and safer, better controlled disposal. In some instances they have sought a solution by exporting their problem to other countries. These issues have brought Governments together through the EC, OECD and United Nations to devise common strategies for handling international waste movements and to reach agreements on preferred methods of waste management throughout the world.

1.5 The UK is fully participating in all these developments. We are thoroughly reviewing our own waste disposal laws and practices as other countries are reviewing theirs. We aim to ensure through co-operation in international organisations that we remain at the forefront of world waste management.

#### WASTE DISPOSAL FACILITIES

1.6 Although the Committee's investigation was entitled 'Toxic Wastes' it embraced a much wider category of "controlled waste", ie waste which is controlled by Part 1 of the Control of Pollution Act 1974. This includes household, commercial and industrial wastes. It excludes



wastes which are controlled by other means ie liquid industrial effluent and most sewage sludge (Part II of COPA), agricultural wastes (MAFF Codes of Practice) and wastes from mines and quarries (Town and Country Planning Act 1971 and Mines and Quarries (Tips) Act 1969).

Approximately 100m tonnes of controlled waste is produced in England and Wales each year. Half of this is industrial waste, roughly a quarter is household and commercial, and the other quarter is mainly furnace ash and waste from demolition and construction. Almost all controlled waste can include "special waste", ie waste which is dangerous or difficult to dispose of and governed by separate regulations. Almost 2m tonnes of special waste was generated in 1987/88.

1.7 Waste disposal facilities are provided by both private and public sectors in the UK. In terms of volume the private sector generally disposes of and otherwise manages industrial waste while the public sector is responsible for the disposal of household and commercial waste. Increasingly waste disposal authorities contract out the disposal of household and commercial waste to the private sector rather than disposing of it at their own facilities. This situation is similar to that in the USA but remarkably different from that in the rest of Europe where disposal is predominantly a public sector activity. The private sector therefore disposes of most industrial waste and around 10% of household and commercial waste under contract to the Waste Disposal Authorities.

1.8 There are about 5,500 waste disposal facilities in England and Wales. Around 1,000 are operated by Waste Disposal Authorities. 700 of these are landfills taking household and commercial waste only. The other three hundred are transfer stations, civic amenity sites, baling and pulverising plant and incinerators.



1.9 Of the 3388 private sector landfill sites, around half are small scale, taking inert waste only (furnace ash, slag and building waste). About 1000 are licensed to take only non-special waste and asbestos. The remaining 500 are licensed to accept special waste but in terms of volume most of this goes to 100 major co-disposal sites. The private sector also operates treatment plants, solidification plants, incinerators and transfer stations.

Methods : "Co-disposal"

1.10 Around 90% of household and commercial waste is landfilled, generally speaking at quite separate facilities from those dealing with industrial waste. However certain industrial wastes, many of which have been treated are disposed of in landfills taking household and similar waste. This is known as "co-disposal". This disposal method exploits natural biological and chemical processes occurring within the body of the waste mass to change the chemical nature of both the industrial and the household waste so that the material becomes environmentally benign. Co-disposal is particularly well-suited to the geology of certain parts of the UK. The process has been researched since 1974 and this research supports the view that carefully engineered and controlled landfill is a safe long term disposal method for a wide range of wastes. Experience of both mono-disposal and co-disposal in the UK has been good. There have been few major pollution incidents involving landfills, and landfilling technology continues to be monitored and researched through the Department of the Environment's research programme. The Government welcome the Committee's, conclusion based on the range of evidence presented to it, that co-disposal is technically sound for a range of waste.



1.11 Experience of landfill in other countries has been in many cases quite different. Indiscriminate "dumping" of industrial waste without thought or record has often led to large scale pollution costing vast sums of public money to clean up. Public opinion has been outraged by these incidents, but in demanding higher standards it has turned against not only uncontrolled dumping but also against properly engineered landfill and even incineration and treatment. The Government believe that a rational approach towards waste disposal must be maintained, recognising that large amounts of waste are generated each year in a society with increasing standards of living. Waste minimisation and recycling offer partial solutions. The Government are working with industry and through pollution legislation to promote minimisation. But there will always be large quantities of waste which must be disposed of and for which landfill is the most widespread option available. Even after incineration or treatment the residues must go to landfill. There is no where else for them to go.

1.12 The UK's landfill methods are well researched and have not resulted in the disasters that have occurred elsewhere. The Government see no reason to change these methods. In particular they see no reason to abandon co-disposal landfill in favour of entombment landfill, which is a method increasingly adopted in other countries as a reaction to their pollution problems. Entombment landfill is no more than long term storage. The wastes do not biodegrade or chemically change. They sit in their concrete case for future generations to deal with. It is far better to deal with our waste now through our well researched and monitored processes than change to methods which even their advocates acknowledge merely postpone real disposal to some future date.



1.13 The Government believe that the law and practice of waste management in this country are basically sound. The law requires that waste cannot be dealt with or disposed of without a licence and it gives powers to local authorities to licence these facilities in detailed ways to protect water supplies and public health. There are extra provisions for the control of special wastes. This type of legislation is found in most Western countries, although the effectiveness of legislation depends on the extent to which it is applied and enforced. In the UK we have a unique body, HM Inspectorate of Pollution (HMIP), whose job it is to report on standards of application and enforcement of the law by the primary enforcement authorities, the Waste Disposal Authorities. HMIP was established in 1987 incorporating the former Hazardous Waste Inspectorate (HWI) which was established in 1983. The reports of the HWI and HMIP have contained full and frank criticisms of waste management and have revealed wide discrepancies between enforcement authorities in the standards they applied. As a result of their reports, standards have substantially improved in many of the poorer WDAs. The Government are unaware of any comparable body in other Western countries which issues regular reports on just how legislation has been applied. It is a reasonable assumption that much more is known publicly about the achieved standards of waste management in the UK than most other countries.

1.14 The Government have also acted on the reports and set in hand a major review of waste legislation and regulations. This review was launched with the issue of the first consultation paper in September 1986 on changes to the scope of the Control of Pollution Act 1974 and strengthened powers for Waste Disposal Authorities. The review is now in its final stages prior to legislation as the consultation draws to a close on the third paper on the reform of the Waste Disposal Authorities themselves.



## CHAPTER 2. THE GOVERNMENT'S PROPOSALS

2.1 The Government have undertaken a fundamental overhaul of existing legislation on waste management. The review has shown that the provisions of Part 1 of the Control of Pollution Act (COPA) are basically sound. These provisions are waste disposal plans, disposal licensing and extra controls for waste which is dangerous or difficult to dispose of (ie special waste). There are some loopholes, at least one of which, concerning breach of licence conditions, is of a serious nature. These loopholes will be plugged. But the main emphasis of the Government's programme is the extension of controls to the whole waste stream and the tightening of enforcement.

2.2 COPA is primarily concerned with disposal activities. Control begins with the handling or deposit of controlled waste and ends with the closure of a landfill or the cancelling of a licence. There are few controls on waste before it reaches the disposal facility (except for movement of special wastes) or safeguards for the environment after the landfill is finished. The provisions for licensing itself are limited to the physical requirements of the facility - its technical capacity to absorb the waste in question without risk to the environment. The Government propose to extend the provisions of COPA from cradle to grave, and to ensure that these provisions are fully enforced by newly designated Waste Regulation Authorities.

### The Duty of Care

2.3 The Government plan to introduce controls over all persons who produce or otherwise have control over waste. All holders of waste will be required to take reasonable



care to ensure its lawful disposal when consigning the waste to the control of another person. This Duty of Care will extend to all persons who have control over waste at any stage from its creation to its final disposal. In the first instance this person will be the producer of the waste but subsequently, as the waste moves from the producer's premises, it may pass to the control of a haulier or the operators of transfer stations, civic amenity sites, treatment works or disposal facilities. All will be bound by the Duty of Care. The only exception will be occupiers of private dwellings in respect of waste they produce in that private dwelling. It is unreasonable to expect private householders to carry out the checks required under the Duty of Care. It is also unnecessary since any one removing waste in the way of business from private dwellings on their behalf will be under the Duty. Any person in control of imported waste will similarly be bound by the Duty of Care.

2.4 A Code of Practice, which is at present being prepared for consultation, will set out the steps which will be regarded as reasonable in exercising the Duty of Care. The Act will require holders of waste to have regard to the Code of Practice in exercising their duty. Breach of the Duty of Care will be an offence. Compliance with the Code of Practice may be evidence that the Duty has been exercised but may not be sufficient evidence if contrary evidence outside the scope of the Code of Practice is available. Similarly breach of the letter of the Code will be evidence of a breach of the Duty but will not in itself be an offence. It will be open to the holder to demonstrate that equally effective steps have been taken.

2.5 It follows that the Code of Practice will relate very closely to the Duty of Care and hence will be pertinent to reasonable care in the consignment of waste to another person. It should be flexible enough to apply both to



large multi-nationals and small one person businesses. It is not appropriate that the Code of Practice should deal with issues beyond the legal requirements of the Duty of Care. However, where additional guidance on good practice on the handling and storage of waste by producers and other holders is required, it would be appropriate for these issues to be dealt with in a Waste Management Paper (WMP). HMIP therefore propose to issue a WMP on the management of waste by producers, holders and carriers of waste, to back up the Code of Practice.

### Registration of carriers

2.6 The Government have proposed that all carriers of waste must register with the Waste Disposal Authority (WDA) (in due course the Waste Regulation Authority (WRA)) of their principal place of business. These proposals are now being carried forward by the Hon Member for Deptford, Mrs Joan Ruddock, as a Private Members Bill and, if the Bill has a successful passage through Parliament, the system of registration can be in place before the Government's other proposals on Duty of Care come into force.

2.7 Duty of Care and registration of carriers are very closely linked. Without registered carriers, producers and holders of waste would have a difficult task in taking the first steps toward fulfilling their Duty of Care. Through the register of carriers, the holders of waste can make checks that the carrier they propose to use has not been convicted of relevant pollution offences. This is a first step, but the holders will be required to continue to exercise their judgement on the bona fides of the carrier. If they have any reason to doubt the bona fides, they may be in breach of the Duty of Care, and committing a criminal offence, if they nevertheless proceed to hire him. Registration is not intended to provide operating controls



over carriers. There are already Department of Transport Regulations to do that. The registration system will instead have its principal effect through the Duty of Care. It is the potential penalties on waste producers and other holders that will starve the rogue carriers of business. In the process, the whole business of consigning waste from one person to another will become a serious undertaking. Producers will no longer be able to accept casual offers without leaving themselves liable to prosecution. This will be an important reform and the Government welcome the opportunity afforded by Mrs Ruddock to set the registration process in hand to be ready for the Government's legislation on the Duty of Care.

2.8 The registration authority will record information concerning the applicant, or in the case of a corporate body its managers, directors, partners and any unspent convictions that any of these persons may have for prescribed offences. The registration authority will be able to refuse or revoke registration only if the applicant or other relevant person has an unspent conviction. Relevant persons are those who are connected, for example through directorships or partnerships, with the present company or with a previous company belonging to the applicant. Prescribed offences will include contravention of the provisions of Part 1 of COPA and certain other pollution offences.

#### Stronger powers for Waste Regulation Authorities

2.9 The Government propose to strengthen and extend the powers available to the new Waste Regulation Authorities in licensing disposal facilities and in enforcing these licences. These new powers extend the relevant considerations which a licensing authority will be able to take into account in dealing with an application for a licence. At



present the authority must grant a licence as long as the technical requirements of the proposed operations will not endanger public health or the water supply. In future the authority will be able to consider the past record of an applicant insofar as he, or an associated person or company, has unspent convictions for relevant pollution offences. They will also be able to take into account the technical competence of the applicant (insofar as he must be able to demonstrate that he or a senior director or manager of his company has relevant technical qualifications). Finally they will be able to take into consideration the financial resources available to the applicant to discharge his responsibilities under the licence. There are various ways in which an applicant may demonstrate that such resources are available and guarantee that they will remain available until a Certificate of Completion is obtained. The Government will hold discussions with representatives of industry and local authorities to discuss the range of options available with a view to issuing guidance.

2.10 The powers described above refer to the consideration of licence applications. The Government also propose to increase the powers available on existing licences. Amongst the most important of these concerns the responsibility of a licence holder beyond the period of deposit of waste and capping of the site. The licence holder will be responsible for the monitoring and maintenance of his site, including remedial action where necessary, for a period after the top soil is restored, indeed until the site has stopped generating landfill gas and contaminated leachate, and a Certificate of Completion is issued. This may be several decades after the final deposits of waste; hence the need for an applicant for a disposal licence to be able to demonstrate that the necessary financial resources can be guaranteed.



2.11 Concomitantly a licence holder will not be able to surrender his licence under any circumstances. He will be able to transfer the licence to another person who is able to satisfy the requirements of the WRAs in the normal way by applying for the licence. But until such transfer takes effect, the licence holder will remain responsible for the facility and its safety.

2.12 There will also be powers for a WRA to suspend a licence, or part of a licence so that breaches of licence conditions can be rectified while continued disposal of waste is halted but without relieving the licence holder of responsibility for the safety of the site through the operative parts of the licence. Breach of any licence conditions will be made an offence.

2.13 The Government are also considering proposals to take powers to extend the vires for licensing beyond those of protection of public health and water supplies. These will be contingency powers to enable controls to be adapted rapidly without recourse to primary legislation to respond to any developments in knowledge about the effects of waste management on other environmental media. The Government are considering powers to specify that particular conditions should be included in certain disposal licences, and also whether an established use certificate should be an adequate pre-condition to obtain a disposal licence.

2.14 Finally the Government are considering a proposal, put forward in response to the last consultation exercise, to place a general duty on waste disposal licencees to conduct their operations with regard to the protection of the environment in addition to compliance with the particular operating conditions of the licence.



## Fly-tipping

2.15 The Government share the Committee's concern about the scourge of fly-tipping. This is a most pernicious crime perpetrated for the convenience and financial benefit of the criminal and to the detriment of the environment and the public. The costs of fly-tipping to the public purse indeed outweighs the financial benefit to the criminals because the cost of cleaning up the waste far outstrips the cost of legal disposal that the criminal saves.

2.16 The Government's proposals include three measures which are designed to halt fly-tipping. Firstly, anyone convicted of fly-tipping (as well as other relevant offences) may be struck off the register of carriers. Any producer of waste who then engages that person to carry his waste will himself become liable to prosecution. This will be a powerful incentive for waste producers to vet very carefully those to whom they consign waste. Secondly, the Government propose that relevant convictions for waste disposal offences should be taken into account when considering Operator Licences for goods vehicles. Any operators directly involved in fly-tipping therefore stand to lose their licence under the Transport Act 1968. Finally the Government propose to make the owners of vehicles used in fly-tipping liable to prosecution to avoid situations where known fly-tipping organisations can avoid penalties by feigning ignorance of the vehicle's use. These measures will substantially increase the powers available to the authorities to track down the culpable parties in fly-tipping and to impose effective penalties.



## Waste Regulation

2.17 The standard of waste disposal has been a matter of concern to Government, to the public and to the disposal industry for some time. The Hazardous Waste Inspectorate, now part of HMIP has played a central role in raising standards and since their first report in 1985 considerable improvements have been achieved. The Government are grateful for the Committee's recognition of their achievements in this short space of time and agree that HMIP has emerged as a forceful critic of bad practice.

2.18 The Government believe that the present arrangements for waste regulation provide a good basis of control at local level, with full accountability and with important links to related local issues such as environmental health and development control. In principle the Government believe these present arrangements can be improved to provide a fully effective regulation system. Indeed many authorities have demonstrated a commitment to improved resources and policies in recent years which the Government find encouraging. Their proposals for strengthening this system were the subject of consultation papers issued in England and Wales, and in Scotland. The paper for England and Wales invited responses by 28 March and these are now being considered. The consultation period for the Scottish paper ends on 12 May. The Government will announce their decisions in due course.

## Regulation and Operation : The Dual Role

2.19 The Government agree with the Committee that it is essential that the roles of regulation and operation be separated. Within the Government's intention of keeping regulation at local authority level, this will best be achieved through the separation of disposal operations into



Local Authority Waste Disposal Companies (LAWDCs) at arm's length from the parent authority and subject to full licensing. The Committee too have seen the merit of arm's length local authority companies providing the framework for full costing of the disposal operations and an end to market distortions through hidden subsidies. The Government believe that through these measures, and better licensing and enforcement brought about by other elements of the proposals, the roles can be sufficiently distanced without the need for new regional authorities or without removing waste operations from the authorities. They also believe that local authorities disposal operations, when organised into LAWDCs, should be opened up to competition with the private sector rather than being able to rely on guaranteed markets in perpetuity. Indeed many local authorities may see advantage in privatising their LAWDCs in order to ensure impartiality in regulation, and to put the capital involved to better use.

#### Waste Regulation Authorities

2.20 With the creation of LAWDCs, the authorities will be able to concentrate their resources on waste regulation and this will be reflected in a change of name to Waste Regulation Authorities (WRAs). They will be able to re-appraise the staff numbers and qualities appropriate to waste regulation rather than being dominated by operational considerations. They will be able to ensure that the place of the regulatory function within the organisation is such to afford maximum support to licensing and enforcement. When charges are introduced for disposal licensing, the authorities will have a direct source of revenue to apply to the provision of this service.



2.21 The Government are aware that much needs to be done to improve the regulatory performance of all authorities to that of the best. They also acknowledge that such improvements must be seen to be real. They have therefore made proposals to ensure that the authorities operate to national standards and that they account for their performance in public.

#### National standards

2.22 Waste disposal licensing will be the responsibility of the Waste Regulation Authorities. It is for them to discharge their responsibilities to the highest standards and it is not the Government's intention to usurp this function by prescribing precisely what should be in every licence. To do so would run counter to the need for licences to be individually tailored to each facility. But the Government do see a need for more explicit national standards to be set for the WRAs to work to.

2.23 The Government have therefore proposed that all future new or revised Waste Management Papers issued by HMIP shall contain more operational and quantitative advice on licensing and enforcement. The advice will contain recommendations to the WRAs on the manner and frequency of inspection and on the resources required to licence various types of facility and to enforce those licences, the issues to be addressed in licences for various facilities and the associated waste management issues. The standards will thus have been set. The later proposals are designed to ensure that WRAs apply them.

2.24 The Government propose to enhance the status of WMPs so that WRAs will be required by statute to have regard to their recommendations in carrying out their duties of licensing and enforcement. They acknowledge however that



further measures are needed if the authorities are to satisfy the public that these standards are indeed being met. They believe that in the first instance the authorities themselves should account for their actions through published annual reports on their licensing policies, resources and achievements in comparison with national standards set out in the WMPs. These reports will provide the public information that the Committee have sought on the detailed operations of individual authorities.

#### HMIP

2.25 HMIP has a central role to play in the improvement of waste disposal standards, continuing the work it has carried out so effectively since 1983. As a further check on the performance of WRAs, HMIP will be empowered to issue reports on any authority at any time. In the normal course of events these reports will be a response to the report of the WRA itself, commenting on the substance of the report and the general performance of the authority.

2.26 To support these powers HMIP will also be given explicit powers of access to WRA records and the right of entry onto any land to determine whether all provisions of the law are being complied with, including the statutory duty on authorities to have regard to the recommendations of WMPs in carrying out their duties.

#### Regional Co-ordination

2.27 HMIP will also have an enhanced role in bringing together WRAs to reduce differences between authorities in their licensing policies and procedures. Such regional groupings do already exist in England and Wales. In Wales they have proved successful in raising standards and improving co-ordination between authorities. In England



they have been loose voluntary arrangements organised by the authorities themselves. In future the Government propose that HMIP should take the lead in creating formal regional liaison arrangements in England. They believe that with the creation of national standards and the publication of annual reports, these formal regional groupings under the chairmanship of HMIP will bring real improvements in co-operation and uniformity of standards.

#### Default powers

2.28 As a final precaution, the Government propose to improve the default powers available to the Secretaries of State for the Environment and for Wales. If, despite all the efforts of the authorities and HMIP, any authority is still not attaining required standards in general or in relation to the control of particular facilities, the Secretary of State will be empowered to issue a notice to the authority requiring specified action to be taken. Ultimately he will be able to take over the function in respect of any facility or class of facility in the face of repeated failure to comply.

2.29 The Government have recently consulted on these proposals. They are currently examining the responses to that consultation in England and Wales, including the Committee's recommendation that the WDAs be replaced by 10 regional authorities. The Government will give most careful consideration to the comments and suggestions received. They are pleased however to have this opportunity to set out again the thinking behind their initial proposals in the context of the Committee's report.



## International trade in waste disposal services

2.30 The Government acknowledge public concern about trade in waste disposal services. They welcome the Committee's agreement that international trade involving incineration or treatment can be an appropriate way of making sensible use of facilities across Europe and they would add that this also applies to the wider international community. The Government however consider that transfrontier shipments of waste for direct landfill should be exceptional and announced last November proposals to introduce controls on all forms of trade in waste, covering both imports and exports and the whole range of controlled waste materials.

2.31 The Government's intentions are that powers should be available to the Secretary of State to prohibit, restrict or control the import or export of all waste. The operation of such powers will be subject to the agreement of the European Community as the Committee recognise. The proposal have already been raised with them and have attracted a positive response. The Government welcome the Committee's support for these initiatives.



## CHAPTER 3 AN ENVIRONMENTAL PROTECTION AGENCY

3.1 The Committee have devoted the Preface of their Report to the consideration of establishing an Environmental Protection Agency or Commission in the UK. The Committee have concluded that such an Agency should include Her Majesty's Inspectorate of Pollution, the pollution control functions of the National Rivers Authority, local authority pollution control functions including waste regulation, many of the functions of the Royal Commission on Environmental Pollution and also responsibility for the development and promotion of Government policy on waste and other pollution control issues

3.2 Although this suggestion is tangential to the report on toxic waste, it is a far reaching suggestion, as the Committee acknowledge. In putting it forward they have been attracted by the concept of a single national body with overall responsibility for safeguarding environmental quality in the UK. The Government agree that there might appear to be attractions in the creation of a single body, independent of Government, bringing all forms of pollution control under one command. But there are also a number of objections to this approach.

3.3 It is equally arguable that effective pollution control is best promoted through a number of organisations which have been tailor-made to regulate specific issues. There is no guarantee that synergy will be gained automatically by amalgamating disparate organisations with different responsibilities and different scales of operation. An Environmental Protection Agency or Commission on the lines proposed by the Committee would find that the vast majority of its work was relatively simple, small scale and local in character. Local knowledge and the capacity for fast

response which at the moment often lies with local authorities could be put at risk in a centralised system. A large and complex bureaucracy would almost certainly result, giving rise to unproductive overheads.

3.4 An even more important issue is the question of accountability. In the case of local pollution control issues and incidents there should, wherever possible, be a means of exposing the responsible authority to local democratic pressure. The Government's proposals for reforming the structure and role of waste disposal authorities expressly build upon this point. At the other end of the scale, on major policies and casework, it is entirely appropriate, and normal within the British constitutional system, that the Secretary of State should be accountable to Parliament for his policies. He is currently accountable, both for the nature of his policies, and for the public expenditure cost of them, and for the costs they may impose on Industry and the public at large. He is accountable both to Parliament and its Committees. He cannot be expected to account for any of these important matters if the powers are vested in an independent Environmental Protection Agency. The Committee would, no doubt, dislike being unable to question and hold Ministers to account on such an important subject as pollution. Nor would the Government be content to allow public expenditure costs and the costs placed upon the citizen and corporations to be determined beyond its control. The Government concludes therefore that it would not be appropriate to transfer waste management policy to an independent commission as recommended by the Committee.

3.5 The Select Committee felt that their proposals were especially relevant as an extension of the Government's plans for introducing a new system of integrated control over industrial pollution (IPC). IPC is certainly a very significant step in the development of pollution control in



the United Kingdom, indeed internationally. In introducing IPC, and the creation of HMIP, the Government have demonstrated their willingness to consider new mechanisms and structures where appropriate. But they believe that the application of IPC should be selective. The arguments for an integrated approach are strongest where large or complex industrial processes are involved. Cross-media controls are less relevant in simpler, local cases. It is quite appropriate that dangerous and difficult polluting processes are dealt with by a specialist and highly expert body (ie HMIP). Such a degree of expertise is not required to deal with the great bulk of pollution control casework. Equally, the Government see no need to adopt an all-embracing Commission to take on the river pollution control responsibilities which will be vested in the new National Rivers Authority. The NRA with a staff complement of 6,500 will have wide-ranging functions across the whole field of water quality and drainage, and on that specific question of river quality it will have close working relations with HMIP. The Government have already announced how these arrangements will work with regard to integrated pollution control.

3.6 The Government believe the main thrust of their policy should be directed at ensuring that the existing framework of control is made effective rather than at creating a new one. Accordingly, the Government do not accept the need for a new Environmental Protection Agency.

## CHAPTER 4 THE GOVERNMENT'S RESPONSE TO RECOMMENDATIONS AND CONCLUSIONS

### The problem of definition

#### Recommendation 1

4.1 (i) We recommended that a systematic, comprehensive, and comprehensible set of definitions of the various classes of waste, taking into account, where necessary, concentration and exposure, be introduced throughout the European Community as a first stage towards international agreement, and that HMG support the current EC initiative to that end. (36)

(ii) We support the fundamental principle of a two-tier system of classification: controlled waste and a sub-group, requiring tighter control, of "difficult waste". We recommend that the class of "special wastes" be expanded accordingly to include the most environmentally-damaging wastes and clinical wastes, in line with Waste Management Paper No. 26 and with current European thinking. (36)

(iii) We recommend that HMIP and the waste disposal authorities liaise to achieve a more common and consistent vocabulary for licensing wastes. (36)

(iv) We recommend that in drafting the definitions, particular attention be paid to the problem of secondary products. (36)



## Response

4.2 (i) Negotiation in the European Community and international organisations is working towards systematic classifications and definitions of waste materials. The Government agree that a universal terminology for waste is highly desirable and fully participate in these negotiations.

(ii) Consultation on the review of the Special Waste Regulations is about to begin. The UK's Special Waste Regulations 1980 went considerably beyond the requirements of the 1978 Toxic and Dangerous Waste Directive. The list of substances covered by the regulations contained 12 which were not included in the Directive. The regulations also instituted a system whereby the Waste Disposal Authorities were pre-notified of all movements of special wastes from the premises where they were produced whereas the Directive required only that a consignment note accompany the waste.

The European Commission has proposed to the Environment Council a new Directive on Hazardous Waste to replace the Toxic and Dangerous Waste Directive of 1978. The proposed Directive includes a much expanded list of substances and toxicity criteria, which the UK Government broadly endorse. The new Directive does not propose a pre-notification system for the substances, although a system similar to the UK's was adopted for use in transfrontier movements under the Transfrontier Shipment of Hazardous Waste Directives. The consultation paper on the Special Waste Regulations will take full account of the developments in the EC including proposals to make clinical waste a special waste. The

paper will propose a thorough overhaul of our pre-notification system and documentation procedures.

(iii) The Government agree that consistent vocabulary is of the greatest importance in waste disposal licensing. This issue was addressed in the revised Waste Management Paper 4 published in October 1988 and will be a regular feature of future Waste Management Papers.

(iv) The Government are well aware of the special position of recycling in waste management. The reclamation and recycling industries play a vitally important role in providing secondary raw materials for industry and minimising the amount of waste to be disposed of. Every effort is being made to ensure that burdens on the reclamation industry are kept to an absolute minimum. But the Government agree with the Committee that great care must be taken not to create loopholes for unscrupulous operators to use to avoid proper controls on waste management.

#### Waste arisings

#### Recommendation 2

4.3 Waste Management Paper No 4: The Licensing of Waste Facilities cites, as an example, licence conditions on co-disposal sites that "difficult and special wastes ..... be accompanied by a weighbridge ticket or be weighed before acceptance on site". We recommend that, as a basic contribution to more reliable and comprehensive management information, this licence condition should be mandatory at any facility licensed to accept difficult and special wastes. (41)



## Response

4.4 In general, HMIP do not lay down mandatory conditions for licences. They consider that WDAs should carefully tailor licences to the individual needs of each facility, and in particular that licence conditions should not be imposed on operations only in order to achieve administrative improvements, such as the provision of better statistics, that might be achieved by other means. The Government do agree however that the proper management of any facility which is governed by a licence containing conditions on the rate at which certain wastes can be accepted, cannot be achieved without accurate information on the weight of every consignment. Waste Management Paper 4 contains guidance on this matter. As part of their proposals for improved waste regulation, the Government will require, by law, that the new WRAs have regard to the guidance in WMPs in carrying out their statutory functions.

## Recommendation 3

4.5 Quality of statistics on waste arisings must be improved, both for special wastes and for controlled wastes generally, and we urge WDAs and HMIP to give this more attention. (43)

## Response

4.6 The Government acknowledge the need for improved statistics on waste arisings and disposal to allow better planning for and monitoring of disposal. They will review the current position on waste statistics and take steps to facilitate the production of more comprehensive and usable data.

## Waste Disposal Technology

### Economics of the Industry

#### Recommendation 4

4.7 We are concerned that waste disposers too often deploy the cheapest tolerable option rather than striving for the Royal Commission on Environmental Pollution's concept of the "Best Practicable Environmental Option" (BPEO). (44)

#### Response

4.8 The operational and quantitative advice on licensing and enforcement contained in new or revised WMPs will set national standards to be attained in waste disposal. The Government propose that the new WRAs should be required to have regard to these standards in licensing facilities.

#### Recommendation 5

4.9 We welcome the proposed requirement for local authorities fully to cost their waste disposal operations. Placing local authority operations on a proper financial footing should lead to a more equitable competitive situation as between the public and private sectors and a general enhancement in standards of site management, but, in addition, we recommend that HMIP should issue regular evaluations of price levels at Waste Disposal Authority sites where industrial and household wastes are co-disposed. (49)



## Response

4.10 The Government welcome the Committee's support for the separation of local authority waste disposal operations into arm's length Local Authority Waste Disposal Companies. These companies will be fully self-financing operations which will eliminate the market distortions that may now arise through intentional or unintentional subsidies. Once the companies are trading as independent units, any central evaluation of price levels should be unnecessary. The enforcement of high technical standards by the new WRAs and the discipline of the market will establish the correct price levels to be attained. HMIP will, however, continue to monitor price levels as one indicator of the standards being achieved in practice in the public and private sectors and will issue reports as necessary.

### Waste Disposal Techniques

Landfill

Co-disposal

### Recommendation 6

4.11 We recommend that WDAs and HMIP should make it a prime objective to bring the standards of co-disposal in the UK up to the level of current best practice. (57)

## Response

4.12 HMIP report that all co-disposal sites in the UK are environmentally safe, but that standards in a minority can be improved. HMIP is working with WDAs to achieve this, based on the guidance in Waste Management Paper 4.

## Environmental Impact of Landfill

### Recommendation 7

4.13 We recommend that on privatisation of the electricity industry, generators of electricity from landfill gas be licensed to sell their electricity to the supply companies. (64)

### Response

4.14 After privatisation of the Electricity Industry, those who generate electricity from landfill gas will be free to sell to whoever they like. They may sell to the local distributor, other distribution companies, or direct to the final customers. The Distribution Companies will be required to buy a certain minimum amount of non-fossil fuel capacity by the "Non-Fossil Fuel Obligation". Landfill gas schemes contracting through the Non-Fossil Purchasing Agency will be one means by which the Distribution Companies can meet this obligation.

### Insurance

### Recommendation 8

4.15 We recommend that the DOE set up a working party on insurance, as proposed by the NAWDC. (67)

### Response

4.16 There are a number of issues concerning the provision of finance for the control of pollution which may arise from waste disposal facilities all of which are loosely discussed under the name of insurance. In the first instance as the Committee have noted, the vast majority of waste disposal



companies will have public liability insurance and a growing number are taking advantage of Environmental Impairment Liability insurance. The Committee record that there is no unwillingness on the part of the insurance industry to negotiate terms for insurance of these kinds and the Government believe that it is for the waste disposal industry to take the lead in this matter. The Government have however announced proposals whereby licensees of landfill sites will remain responsible for the monitoring of their sites and for any remedial work that might be necessary for many years after a site has closed. The Government intend to initiate discussions with the industry on the need to ensure that all licensees bound by this duty have access to the level of funds necessary to put any obligations into effect.

Incineration on land of toxic industrial waste

#### Recommendation 9

4.17 Under the Government's proposals for Integrated Pollution Control commercial incinerators will be scheduled processes liable to control by HMIP. We welcome this approach which should both raise standards of control and eliminate duplication of regulatory effort. (74)

#### Response

4.18 The Government are pleased to note for the Committee's endorsement of the proposal to bring commercial incinerators under Integrated Pollution Control by HMIP.

## Marine incineration

### Recommendation 10

4.19 We welcome the Government's intention to implement the provisions of the Ministerial Declaration of Action of the Second North Sea Conference as regards incineration at sea, but note that this decision will have implications for land-based incinerator capacity. (77)

### Response

4.20 The Government welcome the Committee's support for their implementation of the action programme contained in the Declaration of the Second North Sea Conference. As far as incineration of waste at sea is concerned the Government do not believe that phasing out of marine incineration will have an adverse impact on the availability of land based incineration capacity in the UK. The UK makes very limited use of marine incineration. In 1988 only 5500 tonnes were incinerated at sea and this amount can be readily absorbed within present land based incineration capacity. There are indeed plans from several private sector waste disposal firms to provide additional chemical incineration capacity in the near future.

## Municipal Incinerators

### Recommendation 11

4.21 We recommend that local authorities and others should work with the private sector, in planning imaginative municipal incineration schemes combining refuse disposal and energy recovery through electricity generation and sale to



the supply companies and/or district heating. This should be encouraged by the DOE in consultation with the Department of Energy. (80)

#### Response

4.22 The Government wish to see as much positive use of waste as possible. The Department of the Environment is currently revising Waste Management Paper 1 on the options for waste management which will include an appraisal of the potential for energy recovery from waste. This includes the generation of electricity, combined heat and power schemes, and refuse derived fuel. The Government agree that waste can play a part in our energy supplies and wish to see full co-operation between local authorities and the private sector for future investment in energy recovery from waste. The Government's proposals for the future role and functions of local authorities in waste management are intended to encourage this co-operation.

#### Clinical Waste

#### Recommendation 12

4.23 We recommend that HMIP should forthwith issue an amendment to Waste Management Paper No. 4 to advise all waste disposal authorities that landfill site licences should incorporate a condition which precludes landfilling of clinical wastes. (82)

#### Response

4.24 The Government are concerned that clinical waste should be managed in strict accordance with the guidelines produced by HMIP in Waste Management Paper 25 which clearly states that landfill is suitable for only a restricted range

of clinical waste. Under no circumstances should tissue waste, related swabs and dressings or any infected matter be landfilled. The procedures to be followed for the safe handling and segregation of clinical wastes are clearly stated in the Health and Safety Commission's document "The Safe Disposal of Clinical Waste", and further guidance is contained in Waste Management Paper 25. Following recent incidents referred to by the Committee, the Minister for Health has reminded all health authorities of the need to ensure their waste handling procedures conform to the guidance and has called for an urgent review of waste disposal arrangements throughout the National Health Service including the use of colour coded bags.

#### Recommendation 13

4.25 We recommend that NHS incinerators be scheduled as soon as possible, that clinical waste should only be disposed of in scheduled incinerators, whether within or outside the NHS, and that HMIP publish immediately thereafter a BPM note of guidance. (84)

#### Response

4.26 The Health and Safety (Emission into the Atmosphere) (Amendment) Regulations 1989 (SI 1989/319), which came into force on 31 March 1989, bring large clinical incinerators (capable of burning over 1 tonne of waste an hour) within the schedule of processes coming under the industrial air pollution regime operated by HMIP. Crown immunity will not apply to such plants; they will need to be authorised by HMIP before they can begin operation and will then be required to use the best practicable means (bpm) to minimise air pollution and to render emissions harmless and



inoffensive. This bpm duty covers not only plant design and construction but also operational factors such as maintenance, storage, supervision and training.

4.27 As announced in the Government's consultation paper "Air Pollution Control in Great Britain : Works Proposed to be Scheduled for Prior Authorisation", issued in December 1988, the Government intend to extend this control requirement to cover all plants burning clinical waste. Those capable of burning less than 1 tonne of waste an hour are to be brought under the full control of local authority environmental health departments, under a proposed new control regime which will mirror that now exercised by HMIP. When such legislation is brought in health authorities would not retain Crown immunity.

4.28 Draft guidance notes have already been prepared. Insofar as they relate to plants burning under 1 tonne an hour these are now being discussed with local authorities associations. They will be issued as formal requirements when the legislation for local authority control is in place. Meanwhile they are to be made available to health authorities, who will be required to review their waste disposal arrangements, including the condition of their incinerators. In this review health authorities will examine the scope for rationalising their incinerator provision and for using external incinerator facilities. They will then prepare a plan for upgrading within a specified period all plants which are to be retained.

#### Recommendation 14

4.29 We recommend that the Department of Health and the Department of the Environment should draw up an Action Plan to ensure that each Regional Health Authority has access to adequate and environmentally-acceptable clinical waste incineration capacity. (85)

#### Response

4.30 Under Section 2 of the Control of Pollution Act, WDAs are required to prepare plans to survey the arisings of controlled waste in their area and the facilities needed to deal with these arisings. This plan should cover the arisings of clinical waste, which is a controlled waste.

4.31 Under the proposed arrangements for reforming the WDAs and the creation of LAWDCs, the emphasis of Waste Disposal Plans will change. In the past WDAs have regarded plans as their own operational plans for disposing of household and commercial waste collected by the collection authorities. The separation of regulation from operation will emphasise to the new WRAs that the role of these plans is to provide comprehensive strategic planning documents for all waste arising in their area, including clinical waste, so that the LAWDCs and the private sector can plan their future investment needs.

#### Marine Disposal

#### Recommendation 15

4.32 We welcome the Ministerial Declaration on dumping of polluting materials in the North Sea. (87)



## Response

4.33 The Government welcome the Committee's support for their implementation of the action programme contained in the Declaration of the Second North Sea Conference.

## Recommendation 16

4.34 We recommend that responsibility for the regulation of dumping of colliery waste at sea or on the foreshore should be transferred to HMIP. (89)

## Response

4.35 Under the terms of the Ministerial Declaration following the second International Conference on the Protection of the North Sea, colliery spoil disposed of by the UK into the North Sea and in some cases, on adjacent beaches, falls into the category of "inert materials of natural origin" which may be disposed of at sea. There are only three places in the UK where colliery spoil is deposited on the foreshore, two in Durham and one in Northumberland. The disposal of liquid tailings is currently controlled under COPA licence by the Northumbrian Water Authority, but the disposal of solid colliery waste is licensed by the Ministry of Agriculture Fisheries and Food.

4.36 In issuing such a licence under Part II of the Food and Environment Protection Act 1985, MAFF are required to have regard to the need to protect the marine environment and the living resources it supports, to safeguard public health and to prevent interference with legitimate uses of the sea. They must also take into account the practicable availability of alternative disposal methods. Successive Governments have accepted that beach tipping is an environmentally undesirable practice which ideally should be

brought to an end; however no alternative solutions have yet been identified which are free from objections on environmental or employment grounds. Nevertheless, the Government are committed to continued efforts to find environmentally acceptable alternatives to the current means of disposal of these wastes which would not jeopardise the economic future of the pits concerned. In that connection British Coal have been required as a condition of their licence to produce a detailed analysis of the costs and benefits of practicable land-based alternatives. The results of that analysis are now under consideration and will be taken into account in any decision to renew British Coal's licences later this year. Transfer of responsibility for regulation of this method of disposal to HMIP would not add anything to the available powers of control or the Government's consideration of the issues concerned.

#### OTHER DISPOSAL METHODS

##### Chemical Treatment

##### Recommendation 17

4.37 We are concerned that there has been no substantial emergence of new technologies for the treatment of wastes in the UK over the last ten years. We consider this a product of the structure of the chemical industry and its lack of commitment to research on wastes. We look to the chemical industry to improve this situation. (91)

##### Response

4.38 The Government agree that industry, both the waste management industry and chemical and manufacturing industries have much to gain from investment in research and development of new technology to minimise, treat and dispose



of waste, especially as the costs of conventional disposal methods rise. Much has already been achieved through the efforts of industry to develop clean technologies for instance the removal of heavy metals from process waste streams and biological and electrochemical methods of detoxifying contaminants. The Department of Trade and Industry are promoting support schemes to increase the development of waste minimisation and processing technology. The chemical industry in particular has developed its own guidelines for waste management through the Chemical Industries Association and the European Council for Chemical Manufacturers' Federation (CEFIC). Their guidance documents place heavy emphasis on the need for waste reduction, recovery and research and development for low-waste technologies and improved disposal methods.

#### Solidification/Stabilisation

#### Recommendation 18

4.39 We recommend the early production by HMIP of a Waste Management Paper on Solidification and Stabilisation including codes of practice, with clear definition of the criteria by which such processed wastes become non-hazardous. We further recommend an investment by the entire waste industry - producers, disposers and regulators - in Research and Development for new technology and processes for waste treatment. (96)

#### Response

4.40 The Government agree that advice on solidification is needed and it will be included in revised Waste Management Paper 1. Private and public sectors already invest in research and development of new technologies and will continue to do so. The Government have also instituted the

Environmental Protection Technology Scheme which aims to encourage technical innovation in the field of environmental protection leading to higher environmental standards and a more dynamic pollution abatement industry. An important part of the Scheme is the offer of financial assistance to support promising innovatory research and development projects within particular priority areas. A handbook will be published towards the end of the year with examples of innovation taken from British Industry.

Research and Development

#### Recommendation 19

4.41 We recommend that the Department of the Environment re-examine its research budget with a view to increasing its sponsorship of Research and Development on waste management topics. We see a clear need for fundamental research, the results of which should be widely disseminated in the technical journals. (102)

#### Response

4.42 The Government's research budget for waste disposal for 1989/90 is £2.5m, an increase of 20% over 88/89. The Government have spent £14m on research into waste disposal since 1979. The Government consider that this budget is adequate to meet the needs for fundamental research into waste disposal processes. A summary of the results of research undertaken in recent years is due to be published as a research report towards the end of 1989.



WDAs - the dual role

#### Recommendation 20

4.43 We recommend that waste licensing and disposal should be the statutory responsibility of different bodies. (117)

#### Response

4.44 Proposals were outlined in Chapter 2 to separate the roles of regulation and operation by the separation of disposal operations into Local Authority Waste Disposal Companies at arm's length from the parent authority and subject to full licensing. The Government believe that these arrangements, together with their proposals for greater accountability in waste regulation, will achieve the effective separation of functions.

Variations between WDAs

#### Recommendation 21

4.45 The proposals in the DOE Consultation Paper of 15 September 1986 to facilitate prosecution for breaches of licence conditions should be implemented as soon as possible. (121)

#### Response

4.46 The Government have announced their intention to legislate to ensure that breach of licence conditions be made an offence. This legislation will be laid before Parliament at the earliest opportunity.

## Arrangements in the Metropolitan areas

### Recommendation 22

4.47 We are extremely concerned at the situation which has arisen in the former Metropolitan Counties, and call upon the Secretary of State urgently to fulfil his duty to hazardous waste management in the former metropolitan areas under Section 10(2) of the Local Government Act 1985. (135).

### Response

4.48 The third report of the Hazardous Waste Inspectorate in June 1988 drew attention to inadequacies in the operation of the voluntary agreements in two former Metropolitan counties, West Midlands and South Yorkshire. That report did not call for the Secretary of State for the Environment to impose statutory authorities, but it did warn that the operation of the agreements needed to be improved to avoid deterioration to a situation where such authorities might be necessary.

4.49 The Secretary of State immediately commissioned from HMIP, as successor to HWI, an in-depth investigation of the arrangements for waste disposal in London and all the former metropolitan counties. Their report has now been published. For those areas covered by voluntary agreements, it finds that the authorities are anxious to make these agreements work and have already taken steps, acting on the advice of HMIP, to improve the agreements and their co-ordination and licensing arrangements. The report has outlined the further steps that the authorities are taking to improve the operation of the agreements. HMIP conclude that such problems as they have identified in these areas are being addressed and that they can be resolved within the framework



of the voluntary agreements. The Government do not therefore propose to take any action at this time under Section 10 of the Local Government Act 1985.

A new structure

### Recommendation 23

4.50 We recommend that a system of about ten Waste Regulation Authorities in England and Wales, based on the LWRA model, should be established. The boundaries of these new authorities should be determined by HMIP, taking into account existing water authority boundaries and the location of waste production and disposal. Waste disposal should remain the responsibility of counties and districts operating through companies as proposed by the Government. Any necessary accountability and involvement of local authorities could be provided by ensuring that the Regulation Authorities contained co-opted councillors from the county or metropolitan district council. (153)

### Response

4.51 The Government do not share the Committee's pessimism about the prospects for waste regulation at local authority level. Indeed they are encouraged by the recent progress made by many authorities in increasing the resources and commitment they denote to waste regulation. The Government note that the Committee identify as the fundamental weakness of the current system, the "irrelevance" of historic local authority boundaries to an effective and efficient waste disposal system. The Government cannot agree with this assessment. The present local authority boundaries were drawn up only 15 years ago after a systematic investigation of the cohesion of industrial areas and their hinterlands.

4.52 The Government believe that present local authority boundaries do provide a framework for the waste regulatory system. Their proposals for strengthening this system include formal regional groupings of authorities (as already happens in Wales) to consolidate licensing policies, practice and enforcement and to co-ordinate planning. The Government are confident that the proposals outlined in Chapter 2 for national standards, clear accountability and regional co-ordination under the auspices of HMIP will provide a waste regulation system that will serve well for many years. The consultation period on the Government's proposals has just ended and the responses are being given very careful consideration. The Committee's views will be considered as part of that exercise.

HER MAJESTY'S INSPECTORATE OF POLLUTION

#### Recommendation 24

4.53 We consider that additional posts should have been given to the CWI before December 1988 and that a sustained commitment by HMG to HMIP is now essential to restore morale. (157)

#### Response

4.54 The Government have emphasised their commitment to HMIP by making available the increase in resources announced in December 1988. This included an additional 9 posts for the Controlled Waste Branch of the Inspectorate. Overall the shortfall in staff has been reduced since 1987 from 66 to 19 through recruitment.



## Recommendation 25

4.55 We are extremely impressed by the work of the Controlled and Hazardous Waste Inspectorate over the last 6 years. In spite of having no statutory powers, the CWI has emerged as a forceful critic of bad practice, with a strong independent voice. (158)

## Response

4.56 The Government are pleased to note the Committee's recognition of the achievements of the Hazardous Waste Inspectorate, now part of HMIP, in this short space of time. HMIP's continued independent voice is central to the Government's proposals for strengthening the waste regulatory system and the Government propose to give them substantial new powers to ensure they are able to fulfil this role.

## Recommendation 26

4.57 We accordingly recommend that HMIP should publish Annual Reports upon its audit of the WDAs commenting on the performance of each of them separately. (163)

## Response

4.58 The Government's proposals outlined in Chapter 2 propose that as a further check on the performance of the new Waste Regulation Authorities HMIP will be empowered to issue reports on any authority at any time. The Government do not believe, given the pressure on WRAs to conform to the new standards that are present elsewhere in the Government's proposals, that reports on every authority will need to be made every year. They are likely to be made in response to particular aspects of an authority's own report as and when

necessary. HMIP have announced that their new programme of inspections will allow every authority to be investigated in depth every five years and full reports will be published at these times.

The future and staffing of HMIP

#### Recommendation 27

4.59 We recommend that HMIP as a whole be placed on an agency basis, headed by a Chief Executive (himself an Inspector rather than an administrator) reporting directly to the Secretaries of State. In our view, the Controlled Waste division of HMIP should have a staff of at least thirty-five field Inspectors and professional staff to carry out field inspections audits, and to ensure that new Waste Management Papers are produced and existing ones rewritten; and we so recommend. (179)

#### Response

4.60 It is the Government's intention to give agency status to appropriate bodies as soon as possible. HMIP may well be a candidate for agency status in due course. For the present, the Government are concentrating on providing the legislative framework to enable HMIP and the other pollution control agencies to operate effectively. The Government do not however believe that agency status is essential for HMIP to discharge its functions effectively. Agency status will enable those bodies to whom it is applied to operate at one remove or more from the parent Department. The Secretary of State must however retain overall responsibility for the agency and accountability to Parliament. This accountability has not in the past hampered a free expression of views from the Inspectorate on relevant pollution matters and the Government see no reason why it should do so in the future.



The Government will continue to keep the staff requirements of HMIP under review following the increase announced last December.

#### Recommendation 28

4.61 We support the Government's proposals for enhanced powers for HMIP and we call upon the Government to bring forth legislation urgently to place the CWI arm of HMIP on a statutory footing and to give Waste Management Papers statutory backing. We look to HMIP to take the lead in raising standards throughout the industry through increased auditing of waste disposal authority performance, the provision of advice, information and codes of practice, and in fostering initiatives to increase the general level of maturity in the industry. (180)

#### Response

4.62 The Government propose to give HMIP greater powers, in particular the right of access to Waste Regulation Authority records and the right to issue reports on any individual authority. Through these powers HMIP will be able to carry out all its duties with even greater effectiveness.

THE DEPARTMENT OF THE ENVIRONMENT

#### Recommendation 29

4.63 We recommend that the Department of the Environment conduct an urgent re-evaluation of its manpower needs in the area of waste management policy and make plans to transfer much of its work to a national Environmental Protection Agency or Commission. (192)

## Response

4.64 The Government believe the main thrust of its policy should be directed at ensuring that the existing framework of control is made effective rather than at creating a new one. They will continue to deploy resources accordingly. The Government do not accept the need for a new Environmental Protection Agency. This issue is addressed separately in Chapter 3.

## Recommendation 30

4.65 We join with the entire waste industry in urging legislation in the next session of Parliament to close the well-known loopholes in COPA, and to set waste management on a firm footing. We recommend that the DOE should process appeals relating to site licensing under COPA 1974 within six months. (194)

## Response

4.66 The Government have developed their proposals for legislation on waste which address the issues of producer and carrier responsibility, improved licensing controls, continued monitoring of disposal facilities into the future, and the performance and accountability of the WRAs themselves. This legislation is a most fundamental overhaul of the waste disposal system and will be introduced at the earliest opportunity during the life of this Parliament.

4.67 The Government recognise that the time taken to determine appeals against refusal of a licence or modifications to a licence has been too long in the past. Improvements have been secured and appeals are now generally determined within 18 months. One of the main sources of delay is however the gathering of information from all



interested parties. It is right that appellants and the authorities have sufficient opportunity to prepare their case and present their evidence at an inquiry if necessary. Further improvements are expected with the new appeal procedures set out in the Collection and Disposal of Waste Regulations 1988 which require appellants to supply substantial information on the basis of their appeal when they originally submit it.

#### THE DUTY OF CARE

##### The Concept

##### Recommendation 31

4.68 We welcome in principle the concept of a duty of care for waste producers, handlers and disposers, in the expectation that legislative proposals to give it effect will be brought forward as soon as possible. (31)

##### Response

4.69 The Government welcome the Committee's support for their legislative proposals. The final stages of consultation are coming to an end and legislation will be introduced at the earliest opportunity.

##### Recommendation 32

4.70 We agree with both the Royal Commission on Environmental Pollution and the DOE that wastes should be accounted for from the point of production to the point of disposal and subject to adequate evaluation of the disposal route. We would prefer that the liability be made strict liability and the waste producers should be responsible for their wastes from 'cradle to grave'. This more than

anything else would ensure that producers consign their wastes to proper persons who in turn would be contractually responsible to them. (201)

#### Response

4.71 Strict liability under the Duty of Care would mean that the producer or holder would be criminally liable for the fate of his waste however conscientious he had been and regardless of whether he was reasonably capable of exercising any control over that waste. Such a stringent responsibility is not necessary. The Government's proposals will instead make the holder responsible for taking reasonable steps to ensure the safe disposal of his waste, and he will have to demonstrate that his actions did indeed constitute reasonable care. The Government believe that this duty will be sufficient to ensure the correct consignment of waste.

#### RESPONSIBILITIES OF PRODUCERS

##### Arisings

#### Recommendation 33

4.72 We recommend that the Code of Practice should include a requirement on producers to provide themselves, or to commission from a registered waste disposer or other properly-qualified analyst, a sufficient analysis of all waste arisings. Specific levels of analysis should be defined for particular classes of waste. We would expect that such a duty, in the first instance, would be imposed on all producers of special wastes, as at present, and on producers of large amounts of controlled wastes at a level to be determined after consultation with HMIP. (211)



## Response

4.73 The Committee make a number of recommendations concerning the Code of Practice but they have in mind a rather wider Code than that described in Chapter 2. The Government believe that the Code of Practice should relate strictly to the statutory Duty of Care and that other issues concerning waste handling by producers, carriers or disposers are best dealt with through the licensing system or Waste Management Papers.

4.74 As far as Recommendation 33 is concerned the Government agree that the waste producer should have a responsibility to characterise the waste in such a way that permits its safe handling and disposal. They welcome the Committee's agreement that it is unreasonable to require all producers to analyse the waste themselves. But they consider that it is reasonable to expect the producer to provide information on the origins of the waste, and the processes to which it has been subjected, sufficient to allow a disposer or carrier to make correct arrangements for its management. In the case of special wastes this is already catered for in the consignment note procedure, which is the subject of a separate review. The characterisation or analysis required by the Special Waste Regulations will be sufficient for producers of these wastes to discharge this particular aspect of their Duty of Care. For other waste, characterisation of origin (including chemical composition of input materials where appropriate) and processes should be sufficient and can be required without imposing additional burdens on industry.

## Waste Minimisation

### Recommendation 34

4.75 We conclude that waste minimisation has many environmental and economic benefits and much more could be achieved in the UK using existing technologies. We feel that as well as environmental disadvantages, British industry could be prejudiced in the future if it fails to keep pace with European and US developments in waste minimisation and clean technology. The Government must take a stronger lead in encouraging waste minimisation. (219)

### Recommendation 35

4.76 We recommend:

- (i) that waste minimisation should be given primary importance in the whole waste production/waste regulation process;
  - (ii) that a statement of principles for waste minimisation should be incorporated in the Code of Practice on the duty of care;
  - (iii) that waste minimisation should be specifically included in the environmental impact assessment of new plant;
  - (iv) that HMIP through IPC and through publicising examples of good practice, should give a greater lead on this issue; and
  - (v) that WDAs should encourage the application of waste minimisation techniques in their own areas.
- (220)



## Response

4.77 (i) The Government agree that waste minimisation should be given greater prominence in future waste management policy. They believe that the prominence will to some extent emerge naturally as the proposals for higher disposal standards inevitably raise the cost of disposal. Minimisation and recycling of waste will become more economically attractive through this process.

4.78 To speed this process, the Government are about to initiate a new pro-active approach to industrial waste management. It is designed to encourage and facilitate the utilisation by UK industry of the most effective practices for the conservation of natural resources and industrial materials. The theme of this new policy is to promote "best practice" in such areas as:

- Corporate organisation for effective industrial waste management
- Design for re-use, remanufacturing or recycling
- Clean technology
- Waste minimisation
- Pollution abatement
- Recycling and reclamation

- Waste treatment for safe disposal
- Marketing of recycled and reclaimed products

4.79 The Government are developing new or revised promotional materials such as brochures, videos and exhibits to be used with an expanded programme to increase the awareness of the business community to waste management issues. This programme will include sponsoring or participating in over 30 focused conferences, regional seminars, workshops, pilot projects and industry exhibitions during the next 12 months.

4.80 These activities are only one element of the Government's overall thrust to promote environmental awareness. For example, the Department of Trade and Industry will be introducing a waste management thrust into its Enterprise Initiative, and will be working with UK equipment manufacturers to stimulate the supply base for pollution abatement equipment and to provide a firm basis for British industry to attack world markets. An Environmental Enquiry Point for business is also being established at Warren Spring Laboratory. The Department is also developing an information and data base on waste management to support its efforts and is continuing to liaise closely with the EC on related policy issues.

4.81 (ii) The Government do not believe that the statutory Code of Practice is the right medium through which to promote waste minimisation. The Duty of Care, enshrined in statute, will be a duty to take reasonable care when consigning waste to the control of another person. The Code of Practice will support that duty. Issues such as waste minimisation are more



appropriate to Waste Management Papers and a paper will be published for producers and carriers of waste to deal with all aspects of waste handling.

- 4.82 (iii) There is already provision in the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 for an environmental statement to include information on a development's possible impact on the environment and where significant adverse effects are identified, a description of the measures envisaged to avoid, reduce or remedy these effects. This includes provision for information on the direct and indirect effects on the environment which may result from emission of pollutants, the creation of nuisances and the elimination of waste.
- 4.83 (iv) Waste minimisation will be a central goal of IPC. In framing the IPC consent HMIP will ensure the application of best available technology not entailing excessive cost to minimise the generation of polluting waste. IPC notes, which HMIP will publish, will be an extensive means of disseminating good practice.
- 4.84 (v) In the normal course of events WDAs do not have the regular contact with industrial processes that is necessary to promote waste minimisation to any degree. The Government's programme for promoting waste minimisation in industry will seek to encourage all those involved in the waste stream, in production, consumption and disposal to use optimum resources and materials management, materials conservation and waste disposal practices. The Government believe that all parties, including local authorities, should co-operate wherever possible to produce a framework in which waste minimisation can flourish.

## Recycling

### Recommendation 36

4.85 We urge the chemical and other hazardous waste producing industry to give more attention to changes in their production processes so as to enable wastes to be recycled. We recommend that the Government reconsider the feasibility of computerised waste exchange and take positive steps to promote the recycling of toxic wastes. (226)

### Response

4.86 The report from the Trade and Industry Select Committee on "The Wealth of Waste" in 1984 recommended that the Government focus increased attention on reclamation and recycling of waste, and that a Minister be designated with special responsibilities for co-ordinating Government initiative in this area. Since that report was issued, the Government have embarked upon a wide ranging programme to promote recycling and to catalyse the business community to become more active in its recycling efforts.

4.87 The Department of Trade and Industry took on the co-ordinating role in April 1985 and quickly established a Reclamation Co-ordination Unit within the Department and a technical support group at Warren Spring Laboratory. The Department also chaired an Interdepartmental Committee of Ministers which was established to ensure that the Government's approach to recycling issues was cohesive and integrated. Since that time, the Government have produced a range of promotional publications and videos on this topic, organised industry commitment conferences, seminars and workshops, participated in appropriate industry exhibitions, and sent education packs to high schools throughout the UK.



Warren Spring Laboratory also is currently reviewing the role of waste exchanges and plans to issue a report within three months. These and other related initiatives and activities have been incorporated into the Government's broader industrial waste management policy described above (recommendation 35(i)).

Environmental audit, the transfer of waste and choice of disposal route

#### Recommendation 37

4.88 We recommend that the Code of Practice should require large waste producers actively to audit their waste streams, and provide guidance on the features this should include. In particular, waste producers should be required to keep records of the disposal routes chosen for their wastes, in consultation with the disposer, as necessary. (230)

#### Response

4.89 The Government believe that this is more appropriate to a Waste Management Paper.

#### RESPONSIBILITIES OF CARRIERS

##### Registration

#### Recommendation 38

4.90 We recommended that the registration of carriers of special and other difficult wastes should be dependent on the carriers' demonstration of competence to deal with wastes concerned. (231)

## Response

4.91 The registration process is not intended to be a licensing system for carriers nor is it intended to impose conditions on the type of waste that a carrier may handle or the way in which he may handle it. The question of competence for carriage of any dangerous material is already covered by Department of Transport Carriage of Dangerous Goods Regulations. These regulations require that the vehicles are suitable for the material, the vehicles are well maintained and the drivers are adequately trained. They cover waste materials. There is no need for a parallel control system run by local authorities for the carriage of waste.

Fly-tipping and keeper liability

## Recommendation 39

4.92 We have already welcomed the proposals in the Control of Pollution (Amendment) Bill, both as the first stage of the general duty of care and as a means of tackling the problems of the illegal dumping of waste. (234)

## Response

4.93 The Government welcome the opportunity afforded by the Control of Pollution (Amendment) Bill to introduce the register of carriers in advance of the Government's main legislation which will, if successful, allow the Duty of Care to be implemented at an early date.



#### Recommendation 40

4.94 We welcome the proposal for keeper liability for vehicles used in connection with the illegal deposit of waste. Coupled with registration of carriers and records kept by disposers and producers, this should make fly-tipping easier to detect and prosecute. (236)

#### Response

4.95 The Government welcome the Committee's support.

#### Recommendation 41

4.96 We recommend that as a requirement of registration, carriers be obliged to display legibly the name of the proprietors on any road vehicle used to transport controlled wastes. (237)

#### Response

4.97 The Government are aware that this recommendation follows the recommendation of the Royal Commission on Environmental Pollution in their eleventh report that each vehicle covered by registration should display a conspicuous registration plate.

4.98 It was the Government's intention in putting forward proposals in 1986 in response to the Royal Commission, to require that all vehicles carrying waste for hire and reward should carry a card identifying the vehicle as being under the control of a registered carrier. It has never been the intention to require persons carrying their own waste to register because virtually every business in the country would then be obliged to register and the register would

become meaningless. Nor has it been intended to require the registration numbers of the companies' vehicles to be recorded on the register of carriers.

4.99 Further consideration of the effectiveness of requiring an identification card was given in the course of the consultation process. As producers of waste would not require to be registered to carry their own waste, the lack of an identification card on any vehicle would not automatically mean that it was carrying waste illegally. Moreover because of the rapid turnover of vehicles and the increasing use of hired vehicles the card could not be a permanent fixture on the cab. It has been concluded that to require an identification card to be displayed on the vehicles of registered carriers would serve little purpose and the proposal was dropped when the results of the consultation exercise were announced in June 1988.

4.100 The Committee's recommendation is however slightly different. They recommend that the proprietor's name should be displayed legibly on any vehicle used to transport controlled waste. To require property to be marked and identified in this way would be an unusual step. It would also be unenforceable since there would be no way of knowing whether an unmarked vehicle was carrying controlled waste until other checks had been carried out in connection with checking the registration requirements. The proprietor of the vehicle need not be connected in any way with the driver, carrier or producer of the waste. The name of the proprietor can easily be obscured by dirt and it is not practicable to require road vehicles to be clean as well as road worthy. It is worth noting that clearly identifiable vehicles are often used to fly-tip waste.



4.101 The Government therefore do not accept the recommendation that vehicles should be marked with the proprietor's name. The identification of the proprietors can be achieved in other ways and these are the subject of the Government's proposals for making the keepers of vehicles used in fly-tipping liable to prosecution.

#### RESPONSIBILITIES OF DISPOSERS

Deposits and audit

#### Recommendation 42

4.102 We recommend that the Code of Practice should include a requirement that landfill operators should record the exact location of each load of special or difficult waste deposited. (239)

#### Response

4.103 This matter is already addressed by the Special Waste Regulations (Regulation 14) which require the location of special wastes to be recorded on the site plan. WDAs are able to require similar provisions for other difficult wastes through disposal licensing if they consider this to be necessary to ensure the long term safety of the site. These are issues more appropriately dealt with through licensing and disposal controls than through Codes of Practice. The detail will however be appropriate to WMPs, which will, under the Government's proposals issued on 24 January, themselves be given statutory backing.

### Recommendation 43

4.104 We recommend that the Code of Practice should include standards and procedures for the proper monitoring and environmental audit of waste disposal sites by landfill operators. (240)

### Response

4.105 Disposal of waste is already closely controlled through licensing. The Government believe that the setting of standards and procedures for the proper monitoring and environmental audit of waste disposal sites is adequately dealt with through disposal licensing, guided by the new, stronger WMPs.

### TRAINING

### Recommendation 44

4.106 We welcome the evident commitment of the professional institutions and the industry to improving training within the industry. (224)

### Response

4.107 The Government are pleased that the Committee recognise the contribution that all sectors of the community can make to better waste management in the 1990s. They join the Committee in welcoming the efforts that the professional institutions and the waste disposal industry have put into training for waste management and look forward to the continued commitment of waste disposal professionals in this area.



## INTERNATIONAL ISSUES

### The European View

#### Recommendation 45

4.108 We recommend that the DOE, HMIP, WDAs and the waste industry should participate to the full in European and international waste management by information exchange, by liaising with like organisations, and by contributing generally to the development of waste management. (249)

#### Response

4.109 The Government assure the Committee of their continued commitment to promote this international co-operation in waste management and their full participation in the work of international bodies to improve standards of waste management throughout the world.

## IMPORTS

#### Recommendation 46

4.110 We conclude that the import of wastes for treatment or incineration is acceptable provided that it is properly regulated at all stages, but the import of wastes for direct landfill, whether or not for co-disposal, should not be permitted under any circumstances. (255)

#### Recommendation 47

4.111 In conjunction with a banning of all imports of waste for direct landfill, we recommend that all waste imports should be subject to the control of the Transfrontier Shipment Regulations and that the agreement of the European

Community be sought to that end. We further recommend that the notification documentation should include a verified analysis of the composition of all imported waste. (258)

#### **Response**

4.112 The Government agree that trade in waste disposal services is an environmentally acceptable trade provided that it is properly regulated. The Government announced last November their proposals to extend the regulation of trade in waste to encompass all types of waste and these proposals are currently being discussed in the European Community. Such regulation would be based on the present system of notification contained in the Transfrontier Shipment of Hazardous Waste Directive and would therefore include documentation on the composition of the waste. It is the Government's intention that waste should not be imported into the UK for direct landfill.

#### **Recommendation 48**

4.113 We urge the DOE to continue to monitor the role played by brokers, and to introduce licensing if there is any evidence of improper disposal routes linked with brokerage, once the amendments to COPA have been introduced. We also recommend that consideration be given to imposing a duty of care upon the ship-owners and ship-masters for a detailed and accurate manifest of the wastes in their cargoes unloaded in the UK. (261)

#### **Response**

4.114 It is the Government's view that a specific duty of care on shipowners and ship's masters is unnecessary, since ships masters are already bound by stringent Department of Transport regulations to hold detailed information on their



cargoes. The Merchant Shipping (Dangerous Goods) Regulations 1981, as amended in 1986, apply to United Kingdom ships wherever they may be and to other ships loading or discharging cargo within the UK. They require that the shipper of any packaged dangerous goods (which includes those carried in freight containers, portable tanks etc) must furnish the ship-owner with a dangerous goods declaration which gives information about the dangerous goods class and other properties of the goods. They place a duty upon the master of the ship to cause a specific list, manifest or stowage plan to be carried in the ship, such a document being based on the shipping documents (including the dangerous goods declaration) prepared by the shipper. There is an additional requirement for details of the location of each dangerous goods consignment on board the ship to be recorded, and to be available on board the ship. For carriage in bulk (ie loaded directly into the cargo spaces of the ship), the regulations require that the shipper notify the master in writing of the nature of any dangerous goods. These requirements are monitored for visiting ships in the UK under the Memorandum of Understanding on Port State Control. UK law insists on sufficient identification, and there is provision for detaining ships whose arrangements for waste cargoes are defective or whose cargoes are not properly classified.

4.115 The Committee also comment on the role of waste brokers in the international trade in waste disposal services. If a broker has control over the waste he will be bound by the Duty of Care. Under no circumstances will a producer or other holder of waste be able to evade his own Duty through the use of a broker or other intermediary. The Committee rightly draw attention to the fact that many waste brokers or waste producers are not carrying out their business under UK jurisdiction. This underlines the fact that the UK cannot act in isolation on this matter. Any



licensing of waste brokers in the UK, were licensing to be considered appropriate, would be of limited effect since the business can be, and mostly is, carried out in other countries. In fact the Government doubt whether licensing of waste brokers is necessary, provided that there are appropriate controls applied to waste producers and disposers, including the requirements of full documentation and characterisation. Waste brokers acting as intermediaries, provided they have no control over the waste, are not the target of concern. If, however they have control over the waste, they must be subject to the laws governing that control. The essential point is the international co-operation that is necessary to ensure that the same controls on producers apply throughout the international community and that there is a well established procedure for documenting the movements of waste between countries.

#### EXPORTS

##### Recommendation 49

4.116 The UK and the EC position has been that the regulatory system for transfrontier shipment should be based on "prior informed consent". We support this approach with regard to exports of waste. (262)

##### Response

4.117 Proposals for the introduction of controls on export of waste based on Prior Informed Consent formed part of the Government's consultation paper issued in November 1988. These proposals will apply to all waste, not only special waste. The Government have introduced these proposals to the Environment Council of the European Community where they are being pursued.



4.118 The United Nations Environment Programme, at Basle last month, promoted a convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, in which the principles governing the export of waste were stated as:-

(a) The state of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or

(b) The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or

(c) The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.

The Government fully support these principles, and are examining the final text of the Convention which emerged on the last day of the meeting.

The Public and Hazardous Waste

#### Recommendation 50

4.119 We recommend that:

(i) waste disposal contractors and local authority site operators should ensure that all their waste disposal activities are environmentally-sound, thorough and based on adequate research;

(ii) industry and WDAs should be open with the public in explaining their activities and providing information. (268)

#### Response

4.120 (i) The Government agree that all waste managers should take responsibility for the environmental effects of their operations, as indeed the vast majority do. The Government are considering proposals to place a general duty on waste disposal licensees to conduct their operations with regard to the protection of the environment, in addition to the existing requirements to comply with specific operating conditions set out in the licence.

4.121 (ii) The Government agree that more needs to be done to demonstrate to the public that waste is managed without significant risk to health or the environment. Their proposals for improving the role and functions of WDAs will require local authorities to set out clearly their policies and achievements on waste regulation in annual reports. These reports will provide the information that the Committee has sought on the detailed operations of individual authorities and their care of facilities under their jurisdiction.

#### Contaminated Land

#### Recommendation 51

4.122 We recommended that the DOE carry out and regularly update a field survey on contaminated land. (272)



## Response

4.123 In December 1987, the Government established a working party to consider the feasibility of establishing a register or registers, of contaminated land and the uses to which such registers might be put. Their report is expected shortly.

## Recommendation 52

4.124 We recommend that the Department of the Environment pay more attention to the problem of contaminated land, particularly with regard to environmental protection, public health and safety. (273)

## Response

4.125 The Government note that the Committee intends to re-examine the subject of contaminated land in the near future. As with waste disposal, the responsibilities and duties for dealing with contaminated land lie mainly with local authorities, and with developers of such land. The authorities are advised to regard contamination as a material consideration when deciding whether to grant permission for development of contaminated sites. If such permission is granted, the responsibility for safe development and secure occupancy rests with the developer of the land. The role of Central Government is one of providing advice based on research. This is done through the Interdepartmental Committee on Reclamation of Contaminated Land (ICRCL). Financial assistance for the reclamation of derelict land which includes many contaminated sites, is provided by Government through the Derelict Land Grant scheme and other forms of funding such as City Grants, Urban Programme and Urban Development Corporations.

4.126 The problems of making safe and recycling and re-using land contaminated in the past can be and are dealt with by development control, and sometimes by Government assistance for derelict land reclamation and urban and inner city policies. The problems to date have largely arisen from an historical legacy. However future policies and legislation on pollution control should help to avoid contamination, for instance the proposals for long term monitoring and maintenance of landfill sites under waste legislation and the control over scheduled processes through Integrated Pollution Control requirements. The Government are therefore developing policies and programmes which should substantially reduce the extent to which contaminated land contributes to environmental problems.

#### Recommendation 53

4.127 We recommend that the DOE bring forward legislation placing on vendors a legal duty to declare all the information in their possession regarding land which has been used for landfill or other purposes which may have contaminated the land in the past. (274)

#### Response

4.128 The Law Commission in England is currently reviewing the principle of "caveat emptor" as applying to the purchase and sale of land. One possibility is that the previous strict adherence to "caveat emptor" as the basis for such transactions might need to be modified to place obligations on vendors of land or property to provide information on the condition of that land or property or any other relevant information of a material interest to the buyer. This review is in its very early stages.