

## Warwickshire Waste Partnership

3<sup>rd</sup> December 2013

### DEFRA views on co-mingled collections and Technical, Environmental and Economic Practicability (TEEP) Report

#### Recommendations

- (1) The Waste Partnership is recommended to note the contents of this report;
- (2) WCA members are recommended to consider the implications of TEEP in respect of their recycling collection methods and the potential implications of not achieving the Waste Framework Directive (WFD) targets for the Partnership.

#### 1.0 Introduction

- 1.1 Councils collecting waste paper, metal, plastic or glass from 1<sup>st</sup> January 2015 will have a duty that they must do so by separate collection where it is necessary to ensure that waste undergoes recovery operations in accordance with WFD articles and to facilitate or improve recovery and is technically, environmentally and economically practicable.
- 1.2 DEFRA will be publishing guidance for LAs shortly but ahead of this a great deal of debate and uncertainty has been created by a letter from Lord de Mauley, Parliamentary Under Secretary of State for natural environment and science to LAs. The LGA has subsequently written to Owen Patterson, Secretary of State for Environment, Food and Rural Affairs, in response to the Lord de Mauley letter.

#### 2.0 Background

- 1.1 A paper was presented to the Warwickshire Waste Partnership on the 18<sup>th</sup> September 2012 on the Waste Framework Directive and Co-mingled collections. It set out the requirements within the WFD and the transposition of the directive into UK regulations. It also outlined the subsequent legal challenge (judicial review) of this transposition which then resulted in an amendment to the UK regulations.
- 1.2 The European Commission issued guidance on implementation on the key provisions of the WFD in June 2012.

### **3.0 DEFRA Guidance**

- 2.1 Discussions regarding the interpretation of TEEP have been taking place within DEFRA. The publication of guidance has been delayed but is believed to be due within the next few months. It is unknown at this stage if this guidance will be statutory or not.
- 2.2 On 17<sup>th</sup> June 2013, DEFRA meet LA representatives to look at TEEP guidance. A copy of the presentation given can be found in Annex A. A summary of feedback and points made by local authorities at that event was subsequently sent to attendees.
- 2.2 The same presentation on TEEP was delivered by DEFRA at a meeting of the National Association of Waste Disposal Officers (NAWDO) in September 2013.
- 2.3 To do this, authorities must prove that collecting these materials together through a co-mingled collection is justified because:
  - It is not necessary for the production of quality recyclables because the output of the MRF is of 'high quality'; and
  - It is not technically, environmentally and economically practicable (TEEP) to provide separate collections.
- 2.4 DEFRA was clear that proving TEEP would not just be a simple tick-box exercise and neither would the argument that "it is what the public want us to do" be sufficient for an Authority to continue to collect co-mingled recyclables.
- 2.5 DEFRA stated that whilst glass was specifically referred to in the Judicial Review it cannot be assumed that it will be sufficient simply to collect glass separately and continue to mix everything else.
- 2.6 DEFRA also said that the duty is on the collector and thus the requirements probably also apply to any commercial waste collected.

### **3.0 Letter from Lord de Mauley**

- 3.1 On 16<sup>th</sup> October Lord de Mauley sent a letter out (a copy can be found in Annex B) informing local authorities, amongst other areas, that DEFRA fully supports the new requirements for the separate collection of waste paper, plastic, glass and metal. It goes on to say that 'it is clear that the intention is that these requirements should represent a high hurdle'.
- 3.2 The letter points towards the issues with achieving high quality recyclables when paper and glass are co-collected, with shards of glass ending up in the paper and low quality glass that is not able to be sent for re-melt.
- 3.3 Lord de Mauley advises local authorities to consult their own lawyers as necessary and keep a clear audit trail given the potential for legal challenge.

## **4.0 Letter from the LGA**

- 4.1 On 16<sup>th</sup> October the LGA sent a letter to Owen Patterson (a copy can be found in Annex C) in response to the Lord de Mauley letter.
- 4.2 The letter refer to outcome of the Judicial Review (JR), and points out that Lord de Mauley's letter does not have the weight of statutory guidance and that it would be legally unsafe to allow it to guide Local Authority decisions in any way.
- 4.3 The letter quotes the wording of Article 10 of the Directive which clearly states that '*waste shall be collected separately if technically, environmentally and economically practicable and shall not be mixed with other waste or other materials with different properties*' as being the most effective approach to mitigating the risk of legal challenge.
- 4.4 It acknowledges that the most useful advice in the letter is that Local Authorities should take their own legal advice and make decisions in accordance with that advice locally.

## **5.0 What this means to the WWP**

- 5.1 WCAs currently carrying out co-mingled collections can continue to do so after 1<sup>st</sup> January 2015 provided that they can demonstrate, if necessary to the satisfaction of a court, that their collection system and sorting arrangements/MRF are producing high quantities of quality material and that introducing a separate collection of paper, metal, plastic and glass would either not facilitate and improve recovery and recycling or it is not technically, economically and environmentally practicable to do so.
- 5.2 Glass and its potential to contaminate paper have featured as the main problem area with co-mingled collections which include glass. The separate collection of glass with all other materials collected co-mingled does not in itself represent a solution as there is a risk of reduced tonnages which breaches the duty to "improve recovery".
- 5.3 Each WCA wishing to continue with co-mingled collections will have to consider the DEFRA guidance when published and are likely to have to undertake an assessment of their collection methods and ensure they are able to defend their decision if challenged.

## **5.0 Conclusion**

- 6.1 The requirements of the WFD and the regulations present one of the greatest challenges faced by Authorities recently especially those using co-mingled collections.
- 6.3 WCAs will need to ensure they have appropriate collection methods in place for 1<sup>st</sup> January 2015 along with evidence to support the use of these methods.

## **Background Papers**

1. Warwickshire Waste Partnership – The Waste Framework Directive and Co-mingled Collections, 18 September 2012

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