



Mark Haynes
HM Revenue & Customs
Ralli Quays
3 Stanley Street
Salford
M60 9LA

24th July 2009

Dear Mr Haynes,

Consultation Response – Modernising Landfill Tax Legislation

I am pleased to respond to the HM Treasury/HM Revenue & Customs Consultation, on the modernisation of landfill tax legislation, on behalf of CoalImp – the Association of UK Coal Importers.

CoalImp represents major coal users (including all of the coal-fired generators in Great Britain), rail companies, ports and other infrastructure operators in the coal supply chain. The twenty two members (listed in the attached Appendix) account for the handling, transportation and use of the majority of imported supplies into the country, in turn accounting for around a quarter of electricity produced last year.

Individual CoalImp members will be submitting detailed responses to the Consultation, answering the complete list of questions posed. The purpose of this letter is to focus on the key issues of major concern to members.

The consultation document proposes fundamental changes to the way in which landfill tax is applied to the disposal of ash produced by coal-fired power stations. The proposed changes would result in an increase in taxation of such material from the current rate of £2.50 per tonne to £48 per tonne in 2009/10, increasing even further by £8 per tonne each year until 2012/13 to £72 per tonne.

Cumulative Impact of Regulation

Members operating coal-fired plant are well used to a complex market and regulatory environment. The existing provisions of the Large Combustion Plants Directive (LCPD) mean that opted-out plant will close by 2016. The Industrial Emissions Directive will lead to further closures between 2016 and 2023.

The potential 'generation gap' around 2016 is now well understood and documented. The investment decisions for new plant to fill this gap are complicated by uncertainty over the future carbon trading regime, and by the

extent to which the market may be foreclosed to non-renewable generation (even if this is zero or low carbon) by the EU renewable energy targets.

Attempts by generators to bring forward investment, for example in capture-ready coal plant, are being hampered by regulatory delays and planning issues. Building sufficient plant in time for the existing 2016 'cliff edge' is already a major challenge, not least because of skills issues.

There is a very real cumulative impact of different aspects of regulation – including LCPD, emissions trading and renewables targets, coupled with planning issues – which makes investment decisions for new plant extremely difficult. All delays to these investment decisions exacerbate the 2016 cliff edge and mean that the role of existing plant needs careful consideration.

Security of Supply

CoalImp believes that implementation of the revised landfill tax proposals would inevitably place further pressure on the viability of opted-in coal plant with corresponding risks to security of supply. Proposals could impact on whether plant that is compliant under LCPD would look to fit SCR in order to continue to run beyond 2015 or whether plant that has opted out of LCPD would look to close before 2015. As such, proposed changes could impact on the size and timing of the 'generation gap' from 2015 and beyond. The most likely alternative source of generation available in the UK, within the timescales, is gas fired generation. However, at a time when the UK is becoming increasingly reliant on imported gas supplies, and having to compete in a global market that is experiencing some difficult security of supply issues, the implications are far reaching.

Classification of Power Station Ash

The key element of the proposal of concern to CoalImp members is the re-classification of power station ash. This proposed change fails to recognise the negligible environmental impact of coal ash produced as a by product of coal fired generation and disposed of in single use landfill sites. In very simple terms coal ash displays many of the characteristics required to be classified as inert:

- It does not undergo any significant physical, chemical or biological transformation
- It does not dissolve, burn or physically or chemically react
- It does not produce any landfill gas
- It does not pose any risk of pollution
- It does not require any significant aftercare.

Although coal ash does not comply with EU tests in terms of leachability, the UK Environment Agency has recognised for some time now that the total leachability, pollutant content and ecotoxicity associated with coal ash is "insignificant". When landfilled, coal ash does not generate quantities of leachate to pose a risk to ground or surface waters or other environmental receptors, and

does not produce any landfill gases that could pose a health hazard or contribute to climate change. Indeed, coal ash typically has organic carbon content of only 0.4 to 1.48 %, which is comfortably less than the equivalent threshold for the WAC definition of inert waste of 3%.

On this basis, we do not support the suggestion that the proposals would strengthen the environmental integrity of the tax. We believe additional criteria should be applied for UK landfill tax purposes recognising the true environmental impact and the inappropriateness of a laboratory leachate test at single use coal ash landfill sites, for landfill tax purposes.

Electricity Prices

Landfill tax on power station ash is ultimately paid for by electricity customers. If the tax is applied as proposed then the amount paid by customers will exceed the landfill tax amount raised. This is because coal fired generation is the price setting marginal plant in the electricity market. Further, this cost will not be balanced by an environmental benefit as there will be no discernible environmental benefit beyond that achieved by the current landfill tax arrangements.

Use of Ash

The United Kingdom Quality Ash Association (UKQAA) has been promoting the use of coal combustion products such as coal ash and FGD gypsum in building and industrial applications since 1997. The trend in recent years has been for about 50% of coal ash to be utilised as a product. This tends to indicate that all potential ash markets have been fully exploited. Approximately 1,000,000 tonnes of furnace bottom ash (FBA) is produced annually; virtually all of this is reused in the manufacture of lightweight concrete blocks. Approximately 6,000,000 tonnes of pulverised fuel ash (PFA) is produced annually. Half of this is currently reused either as an aggregate replacement or in the production of cementitious products. We believe proposed changes to the classification and tax rate for coal ash could have the opposite affect to that intended: reclassifying coal as a non-inert waste could create a stigma which would reduce demand for and/or the value of such products.

Discrimination against Indigenous Coal

In representing the interests of members involved in importation of coal to the UK, CoalImp sees imports as complementary to indigenous production. It is certainly not part of our remit to support Government proposals which discriminate against indigenous coal supplies.

A potential impact of these proposals is to disincentivise UK electricity generators from utilising indigenous UK coals because of their typically higher ash contents than imported supplies. This could result in less UK coal being utilised for electricity generation in an attempt by operators to reduce their

landfill tax liability. Alternatively, UK coal producers may need to reduce their price to reflect the higher disposal costs associated with combusting UK coal. This is likely to threaten future investment plans to develop coal reserves in the UK. In summary, coal ash attracting a higher rate of landfill tax is likely to have a significant negative impact on the UK coal industry.

Conclusions

CoalImp believes that implementation of the revised landfill tax proposals would inevitably place further pressure on the viability of opted-in coal plant with corresponding risks to security of supply. As such, proposed changes could impact on the size and timing of the generation gap that we are looking to bridge from 2015 and beyond.

Increased electricity prices for consumers will not be balanced by an environmental benefit as there will be no discernible environmental benefit beyond that achieved by the current landfill tax arrangements.

The trend in recent years has been for about 50% of coal ash to be utilised as a product. We believe proposed changes to the classification and tax rate for coal ash could have the opposite affect to that intended: reclassifying coal as a non-inert waste could create a stigma which would reduce demand for and/or the value of such products.

It is not part of CoalImp's remit to support Government proposals which discriminate against indigenous coal supplies; coal ash attracting a higher rate of landfill tax is likely to have a significant negative impact on the UK coal industry.

CoalImp believes that there is strong evidence to confirm that whilst coal ash does not satisfy the leachate test under the WAC tests, it is clear that there is no real environmental impact at single use landfill sites. This is currently recognised by the EA. On this basis we believe additional criteria should be introduced which would allow coal ash to remain at the lower tax rate for landfill tax purposes. This could be applied on a case by case basis.

Yours sincerely

Nigel Yaxley
Managing Director

CoalImp Membership

Associated British Ports
British Energy Trading and Sales
Clydeport
DB Schenker
Drax Power Limited
EDF Energy
E.ON Energy Trading
Fastline Freight
Fergusson Group
FirstGBRf
Freightliner Heavy Haul
Hargreaves Services
International Power
Network Rail
Oxbow Coal
Port of Tyne Authority
Rio Tinto Alcan
Rudrum Holdings
RWE Trading
Scottish Power Energy Management
SSE Energy Supply
Welsh Power