



Flemish Government

Draft decree by the Flemish Government amending the Decree by the Flemish Government of 5 December 2003, laying down the Flemish regulations on waste prevention and waste management (VLAREA), the Decree by the Flemish Government of 6 February 1991 laying down the Flemish regulations concerning the environmental permit, the Decree by the Flemish Government of 1 June 1995 laying down general and sectoral regulations on environmental hygiene and the Decree by the Flemish Government of 14 December 2007 laying down the Flemish regulations on soil decontamination and soil protection

THE FLEMISH GOVERNMENT,

Having regard to the Decree of 2 July 1981 on the prevention and management of waste, particularly to Article 3, paragraph 3, section 1 and paragraph 5, Article 10, paragraph 1, paragraph 2 and paragraph 6, Articles 11 and 32, replaced by the Decree of 20 April 1994, and to Article 33, replaced by the Decree of 20 April 1994 and amended by the Decree of 21 December 1994;

Having regard to the Decree of 28 June 1985 concerning the environmental permit, particularly to Articles 3 and 20, amended by the decrees of 22 December 1993, 11 May 1999 and 6 February 2004;

Having regard to the Decree of 15 June 1994 concerning the environmental policy agreements, particularly to Article 4, paragraph 1;

Having regard to the Decree of 5 April 1995 laying down general regulations concerning environmental policy, particularly to Article 10.3.4, paragraph 4, amended by the Decree of 19 May 2006;

Having regard to the Decree by the Flemish Government of 6 February 1991 establishing Flemish regulations concerning the environmental permit, last amended by the Decree by the Flemish Government of 18 July 2008;

Having regard to the Decree by the Flemish Government of 1 June 1995 laying down general and sectoral regulations on environmental hygiene, last amended by the Decree by the Flemish Government of 18 July 2008;

Having regard to the Decree by the Flemish Government of 5 December 2003 laying down the Flemish regulations concerning waste prevention and waste management, last amended by the Decree by the Flemish Government of 7 March 2007;

Having regard to the decree by the Flemish Government of 14 December 2007 laying down the Flemish regulations concerning soil decontamination and soil protection;

Taking into consideration that during the implementation of the Decree by the Flemish Government of 5 December 2003 laying down the Flemish regulations concerning waste prevention and waste management, certain complications came to light which give rise to a number of amendments;

Taking into consideration that Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EC, shall be partially implemented in this Decree;

Taking into consideration that Regulation 1013/2006/EC of the European Parliament and of the Council of 14 June 2006 on shipments of waste shall be worked out further in this Decree;

Taking into consideration that Regulation 440/2008/EC of the European Commission of 30 May 2008 laying down test methods pursuant to Regulation 1907/2006/EC of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), replaces Annex V to Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances as amended repeatedly;

Taking into consideration that intensive consultations have taken place with the interested parties to the environmental policy agreements on the implementation of the VLAREA acceptance obligation;

Having regard to the approval by the Flemish minister responsible for the budget, given on (date) ;

Having regard to Advice No. of the Council of State, given on (date) , in accordance with Article 84, paragraph 1, section 1, point 1, of the coordinated laws on the Council of State;

On the proposal of the Flemish Minister for Public Works, Energy, the Environment and Nature;

following consultation,

DECREES:

Chapter I. Amendments to the VLAREA

Section I. Amendments to Chapter I

Article 1. In Article 1.1.1, paragraph 2, of the Decree by the Flemish Government of 5 December 2003 laying down the Flemish regulations on waste prevention and waste management, amended by the Decrees of the Flemish Government of 14 July 2004, 17 December 2004 and 9 February 2007, the following amendments shall be made:

1. In point 9 points a) and b) shall be replaced by the following:

'a) produces products, commissions products, imports or commissions the import into the Flemish Region, whether or not under their own brand name, and these products being intended for private use or for putting on the market, or the commissioning of their being put on the market in the Flemish Region, regardless of the sales methods employed;

b) resells products under his own brand name which are produced by other suppliers. In this case the reseller is not seen as producer if the producer's brand name is visible on the product.';

2. Point 11 shall be replaced by the following:

'11. intermediary trader: every natural person or legal person who distributes products to one or more retailers or other intermediaries in the Flemish Region;';

3. Point 25 shall be deleted;

4. Point 27 shall be replaced by the following:

'27. tyre: each air-filled tyre including binding bands, with the exception of bicycle tyres.'

5. Point 28 shall be replaced by the following:

'28. electrical and electronic appliances: appliances which need electrical currents or electronic fields in order to function properly and appliances for the generation, transfer and measurement of those currents and fields, which fall under one of the categories listed in Article 3.5.1, and are intended for use with a voltage of at most 1000 volt with alternating current or 1500 volt with direct current. This includes all parts, units and consumables which form part of the product at the moment that it is discarded.

The following appliances are not included in this definition:

a) appliances which form part of other electrical equipment;

- b) appliances which are relevant to the protection of the essential interests or the safety of member states, arms, munitions and war material, unless it concerns products which are not specifically intended for military purposes;
- c) large, immovable industrial installations or electrical or electronic tools and gardening tools;'

6. Points 29 and 30 shall be deleted;

7. Points 33, 34, 35 and 36 shall be replaced by the following:

'33. Batteries and accumulators, in particular:

- a) battery or accumulator: source of electrical energy obtained by direct conversion from chemical energy, consisting of one or more primary (non-rechargeable) battery cells or from one or more secondary (rechargeable) battery cells;
- b) battery pack: set of batteries or accumulators which are interconnected and/or provided with an outside packaging, which forms one complete unit and is not intended to be divided or opened by the end user.

The following batteries do not fall within this definition: batteries and accumulators in appliances intended to be sent into space, and batteries and accumulators in appliances used in connection with the protection of the essential interests or the safety of member states, arms, munitions and war material, with the exception of products which are not specifically intended for military purposes;

34. coin cell: small round portable battery or accumulator with a diameter which exceeds the height and which is used for special purposes such as hearing aids, watches, small portable appliances and as back-up power source;

- 35. portable battery or accumulator: every battery, coin cell, battery pack or accumulator which:
 - a) is sealed closed;
 - b) can be carried by hand;
 - c) is not an industrial battery or accumulator, nor a car battery or accumulator;

35. II) car battery or accumulator: battery or accumulator used for starting, the lighting or the ignition power of a vehicle;

35. III) industrial battery or accumulator: battery or accumulator which has been exclusively designed for industrial or professional purposes, or is used in any type of electrical vehicle;

36. collection percentage: the percentage that is obtained by dividing the weight of the discarded portable batteries and accumulators which have been collected by the average weight of portable batteries and accumulators which producers either sell directly to consumers, or supply to third parties in order to sell them to the end user, during that calendar year and the preceding two calendar years;';

8. Points 54, 55, 56, 57, 58, 59 and 60 shall be replaced by the following:

'54. recycled granulates: granulates which are created by the mechanical treatment of inorganic material which was previously used in building constructions such as

cement granulate, asphalt granulate, mix granulate, bricklaying granulate, recycled lumps, crushed stone fines, sieved crushed stone fines, sorted sieved granulate and sorted sieved sand;

55. recycled lumps: lumps which come from broken, reinforced or non-reinforced concrete slabs, or from recovered stone or recovered processed broken stones or from broken brick lumps;

56. concrete granulates: granulates produced by breaking concrete;

56. II) brickwork granulates: granulates produced by breaking masonry;

56. III) mix granulates: granulates produced by breaking masonry and concrete, so that the mix contains a minimum content of concrete;

57. crushed stone fines: sand produced sieving rubble after breaking and after preliminary sieving of sieved crushed stone fines;

57. II) sieved crushed stone fines: sand produced by the sieving preceding the breaking of rubble;

58. sorted sieved granulates: collective term for stones obtained by sieving rubble, obtained after preliminary sieving and sorting of building and demolition waste which comes from a permanent sorting facility;

58. II) sorted sieved sand: sand produced by sieving rubble, prior to sorting the building or demolition waste which comes from a permanent sorting facility;

60. asphalt granulate: granulate derived from breaking up and cutting asphalt.

9. In point 83 the word 'sampling' will be deleted;

10. A point 96 will be added, worded as follows:

'96. Calorific content: net heating value at constant pressure or lowest calorific value wet'.

Art. 2. A new point 7 shall be added to Article 1.1.1, paragraph three of the same decree, which was appended to the Decree by the Flemish Government of 9 February 2007, worded as follows:

'7. Vehicle: vehicles which fall under category M1 or N1, as stipulated in Annex II.A of Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers, as well as three-wheel motor vehicles as stipulated in Directive 92/61/EC of 30 June 1992 relating to the type-approval of two or three-wheel motor vehicles, with the exception of three-wheeled vehicles, regardless of how the vehicle was maintained and repaired and regardless of whether it was equipped with parts supplied by the manufacturer or with other parts which were fitted as replacement or built-in parts in accordance with the relevant community regulations or internal regulations.'

Art. 3. A new paragraph four shall be added to Article 1.1.1 of the same decree, amended by the Decrees of the Flemish Government of 14 July 2004, 17 December 2004 and 9 February 2007, worded as follows:

‘Paragraph 4. For the implementation of Chapter III, section VI and of Chapter V, section V, subsection VII the following terms are used:

1. processing of batteries and accumulators: every activity which the batteries undergo after they have been submitted to a facility for sorting, preparation for recycling or preparation for disposal;
2. recycling of batteries and accumulators: reprocessing waste materials in a production process, whether for the original purpose or whether for another purpose, however, with the exception of the recovery of energy;
3. producer of batteries and accumulators: person who, regardless of the sales method used, including those used for means of communication at a distance, first professionally brings batteries or accumulators on the market within the region, whether or not for personal use, including those which have been built into appliances or vehicles;
4. putting batteries and accumulators on the market: supplying or making available, whether or not for payment, to a third party, including the import into the customs area.’

Section II. Amendments to Chapter II

Art. 4. In Article 2.3.1 of the same decree the following amendments shall take place:

1. In point 2, point c) shall be replaced by the following:

‘c) waste batteries and accumulators;’

2. Point 5 shall be replaced by the following:

‘5. waste batteries and accumulators;’.

Art. 5. In Article 2.4.1 of the same decree paragraph three shall be replaced by the following:

‘Paragraph three. The test methods which are to be used for the determination of the characteristics provided for in paragraph 2 are included in Council Regulation 440/2008/EC of 30 May 2008 laying down test methods pursuant to Regulation 1907/2006/EC on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).’

Section III. Amendments to Chapter III

Art. 6. In Chapter III of the same decree, amended by the Decrees of the Flemish Government of 14 July 2004, 17 December 2004 and 9 February 2007, the words

'waste prevention and waste management plan' shall be replaced each time by the words 'individual waste prevention and waste management plan'.

Art. 7. Article 3.1.1.1 of the same decree, amended by the Decrees of the Flemish Government of 14 July 2004, 17 December 2004 and 9 February 2007, shall be replaced by the following:

'Art. 3.1.1.1. For the following waste products an acceptance obligation applies to the retailer, the intermediary trader and the manufacturer, as stipulated in Article 10 of the Waste Decree:

1. from 1 June 1998:
 - a) waste printed matter;
 - b) waste batteries and accumulators.
2. from 1 July 1999:
 - a) discarded electrical and electronic appliances as meant in Article 3.5.1.1;
 - b) end of life vehicles;
 - c) waste tyres.
3. from 1 January 2004:
 - a) discarded oil, as described in Annex 3.1.1.1;
 - b) discarded electrical and electronic appliances as meant in Article 3.5.1.2, with the exception of lighting appliances and lamps.
4. from 1 June 2004: old and expired medicines.
5. from 1 July 2004:
 - a) waste animal and plant fats and oils;
 - b) discarded domestic and non-domestic lighting appliances.
6. from 1 July 2005: discarded lamps.
7. from 13 August 2005: discarded electrical and electronic appliances, provided for in Article 3.5.1, point 3.'

Art. 8. In Article 3.1.1.2 of the same decree, amended by the Decrees of the Flemish Government of 14 July 2004, 17 December 2004 and 9 February 2007, paragraph 2 shall be replaced by the following:

'paragraph 2. The retailer, the intermediary trader and the producer shall take back the following products free of charge, even if the consumer does not purchase replacement products:

1. old and expired medicines;
2. waste batteries and accumulators;
3. end of life vehicles;
4. waste printed matter;
5. discarded electrical and electronic appliances provided for in Article 3.5.1;
6. waste oil as meant in Annex 3.1.1.1;
7. waste tyres from the replacement market and from first fitment;
8. waste animal and plant fats and oils.

For domestic waste it is possible to deviate from the free of charge acceptance obligation in the environmental policy agreement or in the individual waste prevention and waste management plan, provided for in Article 3.1.1.4, if the producers organise the acceptance free of charge, even if the consumer does not purchase replacement

products, at depots or other collection points with comparable geographical spread and coverage.

For industrial waste it is possible to deviate from the free of charge acceptance obligation in the environmental policy agreement or in the individual waste prevention and waste management plan if the manufacturers organise the acceptance free of charge, even if the consumer does not purchase replacement products, in a suitable fashion.'

Art. 9. In Article 3.1.1.2, paragraph 3, of the same decree, replaced by the Decree by the Flemish Government of 9 February 2007, will be amended as follows:

1. In paragraph one the words 'The taking back of waste' shall be replaced by the words 'The acceptance of waste';

2. A new point three shall be added to paragraph one, worded as follows:

'3. for other waste: they contain no waste which is foreign to the discarded product unless these can be present during normal use.'

3. Paragraph three shall be replaced by the following:

'As long as the conditions stated in paragraph one, point 1b), point 2b), point 2c) or point 3, are not satisfied, the acceptance can be refused.'

Art. 10. In Article 3.1.1.2, paragraph 4, of the same decree, amended by the Decrees of the Flemish Government of 14 July 2004 and 17 December 2004, will be amended as follows:

1. The words 'manufacturer of waste' shall be replaced by the words 'producer of products';

2. The words 'the local authorities and the producers' shall be replaced by the words 'the parties involved'.

Art. 11. In Article 3.1.1.2 of the same decree, amended by the Decrees by the Flemish Government of 14 July 2004, 17 December 2004 and 9 February 2007, paragraph 5 shall be replaced by the following:

'Paragraph 5. Each manufacturer is responsible for financing his acceptance obligation. For the organisation of the financing the manufacturer can choose between collective or individual arrangements.'

Art. 12. To Article 3.1.1.2 of the same decree amended by the Decrees by the Flemish Government of 14 July 2004, 17 December 2004 and 9 February 2007, a new paragraph 6 and a new paragraph 7 shall be added, worded as follows:

'Paragraph 6. The retailer of products for which the acceptance obligation applies shall display a message in each of his outlets in a clearly visible location on which is indicated under the heading 'ACCEPTANCE OBLIGATION' the way in which he

complies with the requirements of this decree and the way in which the customer can discard his waste. The consumer shall also be informed of this if the sale takes place outside a sales area.

Paragraph 7. All requirements and costs for those who are subject to the acceptance obligation apply from the date of entry into effect of the obligation, regardless of the date of signing of an environmental policy agreement or the approval date of the individual waste prevention and waste management plan.'

Art. 13. Article 3.1.1.3 of the same decree, replaced by the Decree by the Flemish Government of 14 July 2004 and amended by the Decree by the Flemish Government of 9 February 2007, shall be replaced by the following:

'Art. 3.1.1.3 The part of the purchase price of a product that is passed on in order to cover the costs involved in the implementation of the acceptance obligation, have to be indicated on the invoice, unless the environmental policy agreement or the individual waste prevention and waste management plan contain other stipulations.'

Art. 14. Article 3.1.1.4 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, shall be replaced by the following:

'Art. 3.1.1.4 paragraph 1. The way in which the acceptance obligation provided for in Article 3.1.1.1 and 3.1.1.2, is satisfied shall be laid down in accordance with Article 10, paragraph 6, of the Waste Decree:

1. either an individual waste prevention and waste management plan submitted to the OVAM for approval in accordance with the conditions laid down in Article 3.1.1.4, paragraph 2;
2. or an environmental policy agreement as defined in the Decree of 15 June 1994 concerning environmental policy agreements in accordance with the conditions laid down in Article 3.1.1.4, paragraph 2 and paragraph 3.

Paragraph 2. The individual waste prevention and waste management plan or the environmental policy agreement, as meant in paragraph 1, refers in particular to:

1. measures for qualitative and quantitative prevention and re-use;
2. measures for the selective collection of waste;
3. measures for the optimum processing of waste;
4. measures for a good registration of the waste flows and reasoning behind the achievement of the aims;
5. measures for the reimbursement of legal entities or civil law, or the recycling depots or of other collection points;
6. measures to increase the awareness of various target groups;
7. measures for an own inspection system for the aforementioned measures;
8. conditions for reporting to the OVAM relating to all the aforementioned measures;
9. measures for financing collection and processing;
10. for domestic waste: a financial security which is in accordance with the estimated costs for the implementation of the acceptance obligation for the Flemish Region during six months. In an environmental policy agreement other securities can be agreed on in order to guarantee the progress of the obligations arising from the agreement.

Paragraph 3. An environmental policy agreement is possible under the following circumstances:

1. the environmental policy agreement, as defined in the Decree of 15 June 1994 concerning the environmental policy agreements, is drawn up by umbrella representative organisations or enterprises of which the manufacturer, the retailer and the intermediary trader are members. In so doing each of the umbrella representative organisation or enterprises involved sign for the responsibilities ensuing from the legal obligations of their members;
2. a management body is set up which carries out tasks in the name of the representative organisation(s). It is only possible to deviate from the obligation to set up a management body if the umbrella representative organisations or all parties as referred to in 1 above can demonstrate that they can achieve the same results by means of another joint organisation. That organisation will have to comply with the same requirements as a management body;
3. the management body shall submit a management plan covering the duration of the environmental policy agreement to the OVAM for approval within at most six months of signing the environmental policy agreement, in which it is indicated how it will satisfy the conditions of the agreement. The management plan shall contain at least the minimum implementation regulations of the requirements in the environmental policy agreement in accordance with Article 3.1.1.4, paragraph 2. The management body shall submit an update covering the next calendar year for approval each year before 1 October;
4. the management body shall submit a financial plan to the OVAM for advice within at most six months of signing the environmental policy agreement, including the calculation of possible contributions covering the duration of the environmental policy agreement. The management body shall submit an update covering the next calendar year for advice each year before 1 October;
5. if the management body organises the collection and processing it shall submit the specifications for collection and processing advice within at most six months of signing the environmental policy agreement to the OVAM for approval. Each change in the specifications will have to be approved in advance;
6. the OVAM shall fulfil the role of observer on behalf of the region in the Board of Governors and at the general meeting of the management body. To this end the OVAM shall receive invitations and reports with adequate notice;
7. the management body may not refuse to allow any enterprise to join which could fall under the acceptance obligation as defined in the environmental policy agreement. The management body may deviate from that obligation if there are serious reasons thereto and after approval by the OVAM;
8. at the request of the OVAM the management body shall enter into consultation with the representative organisations of parties involved in the implementation of the acceptance obligation.

In paragraph one, points 3, 4 and 5, a distinction is made between domestic waste and industrial waste comparable to domestic waste on the one hand, and industrial waste on the other hand.'

Art. 15. Article 3.1.1.5 of the same decree shall be replaced by the following:

'Art. 3.1.1.5 paragraph 1. All documents within the framework of the acceptance obligation which are of critical importance shall be submitted to the OVAM for

approval. Among other things these are the management plan, the specifications and the communication plan.

The OVAM has one month in which to approve or reject those documents. If no decision has been made known by the OVAM within this period, this counts as tacit approval. Should the OVAM request supplementary information, the period can be extended by a maximum of one month. The period starts from the date of receipt of all the requested information. If the OVAM rejects the documents, an amended proposal shall have to be re-submitted for approval. A proposal cannot be carried out without the OVAM's approval.

Paragraph 2. In derogation of paragraph 1 the financial plan and the admittance agreement shall be submitted for advice.

The OVAM has one month in which to give their advice. If the OVAM has not provided their advice within a month, then this shall count as a positive advice. Should the OVAM request supplementary information, the period can be extended by a maximum of one month. The period starts from the date of receipt of all the requested information.

Paragraph 3. The following applies regarding reports:

1. the figures which are supplied to the OVAM within the framework of the acceptance obligation, shall be certified by an independent auditing body;
2. the figures of carriers and processors which are supplied to the producer's management within the framework of the acceptance obligation, shall be certified by an independent auditing body;
3. the figures which are supplied to the management body by the producers within the framework of the acceptance obligation, shall be certified by an independent auditing body. The management body or a third party appointed by that organisation can take that task upon itself, provided that all the members are audited at least once every three years and that the management body reports on these activities and the results to the OVAM annually;
4. deviation from these obligations can take place in an environmental policy agreement or an individual waste prevention and waste management plan if the quality of the figures can be guaranteed in some other way.

Paragraph 4. The producers, retailers, intermediary traders and management bodies shall supply to the OVAM all information considered useful by the OVAM for the evaluation of the aims and supervision of the Waste Decree and the complementary regulations thereof. If required a system shall be devised which guarantees confidentiality.'

Art. 16. Article 3.1.1.6, paragraph 1, of the same decree, which was appended to the Decree by the Flemish Government of 14 July 2004, shall be amended as follows:

1. In point three the words 'name, address and identification number' shall be replaced by the words 'name and address';
2. In point 4 the words 'name, address and identification number' shall be replaced by the words 'name and address';

Art. 17. To Article 3.1.1.6 of the same decree, which was appended to the Decree by the Flemish Government of 14 July 2004, a new paragraph three shall be added, worded as follows:

‘Paragraph 3. It is possible to deviate from the obligation for the retailer and intermediary trader to maintain a waste register in the environmental policy agreement or in the individual waste prevention and waste management plan, as meant in Article 3.1.1.4, if the transporter of the removed waste gives the OVAM the right to online inspection of his waste register, as provided for in Article 6.2.2, provided that the conditions of the right to online inspection were approved by the OVAM.’

Art. 18. In Article 3.1.2.1 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, is amended as follows:

1. In paragraph one the words ‘Article 3.1.1.4, paragraph 1, section 2’ shall be replaced by the words ‘Article 3.1.1.4, paragraph 1, section 1’;
2. In paragraph one, section 3, the word ‘appliances’ shall be replaced by the words ‘discarded products’.

Art. 19. Article 3.1.2.2 of the same decree shall be replaced by the following:

‘Art. 3.1.2.2 The individual waste prevention and waste management plan, provided for in Article 3.1.1.4, paragraph 1, section 1, shall be approved in accordance with the following procedure:

1. The application for approval of the individual waste prevention and waste management plan shall be sent by registered post to the OVAM or delivered to the OVAM against a proof of receipt, preferably on the official headed stationary of the applicant, dated and signed by the applicant, or where relevant, by a natural person with authority over the company, accompanied by the following enclosures:
 - a) where relevant, a copy of the memorandum of association and of the possible amendments thereto during the last five years;
 - b) the draft of the individual waste prevention and waste management plan for which approval is sought;
2. The OVAM shall examine the application, referred to under point 1, for completeness in accordance with the regulations in Article 3.1.2.1:
 - a) if it is ascertained that the application is incomplete, the OVAM shall inform the applicant by means of a registered letter within fourteen calendar days after the submission of the application, with reference to the missing information and data;
 - b) if it is ascertained that the application is complete, the OVAM shall inform the applicant by means of a registered letter within fourteen calendar days after the submission of the application or the supplementary information;
3. Within a period of four months, starting from the date on which it was ascertained that the application was complete, the OVAM shall deliver their findings on the application, as meant in point 1; within four months the OVAM can request all explanations and information required for the evaluation of the contents of the application;

4. The OVAM shall deliver the decision to the applicant by registered letter within ten calendar days of the judgement, provided for in point 3.'

Art. 20. In Article 3.2.3 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, the words 'The in Article 3.1.1.4, paragraph 1, 2' shall be replaced by the words 'The Article 3.1.1.4, paragraph 1'.

Art. 21. A new paragraph 5 shall be added to Article 3.2.5 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, worded as follows:

'Paragraph 5. The obligation, referred to in Article 3.1.1.2, paragraph 6, does not apply to printed matter.'

Art. 22. In Article 3.3.1, paragraph 2 of the same decree, point 1 shall be replaced by the following:

'1. waste batteries and accumulators shall be processed in accordance with Article 3.6.1'

Art. 23. Article 3.3.2 of the same decree shall be replaced by the following:

'Art. 3.3.2. The individual waste prevention and waste management plan and the environmental policy agreement, as meant in Article 3.1.1.4, paragraph 1, regulate in particular and where relevant:

1. The obligation of the retailers of vehicles to take back each end of life vehicle brought in by the consumer;
2. The obligation of the intermediary traders in vehicles to collect all discarded vehicles taken back by the vehicle retailers pursuant to this decree regularly from their premises and to return them to the producer;
3. The obligation of the producers of vehicles to collect all discarded vehicles accepted by the intermediary trader, or in their absence from the retailer regularly and to have them processed at their own cost in a facility licenced thereto.'

Art. 24. Article 3.3.3 of the same decree shall be deleted.

Art. 25. In Article 3.4.1 of the same decree points 3, 4 and 5 are replaced as follows:

3. the total percentage of re-use by the sorter, tread renewal and recycling of the collected waste tyres comprises at least 55%.'

4. the rest of the collected waste tyres are energetically valorised,'

"5. The disposal of waste tyres is not permitted.'

Art. 26. Article 3.4.3 of the same decree shall be deleted.

Art. 27. In Article 3.4.4, paragraph 3, of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, is amended as follows:

1. In point 2 the words 'in kilograms, types and numbers' shall be replaced by the words 'in kilograms and types';

2. In point 4 the words 'waste materials arising from the processing of waste tyres' are replaced by the words 'waste tyres';

3. In point 4 point c) shall be replaced by the following:

'c) was used for material recycling;'

4. A new point d) shall be added to point 4, worded as follows:

'd) was energetically valorised.'

Art. 28. In Article 3.4.4 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, paragraph 4 shall be deleted.

Art. 29. Article 3.5.1 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, shall be replaced by the following:

'Art. 3.5.1. Electrical and electronic appliances shall be subdivided into the following ten categories:

1. Domestic or comparable appliances:

- a) large domestic appliances (category 1);
- b) small domestic appliances (category 2);
- c) IT- and telecommunication appliances (category 3);
- d) consumer appliances (category 4);
- e) electrical and electronic gardening tools (with the exception of large, immovable industrial installations) (category 6);

2. domestic or comparable appliances, unless otherwise specified:

- a) lighting appliances and lamps (category 5);
- b) other electrical and electronic tools (with the exception of large, immovable industrial installations) (category 6);
- c) toys, appliances for sport and leisure (category 7);
- d) measuring and control instruments (category 9);

3. other appliances:

- a) those categories of appliances, provided for in Article 3.5.1. sections 1 and 2, which are not of a domestic or comparable type;
- b) medical aids (with the exception of all implanted and infected products) (category 8);
- c) machines (category 10).

The Flemish minister can draw up a list of the appliances which fall under these categories.'

Art. 30. Article 3.5.1 II) of the same decree, appended to the Decree by the Flemish Government of 14 July 2004, shall be replaced by the following:

'Art. 3.5.1 II), paragraph 1. The following applies to the financing of the environmental contribution:

1. For discarded electrical and electronic appliances of domestic or comparable type:
 - a) for products sold after 1 July 2001, each producer is responsible for financing his acceptance obligation. The producer can choose between a collective and an individual arrangement;
 - b) the responsibility for financing the costs of the management of discarded electrical and electronic appliances sold before 1 July 2001 rests with one or more systems, to which all producers who were active on the market at the time that the costs originated shall contribute proportionally, for example in proportion to their share of the market for the appliances concerned;
 - c) the producers shall, when they bring a product on the market, lodge a security which proves that the management of the discarded electrical and electronic appliances shall be financed. The security relates to the financing of the collection and environmentally responsible processing of that product. It can take the form of a recycling insurance, blocked funds or the participation of the producer in suitable financial arrangements for the financing of the management of discarded electrical appliances;
2. For discarded electrical and electronic appliances from other users than households or comparable consumers:
 - a) for products sold after 13 August 2005, each producer is responsible for financing the collection and environmentally responsible processing of the discarded electrical and electronic appliances from sources other than private domestic households;
 - b) for historic stock from before 13 August 2005, which is replaced by new, equivalent products with the same function, the costs shall be borne by the producers of those new products at the time that they are supplied. For other historic stock the costs shall be borne by the other consumers than private households;
 - c) producers and other consumers than private households can agree on other financing arrangements without prejudice to the regulations in this article. Those conditions shall then be indicated clearly in the sales conditions of the new product.

Paragraph 2. In derogation of Article 3.1.1.3 the following applies to the visibility of the environmental contributions:

1. For electrical and electronic appliances of a domestic or comparable type the costs of collection and environmentally responsible processing are not indicated separately to the consumer when selling new products. When selling new products the producers may indicate to consumers the costs of collection and environmentally responsible processing for sales of large domestic appliances during a transition period up to 13 February 2013 and to 13 February 2011 for the other appliances. The indicated costs shall not exceed the real costs;
2. For electrical and electronic appliances from other consumers than households or comparable consumers the producers can voluntarily, during a transition period, when selling new products, indicate to consumers the costs of collection and environmentally responsible removal of the historic stock. Producers who make use of this regulation must guarantee that the indicated costs do not exceed the real costs.

Paragraph 3. Natural persons or legal entities involved in remote selling electrical or electronic appliances shall also comply with the conditions for this article for appliances sold to a buyer outside the Flemish Region.'

Art. 31. In Article 3.5.2, paragraph 1, of the same decree, the words 'fraction is' shall be replaced by the words 'electrical and electronic appliances remain'.

Art. 32. In Article 3.5.4 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, point 5 shall be replaced by the following:

'5. The obligation of the producers, or of third parties acting in their name, to collect and process discarded electrical and electronic appliances of the categories, as defined in Article 3.5.1, section 3;'

Art. 33. Article 3.5.5 of the same decree shall be deleted.

Art. 34. In Article 3.5.6 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, paragraph 4 shall be deleted.

Art. 35. In the same decree Chapter III, section VI. Waste batteries and waste lead-acid starting batteries, comprising Article 3.6.1 up to and including 3.6.4, amended by the Decree by the Flemish Government of 14 July 2004, shall be replaced by the following:

'Section VI. Discarded batteries and accumulators

Art. 3.6.1 The acceptance obligation aims on the one hand to stimulate preventive activities, and on the other hand to maximise the processing and the recycling of waste batteries and accumulators, with the intention of achieving the following goals:

1. Preventive activities:
 - a) make efforts with the intention of increasing the average quality of batteries brought onto the market, measured by the capacity, the longevity and the keeping qualities;
 - b) run awareness campaigns aimed at all consumer groups, and in which the emphasis lies on the suitable use of portable batteries:
 - 1) avoid batteries by using appliances which work on more environmentally responsible energy sources;
 - 2) use rechargeable batteries as they are the most suitable in many applications;
2. For waste portable batteries:
 - a) a collection percentage of 45%;
 - b) recycling of 75% of the average weight of nickel-cadmium batteries and accumulators, with the most possible recycling of the cadmium content that is technically feasible, while avoiding exorbitant costs;
 - c) the most possible recycling of the mercury content that is technically feasible, while avoiding exorbitant costs;
 - d) a recycling percentage of 50% of the average weight of other waste batteries and accumulators;
 - e) all the products gathered in recycling points which are placed at the disposal of the citizen for the collection of waste batteries shall be collected and processed;
3. For discarded car batteries and discarded industrial batteries:

- a) collection of all waste batteries;
- b) a recycling percentage of 65% of the average weight of lead-acid batteries and accumulators,
 - 1) with the most possible recycling of the lead content that is technically feasible, while avoiding exorbitant costs;
 - 2) with maximum possible processing of the plastics in a production process as is technically feasible while avoiding exorbitant costs, whether for the original purpose or whether for another purpose, however, with the exception of the recovery of energy;
- c) recycling of 75% of the average weight of nickel-cadmium batteries and accumulators, with the most possible recycling of the cadmium content that is technically feasible, while avoiding exorbitant costs;
- d) with the most possible recycling of the mercury content that is technically feasible, while avoiding exorbitant costs;
- e) a recycling percentage of 50% of the average weight of other waste batteries and accumulators.

All producers, retailers, collectors, recycling enterprises and other processors, and all competent government authorities must be able to participate in the systems for collection, processing and recycling. It is possible to deviate from this obligation if there are serious reasons and after approval by the OVAM.

Art. 3.6.2. The producers of batteries and accumulators are responsible for financing the collection and for processing the waste of all batteries, regardless of when they were brought on the market. The producers of batteries and accumulators shall also have to bear responsibility for the costs of the public information campaigns regarding prevention, collection, processing and recycling of waste portable batteries and accumulators.

At the request of the operator, the producers of batteries and accumulators, or those persons appointed by them, shall collect, free of charge, all waste batteries and accumulators which originate in the Flemish Region in facilities licensed for the dismantling of discarded electrical and electronic appliances, discarded vehicles or other consumables.

In derogation of Article 3.1.1.3, the costs for the end users of the collection, the processing and the recycling shall not be indicated separately when selling new portable batteries and accumulators.

The producers and consumers of industrial and car batteries and accumulators may make other agreements in which other financial arrangements are stipulated which satisfy the conditions laid down in the first paragraph.

Art. 3.6.3. The individual waste prevention and waste management plan and the environmental policy agreement, provided for in Article 3.1.1.4, arrange in particular and where relevant:

- 1. The obligation of the retailers of batteries and accumulators to take in each waste battery and accumulator offered to him by the consumer;
- 2. The obligation of the intermediary traders in batteries and accumulators to collect regularly all waste batteries and accumulators taken in pursuant to this Decree by the

vehicle retailers from their premises and to return them to the producer of batteries and accumulators;

3. The obligation of the producers of batteries and accumulators to collect all waste batteries and accumulators accepted by the intermediary trader, or in their absence, from the retailer, regularly and to have them processed at their own cost in a facility licenced thereto.'

4. The way in which the suitable use of batteries is encouraged.

Art. 3.6.4 The producers of batteries and accumulators shall make sure, in particular by means of information campaigns, that the end users are fully informed regarding:

1. The potential effects of the materials used in batteries and accumulators on the environment and human health;

2. The necessity for waste batteries and accumulators not to be thrown away as unsorted domestic and comparable waste, and the importance of participating in sorted collection thereof, in order to facilitate processing and recycling;

3. The collection and recycling systems available to them;

4. Their role in the recycling of waste batteries and accumulators;

5. The meaning of the symbol of the crossed-out dustbin on wheels and of the chemical symbols Hg, Cd and Pb.

Art. 3.6.5. The producers of batteries and accumulators shall be registered and shall make available the following information on the preceding calendar year to the OVAM before 1 April of each year:

1. The total quantity of batteries and accumulators, expressed in kilograms, which were used in the Flemish Region, divided into each of the following types:

a) zinc pyrolusite batteries;

b) alkali manganate batteries;

c) mercuric oxide batteries;

d) silver oxide batteries;

e) zinc air batteries;

f) nickel cadmium batteries;

g) lead-acid batteries;

h) nickel metal hydride batteries;

i) rechargeable lithium batteries;

j) other batteries;

2. The total quantity of waste batteries and accumulators, expressed in kilograms, which was collected within the framework of the implementation of the acceptance obligation, divided according to type, as meant in point 1;

3. The facility (facilities) where and the way in which the collected waste batteries and accumulators were processed;

4. The quantity of recycled waste;

5. An overview of the preventive activities.'

Art. 36. Article 3.7.3 of the same decree shall be deleted.

Art. 37. In Article 3.7.4 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, paragraph three shall be deleted.

Section IV. Amendments to Chapter IV

Art. 38. In Article 4.1.1, paragraph 2, section one, of the same decree after the words 'use as foundation' the words ' , use in artificial sealing layers with sodium silicate' shall be added.

Art. 39. In Article 4.1.1, paragraph 2, section 2, of the same decree the sentence 'The conditions may not be attained by a mixture of waste.' shall be replaced by the sentence 'Except for use in sealing layers with sodium silicate, the conditions shall not be achieved by a mixture of waste.'

Art. 40. In Article 4.1.1, paragraph 3, section 1, of the same decree the words 'EC Directive 67/584/EEC' shall be replaced by the words 'Directive 67/548/EEC'.

Art. 41. In Article 4.1.1, paragraph 4, section 2, of the same decree paragraph 2 is replaced by the following:

"In derogation of the list in Annex 4.1 to this Decree waste materials may be used as secondary raw materials for soil decontamination or risk management measures if they comply with the conditions concerning composition or use, laid down in the conformity attestation of the soil decontamination project, the limited soil decontamination project or the risk management plan, submitted by the OVAM in accordance with the requirements laid down in Articles 50, 51, 58 or 85 of the Decree of 27 October 2006 on soil decontamination and soil protection and as long as all the requirements for use as a secondary raw material are satisfied."

Art. 42. In Article 4.1.2 of the same decree paragraph 2 shall be replaced by the following:

'Paragraph 2. The waste which is used as secondary raw materials shall be sampled and analysed at least once a year by a laboratory accredited for the relevant analysis packages concerning secondary raw materials. The sample taking can also be carried out by independent and qualified persons or institutions. The OVAM can further specify the frequency.'

Art. 43. A new paragraph four and five shall be added to Article 4.1.2 of the same decree, worded as follows:

'Paragraph 4. The sampling for external supervision and self checking of recycled granulates shall take place in accordance with the directives based on the NBN EN 932-1 standard.

Paragraph 5. For recycled granulates (except for asphalt granulates) produced by a recovery facility subject to a management system approved by the OVAM, the parameter list for the annual analysis obligation is cut back as follows:
Arsenic, cadmium, chrome, copper, mercury, lead, nickel, zinc, extractable organic halogen compound (EOX), mineral oil and polycyclic aromatic hydrocarbons (PAHs).
For asphalt granulates only the PAH spray test is applicable.

Art. 44. A new Article 4.2.1.3 shall be added to the same Decree, worded as follows:

'Art. 4.2.1.3. For the use of kitchen and garden waste (KGW) and green compost or the end material produced by the biological treatment of organic-biological commercial waste materials as a secondary raw material or as compost or soil improving material the licenced facilities for the biological processing of organic biological waste must be in the possession of a certificate of approval, conferred by the Flemish Compost Organisation (VLACO, a non-profit organisation) or another institution equipped with the required capabilities regarding the material in question, based on the General Regulations on Certification.

The Certification Committee on Fertilisers and Soil Improving shall supervise the certification and shall compose the General Regulations on Certification.

De tasks and the composition of this Certification Committee and the General Regulations on Certification shall be approved by ministerial decree and shall be published in extracts in the Belgian Official Journal.'

Art. 45. In Article 4.2.2.1, section 2, of the same decree the words 'respective background values for standard soil, as indicated in Vlarebo' replaced by the words 'target values for soil quality, as indicated in Annex III to the Decree by the Flemish Government of 14 December 2007 laying down the Flemish regulations concerning soil decontamination and soil protection.'

Art 46. In Article 4.2.2.2, paragraph 3, of the same decree the words 'must be fully recycled in pre-formed building materials' shall be replaced by the words 'may only be recycled in specific applications which guarantee at least an equal level of environmental protection'.

Art 47. Article 4.2.2.3 of the same decree shall be replaced by the following:

'Art. 4.2.2.3. paragraph 1. Waste listed in Annex 4.1, section 2, can be used in pre-formed or non-pre-formed building materials on the condition that:

1. They comply with the requirements, laid down in Article 4.2.2.1 and 4.2.2.2, except for the mineral oil parameter in asphalt granulates, cutting asphalt granulates, crushed stone fines, sieved crushed stone fines, sorted sieved granulates and sorted sieved sand, produced by sieving or breaking asphalt. For bituminous roofing materials the mineral oil parameters need not be determined;
2. The mass and volume percentage of non-stony materials, like gypsum, rubber, plastics, insulation, roofing or other contaminants, comprise at most 1%;
3. The mass and volume percentage of organic material, like wood, plant residue or other contaminants, comprise at most 1%;
4. The asbestos content comprises at most 100 mg/kg dry material and is determined in accordance with NEN 5897.

Paragraph 2. Asphalt granulate which displays yellow discolouration when a PAH spray test is applied, can only be used in the following limited applications under the following conditions:

1. It complies with the requirements laid down in Article 4.2.2.3, paragraphs 1, 2, 3 and 4;

2. The quantity of asphalt granulate comprises at least 1500 m³;
3. The application is inventoried: at the very least the local council and the cadastral plot must be indicated;
4. The asphalt granulate must be used in cold state in a foundation consisting of asphalt granulate cement.

Asphalt granulate which does not display yellow discolouration can be used if it complies with the requirements laid down in Article 4.2.2.3, paragraphs 1, 2, 3 and 4.

Art. 48. A new Article 4.2.2.4 shall be added to Chapter IV, section II, subsection II, of the same decree, worded as follows:

‘Art. 4.2.2.4. Paragraph 1. The content of suspected bonded asbestos materials in recycled granulates shall be examined by the recycling facility and shall be checked against the value of 1000 mg/kg dry material, according to an identification test included in the Compendium for Sample Taking and Analysis.

If the target value of 1000 mg/kg dry material is exceeded, the sample must be tested in accordance with NEN 5897. The method of calculation and the standard value are stated in paragraph 2.

Paragraph 2. The standard value for asbestos in recycled granulates comprises 100 mg/kg dry material and is determined in accordance with NEN 5897. The calculation takes place according to the following formula:

$$C_{asbest}^{puin} \text{ mg/kg} = 10 \times C_{niet-hecht}^{puin} + C_{hecht}^{puin}$$

Paragraph 3. When using recycled granulates in non-enclosed applications the target value for suspected bonded asbestos materials does not apply and the standard value for asbestos of 100 mg/kg dry material shall apply forthwith.’

Art. 49. In Article 4.2.3.1 of the same decree, amended by the Decree by the Flemish government of 14 December 2007, the words ‘aldrin + dieldrin’ in section 1 shall be replaced by ‘the sum of aldrin + dieldrin’.

Art. 50. Chapter IV, section II, subsection V, of the same decree shall be deleted.

Art. 51. A new subsection VI, comprising Articles 4.2.6.1 up to and including 4.2.6.3 shall be added to Chapter IV, section II, of the same decree, amended by the Decrees by the Flemish Government of 22 September 2006 and 9 February 2007, worded as follows:

‘Subsection VI. Requirements for the use in artificial sealing layers with sodium silicate in landfills of category 1 and 2

Art. 4.2.6.1. In accordance with the applicable requirements for sealing layers and with the requirements in Annex 4.2.3.A, the following requirements have to be satisfied in order to use waste as a secondary raw material in artificial sealing layers with sodium silicate in landfills of category 1 and 2:

1. The maximum total concentration of organic compounds for use in artificial sealing layers with sodium silicate, as meant in Annex 4.2.3.B, is an enforced value;

2. The maximum availability for leaching out inorganic components for use in artificial sealing layers with sodium silicate, as meant in Annex 4.2.3.B, are enforced values;
3. The maximum leaching out values for inorganic components for use in artificial sealing layers with sodium silicate, as meant in Annex 4.2.3.B, are enforced values;
4. For waste used in artificial sealing layers with sodium silicate, the dosage of the waste material shall be based on the technical properties of the waste material and on the technical requirements of the artificial sealing layer with sodium silicate as provided for in Annex 4.2.3.A, and under no circumstances on the concentrations indicated in Annex 4.2.3.B.

Art. 4.2.6.2. Waste included in Annex 4.1, section 6, for use in artificial sealing layers with sodium silicate and which are indicated as being a dangerous waste material in the list of waste, and/or waste which does not comply with the requirements laid down in Article 4.2.6.1, after supplementary investigation and after the issue of a certificate of use, can still be permitted as a secondary raw material for use in artificial sealing layers with sodium silicate for landfills. The sealing layer formed with the waste still has to satisfy the requirements concerning composition, maximum availability for leaching out and leaching out values, as indicated in Annex 4.2.3.C.

Art. 4.2.6.3. Waste from Annex 4.1, section 6, can be used in artificial sealing layers with sodium silicate on the condition that:

1. It satisfies the requirements laid down in Articles 4.2.6.1 and 4.2.6.2, with the exception of the parameter for mineral oil and for dissolved organic carbon (DOC) in water purification sludge, sand, sieved rubble sand and broken rubble sand obtained by sieving or breaking non-tarry asphalt rubble, as well as bituminous roofing materials;
2. The mass and volume percentage of non-stony materials, like gypsum, rubber, plastics, insulation, roofing or other contaminants, comprise at most 1%.

Art. 52. In Article 4.3.1 of the same decree paragraph two shall be replaced by the following:

‘The OVAM has made an example form for applying for a certificate of use available on their website.’

Art. 53. Article 4.3.2 of the same decree shall be replaced by the following:

‘The application referred to in Article 4.3.1 shall contain at least the following documents and information:

1. The desired use of the waste as a secondary raw material;
2. Identification details of the applicant:
 - should the applicant be a natural person: the first name and last name, address, date and place of birth, telephone number and if applicable fax number and e-mail address;
 - should the applicant be a legal entity: name, legal form of the company, Chamber of Commerce number and if applicable the business establishment number, address of the registered office and of the branch, name and contact address of the responsible party at the branch, telephone number and if applicable the fax number and e-mail address;

3. Identification details of the producer, should the producer be other than the applicant:

- should the applicant be a natural person: the first name and last name, address, date and place of birth, telephone number and if applicable fax number and e-mail address;

- should the applicant be a legal entity: name, legal form of the company, Chamber of Commerce number and if applicable the business establishment number, address of the registered office and of the branch, name and contact address of the responsible party at the branch, telephone number and if applicable the fax number and e-mail address;

4. Identification of the waste material: the usual name, annual quantity and code of the waste material, in accordance with Annex 1.2.1.B;

5. An overview of the production process with description of the steps in which the waste material is released, if applicable;

6. A copy of the environmental permit for the process or the work from which the waste material is released, if applicable;

7. A sampling and analysis report or a representative sample of the waste material, drawn up by a laboratory accredited for the relevant analysis packages. The sampling can also be carried out by independent and qualified persons or organisations.

Should the waste material merely comprise a part of the mass of the pre-formed building material or sealing layer with sodium silicate, then a supplementary sampling and analysis report of the end product shall have to be drawn up.

The analysis reports must demonstrate that the waste material or the pre-formed building material or the sealing layer with sodium silicate satisfies the requirements for the relevant application;

8. A summary of the positive characteristics regarding the possibilities for utilisation of the waste material as a secondary raw material and the confirmation thereof by means of reports;

9. A signature to confirm that the information given is correct and complete, including the date and place, first name and last name and job title.

Section V. Amendments to Chapter V

Art. 54. In Article 5.1.0 of the same decree the words '24 May 1995' shall be replaced by the words '15 December 2006'.

Art. 55. In Article 5.1.1.2, paragraph 1, of the same decree the words 'Regulation 259/93/EC of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community' shall be replaced by the words 'Regulation 1013/2006/EC of 14 June 2006 on shipments of waste'.

Art. 56. A new point 8 shall be added to Article 5.1.1.3, paragraph 5, section 2, of the same decree:

'8. Zinc ashes, muffle furnace fragments and lead slags which came about during the production of zinc, copper and lead in the period 1890-1974, and which are transported in order to be made ready for use as a building material within the framework of a valid certificate of use.'

Art. 57. In Article 5.1.1.4 of the same decree, amended by the Decree by the Flemish Government of 9 February 2007, paragraph 6 shall be replaced by the following:

'Paragraph 6. Where Regulation 1013/2006/EC of 14 June 2006 applies, the transportation document and the notification document shall count as identification forms for the transport of waste.'

For the transportation of green list waste for useful applications the Annex VII document of Regulation 1013/2006/EC shall count as identification form.'

Art. 58. A new point 15 shall be added to Article 5.2.2.1, paragraph 1, of the same decree, amended by the Decree by the Flemish Government of 9 February 2007, worded as follows:

'15. Waste batteries and accumulators.'

Art. 59. A new paragraph 4 is added to Article 5.2.2.1 of the same decree, amended by the Decree by the Flemish Government of 9 February 2007, worded as follows:

'The holder of an urban planning permit shall commission an inventory of the waste materials for the demolition of commercial buildings, buildings which were partially or completely used for purposes other than dwelling and which have a building volume exceeding 1000m³ and before the allocation of the jobs for demolition or dismantling, to be carried out by an architect or by an expert appointed by the commissioner.'

The demolition inventory shall contain the identification of the site including all waste materials which will be released. For each waste material the name, appropriate code from Annex 1.2.1.B, the estimated quantity expressed in cubic metres, in tonnes, the location within the building where the waste material occurs as well as the form of the waste. An example of a demolition inventory for demolition or dismantling works is made available by the OVAM.

Before the demolition or dismantling jobs are allocated, the completed demolition inventory of waste materials must be submitted to the party responsible for the demolition or dismantling tasks and the safety coordinator.

The architect or by an expert appointed by the commissioner tracks the waste material transports, makes adjustments where necessary and keeps copies of the transport documents. The copies of the transport documents and the receipts for the transported waste materials shall be submitted to the holder of the urban planning permit before the final acceptance inspection of the demolition and dismantling works.

The holder of an urban planning permit shall keep the transport documents and the receipts for a period of five years.

Art. 60. In Article 5.5.1.2, paragraph 2, of the same decree point 1 shall be replaced by the following:

'1. Batteries and accumulators;'

Art. 61. In Article 5.5.2.1 of the same decree point 7 shall be replaced by the following:

'7. Batteries and accumulators:

- a) lead-acid batteries;
- b) other batteries;'

Art. 62. In Article 5.5.4.3, paragraph 6, of the same decree, amended by the Decree by the Flemish Government of 9 February 2007, the words 'EN 45004' shall be replaced by the words 'ISO 17020'.

Art. 63. In Article 5.5.4.5, paragraph one, section 6, of the same decree the words 'EN 45004' shall be replaced by the words 'ISO 17020'.

Art. 64. In Article 5.5.5.3 of the same decree, appended to the Decree by the Flemish Government of 14 July 2004, the words 'EN 45004' shall be replaced by the words 'ISO 17020'.

Art. 65. In Chapter V, section V, of the same decree, amended by the Decrees by the Flemish Government of 14 July 2004, 17 December 2004 and 9 February 2007 subsection VII, comprising Articles 5.5.7.1 and 5.5.7.2, shall be replaced by the following:

'Subsection VII. Waste batteries and accumulators

Art. 5.5.7.1. It is forbidden to process waste batteries and accumulators without any preceding treatment aimed at the complete or partial recycling of the waste batteries and accumulators.

It is forbidden to remove acids from waste batteries and accumulators outside a facility licenced for the processing of waste batteries and accumulators.

Systems for the treatment and processing of waste batteries and accumulators shall make use of the best available techniques or of equivalent techniques.

Art. 5.5.7.2. The treatment and storage of waste batteries and accumulators in processing facilities, including temporary storage, shall take place in indoor locations with a watertight floor or in weatherproof covered and acid proof containers. At the very least the treatment shall entail the removal of all liquids and acids.

Art. 5.5.7.3. The contractor, as indicated in Article 5.1.1.2, paragraph 1, who submits waste batteries and accumulators to a third party for processing or who processes them himself, must achieve the recycling goals, laid down in Article 3.6.1. At the request of the OVAM he shall provide the relevant information.

Art. 5.5.7.4. In case of export outside the EU the achieved recycling percentages can be validated by an independent supervisory organ accredited on the basis of ISO 17020.'

Art. 66. In Article 5.6.1 of the same decree the words 'Regulation 259/93/EC of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community' shall be replaced by the words 'Regulation 1013/2006/EC of 14 June 2006 on shipments of waste'.

Art. 67. In Article 5.6.3 of the same decree paragraph 2 shall be deleted.

Art. 68. In Article 5.6.4 of the same decree, replaced by the Decree by the Flemish Government of 14 July 2004, paragraph 2 and paragraph 4 shall be replaced by the following:

'Paragraph 2. The sum shall be transferred, free of all banking charges, before the submission of a notification, to bank account number 435-4508921-53 of the OVAM in Mechlin, with the following reference: 'Notification Regulation 1013/2006', including the serial number on the notification document.'

'Paragraph 4. The notification and transportation documents are made available by the OVAM free of charge, insofar as the OVAM can deliver them within the requirements of the Directive.'

Art. 69. In Article 5.6.5 of the same decree, replaced by the Decree by the Flemish Government of 14 July 2004, paragraph 1, paragraph 2, paragraph 4 and paragraph 5 shall be replaced by the following:

'Paragraph 1. In case of the export of waste outside the Flemish Region, the notifier shall place a bank guarantee or collateral at the disposal of the OVAM, or he shall take out an equivalent insurance in order to cover the costs of transportation and for the removal or useful application, in accordance with Article 6 of the Directive. In case of the import of waste into the Flemish Region, the OVAM can require a bank guarantee, a collateral or an equivalent Insurance from the notifier if necessary in order to comply with the requirements laid down in Article 6, paragraph four of the Directive.

Paragraph 2. The OVAM shall determine the sum of the bank guarantee, the collateral or of the risk to be insured.'

'Paragraph 4. In case of export the proof of the bank guarantee, the collateral or of the Insurance shall form part of the notification dossier. Without that proof the OVAM shall regard the dossier as incomplete.

Paragraph 5. The bank guarantee or collateral can be retracted after the OVAM's approval once the requirements, laid down in Article 6, paragraph five of the Directive have been satisfied. That approval shall be given within a week of receipt of the documents, laid down in that requirement.'

Section VI. Amendments to Chapter VII

Art. 70. In Article 7.1.1.1, paragraph 2, of the same decree the words 'Decree of 22 February 1995 on soil decontamination' shall be replaced by the words 'the Decree of 27 October 2006 on soil decontamination and soil protection,'.

Art. 71. A new paragraph three shall be added to Article 7.1.1.1 of the same decree, worded as follows:

'Paragraph 3. Depending on the sample, the analysis of a parameter which does not occur in the analysis packages, as meant in Article 7.1.1.2, shall take place in a laboratory accredited for waste analysis or for soil analysis, in accordance with the principles of diligence, professional expertise and reproducibility.'

Art. 72. Article 7.1.2.1 of the same decree shall be replaced by the following:

'Art. 7.1.2.1 For certain analysis packages or parts thereof the VITO prepares specimens each year which are used within the framework of accreditation applications or for the quality control of accredited laboratories. If the VITO has not prepared specimens for certain parameters, the laboratory shall have to demonstrate on relevant practical samples that the minimum achievement characteristics have been attained.'

Art. 73. In Article 7.1.2.2 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, point 6 shall be replaced by the following:

'6. The indication of the analysis packages for which an accreditation is requested as stated in Article 7.1.1.2;'

Art. 74. In Article 7.1.3.1 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, paragraph 2 shall be deleted.

Art. 75. In Article 7.1.3.2, paragraph 3, of the same decree the words ', and shall be announced in the Belgian Official Journal' shall be deleted.

Art. 76. In Article 7.1.4.1 of the same decree paragraph 1 shall be replaced by the following:

'Paragraph 1. Each amendment to the information, laid down in Article 7.1.2.2, sections 1, 7, 8, 9, and each change in the executive personnel or in the address of the laboratory, shall be communicated to the OVAM in a registered letter.'

Art. 77. The following sentences shall be added to Article 7.1.4.2, section 1, of the same decree:

'Half of the costs for the independent external supervision shall be borne by the Flemish Region. The other half shall be borne by the participating laboratories. The VITO will be responsible for invoicing and the incurring of costs not borne by the Flemish Region.'

Art. 78. In Article 7.1.4.2 of the same decree, amended by the Decree by the Flemish Government of 9 February 2007, point 2 shall be deleted.

Art. 79. In Article 7.1.4.2 of the same decree, amended by the Decree by the Flemish Government of 9 February 2007, point 5 shall be replaced by the following:

‘5. If the laboratory carries out analyses for which it is not accredited, the non-accreditation for the analyses in question shall be stated specifically in the analysis report;’

Art. 80. A new point 6 shall be added to Article 7.1.4.2 of the same decree, amended by the Decree by the Flemish Government of 9 February 2007, worded as follows:

‘6. If the laboratory commissions analyses to be carried out in another accredited laboratory, the subcontracting for the analyses in question shall be stated specifically in the analysis report.’

Art. 81. A new Article 7.1.4.3 shall be added to the same decree, worded as follows:

‘Art. 7.1.4.3 The laboratory personnel shall not participate in unsuitable obligations which could influence the measuring results. The laboratory shall refrain from any activities which could damage the confidence in their independence or testing activities.’

Art. 82. Article 7.1.5.2 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, shall be replaced by the following:

‘Art. 7.1.5.2 paragraph 1. The OVAM can wholly or partly suspend or terminate the accreditation given to a laboratory if:

1. inspections reveal faulty results in the analyses, carried out at the request of third parties, or during specific inspections by the OVAM;
2. the criteria laid down in Articles 7.1.4.1, 7.1.4.2 and 7.1.4.3 are no longer satisfied;
3. the laboratory carries out analyses in its capacity of accredited laboratory for which it is not accredited, and fails to state that specifically in their analysis report;
4. the laboratory does not follow the directives of the OVAM, including the sampling conditions, analysis conditions and methods, and the composition of the analysis report;
5. the laboratory does not immediately correct the inadmissible shortcoming, discovered during the inspection of the application of ISO 17025.

Paragraph 2. The OVAM notifies the holder of the accreditation of their intention to wholly or partly suspend or terminate the accreditation in a registered letter, against proof of receipt, with an indication of the reasons.

Paragraph 3. Within a period of fourteen days after the date of receipt of the letter the holder of the accreditation can fulfil all necessary formalities in order to prevent the suspension or termination or to make his defence known to the OVAM.

Paragraph 4. The OVAM shall take the decision regarding the complete or partial suspension or termination of the accreditation, taking into account possible fulfilled formalities or the possible defence that was given. In the case where the

accreditation is wholly or partly suspended or terminated the OVAM shall notify the holder of the accreditation of their decision in a registered letter, against proof of receipt, to the laboratory concerned.'

Art. 83. Article 7.1.5.3 of the same decree, amended by the Decree by the Flemish Government of 14 July 2004, shall be replaced by the following:

'Art.7.1.5.3 paragraph 1. The completely or partially suspended or terminated accreditation shall be included in the register of accredited laboratories, available for viewing at the OVAM.

Paragraph 2. In case of non-accreditation the applicant can submit a new application for accreditation for the analysis package in question. During a period of two years from the writ of the decision the applicant can participate in a maximum of one ring test.'

Art. 84. In Article 7.3.1 of the same decree the words 'recommended or obligatory' shall be deleted.

Section VII. Amendments to Chapter IX

Art. 85. In Article 9.1 of the same decree, amended by the Decrees by the Flemish Government of 9 February 2007 and 14 November 2007, the words 'Regulation 259/93/EC of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community' shall be replaced by the words 'Regulation 1013/2006/EC of 14 June 2006 on shipments of waste'.

Art. 86. In Article 9.2 of the same decree the words 'Regulation 259/93/EC' shall be replaced by the words 'Regulation 1013/2006/EC of 14 June 2006 on shipments of waste'.

Chapter II. Amendments to the Annexes to the VLAREA

Art. 87. In Annex 4.1, of the same decree, amended by the Decrees by the Flemish Government of 22 September 2006 and 9 February 2007, the following amendments shall be made:

1. Section 1 shall be replaced by Annex I, which is appended to this decree;
2. Section 2 shall be replaced by Annex II, which is appended to this decree;
3. Section 3 shall be replaced door Annex III, which is appended to this decree;
4. Section 5 shall be deleted;
5. A new section 6 shall be added, which is appended to this decree as Annex IV.

Art. 88. A new Annex 4.2.3 shall be added to this decree, which is appended to this decree as Annex V.

Art. 89. Annex 4.3 to this decree shall be deleted.

Chapter III. Amendment to Heading I of the VLAREM

Art. 90. The following sentence shall be added to Annex I, category 2, of the Decree of the Flemish Government of 6 February 1991 laying down the Flemish regulations on the environmental permit, amended by the Decree by the Flemish Government of 28 November 2003, under the heading 'Exceptions, Storage arising from the acceptance obligation':

'The storage of discarded portable batteries, as defined in the Flemish regulations concerning waste prevention and waste management (VLAREA), at a collection point where only end users can hand them in, is not a facility for processing waste if the waste is regularly removed for processing and if it is linked to educational activities concerning prevention.'

Chapter IV. Amendment to Heading II of the VLAREM

Art. 91. A new paragraph 10 shall be added to Article 5.2.2.5.2 of the Decree of the Flemish Government of 1 June 1995 establishing general and sectoral regulations concerning environmental hygiene, amended by the Decrees by the Flemish Government of 5 December 2003 and 14 July 2004, worded as follows:

'Paragraph 10. The treatment and storage of waste batteries and accumulators in processing facilities, including temporary storage, shall take place in indoor locations with a watertight floor or in weatherproof, covered and acid proof containers. At the very least the treatment shall entail the removal of all liquids and acids.'

Chapter V. Amendments to the VLAREBO

Art. 92. In Article 168, paragraphs 2 and 3 of the Decree by the Flemish Government of 14 December 2007 laying down the Flemish regulations on soil decontamination and soil protection the sentence: 'If the excavated soil cannot be cleaned using the best techniques available at an acceptable cost level, the excavated soil shall be removed.' is replaced each time by the sentence:

'If the excavated soil cannot be cleaned using the best techniques available at an acceptable cost level, the excavated soil shall be processed in accordance with the conditions laid down in the Waste Decree. The use of the excavated soil as a building material is not permitted.'

Chapter VI. Final regulations

Art. 93. Articles 9, 11, 12, 14 and 15 of this decree apply to environmental policy agreements signed after 1 February 2009.

Article 3.1.1.2, paragraph three and paragraph 5, 3.1.1.4, 3.1.1.5, 3.3.3, 3.4.3, 3.5.5, 3.6.3 and 3.7.3 of the Decree by the Flemish Government of 5 December 2003 laying down the Flemish regulations concerning waste prevention and waste management, last amended by the Decree by the Flemish Government of 7 March 2008, apply without prejudice to environmental policy agreements signed before 1 February 2009.

Art. 94. Article 44 of this Decree does not apply to survey reports which were supplied by VLACO vzw [non-profit organisation] before the time of entry into effect of this Decree. These remain valid until the end of their validity.

Art. 95. The provisions in this decree enter into effect from the first day of the second month following the date of publication in the Belgian Official Journal.

Art. 96. The Flemish minister responsible for the environment and water policy is charged with the implementation of this decree.

Brussels,

The Prime Minister of the Flemish Government,

Kris PEETERS

The Flemish Minister of Public Works, Energy, Environment and Nature,

Hilde CREVITS

ANNEX I

Section1
USE IN OR AS A FERTILISER OR SOIL IMPROVER

NAME OF WASTE MATERIAL	SOURCE AND DESCRIPTION	CONDITIONS CONCERNING COMPOSITION AND/OR USE
Slime from sugar factories	Sugar factory, produced during sugar refining, primarily consisting of calcium carbonate, organic matter and water	Article 4.2.1.1
Calcium ash	Burning of limestone rock, ash residue with calcium oxide as main ingredient and possibly calcium hydroxide and calcium carbonate	Article 4.2.1.1
Calcium sulphate	Produced during phosphoric acid and/or citric acid production and which contains hydrated calcium sulphate	Article 4.2.1.1 compulsory certificate of use
Harvested mushroom compost	Mushroom farm, organic nutrient substrate remaining after the mushrooms have been cultivated	Article 4.2.1.1
Compost from tree bark	Licensed facility for making compost from waste bark produced when debarking trees	Article 4.2.1.1
Vinasse, vinasse-extract, vinasse potassium and chicory vinasse	Yeast production plant; syrup-like residue from fermented molasses, extract obtained from vinasse by the addition of ammonium sulphate or produced during the production of inulin	Article 4.2.1.1
Fish meal, animal meal, feather meal, bone meal, wool, fish solubles, products of hide processing, powdered galalite, horn meal, leather meal, blood meal or other	Recognised or registered installations for processing animal waste including blood	Article 4.2.1.1 Regulations on animal waste

permitted products of animal origin		
Dried cacao, tobacco and coffee waste	Production of mild stimulants, obtained from processing cacao and coffee beans and tobacco and the preparation of theobromine from cacao waste with the addition of lime	Article 4.2.1.1
Deposited double salt of potassium sulphate and calcium sulphate (in the case of the addition of a magnesium salt and 'with magnesium salt')	Industrial citric acid production, obtained from rinsing citric acid	Article 4.2.1.1 compulsory certificate of use
Meal of oil cake	The extraction of vegetable oils, obtained by extracting oil by pressing oil-bearing seeds	Article 4.2.1.1
Malt shoots (malt chits)	Malt houses	Article 4.2.1.1
Treated sludge	See Article 1.1.1, paragraph 2, section 52	Articles 4.2.1.1 and 4.2.1.2 compulsory certificate of use
Lime conditioned sludge	Water treatment, obtained during the preparation of drinking water or process water from crude water	Article 4.2.1.1 compulsory certificate of use
Kitchen and garden waste and green compost	Licensed facilities for the composting of vegetable, fruit and garden waste and organic waste with a maximum of 25% organic biological commercial waste or of organic waste produced in gardens, plantations, parks and along roadsides	Articles 4.2.1.1 and 4.2.1.3
End material	Licensed facilities for the biological processing of organic biological commercial waste possibly in combination with animal manure	Articles 4.2.1.1 and 4.2.1.3
Filter cake	Food industry, obtained during the filtration of foodstuffs through inorganic filter	Article 4.2.1.1

	mediums (diatomaceous earth, perlite, filter clay,...)	
Hydrolysed proteins for fertiliser	Production of food additives, produced by the hydrolysis of proteins	Article 4.2.1.1
Ground lime sludge	Obtained from the sawing, grinding and polishing of marble	Article 4.2.1.1
Filter cake from fermentation	Fermentation industry obtained from fermentation	Article 4.2.1.1 compulsory certificate of use
Potassium mother liquor	Methionine production, liquid substance in which potassium occurs as potassium carbonate and potassium bicarbonate	Article 4.2.1.1
Solution containing ammonium chloride	Glycine production, obtained from the preparation of the amino acid glycine	Article 4.2.1.1
Ground steel slags	Steel industry, calcium silicophosphates obtained from the treatment of cast iron	Article 4.2.1.1
Dried and ground inorganic calcium-rich food waste	Obtained from licenced processing facilities for selectively collected egg shells, crustaceans, ...	Article 4.2.1.1 compulsory certificate of use
Flax material, grain material	Flax industry and grain industry	Article 4.2.1.1
Manure	Originating from animals not defined as cattle according to the Manure Decree, and not from laboratory animals	Article 4.2.1.1
Sterilised and dried mixture of purification sludge, animal waste and animal manure	Recognised or registered processing facility for animal waste, including blood	Articles 4.2.1.1 and 4.2.1.2 compulsory certificate of use, regulations on animal waste
Ammonium sulphate solution	Reaction of air containing ammonia in acidic air washer	Article 4.2.1.1
Drainage flow	Superfluous feed water from the cultivation of plants on growing substrates, which is not re-used as feed water	Article 4.2.1.1

Approved for inclusion as an Annex to the draft decree by the Flemish Government amending the Decree by the Flemish Government of 5 December 2003, laying down the Flemish regulations on waste prevention and waste management (VLAREA), the Decree by the Flemish Government of 6 February 1991 laying down the Flemish regulations concerning the environmental permit and the Decree by the Flemish Government of 1 June 1995 laying down general and sectoral regulations on environmental hygiene.

Brussels,

The Prime Minister of the Flemish Government,

Kris PEETERS

The Flemish Minister of Public Works, Energy, Environment and Nature,

Hilde CREVITS

ANNEX II

Section 2
USE IN OR AS A BUILDING MATERIAL

NAME OF WASTE MATERIAL	SOURCE AND DESCRIPTION	CONDITIONS CONCERNING COMPOSITION AND/OR USE
Crushed and/or calibrated and/or sorted or pre-treated slags, ashes or other stony wastes	Originating from the ferrous industry, the non-ferrous industry, the manufacture of non-metallic mineral products	Subsection II of section II of Chapter IV Compulsory certificate of use
Broken and/or calibrated and/or sorted or pre-treated slags or ashes	Originating from the combustion processes of waste materials	Subsection II of section II of Chapter IV Compulsory certificate of use Material subject to a management plan approved by the OVAM (1)
Uncontaminated rubble	Obtained from selective building and demolition activities by private individuals without the aid of a company or a builder	Subsection II of section II of Chapter IV In applications of less than 100 tonnes Article 4.1.2 does not apply here
Uncontaminated concrete granulate	Obtained from demolition and breaking activities on roads	Subsection II of section II of Chapter IV Material which is subject to a management system approved by the OVAM (1)
Uncontaminated recycled rubble	Obtained from licenced facilities for the recuperation of building and demolition waste	Subsection II of section II of Chapter IV Solely for use in water constructions for gabions and falling aprons

		Material which is subject to a management system approved by the OVAM (1)
Uncontaminated concrete granulate masonry granulate, mix granulate and non-tar containing asphalt granulate	Obtained from licenced facilities for the recuperation of building and demolition waste	Subsection II of section II of Chapter IV Material which is subject to a management system approved by the OVAM (1)
Uncontaminated crushed stone fines, sieved crushed stone fines and sorted sieved fines	Obtained from licenced facilities for the recovery of building and demolition waste	Subsection II of section II of Chapter IV Material which is subject to a management system approved by the OVAM (1)
Asphalt granulate	Obtained from licenced facilities for the recuperation of building and demolition waste	Subsection II of section II of Chapter IV compulsory certificate of use in case of yellow discolouration when using the PAH spray test Material which is subject to a management system approved by the OVAM (1)
Uncontaminated sorted sieved granulate	Obtained from licenced facilities for the recuperation of building and demolition waste	Subsection II of section II of Chapter IV Material which is subject to a management system approved by the OVAM (1)
Washed sorted concrete or masonry granulate	Obtained from facilities licenced for the cleansing of contaminated soil materials	Subsection II of section II of Chapter IV Compulsory certificate of use Material which is subject to a management system approved by the OVAM (1)
Fly ash and bottom ash	Obtained from combustion processes	Subsection II of section II of Chapter IV Compulsory certificate of use
Granulated non tar containing building	Obtained from licenced recuperation facilities	Subsection II of section II of Chapter IV

materials	for grinding bituminous roofing materials	Compulsory certificate of use
Clearance spoil	Originating from the clearing of the depths of surface waterways as defined in the Decree by the Flemish Government of 1 June 1995 containing general and sectoral regulations on environmental hygiene and insofar it does not concern navigable or terrestrial depths	Subsection II of section II of Chapter IV Compulsory certificate of use
Dredging spoil	Originating from the clearing, deepening and/or widening of navigable and non-navigable watercourses belonging to the public waterways network and/or from the construction of new water infrastructure	Subsection II of section II of Chapter IV Compulsory certificate of use
Treated ground and soil materials	Originating from licenced facilities for the cleaning of contaminated inorganic waste materials	Subsection II of section II of Chapter IV Compulsory certificate of use
Ground lime sludge	Obtained from the sawing, grinding or polishing of marble	Subsection II of section II of Chapter IV
Paper fibres	Obtained from the paper processing industry	Subsection II of section II of Chapter IV Application in the clay processing industry

(1) until the management system enters into effect by ministerial decree, the materials are subject to a Copro inspection (*) or equivalent quality check (**)

(*) an independent organisation for the scrutiny of products for road works.

(**) Certification and supervision, carried out by an organisation which is in the possession of the necessary accreditation for the material concerned. At least the

same checking procedures and the same guarantees must be present as with a Copro inspection. The inspection procedure comprises the internal quality control (acceptation policy, registration of all goods entering and leaving, quality control) and the external supervision thereof by an independent institution. The same guarantees means that the operator of the recuperation facility must be in the possession of the required permits, which ensure that all the required environmental hygiene and engineering quality regulations are satisfied.

Approved for inclusion as an Annex to the draft decree by the Flemish Government amending the Decree by the Flemish Government of 5 December 2003, laying down the Flemish regulations on waste prevention and waste management (VLAREA), the Decree by the Flemish Government of 6 February 1991 laying down the Flemish regulations concerning the environmental permit and the Decree by the Flemish Government of 1 June 1995 laying down general and sectoral regulations on environmental hygiene.

Brussels,

The Prime Minister of the Flemish Government,

Kris PEETERS

The Flemish Minister of Public Works, Energy, Environment and Nature,

Hilde CREVITS

ANNEX III

**Section 3
USE AS SOIL**

NAME OF WASTE MATERIAL	SOURCE AND DESCRIPTION	CONDITIONS CONCERNING COMPOSITION AND/OR USE
Soil residues	Originating from the sieving and washing with water of agricultural crops from open soil	Article 4.2.3.1
Clearance spoil	Originating from the clearing of the depths of surface waterways as defined in the Decree by the Flemish Government of 1 June 1995 containing general and sectoral regulations on environmental hygiene and insofar it does not concern navigable or terrestrial depths	Articles 4.2.3.1 and 4.2.3.2 Compulsory certificate of use, with the exception of for spreading on embankments in accordance with the provisions of Article 4.2.3.2
Dredging spoil	Originating from the clearing, deepening and/or widening of navigable and non-navigable watercourses belonging to the public waterways network and/or from the construction of new water infrastructure	Articles 4.2.3.1 and 4.2.3.2 Compulsory certificate of use Article 4.2.3.1
Uncontaminated crushed stone fines, sieved crushed stone fines and sorted sieved fines	Obtained from licenced facilities for the recuperation of building and demolition waste	Article 4.2.3.1 Compulsory certificate of use
Treated ground and soil materials	Originating from licenced facilities for the cleaning of contaminated waste	Article 4.2.3.1 Compulsory certificate of use

	materials	
Waste materials comprising uncontaminated concrete sludge or mixtures of uncontaminated soil materials	Originating from bentonite applications with ground and well boring and similar, or originating from a licenced facility for processing aforementioned waste materials, originating from ground and well boring	Article 4.2.3.1

Approved for inclusion as an Annex to the draft decree by the Flemish Government amending the Decree by the Flemish Government of 5 December 2003, laying down the Flemish regulations on waste prevention and waste management (VLAREA), the Decree by the Flemish Government of 6 February 1991 laying down the Flemish regulations concerning the environmental permit and the Decree by the Flemish Government of 1 June 1995 laying down general and sectoral regulations on environmental hygiene.

Brussels,

The Prime Minister of the Flemish Government,

Kris PEETERS

The Flemish Minister of Public Works, Energy, Environment and Nature,

Hilde CREVITS

ANNEX IV

Section 6
USE IN ARTIFICIAL SEALING LAYERS WITH SODIUM SILICATE

NAME OF WASTE MATERIAL	SOURCE AND DESCRIPTION	CONDITIONS CONCERNING COMPOSITION AND/OR USE
Sludge portion		
Water purification sludge	Originating from the treatment of urban waste water and from water preparation	Subsection VI of section II of Chapter IV
Water purification sludge	Originating from biological purification of industrial waste water	Subsection VI of section II of Chapter IV
Water purification sludge	Originating from other treatments of industrial waste water	Subsection VI of section II of Chapter IV
Sludge	Sludge from ground water and soil water purification	Subsection VI of section II of Chapter IV
Granule portion		
Broken and/or calibrated and/or sorted or pre-treated slags, ashes or other stony types of waste materials	Originating from the ferrous industry, the non-ferrous industry, the manufacture of non-metallic mineral products	Subsection VI of section II of Chapter IV
Fluidised bed sand	Originating from thermic electric power plants or from the combustion processes of waste materials	Subsection VI of section II of Chapter IV
Abrasive sand and abrasive grit	Originating from sand blasting during building works	Subsection VI of section II of Chapter IV
Abrasive sand and abrasive grit	Originating from industrial processing of metal, plate glass, wood and plastics	Subsection VI of section II of Chapter IV
Broken and/or calibrated and/or sorted or pre-treated slags or ashes	Obtained from combustion processes of waste materials	Subsection VI of section II of Chapter IV
Uncontaminated rubble sieved sand and broken rubble sand	Obtained from licenced facilities for the recuperation of building and demolition waste or from a licenced cleaning facility	Subsection VI of section II of Chapter IV
Non-tar-containing milled asphalt	Obtained from the milling of non-tar-containing asphalt road surfaces or from a licenced facility	Subsection VI of section II of Chapter IV

Tar containing milled asphalt	for the recuperation of building and demolition waste Obtained from the milling of tar-containing asphalt road surfaces or from a licenced facility for the recuperation of building and demolition waste	Subsection VI of section II of Chapter IV Compulsory certificate of use
Uncontaminated sorted sieved rubble	Obtained from a licenced facility for the recuperation of building and demolition waste	Subsection VI of section II of Chapter IV
Sorted sieved sand	Obtained from a licenced facility for the recuperation of building and demolition waste	Subsection VI of section II of Chapter IV
Clearance spoil	Originating from the clearing of the depths of surface waterways as defined in the Decree by the Flemish Government of 1 June 1995 containing general and sectoral regulations on environmental hygiene and insofar it does not concern navigable or terrestrial depths	Subsection VI of section II of Chapter IV
Dredging spoil	Originating from the clearing, deepening and/or widening of navigable and non-navigable watercourses belonging to the public waterways network and/or from the construction of new water infrastructure	Subsection VI of section II of Chapter IV
Dug out bedding, which has been physically separated	Originating from excavations	Subsection VI of section II of Chapter IV
Solid waste from soil decontamination	Originating from soil and ground water decontamination	Subsection VI of section II of Chapter IV
Treated soil and ground materials	Originating from licenced facilities for the purification of sludge from inlet wells and sand traps, from clearance spoil and dredging spoil	Subsection VI of section II of Chapter IV
Sludge	Originating from inlet Wells and sand traps	Subsection VI of section II of Chapter IV Compulsory certificate of use
Ground lime sludge	Obtained from the sawing, grinding and polishing of marble	Subsection VI of section II of Chapter IV
Soil residues	Originating from the sieving and washing with water of agricultural crops from open soil	Subsection VI of section II of Chapter IV
Waste materials	Originating from a licenced facility	Subsection VI of section II

consisting of materials in their natural state, such as sand, clay, loam and marl	for the treatment of sludge and sand trap material of comparable processes	of Chapter IV
Waste materials consisting of uncontaminated bentonite sludge or mixtures of bentonite sludge with uncontaminated soil material	Originating from bentonite applications during ground and well borings etc. or from a licenced facility for the processing of the aforementioned waste materials derived from ground and well borings.	Subsection VI of section II of Chapter IV
Fill portion		
Fly ash, boiler dust, flue gas dust and bottom ash	Originating from combustion processes	Subsection VI of section II of Chapter IV
Dust particles	Originating from the manufacture of ceramic products	Subsection VI of section II of Chapter IV
Abrasive sand and abrasive grit	Originating from sand blasting during building works	Subsection VI of section II of Chapter IV
Abrasive sand and abrasive grit	Originating from industrial processing of metal, plate glass, wood and plastics	Subsection VI of section II of Chapter IV

Approved for inclusion as an Annex to the draft decree by the Flemish Government amending the Decree by the Flemish Government of 5 December 2003, laying down the Flemish regulations on waste prevention and waste management (VLAREA), the Decree by the Flemish Government of 6 February 1991 laying down the Flemish regulations concerning the environmental permit and the Decree by the Flemish Government of 1 June 1995 laying down general and sectoral regulations on environmental hygiene.

Brussels,

The Prime Minister of the Flemish Government,

Kris PEETERS

The Flemish Minister of Public Works, Energy, Environment and Nature,

Hilde CREVITS

ANNEX V

Annex 4.2.3 CONDITIONS FOR USE IN ARTIFICIAL SEALING LAYERS WITH SODIUM SILICATE

Annex 4.2.3.A CONDITIONS FOR THE SEALING LAYER

Without prejudice to the provisions of subsection 5.2.4.3 of the Decree by the Flemish Government of 1 June 1995 laying down general and sectoral regulations on environmental hygiene the sealing layer must comply with the following conditions:

1. Prior to commencement of the activities a preliminary study must be carried out on all the known raw materials. Based on representative samples of the raw materials the composition of the mixture must be determined and laid down. In order to obtain an indicative mixture composition the following proportions form the point of departure for a mix of the raw materials:

- □□□ portion of sludge 35% - 55% m/m
- □□□ portion of fill material 5% - 15% m/m
- □□□ portion of sodium silicate at least 1.3%
- □□□ portion of granules 100% m/m minus percentage (sludge portion + fill material portion + sodium silicate)

In order to achieve a good composition of the mixture the dosage of the different raw materials is primarily determined by the portions of sludge and fill material. The quantity of granules to be added to the mixture is derived therefrom. The range of the proportions in which the raw materials to be added are applied is determined in the preliminary study. The composition of the mixture is determined based on the moisture content and the degree to which the mixture can be processed.

If all the qualities satisfy the requirements laid down beforehand the definitive mixture has been determined. The definitive composition of the mixture and the qualities of that mixture serve as point of departure for the production checks. To this end the sludge, fill material and granule components are laid down in percentages of weight and the allowed deviation from the average is determined.

2. Continuing on from the preliminary study a preliminary material study is carried out by an environmental expert accredited by the supervisory government authority with expertise in geotechnical engineering. That material study must be submitted to the supervisory government authority for approval. This study must demonstrate the technical suitability of the materials to be processed for the construction of a sufficiently impermeable sealing layer.

This study determines the relation between the water content, density and permeability of the mixture and also the operating range based on permeability, shear resistance and fissure formation due to shrinkage. For this the natural variations in composition, water content, degree of density and the expected tension parameters must be taken into account.

The speed and the degree of hardening, as well as the self-correcting properties of the material, and their influence on the forming characteristics and fissure formation of the sealing layer must be studied.

If the mineral sealing layer can be influenced by the leachate in the landfill, a compatibility study must also be carried out.

3. A test field shall be set up for checking the sealing method, the parameters of the soil mechanics including the hydraulic permeability.

4. The sealing layer with sodium silicate is constructed in two or three layers of 250mm or 300mm thickness. Once the sealing layer has been put in place infiltration through layer may not exceed 20mm per year. This should take into account an annual rainfall of 200 days per year, a standard water pressure of 0.5m and tension suction of -0.5m.

5. Based on the preliminary study, the material study and the checks at the test field, an environmental expert accredited by the supervisory government authority with expertise in geotechnical engineering will draw up a schedule for quality control which shall be submitted to the supervisory government authority for approval. The quality control concerns the materials used, their respective proportions and the supervision of the finished sealing layer.

Annex 4.2.3.B CONDITIONS FOR USE IN ARTIFICIAL SEALING LAYERS WITH SODIUM SILICATE

INORGANIC COMPONENTS	
Parameter (including joints)	Maximum quantities in mg/kg dry matter (1)
Arsenic (As)	246
Barium (Ba)	115.128
Cadmium (Cd)	10
Chrome (Cr total)	478
Copper (Cu)	220
Mercury (Hg)	50
Molybdenum (Mo)	274
Nickel (Ni)	83
Lead (Pb)	3.710
Antimony (Sb)	101
Selenium (Se)	27
Zinc (Zn)	5.628
Chloride	365.487
Fluoride	8.528
Sulphate	646.096

(1) maximum quantities, determined in accordance with CMA/2/II/A.9.3 (NEN/7341)

INORGANIC COMPONENTS	
Parameter (including joints)	leachability in mg/kg dry matter (2)
Arsenic (As)	2
Barium (Ba)	100
Cadmium (Cd)	1
Chrome (Cr total)	10
Copper (Cu)	50
Mercury (Hg)	0,2
Molybdenum (Mo)	10
Nickel (Ni)	10
Lead (Pb)	10
Antimony (Sb)	0,7
Selenium (Se)	0,5
Zinc (Zn)	50
Cyanide (total)	10
Chloride	15.000
Fluoride	150
Sulphate	20.000
DOC(*)	800
TDS (**)	60.000

(2) leachability determined by the shaking test at L/S=10 in accordance with CMA/2/II/A.13 (EN 12.457/4)

(*) If the specific pH values of the waste materials do not satisfy the values DOC* (Dissolved Organic Carbon) they could possibly be tested at L/S = 10 l/kg and a pH of 7,5- 8.0. The waste materials can be seen as being in accordance with the acceptance criteria for DOC*, if the result of the test does not exceed 800 mg/kg.

(**) The values for TDS (Total Dissolved Solids) can be used as an alternative for the values for sulphate and chloride.

MONOCYCLIC AROMATIC HYDROCARBONS	
PARAMETERS	TOTAL CONCENTRATION (3) in mg/kg dry matter
Benzene	0.5
Ethyl benzene	5
Styrene	1.5
Toluene	15
Xylene	15

POLYCYCLIC AROMATIC HYDROCARBONS	
PARAMETERS	TOTAL CONCENTRATION (3) in mg/kg dry matter
Benz(a)anthracene	35
Benz(a)pyrene	8.5

Benz(ghi)perylene	35
Benzo(b)fluorantene	55
Benzo(k)fluorantene	55
Chrysene	400
Fenanthrene	30
Fluorantene	40
Indeno(1,2,3-cd)pyrene	35
Naphthalene	20

OTHER ORGANIC SUBSTANCES	
PARAMETERS	TOTAL CONCENTRATION (3) in mg/kg dry matter
Extractable organic halogen (EOX)	10
Hexane	1
Heptane	25
Mineral oil	1000
Octane	90
Polychlorinated biphenyls (PCBs)	0.5

(3) determination of the total concentration of organic contaminants in accordance with the method laid down in section 3 of the compendium for sample taking and analysis.

Annex 4.2.3.C CONDITIONS FOR USE IN ARTIFICIAL SEALING LAYERS WITH SODIUM SILICATE

INORGANIC COMPONENTS	
Parameter (including joints)	Maximum quantities in mg/kg dry matter (1)
Arsenic (As)	246
Barium (Ba)	115.128
Cadmium (Cd)	10
Chrome (Cr total)	478
Copper (Cu)	220
Mercury (Hg)	50
Molybdenum (Mo)	274
Nickel (Ni)	83
Lead (Pb)	3.710
Antimony (Sb)	101
Selenium (Se)	27
Zinc (Zn)	5.628
Chloride	365.487
Fluoride	8.528
Sulphate	646.096

(1) maximum quantities, determined in accordance with CMA/2/II/A.9.3 (NEN/7341)

If the maximum quantity is not satisfactory for a particular metal, the leachability of that metal must comply with:

INORGANIC COMPONENTS	
Parameter (including joints)	Leachability in mg/m²
Arsenic (As)	86
Barium (Ba)	5.692
Cadmium (Cd)	3,6
Chrome (Cr total)	167
Copper (Cu)	77
Mercury (Hg)	2,5
Molybdenum (Mo)	136
Nickel (Ni)	41
Lead (Pb)	183
Antimony (Sb)	35
Selenium (Se)	14
Zinc (Zn)	278

(2) leachability determined by granular leach test in accordance with CMA/2/II/A.9.2 amended (NVN 7347)

Depending on whether the sealing layer with sodium silicate is applied to a landfill of category 1 or 2, the leachability must also comply with:

INORGANIC COMPONENTS		
Parameter (including joints)	Leachability in mg/kg dry matter (1)	
	Landfill category 2	Landfill category 1
Arsenic (As)	8,12	101
Barium (Ba)	276	829
Cadmium (Cd)	1,49	7,44
Chrome (Cr total)	26	179
Copper (Cu)	102	204
Mercury (Hg)	0,76	7,55
Molybdenum (Mo)	18	54
Nickel (Ni)	20	80
Lead (Pb)	21	104
Antimony (Sb)	2,17	16
Selenium (Se)	0,86	12
Zinc (Zn)	102	408
Cyanide (total)	18	18
Chloride	20.919	34.866
Fluoride	348	1.159

Sulphate	37.319	93.296
DOC	1.634	2.042

(*) leachability determined by the shaking test at L/S=10 in accordance with CMA/2/II/A.13 (EN 12.457/4)

Depending on whether the sealing layer with sodium silicate is applied to a landfill of category 1 or 2, the composition of the organic components must also comply with:

CATEGORY 2 LANDFILLS FOR NON-DANGEROUS WASTE GENERAL

- 1° extractable apolar hydrocarbons: $\leq 2\%$ by weight of waterless waste material;
- 2° total solvents (aspecific): $\leq 1\%$ by weight of waterless waste material;
- 3° total extractable organic halogen compounds: ≤ 1000 mg per kg of waterless waste material.

CATEGORY 2 LANDFILLS FOR NON-DANGEROUS WASTE (ANORGANIC WITH LOW ORGANIC/BIOLOGICALLY DEGRADABLE MATERIALS CONTENT)

1. extractable apolar hydrocarbons: $\leq 5\%$ by weight of waterless waste material with recommended analysis methods EPA 9071, AAC 3\R;
2. total solvents (aspecific): $\leq 3\%$ by weight of waterless waste material with recommended analysis method AAC 3\Q;
3. total extractable organic halogen compounds: ≤ 1000 mg per kg of waterless waste material with recommended analysis method AAC 3\N;
4. water soluble part: $< 10\%$ by weight of waterless waste material, with recommended analysis method: weight loss after extraction in accordance with DIN 38414-S4;
5. unless otherwise indicated in the certificate of use:
 - a) either ignition loss of the dry component of the waste material as a result of the decomposition of the organic materials, with the exception of fixed polymers and asphalt: < 10 percent in weight;
 - b) or total organic carbon, with the exception of the carbon, contained in fixed polymers or asphalt, in the dry component of the waste material: $< 6\%$ (*);
With regard to these requirements fixed polymers are defined as: the plastics in fixed state such as foils, granulates, objects, solid lumps.
Recommended analysis method:
ignition loss: DIN 38414-S3, AAC2/II/A.2;
total organic carbon: AAC2/II/A.7.

(*) If this value is exceeded, higher threshold values can be admitted in the certificate of use, as long as a value of 1634 mg/kg is not exceeded for the

DOC* at L/S = 10 l/kg and the pH value of the material itself is between 7.5 and 8.

CATEGORY 2 DANGEROUS WASTE ON LANDFILLS FOR NON-DANGEROUS WASTE

Parameter	Value
TOC (total organic carbon)	5% (*)
pH	minimally 6
ANC (acid neutralising capacity)	must be checked (**)

(*) If this value is exceeded, higher threshold values can be admitted in the certificate of use, as long as a value of 1634 mg/kg is not exceeded for the DOC* at L/S = 10 l/kg and the pH value of the material itself is between 7.5 and 8.

(**) The acid neutralising capacity of the waste material must be checked. More specifically, the waste material's capacity to form a buffer must be sufficient so that the compliance with threshold values is also ensured during contact with infiltrating rain water.

CATEGORY 1 LANDFILLS FOR DANGEROUS WASTE

1° supplementary criteria:

Parameter	Value
LOI (loss on ignition)(*)	10%
TOC (total organic carbon)(*)	6% (**)
pH	4 – 13
ANC (acid neutralising capacity)	Must be checked (***)

(*) LOI or TOC must be used.

(**) If this value is exceeded, higher threshold values can be admitted in the certificate of use, as long as a value of 2042 mg/kg is not exceeded for the DOC* at L/S = 10 l/kg and the pH value of the material itself is between 7.5 and 8.

(***) The acid neutralising capacity of the waste material must be checked. More specifically, the waste material's capacity to form a buffer must be sufficient so that the compliance with threshold values is also ensured during contact with infiltrating rain water.

2° extractable apolar hydrocarbons: $\leq 5\%$ by weight of waterless waste material;

3° total solvents (aspecific): $\leq 3\%$ by weight of waterless waste material;

4° total extractable organic halogen compounds: ≤ 1000 mg per kg of waterless waste material.

Approved for inclusion as an Annex to the draft decree by the Flemish Government amending the Decree by the Flemish Government of 5 December 2003, laying down the Flemish regulations on waste prevention and waste management (VLAREA), the Decree by the Flemish Government of 6 February 1991 laying down the Flemish regulations concerning the environmental permit and the Decree by the Flemish Government of 1 June 1995 laying down general and sectoral regulations on environmental hygiene.

Brussels,

The Prime Minister of the Flemish Government,

Kris PEETERS

The Flemish Minister of Public Works, Energy, Environment and Nature,

Hilde CREVITS

Regulation impact analysis for amendment VLAREA

Title

Draft decree amending the Decree of the Flemish Government of 5 December 2003 laying down the Flemish regulations on waste prevention and waste management.

Aim

The aims of these amendments are manifold:

Implementation of Directive 2006/66/EC of 6 September 2006 on batteries and accumulators and waste batteries and accumulators (see separate part).

Adapting the VLAREA to Regulation 1013/2006/EC on shipments of waste (no RIA required)

- Amendment of the legislation on acceptance obligations (see separate part)
- Amendment of the legislation relating to the accreditation of laboratories (see separate part)
- Amendment of the legislation relating to secondary raw materials (no RIA required) and relating to the use of artificial sealing layers for landfills (see separate part)

Regulation impact analysis for amendments to VLAREA – Part: Implementation of the Battery Directive

Origins and aims

Origins

The first, still valid European battery legislation originated in 1991. Directive 91/157/EC imposed specific requirements for batteries and accumulators containing the heavy metals lead, mercury and/or cadmium. It imposed a maximum limit for the mercury content in batteries and obliged all member states to set up systems to collect and recycle as many waste batteries and accumulators containing heavy metals as possible.

However, this directive had a number of shortcomings: it did not impose any quantitative aims, so that both the collection and the recycling remained at a low level in various member states. It only applies to batteries and accumulators containing heavy metals, while many other batteries are also in use. Studies indicate that in the EU over 40% of the waste batteries are still dumped or incinerated. The health dangers of cadmium became more and more apparent, and its use needed to be restricted urgently.

That is why Europe went to work in 2004-2005 to do a thorough revision of this directive, which led to the new Directive 2006/66/EC on waste batteries and accumulators.

Aims

General

The general aims can be summarised quickly:

1. Collect as many batteries as possible:

This aim can be achieved by developing and optimising human sorting behaviour. The example of the Fleming as European best boy in the class for sorting has already proven that sorting behaviour can be learnt. Here increasing awareness and the setting up of suitable collection systems have led to good results.

2. Process them in the most environment friendly and effective way possible.

Once the waste batteries and accumulators have been collected, the best technologies available have to be used for processing the batteries. Here the focus is on recycling and moving away from incinerating or dumping waste which still has a residual value.

The Directive provides us with a general framework giving the main outlines for achieving these aims. Within the EU a distinction will have to be made between three types of batteries and accumulators: portable, industrial and car batteries. For each type specific measures are being set up for the collection and processing in the waste phase.

Portable batteries will have to be collected for 25 to 45%, industrial and car batteries for 100%.

Member states will be obliged to construct an extensive network of collection points where the consumer can get rid of his waste batteries. A ban on dumping or incinerating industrial and car batteries is in the make. The imposed recycling percentages for lead-acid starting batteries, NiCd batteries and other batteries are 65%, 75% and 50% respectively.

The Directive places the responsibility for financing the collection and processing solely with the producers. That is to say that the producers, or third parties acting on their behalf, have to finance all the costs arising from the collection, processing and recycling of all batteries and also have to pay for information campaigns. In order to make sure that all producers help in the organisation, strict enforcement is required from the authorities involved.

Legal framework – Preparation of the implementation into Flemish legislation

The leeway for policy-making which is still available to member states for the implementation of the general framework is the way they can translate the broad meaning of producer responsibility into their own legislation.

Only a suitable combination of legal, economic, voluntary and social instruments can lead to a good result. The legal instruments (acceptance and collection obligations) were already laid down by Europe, but it leaves the member states the freedom to choose which other instruments to employ. The acceptance obligation already entered into effect in Flanders in 1998. In 2005 the Flemish government took the initiative of having this system thoroughly re-evaluated. The intention was to see which policy instruments were the most suitable for achieving the goals intended by the acceptance obligations. The studies showed that environmental policy agreements were the right instrument for this.

Goals of the implementation

- Timely and correct implementation of the Directive

The draft of the decree to which this RIA relates, is aimed at the formal implementation of Directive 2006/66/EC on waste batteries and accumulators in the Flemish Region. Article 26 of this Directive requires that the member states set up the necessary legal and administrative law framework in order to comply with this Directive around 26 September 2008. After agreement was reached on the distribution of authority regarding the articles between the federal and regional authorities, the implementation could take place.

This means that:

 - *an acceptance obligation must be introduced for portable and car batteries and an obligation to accept returned industrial batteries;*
 - *collection systems have to be set up for all types of batteries;*
 - *in 2012 and 2016, 25% and 45% respectively of portable batteries have to be collected;*
 - *certain recycling aims must be achieved: 75% for nickel cadmium batteries, 65% for lead-acid batteries and 50% for other batteries;*
 - *the disposal of car or industrial batteries by dumping or incineration is prohibited;*
 - *the costs of financing the collection and processing systems shall be borne by the producers.*
- Avoiding embellishment but keeping the successful, established Belgian system.
- Besides a timely and correct implementation, the main policy principles are the following:
 - *Regarding collection: the figures that we are currently achieving are already higher than prescribed by the Directive for the year 2012. We do not want to reduce this right now so we propose to transfer the goal straight away to the 2nd target of the directive, to be achieved by 2016.*
 - *Regarding recycling: in principle it is not the intention to exceed the European requirements. In accordance with the Flemish Coalition Agreement no stricter regulations are being introduced, nor will any embellishments be carried out during the implementation of the Directive. The high recycling goals, now laid down in Flemish legislation, can be reviewed and lowered on the basis of the different calculation methods of the Directive and the practical experience which has already been gained.*

Options

Directive 2006/66/EC of the European Parliament and the Council of 6 September 2006 on waste batteries and accumulators must be implemented in Flemish legislation.

In doing so the Flemish legislator targets at:

- A timely and correct implementation of the Directive;
- Avoiding embellishment but keeping the successful, established Belgian system.

Option 1: Zero option

The Flemish Region can choose not to implement new legislation and to continue working with the Flemish/Belgian system. We have had a sound policy regarding waste batteries from the middle of the 90s. This legislation is now incorporated into the VLAREA and is worked out further in two environmental policy agreements, one for portable batteries (with Bebat as management body) and one for car batteries (with Recybat as management body). The policy has yielded good results which far exceed the European average.

Do we keep this legislation, or do we adapt it to the new European Directive?

Option 2: The creation of new legislation by amendment of the VLAREA

Below is a summary of the most important amendments which would have to be introduced, in order to achieve a correct implementation, with the possible options – including a zero option each time - including:

- **Sorting the batteries into three types**
 Within the EU a distinction will have to be made between three types of batteries and accumulators: portable, industrial and car batteries. For each type specific measures are being set up for the collection and processing in the waste phase. Currently a distinction is made in Flanders between portable batteries and lead acid starting batteries, but there is no mention of industrial batteries. These are more or less between the other two types.
 Do we make three categories with three environmental policy agreements or do we keep our two systems?
- **Acceptance obligation versus collection obligation**
 Europe imposes an acceptance obligation for portable batteries and car batteries. That means that these, once they are empty and discarded, can be returned by the end users free of charge, without the obligation of buying a new battery.
 For industrial batteries a collection obligation will come. That means that producers or third parties acting on their behalf are also not allowed to refuse this discarded waste, but that this does not necessarily have to take place free of charge.
 Currently the VLAREA imposes an acceptance obligation for all batteries.
 Do we have to split this up again according to battery type or do we keep our system?
- **Collection targets for portable batteries**
 25% and 45% respectively of the quantity of portable batteries sold per year must be collected at the latest by 6 and 10 years from the date of entry into effect of the Directive. We already achieve a collection percentage of over 50%. We have three possibilities:
 1. We can lower the goal to 25%.
 2. Or we can choose for the immediate effectiveness of the 2nd goal (45% collection).
 3. Or we can increase the goal to 50% as we achieve this already anyway.
- **Collection targets for industrial and car batteries**
 The Directive implicitly imposes a collection obligation as it is explicitly determined that these batteries may not be incinerated nor dumped. Flemish legislation does not lay down targets for the collection of industrial batteries, but it does for car batteries: 95%. A dumping and incineration prohibition has also been included.
 Do we get rid of our targets and also impose an implicit collection obligation or do we keep our requirement and also impose it on industrial batteries?
- **Recycling targets for portable and industrial batteries**
 According to Europe 75% of the average weight of nickel-cadmium batteries and 65% of batteries containing lead respectively have to be recycled. In the end 50% was imposed as a recycling percentage for other discarded portable batteries. At the moment there is a division according to the different types of batteries in Bebat's environmental policy agreement. 80% of nickel cadmium batteries have to be recycled, 75% of mercury batteries, 80% of batteries containing lead and 65% of other batteries.
 Do we keep our own percentages, or do we adapt them to Europe while keeping or disposing of the extra requirement for mercury batteries?
- **Recycling targets for car batteries**
 VLAREA defines more specific processing norms for car batteries than the Directive. A recycling percentage of 95% for lead is provided for. A 100% useful application of the plastics or 30% recycling and a completely useful application of the electrolyte are required.
 Europe talks about a recycling percentage of 65% of the average weight in plastic, electrolyte and lead together, in which the target is the most possible – technically achievable - recycling of the lead.
 Do we keep our own percentages, do we adapt them to Europe while keeping or disposing of the extra requirements for plastics and electrolyte?

Effects

Target groups and parties involved

Target groups:

- The consumer: 6 million Flemish people
All Flemish people have something to do with batteries in one way or another. From young to old: batteries are in everything, sometimes not wanted, sometimes not known. They are bought separately in shops as a replacement for empty, waste batteries or people buy appliances which already incorporate batteries.
- The producers/importers/distributors of batteries and the management bodies: +/- 1000 companies
The producers of batteries can supply goods to consumers in various ways:

- *by means of intermediaries like wholesalers and shops;*
 - *a part of the production goes directly to other companies who incorporate the batteries into appliances before putting them on the market;*
 - *a large number of batteries are sold unbranded to large chains of stores who then mark them with their own brand before they end up on their shelves.*

The producers/importers/wholesalers/retailers are organised into federations. In order to fulfil their legal obligations regarding waste management this target group organises itself into the collective system of management bodies which take all tasks upon themselves.

Parties concerned

- authorities: the OVAM and the Inspectorate for the Environment

These authorities have to ensure a correct implementation of European Directives and subsequently good enforcement of the adopted legislation.

Option 1**Direct effects**

The existing Flemish/Belgian system remains intact. All batteries are collected and processed in the correct way. Nothing changes.

Distribution effects

The consumer pays a collection and recycling contribution with each battery purchased. The consumer is made aware that the batteries he uses in appliances are special waste which have to be collected, after which they have to undergo a specific process.

Through the system of the producer responsibility the producers/importers are responsible for the complete cycle of good management of waste batteries. They have to ensure sufficient free collection points for the consumer, a high collection percentage and correct recycling of the batteries. Proof of their achieved aims has to be confirmed by a report with numeric data.

The producers pay their membership to the management bodies which have been set up and give them all the requested information.

Indirect effects

If the Directive in question is not implemented (in time), the European Commission will start infringement proceedings, as all EU member states are required to implement the directives in their own legislation. The infringement proceedings start with a letter of first warning and moves on to a reasoned advice and ends in a ruling by the European Court of Justice. The latter can impose fines for each day that the directive has not been implemented.

Comparative table of all effects

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Consumers	Discarded batteries can easily be handed in	EUR 0	Collection and recycling contribution	EUR 0.1239 per battery
Producers and distributors	Can take their producer responsibility by means of the system		Portable batteries: -Membership fee for the management body Car batteries: -Membership fee for the management body	EUR 60 EUR 100
Government	No implementation process	EUR 0	Large fines from the EU	?
Total				

Option 2

Direct effects for the target groups

We do not expect direct effects for the consumer. He can discard his batteries simply. The consumer is made aware that the batteries he uses in appliances are special waste which have to be collected, after which they have to undergo a specific process.

The producers and importers of batteries will have to reorganise and make a clear distinction between portable, industrial and car batteries. They will have to choose between different options: either they draw up three environmental policy agreements with the government (with three separately set up or redefined management bodies); or else they will have to decide among themselves who will take care of the portable, the industrial and the car batteries in practice. The producers pay their membership fee to the management bodies that have been set up and give them all the requested information. Regardless of which option is chosen they will have to pass on the costs to the consumer by means of the environmental contribution.

Distribution effects

The consumer pays a collection and recycling contribution (environmental contribution) with each battery purchased.

The citizen pays the costs incurred by the government by means of his taxes.

Indirect effects

If everything goes according to plan, the European Commission will approve the implementation. Depending on the reported information, acquired from the management bodies and passed on by the government, the Commission will supervise the effective application of the implemented legislation. If this does not happen, a letter of first warning may still be sent.

Comparative table of all effects

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Direct effects				
Consumers	Discarded batteries can easily be discarded	EUR 0	Collection and recycling contribution	EUR 0.1239 per battery
Producers and distributors	Can take their producer responsibility by means of the system		Portable batteries: -Membership fee for the management body Car batteries: -Membership fee for the management body Industrial batteries: (possibly) Negotiations on new environmental policy agreement + setting up of a management body	EUR 60 EUR 100
Government	Correct implementation and sound legislation	No EU fines	Implementation process, (1/2 time employment, level A, once only) Possible negotiations on new environmental policy agreement + follow up to management body (1/2 time employment, level A per year)	EUR 26,657 EUR 26,657
Distribution effects				
			The consumer pays all costs by means of the environmental contribution and taxes	
Total				

Choice and reasoning for the options

Differentiating the batteries into three types

Do we make three categories of batteries or do we keep our two systems?

If we opt for three categories, this could mean that there will be three environmental policy agreements, each with their own management body. However, negotiating a new environmental policy agreement is a gigantic task: the sector and the government (preferably all local authorities!) have to go through a long negotiating process. This does not only cost lots of money for administration and the producers/importers but there is a big chance that this will make us too late for the correct implementation for Europe, which could lead to infringement proceedings.

In addition, industrial batteries are not so easy to differentiate into a separate category. Europe does divide them in theory. But in practice it is not so simple: the same battery can in fact be used for an ordinary torch or for a special lamp in a shipyard: the latter immediately means the battery is industrial. A battery which serves to power a small forklift truck is a car battery, but the same battery can also be used in a small lift and then it suddenly falls into the category of industrial batteries.

Thus it is in fact the use of the battery which determines to which category it belongs. Once the batteries become waste and are collected into one big heap it is no longer possible to see their prior use!

We can also keep our two existing systems, as these already implicitly comprise all three categories. The management bodies Bebat and Recybat can then determine by means of an allocation formula how many of the industrial batteries end up in their collection. The total share of industrial batteries at Bebat for example contains around 10% industrial batteries.

We choose option 2: a practical arrangement between the existing management bodies without needing to negotiate a new environmental policy agreement. Recybat and Bebat have already composed a list of all possible industrial batteries and will have to decide among themselves who is responsible for what. With regard to Europe this is correct as we can guarantee the complete collection and processing of all types of batteries.

Acceptance obligation versus collection obligation

Do we separate this into three categories of batteries or do we keep our system?

In our Flemish legislation we also already have the differentiation between the areas which fall under the acceptance obligation and areas which fall under the collection obligation. Purely legally/theoretically we could introduce a collection obligation for industrial batteries.

As was already indicated in point 4.4.1, it is very difficult in practical terms to categorise into three different types of batteries. For legislation it is preferable to combine these three as much as possible, as separation into acceptance or collection obligation is nearly unworkable. In practice it will not present any problems: industrial batteries are usually installed/brought by specialised companies, who when replacing a defective/old piece, will take the discarded goods with them as new material is being purchased.

We choose option 2: an acceptance obligation goes a little further than a collection obligation due to the lack of costs for the end user. As this condition of the Directive is based on Article 175 of the Treaty establishing the European Community, the member states are free to go further in this.

Collection targets for portable batteries

Do we lower our target to 25%, or choose for the immediate entry into effect of 45% collection or increase the target to 50%?

Each option has its advantages and disadvantages. We already achieve a collection percentage of over 50%. We must not go in for gold-plating, but it wouldn't it be illogical and absurd to adopt the Directive literally and suddenly go down to a collection target of just 25%?

It appears to be rational to increase the target to 50%. It would not be at all motivating for Bebat to have to work with a collection percentage which they already achieve. It looks good too: everywhere in the EU people are very interested in the Belgian example, which is known as the best in the world. On the other hand we should perhaps look to the future too: since 2001 the collection figure has been declining little by little from 60% to 50% in 2006. This is because of the advance of rechargeable batteries. People keep them at home longer so that they do not become available for collection as quickly. This phenomenon will doubtlessly stabilise, but we don't really know when. It would be unrealistic to sign up for an extra high target which we might not achieve anymore in three years.

For safety reasons we choose the 45% target. Within Europe we're still the best boy in the class, who is already introducing *and* achieving the 2016 targets. We are not adding gold-plating as ultimately all member states must achieve this result.

Collection targets for industrial and car batteries

Do we keep our 95% target for car batteries (and extend it to industrial batteries) or do we impose an implicit collection obligation of 100%?

The Directive does not impose quantitative targets for these areas. According to Europe the acceptance and collection obligation, linked to the dumping and incineration prohibition, will in practice lead to a collection percentage of 100%. We could take this over as we already have a dumping and incineration prohibition in our legislation.

Our legislation does not impose targets for industrial batteries, as it does for car batteries. This is therefore not actually in accordance with the Directive. We therefore have to change this or

infringement proceedings will follow. We could impose the target for both waste areas, or even increase it to 100%.

We opt for a combination of both possibilities and include the following regulation in the VLAREA 'for discarded car and industrial batteries a collection obligation applies to all waste batteries'.

Not drawing up a collection target leads to vagueness and will raise a lot of questions in the industry regarding what exactly has to be done or not. On the other hand a target of 100% does seem a bit strict, considering this is not specifically imposed by Europe.

By stating this sentence the government and the industry will understand each other. It means that all batteries available for collection will have to be collected effectively.

Recycling targets for portable and industrial batteries

Do we keep our own percentages or adjust them to the European obligations and if so, do we then keep our own extra stipulation regarding mercury batteries?

As this requirement in the Directive is based on Article 175 of the Treaty establishing the European Community, the member states are free to go beyond this. We can therefore maintain our higher *and* supplementary requirements. However, we are taking the results of a VITO study into account on processing waste batteries, and the practical experience which we have already acquired. These have taught us that the processors do not always achieve the prescribed norms, and were therefore actually contravening the law!

We can take over the European obligations and scrap ours. This could be particularly advantageous in the future: in committee procedures it still has to be decided exactly how to define recycling. The definition, which will be determined in a European committee, will be based on the targets already imposed in the Directive.

We choose option two: harmonisation with European legislation. Then we will not have to make amendments to our, possibly too high, targets after the committee decisions. We do wish to keep a general regulation (without setting a target) regarding mercury, as the correct processing of this heavy metal is very important, and is also supported by the European Commission.

Recycling targets for car batteries

Do we keep our own, more subdivided targets, or do we adapt them to Europe?

Europe speaks of a recycling target for the average weight (= plastic, electrolyte and lead together) of a battery. If we do not implement this the Commission could find our requirements (separate targets for lead, plastics and electrolyte) confusing and start up the letter of first warning procedure. On the other hand it could be advantageous to join in with Europe as we could then report our processing figures more easily and compare them to other member states.

VLAREA is not really stricter than the Directive, but it defines more specific processing standards for car batteries. There is a separate target for the lead, the plastics and the electrolyte. After internal consultations it was decided the requirement on electrolyte is not very meaningful and can be deleted. However, we would like to keep the requirement concerning plastic processing.

We choose a combination: we join in with the Directive, but maintain a stipulation concerning plastic processing. We do not impose targets for this, but rather use a descriptive goal. Effect, implementation and monitoring

Legal-technical effect

A decree by the Flemish government shall be drawn up. This is in accordance with all linguistic, official and technical legislative requirements.

Implementation and administrative burdens

The administrative burdens do not increase because of the European Directive, as collection and processing targets were also required to be reported previously.

Enforcement

As part of the Waste Decree, section VI of Chapter 3 and subsection VII of Chapter 5 will be maintained and approved under heading IX 'Supervision' of that same decree.

Evaluation

The legislation can be adjusted when the Directive is amended. After 10 years the European Commission will evaluate the implementation of this directive and its effect on the environment, as well as on the internal market. At that time it will be assessed whether it is desirable to raise the collection targets or to make the recycling requirements stricter.

Besides this a lot still has to be worked out in committees. A methodology for calculating sales figures (in order to obtain correct collection figures), it still has to be decided what exactly is meant by the recycling of batteries, and rules can be laid down for the export of batteries...

These decisions will probably take the form of an Order, so that they do not have to be implemented in our legislation. Nevertheless, amendments to the VLAREA are not precluded.

The amendments could possibly be included in the environmental policy agreements which are likely to be quicker to change than an implementation decree.

Consultation

After Belgian consultations concerning the distribution of authority with regard to the different articles in the directive, the proposed legislation was discussed. This round of talks took ten months.

- Within the administration:

Cooperation between the different services within the OVAM: the Europe department as pioneer, the Selectively Collected Waste Flows for the factual input and the legal department for legal advice.

Cooperation with the department: with the Environment Inspection section which will have to enforce this legislation afterwards and with the Environmental Permits section regarding the amendment in Vlare.

Exchange of ideas with the other regions and cooperation with the federal government in order to ensure that no gaps will occur due to incorrect overlaps in the different pieces of legislation.

- With the stakeholders:

Two rounds of negotiation in for which all federations and parties involved were invited. A specific consultation with a processor of lead-containing batteries was also organised.

Throughout the entire process the federations and companies could give their comments and extra information. These were discussed internally and processed, and the ensuing outcome was put to the industry again.

Further information for the Inspectorate of Finances

There is no extra financial or budgetary consequence.

Summary

Introduction

The new Directive 2006/66/EC of the European Parliament and the Council of 6 September 2006 on waste batteries and accumulators contains a number of new items in relation to the preceding Directive 91/157/EC.

Our progressive battery legislation already contains many of these new elements, but will nevertheless have to be adapted to the European text in order to achieve compliant implementation. The main question which has to be asked is whether we wish to keep as much as possible of our own text, whether to take over the European Directive just like that or whether a compromise can be found.

The most important problems discussed during the RIA-process were the following:

a) The Directive divides the batteries into three types: portable, industrial and car batteries. At the moment we divide them into two categories and link these to an environmental policy agreement.
 ⇒ Do we make three categories with three environmental policy agreements or do we keep our two systems?

We chose a practical arrangement between the existing management bodies, without a new environmental policy agreement having to be negotiated. This is correct with regard to Europe, as we can guarantee a complete collection and processing of all types of batteries.

b) Acceptance obligation versus collection obligation

Europe imposes an acceptance obligation for portable and car batteries. For industrial batteries there will be a collection obligation. VLAREA imposes an acceptance obligation for all batteries.

⇒ Do we split this up again according to battery category or do we stick with a general acceptance obligation?

We choose option 2: an acceptance obligation does go a bit further than a collection obligation, but as this requirement in the Directive is based on Article 175 of the Treaty establishing the European Community, the member states are free to go further in this.

c) Collection targets for portable batteries.

25% and 45% of the quantity of portable batteries sold each year must be collected at the latest by 6 years and 10 years respectively after the Directive's entry into effect. We already achieve a collection percentage of over 50% right now.

⇒ Do we lower the target to 25%, choose the immediate entry into effect of the 45% target or increase the target to 50% as we achieve this already anyway?

For safety reasons we have chosen the 45% target. Since 2001 our collection figure has been decreasing bit by bit from 60% to 50% in 2006. This is because of the greater use of rechargeable batteries. People keep them at home longer so that they do not become available for collection as quickly. This phenomenon will undoubtedly stabilise, but we do not know exactly when. It would be unrealistic to sign up for an extra high target which we might not achieve anymore in three years' time.

d) Collection targets for industrial and car batteries

The Directive implicitly imposes a complete collection obligation. Just for car batteries Flemish legislation imposes a target of 95%. Besides this there is a prohibition on dumping and incineration.

⇒ Do we also impose an implicit collection obligation or do we keep our requirement and also apply it to industrial batteries?

We choose a combination of both possibilities and include the following condition in the VLAREA: 'for discarded car and industrial batteries the collection of all waste batteries applies'. Not including a collection target would lead to vagueness and would give rise to many questions from the industry regarding what exactly has to be done and what does not. On the other hand a target of 100% seems rather strict as Europe does not specifically impose this either.

e) Recycling targets for portable and industrial batteries.

According to Europe 75% of nickel cadmium batteries have to be recycled, 65% of lead containing batteries and 50% of all other waste batteries. We have an extra distinction and the targets are different (nickel cadmium batteries 80%, mercury batteries 75%, lead containing batteries 80% and other batteries 65%).

⇒ Do we keep our percentages or adapt them, while keeping the requirement for mercury batteries?

We choose harmonisation with Europe. This saves us possibly having to amend the legislation when, after EU decisions on the content of the definition of recycling, it transpires that our existing targets are too high. We do wish to maintain the requirement (without a target) for mercury, as the correct processing of this heavy metal is very important, and is also supported by the EU.

f) Recycling targets for car batteries

The VLAREA defines more specific processing norms for car batteries than the Directive. It demands 95% recycling of the lead, 100% useful application of the plastics or 30% recycling and a completely useful application of the electrolyte. Europe speaks of a recycling percentage of 65% of the average weight in plastic, electrolyte and lead together.

⇒ Do we keep our percentages or adapt them, and what about the plastics and electrolyte requirement?

We choose a combination: we will conform to the Directive *and* keep a requirement on plastic processing. We do not impose targets here but use a descriptive target.

Decree

According to us, after the RIA process, this draft decree is a compilation of the most suitable options.

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Regulation impact analysis for amendment VLAREA – Part: Amendment of the acceptance obligation

Origins and aim

Origins

This amendment fits in with the optimisation of the policy instrument acceptance obligations as announced in the policy communication 2005-2006.

This amendment fits in with the optimisation of the policy instrument acceptance obligations as announced in the policy communication 2005-2006.

An acceptance obligation lays the responsibility for collection and processing in the waste phase, including financing, with the person who puts the product on the market. To this end the retailer is obliged to accept the product which the consumer would like to discard free of charge.

The producer can satisfy his acceptance obligation in two ways: collectively by means of an environmental policy agreement (*Milieubeleidsvereenkomst* – MBO) or by means of an individual waste prevention and waste management plan.

There is an acceptance obligation for the following areas: discarded electrical and electronic appliances, waste batteries, waste lead-acid starting batteries, waste photo chemicals, discarded vehicles, waste printed matter and advertising leaflets, spent oil, used frying fats and oils, old and expired medicines and waste tyres.

The origins of this amendment are manifold: there was a need for a general improvement of the instrument and for improvement of the legislation for specific areas, in particular waste electrical and electronic equipment (WEEE) and waste tyres.

- **General improvement of the instrument.**

The policy instrument has an impact on a large and varied group of stakeholders and there are major conflicts of interests. These interest groups were – each for different reasons – the instigators of a critical evaluation (see 2.2).

Acceptance obligations are also the subject of many discussions in the Flemish parliament. It appears from the yearly evaluating report to the Environmental Committee of the Flemish parliament that on the one hand good results have been achieved, but on the other hand there are still many critical questions regarding the implementation. The Environmental Committee of the Flemish Parliament formulated a number of resolutions¹ including the following points of attention: internalising the costs, sufficient transparency of the financing, cost-covering financing without excessive costs for citizens (avoidance of large capital reserves accruing with the management bodies), correct reimbursement for local authorities, balanced distribution of the burdens, sufficient involvement of all stakeholders during the negotiations and the implementation, the possibility of joining the collective system for individual companies which are not members of the federations, sufficient attention for ecodesign and prevention, speeding up the negotiations and the procedure. Furthermore the OVAM also perceived that in spite of the good results the policy instrument led to various problems during the implementation. The legal obligations are interpreted differently by the parties involved which lead to difficult negotiations and make it difficult for the OVAM to organise supervision and enforcement optimally. In a number of cases the government has too little influence on the implementation. The OVAM is therefore the requesting party for the clarification of

¹ In particular the resolutions of 28/06/2001, 28/11/2002, 15/10/2003, 24/02/2005

the legislation. And thus it was necessary to evaluate the acceptance obligation and trace where and how it had to be reshaped.

The legislation on acceptance obligations has grown from the acceptance obligation for products which became domestic waste in their waste phase. The scope of acceptance obligations has however been extended to products which end up as commercial waste. Waste legislation differentiates between these two kinds of waste in view of the role of local authorities in the domestic waste policy. This has not been taken into account in Chapter III, which means that on the one hand a number of obligations apply which require useless investments and on the other hand that there are insufficient guarantees in order to ensure that the contribution of consumers to the environment is not used to pay for commercial waste.

- On the basis of experience gained the government and the sector have requested a number of refinements to the implementation of the directive on WEEE.
- The environmental policy agreement on waste tyres ends on 28 November 2008. The targets in the VLAREA have more than been achieved and are, in view of the current developments in the market and in processing techniques, too unambitious for obtaining any further improvement of the environmental results.

Aim

General

With this law amendment the government intends to improve the existing instrument acceptance obligations into an instrument that, on the one hand, leaves room for achieving the environmental goals by means of producer responsibility (see below), and on the other hand gives the government enough influence on the preparation and implementation of the acceptance obligations by means of individual plans or environmental policy agreements. The amendments are an answer to the aforementioned weaknesses of the instrument and the concerns of parliament.

The environmental aims of the instrument are:

Aims pursued by the Flemish Region with the acceptance obligations

These aims can be solidified in each area based on the legal regulations in VLAREA and the accords in the environmental policy agreements.

General Aims

- Reduction of environmental impact:
- Reduction of the total volume of waste.
- Reduction of the use of raw materials (virgin resources).
- Increase the share of re-use and recycling of waste.
- Increase of the use of recycled materials.
- Reduction of environmental risks due to improper disposal of dangerous waste.
- Supervision of the management of dangerous waste.
- Place organisational and financial responsibility with the producers.

Concrete Aims

- Prevention aims
- Increasing consumer responsibility:
- Promoting environment friendly purchasing behaviour.
- Promoting re-use.
- Stimulating ecodesign:
- Stimulating waste prevention by encouraging innovation for waste reduction (= ecodesign). This by confronting the producers with the costs of waste.
- More potential for re-use and recycling in the waste phase.
- Use of products from re-use and recycling in the production phase.

- Collection aims:
- Increasing consumer responsibility for separating at source.
- Maximum selective collection of the waste material: concrete collection aims.

- Optimal processing and/or disposal, taking into account the Lansink ladder (waste should be disposed of in an as environment friendly way as possible), by means of concrete goals (share in percentages in comparison to the total quantity of waste for that sector) with regard to:
 - re-use: concrete aims for the share of re-use in the total quantity of collected waste.
 - recycling
 - incineration with energy recuperation
 - incineration without energy recuperation
 - dumping
- Place organisational and financial responsibility with the producers.

- Internalising the costs.

The amendments aim at a general improvement of the instrument on the following points:

- Equal rules and duties for the parties from the different sectors;
- Harmonising the procedures and obligations for the different sectors;
- Engagement and consultation in relation to obligation;
- Differentiation in the obligations between domestic and commercial waste;
- More government impact on the implementation of those aspects for which it is authorised
- Clarification of the legal text: e.g. clarification of the obligations
- Where possible simple and clear use of language

Furthermore there are amendments for refining sector specific legislation

- Further refinement of the implementation of the WEEE directive, pending the comments by the European Commission;
- Amendment of the targets and reporting obligations for waste tyres.

Explanation of the procedure followed

Legal framework

The proposed amendments to VLAREA are in accordance with the waste decree and the decree on environmental policy agreements.

The principles of the new implementation plan for environmentally responsible management of domestic waste were respected.

Furthermore European Directives apply to specific sectors.

Preliminary evaluation study

The process for evaluating and preparing the policy which preceded this law amendment comprised two internal and one external evaluation study. All interested parties were involved with each step of the process.

In 2005 the working group acceptance obligations of the consultation platform domestic waste dedicated a first discussion to the evaluation to be carried out. It was proposed to carry out an ex post RIA. Subsequently the OVAM carried out a preliminary study in which the implementation in practice was compared to the vision document on acceptance obligations of 2004. Based on this information the OVAM worked out a further procedure for evaluation and adjustment. The principle of acceptance obligations was not questioned, but the realisation of this principle, whether by means of an environmental policy agreement or an individual plan, was questioned. For this reason the scope of the ex post RIA was extended and the most important questions of a RIA were included in a multi-criteria analysis, in which the realisation of an acceptance obligation by means of an environmental policy agreement or individual plan were compared to other implementation instruments.

The five policy instruments which were compared are:

- acceptance obligation by means of an environmental policy agreement;
- acceptance obligation by means of an individual plan;
- a uniform inter-regional legislative initiative with a recognised management body (by analogy to the existing system for packaging waste) – hereafter referred to as ISA;
- a collective plan;
- a legislative initiative without producer responsibility.

For each option the following criteria were investigated:

- efficacy;
- efficiency;
- accordance with higher European legislation;
- accordance with federal legislation;
- inter-regional accordance;
- impact of the government during the preparation;
- impact of the government during the implementation;
- transparency regarding the government;
- transparency regarding the other parties involved in the implementation;
- commercial effect.

For this the investigation into the efficacy and the efficiency of the instruments was of central importance. The HIVA was charged with working out an evaluation framework and applying it to three sectors: WEEE, waste batteries and waste lead-acid starting batteries.

This study showed that the instrument environmental policy agreement works well, but that problems can arise with transparency regarding the government and other interested parties, the impact of the government in the preparatory phase and market conformity. According to the investigators the instrument 'uniform inter-regional legislative initiative with a recognised management body' would lead to slightly better solutions for those problems. However, the difference between both instruments was insufficiently large to proceed to quick policy changes.

The following additional arguments have led to the choice for a further improvement of existing legislation:

- The experience of the OVAM shows that the aforementioned problems do not always occur and not in all sectors, but can be the consequence of the attitude of the parties involved and of contextual elements. A number of these aspects can be corrected with amendments to existing legislation.
- Theoretically a uniform legislative framework with accreditation gains the highest score as inter-regional cooperation offers more guarantees for harmonising legislation. In practice it is clear that equally difficult negotiations precede this.
- An accreditation has the important advantage that the impact of government is larger as it has to grant a one-sided approval and can also retract the accreditation. In practice it is clear that retracting an accreditation is comparable to revoking an environmental policy agreement. The consequences are as far-reaching as they are problematic: the logistical system collapses and the

government is duty bound to take over the tasks itself. In practice retraction and revoking are both hardly realistic. By specifying a number of obligations for the management bodies and letting the government attach its approval to strategic documents, its impact will increase. The inclusion of the VLAREA-condition that without approval of strategic aspects, like for instance the specifications, the implementation cannot be started, allows for intervention in case of non-compliance.

- Certain of the parties involved proposed working with a tiered system: to work with accreditation if there was no environmental policy agreement, and if there was no accreditation, letting the government commission the tasks to be carried out at the costs of the producer, for example by means of levies on the quantity of goods brought onto the market. This course is, however, hardly realistic in the short term.
- Producers who cannot come to an agreement on an environmental policy agreement will also not be able to set up a management body which could qualify for accreditation.
- A government system which passes on the costs to all individual producers by means of levies requires far reaching law amendments, does not fit into the concept of producer responsibility and encroaches on the territory of federal competencies.

If during the duration of the current and new environmental policy agreements it transpires that the voluntary cooperation turns out to be difficult and ambiguous the course of issuing accreditations as a replacement for an environmental policy agreement will be investigated further. This choice does however change the role of the government: more government and less producer responsibility. An in-depth discussion on the role of the government will ensue.

Further analysis of the improvement options

Parallel to the external investigation assignment the OVAM made an internal comparative study of all environmental policy agreements. Together both courses were the basis for deciding which adjustments are desirable and possible and to carry on with the RIA-process.

The proposed amendments and their justification were put to all interested parties twice for feedback. Their comments were taken into account in these amendments. The OVAM is in the possession of internal documents in which all arguments and comments are processed and discussed.

In view of the contradictory interests of various parties involved in the acceptance obligation it is impossible to grant everybody's wishes. All the paths of the solutions and the comments were weighed up each time in light of

- the aims of acceptance obligations
- the aims of this amendment as indicated in 2.2;
- their added value for the environment;
- their efficiency and practical attainability;
- the legal attainability;
- the balance between the rights and the obligations of all those involved.

Construction and structure

The amendments to VLAREA concern several subjects and articles and not all amendments require a complete RIA. The RIA discussion is grouped according to the amendment, depending on the nature of the amendment.

Complete development of the regulation impact analysis

The implementation regulations of this draft decree which have a relevant substantial impact or which intend to bring about a change in behaviour or from which this is expected will be fully worked out in conformance with the prescribed guidelines. This concerns the following implementation regulations:

- Article 3.1.1.1 or rather the abrogation of the acceptance obligation for photo chemicals
- Article 3.1.1.4 paragraph 3: refinement of the regulations for complying with the acceptance obligation by means of a collective system (environmental policy

agreement) and Article 3.1.1.5 : specification of the advice and approval procedures and reporting obligations

- Article 3.4.1 and 3.4.4: amendment of the aims and reporting obligations for waste tyres

Limited development of the regulation impact analysis (solely the calculation of administrative burdens)

This draft decree also includes implementation regulations which contribute to a quicker, more efficient and effective processing of existing activities. They do not aim for specific changes in behaviour and can therefore be worked out less extensively in this impact analysis. The most important substantial impact could be a decrease (or increase) in the administrative burden. This concerns the following implementation regulations:

- Article 3.1.1.4, paragraph 2, section 10: clarification that the provision of a financial security is only obliged for domestic waste flows

No development of the regulation impact analysis

The determination of a number of the implementation conditions of the draft decree merely concerns the legal establishment of current policy, or concerns conditions which have no or only a very limited impact or are not or hardly aimed at changing behaviour. They are not worked out further in the regulation impact analysis document. The implementation conditions in question are summed up below. The reason why they are not worked out further in this document will be mentioned each time.

- the amendments in definitions are clarifications or the result of European Directives
- Art 3.1.1.1: description of the areas covered by the acceptance obligation: textual amendments relating to clarification; with the exception of the abrogation of the acceptance obligation for photo chemicals for which, however, a fully worked out RIA exercise was made.
- Art 3.1.1.2, paragraph 3: description of the acceptance precondition for certain areas; addition of section three which lays down that depots can refuse all abnormally contaminated waste products. This is a clarification of the legislation and an improvement of the legal basis for depots.
- Art 3.1.1.2, paragraph 4: clarification of the text
- Art 3.1.1.5: paragraphs 5 & 7: specifies that producers are responsible for the financing of their acceptance obligation and that this obligation applies from the date of entry into effect of the obligation regardless of the date of signing the environmental policy agreement or individual plan. This is a clarification of existing legislation which reduces problems of interpretation and therefore also creates clarity for the remuneration of the depots. The indicated timing is particularly important for possible new areas.
- Art 3.1.1.3: simplification of the text of the existing article
- Art 3.1.1.4, paragraph 2: with the exception of point 10, which will be discussed in the limited RIA.
- Art 3.1.1.5 information obligations: this obligation used to be mentioned separately for each area, and has now been generalised but does not imply any additional obligations or burdens for the target groups and the government
- Art 3.1.2.1: clarification of the text
- Art 3.1.2.2: clarification of the administrative procedure: the method for submission and the terms are clarified in Art 3.2.5 paragraph 5: the generalised obligation for information at points of sale does not apply to printed matter; this is a continuation of existing policy.
- Art 3.1.1.2, paragraph 6: obligation to inform on acceptance obligations at point of sale. This obligation used to be mentioned separately for various subsections. The obligation is now also specifically applied to sales outside the sales area. The distributors can fill in this obligation in a manner suited to their business, for example by means of integration in the planned information campaigns and can avoid additional costs.

- Art 3.3.2: this article contained a reference to a date which has expired (1 January 2006).
- Art 3.5.1 and 3.5.1 II) description of the area of application and the financing of the acceptance obligation for electrical and electronic appliances, in accordance with the Directive, these amendments offer a greater degree of legal security but do not have any further effect.
- Art 3.5.2 paragraph 1: clarification of the text of the existing article without further effect.

Origins, aim, options and effects of the disposing of the acceptance obligation photo chemicals

VLAREA Art. 3.1.1.1

Origins and aim

- The existing Flemish waste legislation means that waste photo chemicals (regardless of whether an acceptance obligation applies):
- have to be collected selectively at the place of production (at the source);
- have to be fetched by an accredited transporter of dangerous waste;
- have to be processed by a licenced processor of dangerous waste.
- can be exported abroad for processing as long as there is an approved notification (see Directive 1013/2006/EC).

The original decision to introduce the acceptance obligation in the Flemish Region can be traced to a demand by the Brussels Capital Region and to a lesser degree also the Walloon Region.

The acceptance obligation photo chemicals applies to spent photo baths which are a by-product of carrying out a photographic process and comprises both home and professional use.

Due to the increase in digital photography the number of end users is decreasing. Moreover there is effective general legislation on small and dangerous waste which also applies to photo chemicals. Because the existing environmental policy agreement (MBO) ends in 2008 it had to be investigated before a possible extension whether the acceptance obligation instrument was still the correct policy instrument for this area.

The most important goal of an amendment is the realisation of the environment target in an efficient and effective manner:

- maximum collection and processing via legal channels by means of extending and establishing a network covering all areas;
- maximum recycling of waste photo chemicals. In VLAREA and the environmental policy agreement waste photo chemicals no minimum target has been included for collection and processing achievement.

The acceptance obligation was evaluated² by the OVAM as the environmental policy agreement finishes on 31 December 2007.

Options

Option 1: zero option: keeping the acceptance obligation

The acceptance obligation for waste photo chemicals remains applicable and the concrete implementation terms are determined in an environmental policy agreement with the producers and importers of photo chemicals. The implementation is entrusted to the management body, namely FOTINI (non-profit making organisation). Given that the current environmental policy agreement ends on 31 December 2007 a new environmental policy agreement needs to be negotiated with the sector. The time span for negotiation up to and including signing by all parties can be estimated at at least one year.

As motivation for keeping the current situation one can point to the coordinated handling of the waste flow by the management body and the interregional harmonisation with regard to the handling of this waste flow.

² a detailed evaluation report is available at the OVAM

Expected target achievement: the achieved results up to today will probably not improve further by a continuation of the acceptance obligation and accompanying environmental policy agreement. The selective collection and useful application will stay at the same high level. The waste group spent photo chemicals will however continue to decrease under the influence of further digitalisation.

Vision of the target groups:

The sector would like the abolition of the acceptance obligation for waste photo chemicals as the efforts regarding the acceptance obligation for domestic waste exceeds the financial capacity of the extinguishing flow. For professional end users abolition does not change anything.

The local councils, represented by VVSG, would like to keep the acceptance obligation for the sake of its function as an example. The council remunerations are not high, but the management body refunds (as one of the few) the complete costs of the collection at the depots in accordance with the ministerial decree.

Option 2: abolition of the acceptance obligation without additional new legislation

The acceptance obligation for waste photo chemicals is going to be abolished. The accompanying environmental policy agreement with the producers and importers of photo chemicals which lays down the practical implementation terms will not be renewed. The waste legislation does not provide for another instrument to replace the targets of the acceptance obligation either. Only the existing legal requirements for the collection and processing of waste photo chemicals (as dangerous and special domestic or commercial waste) will remain.

Rationale: The continuation of the digitalisation in all sectors will further decrease the waste flow 'waste photo chemicals' meaning that the capacity of this waste flow, necessary for the implementation and follow through of the acceptance obligation, can no longer be guaranteed. Moreover the targets will also be achieved by a correct observance of the existing legal requirements applicable to the collection and processing of this waste. This is stimulated by the positive value of a part of this waste flow.

Expected target achievement: It is to be expected that current results (%) in the area of selective collection and useful application will be maintained. Nevertheless the waste flow will decrease all by itself as a result of digitalisation.

Option 3: abolition of the acceptance obligation and introduction of the obligation for a collective plan

The acceptance obligation for waste photo chemicals will be abolished and replaced by the obligation for the submission of a collective waste prevention and waste management plan for waste photo chemicals which have to be approved by the OVAM. The existing legal requirements for the collection and processing of waste photo chemicals (as dangerous and special domestic or commercial waste) remain intact.

Rationale: The obligation for a collective plan provides the possibility to nevertheless aim at a joint approach for handling waste photo chemicals together with the producers and importers, but imposes a less heavy (financial and administrative) obligation on the producers and importers. The long approval procedure for an environmental policy agreement is avoided. Moreover the targets will also be achieved by a correct observance of the existing legal requirements applicable to the collection and processing of this waste. This is stimulated by the positive value of a part of this waste flow.

Expected target achievement: It is to be expected that current results (%) in the area of selective collection and useful application will be maintained. Nevertheless the waste flow will decrease all by itself as a result of digitalisation.

Vision of the target group: The sector involved (manufacturers of photo chemicals) supports the abolition of the acceptance obligation for waste photo chemicals. They do not only doubt the added value of the acceptance obligation, but also feel that the financial capacity of this waste flow will gradually decrease as a result of market development. A substitution of the acceptance obligation by, for example, a collective plan which will demand equally large efforts (in organisation and financially) from the sector, is not seen as a suitable alternative by the sector.

Effects

Target groups and parties involved

Producers and importers

Seven companies are members of FOTINI and together they represent over 95% of the photo chemicals sold on the Belgian market. All the companies are based in Flanders.

Retailers

Each company works with a network of retailers (representatives or multivendors) or sells directly to the customers.

Professional end users

The practical organisation of the selective collection of dangerous commercial waste (including waste photo chemicals) is at the cost of each company (waste producer). Each waste producer also has to maintain a waste register. Each waste producer makes its own contracts with accredited transporters and/or licenced processors. At the moment the value of waste photo chemicals is positive. The costs in connection with collection and processing are liberally compensated by the returns from the recuperated silver.

These amendment proposals do not involve amendments for this target group in any scenario, the costs for this target group also remain the same. That is why they have not been defined.

Consumers

Amateur photographers can hand in their waste photo chemicals at the domestic dangerous waste collection (KGA) points.

Local authorities

The councils (together with their inter-council cooperations) are responsible for the organisation of the selective collection of domestic dangerous waste. Each council organises the collection of domestic dangerous waste since the middle of the 90s for private individuals. In practice waste photo chemicals which are collected by means of KGA represent less than 1% of the total supply of waste photo chemicals.

Photo chemicals in small packages are primarily sold to small consumers, like private individuals. When the quantities of photo chemicals sold in small packages and the normal dilution of photo chemicals on the one hand are compared to the collected waste photo chemicals by means of KGA collection on the other hand it is clear that these are not in proportion. A lot more waste photo chemicals are collected by means of KGA collection (up to 4x more) than what could logically be expected based on the sales figures for photo chemicals intended for small users. The council KGA collection channel is most probably being used by companies and because of this the management body also pays for the waste photo chemicals which do not come from private individuals.

Flemish government

The OVAM is responsible for the succession to the acceptance obligations.

- The section Environmental Inspection in cooperation with the OVAM organises the enforcement of the observance of the legal regulations concerning collection and processing. These activities form part of the standard tasks of the Environmental Inspection department. The efforts required remain the same for all options and are therefore not further specified.

Option 1: zero option, keeping the acceptance obligation

The expected target achievement is good; efficacy low considering the results will be achieved by means of the legislation for dangerous waste.

Direct effects

Producers via the management body:

- The management body pays the costs for remunerating the local authorities for the collection of waste photo chemicals by means of KGA collection. In 2006 286 of the 308 councils reached an agreement with FOTINI. In 2007 a total of EUR 24,279 was paid in remuneration to the 286 councils for the collection of waste photo chemicals in 2006. This cost will decrease due to the decreasing quantity of waste photo chemicals.
- Working costs of the management body: According to the management body these comprise around EUR 25,000 per year. These costs also include the costs for the collection of the requested data.

Producers directly:

- Costs for the awareness material intended for the consumers of photo chemicals. These warn the amateur end user to hand in the waste photo chemicals at the KGA or as dangerous commercial waste. This material already exists and is included in the other information with the products, in case of an extension it will be possibly be reprinted. No additional costs.

Local authorities

The councils (together with their inter-council cooperations) are responsible for the organisation of the selective collection of domestic dangerous waste. In practice waste photo chemicals which are collected by means of KGA represent less than 1% of the total supply of waste photo chemicals. The processing cost of KGA is roughly estimated at around EUR 0.85 per kilogram. A separate cost price for the collection of KGA is difficult to calculate. Based on a ministerial decree, the costs for the use of the KGA collection infrastructure at the depots for KGA-parts, which represent less than 1% of the total KGA, was calculated. These were the sums included in the agreements with FOTINI. FOTINI pays the remuneration to the councils which have a contract with them. Based on the collected quantities for these KGA waste flows and the number of inhabitants a total of EUR 24,279 was paid as remuneration to councils in 2007 to 286 councils for the collection of the waste photo chemicals in 2006. The average per council is around EUR 85 per year. For these councils all the costs for the collection of photo chemicals are covered.

- Increasing the awareness of citizens to hand in their waste photo chemicals at the KGA collection depots does not take place specifically for waste photo chemicals. The councils raise awareness on all KGA waste, including waste photo chemicals. For this no separate costs can be charged.

Citizens

- The amateur photographer takes his waste photo chemicals to the KGA collection at the depot.

Flemish government

- The succession of the acceptance obligation by the OVAM: consultation with the sector, evaluation of reports, supervision of the processing, implementation of the environmental policy agreement reporting obligations: 15 days work for one member of the personnel of level A. Estimated cost EUR 210.93 per day (A111, 3 years of seniority, EUR 55,051.91 yearly wage, 261 days), in other words EUR 3,163.95.

Indirect effects

Local authorities

The local authorities have lobbied for a long time via the VVSG for a correct remuneration of the collection and processing costs of domestic waste which fall under the acceptance obligations. FOTINI implements the ministerial decree on the remuneration for depots. VVSG attaches a lot of importance to this example function, even though comparatively the cost for this waste flow is financially negligible.

Distribution effects

The total remuneration from the producers to the local authorities is as high as the total cost in effort needed to realise the remuneration and the accompanying report obligations.

Option 1: Comparative table of all effects

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Direct effects				
Producers			Working costs of the management body	EUR 25,000
			Costs for remuneration of the local authorities	EUR 24,279
Local authorities	Remuneration of the costs by FOTINI:	EUR 24,279	The organisation of KGA collection. The processing of the KGA is estimated roughly at around EUR 0.85 per kilogram.	See previous entry
Private end users			Selective submission of the KGA	EUR 0
Flemish government			The succession of the acceptance obligation, 15 days work	EUR 3,164
Indirect effects				
Local authorities	Exemplary dossier			
Distribution effects				
Local authorities	The local authorities receive a remuneration which covers the costs			
Producers			In relation to the limited waste costs the producers have to pay high labour costs	
Total		EUR 24,279		EUR 52,443

Option 2: abolition of the acceptance obligation without additional new legislation

The target achievement will remain the same; the efficacy will increase as the results are achieved by means of the legislation on dangerous waste.

Direct effects

Producers

- With abolition of the acceptance obligation the working costs and reporting costs for the producers will become obsolete. There will no longer be an obligation for remuneration of the depots. In view of the large organisational costs it is hardly likely that a voluntary remuneration will be paid.
- Informing on suitable methods for disposal can take place on a voluntary basis and can continue without additional costs in comparison to the zero option.

Local authorities

- The local authorities lose the remuneration of the costs: on average EUR 85 per council. (Compare supra). This cost will decrease further as a result of the digitalisation of photography.

Consumers

- Nothing changes for consumers.

Flemish government

- The efforts with regard to the succession to and reporting on the acceptance obligation disappear.
- The existing efforts concerning enforcement stay the same.

Distribution effects

For the producers the added cost of the acceptance obligation will cease. The local authorities will have to pay for the collection and processing costs themselves, this is an additional cost of an average of EUR 96 per local council.

Option two: comparative table of all effects

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Direct effects				
Producers	The labour costs including the reporting costs cease	EUR 25,000	Providing information	Same
	The remuneration for depots ceases	EUR 24,279		
Local authorities			Collection and processing costs	EUR 24,279
Consumers	No difference			
Flemish government	The follow-up to the acceptance obligation ceases: 15 days work	EUR 3,164		
Indirect effects				
Local authorities			Loss of the exemplary dossier	
Distribution effects				
			Additional cost of and average of EUR 96 per council, this cost will continue to decrease	
	Cessation of the management costs + the remuneration			
Total		EUR 52,443		EUR 24,279

Option 3: abolition of the acceptance obligation and the obligation for setting up a collective plan

The target achievement will be the same, the efficacy smaller as it is not the supplementary legislation on collective plans which leads to results, but the legislation on dangerous waste.

Direct effects

Producers

- The producers are no longer obliged to set up a management body but still need to fulfil the required administrative and financial tasks. The labour costs will decrease slightly, an estimated EUR 20,000 instead of EUR 25,000. The difference to the zero option is small.

- It is possible to agree on remuneration with the councils here too: the costs will then remain the same: EUR 24,279. This cost will decrease as a result of the decreasing quantity of waste photo chemicals. The difference to the zero option is minimal.
- Local authorities
- Should voluntary remuneration continue to exist there is no difference to the zero option.
- Consumers
- No difference to the zero option
- Flemish government
- Light decrease in the supervisory tasks of the OVAM as the procedure and supplementary obligations cease. The negotiation and supervision of the collective plan do remain a task for 10 working days = EUR 210.93 x 10 = EUR 2,109.3
- The enforcement task concerning processing stays the same.

Indirect effects

The local authorities keep their exemplary dossier

Option three: comparative table of all effects

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Direct effects				
Producers			Voluntary agreement with the local authorities	Same
	Labour costs borne by the members decrease in comparison with the zero option	EUR 5000		
			Maintaining information	Same
Local authorities	Possibly a voluntary agreement with the producers: remuneration of the costs	Same		
Government	Cessation of the environmental policy agreement procedure and reporting obligation: decreasing effort, but negotiation and supervision of the collective plan	EUR 2,109		
Indirect effects				
	Example function of the MB stays			
Distribution effects	Depends on whether the voluntary remuneration is kept or not			
Total		EUR 7,109		Same

Choice and explanation of the option

The analysis shows that option two is preferable for the following reasons:

Efficacy: the environmental targets are achieved by the general legislation on dangerous waste.

Option one and option three do not improve the target achievement. The indication as special and dangerous waste material suffices in the Flemish Region to guarantee the good collection and useful application of waste photo chemicals. Imposing an acceptance obligation gives no additional value. Experience shows that the use of the legal collection and processing channels is also stimulated by the positive value of a part of the waste photo chemicals.

Efficiency: Option two provides the most benefits. Options one and three involve additional costs for the producers which are not in proportion to the benefits for local authorities. The costs for the local authorities will decrease further, the labour costs for producers will remain unaltered and proportionately they will increase. The example function put forward by the VVSG as argument for keeping the acceptance obligation is not a goal in itself.

The existing acceptance obligation only pays for remuneration for waste photo chemicals handed in by private individuals. In practice these form less than 1% of the total supply of waste photo chemicals.

The collection and processing of waste photo chemicals from professional consumers (more than 99% of the total supply) is not repaid within the framework of the acceptance obligation. The companies are responsible for collection and processing of this commercial waste themselves. This system is already effective.

Origins, aim, options and effects of refining the conditions in order to comply with the acceptance obligation by means of an environmental policy agreement (MBO)

Origins and aim

The cause for this refinement is described extensively in point 1.1. Besides the problems experienced by the OVAM during the implementation, questions by the Environmental Committee and by various interest groups were the joint cause for these amendments. The target groups each had their own motivations for evaluating and adjusting the acceptance obligation. These are described under 3.2.3.1. The proposed amendments are aimed at the smooth implementation of the acceptance obligation and provide sufficient guarantees for realising the environmental targets:

- A level playing field with equal obligations for parties from various areas by harmonising procedures and obligations for the various areas wherever possible;
- Transparency in the financing and market allocations;
- Involvement and consultation in the negotiations and for the implementation with regard to obligations;
- Differentiation in the obligations between domestic and commercial waste;
- More government impact so that the intended environmental effects are achieved and the interests of all parties are taken into account.

Options

The different options concerning the peripheral conditions for the implementation of the acceptance obligation by means of a collective system.

Option 1: zero option: keeping the existing legislation

The existing legislation stipulates in general terms the peripheral conditions and obligations in order to work out the acceptance obligation by means of a collective system. There is therefore a lot of room for interpretation and procedural affairs also have to be laid down in the environmental policy agreement.

For the collective system the existing legislation only determines specifically:

- that the environmental policy agreement shall be concluded by the umbrella representative organisation for companies, of which the producer is a member;
- that a management body or another organ must be set up to carry out the tasks;
- that the management body submits a management plan to the OVAM for approval each year, which indicates how the requirements will be satisfied;
- that the OVAM, as observer, shall be invited to the Board of Governors and the management body's General Meeting;
- the points which have to be dealt with in an environmental policy agreement (or individual plan);
- that the OVAM must approve all strategic, operational and logistical aspects of the acceptance obligation and of all planned communication initiatives, which fall within the framework of the environmental policy agreement;
- that the numerical data which is provided to the OVAM or to a management organisation within the framework of the acceptance obligation shall be certified by an external accountant, book keeper or chartered accountant and that other certificate systems can suffice if they have the approval of the OVAM.

The holes in the existing legislation are the motive for the change.

Option 2: refinement of the existing legislation

The stipulation with requirements for the conclusion of a collective system will be refined with specifications for the different obligations of the management body. The stipulation regarding approval will also be worked out further.

- An environmental policy agreement is possible under the following conditions:
 1. *The environmental policy agreement as provided for in the Decree of 15 June 1994 concerning*

environmental policy agreements shall be concluded by the umbrella representative organisations for companies, of which the producer, the retailer and the intermediary trader is a member. With this each umbrella representative organisation for companies involved signs for activities which ensue from the legal obligations of their members;

2. A management body shall be set up which carries out tasks in the name of the representative organisation(s). One can only diverge from the obligation to set up a management body if the umbrella representative organisations for all parties as stipulated in point 1, can demonstrate that they can achieve the same results by means of another joint organ. This organ shall then meet the same requirements as a management body.

3. The management body shall submit a management plan for the term of the environmental policy agreement to the OVAM for approval, indicating how it will comply with the requirements of the agreement, within at most six months of signing the environmental policy agreement. At the very least the management plan shall contain the implementation terms of the requirements in the environmental policy agreement. The management body shall submit an update for the following calendar year for approval, each year before 1 October;

4. The management body shall submit a financial plan to the OVAM for advice within at most six months of signing the environmental policy agreement, including the calculation of possible contributions covering the duration of the environmental policy agreement. The management body shall submit an update covering the next calendar year for advice each year before 1 October;

5. If the management body organises the collection and processing it shall submit the specifications for collection and processing advice within at most six months of signing the environmental policy agreement to the OVAM for approval. Each change in the specifications will have to be approved in advance;

6. The OVAM shall fulfil the role of observer on behalf of the region in the Board and the general meeting of the management body. The OVAM shall receive invitations and reports with adequate notice to this end;

7. The management body may not refuse to allow any enterprise to join which could be covered by the acceptance obligation as defined in the environmental policy agreement. The management body may deviate from that obligation if there are serious reasons thereto and after approval by the OVAM;

8. At the request of the OVAM the management body shall enter into consultation with the representative organisations of parties involved in the implementation of the acceptance obligation.

In points 3, 4 and 5 a distinction is made in this regard between domestic waste on the one hand and commercial waste comparable to domestic waste on the other.

VLAREA also describes which points have to be dealt with in an environmental policy agreement or individual plan (compare the zero option)

Advice and approval are clarified:

All documents within the framework of the acceptance obligation which are of critical importance, shall be submitted to the OVAM for approval. These are, among other things, the management plan, the specifications and the communication plan. The OVAM has one month in which to approve or reject those documents. If no decision has been made known by the OVAM within this period, this counts as tacit approval. Should the OVAM request supplementary information, the period can be extended by a maximum of one month. The period starts from the date of receipt of all the requested information. If the OVAM rejects the documents, an amended proposal shall have to be resubmitted for approval. A proposal cannot be carried out without the OVAM's approval.

In derogation of the above the financial plan and the admittance agreement shall be submitted for advice. The OVAM has one month in which to give their advice. If the OVAM has not provided its advice within a month, then this shall count as a positive advice. Should the OVAM request supplementary information, the period can be extended by a maximum of one month. The period starts from the date of receipt of all the requested information.

The obligations for the certification of the reporting are clarified and more flexible:

- *the figures which are supplied to the OVAM within the framework of the acceptance obligation, shall be certified by an independent auditing body;*

- *the figures of carriers and processors which are supplied to the producer's management within the framework of the acceptance obligation, shall be certified by an independent auditing body;*

the figures which are supplied to management body by the producers within the framework of the acceptance obligation, shall be certified by an independent auditing body. The management body or a third party appointed by that organisation can take that task upon itself, provided that all the members are audited at least once every three years and that the management body reports on these activities and the results to the OVAM annually;

deviation from these obligations can take place in an environmental policy agreement or an individual waste prevention and waste management plan if the quality of the figures can be guaranteed in some other way. The figures which are provided to the OVAM within the framework of the acceptance obligation, are checked by an independent supervisory organ;

Further clarification

The most important amendments are:

- that the legislation specifically states that representatives of intermediary traders and retailers can also sign the environmental policy agreement in view of the fact that they also have obligations, as this interest group is often affected by the responsibilities arising from the environmental policy agreement without being able to help define them;
- that a multi-annual management plan for the duration of the environmental policy agreement must be set up which is updated annually: due to this the implementation of the environmental policy agreement is described in a multi-annual plan (long term transparency), but it leaves room for adjustments within the framework of the environmental policy agreement (dynamics and adjustments);
- that it is specifically stated the a financial plan and the calculation of the environmental contribution have to be submitted for advice; previously the content and procedure of a management plan could also become the subject of negotiations and the government had little leverage for enforcing progress;
- the obligation composing specifications for collection and processing and submitting them for approval within a certain period;
- the prohibition on refusing the admittance of companies to the management body without the approval of the OVAM. This is a concern of the Flemish Parliament. This decreases the risk that the management body excludes the less interesting (expensive) products of a certain waste flow or that the management body misuses its monopoly position;
- that the requirement is imposed to consult with other target groups involved in the implementation of the environmental policy agreement. This involvement was often a bone of contention, the reason why a lot of interest groups sought to co-sign the environmental policy agreement. The creation of a channel for consultation fulfils the demand of the interest groups for involvement, without detracting from the end responsibility of the producers. Co-signing the environmental policy agreement or having an obligatory seat in the Board of Governors could lead to economic conflicts of interest. It is up to the sector itself how it wishes to deal with this;
- That the management plan, the financial plan and the specifications always have to distinguish between domestic waste and commercial waste. This gives rise to two separate systems and avoids cross financing (citizens do not help pay for commercial waste). It also allows, on the one hand, that the role of local authorities in domestic waste is valued as highly as possible and, on the other hand, that for commercial waste the effect of the free market is stimulated;
- That the approval and advice procedure is included in the legislation, which means that it can no longer be the subject of negotiations and that all interested parties are treated equally. Here a distinction is made between documents for which the government has the authority to make a decision and for those where the authority to give advice suffices. The clear-cut timing increases the impact of the government and the legal certainty for the companies;
- That the certification obligations of the reporting is described by type of reporting, because of this high but useless costs for chartered accountants can be avoided for some parts, without the quality of the data being threatened.

Option 3: Tiered system:

The tiered system consists of the supplementation of the existing legislation with the accreditation of the management body as additional possibility for complying with the acceptance obligation and the option in which the government takes over from the producers completely but charges the financing to them.

This option was proposed by the VVSG. The intention is to have more impact on the producers and the management body by means of the threat of an accreditation instead of an environmental policy agreement, tier three is to guarantee that a system continues to exist.

- Tier 1 is the existing legislation
- Tier 2 is that during endless negotiations or a when a management body functions badly the possibility of working with an environmental policy agreement is dropped and in its place the obligation to work with the accreditation of the management body is introduced. The accreditation could contain the same type of conditions as in option 2. When postponing the environmental policy agreement negotiations or ending the environmental policy agreement, an accreditation application would have to be submitted in order to still be allowed to work with a collective system. The accreditation has the advantage that the government must unilaterally approve or disapprove of the whole system; the accreditation can also be postponed or retracted. The government can impose additional conditions for an accreditation such as, for instance, the application of the legislation to government commissions. However, such far-reaching interference makes the concept of producer responsibility hollow and restricts it to financing. There is no support among the producers for such a system. In theory an accreditation can give the government more impact. In practice the impact remains the same. The government can abrogate the environmental policy agreement in the zero option and in option 2. The practical consequences are the same as the retraction of an accreditation: the whole system stands still. In reality the consequences of this are so profound that the chance that this possibility is exercised is practically non-existing.
- Tier 3 is that in case an accredited body is not available the government takes over the tasks and charges the financing to the producers. This implies that the government will set up the entire collection and processing system itself.

This option requires a thorough revision of the legislation and of the systems involved in acceptance obligations. The largest part of the burdens would reside with the government and they would later pass the charge on. The calculation for the charge to be passed on is not clear and holds the risk that it enters the territory of other jurisdictions.

The evaluation study showed that the accreditation course was interesting, in particular in combination with an interregional cooperation agreement (such as is currently the case for packaging waste). At the moment the climate is not suitable for such an interregional construction. Cutting the system in Flanders loose from the other regions appears to be impossible in view of their interdependency.

The introduction of this option and its peripheral requirements is a further addition to the load of the existing legislation and hollows out the concept of producer responsibility. Such an operation requires preceding social and political discussion. The potential for improvement within the existing legislation is however, still sufficiently large.

For this option the criteria for the transition between tiers 1 and 2 are crucial. However, it is practically impossible to define 'negotiations which take too long' objectively and to lay the responsibility for this with one party. Experience teaches that there can be several causes: not only a lack of agreement between the parties (which can, moreover, hardly be ascribed to one party), but also a lack of shared vision among the regions. The risk of lengthy legal appeals against such a decision is very real, which could cause the operation to miss its goal entirely.

Taking this information into account this option will not be worked out further. Should it transpire that the proposed improvements in the legislation have no effect then a complete re-evaluation of the instrument will probably push its way to the front again.

Effects

Target groups and parties involved

The producers and importers of the products (hereinafter called the producers):

They are responsible for the collection and processing of their products in the waste phase, they can arrange this by means of an individual plan which must be approved by the OVAM or by means of a collective system on which agreements must be drawn up in an environmental policy agreement. In this case the federations involved usually set up a management body in order to implement their obligations.

The producers pass on the cost of their acceptance obligation by means of charging the environmental contribution to the consumers. The total price of their product increases, which is a reason for them to limit the cost price.

The producers are the requesting party for limited legislation with great freedom of operation in how they fill in their acceptance obligation and cost reducing solutions. The opinions of the producers are specific to their area on a number of points.

At the moment there are a total of 15 bodies, which together have around 5300 members. Some producers fall under several acceptance obligations.

The distributors, intermediary traders and retailers:

For most waste flows they are legally required to take back the discarded product when buying a new product if the producers have made an arrangement permitting the consumer to hand in his discarded product easily in another way. If such an arrangement is lacking then they are obliged to take back the discarded product regardless of the purchase of a new product. These sectors were primarily the requesting party for greater involvement and consultation at the setting up of an agreement and at its implementation by the management body as they are also subject to obligations and organisatory and logistical consequences. They request seats in the Board of Governors of the management body.

They are also the requesting party for a substantial administrative simplification of the reporting obligations for the various waste flows. However, the reporting is organised by the management bodies, improved attunement of their systems to each other is the responsibility of the management bodies, the government has a limited influence on the way in which each flow organises itself and can not impose cooperation.

The local authorities & intercommunities (Belgian associations of more than one council):

They are responsible for the collection and processing of domestic waste pursuant to their duty of care. The management bodies can make use of the collection channels of the intercommunities but have the right to work out alternatives provided that these guarantee sufficient geographic coverage. In practice cooperation is usually desirable.

The VVSG is consulting partner for the local authorities and intercommunities regarding acceptance obligations.

It is the requesting party for a correct remuneration for their services. The Ministerial Decree of 18 July 2005 establishing further regulations for the cost distribution of the collection costs at depots to producers within the framework of the acceptance obligation forms the legal basis.

They also ask for involvement during the environmental policy agreement negotiations and when working out the logistical agreements by the management body for those affairs which have an effect on their operations. They are the requesting party for a tiered system in which the government, when the producers do not fulfil their obligations quickly or satisfactorily, can impose additional obligations by means of an accreditation or can even act in their stead.

The waste processing sector:

They implement the collection, sorting and processing of discarded products. Their members have contracts with the management bodies.

The federations FEBEM and COBEREC are the most important negotiating partner within the framework of the acceptance obligations.

They are the requesting party for a further extension of the acceptance obligations in light of the positive effect on the sector. They are also the requesting party for greater involvement in the negotiations and its implementation by the management body as the way in which collection and processing is organised can have a big impact on the organisation of the sector. They also request seats in the Board of Governors of the management body. Furthermore they ask for involvement in laying down the specifications. The OVAM has not reacted to these last two questions as they are outside the environmental jurisdiction and can lead to a conflict of interests.

FEBEM is opponent to management bodies taking on an implementary role as they see this as distortion of competition. There is, however, no legal basis for prohibiting a management body from carrying out the collection and processing itself, provided that they comply with all the legal conditions and requirements.

The sector is also requesting party for a clear differentiation in the legislation and implementation of the acceptance obligation for domestic and professional products, as the local authorities are an important participant for domestic products; for professional products market forces should be respected to the utmost.

The recycling sector:

This sector is mainly involved in the acceptance obligation for WEEE; they are an important player in the realisation of the re-use aims. They have chosen to be represented by the KVK, the umbrella organisation of the Flemish recycling centres. They also request greater involvement in negotiations and implementation in relation to correct remunerations and good guarantees on the supply of potentially re-usable material.

The consumers:

They are an important interested party but the only one without active lobbying to all institutions with regard to their interests. In the end the consumer pays the bill for the product in its waste phase by means of the environmental contribution, the citizen-consumer pays the government's costs by means of taxes.

The consumer is helped by simple collection systems and good information.

The government:

The government wants to realise its environmental targets (see 2.3) by means of the policy instrument acceptance obligations. However, with the implementation of the instrument it transpired that the government sometimes has insufficient impact to safeguard environmental and general interests. For all options the government's exertions concerning upward and downward supervision are the same. Therefore they will not be discussed.

Option 1: zero option: keeping the existing legislation

Direct effects

Federations of producers

- The producers' federations have the most effect on the contents of the environmental policy agreement, the effectiveness of the management bodies and the logistical systems which are set up. As they finance the products in their waste phase they consider this to be normal, and in several cases wish to be the only negotiating partner. Because of this they sometimes refuse to allow other negotiating parties to the table.
- The federations have to implement the management agreement by means of the management body and submit a management plan every year. The contents and procedure for the management plan is the subject of the environmental policy agreement negotiation. The agreements may differ per environmental policy agreement.

The producers

- Individual producers who are not a member of the federations are dependant on the goodwill of the management bodies for joining the collective system.
- Individual producers have to let their declarations to the management body be certified. The cost of this certification depends on the size of the company and the number of products for which the company has to submit a declaration. This is hard to calculate. The companies and management bodies complain about this cost as it has little added value.

Retailers

- Whether the retailers are involved in the environmental policy agreement negotiations and implementation depends on the goodwill of the producers. Retailers have no basis for compelling their involvement, regardless of their legal obligations (taking back discarded products). Retailers are often faced by the logistical and administrative problems arising from choices made by the producers.

Local authorities (intercommunities and depots)

- Whether the local authorities are involved in the environmental policy agreement negotiations and implementation depends on the goodwill of the producers. Local authorities are often faced by the logistical and administrative problems arising from choices made by the producers.
- The ministerial decree on the remuneration for the depots guarantees that their costs will be refunded. However, long environmental policy agreement negotiations can interfere with such a regulation causing the depots to lose remunerations.

Waste processing sector

- They invest in the waste processing industry and supply services to the management bodies. The sector complains that the management bodies do not allow competition in the free market because of their monopoly position, and that they keep the prices artificially low.
- Whether this sector is involved in the environmental policy agreement negotiations and implementation depends on the goodwill of the producers. It is often faced by the logistical and administrative problems arising from choices made by the producers and therefore wishes be involved from the start.

Consumers

- If the environmental contribution is too high the financial reserves heap up in the management bodies. The government cannot adjust this. The consumer pays too much for the collection and processing of his waste.
- For the new implementation plan Environmentally Responsible Management of Domestic Waste (Belgian Official Journal 07.01.08) it was calculated what the acceptance obligations would cost on average per family per year: EUR 15 per year; (p.139)

The government

- The government has little impact if a management body carries out an environmental policy agreement slowly or not at all. Modification becomes very difficult, which means that the environmental targets or the public interest are jeopardised.
- In case of non-submission (or postponing) of specifications the government cannot check whether the chosen implementation parameters take the environmental criteria into account sufficiently (besides the cost calculations). Nor can the government supervise whether market forces are respected during the allocation of the specifications.
- The government participates in the Board of Governors and discusses the management plans and specifications (where applicable) and gives its approval.
- The government is often approached as mediator between the different interest groups. However, it is strongly dependant on the goodwill of the producers.
- The limited description of the approval procedure has as a consequence that the government has no possibilities for sanctions for carrying out activities without the required approval.
- At the moment the OVAM is investing EUR 430,255 in the acceptance obligations.

Calculation FTE cost based on employees with at least three years of service

Level	FTE total	Yearly cost	Total personnel
A	2.508	55051.95	138,070.29
B	7.07	40596.38	287,016.40
C	0.15	34456.74	5,168.51
Total	9.728		430,255.20

Indirect effects

None

Distribution effects

- The costs of the producers are charged to the consumer by means of the environmental contribution.
- The costs of the government are charged to the consumer/citizen by means of taxes. The share of the taxes that go to the acceptance obligations is too small to be calculated.

Option 1: comparative table of all effects:

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Direct effects				
Producers	Extensive autonomy in implementing the system		Pass on all costs to citizen	EUR 0
Retailers			Logistical problems	
Flemish Government			Labour costs	EUR 430,255
			Limited effect on implementation	
Consumer			Environmental contribution per family per year	EUR 15
Local authorities	Remuneration of the costs by means of MB			
			Logistical problems	
Indirect effects				
			Implementation problems for all parties with the exception of producers	
Waste processing sector			Risk of market disruption	
Distribution effects				
			Consumer pays for the whole system by means of taxes and environmental contribution	
Total				

Option 2: Refining the existing legislation

Direct effects

Federations of producers

- The producers' federations have the most impact on the contents of the environmental policy agreement. They can no longer refuse a place at the negotiating table to the intermediary traders and retailers for those aspects for which they also have obligations.
- The composition and efficacy of the management body remains a subject for negotiations between the various parties (producers – traders). The final responsibility remains with the producers who are also financially responsible.
- The management bodies have to organise negotiations (involvement) of all stakeholders at the request of the OVAM but are allowed to decide for themselves who is to hold a seat in their governing bodies.
- The producers must draw up a management and a financial plan by means of the management body. The financial plan is submitted for advice, the final responsibility remains with the producers.
- Het management body cannot refuse the entry of individual companies without the approval of the OVAM.

- The timing in the approval procedure provides more legal certainty to the management body when requests for advice take too long.

Producers

- The accession of individual companies to the management body is assured better.
- If the management body can offer an alternative, the costs for the yearly company revision of the declarations can be lowered to their share in the costs made by the management body. This will give rise to a strong decrease in the costs. The sectors are free in their choice of whether to make use of this possibility. As this is potentially a burden decrease in which the gains are entirely dependant on the alternative worked out by the sector, no cost estimate was made. This system already exists for electrical and electronic appliances.
- The producers themselves also support a clear distinction between domestic and commercial waste and some management bodies already apply this voluntarily. As a result they have no objections to laying this down in law.
- The producers can be obliged to consult with the other stakeholders. They nevertheless keep the autonomy for deciding on the composition of their management bodies themselves.
- The costs ensuing from the system for the producers will probably not change, in case of change they will be passed on to the consumer.

Local authorities

- There is better participation for the local authorities: they can request consultations through the OVAM, the management bodies are obliged to cooperate.

Waste processing sector

- There is better participation for the waste processing sector: they can request consultations through the OVAM, the management bodies are obliged to cooperate.
- The obligation for specifications and their approval by the OVAM guarantees better transparency and respect for market forces in the allocation of the contracts.
- The obligatory differentiation between the systems for domestic and commercial waste creates more opportunities for good functioning of the free market in commercial waste.

Government

- The specific inclusion of all obligations and accompanying procedures reduces the negotiating margin, enabling negotiations to take place more efficiently and for the equality principle to be applied better.
- The government can fall back on legal regulations during implementation which makes it easier to impose sanctions for non-compliance. Infringements of the legal obligations by the management body will be included within the framework of the new enforcement decree as an environmental infraction for which administrative sanctions apply or for which remedying measures can be imposed.
- The government reads and attaches its approval to or advises on the multi-annual plan, the yearly update on the management plans and the specifications. This was already provided for in the existing legislation but difficult to enforce. The government can implement its task and safeguard the environmental and the public interest better.
- The government is better equipped for its task as mediator and can organise the involvement of all interest groups.
- However, these effects have greater impact on the efficacy of the efforts than on the required level of manpower. In option 1 and option 2 manpower is required comparable to the existing level. These proposals do not imply a change in the required level of manpower for the government.

Consumers

- The required financial plan increases the transparency and reduces the risk of useless financial reserves financed by the consumer.
- The mandatory distinction between domestic and commercial waste reduces the risk that the consumer helps to pay for commercial waste.
- If the costs for certification and reporting decrease this can have an effect on calculation of the environmental contribution.
- The environmental contribution will probably remain the same or decrease. The extent of the decrease is, however, dependant on related factors.

Indirect effects

By clarifying and standardising a number of procedures they are transparent for all those involved and the period of negotiations can stay limited. This simplifies the implementation for all those involved.

Distribution effects

The end users of domestic and commercial waste only pay for their own waste, there is less chance of cross-financing

The costs of the producers are passed on to the consumer by means of the environmental contribution.

The costs of the government are passed on to the consumer/citizen by means of taxes.

Option 2: comparative table of all effects:

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Direct effects				
Producers	Autonomy with regard to the obligation in working out a system		Pass on all costs to the citizen	Same
Retailers	More consultation, less logistical problems			
Flemish Government			Working hours: 430,255	Same
	More impact on implementation			
Consumer			Environmental contribution same or decreasing	Same or decreasing
Local authorities	Remuneration of the costs by means of MB			
	More involvement, less logistical problems			
Indirect effects				
	Less implementation problems			
Waste processing sector	Less risk of market disruption			
	More involvement, less logistical problems			
Distribution effects				
			Consumer pays for the whole system by means of taxes and environmental contribution	
	Balanced involvement during implementation			
Total				

Option 3: tiered system environmental policy agreement + accreditation

This option will not be worked out further as:

the nature of the problems for which a solution is sought is not such that far-reaching changes to the system are necessary;

the proposed amendments are not feasible within the existing interregional context and require an even stronger interregional approach;

the proposed amendments could perhaps lead to jurisdictional conflicts;

the chance that tier 3 of the option can actually be implemented effectively in practice is minimal in view of the drastic changes to the system it entails;

the development of option 3 will require enormous additional government efforts and will therefore undermine the original intention, which is that the producers are responsible for their acceptance obligation.

Choice and reasoning for the option

The target achievement is guaranteed for all the options and is being realised to a large extent even now. The challenge in this amendment is to improve the implementation so that on the one hand the environmental interests, and on the other hand the (economic) interests of all the target groups are taken into account sufficiently.

Effectiveness and efficiency: Option 1 provides insufficient guarantees for a good implementation, the impact of the government and the involvement of the target groups. Therefore the economic interests could suffer. Option 2 provides better guarantees in this case.

From the internal and external evaluation studies and the consultation with all the interest groups it appears that option 2 is an achievable and pragmatic option with a good chance of target achievement. This option leaves the existing legislative framework intact but clarifies it where necessary. This increases the legal certainty for all those involved and goes a way towards solving the most important problems of various parties. Should it transpire in the future that these amendments do not after all suffice to implement the acceptance obligation in a satisfactory way then the system will need to be re-evaluated completely.

Origins, aim, options and effects of the amendment of the aims and reporting obligations for waste tyres

Articles 3.4.1 and 3.4.4

Origins and aim

The environmental policy agreement for waste tyres ends on 28 November 2008. In preparation for the new environmental policy agreement negotiations, the government wishes to change the aims so that the sector is stimulated to continue to make an effort and to use the increasing processing possibilities to the maximum, as the sector cannot then opt as much for a cheaper solution with more limited environmental effects.

During the implementation of the existing environmental policy agreement it transpired that the reporting is not specific enough to enable good supervision. By clarifying the reporting obligations improvement is possible.

Aims:

- To maintain the aims so that they can be achieved in practice also
- Refining the reporting to enable better supervision. At the moment it only has to be reported which quantity of tyres were sorted for re-use and which quantity received new tread. By requiring the reporting of the quantity of tyres used for material recycling and for energetic valorisation the government and the sector can monitor the environmental results of the acceptance obligation better and the sector can show that the aims are being achieved.

There is no specific European legislation available concerning targets for the processing of waste tyres.

Options

Option 1: zero option: keeping the existing legislation

Regarding targets

The existing legislation lays down that the following targets apply to tyres collected within the framework of the acceptance obligation:

1. all waste tyres are collected;
2. the collected tyres are first sorted for re-useable tyres;
3. the tread of at least 25% of the collected waste tyres, expressed in weight, shall be renewed;
4. the tyres which cannot be fitted with new tread should, by preference, be recycled. From 2005 a recycling percentage of 20% of the collected waste tyres has been achieved;
5. the rest of the collected tyres will be energetically valorised.

The targets for re-use are not quantified in this legislation. This makes it impossible for the management body to impose clear targets on its partners in order to justify the sorting process. The target for fitting new tread (25%) appears to be impossible to achieve in practice. With regard to Belgium Recytyre reported 8% of the collected tyres were fitted with new tread in 2007. European results show that the potential for tread renewal is between 10 and 15%. Regarding material valorisation a result of around 47% was achieved in 2007.

Concerning reporting obligations

If the existing legislation is kept, then there is only a reporting requirement for:

1. the total quantity of tyres, expressed in kilograms, sorts and numbers, which were brought on the market in the Flemish Region;
2. the total quantity of waste tyres, including those which qualify for re-use, expressed in kilograms, sorts and numbers, collected within the framework of the implementation of the acceptance obligation;
3. the facility (facilities) where and the way in which the collected waste tyres were processed;
4. the total quantity of waste ensuing from the processing of waste tyres, expressed in kilograms, which:
 - a) were sorted for re-use;
 - b) fitted with new tread;
 - c) were given useful applications (material recycling, energetic valorisation etc.).

Because of this, no distinction can be made between the quantities which go to recycling and energetic valorisation. Nevertheless this is an important difference from an environmental perspective. Moreover, the sector has differentiated targets and has to be able to report them. The existing legislation also lays down that the numbers of collected waste tyres must be reported. This figure is not relevant nor is it reported.

Option 2: refining the quantitative targets and the reporting obligations in the legislation

Targets

In this option the recycling targets will be divided into two categories. On the one hand is recycling including re-use, tread renewal and material valorisation, which accounts for about 55%. On the other hand there is energetic valorisation, restricted to a maximum of 45%. It will also be specified that the disposal of waste tyres is prohibited.

Reporting

It will be added to the reporting obligations that the use for material recycling and for energetic valorisation must be reported.

Option 3: toning down the targets to non-quantitative targets

Federauto and Recytyre plea for ending the quantitative targets. The legislation only lays down that the recycling of waste tyres takes precedence over incineration insofar as the technical, economical and geographical circumstances permit it.

This option is inspired by the threat of fines for not achieving the targets in the draft Walloon levies decree. This draft decree is currently being challenged by several management bodies. As this is not the result of Flemish legislation and completely outside Flemish jurisdiction, the Flemish legislator does not wish to take this into account and this potential effect is therefore not described further. The reporting obligations in this option are differentiated as in option 2.

Effects

Target groups and parties involved

Producers and importers of waste tyres

The federations of this sector have set up the management body Recytyre. Recytyre has 377 members.

Recytyre has contracts with the collectors, by which means they organise the collection and processing. They want economic arguments (cost price of types of processing) to be allowed to bring more into the balance in the implementation of the acceptance obligation. They are the requesting party for relaxation of the legislation.

The collectors of waste tyres

Currently 54 collectors are registered with Recytyre 54. Recytyre has an agreement with these collectors for the collection *and* the processing of waste tyres. The collectors themselves choose which processor they go to.

The processors of waste tyres

The government, principally the OVAM, which has the task of supervising the acceptance obligation.

Consumers

The consumers pay for the collection and processing by means of the environmental contribution. The consumer can hand in discarded tyres at the garages when purchasing new ones or leave them at a depot.

Professional consumers of tyres: for example the transport sector.

Option 1: zero option: keeping the existing legislation

Target achievement is only guaranteed for 20% recycling. There are no reasons to make more environment efforts.

Direct effects

Producers and importers

- The sector will always choose the most advantageous option economically for the processing of waste tyres, from the laid down targets. The quickly changing market plays an important part here. However, the way in which the market will develop is hard to predict. The zero option gives the sector the greatest freedom of choice for processing the waste tyres: if recycling is an economically advantageous choice then they can do more recycling than is legally required, under other circumstances they will choose energetic valorisation.

- The environmental contribution (the cost price for collection and processing that the producers pass on to the consumer) can stay the same (unless the indexation of the costs for collection and processing were to be passed on by means of an indexation of the environmental contribution). This is currently:
 - *For passenger car tyres, 4x4, trailers, caravans, delivery vans = EUR 1.98 (excl. VAT) or EUR 2.40 (incl. VAT).*
 - *For heavy goods vehicles and busses = EUR 10.30 (excl. VAT)*

The sector will have to make a greater effort in reporting as they already do not meet all their (indirect) obligations. This additional cost is not the result of additional obligations.

Collectors

The collectors now have a lot of freedom of choice in cooperating with the processors. Whether this continues depends on the system Recytyre imposes on them.

The sector will have to make a greater effort in reporting as they already do not meet all their obligations. This additional cost is not the result of additional obligations.

Processors

The sector will have to make a greater effort in reporting as they already do not meet all their obligations. This additional cost is not the result of additional obligations.

Government

The government will continue to urge for better reporting but cannot impose sanctions for non-compliance unless there are more specific stipulations in the legislation. The costs of the government are comprised in the costs for the acceptance obligations in general (see previous point)

Consumers

- The environmental contribution stays the same, decreases or increases are pursuant to the economic and technological context, not the legislation.

Indirect effects

None

Distribution effects

- The costs of the producers are passed on to the consumer by means of the environmental contribution.
- The costs of the government are passed on to consumer/citizen by means of taxes.

Comparative table of all effects

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Direct effects				
Producers	Great freedom of choice		Costs are passed on to the consumer	o
	Limited administrative burdens			
Collectors	Great freedom of choice in cooperation with processors			
Government			Supervision of the implementation	
Consumer	Environmental contribution			
Indirect effects				
	none			
Distribution effects				
			The consumer/citizen pays the costs by means of the environmental contribution and taxes	
Total				

Option 2: refining the quantitative targets and the reporting obligations in the legislation

There is a 10% increase in the with regard to recycling and a 10% decrease regarding energetic valorisation relative to the existing targets. Scientific research has shown that certain forms of material valorisation have a negative environmental impact, including zinc leaching. Within the framework of the new environmental policy agreements the sector will have to commission an environmental health evaluation. If this shows that certain applications of material valorisation are not admissible due to their environmental impact, the sector will have to look for alternatives. However, it will have to be avoided that a shift towards energy recuperation takes place. The new targets prevent this: if fewer tyres can be shipped off to material valorisation the sector will have to compensate this by increase re-use and/or tread renewal in order to achieve the 55% recycling target. This is in accordance with the Lansink ladder in which re-use and tread renewal are valued higher than energy recuperation.

Direct effects

Producers and importers

- 40% recycling is actually being achieved currently without effort. Thus drastic effects on the sector are not to be expected. If the market does not undergo any major changes the proposed option will have no large effects as the proposed amendment is a translation of the existing situation. The market for granulates and rubber powders will probably develop further. Furthermore, new recycling applications are coming. This could increase the recycling potential in the future even more. If the environmental hygiene evaluation shows that certain applications of material valorisation are not admissible due to their environmental impact, the potential for material valorisation can also decrease. The sector can accommodate this by opting for more re-use and tread renewal.
- In this option the sector has more freedom of choice in processing channels. The sector has a larger capacity to accommodate fluctuations in the processing market while still achieving the imposed targets. On the other hand it is true that the management body will have to continue to make every effort to promote re-use and tread renewal.
- The sector will have to make greater efforts for reporting because they already do not meet their obligations. This additional cost is not the result of additional requirements as the amendment to the legislation is a specification of that which should indirectly already take place in order to be able to report well.

Collectors

- The sector will have to make greater efforts for reporting because they already do not meet their obligations. This additional cost is not the result of additional requirements.

Processors

- The sector will have to make greater efforts for reporting because they already do not meet their obligations. This additional cost is not the result of additional requirements.
- Adapting the targets could be form an incentive for the processors to invest more in recycling, retreading and in new recycling applications as the producers must maintain the higher recycling percentage. In time this could also benefit employment.

Consumers

- The environmental contribution stays the same, decreases or increases are pursuant to the economic and technological context, not the legislation.

Government

- Due to the specific legislation the government has sanctions in order to take action in case of insufficient reporting.
- The government will have to take care that the chosen recycling applications have an effective positive effect on the environment. This is a permanent task of the environmental government.

Indirect effects

none

Distribution effects

The costs of the producers are passed on to the consumer by means of the environmental contribution.

The costs of the government are passed on to the consumer/citizen by means of taxes.

Comparative table of all effects

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Direct effects				
Producers	More freedom of choice for processing			
Processors	Better investment climate			
Government			Supervision of the implementation and enforcement	Same
Consumer	Environmental contribution			
Indirect effects	none			
Distribution effects				
			The consumer/citizen the costs pays by means of the environmental contribution and taxes	
Total				

Option 3: toning down the targets to non-quantitative targets

Target achievement: the existing target achievement will be hollowed out. As a result of the removal of the quantitative targets, the processing of waste tyres will be mainly economically driven. In this the market plays an important part. It is hard to predict what the division of the different processing options will be like in practice then.

The effects with regard reporting stay the same as with the zero option.

Direct effects

Producers/importers

- With this option the sector has the greatest freedom of choice for the processing of waste tyres. There is a very real chance that the sector will then choose for the most profitable option in economic terms. A possible development towards increased supply for incineration with energetic valorisation instead of recycling is realistic.
- In choosing the most profitable solution the environmental contribution would stay the same or could possibly decrease.

Collectors

- No difference to the zero option

Processors

- If energetic valorisation becomes the most profitable type of processing (for example by increasing the use of waste tyres as an alternative fuel in the cement industry) other processing methods (and processors) will lose their share of the market, with the risk of bankruptcies.
- No innovation and no new job opportunities.

The government

- In the legislation will only lay down that the recycling of waste tyres takes precedence over incineration insofar as the technical, economical and geographical circumstances permit this. This is hard to capture in quantifiable criteria, because of which the government has no instruments with which to guide the distribution among the different processing options.
- The government does not have any guarantees here, has no further influence: it risks 'low value' processing of the waste tyres (which do not take environmental achievements into account).

Consumers

- The environmental contribution will stay the same or decrease.

Indirect effects

None

Distribution effects

- The costs of the producers are passed on to the consumer by means of the environmental contribution.
- The costs of the government are passed on to the consumer/citizen by means of taxes.

Comparative table of all effects

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Direct effects				
Producers	More freedom of choice			
Government			Supervision of the implementation and enforcement	Same
Consumer	Environmental contribution			
Indirect effects	None			
Distribution effects				
			The consumer/citizen pays the costs by means of the environmental contribution and taxes	
Total				

Choice and reasoning for the option

Option 2 provides the best guarantees for realising the targets.

This option does not involve any additional costs for the targets within the existing context for the sector as the target is already being achieved. The possibility exists that the context will change; possible amendments in the cost structure are not to be ascribed to the law amendment, but to the changing context. As an environmental policy agreement is drawn up for five years, the situation can be re-evaluated within five years.

The option will require more efforts with regard to reporting. These efforts were already required implicitly, but are now enforceable and are actually a correction of the situation and cannot therefore be seen as an additional cost.

With regard to reporting option 2 is a clarification of the legislation which provides the government with more effect on the monitoring.

Effect, implementation and monitoring

Legal-technical effect

A decree by the Flemish government shall be drawn up. This is in accordance with all linguistic, official and technical legislative requirements.

Implementation and administrative burdens

Calculation of the administrative burden within the framework of the complete implementation of the regulation impact analysis

The amendments to the acceptance obligation can be seen as a zero-effect operation with regard to administrative burdens. possibilities for relaxation of the legislation now provided are voluntary choices, it is the management bodies that set up the system and thus determine the cost price and possible profit. The other regulations are a specification of what should already take place. The additional cost can be ascribed to the reduction of the opportunities for evasion.

Calculation of the administrative burdens within the framework of the limited development of the regulation impact analysis

Article 3.1.1.4, paragraph two, section 10: Clarification that the requirement of a financial security is only necessary for domestic waste flows and that they can make agreements in the environmental policy agreement on the way in which this will be done.

This regulation reduces the administrative and financial burdens for producers and importers of products which are commercial waste in their waste phase.

The sum of the financial security is determined with reference to the following criteria:

- quantity of products brought on the market
- type of products brought on the market
- expected quantity of products to be collected after being discarded
- the processing and collection costs of these products.

The sums now included in the individual plans vary from EUR 0 to EUR 15,000. It should be said here that more and more professional electrical and electronic appliances have a positive value when processing, because of which the costs of collection can be partly or completely compensated and therefore give rise to lower financial securities.

Based on the individual plans for electrical and electronic appliances and lead acid starting batteries one can state that the financial security costs an average of EUR 10,000 per company. At the moment around 50 companies have submitted an individual plan; however, this number could change.

For the management bodies this means that less monetary reserves need to be accrued.

Enforcement

The new enforcement legislation provides better leverage for compelling compliance with the legislation on the basis of the VLAREA. The supervision of the acceptance obligations is carried out by the OVAM and will continue to require efforts. Ideally the OVAM should be able to spend more on enforcement, Environmental Committee is requesting party for this. Due to budgetary limitations this is impossible. The OVAM will organise the deployment of available personnel in such a way that a maximum degree of efficacy is achieved in enforcement.

Evaluation

The proposed amendments are the result of a recent evaluation practice. The OVAM estimates that at least 4 working years are required in order to evaluate the effects of the amended legislation. In this period negotiations will take place on a number of new environmental policy agreements, and they will also be implemented. As the legislation cannot become stricter during the running time of an environmental policy agreement unless it is because of European legislation and the OVAM has

decided to respect the spirit of the Decree, one will have to wait for new environmental policy agreements in order to evaluate the effects. If the signals regarding implementation problems persist then preparations for a new evaluation will start three years after entry into effect. Targets for waste tyres: as an environmental policy agreement is drawn up for five years, the situation can be re-evaluated within five years.

Consultation

As indicated above, comprehensive consultation with all the target groups involved took place by means of sounding board meetings for the external evaluation and later by means of the Forum acceptance obligations, where the concrete amendment proposals were discussed. Problems with the further implementation can be put on the agenda via this Forum.

Further information for the Inspectorate of Finances

Summary

During the preparation period all aspects were examined thoroughly and documented. In this document we discuss the most radical changes with clear effects on businesses or citizens, in accordance with the proportionality principle of the RIA handbook.

Explanation of the RIA-process

The process for evaluating and preparing the policy which preceded this law amendment comprised two internal and one external evaluation study. All interested parties were involved with each step of the process.

For this the investigation into the efficacy and the efficiency of the instruments was of central importance. The commission for the policy evaluation study was awarded to the HIVA. It was charged with working out an evaluation framework and applying it to three sectors: WEEE (Waste Electrical and Electronic Equipment), waste batteries and waste lead-acid starting batteries.

Parallel to the external investigation assignment the OVAM made an internal comparative study of all environmental policy agreements. Together both courses were the basis for deciding which adjustments are desirable and possible and to carry on with the RIA-process.

The proposed amendments and their justification were put to all interested parties twice for feedback. Their comments were taken into account in these amendments. The OVAM is in the possession of internal documents in which all arguments and comments are processed and discussed.

In view of the contradictory interests of various parties involved in the acceptance obligation it is impossible to grant everybody's wishes. All the paths of the solutions and the comments were weighed up each time in light of

- the aims of acceptance obligations as indicated in the background document and the evaluation study;
- the aims of this amendment as indicated in 2.3.1 of this document;
- their added value for the environment;
- their efficiency and practical attainability;
- the legal attainability;
- the balance between the rights and the obligations of all those involved.

Basic principle: improvement of the existing legislation on acceptance obligations instead of introducing a new instrument, namely accreditation

This amendment to VLAREA in Chapter III has as guiding principle an improvement of the existing instruments. In the evaluation study, for the domestic sectors WEEE, waste batteries and waste lead-acid starting batteries, the instrument acceptance obligations by means of environmental policy agreements or individual plans were compared among other things to a uniform legislative framework with accreditation (the system for packaging waste served as point of comparison). This study showed that the instrument environmental policy agreement works well, but that problems can arise with transparency regarding the government and other interested parties, the impact of the government in the implementary phase and market conformity. According to the investigators the instrument 'uniform inter-regional legislative initiative with a recognised management body' (option 1) would lead to slightly

better solutions for those problems. However, the difference between both instruments was insufficiently large to proceed to quick policy changes.

- The following additional arguments have led to the choice for a further improvement of existing legislation:
- The experience of the OVAM shows that the aforementioned problems do not always occur and not in all sectors, but can be the consequence of the attitude of the parties involved and of contextual elements. A number of these aspects can be corrected with amendments to existing legislation.
- Theoretically option 1 gains the highest score as inter-regional cooperation offers more guarantees for harmonising legislation. In practice it is clear that equally difficult negotiations precede this.
- An accreditation has the important advantage that the impact of government is larger as it has to grant a one-sided approval and can also retract the accreditation. In practice it is clear that retracting an accreditation is comparable to revoking an environmental policy agreement. The consequences are as far-reaching as they are problematic: the logistical system collapses and the government is duty bound to take over the tasks itself. In practice retraction and revoking are both hardly realistic. By specifying a number of obligations for the management bodies and letting the government attach its approval to strategic documents, its impact will increase. The inclusion of the VLAREA-condition that without approval of strategic aspects, like for instance the specifications, the implementation cannot be started, allows for intervention in case of non-compliance.
- Certain of the parties involved proposed working with a tiered system: to work with accreditation if there was no environmental policy agreement, and if there was no accreditation, letting the government commission the tasks to be carried out at the costs of the producer, for example by means of levies on the quantity of goods brought onto the market. This course is, however, hardly realistic in the short term.
- Producers who cannot come to an agreement on an environmental policy agreement will also not be able to set up a management body which could qualify for accreditation.
- A government system which passes on the costs to all individual producers by means of levies requires far reaching law amendments, does not fit into the concept of producer responsibility and encroaches on the territory of federal competencies.

If during the duration of the current and new environmental policy agreements it transpires that the voluntary cooperation turns out to be difficult and ambiguous the course of issuing accreditations as a replacement for an environmental policy agreement will be investigated further. This choice does however change the role of the government: more government and less producer responsibility. An in-depth discussion on the role of the government will ensue.

Art. 3.1.1.1 Abrogation of the acceptance obligation photo chemicals

The acceptance obligation for photo chemicals was introduced at the request of the other regions and was evaluated internally as the environmental policy agreement ends on 22 December 2007. Besides an evaluation of the efficiency and the effectiveness of the existing legislation the following alternatives were considered:

- zero option: keeping the acceptance obligation;
- abrogation of the acceptance obligation without additional new legislation;
- abrogation of the acceptance obligation and drawing up a new voluntary environmental policy agreement.

The analysis shows that option two is preferable for the following reasons:

- Effectiveness: the indication as special and dangerous waste material suffices in the Flemish Region to guarantee the good collection and useful application of waste photo chemicals. Imposing an acceptance obligation gives no additional value. Experience shows that the use of the legal collection and processing channels is also stimulated by the positive value of the waste photo chemicals. The returns on the silver recuperation and the low costs for processing desilvered waste photo chemicals ensure that the costs of collection and processing are fully compensated for the waste producer.
- Efficiency: As a result of digitalisation the waste flow photo chemicals will continue to decrease so that the efforts for implementation and supervision of the acceptance obligation can no longer be justified. Current estimates indicate that the logistical costs of the management body are of the

same size as the sum the management body pays as service remuneration to the depots and intercommunities with which it has drawn up a contract. Only half the depots have a contract.

Article 3.4.1 Amendment of the targets and reporting obligations for waste tyres

The continuation of the existing legislation (zero option) was compared to the hold back option and the suggestion from the sector to dispose of quantitative targets. This showed that an amendment was necessary in order to vouchsafe the current environmental results.

Decision

According to us, after the RIA process, this draft decree is a compilation of the most suitable options.

Contact information

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Regulation impact analysis for amendments to VLAREA – Part: Amendment of the legislation for the accreditation of laboratories

Origins and Aim

1.1. Origins

The accreditation of laboratories takes place for specific analysis packages which are compiled by Ministerial Decree. The analysis packages are a summary of the parameters in waste materials or in soil. The content is based on standardised parameters in the relevant environmental legislation (VLAREA, VLAREM and VLAREBO). Often analyses for environmental studies have to be carried out on waste materials or soil for non-standardised parameters too. The analysis must be carried out by an accredited laboratory for waste material or soil but there is not a single quality control to establish whether the laboratory is qualified for this analysis.

The existing obligation of having the VITO prepare specimens every year for all the analysis packages is no longer feasible for the OVAM reference tasks with the current VITO allocation. The amendments to the environmental legislation lead to more standardised parameters. New and improved analysis packages were approved by Ministerial Decree but without the extra financial means being made available. Negotiations on the extension of the financing have been going on for years and have not led to additional funds. Quality control by means of the annual ring test specimens is the most important government instrument for evaluating the quality of accredited laboratories.

By taking part in the Vito ring test the accredited laboratories receive useful information on 3rd line verification for free. This information has added value for the laboratory's ISO 17025 quality system. If the laboratories require external organisations for 3rd line verification they must pay a financial contribution.

Experience has shown that in a laboratory a change in the managerial staff or in the people responsible for organisation sometimes has a significant impact on the technical quality of the measuring results. It is only at a later stage, during an audit or a ring test, that we discover that high quality results are no longer provided. At the moment this crucial data from the application dossier does not have to be notified when changes take place at accredited laboratories.

The submission of an annual report with a statistical overview of the results achieved is only complied with to a limited degree. Until now the OVAM has not taken any action with regard to this information. The OVAM cannot decide to suspend or withdraw the accreditation if the laboratory does not follow the OVAM guidelines or the ISO 17025 adequately. Mistakes in sample taking and in reporting occur and lead to unreliable analysis results and possibly to wrong decisions.

The suspension or withdrawal of the accreditation enters into force at the moment that the decision has been received, while the laboratory can only start the defence procedures from that time. The normal activities of the laboratory with a suspended or withdrawn accreditation are immediately disrupted as a result of the decision.

The decision regarding accreditation as well as suspended or withdrawn accreditation are only partially published in the Belgian State Journal. This publication contravenes the letter of the law – the complete decision must be published. The complete decision usually contains attachments with the analysis packages and is therefore highly detailed.

Policy aim

Amendments to VLAREA Chapter VII on sample taking and analysis of waste materials.

Supplementing the system for the accreditation of analysis packages with a flexible approach for other parameters in waste materials or soils. In this way reliable results can also be guaranteed for other parameters.

Making the obligatory organisation of ring tests for all analysis packages and all indicated parameters more flexible. With regard to analysis packages/parameters a distinction will be made between priority parameters and parameters which have to be analysed more sporadically. Only organising the annual ring test for the priority analysis packages/parameters and if there are a minimum number of accredited laboratories, as statistical processing of ring tests is only meaningful from a minimum number (5).

Introducing the spread of costs for 3rd line supervision. Within the framework of quality control the results of 3rd line supervision are useful both for the OVAM and for the laboratories concerned. The VITO calculates the cost price for the preparation of the specimens and the evaluation of the results. Half of this total cost price is financed by the laboratories taking part. If there are less than ten and more than five participating laboratories the financial contribution of the laboratories increases without them being responsible for this. In this case a correction is carried out and the contribution is calculated as if there are ten participants.

Being informed of the present situation in a laboratory after a change in the core personnel. Changes in the managerial staff or in the people responsible for organisation must therefore be notified to the OVAM as well.

The obligation to submit the annual report with statistical overview of the results is abrogated.

Supplementing the conditions for a suspension or withdrawal with essential criteria. Not following OVAM guidelines can have a negative effect on the quality of the measuring results and the analysis reports. This condition was in the first version of the VLAREA and was dropped due to carelessness. Compliance with the quality system ISO 17025 is not merely a precondition for accreditation.

Maintenance of the quality system is a continuous undertaking. It is therefore logical that during the accreditation period an inadmissible shortcoming must be resolved as quickly as possible and certainly within a month. If the laboratory does not take the necessary corrective action or does so too late the quality of the analysis can suffer. The intention to suspend or withdraw an accreditation is now included in the procedures. The laboratory will first be given the opportunity to defend itself before a decision is made on the merits. The legal security and safety of the company will be protected better.

Dropping the notification of the status of accreditation in the Belgian State Journal. Besides the updated status of the accreditation in a register available for inspection at the OVAM, interested parties can also consult the status of the accreditation of the laboratories on the OVAM website.

Options

Option 1: zero option: no changes

Option 2: carrying out all proposed changes

Option 3: same as option 2 but without the cost division for 3rd line supervision of VITO ring test specimens and participation in commercial ring tests for the ring test specimens not provided by VITO

Effects

Target groups and parties involved

All laboratories which are accredited for analyses of waste materials or of soil or which request an accreditation.

The Ring Test and Accreditation unit (REE) of the VITO is responsible for the technical aspects of the application dossier, the preparation of the ring test specimens, the statistical processing of the ring test results and the supervision of compliance with ISO 17025.

The OVAM is an interested party for the administrative side of the accreditation, but also, among other things, the evaluation criteria concerning accreditation, suspension and withdrawal.

Option 1

Direct effects

Inadequate quality control and processing of the accreditations of laboratories

The legal obligation to organise ring tests for the analysis packages every year cannot be maintained with the existing financial means for the reference tasks.

The sum of the basic Vito allocation for the OVAM reference tasks was determined at EUR 304,909.04 in 2001 and this allowance was only increased to allow for inflation (health index). In 2007 over EUR 92,000 in supplementary means was used in order to sustain the accreditation system in a toned down version. For certain analysis packages and parameters no test specimens were prepared and no evaluation took place.

When new environmental legislation is approved standards are seldom scrapped, much more frequently additional standardised parameters are introduced. As a result additional specimens must be prepared and more parameters must be evaluated. The organisation of the ring tests is becoming continuously more expensive. The shortage of financial means will only increase.

Belated awareness at the OVAM of changes in personnel in accredited laboratories

In a laboratory a change in the managerial staff or in the people responsible for organisation sometimes has a significant impact on the technical quality of the measuring results. The OVAM only learns of the changes when the accreditation is extended, during blind tests or through the BELAC. Thus the quality of the analysis results is insufficiently assured during a certain period.

Insufficient legal security of the accredited laboratories with divergent test results

The laboratories are first sanctioned (suspension/withdrawal of the accreditation) and can only put forward their defence afterwards. This sequence can give rise to serious problems if the laboratories analyse samples continuously and have to respect their contracts with their customers.

Insufficient legal grounds for adjusting the accreditation of the laboratories

The application of OVAM guidelines in order to increase the reliability of the analysis results or attuning the accreditation to the competencies of the laboratory cannot be forced.

The accredited laboratories keep a greater degree of freedom, because of which the analysis results of different laboratories can be strongly divergent and the reliability can be doubted increasingly. The application of ISO 17025 can be done both by the accreditation body (BELAC) as by the VITO. At the moment a recognised and accredited laboratory can be recognised for a parameter and test method while its accreditation has been suspended. This contradiction must come to an end with regard to the world outside.

Incomplete publication of the accreditation decision of the laboratories

The publication of the complete accreditation decision in the Belgian State Journal is not relevant to the citizens due to the contents (analysis packages with summaries of the parameters) as the publication takes place weeks or even months after the accreditation is given.

Distribution effects

The accredited laboratories taking part in the VITO ring tests receive a number of test specimens for certain analysis packages and the evaluation of their analysis quality free of charge. The OVAM must dedicate extra resources in order to generally carry out the accreditation system for analysis packages.

Indirect effects

Due to the obligation to apply the international quality standard ISO 17025 an evolution has come about, the laboratories are evaluating their accreditation in the light of the costs against the benefits. Laboratories no longer participate in the analysis packages for which they receive too few commissions. For certain analysis packages it is no longer useful to organise ring tests as too few accredited laboratories participate for a statistical analysis.

For certain parameters in certain matrices the supply of accredited laboratories is restricted to just one or a few laboratories.

The analysis of waste materials or soil is necessary with regard to specific environmental legislation (VLAREA, VLAREM and VLAREBO). In the VLAREM legislation a number of test methods and parameters are summed up which do not appear in any analysis packages. For the environmental studies of waste materials and soils specific analyses are sometimes required during the

implementation of VLAREA, VLAREM and VLAREBO for parameters which are not included in an analysis package. In such cases the existing accreditation does not provide quality assurance.

Option 2

Direct effects

There is a supplementary quality control for the analysis of parameters which do not occur in an analysis package for the matrices waste material or soil. The reliability of these measuring results is increased and gives rise to fewer discussions.

Ring tests are now only organised for the parameters and the analysis packages with sufficient participants.

The laboratories have to apply for participation in the ring tests. The division of the costs is 50/50 between the participating laboratories and the OVAM. The costs are estimated based on the previous ring test per analysis package and the number of participants.

The OVAM must be informed if there are changes among the managerial staff or the people responsible for the organisation. It is possible that an evaluation will take place to ascertain whether the quality of the analysis results is still sufficiently guaranteed. It is possible that an evaluation will take place to evaluate whether the quality of the analysis results is still sufficiently guaranteed. If not then the OVAM can take action with regard to the status of the accreditation.

The OVAM can enforce that its guidelines are followed in order to increase the reliability of the analysis results. The application of ISO 17025 will also be complied with better during the accreditation by the accredited laboratories. In practice this will lead to a greater guarantee of more constant quality of the analysis results.

The laboratories will first be given the opportunity to defend themselves before a possible suspension or withdrawal of the accreditation enters into effect. The commercial security for the company and the legal security of the analysis is greater.

The OVAM can make the status of the accreditation available to all interested parties even without publication of the accreditation in the Belgian Official Journal.

Distribution effects

The accredited laboratories taking part in the VITO ring tests pay 50% of the total costs for the ring test specimens of the analysis packages and for the evaluation of their analysis quality. The other half is paid for by the VITO allocation for the OVAM reference tasks. The system of 3rd line supervision for the analysis packages remains fully feasible.

Indirect effects

The quality of the analyses of waste materials or soil taking place within the framework of the specific environmental legislation (VLAREA, VLAREM and VLAREBO) and which are not included in an analysis package could be vouchsafed in an ad hoc manner.

Comparative table

A cost/benefit evaluation has only been drawn up for the division of costs of the 3rd line supervision.

Target groups and parties involved	Benefits		Costs	
	Description	Estimate		Description
Accredited laboratories	Quality control with regard to the other accredited laboratories at the same point in time, with identical specimens and according to the same analysis methods for all analysis packages	Cannot be expressed in terms of money	See point 2.2.3 Code analysis package	Recommended price in EUR (excl. VAT)
			1.3	825
			1.4	450
			1.5	250
			2.1	700
			2.2	75
			2.3	325
			3.1	550
			3.2	500
			3.3	300
			4.2.2	175
			4.2.8	150
			4.3	350
			5	325
			7	750
			9	650

Option 3

Same as option 2 but without the cost division for 3rd line supervision of VITO ring test specimens and participation in commercial ring tests for the specimens not supplied by the VITO.

Direct effects

The VITO has made a study of the supply of commercial ring tests at home and abroad. From this it appears that ring tests exist only for a limited number of parameters in waste materials and soils. Very often other analysis methods will be applied by the other participants with international ring tests. The OVAM cannot oblige the accredited laboratories to take part in certain commercial ring tests. In consequence of both reasons a uniform evaluation of the quality of the analysis of the accredited OVAM laboratories is impossible.

From a scientific viewpoint this alternative is inadequate. Commercial ring tests are not an equivalent alternative for the VITO ring test specimens which cannot be supplied because of financial restrictions.

Distribution effects

The accredited laboratories participating in the VITO ring tests receive a number of test specimens for certain analysis packages/parameters and for the evaluation of their analysis quality free of charge. The accredited laboratories pay the organiser of the commercial ring tests for the missing analysis packages/parameters.

Indirect effects

The quality of the analyses of waste materials or soils which take place within the framework of specific environmental legislation (VLAREA, VLAREM and VLAREBO) and which are not included in an analysis package, could be vouchsafed in an ad hoc manner.

Comparative table of all effects

With the laboratory's free choice in commercial ring tests the cost prices depend on the parameters to be evaluated and the sample types. The total cost price for the laboratory will presumably hardly be lower than the current recommended prices if they have to pay the full 100% of the commercial ring test.

Giving the cost prices of the commercial ring tests is therefore irrelevant.

Choice and motivation for the option

Option 1

This is not a suitable choice because of the shortcomings in the existing legislation summed up above.

Option 3

This is a financial alternative but in no way credible, nor equivalent to the VITO ring tests. Furthermore this alternative completely overthrows the existing OVAM evaluating system for accreditations and 3rd line supervision.

The existing evaluating system for accreditations and 3rd line supervision consists of each laboratory receiving all the test specimens simultaneously which are necessary for the control of the parameters of the analysis packages.

The evaluation of the first accreditation application or later applications for a continuation is only possible because the 3rd line supervision is organised simultaneously and in this way there are sufficient participants for the statistical analysis for most of the analysis packages. This statistical analysis is necessary in order to be able to compare the analysis quality of the laboratories (z-scores, outliers) to each other. The criteria for accreditation or suspension is based on the number of z-scores and outliers.

If the accredited laboratories could be free to choose which commercial ring test they would participate in for ring test specimens not provided by the VITO, we could no longer carry out a statistical analysis nor could the evaluation for accreditation or suspension take place. The complete evaluation system would be undermined.

For the analysis packages without VITO ring test specimens an ad hoc approach would still need to be set up. In practice inequality would arise between the analysis packages with or without the VITO ring test specimens.

The OVAM would lose a very effective instrument for uniform quality control of the accredited laboratories.

Option 2

This is the only viable choice for solving the existing shortcomings concerning quality control of the accreditations of laboratories.

Implementation, operation and monitoring

Legal-technical implementation

This implementation will take place by means of amendments and new regulations in Chapter VII of the VLAREA.

Implementation and administrative burdens

The implementation of the amendments which do not have a cost aspect can commence after publication in the Belgian State Journal. The 3rd line supervision takes place annually at fixed times and depends on the analysis package. The 3rd line supervision for all analysis packages, with the exception of the specific analysis for pre-formed building materials, takes place each year in March. The analysis package for pre-formed building materials is organised each year in September for logistical and reporting reasons. As a result the division of the costs for the ring test will only commence in phases.

In addition the accredited laboratories must notify changes in the managerial staff or in the people responsible for organisation. For example, in the application for accreditation the new managerial staff must sign a declaration that they will cooperate with inspections. The new managers must supply an attestation that they have committed no transgressions against environmental regulations. This information obligation for the laboratories entails an administrative burden. Measurement of the

administrative burden depends on the number of laboratories in which key functions change and the number of persons involved in these changes. Based on the past year it is estimated that key functions have changed at 20% of the laboratories (i.e. 5 in 25). The administrative burden in which 2 key functions have changed is estimated at 1 hour A0 (EUR 85) plus 1 hour B (EUR 30). For the accredited laboratories for the waste materials and soil sector this means the administrative burden adds up to EUR 575 annually.

The obligation to submit an annual statistical overview of the results achieved is being dropped. This duty to inform was only carried out by two laboratories. The administrative burdens are estimated at 2 hours A0 (EUR 170) and 4 hours B (EUR 120) or EUR 290 per laboratory. Ending the reporting obligation for the laboratory sector means a decrease of EUR 580 per year.

The OVAM will provide an information session for the laboratories. The OVAM will evaluate the ministerial decree concerning the analysis packages and make changes if necessary.

The VITO will set up an invoicing system in order to recuperate 50% of the costs of the 3rd line supervision from the laboratories. The VITO must get an accreditation for the organisation of the ring tests in accordance with ISO 17025. This is a requirement in order for the results of the participating laboratories to qualify for ISO 17025.

Enforcement

As part of the implementation decree VLAREA section I of Chapter VII will be upheld and approved by the OVAM. For the analytical and technical aspects the OVAM calls on the reference laboratory VITO.

Evaluation

An evaluation of the regulations regarding accreditation is planned after 5 years.

Consultation

In the spring of 2007 the OVAM sent a survey by registered post to all the laboratories which took part in the ring test of March 2007, concerning the cost sharing of 3rd line supervision. Next the OVAM sent a reminder to all the laboratories left over that had still not reacted.

Very properly a number of laboratories asked after the approximate costs for the 3rd line supervision. The OVAM sent target prices for the VITO ring test to the laboratories for their opinions. From the reactions it appeared that the prices were acceptable.

A number of laboratories pointed out correctly that the VITO does not have an accreditation for the organisation of ring tests. This means that the results of the 3rd line supervision cannot be seen as full-valued in accordance with ISO 17025.

The OVAM has asked the VITO whether there are commercial ring tests available for the analysis packages for waste materials/soil, and how much they cost. From the supply of commercial ring tests it appeared that they are only a partial solution for the matrices and parameters of the analysis packages.

Further information for the Inspectorate of Finances

Because of the introduction of cost sharing for 3rd line supervision for the accredited laboratories there is an extra financial repercussion for these laboratories. The impact per laboratory is relative to the analysis packages in the accreditation.

Summary

The existing system for the analysis of waste materials and soil has a number of loopholes. Thus there is no efficient quality control for the laboratories working with non-standardised parameters, ring tests keep becoming more expensive due to the extension of standards, and certain information is not available (changes in key personnel) or superfluous (annual statistical overviews of achiever results and the publication of accreditations in the Belgian State Journal). Furthermore there is not enough leverage to draw the accreditation into question when the prescribed rules are not satisfied, and too little account is taken of the right to appeal and legal safety of the laboratories in case of suspension.

A number of shortcomings can easily be rectified by means of a simple amendment to the law. Thus the annual reporting obligation will be scrapped and it will no longer be necessary to publish the decision on accreditation in the Belgian State Journal (the information will however be made available on paper and via internet). On the other hand the laboratory will have to notify changes in important members of their personnel. Furthermore laboratories can be suspended if they do not comply with

certain essential quality related criteria. However, they will be given the opportunity to present their defence before the decision on their suspension/withdrawal is final.

In order to cut the costs of the ring tests somewhat the system of ring tests will only be applied for priority parameters and analysis packages. An additional cost reduction can be achieved either by letting the participating laboratories bear a share of the costs (the policy option), or by allowing the laboratories to participate in commercial ring tests (alternative policy option). However, studies have shown that commercial ring tests are not available for all the relevant parameters. Moreover, permitting commercial tests might give rise to difficulties when comparing different analysis data (among other things because different test methods are allowed).

In the survey the laboratory sector indicated that the costs for the ring tests were acceptable.

Decision: according to us, after the RIA process, this draft decree is a compilation of the most suitable options.

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Regulation impact analysis for amendments to VLAREA – Part: artificial sealing layers for landfills

Origins and aim

Origins

This draft decree contains an extension of Chapter IV of the Decree by the Flemish Government of 5 December 2003 laying down the Flemish regulations on waste prevention and waste management (Vlarea). That chapter describes and regulates the possibilities for using waste materials as secondary raw materials.

According to Article 5 of the waste material decree the waste material policy aims to protect the health of humans and the environment against the harmful influence of waste materials, and to prevent wastage of raw materials and energy by:

1. in the first place preventing or reducing the production of waste materials, and preventing the harmfulness of waste materials or restricting it as much as possible;
2. in the second place promoting the useful exploitation of waste materials;
3. finally organising the removal of waste materials which cannot be avoided or be put to good use.

In accordance with Article 11 of the decree the Flemish Parliament will compose a list of waste materials that can be legally used as secondary raw materials if they satisfy the conditions regarding composition and/or use, laid down by the Flemish Government. These conditions ensure that the use of the waste materials as secondary raw materials takes place without danger to public health and without negative consequences for the environment and in particular:

- without endangering water, air, soil, fauna and flora;
- without giving rise to noise or odour pollution;
- without causing damage to areas of natural and landscaped beauty.

The Flemish Government can introduce a certificate of use for these materials to attest to their compliance with the imposed conditions.

In Chapter IV of the existing Vlarea these conditions were described for different types of use in or as secondary raw materials: fertilisers, building material, soil and carbon sources.

In the Netherlands and Germany a process has been developed with which a number of different waste materials can be put to good use in a way that is safe for the environment. The resulting end product seems to be capable of substituting the primary raw material clay as a sealing material for landfills.

The principle behind the way it works is to mix fibrous and granular types of materials in the correct proportions with filling materials and sodium silicate. In practice water purification sludge is premixed with granular materials (such as for example sorted fines) in a proportion of 40/60 and is made fine with a chain breaker while adding sodium silicate. Fly ash is then added to this rough mixture in a mixing installation and homogenised further. The resulting material is fairly loose in structure and can easily be manipulated (unlike clay). It is spread out over the landfill and tamped down with an ordinary road roller, after which the sealing foil can be applied.

In Flanders experience has already been gained in using sealing layers with sodium silicate for landfills as this was used during the cleanup operation of the former landfill the Hooge Maey in Antwerp. An extensive protocol was drawn up for this for quality control of the materials used and the resulting sealing material.

Such use of waste materials is not included within the existing regulated types in Vlarea. The aforementioned application at the Hooge Maey was permitted in accordance with Article 4.1.1.4 of Vlarea, in which it was laid down that waste materials may be used as secondary raw materials on **soil cleaning projects** if they comply with the conditions of the conformity attestation by the OVAM for those projects. Normal management of a landfill provides for the use of sealing layers as a standard requirement which every operator must adhere to, and which does not therefore fit within the framework of a soil cleaning project.

Aim

This draft decree is intended to ensure that a legal framework is created so that this process can also be used during the normal management of landfills, and not only during cleanup operations. Thus an important goal of the waste policy is realised because for these waste materials the act of discarding is prevented.

Options

Option 1: zero option, the use of waste materials with sodium silicate will not be allowed in the sealing layers of landfills;

Option 2: the use of waste materials in sealing layers with sodium silicate will be included in Vlarem II – Part: Landfills;

Option 3: the use of waste materials in sealing layers with sodium silicate will be included in Chapter IV of the Vlarea in consequence of which these waste materials will be legally eligible for use as secondary raw materials.

Effects

Target groups and parties involved

- The waste processing companies wishing to apply the process
- Landfill operators
- The producers of waste materials, in particular of water purification sludge
- The Flemish Region

Option 1

Direct effects

In Flanders the use of artificial sealing layers with sodium silicate is employed at the moment at the cleanup operation and finishing of the intercommunity landfill the Hooge Maey in Antwerp. That project was divided into three zones: A, B and C. Zones A and B were cleaned up during the period 2000 until 2005. Since the summer of 2005 the last zone is being finished, which was to take until the end of 2010.

Afterwards this activity would have to be terminated, if the legal framework was not amended. The on-going project includes an extensive soil decontamination operation, which permitted the licenced use of these artificial sealing layers with sodium silicate within the framework of the conformity attestation of the soil decontamination project.

It is unlikely that other landfills would need to be cleaned up in this way in the near future. On the other hand there are several operational landfills which will indeed need a sealing layer by making use of soil materials such as clay and clay matting

Thus, by not amending the relevant legislation and regulations:

- *A new market for waste processing would not be developed*
- *The processing of water purification sludge would be restricted to sludge incineration.*

Distribution effects

None

Indirect effects

None

Comparative table of all effects

See table included in option 3 (inverse)

Option 2

This option is identical to option 3 with the exception that the legislation is included in the Vlare Part: Landfills, as an alternative for the construction of sealing layers for landfills. As a result one area of application is attained, namely landfills, while in time, from experience, other application forms will be sought such as the sanitation of brownfields. Thus a new amendment will have to be made to the Vlare when an additional area of application has been indicated as the next step. Hereby reference will have to be made to the same framework of standards, which does not help the legibility of the legislation.

The effects relating to this proposal are also described in option 3.

Option 3

Direct effects on the target groups

For the waste processing companies wishing to apply the procedure a new market has opened. In the existing situation around 20 hectares of landfills must be finished every year, with an average production of sealing layers of 15,000 ton per hectare. With a target market share of 50% of 20 hectares and a processing price of an average of EUR 50 per tonne of waste material it would concern a market of over EUR 6 million per year. This would involve the establishment of around ten jobs.

The landfill operators budget a sum each year for the construction of their sealing layers, for which at the moment either natural clay or mineral substitute products (bentonite mats, ...) have to be used. The cost price of purchase and construction can run up to EUR 100,000 per hectare. The use of sealing layers with sodium silicate is significantly cheaper in purchase and construction, which make savings of up to EUR 50,000 per hectare possible. A number of these operators are intercommunity associations, so that a part of these savings can flow back into the councils in the form of lower costs for waste processing.

The most important raw material for artificial sealing layers with sodium silicate is water purification sludge which comprises around 45%. With the envisaged production a maximum of around (50% of 20 hectares x 45% of 15,000 tonnes =) 67,500 tonnes of water purification sludge could be used, so that it would not have to be incinerated. The same is true of around 67,500 tonnes of fines and 12,000 tonnes of fly ash.

The general advantage for society is in the decrease in the quantity of waste materials to be dumped or incinerated (fines and sludge) in favour of their use in sealing layers as a secondary raw material. As a result of the availability of such alternatives (in particular for sludge) the market forces are improved and the formation of a monopoly in the end processing sector is prevented.

Distribution effects

In consequence of this approach less clay (or mineral substitutes) will have to be used which will enable natural minerals to be used in higher value applications. Thus the proposed measure also encapsulates the targets strived for by the waste materials and minerals policy, which is aimed at sustainable use of primary raw materials.

The water purification societies and companies with water purification have an alternative course available to them for the processing of water purification sludge, which is more valuable to society on the one hand, and is cheaper than removal through incineration on the other hand. In the VITO study on the best available techniques for processing water purification sludge this process is called BBT (Belgian acronym for Best available Techniques).

This also means that 67,500 tonnes of water purification sludge, 67,500 tonnes of fines and 12,000 tonnes of fly ash are no longer subject to environmental duties or to other processing methods. Water

purification sludge is currently incinerated with energy recuperation (duty: 67,500 tonnes at 9.23 EUR/tonne) whereby around EUR 625,000 in duties are paid, fines are decontaminated as appropriate and then used as a secondary raw materials (building materials) and fly ash is dumped. Fly ash from domestic waste incinerators is not subject to duties as duty was already paid for the delivery of domestic waste to the incinerators.

Indirect effects

More sustainable use of primary minerals, resulting in reduced quantities of clay needing to be acquired for less valuable use.

Comparative table of all effects

Target groups and parties involved	Benefits		Costs	
	Description	Estimate	Description	Estimate
Landfill operators	Savings	0.5m		
Producers of waste, including Aquafin Flemish Region	No duties	0.625m		
	Increased use as secondary raw materials		Reduction in duties received	0.625m
Total		1.125m		0.625m

This table indicates the maximum effects. The real effects depend on the number landfill operators willing to carry out the construction of an alternative sealing layer with these secondary raw materials. The expectation is that there will be no increase in the quantity of waste materials to be used in this application, in relation to the existing situation.

Choice and motivation for the option

As the policy is aimed at limiting the dumping of waste as much as possible in favour of both prevention and the useful application of waste materials, and as the production and use of artificial sealing layers with sodium silicate facilitates a promising new application for waste materials, the choice has been made for option 3.

If additional applications are discovered later, these can be included in the legislation by means of a simple procedure.

Effect, implementation and monitoring

Legal-technical implementation

Chapter IV of the Vlarea regulates the application of waste materials, by introducing the concept secondary raw materials. At the moment four types are defined in this regard, namely the use of waste materials in or as fertilisers, building materials, soil or sources of carbon (animal feed). By introducing a fifth section the use of waste materials in sealing layers with sodium silicate is added thereto. The application form in Annex 4.3 to the VLAREA for receipt of a certificate of use will be amended for this purpose by adding an extra box to tick.

Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations lays down that the proposed framework of standards must go through the procedure in advance before being finally approved and entered into effect.

Implementation and administrative burdens

This new application of waste materials is currently, within this proposal, limited to the use of waste materials in sealing layers. This represents a limited number of dossiers in the administrative field, (max. 1 dossier per year) insofar as dangerous waste materials are used for the construction of an alternative sealing layer. This means that the party involved fills in an application form for a certificate of use, to be dealt with by the OVAM.

The administrative costs are therefore limited.

No.	Description information obligation				Accountability%	Parameters				Administrative Burdens	
	No.	Description	Art.	Outsourcing %		Time	Hourly rate	External cost	Number		Frequency
1	Layout application form for certificate of use					TOTAL information obligation 1				101 €	
	Costs of time spent										
	1.1	Looking up information		0%	100%	120	33 €	0 €	1	1	66 €
	1.2	Filling in application		0%	100%	20	33 €	0 €	1	1	11 €
	1.3	Submitting application		0%	100%	26	32 €	0 €	1	1	14 €
						TOTAL costs of time spent				91 €	
	Out-of-pocket expenses										
	1.11	Copying		0	100%	0.1 €		100	1	10 €	
						TOTAL out-of-pocket expenses				10 €	

Enforcement

The Environmental Inspectorate of the Flemish Region currently enforces the legislation applicable to landfills and certificates of use. At this moment they are supervising the construction of the sealing layer with regard to Section 5.2.4 Organisation and infrastructure of landfills from Vlarem Chapter II. Therefore this alternative form of constructing sealing layers on a landfill does not involve extra dedication of resources.

Consultation

In the spring of 2004 preliminary consultations took place with the target group 'waste processors'. This led to the establishment of a technical committee with representatives from the business community and the OVAM, with additional scientific experts. The committee was set up in order to provide a scientific foundation for the risk assessment of the artificial sealing layers with sodium silicate. The end report was submitted in July 2006, after which the draft of the text was developed into the amendment to the Vlarea. Both the end report and the draft proposal were supported by the target group.

Further information for the Inspectorate of Finances

This decree requires no additional personnel for the implementation and supervision (enforcement) thereof.

Nevertheless, in consequence of encouraging the increased use of waste materials as secondary raw materials a number of processing acts will be permitted that are not subject to the duties for waste materials. This approach further implements the waste materials policy, namely Article 5 of the Waste Decree. As a result of this intervention a maximum of EUR 625,000 less can be inned in duties.

Summary

In Chapter IV of the existing Vlarea the conditions are defined for the use of waste materials as secondary raw materials: fertilisers, building materials, soil or animal feeds.

In the Netherlands and Germany a process was developed with which a number of waste materials could be made useful in an environmentally safe way. The resulting end product appears to be capable of replacing the primary raw material clay as a sealing layer on landfills.

The required experience was gained in Flanders with the use of sealing layers with sodium silicate for a landfill, as it has been used in the cleanup operation of the former landfill Hooze Maey in Antwerp. An extensive protocol was drawn up for this, for quality control of the materials used and the resulting sealing material.

Such use of waste materials is not included within the existing regulated types in Vlarea. The aforementioned application at the Hooge Maey was permitted in accordance with Article 4.1.1.4 of Vlarea, in which it was laid down that waste materials may be used as secondary raw materials on **soil cleaning projects** if they comply with the conditions of the conformity attestation by the OVAM for those projects. Normal management of a landfill provides for the use of sealing layers as a standard requirement which every operator must adhere to, and which does not therefore fit within the framework of a soil cleaning project.

This additional legislation ensures that sealing layers on landfills can be constructed using waste materials instead of clay.

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