

INTRODUCTION TO WASTE LEGISLATION

ATTENTION!

Although care has been taken in compiling these notes nevertheless errors may have occurred and changes in the law are being made all the time. It is important to note that these are training notes to increase awareness of the law and to encourage proper professional advice being taken at appropriate times. They are NOT in any way a substitute for professional advice.

INTRODUCTION TO WASTE MANAGEMENT LAW

Waste disposal has been an issue from earliest times. As matter can neither be destroyed nor created any perception of waste is relative. It is the way matter is used or abused that creates waste. For example, what one manufacturer may see as waste from an industrial process another sees as a useful by-product.

1. Waste may be the excessive use of matter e.g. the inefficient use of fuels.
2. Waste may be the failure to use or reuse matter e.g. the failure to re-use packaging.

These perceptions of waste are linked. The failure to reuse containers may lead to the containers being disposed of and new containers being manufactured which leads to the unnecessary consumption of fuels in the manufacturing process. Waste upon waste. In addition waste may become pollution by being deposited into a medium of air, water and land, where it causes damage actively or passively.

Waste may be managed by, for example, reduction or treatment (which in turn may also prevent it from being pollution). However there will always be some waste, some matter, which, for at least the time being, is unwanted. In developing policies interested parties have recognised that certain methods of managing waste are more effective than others and so hierarchies have been developed.

Sources of Waste Law

Policies are created by Governments following the recognition of problems, incidents, pressure from non-governmental organisations, international pressure and requirement to fulfil obligations undertaken in Treaties such as those of the European Union.

Laws implement policies. Laws are found in:

Legislation:

Legislation is made up of Acts of Parliament, which may stand alone or give the outline and Statutory Instruments (Regulations & Orders), which give the detail. Legislation is often accompanied by explanatory documents such as:

Government Circulars produced by the government department responsible for the legislation

Codes of Practice produced by agencies such as the Environment Agency, these are not legally binding but if followed will usually ensure that the legislation is complied with.

European Law

This is of two main kinds **Regulations**, which come into effect in each Member State immediately and **Directives**, which are brought into effect in the Member States by national legislation. In the UK the legislation is either a Act followed by a Statutory Instrument e.g. the Integrated Pollution and Prevention and Control Directive (96/61/EC) was brought in by the Pollution and Prevention and Control 1999 with details in the Pollution and Prevention and Control Regulations 2000 (SI 2000/1973) or they are brought in through Statutory Instruments made under a general provision in the European Communities Act 1972.

Case Law

Court cases have two effects. Firstly the decision in a case may make new law or follow existing case made law e.g. the Case of *Donoghue v Stevenson* in 1932 (introduces the concept of Duty of Care) is the foundation of the modern law of negligence. Secondly the decisions by judges in cases interpret the legislation, made by Parliament

The chain of development of waste management law may be described as being international law informs European law informs UK policy informs UK law.

DEFINITION OF WASTE

Introduction

The definition of waste is important in the UK as it determines:

- a) whether an industrial operation requires a waste management license or IPPC permission
- b) whether the “duty of care” applies;
- c) whether transportation of material is to be by a registered waste carrier.

There are two important points to remember:

1. Under the definition, if a substance is to be recovered and processed it is still discarded and therefore to be regarded as waste.
2. Waste is defined from the point of view of the holder and it is the holder’s intentions as to discarding that are relevant when assessing whether an item is waste.

Definition

The Waste Management Licensing Regulations 1994 (SI 1994/1056) incorporated the definition of ‘Directive Waste’ found in the Framework Directive on Waste (75/442/EEC) into UK law. The Regulations virtually repeats verbatim Article 1 and the categories of waste listed in Annex 1 of the Directive in Regulation 1(13) and Schedule 4 Part II respectively.

The Regulation 24(8) of the Waste Management Licensing Regulations also amends the Regulation 7A of the Controlled Waste Regulations 1992 (SI 1992/588) so that all ‘controlled waste’ is ‘Directive Waste’.

The definition of waste is now found in s 75(2) of the Environmental Protection Act 1990 as amended by the Environment Act 1995 amended s 75(2) and is stated as follows:

- “Waste” means any substance or object in the categories set out in Schedule 2B of this Act which the holder discards or intends or is required to discard and for the purposes of this definition –
- “holder” means the producer of the waste or the person who is in possession of it; and
- “producer” means anyone whose activities produce Directive waste or who carries out pre-processing, mixing or other operations resulting in a change in its nature or composition of this waste”.
- Controlled Waste (which is a category of waste) is defined as household, industrial and commercial waste or any such waste.

Household waste is defined as “waste from domestic properties, caravans, residential or nursing homes, educational establishments and hospitals”. Domestic properties are defined as “a building or self contained part of a building which is used wholly for the purposes of living accommodation.”

Industrial Waste is defined as waste from (EPA 1990 s75 (6)):

- a) factories as defined by the Factories Act 1961;
- b) public transport;
- c) the supply of electricity gas water or the provision of sewerage services;
- d) postal or telecommunications services provided to the public.

Commercial Waste is defined as “...waste from premises used wholly or mainly for the purposes of a trade or business or for the purposes of sport, recreation or entertainment excluding household waste, industrial waste, waste from any mine or quarry and waste from premises used for agriculture.”

Schedule 2B of the Act repeats Annex 1 of the Directive as follows:

1. Production or consumption residues not otherwise specified in this Part
2. Off-specification products
3. Products whose date for appropriate use has expired
4. Materials spilled, lost or having undergone other mishap
5. Materials contaminated or soiled
6. Unusable parts
7. Substances that no longer perform satisfactorily
8. Residues of industrial processes
9. Residues from pollution abatement processes
10. Machining or finishing residues
11. Residues from raw materials extraction and processing
12. Adulterated materials
13. Any materials, substances or products banned by law
14. Products for which the holder has no further use
15. Contaminated materials, substances or products resulting from remedial action with respect to land
16. Any materials, substances or products, which are not contained in the above categories

Under the 1995 Environment Act the onus to prove an item is waste in criminal proceedings is upon the prosecution and the burden is beyond a reasonable doubt.

The Waste Management Licensing Regulations incorporate into UK law the exclusions from the definition found in Article 2 of the Directive.

Exclusions from the Definition

Waste that is excluded from being Directive Waste by Article 2 of the Directive itself is:

- (a) Gaseous effluents emitted into the atmosphere;
- (b) where they are already covered by legislation:
 - (i) radioactive waste;
 - (ii) waste resulting from prospecting, extraction, treatment and storage of mineral resources and working of quarries (now include as non-natural waste introduced by the Agricultural and Mines & Quarry Regulations 2005)
 - (iii) animal carcasses and the following agricultural waste: faecal matter and other material, non-dangerous substances used in farming;
 - (iv) waste waters with the exception of waste in liquid form;
 - (v) decommissioned explosives.

There is conflict between Article 2 and Annex I in that Annex I includes mining residues and agricultural discards as categories of waste.

A Test for what is Waste

Therefore under UK law an item is waste if:

- a) it falls within Schedule 2B of the Environmental Protection Act 1990 (which is a repeat of Schedule 4 Part II of the Waste Management Licensing Regulations which is a repeat of Annex I of the Directive on Waste)
- b) it is not excluded from being waste by virtue Article 2 of the Directive on Waste;
- c) it has been discarded.

As 2B is very comprehensive and Article 2 is very clear the only issue is really whether an item is discarded.

The Meaning of Discarded

The Problem

Is waste discarded if it is recovered or recycled?

Guidance as to whether an item is discarded or not can be obtained from the following sources:

1. Government Circular 11/94 “Waste Management Licensing: The Framework Directive on Waste”
2. Waste Management Licensing Regulations Schedule 4 Parts III & IV which list what amounts to Disposal and Recovery Operations respectively and are a reproduction of Annex IIA and IIB of the Framework Directive on Waste.
3. Case Law: *Vesso and Zanetti* Cases C-206/88, C-207/88, [1990] ECR I-1461 C-359/88 [1990] ECR I-1509 *Tombesi* (Case C-304/94) [1997] 3 CMLR 673, [1998] Env LR 59, *Inter Environment Wallonie ASBL v Regione Wallonie* [1998] Env LR 25, *Mayer-Parry Recycling Ltd v Environment Agency* [1999] CMLR 963, [1999] Env LR 489, CO/512/00 *R v Environment Agency* 8th September 2000; *Castle Cement v Environment Agency* [2001] EWHC Admin 224

Circular 11/94

Circular 11/94 sets out guidelines for the interpretation of “discard” as follows:

The purpose of the Directive on Waste is to control wastes, which pose:

“...a threat to human health or the environment which is different from the threat posed by substances or objects which are not waste. This threat arises from the particular propensity of waste to be disposed of or recovered in ways which are potentially harmful to human health or the environment *and from the fact that the producers of the substances or objects concerned will normally no longer have the self interest necessary to ensure the provision of appropriate safeguards.*”

“Self interest” means economic self-interest.

The Circular suggests a number of questions in order to identify whether a substance is waste or not:

1. Is the substance or object one which the producer no longer has the economic self-interest to safeguard? *If yes, then it is waste.*
2. Has the substance or object fallen out of the commercial cycle or out of the main chain of utility? *If yes, then it is waste.* E.g. a bottle that goes to the bottle bank has fallen out of the commercial cycle but bottles that are to be re-used or refilled remain in the commercial cycle.
3. Has the substance or object passed to a waste disposal operation (as distinct from a waste recovery operation)? *If yes, then it is waste.*
4. Has the substance or object been sent to a facility, which involves a specialist recovery operation? (These are operations that are set up solely to recover waste such as the recycling of bottles as opposed to the re-use of bottles.) *If yes, then it is waste.*
5. Does the holder not want the substances or object AND will payment have to be made for its removal? *If yes then it is waste.*
6. Can the substance or object be re-used in its present form without going through a process involving a specialist recovery operation? *If yes then it may not be waste.*
7. Is the substance or object worn but functioning and still useable for the purpose for which it was made ‘albeit after repair’? *If the answer is yes then it may not be waste as it may not be discarded.*

Disposal and Recovery Operations

The both disposal and recovery operations require a permit and wastes that go to recovery may be discarded as well as those that go to disposal.

Disposal Operations (Waste Management Licensing Regulations Schedule 4 Parts III)

1. Tipping
2. Land treatment
3. Deep injection
4. Surface impoundment
5. Specially engineered landfill
6. Incineration at sea
7. Release to water
8. Release to seas/oceans
9. Blending/mixture before disposal
10. Repackaging before disposal
11. Biological treatment before disposal
12. Physico-chemical treatment before disposal
13. Incineration on land
14. Permanent storage
15. Prior storage (excluding temporary storage pending collection)

Recovery Operations (Waste Management Licensing Regulations Schedule 4 Parts IV)

1. Reclamation/regeneration of solvents
2. Recovery of catalyst components
3. Refining/re-use of waste oil
4. Recycling/reclamation of other organics
5. Waste as fuel
6. Spreading on land
7. Recycling/reclamation of metals
8. Use of recovered wastes
9. Recycling/reclamation of other inorganics
10. Exchange of wastes
11. Prior storage (excluding temporary storage pending collection)
12. Regeneration of acids/bases
13. Recovery of pollution abatement components

Case Law

If a substance or object can be re-used it still may amount to waste therefore a substance or object is still “discarded” even if it has an economic use. The definition of “discard” does not hang upon whether or not a holder has a use for the item. In the case of *Vesso and Zanetti* Cases C-206/88, C-207/88, [1990] ECR I-1461 C-359/88 [1990] ECR I-1509 the premises being used for the recovery of materials did not have required authorisation. It was argued that no authorisation was necessary as the materials were not waste because they had been salvaged and could be re-used. It was held that the items had still been discarded even if they had a use. This case was confirmed in *Tombesi* [1998] Env LR 59 and *Inter-Environnement Wallonie ASBL v Region Wallone* [1998] Env LR.

In UK law the word “discard” has acquired a special meaning in that its ordinary meaning is that of “throwing away” or “getting rid of” an item. Although the ordinary meaning would cover the disposal operation it would not cover the activities in concerning recovery activities any yet both activities amount discarding within the meaning of waste. The European Court of Justice has therefore given a special meaning to “discard.”

In *Mayer Parry Recycling Ltd v Environment Agency* [1999] Env LR 489 Mayer Parry received scrap metal and re-processed it so that it could be used by steel manufacturers for making other items. The question arose as to whether Mayer Parry required the appropriate permit for dealing with waste products. It was held that the material remained waste until the recovery process was complete.

More recently in *R v Environment Agency* 8th September 2000 and *Castle Cement v Environment Agency* [2001] EWHC Admin 224 it has been held that the material does not cease to be waste when the recovery process is complete but remains waste until it has actually been changed into the new product. E.g. tyres do not cease to be waste merely because they have been shredded for use as fuel.

Probably *not* waste if:

1. Sold/given away and usable or
2. Producer puts to beneficial use or
3. Remains in normal commercial cycle or chain of utility or
4. No longer waste because recovered (beneficial use) or
5. No longer waste because be usable in present form

Probably Waste if:

1. Consigned to disposal operation or
2. Only usable after "specialised recovery" or
(i.e. establishment/undertaking specialising in waste recovery or a specialised process) or
3. Holder pays for service to dispose or
4. Discarded as waste or
5. Abandoned or dumped or
6. Purpose of beneficial use is mainly to rid holder of burden of disposing of it

WASTE MANAGEMENT PERMIT OR LICENCE

The law controls the managing of waste by requiring those who carry waste to be registered and those who disposal of waste to obtain a licence or permit.

Under s 36 of the Environmental Protection Act 1990 Part II a waste management license or permit is required for the disposal, keeping or treatment of 'Directive Waste' on land or by means of a mobile plant (a mobile plant waste management licence must be obtained) i.e. disposal and recovery operations as listed in the Framework Directive on Waste.

- Disposal operations include: landfill, incineration on land or at sea, permanent storage and treatment prior to final disposal and the injection of waste in to the earth.
- Recover operations include: reclamation and recycling.

Exemptions

Under Waste Management Licensing Regulation s1994 Regulation 17 and Schedule 3 and Waste Management (England) Exemption Regulations 2005, there are over 45 exemptions. They are explained by DOE Circular 11/94, Annex 5. The exemptions are complex, detailed and heavily qualified. They do not apply to special waste and only allow a person to operate without a license. The person must still comply with duty of care etc. Most of the exemptions require registration with the Environment Agency.

Exemption is only granted if consistent with objectives in Part I, Schedule 4 Regulations i.e.

- no danger to human health
- no harm to environment
- no risk to water, air, soil, plants, animals
- no nuisance through noise or odours
- no adverse effect on countryside or places of special interest

An exemption must cover the entire activity (eg once the quantity limit has been exceeded, entire activity becomes licensable (not only excess). There is no fit and proper person test for the operator for an exempt site. There is still an annual fee and must be re-registered every 12 months with the Environment Agency

Examples of exemptions include:

Para 7. Spreading wastes on land used for agriculture:

Soil/compost, abattoir waste, paper sludge, textile waste, sewage sludge, food/drink waste, wood/bark, lime/gypsum, inland dredgings, septic tank waste, tannery waste

Para 11. Baling sorting and crushing for recovery or re-use of paper/cardboard, textiles, plastic, glass, steel/aluminum and cans/ drink cartons

Para 12. Composting

Para 19. Storage of up to 3 months or use of construction or demolition waste, excavations, ash, slag, clinker, rock, wood, gypsum, or road planning for the provision of:

- a) recreational activities or
- b) construction, maintenance or improvement of a building, highway, railway, airport, dock or other transport facility (e.g. farm tracks)

Unlawful Disposal

It is a criminal offence under section 33(1) Environmental Protection Act 1990 to:

- a) deposit controlled waste- or knowingly cause or knowingly permit controlled waste to be deposited in or on any land, unless a waste management licence or permit authorising the deposit is in force, and the deposit is in accordance with the licence or permit;

- b) treat keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of –
 - (i) in or on any land, or
 - (ii) by means of any mobile plant, except in accordance with a waste licence or permit
- (c) treat keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

Section 33(5) is extended to the controllers of motor vehicles and states that when waste is deposited from a motor vehicle in contravention of s33 the person 'who controls or is in a position to control the use of the vehicle' is treated as knowingly causing the deposit 'whether or not he gave any instructions for this to be done.' Circular 11/94 states that the onus is on the owner or manager of vehicles to ensure that employees do not fly-tip waste. However the provision does not apply to those who hire vehicles, as they do not control their use.

Section 33(6) makes it an offence to contravene any condition of a waste management licence or permit.

Exceptions

Section 33 does not apply in relation to household waste from a domestic property, which is treated, kept or disposed of within the curtilage of the dwelling. Therefore composting and bonfires are permitted. Household waste is as defined in accordance with s 75 EPA 1990 but does not include waste, which is composed of mineral or synthetic oil or grease, asbestos, and clinical waste. The limitation that the waste must be from a 'domestic property' means that section 33 still applies to waste from caravans, residential homes educational establishments, hospitals and nursing homes. However householders must ensure that they use a registered waste carrier to remove their waste

Section 33 also does not apply to waste management activities that have been exempted or excluded by the Secretary of State such as 'exempt sites' under the Waste Management Licensing Regulations 1994. Exclusions are deposits of waste that are so small or are of such a temporary nature that treatment or disposal methods are innocuous and deposits of waste that are dealt with by other enactments. Nor does it apply where an Integrated Pollution Control authority or Integrated Pollution Prevention and Control Permit has been granted as these are dealt with under separate legislation.

Defences

s 33 (7) EPA 1990 it is a defence where:

- a) the defendant took all reasonable precautions and exercised all due diligence to avoid the commission of the offence;
- b) the defendant acted under instructions from his employer and neither knew nor had reason to suppose that the acts done by him constituted a contravention of s 33;
- c) the acts alleged to constitute the contravention were done in an emergency to avoid danger to human health in a case where –
 - (i) he took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health, and
 - (ii) particulars of acts were furnished to the waste regulation authority (Environment Agency) as soon as reasonably practicable after they were done.

Penalties

On summary conviction up to six months imprisonment and/or a fine not exceeding £50,000.
 On conviction on indictment up to two years imprisonment and/or a fine.

"A FIT AND PROPER PERSON"

Section 36 of the Environmental Protection Act 1990 requires a person who is granted a license or permit to be a fit and proper person. The legislation 'defines' a fit and proper person in negative terms i.e. it states what a fit and proper person is not.

1. A person will not be a fit and proper person if he or she is a relevant person who had been convicted of a relevant offence.

Relevant persons and relevant offences

"Relevant persons" are:

- employees
- business partners
- previous company of which applicant an officer
- officers of applicant company

"Relevant offences" include offences under:

S33 Environmental Protection Act 1990

Ss85 Water Resources Act 1991

S33 Clean Air Act 1996

The Agency has discretion to disregard these requirements having regard to who was convicted, the nature and gravity of offence and the number of relevant offences.

2. A person will not be fit and proper unless he or she is technically competent to manage the activities to be authorized by the license or permit

Technical competence

The proposed manager must have a Certificate of technical competence from Waste Management Industry Training and Advisory Board ("WAMITAB") for the particular type of facility

3. A person will not be a fit and proper person unless he or she is in a financial position to make financial provision adequate to discharge the obligations arising from the license or permit.

Financial Adequacy

The Government Department (Department of Food, Environment and the Regions) has issued guidance as to the financial provision that needs to be made. Assessment should be closely related to the various stages of proposed activity:

For example for landfill financial provision for the following is required:

site acquisition and preparation

site operation

restoration / landscaping / aftercare

post-closure control or monitoring

The Environment Agency takes a pragmatic approach, the amounts required depend on circumstances, general enquiries are made and audited accounts are scrutinized. There may be a requirement of some form of security (eg bond/money in escrow account/insurance)

PLANNING PERMISSION

Waste Management licences or permits cannot be issued to an occupier of land where there is no planning permission 'in force in relation to the use of that land' for a waste disposal or recovery operation.

PPG 23 lists planning considerations for waste disposal and recovery sites:

- The availability of land for the waste management activity, taking into account its proximity to other development or land use;
- The sensitivity of the area, as reflected in the landscape, agricultural land quality, nature conservation or archaeological designations, if evidence suggests that there is a risk of such features being affected by pollution;
- Any loss of amenity, which the activity might cause;
- Any environmental benefits emanating from the proposal, such as regeneration of derelict land or transport improvements;
- The design of the site and the visual impact of the development, including such matters as impact on the road network and the surrounding environment;
- The condition of the site itself, where it is known or likely to be contaminated, and the potential for remediation;
- The proposed after use of the site and the feasibility of achieving restoration to the required standard;
- The potential use of mineral workings as landfill;
- The hours of operation required by the development where these may have an impact on neighbouring land use;
- The possibility that nuisance might be caused, for example by birds, vermin or overblown litter; and
- Transport requirements including the scope of transporting waste to the site by rail or water.

Environmental assessments are required for waste management sites for incineration, chemical treatment and landfill of hazardous waste and for sites 'likely to have a significant effect on the environment by virtue of factors such as nature size and location'.

INTEGRATED POLLUTION PREVENTION AND CONTROL (IPPC) PERMITS

The integrated Pollution Prevention and Control Directive – 96/61/EC was passed in 1996 by the EU and Member States were required to adopt it by 31st October 1999. The Directive applies to all new and substantially changed activities immediately and existing activities must comply by 31st October 2007. The Pollution Prevention and Control Act 1999 (27th July 1999) and the Pollution Prevention and Control Regulations 2000 introduced IPPC into the UK. Its purpose is to introduce a single pollution control regime. It is similar to IPC in that it is based on permitting activities under certain conditions. However it is different from IPC in that it covers a wider range of activities and environmental issues and is different in detail and terminology. The activities covered by IPPC are: Energy, metals, minerals, chemicals, waste including landfill, the food and drink industry extensive farming. The environmental issues covered by IPPC are: pollution from substances, vibrations, heat or noise into the air, water or land; waste avoidance and recovery; energy efficiency; accident prevention; soil and ground water protection; site restoration. The Regulations list prescribed activities, which require permits. These activities are listed as follows:

Part A (1) a permit must be obtained from the Environment Agency

Part A (2) a permit must be obtained from the local authority

Part B an air pollution permit must be obtained from the local authority (this is now called APC and was referred to as LAAPC)

Whether an activity comes within Part A (1), Part A (2) or Part B depends upon the output. It will be noted that the regulations provide for a regulatory split between the Environment Agency and the local authorities. Local authorities retain control over the installations that they regulate under the Local Authority Air Pollution Control (LAAPC) regime which will now be referred to as (Air Pollution Control) APC. The EA retains responsibility for the existing IPC processes. There will be a link between local authorities and the EA in relation to water permits issued by local authorities under the IPPC. There are still

a number of areas of uncertainty where the exact division of responsibility between EA and local authorities is still not clear such as the standard of remediation required on closure of a landfill site. The waste management activities are as follows:

Disposal of Waste by Incineration

Part A (1) activities are:

- The incineration of any waste chemical or plastic from their respective manufacture
- The incineration of any waste being or comprising any specified chemicals (Br, Cd, Cl, F, I, Pb, Hg, N, P, S, Zn)
- The incineration of any other hazardous waste (unless exempt)
- The incineration of municipal waste in a plant rated at over 3 tonnes per hour
- The incineration of any other waste, including animal remains in a plant rated at over 1 tonne per hour
- The burning out of residues from metal drums having been used for the storage or transport of chemicals

Part B activities are:

- The incineration of specified hazardous waste ('clean' oils and other liquid waste, non-hazardous sewage sludge and non-hazardous clinical waste) in a plant rated at less than 10 tonnes per day and less than 1 tonne per hour (unless in an exempt incinerator)
- The incineration of any non-hazardous waste in a plant rated at less than 1 tonne per hour (unless in an exempt incinerator)
- The cremation of human remains

An exempt incinerator is one designed to incinerate at a rate of 50kg or less per hour but not being used for the incineration of clinical waste, sewage sludge or screenings or municipal waste.

Disposal of Waste by Landfill

Part A(1) activities are:

The disposal of waste in a landfill receiving more than 10 tonnes per day or with a total capacity of more than 25,000 tonnes excluding disposals in landfills of inert waste only. At sites where the waste handling is below these thresholds the Waste Licensing system will continue.

Disposal of Waste Other than by Incineration or Landfill

Part A(1) activities are:

- Disposal of hazardous waste in a facility rated at over 10 tonnes per day
- Disposal of waste oils in a facility rated at over 10 tonnes per day
- Disposal of non-hazardous waste in a facility rated at over 50 tonnes per day biological treatment or physiochemical treatment.
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Recovery of Waste

Part A(1) activities are:

- Distillation of any oil or solvent
- Cleaning or regeneration of carbon charcoal or ion exchange resins
- Recovering hazardous waste in plant rated at over 10 tonnes per day by
- Use principally as a fuel to generate electricity

- Solvent reclamation/regeneration
- Recycling/reclamation of inorganic materials, other than metals and metal compounds
- Regeneration of acids/bases
- Recovering of components from catalysts
- Oil re-finishing or other re-uses of oil

Features of IPPC

The main features of IPPC are:

IPPC is concerned with permits for **installations**

IPPC uses the **Best Available Techniques** (BAT) to give a high level of protection for the environment as a whole, taking into consideration costs and advantages. The change is one of phrasing rather than substance. BAT considerations are found in the regulations and include low waste technology, less hazardous substances, recovery and recycling, comparable processes, facilities or methods, technological advances, length of time needed to introduce BAT, consumption and nature of raw materials including water, prevention and mitigation of accidents. BAT takes into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions.

IPPC **makes no distinction between substances** and **contains an indicative list of major polluting substances** in air and water listed in Annex III of the Directive as follows:

Air: SO_x, NO_x, VOCs, Metals, Dust, Chlorine and Fluorine and their compounds

Water: Organohalogenes, Metals, Carcinogens, Eutrophication substances, Oxygen depleting substances

IPPC imposes **Emission Limit Values**, which are the mass expressed in terms of certain specific parameters concentration, and /or level of emission, which may not be exceeded during one or more periods of time, shall be included for pollutants emitted in significant quantities and is more specific.

IPPC **Environmental Quality Standards** which are the requirements which must be fulfilled at a given time by a given environment or particular part thereof as set out in EC Law takes precedence over BATNEEC and BAT. The Directive requires the European Commission to publish every three years an inventory of principle emissions and sources in a European Polluting Emissions Register (EPER). The Commission is also required to publish every three years BAT Reference Notes as an exchange of information regarding best practice.

IPPC has no expressed statement of triviality. IPPC will apply if an industry has a **production capacity or output over a certain amount**.

IPPC imposes a **duty to notify of substantial changes** but these only relate to **negative** effects

IPPC has **no specific review periods but there are certain triggers** for review, for example when significant pollution is being caused or when substantial changes in the best available techniques enable significant reductions in releases to be made without excessive cost.

Applications for Permits

Applications for permits must be made on the prescribed form together with the prescribed fee. There are requirements for advertising and consultation with a number of authorities e.g. Health and Safety Executive.

Applications must be determined within 4 months but this does not include time for complying with requests for further information.

An application may be refused if the regulator considers the applicant is not the person who will have control over the operation of the installation or that the applicant would not ensure that the conditions of the permit would be complied with.

An applicant for a permit for waste management activities must be a fit and proper person the test for which is the same as for a licence. An applicant is not a fit and proper person if:

- a) Applicant or "relevant person" convicted of a "relevant offence"
- b) Proposed activities will not be managed by a "technically competent person"
- d) Inadequate financial provision (the applicant will not or cannot make financial provision adequate to discharge the obligations arising from the license)

There must be consultation with the Health and Safety at Work Executive the Nature Conservancy Council and the planning authority. Account must also be taken of Central Government Guidance Notes. If work is to be undertaken on neighbouring land the owners of this land must be consulted even if they have already consented for the work to be carried out. The Authority may require a licensee to undertake work such as boreholes on adjacent land and may require such boreholes to be maintained through out the period of the licence. Compensation is payable to landowners where this work is carried out under.

However there is no obligation to consult the public. If the Public wish to object to a site this must be done at the planning stage whether or not a waste management licence should or should not be issued is a technical matter.

Conditions

The Environment Agency can attach such conditions, as it considers fit covering authorized activities and any related precautions or works both before or after permitted activities commence. The conditions need not be solely for health and safety purposes. Matters such as the following are taken into account:

- a) The duration of the activity,
- b) Supervision of activities,
- c) Specific types of waste to be covered,
- d) Keeping records,
- e) Associated works.
- f) Effect on third parties e.g. whether their consent required

Conditions must be applied to ensure that the appropriate emission standards are set and that the Best Available Techniques are applied.

Regulation 3 defines Best Available Techniques as the most effective and advance stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole, and for the purposes of this definition:

Best - means the most effective in achieving a high level of protection of the environmental as a whole.

Available - means techniques which are developed on a scale which allows implementation in the relevant industrial sector under economically and technically viable conditions taking in to consideration the costs and advantages whether or not the techniques are used or produced inside the Member State, as long as they are reasonable accessible to the operator. Precaution and prevention is balanced with costs and benefits.

Techniques - include the design, maintenance and operation of an installation.

Unauthorised disposals

As for waste management permits under section 33 of the Environmental Protection Act, it is an offence to operate without a permit or to fail to comply with the conditions.

Refusal

The Environment Agency can only reject a permit in the following circumstances:

1. An application **must** be refused if planning permission is required for the use of the land and none has been obtained.
2. An application **may** be refused to prevent pollution of the environment or harm to human health. The license need not be refused if the concerns can be addressed through the license conditions
3. An application may be refused if the applicant is not a fit and proper person.

Transfer

Under s 40 Environmental Protection Act 1990 a permit can be transferred from one person to another (provided that other is a fit and proper person) on application to the Environment Agency.

Surrender

Under s 39 Environmental Protection Act 1990 a permit cannot be surrendered at will. It can only be surrendered if the Environment Agency accepts the surrender. The Agency must inspect the land and issue 'a certificate of completion' if it is satisfied that the condition of the land will not cause pollution of the environment or harm to human health.

Supervision

Section 42 Environmental Protection Act 1990 puts the Environment Agency under a duty to supervise waste management permits. It must take all necessary steps to ensure that pollution of the environment, harm to human health or serious detriment to the amenities of the locality does not occur. Frequency is set out in Waste Management Paper No 4.

Modification, Suspension and Revocation

Under ss 27 & 38 Environmental Protection Act 1990 the Environment Agency has power to modify, suspend or revoke a permit. Modification may take place on the application of the permit holder or on the Agency's own initiative. The permit may be modified to the extent that it does not cause pollution to the environment or harm to human health or become seriously detrimental to the locality affected by the activities. The Agency is required to review permits periodically.

A permit may be revoked where it appears to the Agency that the permit holder has ceased to be a fit and proper person by reason of having committed 'relevant offences' or that the continuation of the activities would cause pollution to the environment or harm to human health or become seriously detrimental to the locality affected by the activities and that this cannot be avoided by modifying the permit.

A permit may be suspended where it appears to the Agency that the permit holder has ceased to be a fit and proper person by reason of the management having ceased to be in the hands of a technically competent person or that serious pollution to the environment or harm to human health has been or will be caused by the carrying on of the activities authorised by the permit. The Agency may then require works to be carried out during the suspension to remediate.

Appeals

An applicant can appeal if his or her application has been rejected, modified, suspended or revoked to the Secretary of State. Where an appeal is pending the modification or revocation shall have no effect but where the licence has been suspended it will continue to be suspended until the appeal is dealt with.

WASTE MANAGEMENT LICENCES

Waste Management Licences are being superseded by IPPPC permits. Where they exist provision as to their grant or refusal and operation are similar to Permits.

Transfer, Surrender, Supervision, Modification, Suspension, Revocation and Appeals

Regulators have the same powers corresponding to those in relation to IPPC Permits for the waste management industry and the holder of a licence has much the same right of appeal.

THE LANDFILL (ENGLAND AND WALES) REGULATIONS 2002

The Landfill (England and Wales) Regulations 2002 came into force on 15th June 2002, except for Regulation 19(1) which states that from 31st August 2002, must identify the waste to which a transfer note relates (from then on) by reference to the appropriate codes in the European Waste Catalogue. The Regulations put into effect the Council Directive 1999/31/EC on the landfill of waste. The Regulations will need to be read in conjunction with the Pollution Prevention and Control Act 1999 and the Pollution Prevention and Control Regulations 2000, which introduced Council Directive 96/61/EC on Integrated Pollution Prevention and Control. Conditions in permits issued under IPPC will be made under these Regulations.

Exemptions (Regulation 4)

Certain substances and exempted as follows:

- (a) The spreading of sludges (including sewage sludges and sludges resulting from dredging operations) and similar matter on the soil for the purposes of fertilisation or improvement;
- (b) The use of suitable inert waste for redevelopment, restoration and filling-in work or for construction purposes;
- (c) The deposit of:
 - (i) non-hazardous dredging sludges along the bank or towpath of a waterway from which they have been dredged
 - (ii) non-hazardous sludges in surface waters, including the bed and its sub-soil; or
- (d) Any landfill which finally ceased to accept waste for disposal before 16th July 2002”.

Planning Considerations (Regulation 5)

A permit will not be issued unless planning permission has been obtained. On application to a planning authority Regulation 5 provides that a planning permission shall only be granted for a landfill site if the planning authority has taken into consideration requirements relating to:

- (a) the distances from the boundary of the site to residential and recreational areas, waterways, water bodies and other agricultural or urban sites;
- (b) the existence of groundwater, coastal water or nature protection zones in the area;
- (c) the geological or hydro geological conditions in the area;
- (d) the risk of flooding, subsidence. Landslides or avalanches on the site; and
- (e) the protection of the natural or cultural heritage in the area.

Classification of landfills (Regulations 7)

All landfills must be classified into 3 categories and the Environment Agency requires this before issuing a permit, viz.:

- for hazardous waste
- for non-hazardous waste (including municipal waste)
- for inert waste a site

Hazardous waste is as defined in the Council Directive 91/689/EEC on hazardous waste (see special waste)

Inert waste is defined as: —

- (a) it does not undergo any significant physical, chemical or biological transformations;
- (b) it does not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm to human health; and
- (c) its total leachability and pollutant content and the ecotoxicity of its leachate are insignificant and, in particular, do not endanger the quality of any surface water or underground water”.

Non-hazardous waste is defined as that which is neither hazardous nor inert

Permit Conditions under IPPC (Regulation 8)

A permit must include:

1. Conditions specifying the authorised waste types and quantities;
2. Requirements for:
 - a) the preparation and carrying out of the landfill operations;
 - b) the monitoring and control procedures, including contingency plans;
3. Ensuring adequate financial provision until permit surrender;
4. Ensuring the operations are conducted in such a manner as to prevent accidents and limit their consequences;
5. Requiring the operator to report annually on the types and quantities of wastes disposed of and the results of the monitoring programme
6. Appropriate conditions for ensuring compliance with requirements of other provisions in the Regulations

Prohibited Wastes (Regulation 9)

The operator of a landfill shall not accept any of the following types of waste at the landfill:

- (a) Any waste in liquid form (including waste waters but excluding sludge);
- (b) Waste which, in the conditions of landfill, is explosive, corrosive, oxidising, flammable or highly flammable;
- (c) Hospital and other clinical wastes which arise from medical or veterinary establishments and which are infectious;
- (d) Chemical substances arising from research and development or teaching activities, such as laboratory residues, which are not identified or which are new, and whose effects on man or on the environment are not known;
- (e) As from 16th July 2003, whole used tyres other than -
 - (i) Tyres used as engineering material;
 - (ii) Bicycle tyres; and
 - (iii) Tyres with an outside diameter above 1400mm;
- (f) As from 16th July 2006, shredded used tyres other than -
 - (i) Bicycle tyres; and
 - (ii) Tyres with an outside diameter above 1400mm; and
- g) Any waste which does not fulfil the relevant waste acceptance criteria.

The operator of a landfill shall ensure that the landfill is not used for landfilling waste which has been diluted or mixed solely to meet the relevant waste acceptance criteria.

Waste that can be Landfilled (Regulation 10)

All Waste

The operator of a landfill shall ensure that the landfill is only used for landfilling waste which is subject to prior treatment unless -

- (a) it is inert waste for which treatment is not technically feasible; or
- (b) it is waste other than inert waste and treatment would not reduce its quantity or the hazards which it poses to human health or the environment.

Additional Criteria for all landfill waste

The following criteria shall apply to the acceptance of waste at any landfill

Waste may only be accepted at a landfill where its acceptance would not —

- (a) Result in unacceptable emissions to groundwater, surface water or the surrounding environment;
- (b) Jeopardise environment protection systems (such as liners, leachate and gas collection and treatment systems) at the landfill;
- (c) Put at risk waste stabilisation processes (such as degradation or wash out) within the landfill; or
- (d) Endanger human health.

Hazardous Waste

The operator of a landfill shall ensure that the landfill is only used for landfilling hazardous waste which is subject to prior treatment as for all kinds of waste and the additional criteria for hazardous waste applies.

Additional criteria for hazardous waste

Waste may only be accepted at a landfill for hazardous waste if —

- (a) It is listed on the Hazardous Waste List of the European Waste Catalogue or has similar characteristics to those so listed; and
- (b) Its total content or leachability -
 - (i) Does not present a short term occupational risk or an environmental risk; and
 - (ii) Would not prevent the stabilisation of the landfill within its projected lifetime taking account of its after care period following closure...

Non Hazardous Waste

The operator of a landfill for non-hazardous waste shall ensure that the landfill is only used for landfilling -

- (a) Municipal waste;
- (b) Non-hazardous waste of any other origin which fulfils the waste acceptance criteria for all kinds of waste and is listed on the EWC; and
- (c) Stable, non-reactive hazardous waste (such as that which is solidified) with leaching behaviour equivalent to that of non-hazardous waste and which fulfils the waste acceptance criteria for all kinds of waste. In addition the operator shall ensure it is not deposited in cells used or intended to be used for the disposal of biodegradable non-hazardous waste.

Additional criteria for non-hazardous waste

Waste may only be accepted at a landfill for non-hazardous waste if —

- (a) It is listed on the Hazardous Waste List of the European Waste Catalogue or has similar characteristics to those so listed is stable, non-reactive hazardous waste with insignificant leachability and is deposited in cells not used for biodegradable non-hazardous waste; or
- (b) It is any other waste listed on the European Waste Catalogue or has similar characteristics to those so listed

Inert Waste

The operator of a landfill for inert waste shall ensure that the landfill is only used for landfilling inert waste, which meets the waste acceptance criteria for all kinds of waste and the additional criteria for acceptance of waste at landfills for inert waste.

Additional criteria for inert waste

Waste may only be accepted at a landfill for inert waste if it is listed in the following Table or it otherwise falls within the definition of inert waste in regulation 7(4) -

<i>European Waste Catalogue Code</i>	<i>Description</i>	<i>Exclusions</i>
<i>10 11 03</i>	<i>Waste glass based fibrous materials</i>	
<i>15 01 07</i>	<i>Glass packaging</i>	
<i>17 01 01</i>	<i>Concrete</i>	
<i>17 01 02</i>	<i>Bricks</i>	
<i>17 01 03</i>	<i>Tiles and ceramics</i>	
<i>17 02 02</i>	<i>Glass</i>	
<i>17 05 04</i>	<i>Soil and stones</i>	<i>Excluding topsoil, peat</i>
<i>20 01 02</i>	<i>Glass</i>	
<i>20 02 02</i>	<i>Soil and stones</i>	<i>Excluding topsoil, peat</i>

Charges (Regulation 11)

Site operators are required to charge a gate fee sufficient to cover the costs of setting up and operating the site, the costs of establishing and maintaining the financial provision and the estimated costs for the closure and after-care of the site for at least 30 years.

Checking Deposits (Regulation 12)

The operator is required to visually inspect the waste at the entrance to the landfill and at the point of the deposit and shall satisfy himself that it conforms to the description provided in the documentation submitted by the holder and, if representative samples are taken for analysis, the operator shall retain the samples and results of any analysis for at least one month.

Registers (Regulation 12)

The operator shall also keep a register showing:

- (a) The quantities of waste deposited;
- (b) Its characteristics;
- (c) Its origin;
- (d) The dates of its delivery;
- (e) The identity of the producer or, in the case of municipal waste, the collector; and
- (f) In the case of hazardous waste, its precise location on the site.

The information shall be made available to the Environment Agency on request.

Receipts (Regulation 12)

The operator on accepting each delivery of waste shall provide a written receipt to the person delivering it.

Refusals (Regulation 12)

Where waste is not accepted at a landfill, the operator shall inform the Environment Agency of that fact as soon as reasonably possible.

Closures and after-care procedures (Regulations 15 and 16)

Closure may be either on application by the operator or following a reasoned decision of the Environment Agency. After the consideration of matters such as monitoring the Agency may serve a Notice approving the closure. However operators continue to be liable for maintenance, monitoring and control of the site for a period to be determined by the Agency and, specifically, for monitoring and analysing landfill gas, leachate and the groundwater regime in the vicinity of the site. At any time after closure, an operator is free to apply to surrender the permit. Under the Pollution Prevention and Control (England and Wales) Regulations 2000 the Agency has to be satisfied that there is no longer a "pollution risk" from the previously permitted activities and or "*is likely to cause a hazard to the environment*".

Offences (Regulation 17)

It is an offence to contravene: —

- a) regulation 9 (prohibition of certain wastes) or 12 (waste acceptance procedures)
- b) regulation 10 (1) or (2) (waste pre-treatment and the acceptance criteria for hazardous waste sites) or
- c) paragraph 3(5) of Schedule 4 (The operator of a landfill which is not classified as a landfill for hazardous waste shall only accept hazardous waste at that landfill on or after 16th July 2002 if it is stable, non-reactive hazardous waste with leaching behaviour similar to non-hazardous waste and so long as not in a cell with biodegradable waste).

Penalties

The penalties for these are a fine up to £20,000 or imprisonment for up to 6 months or both on summary conviction and a fine (unlimited) or imprisonment for up to 5 years or both on conviction on indictment

DUTY OF CARE

Introduction

In the 1980s it was found that, according to the Third report of the Hazardous Waste Inspectorate (DOE (1988) Third Report of the Hazardous Waste Inspectorate HMSO London p 15):

“Too many waste producers’ principal concern about waste is to get it off the premises, at the cheapest possible price, and then forget about it.”

The waste producer did not consider that separation labelling and correct disposal of waste to be the producer’s problem. In its 11th Report the Royal Commission on Environmental Pollution (Royal Commission on Environmental Pollution (1985) *Managing Waste: The Duty of Care* 11th Report Cmnd 9675, HMSO, London) proposed that a duty similar to that contained in the Health and Safety at Work Etc Act 1974 should be placed upon those in the waste industry. Initially it was envisaged that the duty would require the producer to ensure that its waste was subsequently managed and disposed of without harm to the environment. The Report’s recommendations were extended to cover all parts of the waste industry and not just producers and were put into effect by section 34 of the Environmental Protection Act 1990 and came into force in 1992 (Environmental Protection Act (Commencement No 10) Order 1991 (SI 1991/2829). Interestingly the duty does not come from the EU but is entirely a UK principle. Detail is added by to section 34 by Environmental Protection (Duty of Care) Regulations 1991 (SI 1991/2839). The legislation is explained through a government circular (Circular 19/91 *Environmental Protection Act 1990 Section 34 The Duty of Care*, HMSO, London), and a Code of Practice (DOE (1996) *Environmental Protection Act 1990 Section 34 The Duty of Care, A Code of Practice*, 2nd edition HMSO, London).

Provisions Section 34

The provisions state that:

...it shall be the duty of any person who imports, produces, carries, keeps treats or disposes of controlled waste or as a broker, has control of such waste, to take all such measures applicable to him in that capacity as a reasonable in the circumstances –

- a) to prevent any contravention by any other person of section 33 of the Environmental Protection Act 1990;
- b) to prevent the escape of the waste from his control or that of any other person; and
- c) on the transfer of waste to secure –
 - i) that the transfer is only to an authorised person or to a person for authorised transport purposes; and
 - ii) that there is transferred such written description of the waste as will comply with the duty as respects the waste.

In addition under sections 157 and 158 of the Environmental Protection Act 1990 directors, managers, company secretaries etc can be held personally liable where an offence has been caused by their consent, neglect or connivance. The Code of Practice notes that: “employers are responsible for the acts and omissions of their employees. They should therefore provide adequate equipment, training and supervision to ensure that their employees observe the duty of care.”

Under Section 34 it is also an offence to fail to comply with any Regulations made under section 34. This is primarily an administrative offence and relates mainly to the transfer of waste. The Regulations set out detailed requirements for transfer notes, which by virtue of the second offence in section 34 make it an offence not to comply with them.

Exclusions to Section 34

There are three exclusions to the duty of care under section 34.

1. Occupiers of Domestic Properties

An occupier of a domestic property as respects the household waste produced on the property. A Domestic property is only one of the five categories of premises, which produce household waste. Therefore the duty of care continues to apply to waste emanating from caravans, residential homes, educational establishments, hospitals and nursing homes. The waste must be household waste however construction waste, demolition waste and septic tank sludge from domestic properties is viewed as 'industrial waste'. To make occupiers of domestic properties wholly exempt from the duty regulation 2(2) of the Controlled Waste Regulations 1992 (SI 1992/588) makes construction waste, demolition waste and septic tank sludge from domestic properties household waste for the purposes of s 34 of the EPA only. Remember that he still has a duty to use a registered waste carrier

The exception only grants an exclusion to waste produced on the property therefore it does not include:

A householder disposing of waste that is not from the property e.g. from a workplace or neighbour's property or waste from someone who is not an occupier e.g. a builder carry out work at the property as a contractor.

2. Animal By-products

These are dealt with under separate specialist legislation.

3. Scrap Metal

Scrap metal is dealt with under separate specialist legislation.

Elements of the Duty of Care

Reasonable in the circumstance

The standard of the duty of care is one of reasonableness and therefore it is objective but only so far as the class of person within the industry. Therefore what is reasonable for the carrier may not be reasonable for the producer and vice versa.

Guidance is given in the Code of Practice as to what is reasonable in the circumstances. This will depend on:

- The nature of the waste;
- The dangers it presents in handling and treatment;
- How it is dealt with; and
- What the holder might reasonably be expected to know or foresee.

The responsibility for the waste ultimately rests with the holder and cannot be passed on to a consultant or other adviser or a broker.

The Code requires waste holders to ask certain basic questions to fulfil their duty:

- Does the waste need a special container to prevent escape or to protect it from the elements?
- What type of container would suit the waste?
- Can the waste be safely mixed with other wastes or should it be segregated?
- Can the waste be safely crushed?
- Can the waste be safely incinerated or are there special requirements for its incineration such as minimum temperatures and combustion times?
- Can the waste be disposed of safely to landfill with other waste? And
- Is the waste's physical state likely to change in storage?

Prevention of a contravention of s 33 of the EPA 1990

Escape of waste

This provision is aimed at the prevention of waste being blown off a lorry or a leak from a container. The code of practice requires protection measures to be taken against:

The waste's container wearing or corroding;
Accidental spills or leaks or the leaching of unprotected waste by rainfall;
Accident or weather breaking open the container and allowing waste to escape;
The waste blowing away or falling while stored or transported; and
The scavenging of waste by vandals, thieves, children, trespassers or animals

Securing compliance with the duty when waste is transferred

There are two basic elements:

- Actions required to be taken prior to the waste being transferred to a carrier or waste management site for the first time;
- Checks to ensure that the waste is transferred to the correct place.

Waste must pass to an authorised person. Authorised persons are registered waste carriers, holders of waste management licences or persons exempt from holding such a licence and waste collection authorities.

The onus is on the waste producer to ensure that the carrier is registered or exempt or if the waste producer is transferring the waste directly to a waste management facility, to check that the facility is licensed or authorised to take the type of waste being transferred. If the waste is transferred to a carrier there is a chain of obligation in that the carrier must check that the place to which the waste is carried to for disposal is licensed or authorised for the disposal of the particular type of waste. When a carrier is used for the first time the Code advises the waste producer to check with the Environment Agency to ensure that the carrier is registered.

The Code also recommends additional checking:

- When a new transaction is proposed where the description of the waste or its destination is changed;
- Where several carriers are involved in collecting waste from the same place and there is a danger that an unauthorised carrier picks up the load e.g. construction waste.
- Where the carrier has changed;
- Where there has been a change in the licence conditions of the disposal site.

The Code gives examples of obvious causes for concern when the waste might be mismanaged:

- a) Wrong or inadequate waste descriptions;
- b) Poor packing so the waste escapes;
- c) Poorly completed transfer notes or false information on such notes;
- d) Unsupported claims of being a registered carrier or exempt from licensing;
- e) Failure of waste consigned via a carrier to arrive at its destination;
- f) Damaged or interfered with waste containers.

The Transfer Note System

Section 34 of the EPA 1990 and the Environmental Protection (Duty of Care) Regulations 1991 establish a system of transfer notes. The Act requires the waste to be accompanied by a written description. The Regulations state that the waste to be transferred must be clearly identified in the transfer note and the transaction described. It is an offence not to comply with the Regulations therefore it may be easier to prosecute for failing to comply than to bring a prosecution for breach of duty under s 34 where it has to be shown that the person in breach has acted unreasonably in the circumstances.

Format of the Transfer Note

The legislation is surprisingly vague as to the format for the transfer note and merely requires suitable documentation. Also there is no mention as to who is responsible for the completion of the notes, this is in contrast to the consignment note system required for special waste. Commonly the waste industry use a two part note with one part going from the waste producer to the carrier with the second part being handed by the carrier to the disposer. But without an explicit requirement it is difficult for the Environment Agency to trace loads.

Description of Waste in the Transfer Note

The Regulations require that the waste be described so as to enable other person to avoid a contravention of section 34. This means that it must inform the person who accepts the waste to know that it is suitable for disposal at the licensed or exempt site receiving it.

The Code states that the description should contain some combination of the following elements:

- The type of premises or business, which is the source of the waste;
- The name of substances or a description of the substances, which compose the waste;
- The process that produced the waste;
- A chemical or physical analysis

The note must also refer to the appropriate waste code on the List of Wastes (England and Wales) Regulations 2005

The Landfill Tax (Qualifying Material) Order 1996 (SI 1996/1528) gives useful guidance by the way certain wastes are described in its table.

Description of the Transaction in the Transfer Note

The Regulations require the transfer note to contain the following information:

- The quantity of waste;
- Whether the waste is loose or in a container;
- If the waste is in a container the kind of container;
- The time and place of the transfer.

The Regulations also require the transfer note to state the category of authorised person as being one of the following:

1. The waste collection authority
2. The holder of a waste management licence;
3. A person exempt from the need to possess a waste management licence;
4. A registered waste carrier;
5. A person who is exempt from the need to possess a carrier registration.

The transfer notes must be retained at landfill sites must be retained for six years under the Landfill Tax provisions.

REGISTRATION OF WASTE CARRIERS AND WASTE BROKERS

Registration of Carriers

Under the Control of Pollution (Amendment Act 1989 and the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 and the Waste Management Licensing Regulations 1994 controlled waste carriers must be registered. The provisions were introduced due to the problem of wide scale fly-tipping of construction waste.

The provisions require waste carrier who transport controlled waste 'in the course of any business...or other wise with a view to profit' on behalf of third parties to be subject to formal registration. In this context third party refers to the waste producers who, for example, in the case of construction waste would be the client for whom the builder is carrying out the work. Registration also applies to all commercial bodies who move building and construction waste when they themselves are the producers.

Exemptions from Carrier Registration

- Householders
- Producers of waste which is not building or demolition waste
- Transporters of animal by products and carcasses (these come under separate provisions – Animal By-products Order 1992)
- Transporting waste from one part of a site to another.

There are no exemptions for the size of company or type of vehicle.

Registration of Brokers

Under the Directive on Waste (75/442/EEC as amended) as put into effect by the Waste Management Licensing Regulations 1994 waste brokers must be registered. The provisions require establishments or undertakings 'which arrange for the disposal or recovery of waste on behalf of others (brokers or dealers)' to be registered.

Exemptions from Carrier Registration

Persons actually carrying out disposal or recovery operations

Application

Application for registration must be made to the Environment Agency who has two months within which to process the application. A fee must accompany the application. Applications are made by individuals if they are sole traders or by corporations or by partnerships (although each member of the partnership must be named on the licence and (if a carrier) the certificate. If more persons are to be added to the registration then a fresh application must be made.

Refusal

An application may be refused 'if and only if':

- a) There has been a contravention of the application procedures; or
- b) The applicant or any other relevant person has been convicted of a specific offence (these relate to the illegal carriage of waste) and in the opinion of the Agency it is undesirable for the applicant to be authorised to transport controlled waste or to arrange (as a dealer or broker) for controlled waste to be disposed of or recovered on behalf of others.

Offences are within the Rehabilitation of Offenders Act 1974 and are spent as follows:

- After 7 years for a prison sentence of 6 months or less;
- After 5 years for a fine or Community Service Order;
- After 1 year for a conditional discharge.

The Act does not apply to corporations and the offences must always be declared.

Grant of a Registration

A registration lasts for three years. A certificate is issued in respect of a carrier, which must be produced on demand to a police officer or Environment Agency inspector. The Environment Agency must give a carrier or broker at least six months notice of expiry of registration, which may then be renewed.

Revocation of Registration

Registration may be revoked 'if and only if':

- a) the carrier or broker or any other relevant person has been convicted of a specific offence (these relate to the illegal carriage of waste); and
- b) in the opinion of the Agency it is undesirable for the applicant to be authorised to transport controlled waste or to arrange (as a dealer or broker) for controlled waste to be disposed of or recovered on behalf of others.

Appeal

Appeal on the grounds of refusal or revocation of registration lies to the Secretary of State.

Offences

It is an offence for any person who is not a registered carrier of controlled waste in the course of any business or with a view to profit to transport any controlled waste from to and from any place in the UK.

There are three defences:

- a) It was an emergency and notice was given to the Environment Agency as soon as practicable;
- b) The person neither knew nor had reasonable grounds to suspect that what was being transported was controlled waste and took all such steps as was necessary for ascertaining whether it was controlled waste;
- c) The person was acting under the instructions of his employer.

It is an offence to operate as an unregistered waste broker.

HAZARDOUS WASTE

The Hazardous Waste (England & Wales) Regulations 2005 defines hazardous waste as a waste featured in the List of Wastes as a hazardous waste in the Hazardous Waste Directive, Council Directive 91/689/EEC as amended by Council Directive 94/31/EC; or any other waste, which displays one or more of the properties listed in Annex III of the Directive set out in Schedule 3 of the Regulations, is a hazardous waste. (Regulation 6) A waste is non-hazardous waste if it is not a hazardous waste in the List of Wastes. (Regulation 7). The Lists of Wastes under the Directive is put into UK law by the List of Wastes (England) Regulations 2005.

Determination of hazardous or non-hazardous waste

The Secretary of State may determine, in exceptional cases, that a specific waste stated in the List of Wastes that is described as hazardous is non-hazardous (Regulation 10) or that a non-hazardous waste is hazardous. (Regulation 11) and may revoke such determination (Regulation 13).

The Secretary of State shall, before making a determination or revoking such a determination, may consult and give notice to the Environment Agency; Health and Safety Executive and the holder of the specific waste and any other person who has an interest in the specific waste.

Requirement to notify premises

The waste producer must notify the Agency of any premises where hazardous waste is produced at or removed from. The premises will for a period of 12 months (“the period of notification”) be “notified premises”.

A waste collection authority that collects hazardous waste deposited in contravention of section 33 of the 1990 Act has a duty to notify the Agency of the premises. (Regulation 24)

A consignor who proposes to remove, or cause to be removed, any hazardous waste from any premises may notify the Agency of the site premises if

- (a) The hazardous waste was produced on those premises; or
- (b) The consignor is unable to ascertain, or unable to ascertain without unreasonable inconvenience or expense, whether or not the hazardous waste was produced on those premises.

And

- (a) The relevant premises are not, or will not be, notified premises at the proposed time for removal of the waste; or
- (b) The consignor is unable to ascertain, or unable to ascertain without unreasonable inconvenience or expense, whether the relevant premises are, or will be, notified premises at that time. (Regulation 28)

Notification in writing or by telephone may be given by or on behalf of the producer or consignor, or by or on behalf of a waste collection authority. Notification may not without the consent of the Agency be given more than one month in advance of the effective time. The effective time is the date on which notification commences which is the specific date requested or on the 4th day after notification was given.

The person giving notification shall provide

- Name and address
- The address of the notified premises
- Fee payable in respect of the notification of premises at the same time as giving notification. (Regulation 29)

When notification of the premises is made to the Agency, it shall issue to the person making the notification a code unique to those premises (a “premises code”). (Regulation 30)

Prohibition on removal of hazardous wastes from premises unless notified or exempt

No producer, holder or consignor shall remove, or cause to be removed, and no carrier shall transport, hazardous waste from any premises unless those premises are, at the time of removal of the waste, notified premises or exempt premises. (Regulation 25)

Exemption from the requirement to notify

Office premises, shop premises, agricultural premises within the meaning of the Agriculture Act 1947 and premises listed in paragraphs (a) to (e) of section 75(5) of the 1990 Act), to the extent that the hazardous waste arises from the use of the premises provided:

- The total quantity of hazardous waste produced by the producer at those premises is less than 50kg in any period of twelve months;
- Not more than two consignments of hazardous waste produced by that producer are removed from the site premises in any period of twelve months.

In relation to site premises at which waste electrical and electronic equipment is collected,

- The total quantity of waste electrical and electronic equipment produced by the producer at those premises is less than 200kg in any period of twelve months; and
- Hazardous waste produced at shop premises by customers of the occupier shall be treated as being produced by the occupier. (Regulation 33)

No person removes hazardous waste other than –

- A registered carrier or
- A waste collection authority. (Regulation 26)

Consignment codes

The Agency must maintain a “coding standard enabling each consignment of hazardous waste to be given a unique consignment code. (Regulation 37)

It is the duty of

- The consignor, in relation to a consignment of hazardous waste to be removed from premises in England (whether produced at those premises or at another place)
- The producer, in relation to hazardous waste to be deposited within the curtilage of premises in England at which it was produced
- The carrier, in relation to each consignment of hazardous waste collected in the course of a carrier’s round to which the carrier has elected to apply the multiple collection procedure,

To assign to the consignment of hazardous waste a unique code in accordance with the coding standard for the time being in force. (Regulation 38)

Completion of the consignment note

Where hazardous waste is removed from any premises a consignment note shall be completed (Regulation 39)

The standard procedure

Before the consignment is removed, the hazardous waste producer, or holder shall ensure that a copy of the consignment note with Parts A & B completed is prepared for each of the following:

- The hazardous waste producer or holder, where different from the consignor
- The consignor
- The carrier
- The consignee

All copies are given to the carrier who shall complete Part C on each of the copies and return them to the consignor.

The consignor shall complete Part D on each of the copies and where the hazardous waste producer or holder is not the consignor, ensure that one of those copies is given to him and retain one copy; and give the remaining copies to the carrier.

The carrier shall ensure that the copies, which he has received, travel with the consignment and are given to the consignee on delivery of the consignment. On receiving the consignment the consignee shall complete Part E on both copies and give one copy to the carrier. (Regulation 40)