

The revised Waste Framework Directive – regulation of excluded wastes

The revised Directive will change some aspects of waste controls. Regulations to transpose its provisions into law in Northern Ireland are in preparation. In the meantime, existing waste management licences, exemptions, and registrations will remain in force, with one important exception. The revised Directive excludes some wastes from the scope of its controls ('excluded wastes'). We will not enforce waste management licensing, exemption or other requirements in relation to those excluded wastes.

Introduction

The EU Waste Framework Directive provides the overarching legislative framework for the collection, transport, recovery and disposal of waste and includes a common definition of waste. The Directive requires all Member States to ensure waste is recovered or disposed of without endangering human health or causing harm to the environment. It includes permitting, registration and inspection requirements. The Directive also establishes a waste hierarchy, requiring Member States to take measures to encourage firstly, the prevention or reduction of waste production and its harmfulness and secondly the recovery of waste. Recovery means recycling, re-use, reclamation or any other process that produces secondary raw materials or energy. The Directive's requirements are supplemented by other directives for specific waste streams and types of operation (e.g. incineration). Current controls on wastes in Northern Ireland are driven by the Directive. The Waste Framework Directive has now been revised. The revised Directive was due to be transposed by 12 December 2010 and is now scheduled to come into force by 31 March 2011.

The Waste (Northern Ireland) Regulations 2011 ('the Waste Regulations') are expected shortly, and will transpose the revised Waste Framework Directive ('rWFD') in Northern Ireland. They will give effect to Article 2 of the Directive, which excludes certain wastes from its scope. This Regulatory Position Statement clarifies how we will approach the regulation of these wastes between 12 December 2010 and the date the waste Regulations come into force.

The regulation of wastes that remain within the scope of the rWFD will generally continue as usual in the period from 12 December 2010 to the date when the Waste Regulations come into force. The rWFD does contain a number of provisions that are designed to improve waste management practices and some of these will involve new obligations. These will change some aspects of waste controls but the new obligations will not take effect until the Waste Regulations come into force.

Excluded Wastes

The effect of the Article 2 exclusions is that some wastes will cease to require regulation under the rWFD. In particular, certain waste operations will cease to require a waste management licence or a registered exemption under the rWFD. Annex 1 sets out a full list of Article 2 exclusions.

There are two broad categories of exclusions from the rWFD (see Annex 1). The first consists of wastes that are excluded absolutely because they do not depend on the waste being covered by other European legislation. However, within this category there are some qualifications to the exclusions. The second consists of wastes that may be excluded if there are other European Directives or regulations that cover, for example, their handling, treatment or disposal.

Our Position

i) Waste Management Licences and exemptions

In the period from 12 December 2010 to the date when the Waste Regulations come into force, we will not require operators to obtain a waste management licence or register an exempt waste operation under the Waste Management Licensing Regulations (Northern Ireland) 2003 (as amended) ('WML Regs') for the recovery or disposal of wastes that are covered by one of the exclusions in the rWFD.

If you already have a waste management licence or a registered exemption covering one of these wastes we will not take any action to enforce the conditions of that licence or exemption insofar as that waste is concerned.

In due course we will issue further information indicating how any necessary revocations of existing waste management licences or exemptions will take effect.

ii) Other obligations

In the period from 12 December 2010 to the date when the Waste Regulations come into force, we will not require operators to comply with any other obligations that arise solely by virtue of the fact that they are handling 'excluded waste', such as the duty of care or the duty to register as a waste carrier.

It should be noted that this position does not avoid the need for waste management licences or other controls that are imposed because of European Directives apart from the rWFD. For example, extractive waste within the scope of the Mining Directive is subject to particular requirements. Waste incineration and co-incineration activities are also controlled in specific ways because of the requirements of the Integrated Pollution Prevention and Control Directive ('IPPCD') and the Waste Incineration Directive. These controls will continue to be enforced.

Which waste materials will now be excluded from the rWFD?

The list below gives some examples of waste materials and activities which are covered by this Regulatory Position Statement.

Straw and farming or forestry materials

1. Burning of straw and other crop residues

Waste material derived from the dry stalk of a cereal plant after the grain has been removed is sometimes burned as fuel in combustion plants. Straw or crop residue is no different in substance from a crop grown specifically for use as a fuel. It is natural non-hazardous agricultural material used for the production of energy and will fall out of the scope of the rWFD if burned through processes or methods which do not harm the environment or endanger human health.

If straw or crop residue is burned in an appliance with a thermal input of less than 20MW, we consider that the negative impacts on human health and the environment should not be greater than burning an equivalent non-waste solid fuel. It will therefore fall outside the rWFD and will not require a licence or exemption from the Northern Ireland Environment Agency. Appliances with higher thermal inputs will continue to require a PPC Permit under the Pollution Prevention and Control Regulations and in some cases a licence or exemption under the Waste Management Licensing Regulations.

Animal by-products

2. Milk and colostrum landspread outside the farm of origin

The current and revised Animal By-Products Regulation ('ABPR') allows milk and colostrum to be spread outside the farm of origin without processing provided that the Department of Agriculture and Rural Development (DARD) does not consider it to present a risk of spreading any serious transmissible disease.

The storage and spreading of milk and colostrum outside the farm of origin will fall outside the scope of the rWFD and will be regulated only under the ABPR.

Milk and colostrum spread on the farm of origin will not be excluded waste because the ABPR does not cover on-farm use and will continue to be regulated under a waste management licence or exemption.

3. Digestive tract content separated from the digestive tract

The current and revised ABPR allows this material to be spread on land provided that DARD does not consider it to present a risk of spreading any serious transmissible disease.

The storage and spreading of this material will fall outside the scope of the rWFD and will be regulated only under the ABPR.

4. Landspreading of processed animal protein

The current revised ABPR allows Category 2 and 3 processed animal protein to be used for the manufacturing of organic fertilizers or soil improvers subject to the process being approved under the ABPR for fertilizer production and any additional requirements imposed by DARD on their use such as grazing restrictions. This includes blood treated to fertilizer standards in an ABPR approved plant.

The storing and spreading of this material will fall outside the scope of the rWFD and will be regulated only under the ABPR.

Animal carcasses

5. Pet crematoria

The current and revised ABPR provide rules for the disposal of carcasses by incineration and for the approval of plants by DARD.

The incineration of dead pets (including pre-incineration storage) in crematoria with a capacity of less than 50kg per hour currently requires a waste management licence or exemption from the Northern Ireland Environment Agency as a waste operation. This activity, because it is approved by DARD under the ABPR, will now fall out of scope of the rWFD and will no longer require a waste management licence from the Agency. However any plant incinerating additional wastes e.g. veterinary waste is likely to require approval from NIEA and DARD.

The ash resulting from the incineration will continue to be regulated as waste and must be recovered or disposed of in accordance with waste legislation.

6. Pet cemeteries

Our waste management licences will cease to have effect when the operation is authorised by DARD in accordance with the new ABPR. We will notify individual waste management licence holders when this happens.

Enforcement

Whilst the requirement to obtain a waste management licence or register an exemption was removed for certain excluded wastes after 12 December 2010, any activity involving such wastes which causes, or is likely to cause, pollution of the environment or harm to health, may still be subject to enforcement action under other, non-waste, legislation such as the Water (Northern Ireland) Order 1999 with respect to water pollution.

Where a waste management licence covers the recovery or disposal of wastes other than excluded wastes the licence will remain in force with respect to those non-excluded wastes.

This regulatory position will be reviewed when the Waste Regulations come into force.

Annex 1 - The new exclusions

There are two broad categories of exclusions from the revised Waste Framework Directive.

The first category consists of wastes that are excluded absolutely. These are:

- Para 2(1)(a) *Gaseous effluents emitted into the atmosphere*
- Para 2(1)(b) *Land (in situ) including unexcavated, contaminated soil and buildings permanently connected with land*
- Para 2(1)(c) *Uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which it was excavated*
- Para 2(1)(d) *Radioactive waste¹*
- Para 2(1)(e) *Decommissioned explosives*
- Para 2(1)(f) *Faecal matter (unless covered by paragraph 2(2)(b)) straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such biomass through processes which do not harm the environment or endanger human health*

The brackets in this exclusion are interpreted to mean that faecal matter as an animal by-product is not excluded from the rWFD if it is destined for incineration, landfilling or use in a biogas or composting plant

- Para 2(3) *Sediments relocated inside surface waters for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts or land reclamation if it is proved that the sediments are non-hazardous*

The second category consists of wastes that are excluded to the extent that they are covered by other Community legislation. In other words, these wastes may be excluded if there are other European Directives or Regulations that cover for example their handling, treatment or disposal. These wastes are:

- Para 2(2)(a) Waste waters

The Community legislation covering waste waters is the Urban Waste Water Treatment Directive and the Dangerous Substance Directive (for disposals into the sea)

- Para 2(2)(b) *Animal by-products including processed products covered by Regulation (EC) No 1774/2002, except those which are destined for incineration, landfilling or use in a biogas or composting plant*

The current Animal By-Products Regulation. (NI) 2003 will be replaced by the revised Animal By-Products Regulation (NI) 2011 by 31 March 2011. The broad meaning of the exclusion in Para 2(2)(b) is that wastes within the scope of the current and then the revised Animal By-Products Regulations will no longer fall to be regulated under the WFD unless they are going to be incinerated (which includes co-incineration to produce energy), landfilled, used in a biogas plant (anaerobic digestion) or composted

- Para 2(2)(c) *Carcasses of animals that have died other than by being slaughtered, including animals killed to eradicate epizootic diseases, and that are disposed of in accordance with Regulation (EC) No 1774/2002*

The broad meaning of this exclusion is that entire bodies or parts of animals will be excluded from the scope of the WFD if they are disposed of in accordance with the current and then revised Animal By-Product Regulation

- Para 2(2)(d) *Waste resulting from prospecting, extraction and storage of mineral resources and the working of quarries covered by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries*

Directive 2006/21 is the Mining Waste Directive

When compared to the exclusions under Article 2 of the 2006 Waste Framework Directive:

- paragraph 2(1)(a) above (gaseous effluents) is the same;
- paragraph 2(1)(d) (radioactive waste) and 2(1)(e)(decommissioned explosives) are the same except that they are now absolute exclusions (previously only excluded where already covered by other legislation);
- 2(1)(b)(in situ land), 2(1)(c)(uncontaminated soil used on site), 2(3)(non-hazardous sediments relocated inside surface waters) and 2(2)(b)(animal by-products) are new exclusions;
- 2(1)(f)(faecal matter, straw, etc) is new but similar to the previous exclusion of certain agricultural waste already covered by other legislation;
- 2(2)(a) is almost the same as the previous exclusion for waste waters;
- 2(2)(c)(animal carcasses) is new but similar to the old exclusion of animal carcasses where already covered by other legislation – it now refers specifically to the Animal By-products Regulation;
- paragraph 2 (2)(d) is the same except that it now refers specifically to the Mining Waste Directive.

¹Radioactive waste which is covered by an exemption order under the Radioactive Substances Act 1993 will continue to be subject to controls under the Waste Management Licensing Regulations (NI) 2003 or the Hazardous Waste Regulations (NI) 2005 where relevant.