

## **Department for Environment, Food and Rural Affairs**

### **Summary of responses to the consultation on amendment to the Hazardous Waste (England and Wales) Regulations 2005 13<sup>th</sup> November 2008 to 6<sup>th</sup> February 2009**

**March 2009**

#### **1. Introduction or Background**

- **Background to proposal**

- (i) The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005 No 894), “the Regulations”, which came into force on 16 July 2005, implement the requirements of the EC Hazardous Waste Directive (91/689/EEC).
- (ii) Following feedback received from the hazardous waste industry and the Environment Agency in the light of over 3 years’ operational experience, we consulted recently on some relatively minor changes to the Regulations in order to address those provisions which are not working as we had originally intended. The changes sought to clarify the intention of the regulations and minimise the burden on operators.

- **What we were seeking views on and why**

- I. We proposed to clarify that where asbestos waste is produced at domestic premises, a contractor who is engaged to deal with the waste is subject to the Regulations; but that the Regulations do not apply to a person who engages a contractor at the premises. We considered this clarification necessary as the Agency had learnt that there was some confusion regarding the circumstances in which asbestos produced at domestic premises is subject to the requirements of the Regulations.
- II. The Regulations require producers of hazardous waste to notify annually to the Environment Agency the premises at which they produce hazardous waste. However, under the 2005 Regulations certain premises were thought to represent a lower environmental risk and were therefore excluded from the notification requirement if they produced less than 200kg of hazardous waste in any 12 month period.
- III. Having made an assessment of premises notifications since 2005, Defra and the Environment Agency concluded that premises producing up to 500kg of hazardous waste in a 12 month period

represent a relatively low risk and require only a low frequency of inspection. We therefore proposed to introduce a blanket exemption from the requirement to notify premises to the Environment Agency for **all** premises producing less than 500kg of hazardous waste in any 12 month period.

- IV. We proposed to clarify that if a householder places hazardous waste, such as a waste television, for collection separately from his mixed waste receptacle or delivers the waste separately to a civic amenity site or household waste recycling centre (HWRC), the requirements of the Regulations are intended to apply, but that the Regulations are not intended to place any requirements on householders themselves. Our proposal also clarified that once the waste has been accepted at these other premises, the persons who have accepted it must be treated as the producer of the waste for the purposes of the Regulations and that Part 4 of the Regulations, which generally bans the mixing of hazardous waste, would apply from the time at which the separated fraction of waste is collected by a waste management contractor from the domestic premises or the time at which it is delivered by a householder to a civic amenity site or HWRC.
- V. The intention of regulation 26(8) was to allow the waste management industry to find out whether particular premises producing hazardous waste had been notified to the Environment Agency. However, its wording also meant that the Agency would also be obliged to divulge information about the person who had notified the premises. Since many waste management companies notify premises on behalf of those who actually produce the waste, it would be possible that the information provided by the Agency could be used by some businesses to gain a commercial advantage. We proposed an amendment to rectify this so that the information to be released by the Agency would only relate to the premises at which the hazardous waste is produced.
- VI. We proposed to require that where someone collects hazardous waste from multiple premises on a single journey, they must use the multiple collection procedure and paperwork. This is because the Agency had observed that some people collecting waste from multiple premises had chosen to complete the paperwork for individual consignments, but pay the reduced fee that is intended to apply only where the multiple collection consignment note has been completed.
- VII. We proposed to require that where hazardous waste being moved is also dangerous goods as defined in regulation 2 of The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 (SI 2007 no.1573), the dangerous goods declaration should be made on a separate form, as

opposed to being detailed within the standard consignment note or multiple collection consignment note as at present.

- VIII. We also consulted on a few more minor amendments. Full details of the consultation may be found at <http://www.defra.gov.uk/corporate/consult/hazardous-wasteregs/index.htm>.

## **2. Summary or analysis of responses**

- i. Overall, the response to the consultation was favourable with most of the proposals accepted by consultees including business and industry. The proposal to increase the qualifying limitation for premises producing hazardous waste required to notify their premises from 200kg to 500kg per annum was particularly welcomed as one that would significantly reduce industry administrative costs by over **£1.6m** per year. Most respondents considered that there would be a realisation of savings in costs and administration for small and medium enterprises. Some respondents estimated that the number of notifications they would need to make could be reduced by up to 50%. Most agreed with the consistency that would be provided by having a single threshold for all premises.
- ii. However, further clarification was requested regarding how this provision would work in practice. Some were concerned about measures that would be taken to maintain the regulation of those hazardous waste producers who would no longer be required to notify their premises. Others felt there could be potential for confusion and miscalculation as well as initial problems between mobile operators and premises owners.
- iii. There was a more mixed response to the proposed changes to the consignment procedure and forms. Although most Local Authorities and Waste Disposal Authorities agreed that the existing collection system could be modified to make it simpler and more transparent, the majority in the waste industry were concerned that it would increase their operating costs by requiring them to invest in new IT and administrative systems.
- iv. But not all those that opposed the proposed changes to the consignment system felt that the status quo should be maintained. Indeed, there was a suggestion that the existing schedule of charges needs to be simplified. There was also some support for moving away all together from the multiple collection procedure and introducing one single form that could be used for single collections or multiple collections.
- v. Most respondents opposed the proposal to remove the mobile service provisions from the regulations. Some felt that it would be practically

difficult for mobile service operators to ascertain whether the 12 month qualifying limitation had been reached at a given premises. It was suggested that the removal of this provision would put a burden on the refrigerant industry, which already has to manage multiple consignment notes because of the nature of refrigerants and the way they are handled.

- vi. There was strong support for the other proposals consulted on although some queries were raised by consultees and will be addressed in guidance and FAQ material which will accompany the revised regulations.

- **How many responses were received**

69 responses were received from the organisations listed below:

A-Gas (UK) Ltd  
Air Conditioning and Refrigeration Industry Board  
Association of Independent Multiple Pharmacies  
Blue Environmental Limited  
Boots UK  
Briggs Equipment UK Ltd  
British Coatings Federation Ltd  
British Metals Recycling Association  
British Telecommunications  
British Veterinary Association  
British Waterways  
BVSF  
Cambridgeshire and Peterborough Waste partnership  
Cambridgeshire County Council  
Cathedral Hygiene  
Chartered Institute for Waste Management  
Chemical Business Association  
Community Pharmacy Wales  
Community RePaint  
Company Chemists Association  
Construction Industry Council  
Cromwell Polythene  
Department for Transport  
Donarbon Ltd  
East Sussex County Council  
Greater Manchester Waste Disposal Authority  
Healthcare Environmental  
Independent Battery Distributors Association  
Intercare Distribution Services Limited  
Intercare UK  
Law Society

Leeds City Council  
 Lincolnshire County Council  
 Local Authority Recycling Advisory Committee  
 National Household Hazardous Waste Forum  
 National Pharmacy Association  
 Network Rail  
 New Forest District Council  
 Non-Ferrous Alliance Limited  
 Norfolk County Council  
 Oakwood Environmental Services  
 OCS Group UK Ltd  
 Oil Recycling Association  
 Pharmaceutical Services Negotiating Committee  
 PHS Group Ltd  
 Recolight  
 Retail Motor Industry Federation  
 Royal Mail  
 Royal Pharmaceutical Association of Great Britain  
 Safetykleen  
 Sanitary Medical Disposal Services Association  
 Severn Trent Water Limited  
 Shropshire Waste Partnership  
 Sims Group UK Limited  
 South Cambridgeshire District Council  
 South West Water  
 Southern Water  
 SRCL Limited  
 Suffolk Waste Partnership  
 Technical Advisers Group  
 Trust Hygiene Services  
 UK Cleaning Products Industry Association  
 UKRA Technical Committee  
 United Utilities  
 Veolia  
 Vetspeed LTD  
 Warwickshire County Council Environmental Management Systems Team  
 Water UK  
 Yorkshire Water

- **What were the main points raised and what is the government's response?**

The table below list the main consultee comments and the government's response.

Consultee comment	Government response
The Regulations should not refer to "domestic" legislation in the	The Hazardous Waste Regulations must refer to "domestic" in order to meet the requirements of the Hazardous Waste Directive. "Household" is defined in the Environmental

<p>Hazardous Waste Regulations while continuing to refer to “household waste” in other legislation.</p>	<p>Protection Act 1990 (EPA) and the Controlled Waste Regulations 1992. The EPA pre-dates HWD. We are not planning to change the EPA although we would aim to ensure that the guidance is clear on differences.</p>
<p>The meaning of mixed waste should be clarified.</p>	<p>Guidance on this is available on the DEFRA website at <a href="http://www.defra.gov.uk/ENVIRONMENT/waste/special/pdf/hwrmixing-guide.pdf">http://www.defra.gov.uk/ENVIRONMENT/waste/special/pdf/hwrmixing-guide.pdf</a></p>
<p>Would healthcare waste collected from domestic premises need to be consigned?</p>	<p>As now, unless produced by a medical practitioner it will only need to be consigned from the premises to which it is taken from the household for collection, disposal or recovery.</p>
<p>Increasing the qualifying limitation could reduce some businesses’ notifications by up to 50%</p> <p>Increasing premises notification to 500Kg will allow more people to evade control. There could be a possible increased risk associated with this proposal in that some smaller producers of hazardous waste would look to save money by using unscrupulous operators who may not follow the rules.</p>	<p>The current proposal was reached after lengthy discussion with the Agency on a reasonable level for premises with low risk. Although the increase in the qualifying limitation will mean that more premises will not need to register, the Agency does visit non-registered premises. These premises will still be subject to other requirements of the Regulations. The Agency would continue to make sure that some enforcement checks are carried out in respect of these premises and take the necessary action as appropriate.</p>
<p>The qualifying limitation should be higher than 500kg per annum.</p>	<p>The current proposal was reached after lengthy discussion with the Agency on a reasonable level for premises with low risk.</p>
<p>It is difficult for companies to be sure that an “exempt” waste producer remains within the allowed threshold especially when several waste collectors are used.</p> <p>Carriers would be concerned that they would be committing an offence if collecting from someone who has produced more than</p>	<p>The same consideration applies under the current 200kg threshold regime. If a carrier themselves has collected more than 500kg from that premises, they should face penalties. However where a number of carriers have collected smaller amounts, the Agency would expect to focus its enforcement action on the producer.</p>

<p>500kg.</p> <p>Concerns that increasing the qualifying limitation should not increase the burden on carriers or operators to monitor the compliance of others.</p>	
<p>It's not clear if "exempt premises" would include premises such as schools involved in battery take back schemes.</p>	<p>As long as all hazardous waste produced at that premises including the batteries is less than 500kg the premises notification exemption would apply. Guidance will be issued to clarify that the HWR requirements are separate from permit requirements and that the HWR exemption applies only to the notification of premises producing hazardous waste and does not exempt these premises from other HWR requirements.</p>
<p>Asbestos should be defined as "cement bonded only".</p>	<p>The definition in the European Waste catalogue goes beyond this narrow definition.</p>
<p>Would householders have to consign small amounts of asbestos; some consultees felt that there is still some scope for contractors to leave asbestos for householders to dispose of.</p> <p>It may be prudent to place a 500kg per household per annum limit on domestic asbestos waste, to prevent contractors leaving large quantities of asbestos waste for the owner/occupier to dispose of at the local authority's expense.</p>	<p>We consider that the revised wording for the asbestos provision effectively clarifies the intentions of regulation 13.</p> <p>Any further points regarding consigning amounts of asbestos will be clarified in the accompanying guidance on the Environment Agency webpage <a href="http://www.environment-agency.gov.uk/business/topics/waste/32198.aspx">http://www.environment-agency.gov.uk/business/topics/waste/32198.aspx</a>.</p>
<p>The proposals for the multiple collection system and notes would increase the amount of paperwork and hence businesses' administrative burden.</p>	<p>The government will carry out a thorough review of the whole consignment note system and an analysis of the cost impact of any proposals on industry before making any further changes.</p>
<p>There should be a one-off registration fee for obligated waste producers, rather than having to renew</p>	<p>Annual notification ensures that the Agency's list of premises producing hazardous waste remains up-to date.</p>

registration each year.	
Simplified notes should be produced for “low risk wastes”.	The consignment note and all the information in it is required by the Hazardous Waste Directive and it is therefore not possible to legislate for something simpler. There may be some scope for individual businesses to use a different format for consignment notes as long as all the required information is included. Such cases would need to be discussed with the Environment Agency on a case by case basis.

### 3. The way forward

- I. We intend to implement most of the proposals consulted on in the light of the consultation responses (but see II below).
- II. Although there was a strong indication that the proposed changes to the consignment note system could have a cost impact for industry, there was also an appreciation that the current system needed some modification. In the light of this, we intend to delay making any changes to the consignment note system until we have carried out a further more thorough review. This review, which will look at various options for consignment notes, will include a thorough analysis of the impacts on business and the waste industry.
- III. However, we have decided to implement the proposal to widen the notification exemption from 200kg to 500kg as planned on 6 April 2009 so that businesses can benefit from this deregulatory change as soon as possible. We are also proceeding with the other minor clarifying changes.
- IV. The amendments will be effected by The Hazardous Waste (England and Wales) (Amendment) Regulations 2009 (“the amendment Regulations”). The amendment Regulations, which will apply to England only, will come into force on 6 April 2009. The amendment Regulations include a reference to Wales, simply because they are amending the 2005 Hazardous Waste Regulations, which actually apply in a small part to Wales.
- V. Guidance will be issued to clarify various points raised during the consultation. We intend to issue this guidance around the time that the amendment Regulations are laid before Parliament in March. This guidance may be found on the Environment Agency’s website at webpage <http://www.environment-agency.gov.uk/business/topics/waste/32198.aspx>.

- VI. Consultees, who have raised points which have a bearing on hazardous waste policy, albeit outside the scope of this consultation, will be contacted to provide further details.