SCOTTISH STATUTORY INSTRUMENTS

2004 No. 275

ENVIRONMENTAL PROTECTION

The Waste Management Licensing Amendment (Scotland) Regulations 2004

Made - - - - 9th June 2004
Laid before the Scottish Parliament - - - - 10th June 2004
Coming into force in accordance with regulation 1(2) and (3)

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and sections 29(10), 33(3) and 74(6) of the Environmental Protection Act 1990(**2**) and all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste Management Licensing Amendment (Scotland) Regulations 2004.

(2) Regulations 2, 4, 5, 9, 10, 12, 15, 16, 17, 21, 22 and 23 shall come into force on 12th July 2004.

(3) Except as specified in paragraph (2) above, these Regulations shall come into force on 12th January 2005.

(4) These Regulations extend to Scotland only.

Amendment of the Environment Act 1995

2.—(1) The Environment Act 1995(**3**) is amended in accordance with this regulation.

(2) In section 56(1) (interpretation of Part I), in the definition of "environmental licence" in the application of Part I of that Act to SEPA, for paragraph (j) substitute–

"(j) registration in respect of an activity falling within paragraphs 7, 8(2), 9, 10, 12, 12A, 19, 45(1) or (2) or 46 of Schedule 3 to those Regulations, except where the waste which

(**1**) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**2**) 1990 c. 43. The functions of the Secretary of State in so far as within devolved competence were transferred to Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**3**) 1995 c. 25. Section 56 was amended by the Pollution Prevention and Control Act 1999 (c. 24), Schedule 2, paragraph 17; by S.S.I. 2000/323, Schedule 10, paragraph 5(2) and by S.S.I. 2003/171, regulation 2(2).

is the subject of the activity consists of agricultural waste within the meaning of those Regulations,".

Amendment of the Waste Management Licensing Regulations 1994

3. The Waste Management Licensing Regulations 1994(**4**) are amended as set out in regulations 4 to 22 below.

4. In regulation 12 (mobile plant)–

(a) for paragraph (1)(d) substitute–

"(d) plant for the treatment of clinical waste;";

(b) at the end of sub paragraph (1)(e) insert–

";

(f) plant for the dewatering of muds, sludges, soils and dredgings;

(g) plant for the treatment by lime stabilisation of sludge;

(h) plant for the treatment of contaminated material, substances or products for the purpose of remedial action with respect to land or controlled waters"; and

(c) after paragraph (2) insert–

"(3) For the purposes of paragraph (1)(h), "controlled waters" has the meaning given by section 30A of the Control of Pollution Act 1974(**5**)

5. In regulation 16 (exclusion of activities under other control regimes from waste management licensing)(**6**), in paragraph (1)(bb), for "of Part A" substitute "Part A".

6. In regulation 17(2) (exemptions from waste management licensing), for the list of paragraphs of Schedule 3 substitute–

"4, 7, 8, 9, 11, 12, 12A, 13, 14, 15, 17, 18, 19, 25, 37, 40, 41, 45 or 46".

7. In regulation 18 (registration in connection with exempt activities)(**7**)–

(a) in paragraph (4C)(a), for "paragraphs 7, 9 or 19 of Schedule 3" substitute "paragraphs 7, 8, 9, 10, 12, 12A, 19 or 46 of Schedule 3";

(b) in paragraph (4C)(c) for "sub paragraph (d)" substitute "sub paragraphs (ca) and (d)";

(c) after paragraph (4C)(c) insert–

"(ca) In the case of a notice in relation to an exempt activity falling within paragraph 46 of Schedule 3, the relevant particulars shall be deemed to be entered in the register on the date which is requested in the notice, provided that–

(i) the notice was submitted to SEPA as soon as was practicable before the requested date; and

(ii) SEPA has not within the period prior to the requested date either entered the relevant particulars in the register or served a notice of refusal on the establishment or undertaking.";

(d) for paragraph (4D)(a) substitute–

(**4**) S.I.1994/1056; amended by S.I. 1994/1137, 1995/288, 1950, 1996/593, 634, 916, 972, 973, 1279, 1997/351, 2203, 1998/606, 2746, S.S.I. 2000/323, S.S.I. 2003/170 and S.S.I. 2003/171.
(**5**) 1974 c. 40; section 30A was inserted by the Water Act 1989 (c. 15), Schedule 23, paragraph 4.
(**6**) Regulation 16(1)(bb) was amended by S.S.I. 2003/170, Regulation 15.
(**7**) Regulations 18(4C) and (4D) were inserted by regulation 7 of S.S.I. 2003/171.

"(4D) Subject to sub paragraphs (b) and (c), SEPA may remove from the register the particulars which have been entered in relation to an exempt activity where it is satisfied that–

(i) the establishment or undertaking to which the relevant entry relates no longer exists or is no longer carrying out that activity;

(ii) the activity is no longer being carried out in compliance with the conditions or limitations of the relevant paragraph of Schedule 3 or with the relevant provisions of regulation 17(2) or (4); or

(iii) there has been a breach of any of the registration obligations in regulation 18A which apply in relation to an activity.";

(e) in paragraph (4D)(b), after "a date specified in the notice" insert "which shall be at least 28 days after the date on which the notice is served"; and

(f) for paragraph (6), substitute–

"(6) A person guilty of an offence under paragraph (1) above shall be liable on summary conviction to a fine not exceeding–

(a) in the case of an exempt activity falling within paragraphs 7, 8, 9, 10, 12, 12A, 19 or 46 of Schedule 3, level 3 on the standard scale; and

(b) in any other case, level 2 on the standard scale.".

8. In regulation 18A (registration obligations)(**8**)–

(a) in paragraph (1), for "paragraphs 7, 9 and 19 of Schedule 3" substitute "paragraphs 7, 8, 9, 10, 12, 12A, 19 and 46 of Schedule 3";

(b) in paragraph (2)(a), for 'At least' substitute–

"Except in the case of an exempt activity falling within paragraph 46 of Schedule 3, at least";

(c) for paragraph (2)(b) substitute–

"(b) Records shall be kept of the quantity, nature, origin, destination and method of recovery or disposal of all waste used in reliance upon an exempt activity falling within the following descriptions:–

(i) paragraphs 7, 8, 10 and 46;

(ii) paragraphs 9 and 19 where the volume of waste used exceeds 2,500 cubic metres;

(iii) paragraphs 12 and 12A where the volume of waste used exceeds 10 tonnes per annum;";

(d) in paragraph (2)(c), after "and shall be", insert "submitted to or"; and

(e) for paragraph (3) substitute–

"(3) A person who carries on an exempt activity–

(i) in breach of the registration obligations;

(ii) in breach of any of the conditions or limitations stipulated in the paragraph of Schedule 3 in respect of which the activity has been registered; or

(iii) in breach of the requirements of regulation 17(2) or (4),

(**8**) Regulation 18A was inserted by regulation 8 of S.S.I. 2003/171.

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.".

9. In Schedule 1A (certificates of technical competence)(**9**)–

(a) in paragraph 1, in Table 1, in the column headed "Type of Facility", in the entry corresponding to column number 6, for "insert" substitute "inert"; and

(b) in paragraph 2 (definitions)–

(i) in sub paragraph (c) of the definition of "inert waste", for "surface water of groundwater" substitute "surface water or groundwater", and

(ii) for "single waste stream site" substitute "single waste stream".

10. In paragraph 7 of Schedule 3 (treatment of land)(**10**)–

(a) in Part I of Table 2–

(i) in the entry for 03 01 05, omit "and veneer" and insert at the end of that entry "***"; and

(ii) in the entry for 03 03 01, after "wood", insert "(including virgin pulp)";

(b) in Part II of Table 2–

(i) in the entry for 02 01 99 after "livestock markets", insert ", animal faeces, urine and manure";

(ii) after the heading, "*wastes from pulp, paper and cardboard production and processing (03 03)*", insert–

"03 03 01	waste bark and wood (including virgin pulp)";

(iii) omit the entry for 03 03 05;

(iv) after the entry for 03 03 09 and before the heading, "*wastes from the leather and fur industry (04 01)*, insert–

"03 03 11	sludges from on-site effluent treatment plants treating only virgin paper wastes which contain no inks***
03 03 99	de-inked paper sludge from paper recycling, paper crumble derived from virgin pulp which contains no inks***";

(v) after the entry for 04 02 22 and before the heading, "*wastes from manufacture of cement, lime and plaster and articles and products made from them (10 13)*, insert–

"wastes from power stations and other combustion plants (except wastes from waste management facilities, off site waste water treatment plants and the preparation of water intended for human consumption and water for industrial use) (10 01)–

10 01 99	gypsum***"; and

(vi) in the entry for 10 13 04, for "wastes from calcination and hydration of lime" substitute "gypsum***"; and

(**9**) Schedule 1A was inserted by regulation 9 of S.S.I. 2003/171.
(**10**) A new paragraph 7 was inserted by S.S.I. 2003/171.

(c) in sub-paragraph (4), after paragraph (a), insert–

"(aa) the land to be treated by the waste does not exceed 50 hectares;".

11. For paragraph 8 of Schedule 3 (storage and spreading of sludge) substitute–

"**8.**—(1) Subject to sub paragraph (3), the storage in a secure container or lagoon (or, in the case of dewatered sludge, in a secure place) of sludge which is intended to be used–

(a) in accordance with the 1989 Regulations; or

(b) for land treatment in reliance upon the exemption conferred by sub paragraph (2).

(2) The treatment with sludge of land which is not agricultural land within the meaning of the 1989 Regulations if–

(a) it results in ecological improvement, or in the case of the treatment of land used for non-food crops not grown in short term rotation with food crops, it enhances the growth of those crops; and

(b) it does not cause the concentration in the soil of any of the elements listed in column 1 of the soil table set out in Schedule 2 to the 1989 Regulations to exceed the limit specified in the corresponding entry in column 2 of the table.

(3) Sub paragraph (1) applies only if the following conditions are satisfied:–

(a) the sludge is stored at the place where it is to be used;

(b) the sludge is stored at a distance of not less than–

(i) 10 metres from any inland or coastal waters;

(ii) 50 metres from any well, borehole or similar work sunk into underground strata for the purpose of any water supply other than a domestic water supply; and

(iii) 250 metres from any well, borehole or similar work sunk into underground strata for the purpose of a domestic water supply;

(c) no sludge is stored to the extent that the volume stored exceeds ninety per cent of the available capacity of the container or lagoon where the storage takes place; and

(d) no sludge is stored for a period of more than 6 months.

(4) For the purpose of this paragraph, enhancement of crop growth or ecological improvement shall be construed in accordance with Part 2 of Schedule 3A and any guidance issued under regulation 17(6) of these Regulations.

(5) In this paragraph–

(a) "the 1989 Regulations" means the Sludge (Use in Agriculture) Regulations 1989(**11**) and "used", in relation to sludge, has the meaning given by regulation 2(1) of the 1989 Regulations;

(b) "sludge" has the meaning given by regulation 2(1) of the 1989 Regulations, and "used", in relation to sludge, has the meaning given by that regulation; and

(c) "domestic water supply" means a supply of water–

(i) for such domestic purposes as consist in or include, cooking, drinking, food preparation or washing; or

(ii) for any of these domestic purposes to premises in which food is produced.".

12. In paragraph 9(3) of Schedule 3 (reclamation or improvement of land)(**12**)–

(**11**) S.I. 1989/1263, amended by S.I. 1990/880.

(**12**) A new paragraph 9 and Table 2A was inserted by regulation 10(b) of S.S.I. 2003/171.