Draft Regulations laid before Parliament and the National Assembly for Wales for approval by resolution of each of them. Approval is required by section 2(8) and (9)(d) and (e) of the Pollution Prevention and Control Act 1999.

DRAFT STATUTORY INSTRUMENTS

2009 No.

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Environmental Permitting (England and Wales) (Amendment) Regulations 2009

Made - - - -	***
Coming into force - -	*7th July 2009*

These Regulations are made in exercise of the powers conferred by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999(**1**).

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of that Act consulted—

(a) the Environment Agency;

(b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate; and

(c) such other bodies or persons as they consider appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) and (e) of that Act(**2**).

Accordingly, the Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make the following Regulations.

Citation, commencement and extent

1. These Regulations—

(**1**) 1999 c. 24. Functions of the Secretary of State under section 2 (except in relation to offshore oil and gas exploration and exploitation), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 3 of S.I. 2005/1958. Those functions were then transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006, c. 32.

(**2**) The reference in section 2(8) to approval by each House of Parliament has effect in relation to exercise of functions by the Welsh Ministers as if it were a reference to approval by the National Assembly for Wales by virtue of paragraph 33 of Schedule 11 to the Government of Wales Act 2006, c. 32.

(a) may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2009;

(b) come into force on 7th July 2009; and

(c) extend to England and Wales only.

Amendment of the Environmental Permitting (England and Wales) Regulations 2007

2. The Environmental Permitting (England and Wales) Regulations 2007(**3**) are amended in accordance with regulations 3 to 27.

Amendment of regulation 2 (interpretation: general)

3.—(1) Paragraph (1) of regulation 2 (interpretation: general) is amended as follows.

(2) After the definition of "appropriate authority", insert—

""Category A mining waste facility" means a mining waste facility that is classified as Category A under Article 9 of the Mining Waste Directive;".

(3) For paragraph (e) of the definition of "emission", substitute—

in relation to—

(i) a waste operation not falling within paragraph (a) to (d), or

(ii) a mining waste operation,

the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources related to the operation into the air, water or land;".

(4) After the definition "exemption registration authority", insert—

""existing mining waste facility" means a mining waste facility in operation on 1st May 2008;

"extractive waste" means waste within the meaning of Article 2(1) of the Mining Waste Directive, except where it is excluded from the scope of that Directive by Article 2(2)(a) and (b);".

(5) For the definition of "the IPPC Directive", substitute—

""the IPPC Directive" means Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control(**4**);".

(6) At the end of the definition of "landfill", insert—

", but does not include any operation excluded from the scope of that Directive by Article 3(2)".

(7) After the definition of "local authority", insert—

""the Mining Waste Directive" means Directive 2006/21/EC(**5**) of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive 2004/35/EC;

"mining waste facility" means a "waste facility" as defined in Article 3(15) of the Mining Waste Directive but excludes those facilities mentioned in Article 24(2) or in the first paragraph of Article 24(4) of that Directive;

"mining waste facility closure notice" means a closure notice served under paragraph 10 of Schedule 18B to these Regulations;

(**3**) S.I. 2007/3538 as amended by S.I. 2009/890.
(**4**) OJ No L 24, 29.1.2008, p8.
(**5**) OJ No L 102, 11.4.2006, p15.

"mining waste operation" means the management of extractive waste, whether or not involving a mining waste facility, but does not include the activities in Article 2(2)(c) of the Mining Waste Directive;".

(8) After the definition of "regulator", insert—

""regulator initiated variation" means the variation of an environmental permit on the initiative of the regulator under regulation 20(1);".

Amendment of regulation 8 (interpretation: regulated facility)

4.—(1) Regulation 8 (interpretation: regulated facility) is amended as follows.

(2) After paragraph (1)(d), add—

",

(e) a mining waste operation".

(3) Omit paragraph (2) and substitute—

"(2) An exempt waste operation is not a regulated facility within paragraph (1)(a) where it is an activity falling within section 5.3 or section 5.4 of Chapter 5 of Part 2 of Schedule 1 or a directly associated activity of that activity.

(3) An exempt waste operation is not a regulated facility within paragraph (1)(b) to (d).".

Amendment of regulation 12 (requirement for an environmental permit)

5. For regulation 12 (requirement for an environmental permit), substitute—

"**12.**—(1) No person may operate a regulated facility except under and to the extent authorised by an environmental permit.

(2) Paragraph (1) is subject to the transitional provisions in regulation 71A.".

Amendment of regulation 17 (single site permits etc.)

6. For regulation 17 (single site permits etc.), substitute—

"**17.** The regulator may authorise under a single environmental permit, the operation by the same operator—

(a) of more than one regulated facility on the same site;

(b) of more than one mobile plant; or

(c) of more than one standard facility (other than a standard facility to which the IPPC Directive applies),

but may not otherwise authorise the operation of more than one regulated facility under a single environmental permit.".

Amendment of regulation 24 (notification of the surrender of an environmental permit)

7. In paragraph (1)(b) of regulation 24 (notification of the surrender of an environmental permit), after "installation", insert ", except to the extent that it relates to a waste operation".

Amendment of regulation 31 (appeals to an appropriate authority)

8.—(1) Regulation 31 (appeals to an appropriate authority) is amended as follows.

(2) In paragraph (1)—

(a) for sub-paragraph (d), substitute—

"(d) a person who is aggrieved by a decision not to authorise the closure procedure mentioned in—

(i) Article 13 of the Landfill Directive after a request referred to in Article 13(a)(ii) of that Directive, or

(ii) Article 12 of the Mining Waste Directive after a request referred to in Article 12(2)(b) of that Directive;".

(b) in sub-paragraph (e), after "suspension notice" insert ", mining waste facility closure notice.

(3) For paragraph (2) substitute—

"(2) Paragraph (1) does not apply—

(a) where the relevant decision or notice implements a direction of the appropriate authority given under—

(i) regulation 61(1),

(ii) regulation 62(1),

(iii) regulation 62(6), or

(iv) paragraph (4); or

(b) where an application for the grant or variation of an environmental permit in relation to a Category A mining waste facility that is an existing mining waste facility is refused pursuant to paragraph 14(2) of Schedule 18B.".

Amendment of regulation 32 (discharge of functions)

9.—(1) Regulation 32 (discharge of functions) is amended as follows.

(2) At the start of paragraph (2), insert "Subject to paragraph 2A,".

(3) After paragraph (2), insert—

"(2A) Functions in relation to a waste operation carried out at a Part B installation are exercisable by the Agency.".

(4) After paragraph (5), add—

"(6) Functions in relation to a mining waste operation are exercisable by the Agency.".

Amendment of regulation 33 (direction to a regulator: discharge of functions by a different regulator)

10.—(1) Regulation 33 (direction to a regulator: discharge of functions by a different regulator) is amended as follows.

(2) For paragraph (4), substitute—

"(4) A direction under paragraph (1)(b) may not be made in relation to—

(i) a waste operation carried out other than at an installation or by means of mobile plant,

(ii) a mining waste operation.".

Amendment of regulation 35 (provision in relation to types of regulated facility)

11. At the end of regulation 35 (provision in relation to types of regulated facility), add—

";

(n) Schedule 18B (provision in relation to mining waste operations)".

Amendment of regulation 38 (offences)

12. In paragraph (1)(c) of regulation 38 (offences), after "suspension notice" insert ", a mining waste facility closure notice".

Amendment of regulation 42 (enforcement by the High Court)

13. In regulation 42 (enforcement by the High Court), after "suspension notice" insert ", mining waste facility closure notice".

Amendment of regulation 46 (duty of the regulator to maintain a public register)

14. After paragraph (7) of regulation 46 (duty of the regulator to maintain a public register), insert—

"(7A) Where information of any description is excluded from any public register under regulation 48, a statement must be entered in the register indicating the existence of information of that description.".

Amendment of regulation 63 (directions to the Agency: installations outside the United Kingdom)

15.—(1) Regulation 63 (directions to the Agency: installations outside the United Kingdom) is amended as follows.

(2) In paragraph (1), for "Article 17(1)", substitute "Article 18(1)".

(3) In paragraph (2), for "Article 17(2)", substitute "Article 18(2)".

Amendment of regulation 71 (transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant)

16.—(1) Regulation 71 (transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant) is amended as follows.

(2) For the cross heading "Transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant", substitute—

"Transitional provision: conversion of PPC permits, disposal licences or waste management licences resulting from applications in relation to existing Part A installations and mobile plant"

(3) After paragraph (3), insert—

"(3A) If an application to which this regulation applies relates to the operation of a landfill and the determination date for that application falls within sub-paragraphs (b) or (c) of paragraph 6 of Schedule 3 to the 2000 Regulations and occurs on or after 7th July 2009, paragraph (3B) applies.

(3B) On the determination date the disposal licence or waste management licence which authorised the operation of the landfill immediately before that date is deemed to be an environmental permit granted under regulation 13(1) to the extent that it contains closure and after-care obligations.".

(4) For paragraph (4), substitute—

"(4) In this regulation—