

Regulatory Position Statement - December 2017

The revised Waste Framework Directive - Regulation of Excluded Wastes

Introduction

The EU revised Waste Framework Directive (rWFD) 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 revised Waste Framework Directive came into force on 31 March 2011. The Waste (Northern Ireland) Regulations 2011 ('the Waste Regulations') transposed the rWFD in Northern Ireland. They give effect to Article 2 of the Directive, which excludes certain wastes from its scope. This Regulatory Position Statement clarifies how NIEA approach the regulation of these wastes.

Excluded Wastes

The effect of the Article 2 exclusions is that, some wastes do not require regulation under the rWFD. In particular, certain waste operations ceased 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.

Waste materials excluded from the rWFD?

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 Northern Ireland Environment Agency (NIEA) consider that, the negative impacts on human health and the environment should not be greater than, burning an equivalent non-waste solid fuel. It therefore, falls outside the rWFD and does not require a licence or exemption from the NIEA. Appliances with higher thermal inputs, 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 land spread outside the farm of origin

The revised Animal By-Products Regulation (rABPR) allows milk and colostrum to be spread outside the farm of origin without processing, provided the Department of Agriculture, Environment and Rural Affairs (DAERA) vets who regulate Animal By-Products, do 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, falls outside the scope of the rWFD and is regulated only under the rABPR. Milk and colostrum spread on the farm of origin are not excluded wastes because, the rABPR do not cover on-farm use. These continue to be regulated under a waste management licence or exemption by NIEA Regulation Unit.

3. Digestive tract content separated from the digestive tract

The rABPR allow this material to be spread on land provided that, DAERA vets do not consider it to present a risk of spreading any serious transmissible disease. The storage and spreading of this material fall outside the scope of the rWFD and will be regulated only under the rABPR.

4. Landspreading of processed animal protein

The rABPR allows Category 2 and 3 processed animal protein to be used for the manufacturing of organic fertilisers or soil improvers. This is subject to the process being approved under the rABPR for fertiliser production, as well as any additional requirements imposed by DAERA vets on the use of these fertilisers, such as grazing restrictions. This includes blood treated to fertiliser standards in an ABPR approved plant. The storing and spreading of this material falls outside the scope of the rWFD and is regulated only under the rABPR.

Animal carcasses

5. Pet crematoria

The rABPR provide rules for the disposal of carcasses by incineration and for the approval of plants by DAERA vets. The incineration of dead pets (including pre-incineration storage) in crematoria, with a capacity of less than 50kg per hour, did require a waste management licence or exemption from NIEA as a waste operation. This activity, because it is now approved by DAERA under the rABPR, falls out of scope of the rWFD and does not require a waste management licence from NIEA. However, any plant incinerating additional wastes e.g. veterinary waste, is likely to require approval from NIEA and DAERA vets. The ash resulting from the incineration, continues to be regulated as waste and must be recovered or disposed of in accordance with waste legislation.

6. Pet cemeteries

A waste management licence from NIEA is not required, as the operation is authorised by DAERA vets in accordance with the rABPR.

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 remains in force with respect to those non-excluded wastes.

Annex 1 - The 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 broad meaning of the exclusion in Para 2(2)(b) is that, wastes within the scope of the revised Animal By-Products Regulations (NI) 2011, will no longer be regulated under the rWFD, 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 are excluded from the scope of the rWFD, if they are disposed of in accordance with the current 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.