

2011 No. 101

ENVIRONMENTAL PROTECTION

The Landfill (Amendment) Regulations (Northern Ireland) 2011

Made - - - - *14th March 2011*

Coming into operation - *15th April 2011*

The Department of the Environment makes the following Regulations in exercise of the powers conferred by Article 4 of the Environment (Northern Ireland) Order 2002(a).

In accordance with Article 4(4) of that Order, the Department has consulted district councils and such bodies or persons appearing to it to be representative of the interests of district councils as it considers appropriate; such bodies and persons appearing to it to be representative of the interests of industry, agriculture and business as it considers appropriate; and such other bodies or persons as it considers appropriate.

Citation and commencement

1. These Regulations may be cited as the Landfill (Amendment) Regulations (Northern Ireland) 2011 and shall come into operation on 15 April 2011.

Amendment of the Landfill Regulations (Northern Ireland) 2003

2. The Landfill Regulations (Northern Ireland) 2003(b) are amended as follows.

Amendment of regulation 2 (interpretation)

3. In regulation 2(2)—

(a) immediately after the definition of “Chief Inspector”, insert—

““compliance notice” has the meaning given to it by regulation 15A(2);”

(b) for the definition of “operator”, substitute—

““operator” means—

(a) a person falling within the definition of “operator” in regulation 2(2) of the 2003 Regulations or is treated as an operator under regulation 2(3) of those Regulations;

(b) a person who held a disposal licence in respect of a landfill immediately prior to its cancellation or revocation in the specified period under Article 9(3) or 10(4) of the 1978 Order;

(c) a council which rescinded a resolution in respect of a landfill in the specified period under Article 13(4)(a) of the 1978 Order; or

(a) S.I. 2002/3153 (N.I. 7)

(b) S.R. 2003 No. 496

- (d) a person who held a waste management licence or site licence in respect of a landfill in the specified period.”
- (c) immediately after the definition of “disposal licence”, insert—
 - ““emergency” means a case in which it appears to the inspector in question—
 - (a) that there is an immediate risk of serious pollution; or
 - (b) that circumstances exist which are likely to endanger life or health, and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;”.
- (d) immediately after the definition of “inert waste”, insert—
 - ““inspector” means a person appointed under regulation 8(1) or (5) of the 2003 Regulations;”.
- (e) immediately after the definition of “operator”, insert—
 - ““premises” means any land, vehicle or vessel; and “vehicle” means any motor vehicle or trailer within the meaning of the Road Traffic (Northern Ireland) Order 1981(a);”.
- (f) immediately after the definition of “resolution” insert the following definitions in alphabetical order—
 - ““site licence” has the same meaning as in the 1997 Order;
 - “specified period” means the period commencing on 16th July 2001 and ending on 5th January 2004.”

Amendment of regulation 4 (cases where regulations do not apply)

- 4. For paragraph (d) of regulation 4, substitute—
 - “any landfill which finally ceased to accept waste for disposal before 16th July 2001.”

Amendment of regulation 15 (closure and after-care procedures for landfills)

- 5.—(1) For paragraph (1) of regulation 15, substitute—
 - “(1) The following closure and after-care procedures shall apply to landfills, other than those landfills to which regulation 15A applies.”.
- (2) After regulation 15, add—

“Compliance

- 15A.—(1) The following procedure shall apply to any landfill in respect of which—
 - (a) a disposal licence was revoked or cancelled under Article 9(3) or 10(4) of the 1978 Order;
 - (b) a resolution was rescinded by a Council under Article 13(4)(a) of the 1978 Order; or
 - (c) a site licence or waste management licence was surrendered under Article 13 of the 1997 Order,

in the specified period.

(2) The Chief Inspector shall, by notice served in writing (“compliance notice”) on the operator, impose requirements as to—

- (a) closure of the landfill;
- (b) maintenance, monitoring and control of the landfill;

(a) S.I. 1981/154 (N.I. 1)

- (c) monitoring and analysis of landfill gas and leachate from a landfill and the groundwater regime in the vicinity of a landfill in accordance with Schedule 3;
- (d) notification to the Chief Inspector of any significant adverse environmental effects revealed by any of the above measures.

(3) The Chief Inspector may, by notice in writing to the operator, modify the requirements specified in a compliance notice (whether by addition to, variation or withdrawal).

(4) The operator may, by notice in writing to the Chief Inspector, apply to modify the requirements specified in a compliance notice (whether by addition to, variation or withdrawal).

(5) The Chief Inspector shall, by notice in writing, notify the operator when he is satisfied that the requirements of a compliance notice have been fully met and that the condition of the land is unlikely to cause pollution of the environment or harm to human health.

Appeals from decisions with respect to compliance notices

15B.—(1) Where—

- (a) a compliance notice is served on the operator of a landfill; and
- (b) a requirement is imposed under a compliance notice; or
- (c) an application by the operator to modify the requirement specified in a compliance notice has been refused by the Chief Inspector,

the operator may appeal against the imposition of a requirement, or the refusal of an application to modify the requirement, by notice in writing to the Planning Appeals Commission (“the Commission”) together with a statement of the grounds of the appeal, before the expiry of the period of 2 months beginning with the date on which the requirement or refusal is notified to the operator.

(2) The Commission shall determine the appeal and paragraphs (1), (3) and (5) of Article 111 of the Planning (Northern Ireland) Order 1991 shall apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

(3) If either party to the appeal so requests, the Commission shall afford to each of them an opportunity of appearing before and being heard by the Commission.

(4) On receipt of an appeal under paragraph (1), the Commission shall give notice of the appeal to the Chief Inspector.

(5) Upon appeal, the Commission may uphold, revoke or modify a requirement and the requirements in a compliance notice shall have effect from the date of the determination of the appeal as upheld, revoked or modified by the Commission.

(6) While an appeal is pending in a case falling within paragraph (1), the requirement in question shall, subject to paragraph (7), be ineffective; and if the appeal is withdrawn the requirement shall become effective from the end of the day on which the appeal is withdrawn.

(7) Paragraph (6) shall not apply to a requirement imposed under a compliance notice in the case of which the notice includes a statement that in the opinion of the Chief Inspector the requirement is necessary for the preventing or, where that is not practicable, minimising pollution of the environment or harm to human health that that paragraph should not apply.

Power of the enforcing authority to prevent or remedy pollution

15C.—(1) If the Chief Inspector is of the opinion, as respects a landfill in respect of which a compliance notice has been served under regulation 15A, that there is an imminent risk of serious pollution, the Chief Inspector may arrange for steps to be taken to remove that risk.

(2) Where an operator fails to comply with the requirements of a compliance notice served on him under regulation 15A, the Chief Inspector (whether or not proceedings are instituted for an offence under regulation 33(1)(d) of the 2003 Regulations) may arrange for steps to be taken towards remedying the effects of that non-compliance.

(3) Where the Chief Inspector intends to arrange for steps to be taken under paragraphs (1) and (2) he shall, at least 7 days before the steps are taken, notify the operator in writing of the steps that are to be taken.

(4) Subject to paragraph (5), where the Chief Inspector arranges for steps to be taken under this regulation he may recover the cost of taking those steps from the operator concerned.

(5) No costs shall be recoverable under paragraph (4) where the Chief Inspector arranges for steps to be taken under paragraph (1) if the operator shows that there was no imminent risk of serious pollution requiring any such steps to be taken and no costs shall be recoverable which the operator shows to have been unnecessarily incurred by the enforcing authority.

Powers of Inspectors and others

15D.—(1) An inspector may, on production (if so required) of his authority, exercise any of the powers in paragraph (2) for the purpose of —

- (a) determining whether any requirements of a compliance notice are being, or have been complied with; or
- (b) making arrangements under regulation 15C to remove the risk of immediate pollution or remedy the effects of serious pollution.

(2) The powers of the inspector are—

- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with him—
 - (i) any person duly authorised by the chief inspector or, as the case may be, the district council and, if the inspector has reasonable cause to apprehend any serious obstruction to the execution of his duty, a constable; and
 - (ii) any equipment or material required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary.”.

Amendment of the Pollution Prevention and Control Regulations (Northern Ireland) 2003

6. The Pollution Prevention and Control Regulations (Northern Ireland) 2003(a) shall be amended as follows.

Offences

7. In regulation 33(1)(d), for “or a closure notice under regulations 16”, substitute—
“closure notice or compliance notice under regulations 15A or 16.”;

Enforcement by High Court

8. In regulation 34, after “enforcement notice”, insert—
“,compliance notice under the 2003 Landfill Regulations”;

(a) S.R. 2003 No. 46

Sealed with the Official Seal of the Department of the Environment on 14 March 2011.



Denis McMahon
A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Landfill Regulations (Northern Ireland) 2003 (“the Landfill Regulations”) which implement in part, Council Directive 99/31/EC on the landfill of waste in Northern Ireland.

Regulation 3 substitutes the definition of operator in the Landfill Regulations to include:-

1. “operator” within the meaning assigned to it by Regulation 2(2) and (3) of the Pollution Prevention and Control Regulations (Northern Ireland) 2003;
2. a person who held a disposal licence in respect of a landfill immediately prior to its cancellation or revocation in the period beginning on 16th July 2001 and ending on 5th January 2004 (“the specified period”);
3. a council which rescinded a resolution in respect of a landfill in the specified period under Article 13(4)(a) of the Pollution Control and Local Government (Northern Ireland) Order 1978; and
4. a person who held a waste management licence or site licence in respect of a landfill in the specified period.

Regulation 4 amends regulation 4(d) of the Landfill Regulations to provide that the Landfill Regulations do not apply to landfills which finally ceased to accept waste for disposal prior to 16th July 2001.

Regulation 5 amends regulation 15 of the Landfill Regulations (closure and after-care procedures for landfills) and introduces the following:-

1. a new regulation 15A making provisions for the Chief Inspector to serve a compliance notice, which shall include closure and after-care requirements, on the operators of landfills which are captured by the amended definition of “operator”. It shall be an offence to fail to comply with a notice served under regulation 15A.
2. a new regulation 15B which sets out an operator’s rights of appeal with respect to compliance notices, and any such appeal shall be heard by the Planning Appeals Commission.
3. a new regulation 15C making provision for the Chief Inspector to take steps to remove the risk of pollution and to recover the costs of taking those steps from the operator.
4. a new regulations 15D which sets out the entry, examination and investigation powers of inspectors.

Regulation 6, 7 and 8 amend the Pollution Prevention and Control Regulations (Northern Ireland) 2003 to make it an offence to fail to comply with the requirement of a compliance notice, including the option of taking proceedings to the High Court.

A copy of the partial Regulatory Impact Assessment for the Regulations, attached as part of the consultation document, may be found on the DOE website www.doeni.gov.uk/

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