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STATUTORY RULES OF NORTHERN IRELAND

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**2005 No. 300**

**The Hazardous Waste Regulations (Northern Ireland) 2005**

**PART 7**

**ENFORCEMENT**

**Inspections**

**42.**—(1) Any establishment or undertaking which produces hazardous waste shall be subject to appropriate periodic inspections by the Department.

(2) The Department shall carry out appropriate periodic inspections of collection and transport operations (including operations where the hazardous waste is transported following transfer between different carriers) as required pursuant to Article 13 of the Waste Directive and without prejudice to the generality of the requirement to conduct such inspections to conduct the inspections so that they cover more particularly the origin and destination of the hazardous waste.

(3) It is the duty of the Department to carry out such inspections together with inspections of the registers referred to within these Regulations at such intervals as it considers appropriate, having regard to the need to meet the requirements of Article 13 of the Waste Directive and Article 5(2) of the Hazardous Waste Directive.

**Offences**

**43.**—(1) Subject to paragraph (2) and (3), it shall be an offence for a person to fail to comply with a requirement imposed on that person by or under Parts 4, 5, 6 and 7 of these Regulations.

(2) It shall be a defence for a person charged with an offence under paragraph (1) to prove that he was not reasonably able to comply with the provision in question by reason of an emergency or grave danger and that he took all steps as were reasonably practicable in the circumstances for—

- (a) minimising any threat to the public or the environment; and
- (b) ensuring that the provision in question was complied with as soon as reasonably practicable after the event.

(3) It shall be a defence for a person charged with an offence under this regulation to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) A person who, in purported compliance with a requirement imposed by or under any of the foregoing provisions to furnish any information, makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, commits an offence.

(5) A person who intentionally makes a false entry in any record or register required to be kept by virtue of any of the foregoing provisions of these Regulations commits an offence.

(6) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of an offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(7) Where an offence under this regulation which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to, any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be liable to be proceeded against and punished accordingly.

### **General duties on the holder in the event of an emergency or grave danger**

**44.**—(1) In cases of emergency or grave danger, the holder of the hazardous waste shall—

- (a) take all lawful and reasonable steps to avert the emergency or grave danger; or
- (b) where it is not reasonably practicable to comply with paragraph (a), take all lawful and reasonable steps to mitigate the emergency or grave danger.

(2) For the purposes of paragraph (1) an act or omission may be considered lawful notwithstanding that it would, apart from this regulation, constitute a breach of these Regulations.

(3) Where the holder of hazardous waste knows or has reasonable grounds to believe that an emergency or grave danger has arisen, he has the duty to notify the Department as soon as reasonably practicable of the circumstances.

(4) Where the holder takes any step in compliance with paragraph (1), he shall, save where such step has completely averted the emergency or grave danger, notify the Department as soon as reasonably practicable; and for the purposes of this paragraph, an emergency or grave danger shall not be considered to have been completely averted if any release has taken place of a substance or object which is, or which there are reasonable grounds to believe is, hazardous waste, whether or not the holder believes he has completely destroyed, retrieved or rendered harmless the substance or object.

(5) In the event of notification pursuant to paragraph (3) or (4) being made orally, the holder shall confirm in writing to the Department the matters notified within seven calendar days of the oral notification.

(6) For the purposes of this regulation—

- (a) a person shall be considered to be the holder of hazardous waste notwithstanding that he would, apart from this sub-paragraph, have ceased to be the holder through the waste having left his possession or control due to release; and
- (b) a person shall not be considered to be the holder of hazardous waste notwithstanding that, apart from this sub-paragraph, he would be considered the holder due to the waste having coming into his possession or control due to release onto or into premises of which he is the occupier or of which he has possession or control.

### **Penalties**

**45.** Subject to regulation 43(2) and (3) and 44, a person who commits an offence under this regulation shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

## **Fixed penalties**

**46.**—(1) Where an authorised person acting on behalf of the Department has reason to believe that a person has committed an offence under regulation 43(1) to which this regulation applies, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) This regulation applies to an offence consisting of a failure to comply with any requirement of any of the following regulations—

- (a) regulation 23 (standard procedure for consignment notes);
- (b) regulation 26 (procedures for schedule of carriers);
- (c) regulation 27 (procedures for carrier's round).

(3) Where a person is given a notice under this regulation in respect of an offence—

- (a) no proceedings shall be instituted for that offence before the expiration of twenty eight days following the date of the notice; and
- (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

(4) A notice under this regulation shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—

- (a) the period during which, by virtue of paragraph (3), proceedings will not be taken for the offence;
- (b) the amount of the fixed penalty; and
- (c) the name of the person to whom and the address at which the fixed penalty may be paid; and, without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

(5) Where a letter is sent in accordance with paragraph (4) payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(6) A fixed penalty notice issued pursuant to this section shall be in the form set out in Schedule 9.

(7) The fixed penalty payable in pursuance of a notice under this regulation shall be £200.

(8) In any proceedings a certificate which—

- (a) purports to be signed by or on behalf of the authorised officer of the Department;
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

shall be evidence of the facts stated.