

**EXPLANATORY MEMORANDUM TO
THE POLLUTION PREVENTION AND CONTROL (ENGLAND AND WALES)
(AMENDMENT) REGULATIONS 2007**

2007 No. 713

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The amendment will remove some appliances, (gas engines utilising waste landfill gases on closed landfill sites) from the scope of the Pollution Prevention and Control (England and Wales) Regulations 2000 (S.I. 2000/1973, “the 2000 Regulations”). Such appliances will in future be regulated by the simpler, less costly and more appropriate waste management licensing regime (section 35 of the Environmental Protection Act 1990, c. 43).
- 2.2 The amendment applies to gas engine appliances with a rated thermal input of 3 megawatts or more, but less than 50 megawatts (“MW”), that use waste gases from closed landfill sites or on landfill where closure procedures have been initiated. These gas engine appliances use the gas produced from biological degradation of landfill waste as a fuel for the purposes of generating electricity.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

Only the points raised regarding consolidation in paragraphs 7.9 to 7.13 under the heading of “Policy Background”.

4. **Legislative Background**

- 4.1 The 2000 Regulations implement the 1996 Directive (1999/61/EC) concerning integrated pollution prevention and control (“the IPPC Directive”) and maintain long-standing controls on industrial pollution. The Regulations are over one hundred pages in length, and they are highly complex. It is inevitable that amendments needed to be made during the phasing in of the PPC regime to reflect the practical application of the regime on operators.
- 4.2 The IPPC Directive does not require small gas engine appliances (with rated thermal input of 3 megawatts or more, but less than 50 megawatts “MW”) to be subject to a pollution prevention and control (“PPC”) permit. Therefore the effect of this amendment to the Schedule 1 of the 2000 Regulations is such that where these gas engine appliances are regulated under the terms of a waste management licence then they will not require a PPC permit.

5. Territorial Extent and Application

The amendment applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The policy objective is to remove an unnecessary regulatory burden while at the same time maintaining adequate environmental protection. The change reflects Government policy to remove or reduce the burden of regulations where possible.
- 7.2 Without this amendment to the 2000 Regulations certain landfill gas engine appliances (with a rated thermal input of between 3 and 50 MW) that only burnt waste gases resulting from biological degradation of landfill as a fuel to produce electricity would require a PPC permit notwithstanding that this is not required under the IPPC Directive. Gas engine appliances with a rated thermal input of less than 3MW are not within the scope of the 2000 Regulations. The amendment will have the effect that in future such appliances will only fall to be regulated under the waste management licensing regime.
- 7.3 During the transitional period provided by Schedule 3 of the 2000 Regulations it was noticed that unless expressly excluded from Part A(1) of the Schedule 1 Section 1.1 (combustion activities) then these gas engine appliances that burnt such waste gases would require a PPC permit notwithstanding that this was not required by the IPPC Directive. It is considered to be more appropriate for such appliances to be subject to a waste management licence rather than a PPC permit.
- 7.4 The change is being made with the support of the affected industry and the regulator (the Environment Agency). The public consultation revealed no dissenting voice to the desirability of making this amendment.
- 7.5 Around 120 installations will be affected by this amendment. The amendment is of a minor and technical nature which is unlikely to be of interest outside the particular industry affected.
- 7.6 A 12 week public consultation (see Defra weblink at <http://defraweb/corporate/consult/ppc-amendregs3/index.htm>) closed on 12 January 2007. The consultation paper was sent to 180 organisations, this included industry, non-Government Organisations (NGOs), and regulators; 19 responses were received, of which:
- seven agreed with the amendment.
 - six agreed with the principle of the amendment but made suggestions for revision to the text of the amendment. The Department has responded by way of making amendments to the wording of the amendment to make it clearer.
 - six simply responded to say that they had no specific comment.

None of the responses disagreed with the amendment. A brief analysis of the Consultation responses are provided at Annex 1.

- 7.7 The use of self-regulation or voluntary code of practice is not appropriate because an amendment to the principal Regulations is required.
- 7.8 Operators likely to be affected by this amendment and the relevant trade association have received communication from the Environment Agency which explained the intention to make this amendment. The Environment Agency will update relevant operators following the coming into force of this amendment Regulation.
- 7.9 Defra has previously corresponded with both the JCSI and the Merits Committee on 28 February and 22 March 2006 to explain why it no longer proposes to consolidate the 2000 Regulations. The reason behind this change in policy is because the Department is now a long way down the line in preparing the ground for a new permitting and compliance programme that is known as the Environmental Permitting Programme (EPP).
- 7.10 The EPP is a better regulation initiative that will introduce a modernised common permitting and compliance platform for the future. The EPP is also a constituent element of the Department's initial regulatory simplification plan (known as "Lifting the Burden"), which can be located at: http://intranet/betterpolicy/documents/lifting_the_burden.pdf. This report sets out how the Department is cutting red tape and simplifying Regulations.
- 7.11 It is intended that the new Environmental Permitting (England and Wales) Regulations will replace the existing 2000 Regulations. In future the PPC permitting system and the waste management licensing system (which is subject to the Waste Management Regulations 1994 (S.I. 1994/1056)) will be subject to a single, streamlined environmental permit in England and Wales.
- 7.12 Defra has already completed two EPP public consultation exercises for the new permitting and compliance programme. The second consultation (<http://defraweb/corporate/consult/envpermitprog2/index.htm> which closed on 6 December 2006) included a draft affirmative resolution Environmental Permitting (England and Wales) Regulations (EP Regulations). It is proposed to send copies of those final Regulations to the JCSI in early summer for comment prior to preparing for Parliamentary motions to be debated after the summer recess. The Department is planning to introduce the EP Regulations as the successor to the 2000 Regulations and the Waste Management Regulations to come into force in April 2008. A third consultation has been launched on 15 January 2007 (<http://defraweb/corporate/consult/envpermitprog3/index.htm>) seeking views on its approach to procedural guidance.
- 7.13 Consolidation of an extremely lengthy existing Regulation just a short while before implementing the new EP Regulations would require the relevant regulators and the regulated businesses to adapt to two changes in quick succession. Each change would require substantial revision to the numerous guidance documents that are produced both by the Department and by the Regulators. In the meantime, an unofficial consolidated text of the 2000 Regulations is available on the Defra website for the benefit of those regulated by them.

8. Impact

An RIA was included with the public consultation in September. The RIA is provided at Annex 2

9. Contact

Official responsible for this amendment:

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Annex 1

Summary of responses to the consultation (16 October 2006 to 12 January 2007) regarding a proposed amendment to the Pollution Prevention and Control (England and Wales) Regulations 2000 (“the 2000 Regulations”) concerning certain gas engine appliances using waste gases from landfill.

1. The consultation concerned the removal of certain landfill gas engine appliances of between 3 – 50MW (aggregated capacity), which are used to convert landfill gas produced by the biological degradation of waste in a landfill from the list of activities covered by the permitting requirements of the 2000 Regulations.
2. Nineteen responses were received, including: six from those who had no comment to make of any kind; and seven who agreed with the amendment but who had no other comment to make. A list of the names of the organisations who responded is included at the end of this paper.
3. A number of organisations agreed with the principle of the amendment but thought that the text was unclear and might be improved. These organisations included:
 - Berwin Leighton Paniser,
 - Renewable Energy Association ,
 - Viridor Waste Management,
 - Environmental Services Association,
 - Veolia.The Government noted these concerns and the text of the amendment has subsequently been revised.
4. Veolia noted that the amendment as it was drafted in the consultation paper did not include landfill gas engines that although connected to the landfill site were not regulated under a Waste Management Licence. The Government agrees with this comment and the amendment has been altered to take this point into account.
5. Organisations who responded to the consultation.
 - Berwin Leighton Paniser
 - British Coatings Federation
 - Environmental Services Association
 - Institute of Directors
 - Neath & Port Talbot council
 - NSCA
 - Ofwat
 - Pembrokeshire CC
 - Premier Waste Management Ltd
 - Renewable Energy Association
 - SEPA
 - Snowdonia National Park
 - Thames Water Utilities
 - The Law Society
 - UK Cleaning Products Industry Association
 - Veolia

Viridor Waste Management.
Wales Council of Voluntary Action

6. Further Enquiries

If you would like to discuss this consultation with an Official please contact:
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Annex 2

Regulatory Impact Assessment on proposed amendment of the Pollution Prevention and Control (England and Wales) Regulations 2000 (“the 2000 Regulations”) concerning certain landfill gas engine appliances.

January 2007

Risk and Annual Review

1. Title of proposal

Proposal to make minor amendments to the Pollution Prevention Control (England and Wales) Regulations 2000 (the “2000 Regulations”). The S.I. will be known as the Pollution Prevention Control (England and Wales) (Amendment) Regulations 2007.

2. Purpose and intended effect

Objective

To amend the 2000 Regulations to remove from the list of activities, installations and mobile plant to which the Regulations apply, certain landfill gas engines of between 3 – 50MW (aggregated capacity), which are used to convert landfill gas produced by the biological degradation of waste in a landfill into electricity.

The amendment will apply to gas engines that are situated on landfills that are not subject to the requirement for a PPC permit, but which continue to be

regulated under the Waste Management Licensing¹ (WML) regime. This will include landfills that are closed and landfills where closure procedures have been initiated in accordance with Schedule 4 and Regulation 15 of the Landfill Regulations 2002².

The gas engines to which the amendment applies will continue to be regulated under the WML regime and operators will no longer be required to apply for a separate PPC permit for the activity. This degree of regulation is believed to be appropriate and proportionate.

2. Background

In their current form, the 2000 Regulations provide that landfill gas engines of between 3 – 50MW (aggregated capacity) operating on landfill sites require a PPC permit. However This is not a requirement of the IPPC Directive which only applies to combustion installations with a rated thermal input exceeding 50MW.

It has recently been brought to Defra's attention by the industry that where landfill gas engines are situated on landfills that are not subject to the requirement for a PPC permit, but which continue to be regulated under the WML regime, operators are required under the PPC Regulations to apply for a separate PPC permit for the landfill gas engine. This includes closed landfills and landfills where closure procedures have been initiated.

The Government considers that these landfill gas engines can be adequately regulated by the WML regime.

This proposal is supported by both the Regulator and the affected industry.

3. Rationale for government intervention

As described in paragraph 2 above.

4. Consultation

A Consultation took place between 16 October 2006 and 12 January 2007.

5. Options

The alternative would be for these engines to remain caught by Section 1.1 of Schedule 1 to the 2000 Regulations. This is unnecessary because it is not required by the IPPC Directive, and has no benefit in terms of environmental

¹ Environment Protection Act 1990 c.43, and the Waste Management Licensing Regulations 1994 (S.I. 1994 / 1056).

² Landfill (England and Wales) Regulations 2002 (S.I. 2002/1559).

protection. The amendment clarifies a minor technical issue in the Regulations that is supported by both the Regulator and the industry.

To “do nothing” will only maintain the unnecessary duplication whereby such gas engine appliances would be regulated under both the WML and the PPC regimes.

6. Costs and benefits

The proposal can be justified on the basis that:

There will otherwise be a duplication of permitting regimes. Unless this amendment is made to the 2000 Regulations some sites which already have a WML will require a separate PPC permit to operate such small landfill gas engines on closed landfill sites. The cost of making such an application is considered to be about £5000.

We have been informed that unless this situation is addressed then some operators may choose not to introduce such gas engines to make good use of the waste gases so as not to incur the administrative burden and extra expense of applying for a PPC permit.

Taking these small gas engines out of the PPC regime is likely to result in some fairly minor increased cost to the Environment Agency as the regulator of such sites because existing WMLs for such closed landfill sites will need to be reviewed. The Agency will be unable to recover these costs from the Operator. However, these costs are not considered by the Agency to be significant.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed: Ben Bradshaw

Date: 6th March 2007

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