



LANDFILL DIRECTIVE
REGULATORY GUIDANCE NOTE 14 (version 2.4)
THE DUTY OF CARE AND THE EUROPEAN WASTE CATALOGUE

This note has been produced as advice for Environment Agency staff. It is based on the Agency's current understanding of the legislative requirements which may be subject to change. You are welcome to share it with persons outside the Agency.

Purpose and Context

The purpose of this note is to provide guidance on the practical application of the European Waste Catalogue (EWC) to the Environmental Protection (Duty of Care) Regulations 1991 (the Duty of Care Regulations) as required by the Landfill (England and Wales) Regulations 2002¹ (the Landfill Regulations).

It summarises the current requirements, the relevant changes introduced by the Landfill Regulations and the Agency's proposed actions to deal with these.

What is the European Waste Catalogue?

The EWC is a hierarchical list of waste descriptions established by Commission decision 2000/532/EC². It is divided into twenty main chapters, most of which are industry-based but some of which are based on materials and processes. Each of these has a two digit code between 01 and 20. Chapters have one or more subchapters (with four figure codes, the first two of which are the two digits of the chapter). Within these there are codes for individual wastes each of which is assigned a six figure code.. Hazardous wastes are signified by entries where the code is followed by an asterisk.

Effect of the Landfill Regulations on the Duty of Care

The Landfill Regulations amend the Duty of Care Regulations to require that from 31 August 2002, a Duty of Care transfer note identifies the waste to which it relates by reference to the appropriate codes in the EWC.

These changes are not reflected in the current statutory code of practice for the Duty of Care, which will require amendment to reflect them.

¹ The Landfill Regulations 2002 (SI 2002 No 1559), implement certain requirements of the European Directive on the Landfill of waste (99/31/EC), (the Landfill Directive). Although the EWC is implemented from the 31 August 2002, the requirements relating to what wastes different classes of landfill can receive will require operators of landfill sites to be aware of the effects of the introduction of the EWC on the status of waste as hazardous or non-hazardous or inert.

² The EWC was originally established by Commission Decision 94/3/EC. It was replaced by 2000/532/EC and amended by Decisions 2001/118/EC, 2001/119/EC and 2001/216/EC. The full EWC is available from the European Commission's web-site at http://europa.eu.int/eur-lex/en/lif/reg/en_register_15103030.html

Also, by 16 July 2002 all operators of landfill sites should have submitted to the Agency a site conditioning plan, which will either state the classification proposed for their site (hazardous, non-hazardous or inert) and how the requirements will be met; or the actions proposed to close the landfill site.

Importantly, from 16 July waste defined as hazardous by the EWC (i.e. those where the description matches an entry with an asterisk) can only go to a landfill site classified as - hazardous.

Differences between special and hazardous wastes

Those wastes which are more difficult or dangerous to dispose of are defined as special wastes³. These wastes require every movement to be covered by a uniquely numbered consignment note (available from the Agency). Properly completed, a consignment note satisfies the waste transfer note requirements of the Duty of Care. Although the vast majority of hazardous wastes are special, the implementation of the EWC has introduced some wastes as hazardous which are not currently special and therefore which may not be obvious to a holder. Examples of such wastes include separately collected fluorescent light tubes, and refrigerators and scrap cars which have not been “depolluted”.

These wastes, termed *newly hazardous*, need to be identified by the holder. A special waste consignment note is not required, although it can be used and therefore ***their hazardous status should be clearly signified*** on the waste transfer note. The holder must ensure that they go to a suitably licensed or permitted facility and, in particular, if going for disposal to landfill, they only go to a suitable landfill classified as hazardous.

Practical application of Duty of Care

The Duty of Care is an important requirement of the Environmental Protection Act 1990. Essentially it requires that a waste holder (producer, carrier or disposer) takes all reasonable steps to ensure there is no unauthorised deposit, treatment, keeping or disposal of controlled wastes, that it does not escape from their control, and is only transferred to an authorised person together with a written description of the waste.

The primary means by which this is achieved is by providing sufficient information to enable subsequent holders to manage the waste without threat to the environment or human health and in particular to ensure it is accepted and managed in accordance with the conditions of a waste management licence or PPC permit.

There are more than one and a half million businesses in England and Wales. It is estimated that more than half of these have their waste removed by a waste management contractor as industrial or commercial waste. The Agency recognises that full implementation of the requirement for waste producers to declare the correct EWC on waste transfer notes is not likely to be achieved for some time.

Holders of waste must continue to comply responsibly with the Duty of Care. It is particularly important that:

³ Under the Environmental Protection (Special Waste) Regulations 1996, as amended.

- a) a full written, accurate description of the waste is provided to the next holder;
- b) where the waste is destined for landfill, holders must establish whether or not it is hazardous;
- c) after 31 August 2002, wherever reasonably practicable the description should include the relevant EWC code(s).

Subject to a) to c) above, in accordance with the Agency's Enforcement and Prosecution Policy, the Agency will not normally prosecute for an offence which is solely a failure to use the EWC code.

This will remain our position until we have completed and published any revisions resulting from the comments we receive. The publication will be at least six weeks prior to full implementation.

Detailed guidance

The Agency intends before 31 August to issue interim guidance setting out how we propose to implement the EWC in relation to Duty of Care transfer notes, waste management licences and site returns [and indicating any proposed changes that might be required to be made by DEFRA to the statutory Code of Practice]. Our intention is to seek comments on this guidance and fully implement it, after taking any responses fully into account, from 1 January 2003.

The guidance will set out the Agency's proposals for dealing with:

Using the EWC

Coding hazardous wastes

Identifying *newly hazardous* wastes

Missing codes

Imprecise descriptions

Grouping codes to facilitate licensing

The need for clarity over what is inert waste and codes that relate specifically to municipal solid waste

The need to identify whether or not a waste has been treated

Dealing with general wastes and mixed loads

Coding of multiple loads

Timing of the requirement to use new codes

Summary Interim advice

Until such time as the draft guidance is issued for comment, the Agency position is as follows:

1. That these matters will be set out in draft Agency guidance, expected to be published before 31 August 2002.
2. Holders of waste must continue to comply responsibly with the Duty of Care after 31 August 2002. This includes providing a full written description of the waste, ensuring there is no unauthorised deposit, treatment, keeping or disposal of controlled wastes,

that the waste does not escape from their control (or that of another person), and is only transferred to an authorised person.

3. In particular, holders must ensure now that hazardous wastes are only sent for landfill disposal to landfill sites which are classified as hazardous. This means paying particular attention to *newly-hazardous* wastes – those wastes which are non-special (and therefore not covered by a consignment note) but fall within an asterisked entry in the EWC.
4. If waste producers can use the EWC to code their wastes, they should do so as soon as practicable, although they might find it helpful to await the draft guidance.
5. The Agency will not permit the use of the “99” codes for waste “not otherwise specified” as these conflict with our duties in relation to preventing pollution of the environment and harm to human health.
6. Where the Agency does add additional codes, these will be additional six figure codes and not seven or eight digit codes.
7. When fully implemented, waste descriptions will include the EWC, the industry code (Standard Industrial Classification) and the post code.
8. The Agency currently expect to implement the scheme in full from 1 January 2003.