1981 No. 252

PUBLIC HEALTH

The Pollution Control (Special Waste) Regulations (Northern Ireland) 1981

Made . . . . . *24th July 1981*

Coming into operation . . . *4th January 1982*

The Department of the Environment, in exercise of the powers conferred on it by Articles 17(1)(*a*), (*d*) and (*e*), (2)(*b*) and (*d*), (3)(*a*), (*b*) and (*c*), 36(4)(*a*) and (*b*) and 86 of the Pollution Control and Local Government (Northern Ireland) Order 1978(**a**) and of every other power enabling it in that behalf, hereby makes the following regulations:—

PART I: INTRODUCTORY

Citation and commencement

1. These regulations may be cited as the Pollution Control (Special Waste) Regulations (Northern Ireland) 1981 and shall come into operation on 4th January, 1982.

Interpretation

2.—(1) In these regulations:—

"carrier", "consignment note", "disposer" and "producer" have the meanings respectively assigned to them in regulations 5(5), 5(1), 7 and 5(1);

"the Order" means the Pollution Control and Local Government (Northern Ireland) Order 1978.

(2) Any reference in these regulations to a numbered Article shall be construed as a reference to the Article bearing that number in the Order.

Meaning of special waste

3.—(1) The term "special waste" shall apply to any controlled waste which—

(*a*) consists of or contains any of the substances listed in Part I of Schedule 1 and by reason of the presence of such substance,

(i) is dangerous to life within the meaning of Part II of Schedule 1, or

(ii) has a flashpoint of 21 degrees Celsius or less as determined by the methods and with the apparatus laid down by the British Standards Institution in BS 3900: Part A, 8: 1976 (EN53) or

(*b*) is a medicinal product, as defined in section 130 of the Medicines Act 1968(**b**), which is available only in accordance with a prescription given by an appropriate practitioner as defined in section 58(1) of that Act.

(**a**) S.I. 1978/1049 (N.I. 19)
(**b**) 1968 c. 67

Certain radioactive waste to be special waste

4.—(1) Article 17 shall have effect, without modification, so as to empower the Department to make provision for waste which would be controlled waste but for the fact that it is radioactive waste within the meaning of Article 36(4) and, subject to section 9(1) of the Radioactive Substances Act 1960(**a**), regulation 3(1) shall apply to any such waste as if it were controlled waste.

(2) In Part III of Schedule 1 to the Radioactive Substances Act 1960, after paragraph 26 there shall be inserted the following paragraph:

"27. The Pollution Control (Special Waste) Regulations (Northern Ireland) 1981."

PART II: CONSIGNMENT NOTES

Duties of producers

5.—(1) Any person who produces special waste (in these regulations referred to as "the producer") shall, before any such waste is removed from the premises at which it is produced, prepare six copies of the form set out in Schedule 2 (in these regulations referred to as "the consignment note"), shall complete parts A and B and shall furnish one copy to the district council for the district in which it is to be disposed of.

(2) A producer may prepare fewer than six copies of the consignment note if he has reasonable grounds to suppose that a lesser number will be needed.

(3) Copies of consignment notes for the purposes of regulation 5(1) must be furnished not more than one month and not less than three clear days before the removal of the waste and in reckoning this period of days any Saturday, Sunday or public holiday shall be disregarded.

(4) A copy shall be treated as furnished in accordance with regulation 5(3) if it is so posted as to arrive in the ordinary course of post in compliance with the time limit there specified.

(5) Any person who transfers special waste from the premises at which it is produced to another person for disposal (in these regulations referred to as "the carrier") shall, before any such waste is removed from those premises, complete Part C of the consignment note and the producer shall then complete Part D.

(6) The producer shall retain one copy of the consignment note on which Parts A, B, C and D have been completed and, if the waste is to be disposed of in the district of a council other than that in whose district the waste was produced, shall forthwith furnish another such copy to the council for his own district.

(7) The producer shall furnish all the remaining copies to the carrier.

Duties of carriers

6.—(1) The carrier shall transmit the copies furnished to him under regulation 5 to the disposer and shall retain one copy of the consignment note on which Parts A, B, C, D and E have been completed.

(2) A district council shall not be obliged to comply with this regulation in respect of waste collected by them within their own district and disposed of within that district.

(**a**) 1960 c. 34

Duties of disposers

7.—(1) Any person who disposes of special waste (in these regulations referred to as "the disposer") shall, on receiving a consignment of such waste—

(*a*) complete Part E of the consignment note on three of the remaining copies;

(*b*) retain one copy;

(*c*) forthwith furnish one copy to the district council in whose district the waste was produced; and

(*d*) forthwith furnish one copy to the carrier.

(2) A copy shall be treated as furnished to the district council in accordance with regulation 7(1)(*c*) if it is posted to them by first class mail within one day of the receipt of the consignment and in calculating this period any Saturday, Sunday or public holiday shall be disregarded.

(3) A district council shall not be obliged to comply with this regulation in respect of waste collected by them within their own district and disposed of within that district.

Importers and exporters

8.—(1) These regulations shall apply to a person who imports special waste into Northern Ireland as they apply to a producer and as if the waste were produced at the place where it first enters Northern Ireland.

(2) Regulation 7 shall apply to a person who exports special waste from Northern Ireland as it applies to a disposer.

Pipelines and on-site disposal

9. Nothing in regulation 5, 6, 7 and 8 shall require records to be kept of any waste disposed of by pipeline or within the curtilage of a factory or other premises at which it has been produced.

Part III: Exception for Regular Consignments

Directions by district councils

10.—(1) A district council may direct, in writing, that any named producer or disposer may in respect of any special waste to be produced in their area furnish copies of his consignment notes to them, and to any other district council to whom he is obliged to furnish such copies, at intervals not exceeding twelve months and not in accordance with regulations 5 and 7.

(2) In deciding whether to give such a direction a district council shall have regard to the frequency at which consignments of special waste having a similar composition are transferred for disposal to the same site.

(3) A district council may revoke a direction by notice in writing.

Disposal in another council's district

11.—(1) Where a district council proposes to make a direction under regulation 10 in respect of waste which is to be disposed of in the area of another district council it shall be their duty, before they do so—

(*a*) to refer the proposal to that council; and

(*b*) to consider any representations about the proposal which they receive from the council within 21 days or such longer period as may be agreed in writing.

(2) If the district council to which a proposal has been referred request, within the period specified above, that a direction should not be given, either council may refer the matter to the Department and no direction shall be given except in accordance with its decision.

Appeals

12.—(1) A producer or disposer may apply in writing for a district council to make a direction under regulation 10 and if they refuse to do so may appeal to the Department and where on such an appeal the Department determines that the decision is to be altered it shall be the duty of the district council to give effect to the determination.

(2) If within the period of two months beginning with the date on which a district council receive an application under paragraph 1 or within such longer period as the council and the applicant may at any time agree in writing, the council have neither made a direction nor given notice to the applicant that they refuse to do so, the council shall be deemed to have refused to make a direction.

(3) Notice of appeal under paragraph 1 shall be given in writing within six months of the date of the refusal or deemed refusal or such longer period as the Department may at any time allow.

Forecasts

13.—(1) Where a direction under regulation 10 has been made the producer or disposer named therein shall at three-monthly intervals prepare a forecast of the special waste the removal or disposal of which he expects to notify in accordance with the direction at the end of the following three months and shall forthwith furnish copies of the forecast to the district council who made the direction and, in the case of a producer whose waste is to be disposed of in the area of another district council, to that council.

(2) Where special waste materially different from that recorded in the forecast is to be removed or disposed of, the producer or disposer, as the case may be, shall furnish notice of amendment of the forecast to any district council to whom the forecast was sent.

Part IV: Registers and Site Records

Registers

14.—(1) A producer shall keep at each site a register containing copies of all consignment notes relating to special waste produced at that site.

(2) A carrier shall keep a register containing copies of all consignment notes relating to special waste which he has transferred for disposal.

(3) A disposer shall keep at each site a register containing copies of all consignment notes relating to special waste disposal of at that site, provided that a district council shall not be obliged to keep such a register in respect of a site within its own area.

(4) Producers and carriers shall keep each consignment note in the register for not less than two years from the date on which the waste to which it relates was removed from the premises where it was produced.

(5) A disposer shall keep the register until his disposal licence is surrendered or revoked and shall then furnish the register to the district council in whose district the site is situated.

Site records

15.—(1) Any person who makes a deposit of special waste on land shall record the location of each such deposit, shall keep such records until his disposal licence is surrendered or revoked and shall then send the records, for retention, to the district council in whose district the site is situated.

(2) Such records shall comprise either—

(*a*) a site plan marked with a grid; or

(*b*) a site plan with translucent overlays on which deposits are shown in relation to the contours of the site.

(3) Deposits shall be described in such records by reference to the register of consignment notes kept under regulation 14, save that where either—

(*a*) waste is disposed of by pipeline or within the curtilage of a factory or other premises at which it is produced, or

(*b*) a district council dispose of waste on a site within their own district,

the deposits shall be described by reference to a record of the composition of the waste and the date of its disposal.

(4) In the case of liquid wastes discharged without containers into underground strata or disused workings the record shall comprise only a written record of the quantity and composition of special waste so discharged.

PART V: DIRECTIONS AS TO THE DISPOSAL OF SPECIAL WASTE

16.—(1) The Department may give a direction in respect of any place in respect of which a disposal licence under Article 7 or a resolution in pursuance of Article 13 is in force.

(2) Such a direction may require the holder of a disposal licence, or the council which passed the resolution to accept and dispose of at the place, on such terms as are specified in the direction (including terms as to the making of payments to the recipient of the direction), such special waste as is so specified.

(3) Where the Department proposes to give a direction under this regulation it shall (except in case of emergency) give not less than 28 days' notice to the person who is to receive it and shall have regard to any representations it receives from that person within that period.

PART VI: ENFORCEMENT

Offences

17.—(1) A producer, disposer or carrier who fails to comply with any provision of these regulations other than regulation 16 shall be liable on summary conviction to a fine not exceeding £1,000 or on conviction on indictment to imprisonment for a term not exceeding two years and a fine.

(2) Any person who fails to comply with a direction under regulation 16 shall be liable on summary conviction to a fine not exceeding £400.

(3) In any proceedings for an offence under these regulations it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(4) In any proceedings for an offence under regulation 5, 6 or 7 it shall be a defence for the person charged to prove that he was not reasonably able to comply with the regulation in question by reason of an emergency and that he took all reasonable steps to ensure that the necessary copies of consignment notes were completed and furnished as soon as practicable after the event.

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

Responsible authorities

18. The district council for the district in which special waste is produced or into which it is imported from abroad shall so supervise the keeping of records under Part II as to ensure that the requirements of that Part are complied with.

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 24th July 1981.

(L.S.) *J. F. Younger*
Assistant Secretary

SCHEDULE 1 Regulation 3

PART 1

Listed Substances

Acids and alkalis
Antimony and antimony compounds
Arsenic compounds
Asbestos (all chemical forms)
Barium compounds
Beryllium and beryllium compounds
Biocides and phytopharmaceutical substances
Boron compounds
Cadmium compounds
Copper compounds
Heterocyclic organic compounds containing oxygen, nitrogen or sulphur
Hexavalent chromium compounds
Hydrocarbons and their oxygen, nitrogen and sulphur compounds
Inorganic cyanides
Inorganic halogen - containing compounds
Inorganic sulphur - containing compounds
Laboratory chemicals
Lead compounds
Mercury compounds
Nickel and nickel compounds
Organic halogen compounds, excluding inert polymeric materials
Peroxides, chlorates, perchlorates and azides
Pharmaceutical and veterinary compounds
Phosphorous and phosphorous compounds
Selenium and selenium compounds
Silver compounds
Tarry materials from refining and tar residues from distilling
Tellurium and tellurium compounds
Thallium and thallium compounds
Vanadium compounds
Zinc compounds

PART II

Meaning of "dangerous to life"

1. Waste is to be regarded as dangerous to life for the purposes of these regulations if—

(*a*) a single dose of not more than five cubic centimetres would be likely to cause death or serious damage to tissues if ingested by a child of 20 kilograms body weight;

(*b*) exposure to it for fifteen minutes or less would be likely to cause serious damage to human tissue, by inhalation, skin contact or eye contact.

Assessing effect of ingestion

2.—(1) The likely effect of ingestion is to be assessed by the use of reliable toxicity data in the following order of preference:—

Class 1: information about the effect of oral ingestion by children;

Class 2: data derived by extrapolation from information about the effects of oral ingestion by adults;

Class 3: other information about human toxicity;

Class 4: information about animal toxicity;

Class 5: information about the toxicity of analogous chemicals.

(2) Where conclusive information falling within one of the classes set out in sub-paragraph (1) is available no regard shall be paid to information falling within a class bearing a higher number, and the reference to using data in an order of preference is to be understood accordingly.

(3) Where the waste is in such a form that—

(*a*) the ingestion of less than five cubic centimetres is not possible; or

(*b*) there is no risk that a toxic constituent could be assimilated if the waste were to be ingested,

then it is not to be regarded as dangerous to life by reason of sub-paragraph 1(*a*).

Mixed waste: samples

(4) Waste is to be regarded as dangerous to life if a sample of five cubic centimetres taken from any part of a consignment falls within either of the descriptions in paragraph 1.

SCHEDULE 2 Regulation 5

Department of the Environment (Northern Ireland) CONSIGNMENT NOTE FOR THE CARRIAGE AND DISPOSAL OF HAZARDOUS WASTES	Serial No.

Producer's Certificate

A

(1) The material described in B is to be collected from .....

.....

and (2) taken to .....

.....

Signed..... Name.....

On behalf of .. Position .....

Address and telephone.....

.....

..... Estimated date of collection

.....

Description of the Waste

B

(1) General description and physical nature of waste

(2) Relevant chemical and biological components and maximum concentrations

(3) Quantity of waste and size, type and number of containers

(4) Process(es) from which waste originated

Carrier's Collection Certificate **C**	I certify that I collected the consignment of waste and that the information given in A(1) and (2) and B(1) and (3) is correct, subject to any amendment listed in this space: I collected this consignment on .....at.....hrs. Signed.....Name ..... Vehicle Registration No. ..... On behalf of..... Address and telephone .....Date..... .....
Producer's Collection Certificate **D**	I certify that the information given in B and C is correct and that the carrier was advised of appropriate precautionary measures. Signed..... Name ..... Telephone ..... Date .....
Disposer's Certificate **E**	I certify that Waste Disposal Licence No. .....issued by .....Council, authorises the treatment/disposal at this facility of the waste described in B (and as amended where necessary at C). Name and address of facility .... The waste was delivered in vehicle (Reg. No.)..... at.....hours on (date).....and the carrier gave his name as.....on behalf of ..... Proper instructions were given that the waste should be taken to ..... Signed..... Name..... Position ..... Date ..... On behalf of.....
For use by Producer/ Carrier/ Disposer	

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations give effect to certain provisions of Community Legislation, contained in Council Directive No. 78/319/EEC (O.J. No. L84, 31.3.78, pp. 43 to 47) concerned with toxic and dangerous waste. This is achieved by use of the Department's existing power, under Article 17 of the Pollution Control and Local Government (Northern Ireland) Order 1978 ("the 1978 Order"), to designate waste which is dangerous or difficult to dispose of as "special waste".

Regulation 3 together with Schedule 1 provides that waste falling within certain descriptions is to be regarded as special waste. The descriptions extend to inflammable substances, medicines available only on prescription, substances likely to cause death or serious damage on ingestion and substances likely to cause damage by inhalation, skin contact or eye contact. Rules are laid down by which substances are to be tested for these effects.

Regulation 4 deals with radioactive waste: such waste will be special waste if it has dangerous properties other than radioactivity which would bring it within the meaning of Regulation 3. Under these regulations, however, no account is taken of its radioactivity, precautions against which are dealt with under the Radioactive Substances Act 1960.

Part II prescribes a system of consignment notes to be used by those who produce, transfer for disposal or dispose of special waste. Every consignment of waste will be accompanied by a number of copies of the consignment note when it leaves the place of its production. The notes will travel with it on the road and copies will be supplied to the person who disposes of the waste. Obligations are laid on producers, carriers and disposers to ensure that they record the waste they deal with and that the dispatch and arrival of waste is notified to the district council responsible for supervising the disposal of waste. There is an exception for disposals by pipeline or on the site of production.

Part III provides that district councils may waive the requirement that they should be separately notified of the dispatch and disposal of every consignment. A person who produces special waste or disposes of it may apply for a dispensation from this requirement and, if the district council grant it, may send the requisite copies at twelve-monthly intervals. Directions dispensing with this requirement may be given by the council in whose district the waste is produced, but where it is to be disposed of outside their district they must consult the council for that district; disagreements will be resolved by reference to the Department. Producers or disposers may appeal to the Department if the council refuse to make such a direction. The producer or disposer must prepare a three-monthly forecast of the waste in respect of which he intends to take advantage of the direction.

Part IV provides for registers which will contain copies of consignment notes and will be kept by those who produce, carry or dispose of special waste. In addition those who dispose of special waste must record the location of deposits on their land in the manner prescribed.

In Part V the Department is given power to direct that specified special waste shall be disposed of at any site where a disposal licence is in force under the 1978 Order or which is used for the disposal of waste by a district council. Except in case of emergency the Department must give notice if it proposes to make such a direction, and must have regard to representations made to it.

Under Part VI producers, disposers or carriers who fail to comply with the regulations are made liable to prosecution. Defences are provided for those who exercise due diligence or are unable to comply by reason of an emergency. Where an offence is attributable to the act or default of a third party the third party may be prosecuted. The enforcement of Part II of the regulation is to be the responsibility of the district council for the district in which the special waste is produced.