



STATUTORY INSTRUMENTS

**S.I. No. 524 of 2008**

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WASTE MANAGEMENT (CERTIFICATION OF HISTORIC  
UNLICENCED WASTE DISPOSAL AND RECOVERY ACTIVITY)  
REGULATIONS 2008

**(Prn. A8/1954)**

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UNLICENCED WASTE DISPOSAL AND RECOVERY ACTIVITY)  
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INDEX

1. Citation
2. Purpose of Regulations
3. Scope
4. Interpretation generally
5. Duty of a local authority to identify and register closed landfills
6. Duty of a local authority to carry out an assessment of the risk of environmental pollution
7. Application by a local authority to the Agency for a certificate of authorisation
8. Duty of a local authority to comply with the terms of a certificate of authorisation
9. Powers of the Environmental Protection Agency
10. Prosecutions and penalties
11. Amendments to Waste Management Act
12. Amendment to Waste Management (Miscellaneous Provisions) Regulations
13. Amendment to Waste Licensing Regulations

S.I. No. 524 of 2008

WASTE MANAGEMENT (CERTIFICATION OF HISTORIC  
UNLICENCED WASTE DISPOSAL AND RECOVERY ACTIVITY)  
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WHEREAS, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, having regard to section 3(3) of the European Communities Act, 1972 (No. 27 of 1972) (as inserted by section 2 of the European Communities Act 2007) (No. 18 of 2007) (hereinafter referred to as the Act of 1972), consider it necessary for the purpose of giving full effect to the provisions of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006<sup>1</sup> on waste and Council Directive 80/68/EEC of 17 December 1979<sup>2</sup> on the protection of groundwater against pollution caused by certain dangerous substances to make provision for offences under the following regulations to be prosecuted on indictment:

AND WHEREAS I consider it necessary, having further regard to section 3(3) of the Act of 1972 as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007) and for the purpose of ensuring that penalties in respect of an offence prosecuted in that manner under the following regulations are effective, proportionate and have a deterrent effect having regard to the acts or omissions of which the offence consists, to make such provision in the following Regulations:

NOW THEREFORE, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972) as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007) and for the purpose of giving effect to Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006<sup>1</sup> on waste and Council Directive 80/68/EEC of 17 December 1979<sup>2</sup> on the protection of groundwater against pollution caused by certain dangerous substances hereby makes the following Regulations:

*Citation*

1. These Regulations may be cited as the Waste Management (Certification of Historic Unlicensed Waste Disposal and Recovery Activity) Regulations 2008.

*Purpose of Regulations*

2. The purposes for which these Regulations are made include the purpose of giving effect to the provisions of—

(1) Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006<sup>1</sup> on waste, and

<sup>1</sup>OJ L 114, 27.4.2006, p.9-21.

<sup>2</sup>OJ L 20, 26.1.1980, p.43-48.

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 12th December, 2008.*

(2) Council Directive 80/68/EEC of 17 December 1979<sup>2</sup> on the protection of groundwater against pollution caused by certain dangerous substances.

*Scope*

3. These Regulations apply to each closed landfill identified pursuant to Regulation 5 at which waste disposal or recovery activities were carried on without a waste licence.

*Interpretation generally*

4. (1) In these Regulations—

(a) a reference to a Regulation is a reference to a Regulation in these Regulations unless it is indicated that reference to some other Regulation is intended;

(b) a reference to a paragraph that is not otherwise identified is a reference to the paragraph of the provision in which the reference occurs.

(2) A word or expression that is used in these Regulations and is also used in the Waste Management Acts 1996 to 2008 shall have in these Regulations the same meaning as it has in the Act unless the contrary intention appears.

(3) In these Regulations—

“Act” means the Waste Management Acts 1996 to 2008;

“Agency” means the Environmental Protection Agency established under section 19 of the Environmental Protection Agency Acts 1992 and 2003;

“authorised person” means a person who is appointed in writing by a local authority or the Agency to be an authorised person for the purposes of these Regulations;

“closed landfill” means a landfill site operated by a local authority for the recovery or disposal of waste without a waste licence on any date between 15 July 1977 and 27 March 1997 (i.e. prior to the entry into force of the Waste Management (Licensing) Regulations, 1997 (S.I. No. 133 of 1997));

“Code of Practice” means the “CODE OF PRACTICE on Environmental Risk Assessment for Unregulated Waste Disposal Sites” prepared by the Agency under section 76 of the Environmental Protection Agency Acts 1992 and 2003;

“environmental pollution” has the meaning assigned to it in the Act;

“necessary measures” means measures (including suitable remediation measures) to ensure that waste disposed of or recovered in a closed landfill is not causing, or is not likely to cause, environmental pollution;

“risk assessment” means a systematic methodology which considers the likelihood of occurrence and the consequence of occurrence of an event through the

<sup>2</sup>OJ L 20, 26.1.1980, p.43-48.

determination and evaluation of the nature, effect and extent of exposure to a potential hazard;

“Waste Management Acts 1996 to 2008” means the Waste Management Act, 1996 (No. 10 of 1996) as amended by the Waste Management (Amendment) Act, 2001 (No. 36 of 2001), Part 3 of the Protection of the Environment Act 2003 (No. 27 of 2003), Part 2 of the Waste Management (Electrical and Electronic Equipment) Regulations 2005 (S.I. No. 290 of 2005), the Waste Management (Environmental Levy) (Plastic Bag) Order 2007 (S.I. No. 62 of 2007) and the Waste Management (Registration of Brokers and Dealers) Regulations 2008 (S.I. No. 113 of 2008).

*Duty of a local authority to identify and register closed landfills*

5. (1) Each local authority shall identify by 30 June 2009 all closed landfills within its functional area and for such purposes shall have regard to the methodology set out in Appendix 1 of the Code of Practice.

(2) Each local authority shall have regard to the reporting requirements of Chapter 8 of the Code of Practice and maintain a register of all closed landfills identified by it pursuant to Regulation 5(1), which shall be revised and updated as necessary and at least once in each period of twelve months thereafter.

(3) The Agency shall prescribe the particulars to be entered in the register referred to in Regulation 5(2) and the form and manner in which such information shall be entered and maintained.

*Duty of a local authority to carry out an assessment of the risk of environmental pollution*

6. (1) Subject to Regulation 6(2), each local authority shall carry out a Risk Assessment in respect of all closed landfills identified pursuant to Regulation 5(1) and for such purposes shall have regard to the Code of Practice.

(2) The Risk Assessment shall evaluate the priority to be assigned to the closed landfill site in accordance with the Risk Classification system set out in Chapter 4.3.3 of the Code of Practice.

(3) Where a closed landfill, identified by a local authority pursuant to Regulation 5(1), is situated on property in the ownership or control of a person other than the local authority concerned, then that authority shall request the owner or occupier of such property, as the case may be, to permit its authorised persons, officials, servants or agents, to enter onto such property for the purposes of preparing the Risk Assessment described in Regulation 6(1) or for any other purpose and any local authority concerned shall discharge any reasonable costs or expenses incurred by any such owner or occupier by reason of such actions as described herein.

(4) A person on whose land consent is required under Regulation 6(3) to access such land shall grant such consent in relation to the closed landfill to the local authority or its authorised officials, servants or agents.

(5) The local authority may give such directions, as it considers appropriate, to the person in Regulation 6(3), to require that person to permit the carrying out of the necessary measures pursuant to Regulation 6(3).

(6) A person commits an offence if that person fails to comply with a direction under Regulation 6(5).

*Application by a local authority to the Agency for a certificate of authorisation*

7. (1) On completion of the Risk Assessment referred to in Regulation 6(1), a local authority shall make application to the Agency for certification of compliance with the requirements of these Regulations, which certificate shall be known as and referred to in these Regulations as a certificate of authorisation.

(2) An application under Regulation 7(1) shall be made in a format to be determined by the Agency and may require, at the discretion of the Agency, the submission of the following information or material or both—

- (a) the location or postal address of the closed landfill, including, where appropriate, the name of the townland or townlands,
- (b) details of the current owner or occupier or both of the closed landfill,
- (c) details of the current use of the land on which the closed landfill is situate,
- (d) the National Grid reference,
- (e) a map indicating the precise location,
- (f) scaled plans and sections,
- (g) the types and estimated quantities of waste deposited,
- (h) the Risk Assessment as provided for in Regulation 6(1) (to include any necessary measures recommended therein in accordance with the requirements of Chapter 7 of the Code of Practice).

(3) A fee of €5,000 shall be payable by a local authority to the Agency in respect of each application for a certificate of authorisation. The Agency may, however, refund or waive all or part of the fee payable in respect of a particular application where it is satisfied that the payment in full of the fee would not be justified or reasonable having regard to the limited scale or nature of the landfill activity concerned.

(4) The Agency may request from a local authority such further information or material or both as may be required by it for the purpose of determining the application within such period as may be stipulated by it and a local authority shall submit to the Agency such information as requested to the reasonable satisfaction of the Agency.

(5) The Agency shall, within 4 months or such later date as it may determine and advise to the local authority, prepare a draft certificate of authorisation, which shall be made available to the local authority concerned which may make representations on the proposed draft certificate and any representations received by the Agency within the subsequent period of 30 days shall be considered by it.

(6) As soon as practicable after the expiry of the 30 day period provided for in Regulation 7(5), the Agency shall determine the certificate of authorisation, which may vary from the draft certificate and shall issue an appropriately validated certificate of authorisation to the local authority and place a copy on any relevant website maintained by the Agency.

(7) A certificate of authorisation issued under Regulation 7(6):—

- (a) shall determine the adequacy of the Risk Assessment (including any necessary measures recommended therein) submitted by a local authority as part of the application for a certificate of authorisation; and
- (b) may specify further necessary measures in addition to those identified by the Risk Assessment having regard to ensuring appropriate protection for human health and the environment to ensure conformity with the provisions of Council Directive 2006/12/EC<sup>1</sup> and Council Directive 80/68/EEC<sup>2</sup>.
- (c) shall require that a validation report is compiled by the authorisation holder in accordance with the requirements of Chapters 7.3 and 8.2.4 of the Code of Practice.

*Duty of a local authority to comply with the terms of a certificate of authorisation*

8. (1) A local authority shall make all reasonable efforts to comply with any validated certificate of authorisation issued to it by the Agency pursuant to Regulation 7(6).

(2) Any local authority that contravenes Regulation 7(4) or Regulation 8(1) shall be guilty of an offence.

*Powers of the Environmental Protection Agency*

9. (1) The powers and functions conferred on the Agency pursuant to these Regulations may be performed on its behalf by any person appointed by it in writing to be an authorised person for the purposes of these Regulations.

(2) Without prejudice to the powers conferred on the Agency or its authorised persons pursuant to these Regulations, it is declared that the provisions of section 13 of the Environmental Protection Agency Act (No. 7 of 1992), subject to any modifications or adaptations as may be required, shall apply for any purpose connected with these Regulations.

<sup>1</sup>OJ L 114, 27.4.2006, p.9-21.

<sup>2</sup>OJL 20, 26.1.1980, p.43-48.

(3) Where the Agency is of opinion that a local authority has failed to perform any function of that authority provided for by these Regulations or has performed that function in an unsatisfactory manner, the provisions of section 63 of the Environmental Protection Agency Act, 1992 (No. 7 of 1992), as amended by section 13 of the Protection of the Environment Act 2003 (No. 27 of 2003) shall apply *mutatis mutandis* as if the reference therein to a statutory function of a local authority included a reference to functions conferred on local authorities pursuant to these Regulations.

*Prosecutions and penalties*

10. (1) An offence under these Regulations may be prosecuted by the Agency.

(2) Any person guilty of an offence under these Regulations is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or imprisonment for a term not exceeding 3 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000, or imprisonment for a term not exceeding 3 years or both.

*Amendments to Waste Management Act*

11. The Act shall have effect with the following specified modifications:

(1) in section 5 by substituting the following for the definition of “landfill”—

“ ‘landfill’ means a waste disposal site for the deposit of waste onto or into land (i.e. underground), including:

(a) internal waste disposal sites (i.e. landfill where a producer of waste is carrying out its own waste disposal at the place of production), and

(b) a permanent site (i.e. more than one year) which is used for temporary storage of waste, but excluding

(c) facilities where waste is unloaded in order to permit its preparation for further transport for recovery, treatment or disposal elsewhere, and

(d) storage of waste prior to recovery or treatment for a period less than three years as a general rule, or

(e) storage of waste prior to disposal for a period less than one year.”

(2) by the addition in section 67 of subsection (3)—

“(3) Subsections (1) and (2) shall not be construed as enabling a local authority or the Agency to avoid the consequences under EU law



of any failure to comply with the Community acts given effect to by this Act.”

*Amendment to Waste Management (Miscellaneous Provisions) Regulations*

12. The Waste Management (Miscellaneous Provisions) Regulations, 1998 (S.I. No. 164 of 1998) are amended by the deletion of Regulation 5.

*Amendment to Waste Licensing Regulations*

13. The Waste Management (Licensing) Regulations 2004 (S.I. No. 395 of 2004) are amended as follows:

- (1) In article 52(5) by the substitution of “shall review” for “may review”.



GIVEN under my Official Seal,  
8 December 2008

JOHN GORMLEY.  
Minister for the Environment, Heritage and Local Government.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

These Regulations provide for the certification of historic unlicensed waste disposal sites in operation between 1977 and 1996, when our modern waste legislation came into effect. The regulations will provide for the registration of these facilities by the local authorities, the carrying out of a screening risk assessment of the sites and the determination of any remedial measures required (all of which will be the responsibility of the relevant local authority). These facilities will require a certificate of authorisation from the EPA. This certificate will determine the adequacy of the risk assessment and may specify further necessary measures to ensure the protection of the environment.

The Regulations also make a number of minor amendments to waste legislation to correctly transpose certain aspects of the Landfill Directive and to remove an obsolete provision relating to the requirement for a waste permit.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
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