

2015 No. (W.)

WATER RESOURCES, WALES

The Control of Pollution (Oil Storage) (Wales) Regulations 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under sections 92 and 219(2) of the Water Resources Act 1991 and under section 62 of the Regulatory Enforcement and Sanctions Act 2008 require a person having custody or control of oil to carry out certain works and take certain precautions for preventing pollution of any waters which are controlled waters for the purposes of Part III of the Water Resources Act 1991. The Regulations apply in relation to Wales.

The Regulations also replace provision currently made in relation to agricultural fuel oil by the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010.

Regulation 2(1) defines terms used in the Regulations.

Regulation 3 makes provision about the application of the Regulations. Regulation 4 sets out general storage requirements. Regulation 5 imposes detailed requirements as to the construction and installation of fixed tanks and ancillary equipment. Regulation 6 imposes detailed requirements in relation to mobile bowsers

Regulation 7 contains transitional provisions.

Regulation 8 provides that a breach of regulations 3 to 6 is a criminal offence.

Regulation 9 permits Natural Resources Wales, as regulator, to impose civil sanctions in relation to offences committed under regulation 7.

Regulation 10 provides that Natural Resources Wales may enforce these Regulations.

Regulation 11 amends the Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010 by removing requirements as to agricultural fuel oil from those Regulations.

The regulations were notified in draft to the European Commission in accordance with Directive 98/34/EC, as amended.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

2015 No. (W.)

WATER RESOURCES, WALES

The Control of Pollution (Oil Storage) (Wales) Regulations 2015

Made ***

Laid ***

The Welsh Ministers make the following Regulations, in exercise of the powers conferred by sections 92 and 219(2) of the Water Resources Act 1991(1) and by section 62 of the Regulatory Enforcement and Sanctions Act 2008(2).

The Welsh Ministers have consulted the Secretary of State in accordance with section 59 of that Act and have carried out consultation in accordance with section 60 of that Act.

The Welsh Ministers are satisfied, in accordance with section 66 of that Act, that Natural Resources Wales (who is the regulator for the purpose of this Order) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by this Order.

A draft of this Order has been laid before, and approved by a resolution of, the National Assembly for Wales in accordance with section 62 of the Regulatory Enforcement and Sanctions Act 2008.

Title, application and commencement

1.—(1) The title of these Regulations is the Control of Pollution (Oil Storage) (Wales) Regulations 2015.

(2) These Regulations apply in relation to Wales and come into force on [date to be inserted].

Interpretation

2.—(1) In these Regulations—

“container” means a single or double skinned fixed tank, a drum, a mobile bowser or (even if not connected to a fixed pipe or fixed pipework) an intermediate bulk container;

“drum” means an oil drum or similar container used for storing oil;

“environmental permit” has the same meaning as it does in the Environmental Permitting (England and Wales) Regulations 2010.(3)

“fixed tank” includes an intermediate bulk container which is connected to a fixed pipe or pipework ;

“oil” means any kind of oil except uncut bitumen. .

“premises” includes land but does not include vehicles or vessels.

“secondary containment system” means a drip tray, an area surrounded by a bund or catchpit, or any other system for preventing oil which is no longer in its container from escaping from the place where it is stored.

(1) 1991 c.57. Section 92 was amended by the Environment Act 1995 (c.25: see section 120 of, and paragraphs 128 and 144 of Schedule 22 to the Act); the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675: see regulation 107 and paragraphs 8(1) and 8(5) of Schedule 26) and by the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755: see paragraph 274 of Schedule 1. There are amendments to Section 219(2) which are not relevant to these Regulations.

(2) 2008 c. 13

(3) S.I. 2010/675

Storage of oil

3.—(1) Subject to paragraph (2), these Regulations apply to the storage of oil on any premises.

(2) These Regulations do not apply to the storage of oil—

- (a) in any container with a storage capacity of 200 litres or less; stored subject to an environmental permit;
- (b) in any container which is situated wholly underground (unless that container is situated within a building).
- (c) on premises used-
 - (i) wholly or mainly as a private dwelling if oil the container in which the oil is stored was first used for storing oil before these Regulations came into force;
 - (ii) as an oil distribution depot; or
 - (iii) for refining oil.

Storage containers: general requirements

4.—(1) Subject to regulation 7, oil must be stored in a container which—

- (a) is of sufficient strength and structural integrity to ensure that it is unlikely to burst or leak in ordinary use; and
- (b) has been installed without adversely affecting that strength and integrity.

(2) The container must be situated within a secondary containment system which satisfies the following requirements—

- (a) subject to paragraph (5), it must have a capacity of not less than 110% of the container's storage capacity or, if there is more than one container within the system, of not less than 110% of the largest container's storage capacity or 25% of their aggregate storage capacity, whichever is the greater;
- (b) it must be positioned, or other steps must be taken, so as to minimise any risk of damage by impact so far as is reasonably practicable;
- (c) its base and walls must be impermeable to water and oil;
- (d) its base and walls must not be penetrated by any valve, pipe or other opening which is used for draining the system;
- (e) if any fill pipe, or draw off pipe, penetrates its base or any of its walls, the junctions of the pipe with the base or the walls must be adequately sealed to prevent oil escaping from the system.

(3) Any valve, filter, sight gauge, vent pipe or other equipment ancillary to the container (other than a fill pipe, a draw off pipe or, if the oil has a flashpoint of less than 32°C, a pump) must be situated within the secondary containment system.

(4) If the connection point to a fill pipe is not within the secondary containment system, a drip tray must be used to catch any oil spilled when the container is being filled with oil.

(5) Where any drum is used for the storage of oil in conjunction with a drip tray as a secondary containment system, it is sufficient if the tray has a capacity of not less than—

- (a) 25% of the drum's storage capacity; or
- (b) if there is more than one drum used at the same time with the tray, 25% of the aggregate storage capacity of the drums.

Fixed tanks

5.—(1) Subject to regulation 7, where a fixed tank is used for storing oil the following requirements must be satisfied.

(2) Any sight gauge must be properly supported and fitted with a valve which closes automatically when not in use.

(3) Any fill pipe, draw off pipe or overflow pipe must be positioned, or other steps must be taken, so as to minimise any risk of damage by impact so far as is reasonably practicable and—

- (a) if above ground, must be properly supported;
- (b) if underground—
 - (i) must have no mechanical joints, except at a place where it is accessible for inspection by removing a hatch or cover;
 - (ii) must be adequately protected from physical damage;
 - (iii) must have adequate facilities for detecting any leaks;
 - (iv) if fitted with a leakage detection device which is used continuously to monitor for leaks, the detection device must be maintained in working order and tested at least once every five years, or more frequently if appropriate to the device in question, to ensure that it works properly; and
 - (v) if not fitted with a leakage detection device, must be tested for leaks before it is first used and further tests for leaks must be performed, in the case of pipes which have mechanical joints, at least once every 5 years and, in other cases, at least once every 10 years; and
- (c) if made of materials which are liable to corrosion, must be adequately protected against corrosion.

(4) The tank must be fitted with an automatic overfill prevention device if the filling operation is controlled from a place where it is not reasonably practicable to observe the tank and any vent pipe.

(5) Where a screw fitting or other fixed coupling is fitted, it must be maintained in good condition and used whenever the tank is being filled with oil.

(6) Where oil from the tank is delivered through a flexible pipe which is permanently attached to the container or a delivery pump —

- (a) the pipe must be fitted with a tap or valve at the delivery end which closes automatically when not in use;
- (b) the tap or valve must not be capable of being fixed in the open position unless the pipe is fitted with an automatic shut-off device;
- (c) the pipe must be enclosed in a secure cabinet which is locked shut when not in use and is equipped with a drip tray, or the pipe must—
 - (i) have a lockable valve where it leaves the container which is locked shut when not in use; and
 - (ii) be kept within the secondary containment system when not in use;

(7) Any pump must be —

- (a) fitted with a non return valve in its feed line;
- (b) positioned, or made subject to other measures, so as to minimise any risk of damage so far as is reasonably possible; and
- (c) protected from unauthorised use.

(8) Any permanent vent pipe, tap or valve through which oil can be discharged from the tank to the open must satisfy the following requirements—

- (a) it must be situated within the secondary containment system;
- (b) it must be arranged so that any oil discharged from the tank other to its intended destination is contained within the system; and
- (c) in the case of a tap or valve, it must be fitted with a lock and locked shut when not in use.

Mobile bowzers

6.—(1) Subject to regulation 7, if a mobile bowser is used for storing oil, the following requirements must be met.

(2) Any tap or valve permanently fixed to the bowser through which oil can be discharged to the open must be fitted with a lock and locked shut when not in use.

(3) Where oil is delivered through a flexible pipe which is permanently attached to the mobile bowser—

- (a) the pipe must be fitted with a manually operated pump or a valve at the delivery end which must—
 - (i) automatically close when not in use;
 - (ii) be provided with a lock; and
 - (iii) be locked shut when not in use;
 - (b) the pipe must be fitted with a lockable valve at the end where it leaves the mobile bowser and the valve must be locked shut when not in use.
- (4) Any sight gauge must be secured to the mobile bowser and be fitted with a valve or tap which must be locked shut when not in use.

Transitional provisions

7. Where oil is stored in a container which was first used for that purpose before these Regulations came into force, regulations 4 to 6 do not apply—

- (a) Until 2 years after these regulations come into force if the container is situated less than—
 - (i) 10 metres away from any inland freshwaters or coastal waters⁽¹⁾; or
 - (ii) 50 metres away from a well or borehole;
- (b) Until 4 years after the date upon which these regulations come into force in any other case.

Offences

8.—(1) It is an offence for a person who has custody or control of any oil to breach any provision of regulations 3 to 6.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction to a fine or imprisonment for a term not exceeding 12 months, or to both; or
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or to both.

(3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c 44) paragraph 2(a) has effect as if for “12 months” there were substituted “6 months”.

Civil Sanctions

9.—(1) Natural Resources Body for Wales may impose a fixed monetary penalty, variable monetary penalty, restoration notice or stop notice, or accept an enforcement undertaking, in relation to an offence under regulation 8 as if it were an offence under a provision specified in relation to that sanction in Schedule 5 to the Environmental Civil Sanctions (Wales) Order 2010⁽²⁾.

(2) The terms used in this regulation have the same meaning as in that Order.

(3) The provisions of that Order in relation to those sanctions apply as if they were provisions of these Regulations.

Enforcement

10. These Regulations may be enforced by Natural Resources for Wales.

Amendment of the Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010

11.

(1) The Water Resource (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Water) Regulations 2010⁽³⁾ are amended as follows

(1) “inland freshwaters” and “coastal waters” are defined at section 104 of the Water Resources Act 1991 (1991 c.57)
 (2) S.I. 2010/1821 (W.178)
 (3) S.I. 2010/1493 (W.136)

- (2) In regulation 2 omit the definition of “fuel oil”.
- (3) Omit regulation 5 and Schedule 3.
- (4) In regulation 6(1)—
 - (a) after “silo”, for “,” substitute “ or”; and
 - (b) omit “or fuel storage tank”.
- (5) In sub-paragraph (a) of regulation 6(1)—
 - (a) after “silage”, for “,” substitute “or, as the case may be,”; and
 - (b) after “slurry” omit “or, as the case may be, storing fuel oil”.
- (6) In regulation 6(2)—
 - (a) after “silo”, for “,” substitute “ or”; and
 - (b) omit “ or fuel storage tank”.
- (7) In regulation 7(1)—
 - (a) after “silage”, for “,” substitute “ or”;
 - (b) after the first occurrence of “slurry” omit “ or fuel oil”;
 - (c) after “silo”, for “,” substitute “ or”; and
 - (d) after “system” omit “ or fuel storage tank”;
- (8) In regulation 9—
 - (a) after “silage”, for “,” substitute “ or”;
 - (b) after “slurry” omit “ or fuel oil”;
 - (c) after “silo”, for “,” substitute “ or”; and
 - (d) after “slurry storage system” omit “ or fuel storage area”.
- (9) In regulation 10(1) omit “, 5(1)”.

Name

Minister for Natural Resources, one of the Welsh Ministers

Date