

# Information

## BRIEFING NOTE

### Controls on Agricultural Waste

#### 1. Introduction

Agricultural waste became subject to much greater regulatory control on 21st January 2006, when the transitional period ended for implementation of the Waste (Scotland) Regulations 2005. Agricultural waste producers (referred to throughout this note as “farmers”) need (if they have not already done so) to consider carefully how they handle and dispose of agricultural waste.

#### 2. What is Agricultural Waste?

The definition of waste is complex and includes “any substance or object which the holder discards or intends or is required to discard”. A very wide range of agricultural products/by-products is regulated from “non-natural” waste such as silage wrap, redundant machinery, buildings waste and animal health products (e.g. used syringes) to natural or organic materials such as manure and slurry. European case law has established that re-use of materials by another party (even if there is a payment to the transferor of the waste) does not mean that those materials are not waste.

#### 3. The Requirements

- Farmers require Waste Management Licences (“Licences”) for treating, keeping or disposing of agricultural waste, unless a relevant exemption applies.
- Farmers continue to have a statutory duty of care to prevent waste escaping their or others control. Whether transferring waste to a landfill site, incinerator or processor of waste, farmers must ensure the transferee is properly licensed by SEPA.
- Waste transfer notes continue to be required and must be kept for 2 years if waste is transferred. More stringent controls apply to special waste e.g. sheep dip and fuel oils, where pre-notification of movements to SEPA is required and records must be retained for 3 years.

#### 4. The Implications

Both uncontrolled burial and burning of agricultural waste are prohibited. Compliance costs are potentially high. Engineering a properly licensed landfill site is prohibitively expensive and, while charges for disposal of waste off-site vary, they can be significant. Take-back schemes, which may in exchange for a product levy offer re-collection services, are relatively undeveloped at present.

The potential costs of non-compliance are also very substantial – courts have power to impose substantial prison sentences and fines and payment of clean up costs may be ordered.

## 5. Farmers' Options

Farmers now have the following main options for dealing with waste:-

- Taking waste themselves for recovery or disposal off-farm at a licensed site. Farmers transporting their own agricultural waste only will not have to register as waste carriers.
- Transferring waste to a licensed party for recovery or disposal off-farm at licensed sites.
- Registering an exemption with SEPA to recover or dispose of waste on-farm (see 7 below).
- Applying to SEPA for a Licence or landfill permit to recover or dispose of waste on-farm.

## 6. Are Manure and Slurry Waste?

Three different scenarios have been widely discussed and the latest position is as follows:-

- Use of manure/slurry on farm of production as fertiliser/soil conditioner in quantities beneficial to use of land - as use is being made of a valuable by-product, this is not waste.
- Use of manure/slurry on farm of production in quantities exceeding requirements of land - manure/slurry is treated as waste.
- Transfer of manure/slurry between farms - transfers between farms will not according to SEPA's latest guidance be treated as a waste management activity provided that the Scottish Executive's PEPFAA Code of 2005 and the Four Point Plan are complied with. For details of each of these see:-

<http://www.scotland.gov.uk/publications/2005/03/20613/51366>

<http://www.sepa.org.uk/pdf/publications/4pointplan.pdf>

Farmers who import quantities of manure which transpire to be excessive should be aware that excess material may be classed as waste.

## 7. Available Exemptions/Other Information

Limited exemptions are available from the need to obtain Licences and it should be noted that a farmer claiming exemption must register with SEPA. Failure to register is a criminal offence. Relevant exemptions include:-

- Burning plant tissue waste such as branch waste or brash in the open up to a maximum of 10 tonnes per 24 hours. SEERAD does not recommend this method and urges great care to avoid creation of a nuisance.
- Burning plastics in drum incinerators.
- Storing waste pending disposal for up to 12 months.

Stubble burning is not treated by SEPA as a waste management activity i.e. there is no need to claim exemption here.

It remains possible to apply non-agricultural waste e.g. sludge to agricultural land without Licences provided the detailed terms of the relevant exemptions are complied with - farmers should however be cautious of their approach to such "imported materials" and check to ensure that the import complies with all relevant regulations.

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This note is intended as a brief summary of the Waste (Scotland) Regulations 2005. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

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