

Draft Regulations laid before the National Assembly for Wales pursuant to section 62 of the Regulatory Enforcement and Sanctions Act 2008 for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2016 No. (W.)

WATER RESOURCES, WALES

**The Water Resources (Control of
Pollution) (Oil Storage) (Wales)
Regulations 2016**

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 (c. 57) and section 62 of the Regulatory Enforcement and Sanctions Act 2008 (c. 13), require a person having custody or control of oil in certain specified cases to comply with certain requirements as to the manner in which the oil is stored and handled. 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 (S.I. 2010/1493).

Regulation 1 makes provision (among other things) about commencement. The Regulations come into force on 15 March 2016, except for cases where a container is already in use on that date. In those cases later dates are specified in regulation 1.

Regulation 2 defines terms used in the Regulations and Regulation 3 makes provision about the scope of the Regulations.

Regulation 4 sets out requirements in relation to oil storage containers and regulation 5 sets out requirements in relation to secondary containment systems.

Regulation 6 sets out requirements in relation to fixed tanks and regulation 7 sets out requirements in relation to underground pipes associated with fixed

tanks. Regulation 8 sets out requirements in relation to mobile bowsers.

Regulation 9 creates a criminal offence of failure to comply with any requirement in regulations 4 to 8 and regulation 10 permits the Natural Resources Body for Wales, as regulator, to impose civil sanctions in relation to that offence.

Regulation 11 provides that Natural Resources Wales may enforce these Regulations.

Regulation 12 amends the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010 by removing requirements as to agricultural fuel oil from those Regulations. Those Regulations are accordingly renamed (see regulation 12(2)).

A draft of these Regulations has been notified to the European Commission as a technical standard, pursuant to Directive 98/34/EC of the European Parliament and of the Council (OJ No L204, 21.7.98, p 37) laying down a procedure for the provision of information in the field of technical standards and regulations, 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.

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2016 No. (W.)

WATER RESOURCES, WALES

**The Water Resources (Control of
Pollution) (Oil Storage) (Wales)
Regulations 2016**

Made 14 March 2016

Coming into force 15 March 2016

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 section 62 of the Regulatory Enforcement and Sanctions Act 2008(2) (“the 2008 Act”).

The Welsh Ministers are satisfied, in accordance with section 66 of the 2008 Act, that the Natural Resources Body for Wales (which is the regulator for the purpose of these Regulations) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by these Regulations.

(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. By virtue of article 2 of and Schedule 2 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions under section 92 were transferred to the National Assembly for Wales in relation to those parts of Wales which are outside the catchment areas of the rivers Dee, Wye and Severn. In relation to those parts of Wales which are within those catchment areas it is directed that the functions under section 92 are exercisable by the Assembly concurrently with the Secretary of State. By virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32) functions under sections 92 and 219 now vest in the Welsh Ministers.

(2) 2008 c.13.

A draft of these Regulations has been laid before, and approved by a resolution of, the National Assembly for Wales in accordance with section 62 of the 2008 Act.

Title, application and commencement

1.—a) The title of these Regulations is the Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016.

(1) These Regulations apply in relation to Wales.

(2) Subject to paragraphs (4) and (5), these Regulations come into force on 15 March 2016.

(3) Subject to paragraph (5), these Regulations come into force on 15 March 2020 in relation to any container in which oil is being stored on 15 March 2016.

(4) These Regulations come into force on 15 March 2018 in relation to any container—

(a) in which oil is being stored on 15 March 2016; and

(b) which is situated—

(i) less than 10 metres away from any inland freshwaters or coastal waters; or

(ii) less than 50 metres away from a well or borehole.

Interpretation

2. In these Regulations—

“container” (*“cynhwysydd”*) 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” (*“drwm”*) means an oil drum or similar container used for storing oil;

“fixed tank” (*“tanc sefydlog”*) includes an intermediate bulk container which is connected to a fixed pipe or pipework;

“oil” (*“olew”*) means any kind of oil except uncut bitumen;

“premises” (*“mangreoedd”*) includes land but does not include vehicles or vessels;

“secondary containment system” (*“system atal eilaidd”*) 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;

“small bore suction pipe” (*“sugnbibell ceudod bychan”*) means a suction pipe with a diameter of less than 8 millimetres.

Scope of Regulations

3.—b) Subject to paragraphs (2) to (4), these Regulations apply in any case where oil is stored.

(1) These Regulations do not apply in a case where oil is stored in any container—

- (a) which has a storage capacity of 200 litres or less; or
- (b) which is situated wholly underground (unless that container is situated within a building).

(2) These Regulations do not apply in a case where the storage of oil is subject to an environmental permit within the meaning of regulation 13(1) of the Environmental Permitting (England and Wales) Regulations 2010⁽¹⁾.

(3) These Regulations do not apply in a case where oil is stored on premises which are—

- (a) used wholly or mainly as a private dwelling if the container in which the oil is stored was in use for storing oil on the date on which these Regulations came into force in relation to that container;
- (b) used as an oil distribution depot; or
- (c) used for refining oil.

Requirements in relation to oil storage containers

4. A person who has custody or control of oil must ensure that the oil is 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;
- (b) has been installed without adversely affecting that strength and structural integrity; and
- (c) is situated within a secondary containment system in relation to which the requirements of regulation 5 are satisfied.

Requirements in relation to secondary containment systems

5.—c) A person who has custody or control of any oil must ensure that the requirements of this regulation are complied with.

(1) Subject to paragraphs (3) and (4), the secondary containment system mentioned in regulation 4(c) must have a capacity not less than 110% of the container's storage capacity.

(2) Where the secondary containment system contains more than one container, it must have a capacity not less than—

(1) S.I. 2010/675.

- (a) 110% of the storage capacity of the largest container (or of one container where they are of equal capacity); and
- (b) 25% of the aggregate storage capacity of the containers,
whichever is the greater.

(3) Where any drum is used for the storage of oil in conjunction with a drip tray as a secondary containment system, the tray must have a capacity of not less than—

- (a) 25% of the storage capacity of the drum; or
- (b) (if two or more drums are used at the same time with the tray) 25% of the aggregate storage capacity of the drums,
- (c) whichever is the greater.

(4) The secondary containment system 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.

(5) The base and walls of the secondary containment system—

- (a) must be impermeable to water and oil;
- (b) must not be penetrated by any valve, pipe or other opening which is used for draining the system.

(6) If any fill pipe or draw off pipe penetrates the base or any of the walls of the secondary containment system, the junction of the pipe with the base or the walls must be sealed in such a way as to prevent oil escaping from the system.

(7) Any valve, filter, sight gauge, vent pipe or other equipment ancillary to the container (other than a fill pipe or a draw off pipe) must be situated within the secondary containment system.

(8) 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.

Requirements in relation to fixed tanks

6.—d) A person who has custody or control of any oil must ensure that the requirements of this regulation are complied with.

(1) Where a fixed tank is used for storing oil the requirements in paragraphs (3) to (14) must be satisfied.

(2) Any sight gauge must be adequately 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.

(4) Any pipe mentioned in paragraph (4) which is above ground must be adequately supported.

(5) Any pipe mentioned in paragraph (4) which is made of materials which are liable to corrosion must be adequately protected against corrosion.

(6) Any small bore suction pipe must be fitted with an anti-siphon valve.

(7) The tank must be fitted with an automatic overflow 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.

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

(9) Paragraphs (11) and (12) apply where oil from the tank is delivered through a flexible pipe which is permanently attached to the tank or a delivery pump.

(10) The flexible pipe must be fitted with a tap or valve at the delivery end which—

- (a) closes automatically when not in use; and
- (b) is not capable of being fixed in the open position (unless the pipe is fitted with an automatic shut-off device).

(11) The flexible pipe must either—

- (a) be enclosed in a secure cabinet which is locked shut when not in use and is equipped with a drip tray; or
- (b) have a lockable valve where it leaves the container which is locked shut when not in use, and be kept within the secondary containment system when not in use.

(12) Any pump must—

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

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

- (a) be situated within the secondary containment system;
- (b) be arranged so that any oil discharged from the tank other than to its intended destination is contained within the system; and

- (c) (in the case of a tap or valve), be fitted with a lock and locked shut when not in use.

Requirements in relation to underground pipes associated with fixed tanks

7.—e) A person who has custody or control of any oil must ensure that the requirements of this regulation are complied with.

(1) This regulation applies in any case where a pipe mentioned in regulation 6(4) is underground.

(2) The pipe may not have mechanical joints unless they are located at a place where they are accessible for inspection by removing a hatch or cover.

(3) The pipe must be adequately protected from physical damage.

(4) The pipe must have adequate facilities for detecting any leaks.

(5) If the pipe is fitted with a leakage detection device which is used continuously to monitor for leaks, the 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.

(6) Any pipe which is first used on or after the date on which these Regulations come into force in relation to the tank to which that pipe relates (see regulation 1) must, if it is not fitted with a leakage detection device, 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.

(7) Any pipe which—

(a) is in use on the date on which these Regulations come into force in relation to the tank to which that pipe relates (see regulation 1); and

(b) which has not been tested for leaks in the previous 5 years,

must be tested within 1 year of that date and thereafter, if it has mechanical joints, at least once every 5 years or, in any other case, at least once every 10 years.

(8) Any pipe which—

(a) is already in use on the date these Regulations come into force in relation to the tank to which that pipe relates (see regulation 1); and

(b) has been tested for leaks in the previous 5 years,

must be tested, if it has mechanical joints, at least once every 5 years after the date of the last test or, in any other case, at least once every 10 years after the date of the last test.

Mobile bowzers

8.—f) A person who has custody or control of any oil must ensure that the requirements of this regulation are complied with.

(1) If a mobile bowser is used for storing oil, the requirements in paragraphs (3) to (5) must be satisfied.

(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 from a mobile bowser through a flexible pipe which is permanently attached to the 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 adequately secured to the mobile bowser and be fitted with a valve or tap which must be locked shut when not in use.

Offence

9.—g) A person who contravenes regulations 4, 5(1), 6(1), 7(1) or 8(1) is guilty of an offence.

(1) A person guilty of the offence in paragraph (1) is liable, on summary conviction or on conviction on indictment, to a fine.

Civil Sanctions

10.—h) The Natural Resources Body for Wales may—

(a) impose a fixed monetary penalty;

(b) impose a variable monetary penalty;

(c) impose a restoration notice;

(d) impose a stop notice;

(e) accept an enforcement undertaking,

in relation to the offence in regulation 9(1).

(2) The terms used in paragraph (1)(a) to (e) have the same meaning as in Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

(3) The provisions of the Environmental Civil Sanctions (Wales) Order 2010(1) apply in relation to the sanctions mentioned in paragraph (1).

(1) S.I. 2010/1821 (W. 178).

Enforcement

11. These Regulations may be enforced by the Natural Resources Body for Wales.

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

12.—i) The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010(1) are amended in accordance with paragraphs (2) to (11).

(1) In regulation 1(1), for “the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010” substitute “the Water Resources (Control of Pollution) (Silage and Slurry) (Wales) Regulations 2010”.

(2) In regulation 2(1) omit the definition of fuel oil (“*olew tanwydd*”).

(3) Omit regulation 5.

(4) In regulation 6(1), for “silo, slurry storage system or fuel storage tank” substitute “sile or slurry storage system”.

(5) In regulation 6(1)(a), for the words from “making silage” to the end of the sub-paragraph substitute “making silage or storing slurry”.

(6) In regulation 6(2), for “silo, slurry storage system or fuel storage tank” substitute “silo or slurry storage system”.

(7) In regulation 7(1)—

(a) for “silage, slurry or fuel oil” substitute “silage or slurry”;

(b) for “silo, slurry storage system or fuel oil storage tank” substitute “silo or slurry storage system”.

(8) In regulation 9—

(a) for “silage, slurry or fuel oil” substitute “silage or slurry”;

(b) for “silo, slurry storage system or fuel storage area” substitute “silo or slurry storage system”.

(9) In regulation 10(1) omit “, 5(1)”.

(10) Omit Schedule 3.

Name

Minister for Natural Resources, one of the Welsh Ministers

Date

(1) S.I. 2010/1493 (W.136).