

Application of the Waste Incineration Directive to the burning of waste tallow as fuel

April 2005



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The United Kingdom Renderers' Association (UKRA) requested the Department's views on three "solutions" to the application of the Waste Incineration Directive (WID) to the burning of waste tallow as fuel. The Department's views on these three solutions, as communicated to UKRA, are as follows:-

1. Accept that tallow is a biofuel product, not a waste and the WID does not therefore apply

At UKRA's request, the Department wrote to the Association on 14 January 2004 setting out our views on the definition of waste in the Waste Framework Directive (WFD) and the application of the Directive's requirements to the operations carried out by the rendering industry. In summary, the Department's letter concluded that a range of animal by-products are consigned to rendering plant as waste within the meaning of the WFD and that the processing of this waste in rendering plant is a waste management operation subject to control under the Directive. The animal by-products which the Department identified as waste included those which Articles 4(2), 5(2) and 6(2) of the EU Animal By-Products Regulation require to be processed in rendering plant and disposed of by incineration, co-incineration or landfilling; or recovered in biogas or composting plants.

In response to questions asked by UKRA, the Department wrote again on 22 April 2004 and officials met UKRA representatives on 15 June 2004. The Department confirmed in its letter of 22 April and/or at the meeting on 15 June 2004 that:-

(a) **Category 1 material**: The Department is not aware of any circumstances in which Category 1-derived tallow can be used as fuel in compliance with the requirements of the EU Animal By-Products Regulation without its being "disposed of" as waste.

(b) **Category 2 material**: The EU Animal By-Products Regulation only refers to the burning of Category 2-derived tallow in the context of disposal as waste. Article 5(2)(b)(i) of the Regulation provides that after processing in an approved processing plant Category 2-derived tallow may be:-

(i) "disposed of as waste either by incineration or by co-incineration in an incineration or co-incineration plant approved in accordance with Article 12..."; and

(ii) Article 12 of the Regulation requires the incineration and co-incineration of processed products to take place in accordance with the WID.

(c) In order to meet the requirements of the Regulation, therefore, the burning of Category 2-derived tallow as fuel can only be a waste operation which is subject to the requirements of the WID.

(d) **Category 3 material** – Article 6(2)(b) of the Regulation makes similar provisions for Category 3 material as those in place for Category 2. That is to say, it provides that after processing in an approved processing plant Category 3 material may be:-

(i) “...disposed of as waste either by incineration or co-incineration in an incineration or co-incineration plant approved in accordance with Article 12...”

(e) There is a range of possible uses for Category 3 material other than disposal, which may include its burning as fuel. However, it is for industry to identify examples of cases where Category 3 material can be used as a fuel without being disposed of as waste by co-incineration, in accordance with the provisions of the Regulation. If such cases can be identified, they will only be relevant to those rendering plant which deal exclusively with Category 3 materials. UKRA has to date identified no such examples to the Department.

UKRA’s letter does not address the requirements of the EU Animal By-Products which the Department’s officials set out in the exchanges with UKRA last year and which are referred to in this Annex. In the light of the Regulation’s requirements, the Department has no reason to believe that the requirements of the WID do not apply to rendering plant which use tallow from processed animal by-products as fuel.

The WID applies to plant incinerating or co-incinerating substances that are waste within the meaning of Article 1(a) of the WFD. Whether or not a substance is waste – and when waste ceases to be waste – are matters that must be determined on the facts of the case and in the light of case law by the European Court of Justice on the definition’s interpretation. The requirements of the EU Animal By-Products Regulation are a key consideration in both (a) making that decision in relation to animal by-products and (b) the application of the WID to the waste’s use as fuel. But the determination of whether or not animal by-products are waste within the meaning of Article 1(a) of the WFD – and the application of WID to the incineration or co-incineration of substances that are waste - will continue to be one that must be made notwithstanding the EU Animal By-Products Regulation.

The EU Animal By-Products Regulation has direct effect and, in the Department’s view, the terms of Article 12 are unambiguous. Article 12 states that, “The incineration and co-incineration of processed products shall take place in accordance with the provisions of Directive 2000/76/EC [WID]”. UKRA refers to conclusions of the competent authorities in Italy, France and Germany that the combustion of tallow is adequately dealt with under the Regulation and that the WID does not apply. As Article 12 of the Regulation unambiguously requires processed products to be burned in accordance with the WID, the Department is not certain of the point that UKRA is making. If it is a legal point then, on the face of it, it would appear that the requirements of the Regulation, and possibly the WID, are being contravened in the Member States mentioned by UKRA. The Department is prepared to make enquiries about possible non-compliance by other Member States. But this is a sensitive issue and the Department would need evidence of some kind on which to base its enquiries. If UKRA has evidence of non-compliance by other Member States then it is, of course, open to the Association to approach the European Commission directly.

UKRA's letter argues that "In technical and engineering terms, steam raising boilers and engines are completely different from incinerators, they are not designed for waste disposal...their sole purpose is to produce energy." Defra is not aware that any of its officials has ever suggested that the rendering industry's use of tallow as a fuel is "incineration". The Department's officials have drawn attention to the requirements of the EU Animal By-Products Regulation and its reference to incineration or co-incineration of processed products in accordance with the WID; and noted that the Directive defines "co-incineration plant" as meaning "any stationary or mobile plant whose main purpose is the generation of energy...and: - which uses wastes as a regular or additional fuel."

Neither the EU Animal By-Products Regulation nor WID precludes the use of tallow as fuel. It is a matter for commercial decision by each of UKRA's member companies whether or not to invest in any necessary upgrading to comply with the WID. The Department is not aware of any lack of demand for the use of tallow as fuel and it does not follow that commercial decisions by taken by any of UKRA's member companies to stop using tallow as fuel will necessarily lead to an overall increase in CO₂ emissions.

2. To alter WID and define combustion of tallow in Annex II.3 with the same requirements as for boilers running on mineral oil

Towards the end of 2002, correspondence between one of the Department's Ministers and the EU Environment Commissioner about possible alteration of the WID drew the response that the WID is a relatively new Directive and that its Article 14 contains a requirement for the Commission to report to the European Parliament and the Council before the end of 2008 on the Directive's implementation and to propose whatever revisions the Commission might consider necessary. Against that background, and with the Directive itself not coming fully into force until 28 December 2005, the Department sees no realistic prospect of persuading the Commission to propose revisions such as this or that proposed in UKRA's third solution (even if the Department were satisfied that such revisions were desirable) until the Commission makes its report towards the end of 2008.

3. To extend the exclusion from WID of "carcasses" to "parts of carcasses"

The Department's views on the exclusion for "animal carcasses" in Article 2(2) of the WID are set out in the second edition of our guidance on the Directive which is available on the Defra website at <http://www.defra.gov.uk/corporate/consult/ppc-wid/index.htm> The guidance makes it clear that:-

"...the Government considers as being excluded from the WID, incinerators which burn **only**:

- (a) animal carcasses, including those carcasses which have been cut to facilitate incineration at the point of disposal; and/or
- (b) unprocessed parts of animal carcasses e.g. animal by-products such as SRM etc.

This means that incineration plants that burn only animal carcasses and or parts of carcasses (as described above) will be considered to be excluded

from the WID. This will generally include incinerators on premises such as slaughterhouses, knacker yards, wholesale butchers and pet crematoria.

However, this approach does not extend to any processed animal by-products such as tallow or MBM or to products of animal origin such as former foodstuffs or catering waste.”

The amendment of the WID is addressed in the Department’s response to UKRA’s second solution.

Waste Animal By-Products

The application of the controls necessary to ensure the continuing compliance with the Waste Framework Directive in relation to waste animal by-products is discussed in paragraphs 8 and 4.7-4.21 of the consultation paper on the draft Waste Management (England and Wales) Regulations 2005 available at <http://www.defra.gov.uk/corporate/consult/agwaste-regs/index.htm>.

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