

13. THE ENVIRONMENTAL PROTECTION (DUTY OF CARE) REGULATIONS

Anyone who “imports, produces, carries, keeps, treats or disposes of any controlled waste, or a broker who has control of such waste” is subject to the Duty of Care. Controlled waste is defined as any household, commercial or industrial waste, including building and demolition waste therefore any waste that leaves site is defined as controlled waste and must only be moved after a transfer note has been issued.

13.1 The Duty of Care

The duty of care is described in Section 34 of the Environmental Protection Act 1990 which states that all those subject to the Duty of Care must prevent others from:-

- a) depositing, storing, treating or otherwise disposing of waste without a valid licence or contravening the licence conditions; or acting in a manner likely to cause environmental pollution or harm to human health. These are offences under Section 33 of the 1990 Act (Note: licensing is currently regulated by the Control of Pollution Act 1974)
- b) prevent the waste from escaping
- c) ensure that waste is only transferred to an authorised person
- d) include with the waste transfer a written description sufficient to enable others to comply with the duty and avoid committing an offence under Section 33. A compulsory transfer note system was introduced by the Environmental Protection (Duty of Care) Regulations 1991.

This duty has been further extended by the Special Waste Regulations 1996.

13.2 Definitions

Waste Producer - The starting point for deciding who is the waste producer is to decide how the material became waste. A material may become waste by being changed in some way, for example demolition waste, in which case the waste producer is the person carrying out the change. Alternatively waste can be created by a decision or change of attitude, for example, the decision that material is surplus or unwanted, in which case the waste producer will be the person in possession of the object or substance who makes the decision that it is waste.

Waste Manager - A person who keeps, treats or disposes of controlled waste.

Waste Broker - A person who arranges the transfer of waste which he does not himself control what happens to it.

Waste Carrier - A person who transports waste. The company should be registered with a waste regulation authority and have a licence to confirm this registration.

13.3 Duties of a Waste Producer

A waste producer is responsible for providing an accurate description of the waste. This should include:

- a) The type of premises or business from which the waste is generated.
- b) The process that produces the waste and the quantity of waste.
- c) The name of substances which comprise the waste including a physical and chemical analysis, if applicable.

- d) The care of the waste whilst they hold it.
- e) The packaging of the waste to prevent its escape during transfer.
- f) Using a registered (or exempt) carrier to transport the waste.
- g) The final disposal of the waste depending on the degree of involvement in the selection of the waste carrier, manager or broker.

The waste manager should report suspicious circumstances which may indicate a breach of the duty in the disposal chain to the Waste Regulations Authority.

13.4 Duties of a Waste Carrier

The Waste Carrier is responsible for:-

- a) The adequacy of packaging and security of the waste whilst under his control.
- b) Ensuring that a description accompanies the waste and that this description is accurate.
- c) Ensuring that any alteration to the waste is recorded in the description of the waste.

Any requests for contract vehicles to transport waste must be made to the site or contracts manager who should ENSURE the contractor is registered for the transport of waste. Waste carriers are subject to the Controlled Waste (Registration of Carriers) and Seizure of Vehicles Regulations 1991.

13.5 Duties of the Waste Broker

The Waste Broker is responsible for ensuring that the waste is correctly and adequately described and is transferred by a registered (or exempt) carrier and that all documentation is properly completed.

13.6 Duties of the Waste Manager

The Waste Manager is responsible for :-

- a) Carrying out the disposal operation in accordance with the conditions of the Waste Regulation Authority Licence.
- b) Checking the description of the waste they receive. Sample checks on the composition are considered to be “good practice” and should be implemented.
- c) Ensuring that correctly completed documentation accompanies the waste.

13.7 Duty Holders

All duty holders should look out for breaches of the duty committed by others in the chain. Breaches of the duty should be reported to the Waste Regulation Authority and further dealings with the offenders should be reconsidered.

Duty holders are only expected to do what is “reasonable in the circumstances”. The extent to which they should check up on others in the chain depends on the nature of the waste, how it is to be dealt with and what the holder might “reasonably be expected to know or foresee”. It is, for example, more important to check up on a consignment of toxic chemical waste than a load of waste paper.

13.8 Waste Transfer Notes & Consignment Notes

A waste transfer note or a special waste consignment note must be used before any waste is transported off site.

13.9 Completion of Site

On completion of the site, all **Waste Transfer Notes** and **Special Waste Consignment Notes** should be archived with the contract papers and retained:-

- ◆ For a period of 2 years in the case of transfer notes.
- ◆ For a period of 3 years in the case of special waste consignment notes.

Copies of the waste transfer notes should also be included in the health & safety file and handed to the client via the planning supervisor.