



STATUTORY INSTRUMENTS.

S.I. No. 27 of 2012



EUROPEAN COMMUNITIES MERCURY (EXPORT BAN AND SAFE
STORAGE) REGULATIONS 2012

(Prn. A12/0122)

EUROPEAN COMMUNITIES MERCURY (EXPORT BAN AND SAFE STORAGE) REGULATIONS 2012

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EUROPEAN COMMUNITIES MERCURY (EXPORT BAN AND SAFE STORAGE) REGULATIONS 2012

I, PHIL HOGAN, Minister for the Environment, Community and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to provisions of Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008¹ on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities Mercury (Export Ban and Safe Storage) Regulations 2012.

Purpose of Regulations

2. These Regulations are made for the purpose of giving effect to provisions of Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury (in these Regulations referred to as the Mercury Regulation).

Interpretation generally

3. (1) A word or expression that is used in these Regulations and is also used in the Mercury Regulation has, unless the contrary intention appears, the meaning in these Regulations that it has in the Mercury Regulation.

(2) In these Regulations-

- (a) "Agency" means the Environmental Protection Agency established under section 19 of the 1992 Act;
- (b) "Commission" means the Commission of the European Communities;
- (c) "1992 Act" means the Environmental Protection Agency Act, 1992 (No. 7 of 1992);
- (d) "TFS Regulation" means Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006² on shipments of waste.

(3) References in these Regulations to Dublin City Council are references to Dublin City Council in its designation as competent authority under article 53 of

¹OJ No. L 304, 14.11.2008 p.75-79

²OJ NO. L 190, 12.7.2006, p1

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 31st January, 2012.

the TFS Regulation as provided for in Regulation 4 of the Waste Management (Shipments of Waste) Regulations 2007 (S.I. No. 419 of 2007).

Designation of competent authority

4. (1) The Agency shall be the designated competent authority for the purpose of the Mercury Regulation, hereafter referred to as the competent authority.

(2) The competent authority may, for the purposes of sub-paragraph (1), appoint an authorised person.

(3) For the purposes of these Regulations, 'authorised person' means a person who is appointed in writing by the competent authority.

Powers of the competent authority to implement the Mercury Regulation and these Regulations.

5. (1) In carrying out its responsibilities under the Mercury Regulation and these Regulations, the competent authority shall:

- (a) have the power to serve notices or issue directions to undertakings regarding compliance with Regulation 6 of these Regulations and articles 5 and 6 of the Mercury Regulation,
- (b) issue guidance, as appropriate, to assist undertakings to comply with the Mercury Regulation,
- (c) seek the co-operation of any local authority, Dublin City Council and the Revenue Commissioners, as appropriate, to assist in the implementation or enforcement or both, of these Regulations and the Mercury Regulation.

Duties on undertakings

6. (1) (a) Importers, exporters and operators of activities referred to in Article 2 of the Mercury Regulation shall send to the competent authority and the Commission by 1 July 2012, the following data:

- (i) volumes, prices, originating country and destination country as well as the intended use of metallic mercury entering the Community,
 - (ii) volumes, originating country and destination country of metallic mercury considered as waste that is traded cross-border within the Community.
- (b) The companies concerned in the chlor-alkali industry shall send the following data related to the decommissioning of mercury in a given year to the competent authority and the Commission by 31 May each year:
- (i) best estimate of total amount of mercury still in use in chlor-alkali cell,

- (ii) total amount of mercury stored in the facility, and
 - (iii) amount of waste mercury sent to individual temporary or permanent storage facilities, as well as location and contact details of these facilities.
- (c) The companies concerned in the industry sectors that gain mercury from the cleaning of natural gas or as a by-product from non-ferrous mining and smelting operations shall send the following data to the competent authority and the European Commission by 31 May each year:
- (i) amount of mercury gained, and
 - (ii) amount of mercury sent to individual temporary or permanent storage facilities, as well as location and contact details of these facilities.
- (2) Undertakings to which the Mercury Regulation and Paragraph 1 of this Regulation apply shall:
- (i) keep appropriate records and information for the purpose of demonstrating compliance with these Regulations,
 - (ii) provide such records and information, in such format and at such frequency, as may be determined by the competent authority, to demonstrate compliance with these Regulations,
 - (iii) provide such records, in such format and at such frequency, as may be determined by the competent authority, to assist it in informing the Commission of the application and market effects of the Mercury Regulation in the State, and
 - (iv) comply with guidance provided by the competent authority under Regulation 5(1)(b).

Service of notices

7. (1) Any notice required to be served or given by or under these Regulations shall be addressed to the person concerned and served or given in one of the following ways—

- (a) by addressing it to the person by name and delivering it to him or her,
- (b) by leaving it at the address at which the person ordinarily resides,
- (c) by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides,
- (d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by prepaid registered post addressed to him or her to, that address, or

(e) where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and notice is required to be served on, or given to, him or her in respect of any premises, by delivering it to a person over the age of 16 years of age resident in or employed on the premises, or by affixing it in a conspicuous position on or near the premises.

(2) Where the name of the person concerned cannot be ascertained by reasonable inquiry, a notice under these Regulations may be addressed to “the occupier”, “the owner” or “the person in charge”, as the case may be.

(3) For the purposes of this Regulation, a company registered under the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) A person shall not at any time during the period of 3 months after a notice is affixed under paragraph (1)(e) remove, damage or deface the notice without lawful authority.

(5) A person who contravenes paragraph (4) shall be guilty of an offence.

Powers of authorised person

8. (1) An authorised person may, for any purpose connected with these Regulations—

(a) at all reasonable times, or at any time if he or she has reasonable grounds for believing that there may be a risk of environmental pollution arising from the carrying on of an activity at the premises or that such pollution is occurring, enter any premises and bring thereon such other persons (including members of An Garda Síochána) or equipment as he or she may consider necessary for the purpose, and

(b) at any time halt (if necessary) and board any vehicle and have it taken, or require the driver of the vehicle to take it, to a place designated by the authorised person, and such a vehicle may be detained at that place by the authorised person, for such period as he or she may consider necessary for the purpose.

(2) Subject to paragraph (7), an authorised person shall not, other than with the consent of the occupier, enter into a private dwelling under this Regulation unless he or she has given to the occupier of the dwelling not less than 24 hours notice in writing of his or her intended entry.

(3) Every authorised person when exercising any power conferred on him or her by or under these Regulations, shall, if requested by any person affected, produce the certificate furnished to him or her under section 13(3) of the 1992 Act or under Regulation 4(3).

(4) Whenever an authorised person enters any premises or boards any vehicle, pursuant to this Regulation, the authorised person may therein, as appropriate—

- (a) make such plans, take such photographs, record such information on data loggers, make such tape, electrical, video or other recordings and carry out such inspections,
- (b) make such copies of documents and records (including records in electronic form) found therein and take such samples,
- (c) carry out such surveys, take such levels, make such excavations and carry out such examinations of depth and nature of subsoil,
- (d) require that the premises or vehicle or any part of the premises or anything in the premises or vehicle shall be left undisturbed for such period,
- (e) require from an occupier of the premises or any occupant of the vehicle or any person employed on the premises or any other person on the premises, such information,
- (f) require the production of and inspect such records and documents, (including records held in electronic form) and take copies of or extracts from, or take away if considered necessary for the purposes of inspection or examination, any such records or documents,

as the authorised person, having regard to all the circumstances, considers necessary for the purposes of exercising any power conferred on him or her by or under these Regulations.

- (5) (a) An authorised person who, having entered any premises or boarded any vehicle, pursuant to this Regulation, considers that material thereon or therein is such, or is being handled or transported in such manner, as to constitute a risk of environmental pollution, may direct the holder of such material to take such measures as are considered by that authorised person to be necessary to remove that risk, including, the disposal of the material, in such manner and place and within such period as the authorised person may specify.
 - (b) If a holder of such material fails to comply with a direction of an authorised person under this paragraph, the authorised person may do all things as are necessary to ensure that the direction is carried out and the costs incurred by him or her in doing any such thing shall be recoverable from the holder of such material by him or her, or the person by whom he or she was appointed, as a simple contract debt in any court of competent jurisdiction.
- (6) Any person who—

- (a) refuses to allow an authorised person to enter any premises or board any vehicle or to take any person or equipment with him or her in the exercise of his or her powers under this Regulation,
- (b) obstructs or impedes an authorised person in the exercise of any of his or her powers under this Regulation,
- (c) gives either to an authorised person, a relevant local authority or the Agency, information which to his or her knowledge is false or misleading in a material respect, or
- (d) fails or refuses to comply with any requirement of this Regulation or of an authorised person,

shall be guilty of an offence.

- (7) (a) Where an authorised person in the exercise of his or her powers under this Regulation is prevented from entering any premises or if an authorised person has reason to believe that evidence related to a suspected offence under these Regulations may be present in any premises and that the evidence may be removed therefrom or destroyed, the authorised person or the person by whom he or she was appointed may apply to a judge of the District Court for a warrant under this paragraph authorising the entry by the authorised person into the premises.
- (b) If on application being made to him or her under this paragraph, a judge of the District Court is satisfied, on the sworn information of the applicant, that the authorised person concerned has been prevented from entering a premises as aforesaid or that the authorised person has reasonable grounds for believing the other matters aforesaid, the judge may issue a warrant under his or her hand authorising that person, accompanied, if the judge deems it appropriate so to provide, by such number of members of An Garda Síochána as may be specified in the warrant, at any time or times within one month from the date of the issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, the premises concerned and exercise the powers referred to in paragraph (4) or (5).

(8) An authorised person may, in the exercise of any power conferred on him or her by these Regulations involving the bringing of any vehicle to any place, or where he or she anticipates any obstruction in the exercise of any other power conferred on him or her by or under these Regulations, request a member of An Garda Síochána to assist him or her in the exercise of such a power and any member of An Garda Síochána of whom he or she makes such a request shall comply therewith.

Offences by bodies corporate

9. (1) Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a

director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

Offences.

10. Any person who—

- (a) contravenes or fails to comply with any provision of the Mercury Regulation,
- (b) contravenes or fails to comply with any provision of these Regulations,
- (c) fails to comply with a requirement, obligation or condition imposed by the competent authority by way of a direction under the Mercury Regulation or these Regulations,

shall be guilty of an offence.

Prosecutions and penalties

11. (1) A prosecution for a summary offence under these Regulations may be taken by the competent authority or Dublin City Council in relation to offences relating to the TFS Regulation.

(2) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a class B fine or imprisonment for a term not exceeding 3 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000, or imprisonment for a term not exceeding 3 years, or both.

Costs of prosecutions

12. Where a person is convicted of an offence under these Regulations in proceedings brought by the prosecuting authority, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the prosecuting authority, the costs and expenses, measured by the court, incurred by the prosecuting authority in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of directors, employees, consultants and advisers, as the case may be.

Prohibition/restriction on the movements of metallic mercury and certain mercury compounds and mixtures

13. Mercury and mercury waste which is prohibited from being exported or is subject to any restriction on importation or exportation or otherwise restricted under these Regulations or the Mercury Regulation or any other enactment is deemed so prohibited or restricted for the purposes of the Customs Consolidation Act, 1876, the Customs Act, 1956 and the Customs and Excise (Miscellaneous Provisions) Act, 1988.



Given under my Official Seal this 26 day of January, 2012.

PHIL HOGAN,
Minister for the Environment, Community and Local
Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations lay down the rules and penalties applicable to infringements of the Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury and designate the Environmental Protection Agency as the competent authority to implement the regulation.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
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