

Environmental Services Association
Attn: Roy Hathaway and Barry Dennis
154 Buckingham Palace Road
London
SW1W 9TR

Date: 29th September 2014

Dear Mr Hathaway and Mr Dennis

Misclassification of hazardous waste

Tackling misclassification of waste is a priority for us and we would like to raise some concerns with you and ask for your assistance in communicating these issues to your members.

Correct assessment and classification of waste is essential to help ensure it is properly managed. We have recently found that a number of companies are carrying out waste assessments using out of date information and as a result they are misclassifying and mismanaging hazardous wastes. This could pose a serious risk to people and the environment, as well as undermining those waste businesses who are correctly assessing and classifying their wastes.

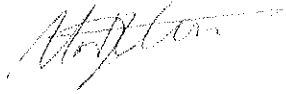
New hazardous waste criteria are being introduced next summer, and although this is unlikely to change many classifications, it will mean that companies will need to review their assessment procedures. For those whose current assessment procedures are up to date, the change is likely to be smooth, but for those whose assessment procedures are already incorrect they may find a number of areas where they need to make changes to their practices.

We have already provided advice to members of our hazardous waste treatment group. To help further raise awareness we would like your help in encouraging your members to review their assessment procedures to ensure they are correct and up to date. We would recommend that this should include a review of internal or commercially available tools they may use. Your members will find it helpful to refer to Technical Guidance WM2 during the review. In the Annex to this letter we have included a number of examples of problems, which may assist in these reviews.

In anticipation of your support, I would like to thank you for helping us communicate this important message. If you need any further technical advice about this, please contact Matt Womersley. Email matt.womersley@environment-agency.gov.uk

Environment Agency
Horizon House, Deanery Road, Bristol BS1 5AH
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Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mat Crocker', with a horizontal line extending to the right from the end of the signature.

Mat Crocker
Deputy Director of Waste and Illegals

Annex – Examples of aspects of waste assessment where concerns can arise

The environment agencies of the United Kingdom publish a technical guidance document (WM2 - 3rd edition) which is reviewed regularly and is aligned to the current legal assessment of wastes. This guidance document should be followed carefully to ensure waste assessment is done correctly.

1. Review of assessment procedures or tools

The Environment Agency updates technical guidance WM2 approximately every two years. The guidance is only updated when an important part of the assessment has changed. We expect any procedures or tools used by waste companies to be routinely checked and updated to maintain alignment with this. If it is not it may not be compliant.

Technical guidance WM2 was last updated in August 2013, was your assessment procedure or tool updated to reflect it?

2. The classification of chemicals

To produce a reliable answer any assessment procedure or tool must use the correct classification of each chemical. Risk phrases must be obtained from appropriate, current data sources.

There is a legal framework for choosing the correct data source to obtain risk phrases associated with relevant substances. These are explained more fully in WM2, but can be summarised as follows:

- (i) Where a substance is listed in Table 3.2 of the CLP you are legally required to use that classification. You should however take into account:
 - any amendments that have been made to that table by adaptations to technical progress (ATP's) and corrigendums;
 - some entries in the CLP may be incomplete, so use information from other sources that indicates that additional categories of danger may apply.
- (ii) Where a substance is not listed in Table 3.2 of the CLP you must determine the classification of the substance using the procedures set out in the Approved Classification of the Labelling Guide (ACLG). The use of the REACH registered substances database is indicated by the ACLG as the source of some of the necessary information. It may be incomplete so additional information should be considered where relevant.
- (iii) Where the substance is not listed in Table 3.2 of the CLP or registered with REACH then other data sources will be the principal source of information as indicated in the ACLG.

There are a number of issues that arise from this

- (i) Amendments to the CLP are occurring at a rate averaging more than once per year. The REACH registered substance database is also updated frequently. This indicates how important it is that companies routinely and regularly check any chemical classifications they are using. An assessment tool is only capable of producing a legally valid assessment of a waste if it is aligned with all current ATPs. Assessments based on out-of-date data sources are unreliable.
- (ii) If a substance is not listed in Table 3.2 of the CLP this cannot be taken to mean that it is not a dangerous substance. The law requires that you classify it in accordance with the procedures set out in the Approved Classification and Labelling Guide, for example by using the REACH registered substances database.
- (iii) A substance listed in Table 3.2 or registered in the REACH registered substances database may have additional categories of danger not listed there. So these do not exclude the requirement to consider other reliable sources of data, for example IARC.

Furthermore, Table 3.2 of the CLP is updated from time to time by means of Adaption to Technical Progress.

3. Appropriate worst case compounds are applied

Where the specific compound present is unknown, as explained in WM2, the classification for the worst case compound that might reasonably exist in the waste should be used.

Where Table 3.2 of the CLP contains general compound entries for elements, that entry can only be used where it is the worst case. In some cases specific compounds for that element may be listed separately with more significant risk phrases.

We therefore do not expect general compound entries to be used as 'worst case' in assessment tools, unless that can be justified for the individual waste being assessed.

As an example, Arsenic can reasonably be expected to occur in soils as oxide forms. These oxides have specific entries in Table 3.2 of the CLP that are clearly the 'worst case' when compared to the general compound entry for arsenic. The latter should not therefore be used as the worst case.

4. Additive hazardous properties are correctly applied

Some hazardous properties are additive. This means two or more substances displaying the same or related risk phrases must be added when assessing against specific thresholds.

Where the assessment procedure or tool does not add substances it will underestimate hazardous properties and have the potential to misclassify hazardous wastes as non-hazardous.

For example, metal substances with ecotoxic risk phrases are additive.