

## **Manual of European Environmental Policy**

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

The Manual was published by Earthscan/Routledge from 2010 to 2012. It was designed as an on-line interactive reference work and annual printed versions were also produced.

This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
- The sections include links to external websites (e.g. to legal texts). These links continue to work as long as those links are not broken by those websites.
- The sections also include the original links that enabled interactivity within the published on-line version of the Manual. These links no longer work.

© Copyright IEEP 2014

The Manual should be cited as follows:

Farmer, A.M. (2012) (Editor). Manual of European Environmental Policy. 1043pp. Routledge, London.

# Disposal of waste oils

<a href="#">75/439/EEC</a> (OJ L194 25.7.1975)	<b>Directive on the disposal of waste oils</b>
Proposed 20.3.1974 – COM(74)334	
<b>Legal base</b>	Articles 115 and 352 TFEU (originally Articles 100 and 235 EEC Treaty)
<b>Amended by</b>	
<a href="#">87/101/EEC</a> (OJ L42 12.2.1987)	Amending Directive
Proposed 24.1.1985 – COM(85)757	
<b>Legal base</b>	Articles 122 and 268 TFEU (originally Articles 100 and 235 TEC)
<a href="#">91/692/EEC</a> (OJ L377 31.12.1991)	Directive standardizing and rationalizing reports on the implementation of certain Directives relating to the environment
<b>Legal base</b>	Article 150 TFEU (originally Article 130s TEC)
<a href="#">2000/76/EC</a> (OJ L332 28.12.2000)	Directive on the incineration of waste
<b>Legal base</b>	Article 192/150 TFEU (originally Article 175/Article 130s TEC); Article 294/Article 14 TFEU (originally Article 251/Article 189b TEC)
<b>To be repealed by</b>	With effect from 12 December 2010
<a href="#">2008/98/EC</a> (OJ L312 22.11.2008)	Directive on waste and repealing certain Directives
<b>Legal base</b>	Article 192/Article 294 TFEU (originally Article 175(1)/Article 251 TEC)
<b>Binding dates</b>	
<b>75/439/EEC</b>	
Notification date	18 June 1975
Formal compliance	18 June 1977
Final date for permits	18 June 1979
Situation reports	18 June 1980 and subsequently every three years

<b>87/101/EEC</b>	
Notification date	13 January 1987
Formal compliance	1 January 1990
<b>91/692/EEC</b>	
Notification date	23 December 1991
Entry into force	23 December 1991
Transposition – Articles 2 and 3	1 January 1993
Transposition – Article 4	1 January 1994
Transposition – Article 5	1 January 1995
<b>2000/76/EC</b>	
Entry into force	28 December 2000
Commission to report on progress	31 December 2008

## Purpose of the Directive

The Directive aims to prevent the uncontrolled disposal of waste oil and the ensuing environmental problems. The Directive also seeks to prevent the waste of resources by encouraging regeneration rather than burning of waste oils. It seeks to ensure that financial arrangements adopted to promote safe disposal and recycling do not create barriers to the common market, and to prevent uncontrolled burning of waste oil as fuel.

## Summary of the Directive

### *Scope and definitions*

A general duty is placed on Member States to ensure that the collection and disposal of waste oils causes no avoidable damage to man and the environment. The definition of ‘waste oils’ is not restricted to lubricating oils, but by including the words ‘used oils’ it excludes wastes from oil refineries, for example.

### *Requirements*

Member States are required to give priority to regeneration (producing base oils) ‘where technical, economic and organizational constraints so allow’. Burning of waste oils which cannot be regenerated is to be carried out under environmentally acceptable conditions as set out in the Directive with the proviso that it is technically, economically and organizationally feasible. Waste oils that are neither regenerated nor burnt must be safely destroyed or their dumping controlled.

The following are prohibited:

- discharge of waste oils to any water and drainage systems;

- any deposit and/or discharge harmful to the soil;
- any uncontrolled discharge of residues from processing; and
- any processing of waste oils causing air pollution which exceeds the level prescribed by existing provisions.

Where the above aims cannot otherwise be achieved, Member States are to ensure that one or more undertakings carry out the collection and/or disposal of waste oils in assigned zones. Holders of waste oils who cannot comply with the above prohibitions must place the oils at the disposal of these undertakings.

### *Indemnities*

Indemnities may be granted to these collection and disposal undertakings as a reciprocal concession for the obligations imposed on them. These indemnities must not exceed annual uncovered costs and must not cause any significant distortion to competition or give rise to artificial patterns of trade in the products. The indemnities may be financed by a charge on waste oils or on products which, after use, are transformed into waste oils. The 'polluter pays principle' is to apply.

### *Information and awareness*

Member States are required, where necessary to achieve the objectives of the Directive, to carry out public information and promotional campaigns to ensure that waste oils are stored appropriately and collected as far as possible.

### *Permitting and registration*

Any undertaking *disposing* of waste oil must obtain a permit from the competent authority. The permit may be subject to conditions. The undertakings must supply certain information to the competent authority on request and must be periodically inspected. Any undertaking *collecting* waste oils must be registered and adequately supervised; a system of permits may be required. Undertakings *regenerating or burning* waste oils may be granted a permit only when the competent authority is satisfied that all appropriate preventive measures have been taken. In the case of regeneration plants, Member States are required to ensure that their operation will cause no avoidable damage to the environment by requiring that the risks from residues are reduced to the minimum and that such residues are disposed of as required by the toxic wastes Directive ([78/319/EEC](#), subsequently replaced by the Hazardous Waste Directive [91/689/EEC](#)).

### *The authorized burning of waste oil*

Member States must also take the following measures where waste oils are burnt: plants with a capacity of more than 3 MW must observe emission limits set in the amending Directive (these include limits for heavy metals, chlorine and fluorine, but sulphur

dioxide and smoke limits are to be set by each Member State); plants under 3 MW must be subject to ‘adequate control’. The Commission must be informed of the measures taken for both regeneration and combustion plants. There are further provisions to ensure that PCB/PCTs do not cause hazards. A limit of 50 ppm is laid down for the content of PCB/PCTs in regenerated waste oil.

### *Reporting on implementation*

Member States must submit information on the implementation of the Directive in accordance with Directive [91/692/EEC](#) (see section on implementation and enforcement of legislation).

## **Development of the Directive**

### *Motivation and inspiration*

A survey conducted before the proposal of Directive 75/439/EC showed that, in some Member States, as much as 20–60 per cent of all waste oil was being disposed of without any control, accounting for a significant proportion of all industrial pollution.

Under a German law of 1968 controlling the disposal of waste oil, a levy on the sale of lubricants was introduced to cover losses during waste oil disposal operations. This law provided inspiration for the Directive, though the Commission’s work was initiated by a legislative proposal from the Dutch government rather similar to the scheme in Germany, and by French draft legislation. This explains why the Directive preceded the Framework [Directive 75/442/EEC](#) on waste. In fact the Directive – agreed at the Council meeting of 7 November 1974 – was the very first to be agreed under the first action programme on the environment.

### *Strict legislation*

The European Parliament welcomed without reservation the provisions aimed at ‘banning the destruction of waste oils’ and ‘making regeneration of waste oils obligatory’, thus giving a much more stringent interpretation to the language of the Directive than it bore, even in its original form, which was altered by the 1987 amendment. The general tone of the European Parliament’s resolution was to make the Directive yet more stringent. The Economic and Social Committee concentrated largely on the financial arrangements and proposed an alternative scheme which, in its view, applied the ‘polluter pays’ principle more rigidly.

Before the Directive was agreed, it underwent some changes including an increase from 200 to 500 l/annum of the threshold above which records had to be kept by establishments producing, collecting or disposing of waste oils.

## *Amendments*

The major amendments proposed by the Commission in January 1985 were based on the inadequate collection of waste oils and the problems of uncontrolled burning. The proposals were unpopular – rather more stringent than those adopted, and would have required an unqualified advertising campaign to ensure the maximum collection of waste oils. The UK government, for example, took the line that there was no need to change current policy and practice and that there was no evidence that potentially harmful substances in waste oils were likely to cause major problems in combustion. The UK House of Lords also concluded that the proposals in most respects were not justified<sup>1</sup>. It considered that there was no evidence to support the stringent controls on burning waste oils put forward by the Commission and thought that regeneration of waste oil was desirable but that the industry itself should promote such action. The regeneration industry wanted the proposed controls on burning because the lack of such controls was forcing them out of business (and indeed did lead to the eventual closure of the re-refining sector in the United Kingdom).

The amendments made by Directive 91/692/EEC concerned reporting requirements. Article 18 was amended to require Member States to report to the Commission every three years on the implementation of the Directive, in response to a questionnaire sent to Member States by the Commission. This process applies to many pieces of waste legislation. The report must be submitted to the Commission within nine months of the end of the reporting period it covers. The first reporting period was 1995–1997 inclusive. In response, the Commission publishes a report on the overall implementation of the Directive.

In December 2000, Directive [2000/76/EC](#) on the incineration of waste repealed Article 8(1) and the Annex to the waste oils Directive. Thus, the Directive no longer requires the holders of certain quantities of waste oils containing impurities over certain levels to handle and store them separately to other waste oils.

In 2008, the Directive on Waste, 2008/98/EC, made one small amendment to Article 10(4), stating that the method for measuring the PCB/PCT content of waste oils shall be fixed by the Commission. As from 12 December 2010, Directive 2008/98/EC will completely repeal the Waste Oils Directive 75/439/EEC (for more information, see the section on *Further Developments*).

## **Implementation of the Directive**

A list of measures transposing the Directive in the Member States can be found in their national [execution measures](#).

### *The period 1995–1997: low rates of regeneration*

In January 2000 the Commission published a consolidated report ([COM\(99\)752](#)) on

progress made in the implementation of several of the waste Directives over the period 1995–1997. In respect of the Waste Oils Directive 75/439/EEC, this report noted a number of problems across the EU in both transposition and implementation. For example, only three Member States reported regeneration rates above 30 per cent for waste oils (Germany, France and Luxembourg). Indeed, the proportion of regeneration was seen to be decreasing in the 1995–1997 data compared to that shown in previous reporting periods. The Commission also noted that Member States had given the impression that they did not wish to focus on regeneration, often viewing combustion as economically preferable.

*The period 1998–2000: incorrect implementation results in infringement proceedings*

In May 2003 the Commission published a consolidated report ([COM\(2003\)250](#)) for the period 1998–2000. Infringement cases for incorrect practical implementation were being pursued against the United Kingdom, Greece, France, Sweden, Denmark, Belgium and Finland. The average rate of collection of waste oils was 83 per cent, meaning that almost 20 per cent of waste oil was illegally dumped or incinerated. Of the waste oils collected, approximately 66 per cent was combusted and 24 per cent regenerated. This represented an overall recovery rate of around 90 per cent. Details were provided of the emission limit values on various substances set by each Member State. Belgium, Denmark, Finland, Germany, Greece, Italy, Portugal, Spain, Sweden and the United Kingdom all reported their limit values, which were in line with or stricter than the limit values set in the Directive.

*The period 2001–2003: not much change*

In July 2006 the Commission published a consolidated report ([COM\(2006\)406](#)) for the period 2001–2003. It reported that the average collection rate for 2003 was 81 per cent – a slight decrease from the previous reporting period. Five Member States had no regeneration plants on their territory: the Czech Republic, Ireland, the Netherlands, Portugal and Slovenia. Of the overall waste oils collected during 2003, 44 per cent was regenerated and 46 per cent was combusted. Some issues were recounted which Member States claimed placed constraints on their giving priority to the regeneration of waste oils – economic aspects such as the low volume of waste oils produced, the possibility of low-cost combustion in other Member States and saturation of the base oils market. For combustion, it was reported that the emission limit values were all within the range, or below the limit values, set in the Directive.

*The period 2004–2006: regeneration much increased*

In May 2009, a report<sup>2</sup> was published by Ecologic and IEEP on the implementation of the waste oils Directive specifically. It found that the regeneration of waste oil was much higher than previously. Particularly, Greece and Luxembourg reported regeneration rates of 100 per cent, while several other Member States reached rates of over 70 per cent: Belgium-Brussels, Belgium-Wallonia, Denmark, Germany, Italy, the Netherlands and

Poland. However, some Member States still favoured combustion as a means of waste oil management, notably Portugal and Slovenia (100 per cent), Austria, Finland, Lithuania, Romania and the United Kingdom (over 70 per cent). The Czech Republic reported a tipping rate of nearly 40 per cent.

## Enforcement and court cases

The following cases specifically concerning Directive 75/439/EEC have been decided by the ECJ. They are listed in chronological order:

- [C-366/89](#) 02.08.1993. Italy failed to transpose certain parts of the Directive, considering it unnecessary as some general customs already reflected its content. But the Court ruled that for the implementation of a Directive into the national law of a Member State, the existence of a practice consistent with the Directive's objectives does not excuse a Member State from transposing that Directive with provisions that are sufficiently precise, clear and transparent in order to enable individuals to know their rights and their obligations. In order to ensure the full application of Directives, Member States must provide a precise statutory framework in the sector in question.
- [C-376/00](#) 11.12.2001. Italy failed to report to the Commission on the implementation process, as in accordance with Article 18 of the Directive.
- [C-392/99](#) 10.04.2003. This case, against Portugal, concerned the interpretation and implementation of three Articles of the Directive. The Court stated that in order for Article 6(2) of Directive 75/439/EEC to be implemented correctly, national legislation must expressly require the adoption of all appropriate health protection measures and use of the best technology possible where the cost is not excessive. Secondly, for Article 13, national legislation must require the competent authorities to carry out periodical inspections of undertakings which regenerate waste oils or use them as fuel. Furthermore, during the inspections the state of technical development and/or of the environment should be examined with a view to revising the allocation of permits. Finally, Article 17 intends to enable the Commission and the Member States to be regularly informed of the technical knowledge acquired by each of those States and of experience gained and results obtained through the application of the Directive in the Community.
- [C-201/03](#) 30.03.2004. Sweden was also found to have failed to take the necessary measures under Article 3(1) to ensure that priority is given to the processing of waste oils by regeneration where technical, economic and organizational constraints so allow.
- [C-424/02](#) 15.07.2004. This case against the United Kingdom, like Case C-15/03 against Austria, was also concerned with the interpretation of Article 3(1) of the Directive. The Court ruled that it was not providing exceptions, but was giving the scope. Prioritizing the treatment of waste oils was a compulsory duty.
- [C-15/03](#) 27.01.2005. Austria failed to properly transpose the Directive into national law; particularly concerning Article 3(1), that there must be regeneration only where not prevented by technical, economic and organizational constraints. Austria argued that putting in place regeneration plants on its territory was



uneconomical and that in those circumstances, and by the principle of proportionality, the obligations of Member States should be modified according to national circumstances. The Court ruled that Austria's interpretation was wrong, and that Article 3(1) forms part of a provision describing the obligation imposed on all Member States and did not thereby intend to provide limited exceptions to a rule having general application.

- [C-92/03](#) 27.01.2005. Portugal failed to adopt the measures necessary to give priority to the processing of waste oils by regeneration where the technical, economic and organizational constraints so allow. Though the Portuguese Government argued that the absence of legislation is not sufficient to prove infringement of Article 3(1) of the Directive (because, theoretically, the objective referred to in that Article does not necessarily have to be concretely enacted in national legislation), the Court found that Portugal in contravention of the Directive.

## Further developments

*The new Directive on waste (2008/98/EC)*

As of the 12 December 2010, Directive 75/439/EEC specifically focusing on management of waste oils will no longer apply, having been repealed by the Directive on Waste [2008/98/EC](#). The Directive on Waste is intended to bring together key provisions on the management of waste, providing a clearer baseline and a streamlined legislative approach at EU level. The treatment of waste oils is integrated into provisions on the management of specific hazardous waste streams. While the requirement to collect and manage waste oils separately is retained, the promotion of reprocessing of oils will be abandoned.

## Related legislation

There is an EU Directive which has a strong interaction with the Directive on waste oils:

- Directive on Waste ([2008/98/EC](#)). Directive 2008/98/EC incorporates measures relevant to the management of waste oils, negating the need for a separate Directive on this. For this reason, Directive 75/439/EEC will be repealed with effect from 12 December 2010.

## References

1. House of Lords Select Committee on the European Communities (1985) *Disposal of Waste Oils*. HMSO, London.
2. Ecologic and the Institute for European Environmental Policy (IEEP) (2009) *A Report on the Implementation of Directive 75/439/EEC on Waste Oils*, [http://ec.europa.eu/environment/waste/reporting/pdf/Report\\_Waste\\_Oil.pdf](http://ec.europa.eu/environment/waste/reporting/pdf/Report_Waste_Oil.pdf)