



6 February 2009

CONSULTATION ON THE REVIEW OF THE ANIMAL BY-PRODUCTS REGULATION (EC) No. 1774/2002

INTRODUCTION

1. The UK Environmental Law Association (**UKELA**) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study and formulation of environmental law in the UK and the European Union. UKELA attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the Waste Working Party.
3. UKELA welcomes the general objectives of the proposed recast Regulation of providing legal certainty, simplifying the ABPR and thus reducing the administrative burden, and notes that these objectives accord with the Government's Better Regulation agenda. UKELA wishes to comment on only two questions raised in the consultation document - Question 1 and Question 15.

Q1: THE COMMISSION IS SEEKING TO CLARIFY THE POINT AT WHICH ABPs BECOME FINISHED PRODUCTS (ARTICLE 46.2(A)). SUCH ABPs IF TREATED OR TESTED IN A WAY WHICH ENSURED REMAINING RISKS WERE MINIMAL WOULD THEN NOT BE SUBJECT TO ABPR RULES. THIS WOULD POTENTIALLY AFFECT SEVERAL SECTORS INCLUDING PHARMACEUTICALS, OLEOCHEMICALS, PET FOOD MANUFACTURERS AND TANNERIES. DO YOU WISH TO COMMENT ON THE LIKELY IMPACT OF THIS PROPOSAL?

4. UKELA supports the idea of clarifying the point at which ABPs become finished products and believes that this will create greater certainty over the legal distinction between materials as ABPs and products which have ceased to be ABPs. A parallel can be drawn with the classification of materials as "waste" under the previous versions of the Waste Framework Directive (75/442/EEC and 2006/12/EC). Defra will be aware of the extensive litigation both in the UK and in the rest of the EU surrounding the issue of when waste ceases to be waste and notes the inclusion of Article 6 (End-of-waste status) in the new Waste Framework Directive (2008/98/EC). UKELA suggests that the conditions set out in Article 6 would form a sensible basis on which to base the conditions for ABPs becoming finished products. These conditions are:
 - (a) the substance or object is commonly used for specific purposes;
 - (b) a market or demand exists for such a substance or object;
 - (c) the substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and

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- (d) the use of the substance or object will not lead to overall adverse environmental or human health impacts.

Q15: DO YOU AGREE WITH THE REFERENCE TO THE WASTE INCINERATION DIRECTIVE (WID) HAVING BEEN REMOVED FROM THE ABPR AND PROVISION MADE IN CERTAIN CIRCUMSTANCES FOR ABPS (INCLUDING TALLOW) TO BE USED AS FUEL FOR COMBUSTION? (ARTICLE 19(F), 20(H), 21(G)).

5. UKELA welcomes the Commission's proposal in Article 7(1)(b) of the proposed Regulation for the exemption from the requirement for approval of incineration plants and co-incineration plants which have a permit to operate in accordance with the Waste Incineration Directive. UKELA questions the need for incineration and co-incineration plants to register under the ABPR where there is other legislation in place governing the process and notes that the proposal would reduce the regulatory burden on operators of such plants by avoiding the need for such plants to be "dual licensed" under both the Regulation and the Waste Incineration Directive.
6. UKELA also agrees with Defra's view expressed in paragraph 25 of the Impact Assessment that further clarification is needed (in order to provide legal certainty) regarding the circumstances in which the burning of tallow needs to comply with WID. UKELA reiterates its comments in relation to Q1 above regarding the point at which ABPs become finished products, and urges Defra to press for end-of-waste specific criteria for tallow to be considered under the comitology procedure provided for in Articles 6(2) and 39(2) of the Waste Framework Directive at the earliest opportunity.
7. UKELA notes that the exemptions in Article 7 of the proposed Regulation do not extend to plants which use animal by-products or derived products as a fuel for combustion. Such fuels may not fall within the definition of "waste" under the Waste Framework Directive (because they have undergone a recovery process and have ceased to be waste), but may still be classified as animal by-products or derived products for the purposes of the Regulation. The combustion of such fuels would require both authorisation under the Regulation and (for plants with a rated thermal input exceeding 50MW) a permit under the IPPC Directive (2008/1/EC). In the UK, such plants would therefore require an authorisation under the Regulation and an Environmental Permit (even for plants under 50MW). This would give rise to an anomalous situation in which plants incinerating or co-incinerating animal by-products or derived products which are classified as waste under the Waste Framework Directive would require only one permit (under the Waste Incineration Directive), but plants which are used for the combustion of non-waste animal by-products or derived products as fuel would be subject to a dual licensing requirement. UKELA therefore suggests that the exemption in Article 7 of the proposed Regulation should also apply to combustion plants which have a permit to operate in accordance with the IPPC Directive
8. UKELA notes that one of the aims of the proposed Regulation is to prevent and minimise risks to animal and public health arising from animal by-products and derived

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products, but believes that the requirements of the IPPC Directive on their own would be sufficient to ensure that these aims are achieved by plants which use animal by-products or derived products as a fuel for combustion.

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