

ENVIRONET NEWS

The electronic newsletter for improved environmental performance

IN THIS ISSUE

- Legionnaires Disease - recent outbreak
- Solutions! - to the Packaging Waste Regulations
- ISO 14001
- New COSHH Regulations
- Update on Contaminated Land

UPDATE ON LEGIONNAIRES DISEASE

A recent high profile case of Legionnaires Disease in Somerset has resulted in the deaths of 3 people and likely prosecution of at least one company.

An outbreak of Legionnaires Disease in Somerset has resulted in the deaths of three people, with eight further people diagnosed as contracting the disease. These eight have suffered to varying degrees, the worst case resulting in brain damage and speech difficulties.

The human cost of such an incident is immeasurable and not surprisingly therefore the Regulators have investigated the outbreak to identify those responsible.

At the time of writing it is understood that a wet cooling tower from a plastics factory was the most likely source. Wet cooling towers, which do not have adequate controls or maintenance procedures in force, are an obvious risk. Under the COSHH Regulations owners and operators of such equipment have a duty to ensure they are operated in safe and proper manner so as not to expose people to undue risks to their health.

It is likely that at least one company will be prosecuted as a direct result of this incident. The lack of a detailed risk assessment could be enough to prove that the defendant contravened the Regulations.

The COSHH Regulations relating to legionellosis do not only control the operation of wet cooling towers but also all other systems containing water, which have the potential to harbour the legionella bacteria.

This incident should remind individuals responsible for the safe operation of these systems not to become complacent, particularly as individuals can be found personally liable where negligence can be proved

SOLUTIONS! - COMPLIANCE WITH PRODUCER RESPONSIBILITY (PACKAGING WASTE) REGULATIONS 1997

If your business has a turnover of over £5 million (reducing to £2 million in 2000) and handles more than 50 tonnes of packaging waste per annum you may have obligations under the Regulations to recover and recycle a percentage of your packaging waste.

Obligated businesses have to:

- Register with Environment Agency (EA) by 1st April each year and pay the EA a fee, currently £750. Also, by 1st April they must send to the EA a completed data form, giving the EA certain information on the packaging handled in the previous calendar year.
- They must calculate their recovery and recycling obligations based upon the packaging handled, the respective activity obligations and the UK Recovery and Recycling Targets for the given year.
- They must meet their calculated recycling and recovery targets by the end of the calendar year.
- They must provide the EA a certificate of compliance by 31st January, confirming they have fulfilled their obligations for the previous year.



Non compliance with any of these requirements is a criminal offence. Successful prosecution by the EA could result in a fine of £5,000 in the Magistrates Court or an unlimited fine in a Crown Court. It is also possible that individual Directors or senior managers could also be held personally liable.

The answer, SOLUTIONS!, the tailor made information collating and processing system from Environet.

Environet Consulting Limited has expertise in assisting organisations:

- understand the complexities of the regulations and the obligations they impose
- collecting the necessary packaging information
- collating the information and calculating the recovery and recycling obligations
- reducing their packaging obligations and costs by rationalising packaging design
- most cost effectively discharging their recovery and recycling obligations

In order for an obligated business to discharge its recovery and recycling obligations it can either “go it alone” or join a “compliance scheme”. Angus Macpherson from the Environment Exchange explains the benefits of “going it alone”:

When businesses register, they have to submit data based on the previous calendar year on the quantity of packaging they have handled and the packaging activities conducted on that packaging. From these two a business calculates its annual obligation. This responsibility lies with a business regardless as to whether or not it opts to join a compliance scheme.

So what does a compliance scheme offer? - legally it takes on the responsibility of obtaining evidence that its members have complied with the legislation. Depending on the compliance scheme it may also offer additional services such as waste collection or reprocessing capacity, some claim that as a result of their size they can negotiate lower cost PRNs, others provide, at a fee, consultancy and data audit services.



If however a business does not require any of these services the simplest and lowest cost mechanism for accessing PRNs is through The Environment Exchange. The Environment Exchange:

- provides on a website transparent, up to the minute, prices and an assured availability of PRNs. In addition it provides a weekly bulletin which summarises trading to date.
- saves time spent on administration and checking prices.
- handles all aspects of the PRN transaction and payment on behalf of members
- provides a code of conduct and a guaranteed payment versus delivery service which aims to ensure that traders will receive payment and PRNs within 5 working days of the trade.

There is no obligation for all PRN transactions to be done through the Environment Exchange and no membership fee. The only charge is £0.50 per tonne traded with a minimum fee of £10 per trade.

For further details either visit the website (www.t2e.co.uk) or call 0171 815 0518.

ENVIRONMENTAL MANAGEMENT SYSTEMS

The number of companies following the ISO 14001 route is rapidly increasing as supply chain pressures grow on organisations to demonstrate their commitment to environmental stewardship.

Developing an effective EMS requires not only a thorough understanding of all the activities carried out by an organisation, but also an appreciation of all the potential environmental consequences of those activities, products or services. Once these have been assessed a meaningful Environmental Policy can be produced, with defined objectives, targets and action plan.

Whilst legal compliance should be seen as a minimum requirement there are a number of companies who unwittingly do not meet their statutory obligations and put themselves and the environment at risk. An effective EMS introduces management control measures, which minimise these risks.

There are also a number of environmental variables such as waste and energy where substantial efficiency savings can be found, which in many cases more than fund the implementation of the EMS.

Environet is assisting a number of organisations obtain ISO 14001. For anyone considering going down the ISO 14001 route, an Initial Review is recommended as it would identify the benefits particular to your organisation. In addition, it could locate current deficiencies in your existing environmental management procedures that leave you exposed to legal risk. For further advice on any ISO 14001 issue, please contact us.

COSHH REGULATIONS - UPDATE

The COSHH Regulations were amended in March 1999, known as the COSHH Regulations 1999. The proposed changes include:

- consolidation of previous COSHH Regulations and amendments
- removing the list of the Maximum Exposure Limits (MELs) from the Regulations and including them in HSE publication EH40 "Occupational Exposure Limits". This is to prevent the regulations having to be amended each time an MEL is altered
- future proposed MELs will be published in HSE publication EH64 "Summary Criteria for Occupational Exposure" for consultation and approval
- a number of new MELs have been included e.g. aniline, gluteraldehyde, rosin based solder flux fume
- the OES for dichloromethane has been replaced with an MEL
- the MEL for benzene has been revised
- definition of substantial concentration of dust is included in the Regulations
- required frequency for monitoring hazardous substances is included in the Regulations



CONTAMINATED LAND - THE AGENDA FOR DEVELOPERS

Tim Smithers, partner at solicitors Veale Wasbrough gives an update on contaminated land liability.

For nearly ten years we have been debating the possible implementation of a scheme regulating the remediation of historically contaminated land. The most recent piece of legislation - The Environment Act 1995 - is still not yet in force, despite many promised implementation dates. The DETR now tells us that the final revised draft Guidance and Regulations to implement the 1995 Act are imminent and the regime should be up and running by late autumn.

There are however a number of other reasons why contaminated land is now high on the environmental agenda:

- The thrust of current planning policy is to encourage the re-use of derelict land. Last month the DETR issued a new draft Planning Policy Guidance note 3 (housing) introducing for the first time a "sequential" test for new housing developments, ensuring the reuse of existing brown-field land before considering the release of new green-field sites.
- The current planning guidance on contaminated land (PPG23) is due for revision later this year. It is hoped that the revisions will go some way to narrow the uncertainty for property developers that their redevelopment schemes and remediation proposals approved under planning legislation will, when properly implemented, enable them to avoid potential additional liability under the 1995 Act remediation regime.
- Recent court decisions have emphasised the potential extent of criminal and civil liability. The extent of criminal liability for water pollution was made clear in the *Empress case*. *The Blue Circle - v - MOD* case last year demonstrated that civil damages for causing pollution to a third party's land can include the financial losses arising from an abortive sale.
- Finally, just before Easter, Michael Meacher, the Environment Minister, announced that he had laid new regulations before Parliament (the Anti-Pollution Works Regulations 1999). These Regulations will give new powers to the Environment Agency to serve notice on polluters or potential polluters requiring them to carry out works or operations to remedy or prevent water pollution. These new regulations will run in parallel with any future contaminated land remediation regime.

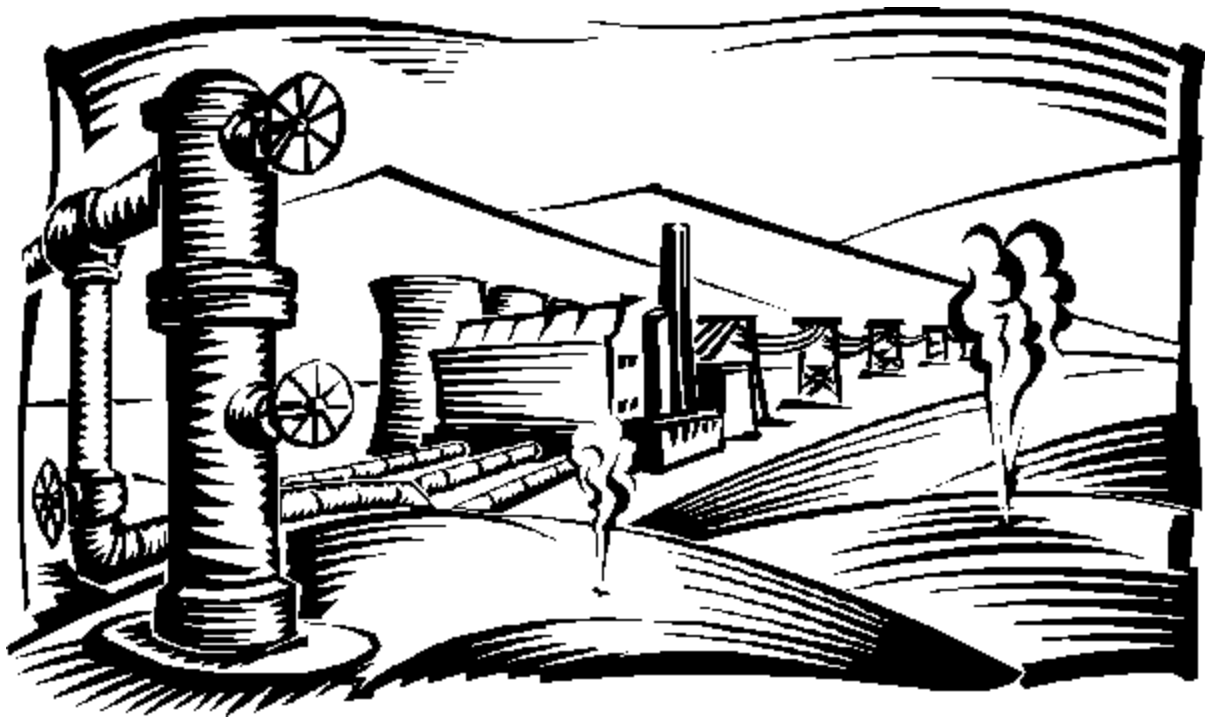
As planning policy moves increasingly towards the reuse of brown-field sites, so the management of potential environmental liability becomes increasingly important for developers. Liabilities may arise:-

- through accidental spillage of pollutants brought onto the site - such as a diesel tank
- by the creation of pathways for pollutants to migrate through groundworks and the digging of service trenches
- by the mere presence of pollutants on site. It is important to recognise that under the 1995 Act, you don't have to be a "polluter" to be liable for clean-up - it is sufficient if you simply allow the continued presence of pollutants that are potentially harmful to the environment.

All those involved in a development scheme need to consider more closely than ever before the contractual allocation of risk, for example:

- the liability of engineering consultants for designing any remediation scheme and monitoring and quality-assuring the implementation of such a scheme
- the obligations on main contractors and specialist subcontractors.

Finally, the developer needs to consider the availability of insurance cover, both in terms of professional indemnity of his contractor and specialist team, and environmental impairment insurance that may be available for future tenants and investors.



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Environet Consulting Limited

Bristol & SW Office

Saville Court, Saville Place, Clifton, Bristol BS8 4EJ, UK
Tel (+44) (0)117 900 1600 Fax (+44) (0)117 923 7598

London & SE Office

Spectrum House, 29 Ashcroft Park, Cobham KT11 2DN, UK
Tel (+44) (0)941 102921 Fax (+44) (0)1932 860967

Email contact@environet-uk.co.uk