

Frequently asked questions on Control of Pollution (Oil Storage)(England) Regulations

What is a building?

The term “building” is not defined in the Oil Storage Regulations but is defined in the Building Regulations 2000 as “any permanent or temporary building but not any other kind of structure or erection, and a reference to a building includes a reference to part of a building”. This definition is not particularly helpful but can be interpreted to mean a construction with walls & a roof rather than say a steel framed tent.

N.B. the building should be providing the necessary secondary containment to prevent oil escaping to the environment. If it isn't a simple risk assessment would show that the oil could escape.

Would the Oil Storage Regulations apply at domestic premises with 2 tanks each of 2500 litres?

No. The exemption applies to domestic premises where the storage capacity of each container i.e. fixed tank is 3500 litres or less not to the total capacity of storage at the premises. The exemption applies to the tank in which oil is stored rather than the total storage capacity.

Why do we need another notice power, won't the anti-pollution works notice be just as effective?

Yes, but the detailed requirements of the Oil Storage Regulations make regulation much clearer in relation to oil storage. If a Works Notice was used then it would have to specify exactly what works or operations were required to prevent pollution whereas the Oil storage Regulations already include those detailed requirements. The Oil Storage Regulations are companion Regulations to the SSAFO Regulations rather than the Anti-Pollution Works Regulations.

Why is it called a transitional notice?

Because the Notice relates to the transitional provisions outlined in Regulation 6 whereby those storage tanks used prior to 1 September 2001 are exempt from the provisions of the Regulations until 1 September 2005. However under Regulation 7 if the Agency considers that there is a significant risk of pollution of controlled waters from such a tank if steps are not immediately taken to minimise that risk, it may serve a Notice.

How do we equate ‘unless immediate action is taken’ with the period for compliance ‘shall not be less than 28 days’?

It is difficult to reconcile the word “immediately” with a compliance period of not less than 28 days. The explanation is that “immediately” refers to the need to take steps to minimise the risk of entry of oil to controlled waters and thus the right of the Agency to serve a Notice whereas the 28 days is the time allowed to comply once a Notice is served. Only in a situation where, if steps are not taken immediately to minimise the risk, pollution may arise does the Agency have the discretion to serve a Notice. This is separate from the situation once the Notice is served and the person has at least 28 days to comply with its requirements. If there is pollution before the 28 days compliance period is up the Agency could prosecute under section 85(1) Water Resources Act 1991 but that rather defeats the point of such notices. If there is such a serious risk of pollution occurring within 28 days a Works Notice could be served with a shorter time period for compliance since there is no 28 day rule for works notices. However there are consultation requirements for works notices which may in effect delay the period for compliance. We would have to encourage shorter timescales in situations where we believed there was such a serious risk of pollution.

If we serve a notice asking someone to bund their tank and they don't do it would we have to do it ourselves?

There is no provision for doing the work ourselves under the Oil Storage Regulations and failure to bund the tank would simply be an offence under Regulation 9 and we could prosecute. If persuasion and prosecution failed we could serve a Works Notice which if not complied with can be enforced by the Agency doing the work itself.

Is the crown exempt from the Oil Storage Regs?

No. Crown exemption has been lifted in respect to the Water Resources Act 1991 & this applies to any Regulations made under WRA including Oil Storage Regs. even though there is nothing specific in the Regs.

Are distributors committing an offence by delivering to an unbunded tank after September 2005?

No. DEFRA explained at a recent meeting that this would not be an offence as it is the non compliance of the tank that constitutes the offence.

Why are solvents included in the DEFRA accompanying guidance to the regs?

This was to pick up oils that are used as solvents such as kerosene and paraffins.

What is the definition of oil?

There is no definition of oil within the oil storage regulations. The oil regulations are a direct response to oil pollution incidents that are reported to the Agency each year, so could and should cover a variety of oils. If there is any doubt about whether a substance is oil then it is likely that it would not be covered but bunding could be enforced by way of a works notice and a simple risk assessment. Bitumen and other heavy oils would be included under the oil storage regs and would require bunding to prevent run-off from contaminated areas reaching the water environment.

Do the regs cover the volume of oil stored or the size of the container?

The regs cover the size of container, so domestic properties with an oil tank of 3500 litres who only ever have 2500 litres stored would have to comply.

Do the regs cover any waste oil?

Yes. Oil storage regulations also cover waste vegetable oil, which is not currently defined by the WML regs, although is regulated under the WML regime. The review to the waste management licensing regulations is ongoing and potentially waste vegetable oil will also be defined under these regulations.

Do the regs apply in Scotland or Wales?

Not at the moment. The Control of Pollution(Oil Storage) (England) Regulations 2001 only apply in England. Regulations in Scotland are due to go out to consultation in the summer 2002 with implementation later in the year. Wales have identified the issue but it is not clear what priority will be given to the issue and there is currently no date for consultation.

Does oil stored within a generator come under the oil storage regulations?

That depends on whether the oil is being stored or used. If the oil is clearly being stored as in the case of an emergency generator then the regulations would apply. Please see the memo to DEFRA for further clarification.

Do heat transfer fluids like those within transformers or fluid filled cables come under the oil storage regulations?

No. The oil is being used rather than stored.

Can I store oil in a road tanker without secondary containment?

Yes. This is a potential loop hole as road tankers were originally exempt because they were judged to be containers for transporting oil rather than storing oil. The accompanying DEFRA guidance says that "tankers are exempt if the tanker is used for transport". The SI defines a container as a fixed tank, a drum, or a mobile bowser or (even if it is not connected to fixed pipework) an intermediate bulk container. A risk assessment and a works notice may be the answer.

What is the definition of a mobile bowser?

The definition produced in a recent R&D report defines a mobile banded bowser as "A mobile oil storage tank, with integral bund, that cannot move under its own power, that is specifically designed to contain oil during transport and is fitted with oil dispensing facilities"

How do we know if a drum should be banded or not between now and September 2005?

The simple answer is we don't, but we should encourage people to store their drums within a drip tray capable of containing 25% of the drum capacity. The regulations allow for a container that was used to store oil before 1st September 2001 to have until September 2005 to comply with the regulations.

How do I know if my "double skinned tank" complies with the regulations or not?

The regulations should help to clear up this confusion. A double skinned tank is not necessarily providing adequate secondary containment. True secondary containment includes containment for the ancillary equipment associated with a tank as well as the tank itself. This would include having sight gauges and valves within the secondary containment facility. The regulations also require that vent pipes are arranged to discharge vertically within the secondary containment facility. A double skinned tank would not prevent loss of oil from overfilling, but one with true secondary containment would.

Is there a legal definition of storage?

In *Plews -v- Plaisted* it was stated that "storage" implied a degree of permanence & could not include property placed temporarily (that backs up our view re.generators and tankers).