



## **Information on the Irish Environmental Protection Agency's decision to classify used railway sleepers as a waste**

**18<sup>th</sup> October 2006 (updated 24<sup>th</sup> August 2009)**

1. Under the Waste Shipment Regulation (1013/2006)<sup>1</sup> the National TFS Office within Dublin City Council is the competent authority for the import to and export from, and the passage of waste in transit through, Ireland.
2. Between August 2005 and September 2006 approximately 22,000,000 kgs of used railway sleepers were notified for importation into Ireland under 17 separate notifications – of which 16 notifications came from the Netherlands. The Netherlands regard used railway sleepers as a waste (EWC 17 02 04\*) and therefore EC Regulation 1013/2006 (formerly EEC Regulation 259/93) applies for the export of waste from the Netherlands.
3. The marketing and use of Creosote and preparations containing Creosote as well as Creosote-treated wood has been banned by Directive 76/769/EEC, as last amended by Commission Directive 2001/90/EC which took effect on June 30th 2003. This Directive was transposed into Irish Law under the European Communities (Dangerous Substances and Preparations) (Marketing and Use) Regulations 2003.

However by way of derogation, Creosote may be used for wood treatment in industrial installations or by professionals covered by Community legislation on the protection of workers for in-situ retreatment only if it contains: benzo-a-pyrene at a concentration of less than 0.005% by mass and water extractable phenols at a concentration of less than 3% by mass. In essence primary treatment, outside an industrial context, is expressly prohibited.

Wood treated in industrial installations or retreated by professionals, in accordance with the previous paragraph which is placed on the market for the first time is permitted for professional and industrial use only, e.g. on railways, in electric power transmission and telecommunications, for fencing, for agricultural purposes and in harbours and waterways.

Wood having been treated with Creosote before 30 June 2003 may be placed on the second-hand market for re-use.

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<sup>1</sup> Council Regulation EC 1013/2006 (replacing Council Regulation (EEC) No. 259/93) on the supervision and control of shipments within, into and out of the European Community.

However, Creosote-treated wood may **not** be used:

- inside buildings, whatever their purpose,
  - in toys,
  - in playgrounds,
  - in parks, gardens, and outdoor recreational and leisure facilities where there is a risk of frequent skin contact,
  - in the manufacture of garden furniture such as picnic tables,
  - for the manufacture and use and any re-treatment of containers intended for growing purposes,
  - packaging that may come into contact with raw materials, intermediate or finished products destined for human and/or animal consumption,
  - other materials which may contaminate the products mentioned above.
4. A number of site inspections were undertaken by the EPA and the Pesticide Control Service (PCS) of the Department of Agriculture and Food between July and September 2006 at the premises of consignees of used railway sleepers. The PCS are the competent authority for enforcing the European Communities (Dangerous Substances and Preparations)(Marketing and Use) Regulations, 2003 (S.I. No. 220 of 2003). Evidence of potential illegal use was noted in a number of site visits and at least one seizure order was placed on railway sleepers during these site visits by the PCS.

Railway sleepers have also been noted for sale to the general public in several garden centres across the country and in use by landscape contractors. The use of creosote-treated railway sleepers in residential gardens is an illegal use under S.I. No. 220 of 2003.

5. Several concerns have come to light from these inspections and from the EPA's cooperation with the PCS concerning the importation of railway sleepers. These include;
- a) The potential health and liability ramifications of frequent skin contact with creosote treated railway sleepers particularly due to potential exposure to known carcinogens.
  - b) Difficulty in controlling the marketing and use of used railway sleepers in the context of the aforementioned Dangerous Substances regulations once they have arrived in the country and become dispersed to a large number of suppliers' and users' premises.
  - c) There are concerns that the level of import of railway sleepers is excessive, given the health and enforcement concerns outlined above.

Given these concerns, and taking into account the fact that the TFS competent authority in the Netherlands classifies the material as waste, the EPA has decided to classify railway sleepers as waste for the purposes of their import into Ireland, *inter*

*alia*, to ensure an adequate level of control and management of this material being placed on the market in Ireland.

4. This decision will have immediate effect. All notifications for the import of used railway sleepers will be processed by the National TFS Office according to Regulation 1013/2006. Accordingly, railway sleepers will need to be imported into appropriately authorised waste storage facilities. Appropriate financial guarantees, insurances etc., will also need to be in place. Transporters of used railway sleepers will need to be appropriately permitted to collect and transport waste.
5. The classification of used railway sleepers as a waste or not, when re-used directly in approved and legitimate engineering projects (e.g. marine construction) is a matter that will be decided by the EPA on a case-by-case basis (c.f. Article 10 of SI 821 of 2007).

END

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