

NEW LEGISLATION *brings* SWEDEN UP TO SPEED

Introduction

During the Swedish presidency of the European Union (the first half of 2001) the introduction of new national environmental legislation was not given the highest priority. Resources had to be allocated to European issues such as the Sixth Environmental Action Programme, the EU Chemicals Strategy, the Integrated Product Policy and the EU position in negotiations over measures to combat climate change. Much of the national development during 2001 was thus limited to legislation implementing various EU directives such as the Volatile Organic Compounds Directive (1999/13/EC) and the Landfill Directive (1999/31/EC). However, towards the end of the year, the legislator picked up the pace. Within the framework of the Environmental Code of 1998 one new act and several new ordinances have been passed, and some interesting government bills and a White Paper have been proposed.

New Legislation

Waste Ordinance

Waste and most of the issues related to waste management are regulated in chapter 15 of the Environmental Code. This chapter contains the framework on which the more detailed provisions are based. There are about twenty government ordinances and authority regulations laying down such provisions. On 1 January 2002 the Waste Collection and Disposal Ordinance (1998:902) and the Hazardous Waste Ordinance (1996:971) were merged into a new Waste Ordinance (2001:1063).

This change was designed to simplify waste legislation and to implement the new EU Waste List (Commission Decision 2000/532/EC as amended by Decision 2001/118/EC and Decision 2001/119/EC).

Under the new ordinance permit procedures are simplified. Under the previous legislation intermediary storage, recycling and disposal of hazardous waste required a permit under both under the Hazardous Waste Ordinance the more general Ordinance on Environmentally Hazardous Activities and Health Protection (1998:899). The latter now exclusively regulates the permits for such activities (unless they involve some other activity which requires a permit under other legislation).

Another 'double' permit requirement concerned the permit to transport waste. Transport of hazardous waste required a permit under the Hazardous Waste Ordinance, whereas under the Waste Collection and Disposal Ordinance a permit was needed for the transport of most non-hazardous waste. The two permit procedures have now been merged into one.

The implementation of the EU Waste List introduces one single waste list into Swedish legislation instead of the previous two, which were based on the European Hazardous Waste List (Decision 94/904/EC) and the European Waste Catalogue (Decision 94/3/EC). This implementation also means that certain types of waste have been reclassified. For example, scrap vehicles, electrical and electronic equipment and tailings containing dangerous substances are now classed as hazardous waste. This change will have repercussions on the permit and notification requirements under the Environmental Code. It is unclear how this will be solved in some cases, as not all situations are covered by the transitional provisions.

Exhaust Emission and Motor Fuel Act

Until January 1 2002 exhaust emission control was regulated in the Vehicle Emission Act (1986:1386) and motor fuels by Chapter 14 of the Environmental Code. These have now been replaced by the Exhaust Emission and Motor

Fuel Act (2001:1080) and Ordinance (2001:1085).

The previous system, with three environmental classes for motor vehicles, has been replaced with the classes contained in Directive 70/220/EEC as amended. Moreover, the new legislation contains provisions on the responsibility of manufacturers and owners to maintain vehicles so that the relevant emission limit values are met. As regards type approvals, the Swedish manufacturer responsibility for light vehicles is replaced by its EU counterpart, whereas for heavy vehicles the Swedish system will remain unchanged pending the development of provisions for EU manufacturer responsibility for such vehicles. Owners of heavy vehicles have lost the right to have problems with exhaust systems attended to free of charge after five years or 80,000 kilometres. However, owners of light vehicles will retain this right.

Ordinance on Noise Emission by certain Equipment for Use Outdoors

The Ordinance (2001:1084) on Noise Emission by Certain Equipment for Outdoor Use implements Directive 2000/14/EC on Noise emission in the Environment by Equipment for Outdoor Use. The ordinance came into force on January 1 2002 and its scope of application includes lawnmowers, dozers, excavators, piste caterpillars, refuse collection vehicles and glass-recycling containers. Certain requirements concerning noise emissions must be fulfilled before the product can lawfully be placed on the market. Moreover, a product label must indicate which noise emission level the manufacturer guarantees. The noise emission requirements are introduced in two steps, the first in January 2002 and the second in January 2006. The second date is when significant changes will occur, as until then the regulation on noise emissions remains virtually unchanged.

Sorted combustible waste

On January 1 2002 the prohibition against putting sorted combustible waste in landfills came into force under the transitional provisions of the Landfill Ordinance (2001:512) (which came into force on July 16 2001). The prohibition is supplemented by the Regulation of the Swedish Environmental Protection Agency on Management of Combustible Waste (NFS 2001:17), which includes provisions on sorting.

In addition to sorting provisions the regulation contains provisions on storage and transport, applications for exemptions from the prohibition, and certain conditions for exemption when there is a lack of capacity in regional incineration plants or storage facilities. Exemptions are granted by regional authorities (ie, the county administrative boards). Moreover, there are certain provisions for producers covered by producer responsibility, radioactive waste and waste from ships. The regulation also contains an exception from the prohibition for waste that is more suitable for landfills. The final provisions outline additional requirements for exemption. For example, when there is no regional lack of incineration or storage capacity, an exemption may only be granted if there are particular reasons for doing so. An exemption due to lack of capacity may only be granted for one year.

Under the regulation's transitional provisions sorted combustible waste may be put in landfills during 2002 if the operator (ie, the municipality in the case of municipal waste and the waste generator in the case of other waste) has applied for an exemption on or before January 1 2002 and the county administrative board does not decide otherwise.

Government Bills and White Papers

The Emergency Bill

Government Bill 2001/02:65 is known as the Emergency Bill among Swedish environmental lawyers. This is because the bill contains proposals to remedy some of the more simple mistakes made when the Environmental Code of 1998 was drafted. However, the bill also contains proposals for important clarifications and changes to the Code.

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When a supervisory authority prohibits an activity or orders an operator to take protective or remediation measures, the order or prohibition may be combined with a fine that becomes payable if the operator does not comply. The fine need not to be paid until the Environmental Court, at the request of the supervisory authority, orders the operator to do so. Under the current provisions criminal procedures apply to such a request. This means that the parties must appear in court and that if the supervisory authority loses the case it must pay the other party's court costs. Many supervisory authorities have been hesitant to ask courts to order payment of fines for fear of having to bear court costs. The proposed change would end this fear since the proposal will apply the administrative procedure to the requests at issue. Moreover, parties would no longer have to appear in court in such cases.

Other important changes concern clarification of the required contents of the permit application and the permit itself. The purpose of these changes is to bring the Environmental Code's procedural provisions further into line with the Integrated Pollution Prevention and Control Directive (Directive 1996/61/EC).

The supervisory authorities are given more room and stricter obligations to act with regard to environmentally hazardous activities that are covered by a valid permit. It is proposed that authorities will have to assess continuously whether the conditions of the permit are sufficiently stringent. If not, the authority must initiate a procedure for reconsidering the permit. One result of this proposal is that, in addition to certain government authorities and the county administrative boards, municipal supervisory authorities will be given the right to initiate such procedures.

The Climate Bill

Government Bill 2001/02:55 concerns climate change. Although no proposals for new legislation are put forward, this bill which will have a great impact on Swedish environmental law in the future. If passed by Parliament, Sweden will commit to reducing greenhouse gas emission by 4 % by 2010, compared to the 1990 level. This goal is to be attained without using carbon sinks and flexible mechanisms. In 2004, the Government will consider a goal where account is taken of the possible use of flexible mechanisms. The Kyoto Protocol and the EU Burden Sharing Agreement allow for an increase of emissions by 4 % during the same period of time with the use of carbon sinks and flexible mechanisms. The Kyoto Protocol and the EU Burden Sharing Agreement allow for an increase of emissions by 4 % during the same period of time with the use of carbon sinks and flexible mechanisms. The measures proposed in the bill include:

- information campaigns;
- the promotion of alternative fuels in the transport sector; and
- the promotion of electricity from renewable energy sources through green certificates trading.

However, as indicated above, these measures have not yet been put in concrete form through any statutory proposals.

The White Paper on Producer Responsibility

In April 2000, the government adopted terms of reference for an evaluation of existing regimes for producer responsibility over:

- packaging, tyres and waste paper;
- systems for returning beverage containers;
- voluntary measures for recycling office paper and cardboard; and
- recommendations for improvement when required.

The evaluation should also include a consideration of the necessity or suitability of an extension of statutory producer responsibility to additional groups of products. The result of nearly 600 pages with few legislative proposals.

As regards additional products to be covered by statutory producer responsibility, eight products were considered as candidates for the new legislation. However, no compelling reasons to introduce such new producer responsibilities were found. Instead, a regime of voluntary measures has been proposed. The government is encouraged to stay in close contact with relevant industry branches to ensure that voluntary commitments are made and met. The construction sector was suggested as a candidate for statutory producer responsibility, but has given 'a few years' to develop credible and workable voluntary solutions.

The legislative proposals in the White Paper are limited to three changes to the Environmental Code and certain changes of a more detailed character to the five producer responsibility ordinances.

The first proposal with regard to the Environmental Code could be an important one since it concerns the very first section of the code. Chapter 1, Section 1 outlines the code's purpose as "to promote sustainable development which will assure a healthy and sound environment for present and future generations." In order to attain this:

"[t]he Environmental Code shall be applied in such a way as to ensure that:

(1) human health and the environment are protected against damage and detriment, whether caused by pollutants or other impacts".

The list goes on with four additional items including:

- conservation of nature;
- preservation of biological diversity;
- sustainable use of land, water and the environment in general; and
- reuse and recycling and sustainable thinking with regard to materials, raw materials and energy.

The proposal is to add a sixth item: "the impact of goods and products on health and the environment is minimized taking the entire life cycle into account". The purpose of this proposal is to give product-related issues a higher status in the development and application of Swedish environmental law. However, such a development must be undertaken with great care so as to avoid non-compliance with European and international rules on the free movement of goods.

Probably the most important proposal concerns Chapter 15 on waste. Under Chapter 15, Section 6 the government is empowered to issue ordinances on producer responsibility. The White Paper proposes that the government be allowed to issue ordinances to the effect that the collection of waste is undertaken under an approved systems. The reason behind this proposal is the problems under current law to control producers who claim to have their own waste collection systems. With the proposed regime, producers would have to show that their products or packaging are part of an approved system. The Swedish Environmental Protection Agency has been nominated as the most suitable authority to develop specific requirements for the approval of collection systems.

Under Chapter 15, Section 7 the government is empowered to issue ordinances on requirements concerning the composition, reusability and recyclability of packaging. The White Paper proposes that goods be added to the scope of this provision in order to enable the government to make use of the proposal to change Chapter 1, Section 1 of the Environmental Code and implement any EU directives regulating such matters.

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