

## **Background paper**

### **Environmentally sound recovery of municipal waste of commercial origin and certain construction wastes**

*- Commercial Wastes Ordinance will enter into force on 1 January 2003 -*

The Ordinance on the Management of Municipal Wastes of Commercial Origin and certain Construction and Demolition Wastes (Commercial Wastes Ordinance) entered into force on 1 January 2003.

The German Federal Cabinet had adopted the ordinance on 7 November 2001. The German Federal Parliament (*Deutscher Bundestag*) had approved the ordinance on 14 December 2001 without amendments. The Second Chamber of the Parliament (*Bundesrat*) approved the ordinance on 26 April 2002 in accordance with Section 80 paragraph 2 of the Basic Law, requiring amendments. The amendments in the *Bundesrat* fully confirmed the concept of the German Federal Government and further defined the purposes of the ordinance. Therefore the German Federal Cabinet adopted these amendments on 15 May 2002. The *Deutscher Bundestag* adopted the amendments requested by the *Bundesrat* on 13 June 2002. The ordinance has been promulgated on 24 June 2002.

The ordinance aims to achieve safe and highest possible quality recovery of municipal wastes of commercial origin (municipal wastes from areas other than private households) and of certain construction and demolition wastes. In particular, so-called sham recovery will be prevented by the requirements for an environmentally sound recovery.

#### **The problem**

Not all procedures for managing municipal wastes of commercial origin or those for construction and demolition wastes can be classed as proper, safe, high quality or compatible with public interest. Some waste producers (figure unknown) – at times acting without authorisation – either do not separate wastes for recovery from wastes for disposal at all, or do so only to a limited degree. Such mixtures are then declared to be overall "wastes for

recovery" and are in most cases consigned either to waste incineration facilities or to sorting facilities. In some cases, only a small proportion of wastes from the sorting facility are recovered, while the larger proportion are consigned to low-cost landfills – generally a long way from the place of production (so-called sham recovery); such a proceeding places recovery methods with high ecological standards at a disadvantage.

The practice described above leads to less waste being sent for disposal to public-law parties responsible for waste management - which are responsible for management of household wastes and of wastes for disposal from other areas pursuant to the Closed Substance Cycle and Waste Management Act - at the site of production. This results in facilities intended for proper and environmentally sound waste management – particularly high quality incineration facilities – operating below their full capacity. The free capacities must then be offered at times below cost. Planning security of the public-law parties responsible for waste management is impaired.

Furthermore, an inequality has developed in the treatment of private households and producers of wastes from other areas. Increasingly, private households bear the costs of a waste management structure, which was created for all waste producers.

### **Fundamental points of the Commercial Wastes Ordinance**

The Commercial Wastes Ordinance essentially determines requirements for the separation of wastes and their pre-treatment – stipulating in particular that a recovery quota of at least 85 % must be achieved – and requirements for the necessary control. This ensures that safe and highest possible quality recovery is not prevented by low substance quality of the wastes as a result of their being put into the wrong container, of pollutants, or of unauthorised mixing with other wastes. The substance qualities of the wastes, defined by the ordinance's graded separation requirements, are a prerequisite for safe and high quality further recovery. This is true not only insofar as separation of individual waste fractions is required, but also insofar as the ordinance authorises a mixture; for there are also standardised separation requirements for authorised waste mixtures with regard to their further management. The differentiated and graded requirements make it ecologically and economically practical for separately collected and separately recovered waste fractions to exist alongside mixtures pre-treated before recovery. At the same time, the fact that mixed wastes may only be consigned to sorting or pre-treatment facilities which ensure a high recovery quota rules out sham recovery.

Waste producers must also use containers of the public-law parties responsible for waste management for residual wastes to an appropriate extent.

The Commercial Wastes Ordinance contains in particular the following regulations:

### 1. Scope

The ordinance applies to producers and holders of municipal wastes of commercial origin and of certain construction and demolition wastes (glass, plastics, metals, wood as well as concrete, bricks, tiles and ceramics), and to operators of pre-treatment facilities in which mixed municipal wastes of commercial origin or certain mixes construction and demolition wastes (*inter alia* sorted, crushed, compacted or pelletised) are pre-treated.

### 2. Definitions

Municipal wastes of commercial origin comprise wastes from areas other than private households, which are listed in Chapter 20 of the Annex to the Ordinance on the European Waste List. Wastes from private households are wastes which are produced in private households in the course of private living, in particular in dwellings and pieces of land or parts of buildings, which form part of it, as well as in other comparable places of production such as homes or assisted living facilities.

### 3. Separation of fractions of municipal wastes of commercial origin

Similarly to household wastes in many communities, certain municipal wastes of commercial origin (paper and cardboard, glass, plastics, metals, biodegradable kitchen and canteen wastes, biodegradable garden and park wastes and wastes from markets) must be consigned to a recovery operation as separately collected waste fractions.

Instead of separating individual fractions, combined collection of paper, glass, plastics and metals is possible if these are re-sorted in a pre-treatment facility into largely the same quantity and substance purity. This enables the goal of high quality recovery to be achieved using other equally good methods.

The competent authority is authorized to allow exceptions from the requirements for the separation of individual waste fractions if the recovery is of the same high quality or if the wastes are consigned to a pilot facility.

Furthermore, municipal wastes of commercial origin requiring special supervision must be separated and then consigned to a proper recovery or disposal operation.

Where separation as described here is not technically possible or economically reasonable, the producer can consign mixed municipal wastes of commercial origin to a recovery operation. In such a case the producer must meet certain requirements laid down in this ordinance.

#### 4. Separation of mixed municipal wastes of commercial origin prior to pre-treatment

If the waste producer wishes to consign mixed municipal wastes of commercial origin to a pre-treatment (e.g. sorting, crushing) prior to feeding it into a substance or energy recovery operation, the mixture must have a defined composition. Authorised components of the mixture are (i) the following municipal wastes of commercial origin: paper and cardboard, glass, plastics, metals, clothes, textiles and wood, and (ii) other wastes listed in the Annex to the ordinance. In particular hazardous wastes or wastes with a high liquid content are not permissible, as these would hamper or prevent safe and high quality recovery.

#### 5. Requirements for pre-treatment facilities

Pre-treatment facilities must achieve a recovery quota of at least 85 %. As a transition towards this quota, facilities, which were erected prior to the entry into force of this ordinance, must achieve at least 65 % until 31 December 2003 and 75 % until 31 December 2004. This provision will prevent sham recovery, particularly via sorting facilities. The recovery quota must be calculated in such a way that water which evaporates in the pre-treatment facility does not affect the quota.

#### 6. Separation of mixed municipal wastes of commercial origin prior to energy recovery

If the waste producer wishes to consign municipal wastes of commercial origin as a mixture to an energy recovery operation without first pre-treating them, this mixture shall not contain metals, mineral wastes, glass, biodegradable kitchen and canteen wastes, biodegradable garden and park wastes, and wastes from markets. This applies accordingly to wastes, which are fed into an energy recovery operation from a pre-treatment facility. This is necessary, as metals, mineral wastes and glass cannot be recovered for energy, and because biodegradable kitchen and canteen wastes, biodegradable garden and park wastes and wastes from markets do not produce high quality energy recovery due to their high water content.

#### 7. Separation of municipal wastes of commercial origin that are not recovered

Municipal wastes of commercial origin that are not recovered must be made available to the responsible public-law waste management party in accordance with § 13 of the Closed

Substance Cycle and Waste Management Act. This does not apply if the public-law party responsible for waste management has excluded municipal wastes of commercial origin from management. Since as a rule residual wastes which are not recovered also are produced in trade and business establishments, waste producers are obligated to use "residual waste containers" to an appropriate extent in accordance with the specific provisions of the public-law waste party responsible for management, however, at least one container.

#### 8. Separation and requirements for pre-treatment of construction and demolition wastes

Where they are produced separately, certain construction and demolition wastes (glass, plastic, metals as well as concrete, bricks, tiles and ceramics) must be consigned to a recovery operation as separately collected waste fractions. Instead of separating individual fractions, combined collection of the above mentioned wastes is possible if these are re-sorted in a pre-treatment facility into largely the same quantity and substance purity. Where the separation described is not technically possible or economically reasonable, the construction and demolition wastes wood, glass, plastic and metals as well as concrete, bricks, tiles and ceramics can be fed as a mixture into a pre-treatment facility if this mixture contains no other wastes but these construction and demolition wastes and other wastes named under number 4 sentence 2. The pre-treatment facility must achieve the recovery quota of 85%.

Furthermore, construction and demolition wastes which are produced in a mixed form must be consigned for recovery to a suitable facility, which must not achieve the aforementioned recovery quota.

#### 9. Control of pre-treatment facilities

The ordinance proposes an internal and an external control for pre-treatment facilities, especially in order to ascertain facility input and output so that recovery quotas can be calculated. The external controls do not apply to specialised waste management companies.

### **Relation to EU legislation**

The ordinance is structured so as to conform to EU legislation. It was notified to the European Commission in July 2001. The Commission did not submit an opinion within the 3-month period, which ended 29 October 2001.

The EU legal principle of free movement of goods applies to wastes for recovery. For transboundary movements also of these wastes, from and through the area of application of

this ordinance, only the EC Waste Shipment Regulation (Regulation EEC 259/93) and the Waste Movement Act apply. The Commercial Wastes Ordinance is applicable insofar as national provisions can be applied under the EC Waste Shipment Regulation. Currently, the EC Waste Shipment Regulation does not contain any grounds for objection of the "higher-quality recovery operation", so that the Commercial Wastes Ordinance is not applicable to exports, e.g. the obligation of separation. In the case of export, also the objection of "false procedure" remains unaffected. For wastes imported to Germany which are subject to notification, this ordinance can be used as grounds for objection under the EC Waste Shipment Regulation.

In order to counteract the "migration" of wastes abroad on the grounds of the Commercial Wastes Ordinance, the Federal Government will plead strongly for corresponding provisions to be established at the European level.

### **Expected effects**

For producers of wastes from areas other than private households, the separation requirements can lead to greater efforts being necessary and thus possibly to higher financial expenditure. Furthermore, in order to exclude the possibility of sham recovery, wastes must be fed into recovery paths that can be more expensive. This, on the other hand, can be counterbalanced by higher revenues from the recovered wastes. All in all, financial costs can arise to a greater or lesser degree in each individual case. Operators of pre-treatment facilities can expect slightly increased costs from the internal and external controls. Increased costs can also arise through the reduction of waste quantities consigned to disposal in low-cost landfills. The ordinance also ensures a binding and nationwide uniform standard for the management of municipal wastes of commercial origin and of certain construction and demolition wastes, thus also leading to greater equality of competition, both among waste producers and among waste management companies – particularly small to medium-sized waste management companies. The ordinance will furthermore improve planning security for local authorities and private waste management companies.