

**Ordinance on
Specialised Waste Management Companies
(*Entsorgungsfachbetriebeverordnung - EfbV*)^{*)}**

of 10 September 1996

The Federal Government, having heard the parties concerned, and pursuant to Article 52 (2) of the Closed Substance Cycle and Waste Management Act of 27 September 1994 (Federal Law Gazette I p. 2705), hereby decrees as follows:

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^{*)} The purpose of this Ordinance is to transpose Council Directive 75/442/EEC of 15 July 1975 on waste (OJ EC No. L 194 p. 47), as amended by Council Directive 91/156/EEC on waste of 18 March 1991 (OJ EC No. L 78 p. 32).

Section 1 General Provisions

Article 1 Scope of Application

This Ordinance defines the requirements for specialised waste management companies which have concluded a supervision contract with a technical supervisory organisation pursuant to Article 52 (1) of the Closed Substance Cycle and Waste Management Act, or which wish to become entitled to use a supervision seal from a recognised waste management association. It also regulates supervision and certification of specialised waste management companies on the basis of a supervision contract concluded with a technical supervisory organisation. Supervision and certification of specialised waste management companies by waste management associations are subject to the Directive on the Work and Recognition of Waste Management Associations (*Richtlinie für die Tätigkeit und Anerkennung von Entsorgungsgemeinschaften*).

Article 2 Specialised Waste Management Company, Definition of Terms

- (1) A company may become a specialised waste management company within the meaning of this Ordinance if it
1. collects, transports, stores, treats, recovers or disposes of waste, either commercially or within the framework of commercial enterprises or public institutions;
 2. on the strength of its organisation, workforce and technical equipment is able to carry out independently one or more of the activities referred to in No. 1; and
 3. with respect to one or more of the activities referred to in No. 1, fulfils the requirements set forth by this Ordinance pertaining to the company's organisation, personnel and activities, and to the reliability, technical competence and relevant skills of the owner and the persons employed by the company.
- (2) An operating unit of a company that fulfils the requirements referred to in paragraph (1) may also become a specialised waste management company within the meaning of this Ordinance. A specialised waste management company may confine its specialised waste management activities to
1. certain types of waste or waste from certain areas of origin,
 2. certain recovery or disposal operations or
 3. certain sites.
- (3) Use of the term "specialised waste management company" shall not be permitted
1. with respect to sites for which a company does not possess a valid supervision certificate from a technical supervisory organisation pursuant to Article 14 (1) or from a waste management association recognised pursuant to Article 52 (3) of the Closed Substance Cycle and Waste Management Act;
 2. with respect to facilities for which a company does not possess a valid certificate within the meaning of No. 1;
 3. with respect to activities for which a company does not possess a valid certificate within the meaning of No. 1.
- A supervision seal from a technical supervisory organisation pursuant to Article 14 (3), or from a recognised waste management association pursuant to Article 52 (3) of the Closed Substance Cycle and Waste Management Act, shall not be used without one of the supervision certificates referred to in sentence 1.
- (4) The owners of the company within the meaning of this Ordinance shall mean those natural or legal persons, or the unincorporated association, which operate the specialised waste management company.
- (5) The persons responsible for management and supervision of the company shall mean those natural persons who have been appointed by the owner of the company to carry out technical management, supervision and control tasks with regard to the company's waste management activities, especially with regard to compliance with applicable provisions and directives.

(6) Other personnel within the meaning of this Ordinance shall mean those employees, and other persons working within the company, who are involved in carrying out the company's waste management activities.

Section 2
Requirements Pertaining to the Organisation,
Human and Technical Resources and
Activities of a Specialised Waste Management Company

Article 3
Requirements Pertaining to the Company's Organisation

(1) The specialised waste management company shall be organised so as to ensure that the required supervision and control of the company's waste management activities is assured. Design of the company's organisation shall be in accordance with the company's purpose, activities and size, with the activities of the persons employed by the company and with the nature, in particular the properties, hazardousness, and quantity of the waste to which the activities relate.

(2) The responsibility, decision-making powers and rights of participation of

1. the owner of the company or, in the case of legal persons or unincorporated associations, of the persons empowered - by law, statutes or partnership agreement - to represent or manage the company,
2. the persons responsible for managing and supervising operations,
3. the company officers that have to be appointed pursuant to environmental regulations or regulations on the transport of hazardous goods, and of
4. other personnel

shall be defined with respect to the company's waste management activities and be set forth in functional descriptions and organisational plans.

(3) Where necessary for proper performance of the company's waste management activities, operating sequences shall be defined for these activities by means of job instructions.

Article 4
Requirements Pertaining to the Company's Personnel

(1) For each of its sites, the specialised waste management company shall appoint a person to be responsible for management and supervision of the company's activities. The owner of the company may himself hold such a position. If a specialised waste management company has several sites, or if several specialised waste management companies are all part of the same parent company, one person may be appointed to be responsible for all such sites or companies, as long as this does not hinder proper fulfilment of the tasks referred to in Article 2 (5).

(2) The specialised waste management company shall have an adequate number of personnel in addition to the persons responsible for management and supervision of the company's activities. This requirement shall be deemed to be fulfilled if proper operations are assured with the company's available workforce. Proof of a sufficiently large workforce shall be provided on the basis of a work plan. This plan shall take into account common causes of absence such as leave, illness and further training.

Article 5
Operations Log

(1) The specialised waste management company shall keep an operations log for each of its sites, in order to document proper performance of waste management activities. The operations log shall contain all data required to prove proper disposal of waste, in particular

1. data on the type, amount, origin and final destination of the waste collected, transported, stored, treated, recovered or disposed of by the specialised waste management company, including specific documentation on the service performed in each case;
2. any unusual occurrences, especially disruptions of operations that could affect proper disposal, including specification of the possible causes and mitigation measures taken;

3. documentation showing any discrepancies between the waste accepted and the relevant data provided by the waste producer, and including relevant measures taken;
4. specification of the person entrusted with the collection, transport, storage, treatment, recovery or disposal of waste and, in cases in which a non-certified company pursuant to Article 7 (3) is commissioned, the relevant scope of such commissioning; and
5. the results of facility- and substance-oriented control inspections, including inspection of proper function (both internal inspections and external inspections).

(2) The operations log shall be regularly reviewed by the person responsible for managing and supervising operations. The log may be kept in electronic form, or in the form of separate sheets for each area of operations or each part of the company if such sheets are combined daily. The log shall be kept in a safe place and protected from unauthorised access. The operations log shall be available at all times and shall be available for submission in clear-text form.

(3) The operations log shall be kept in the archives for five years.

Article 6 Insurance

The specialised waste management company shall be adequately insured with respect to its waste management activities. The type and extent of such insurance cover shall be determined on the basis of a company risk assessment. It shall include the following:

1. For companies that store, treat, recover or dispose of waste, at least an environmental liability insurance policy and a company liability insurance policy;
2. For companies that collect or transport waste, motor-vehicle liability insurance policies, including an environmental liability insurance policy to cover collection and transport operations.

Article 7 Requirements Pertaining to the Company's Activities

(1) The specialised waste management company shall comply with the public-law provisions pertaining to its waste management activities. The owner of the company shall furnish proof that the necessary official decisions pertaining to the activities of the specialised waste management company - especially all necessary plan approvals, licences, authorisations and permits - have been taken and shall furnish proof of compliance with any relevant additional conditions and other instructions of the competent authorities.

(2) Within the framework of its certified activities, a specialised waste management company may commission a third party only if such third party is also certified as a specialised waste management company with respect to the activity for which it accepts responsibility or if the prerequisites of paragraph (3) are fulfilled. The specialised waste management company's responsibility for the proper performance of the activities shall remain unaffected.

(3) The specialised waste management company may - to an insignificant extent - commission third parties that are not certified as specialised waste management companies with respect to their relevant activities, to carry out certified activities. The specialised waste management company shall in any case ensure, by means of careful selection and adequate supervision measures, that such activities are carried out in a proper manner. In particular, this shall mean that:

1. the specialised waste management company shall ensure, prior to such commissioning, that
 - a) the third party, in carrying out the commissioned activity, fulfils the prerequisites of paragraph (1);
 - b) the third party ensures the necessary supervision and control of the commissioned activity;
 - c) the third party and its personnel possess the necessary reliability, technical competence and relevant skills in order to carry out the commissioned activity;
2. the specialised waste management company's insurance policy covers the third party's activity or that the third party is able to furnish proof that it is adequately insured, in accordance with the provisions of Article 6;
3. the manner in which the activity in question is to be carried out, and the final destination of the waste, have been defined, either contractually or in some other binding form;

4. the specialised waste management company has a contractual right to issue directions to the third party regarding the proper performance of the activity in question;
5. the specialised waste management company has contractually assured supervisory authority; and
6. the third party agrees to keep records, in accordance with the provisions of Article 5, regarding the performance of its activity and the proper disposal of waste, and is obligated to provide copies of such records to the specialised waste management company without being specifically requested to do so.

Section 3

Requirements Pertaining to the Owner of the Company and to the Persons Employed by the Specialised Waste Management Company

Article 8

Requirements Pertaining to the Owner of the Company

(1) The owner of the company shall be reliable. Such reliability shall entail the following: the owner of the company, his legal representatives and, in the case of legal persons or legally incapacitated associations, the persons empowered by law, statutes or partnership agreement to represent or manage the company are suited, by virtue of their personal characteristics, conduct and qualifications, to fulfil their responsibilities in a proper manner.

(2) As a rule, such reliability shall be deemed lacking if one of the persons referred to in paragraph (1) second sentence,

1. through violation of provisions of
 - a) criminal law with respect to offences that cause public danger, or with respect to offences against the environment,
 - b) laws pertaining to immission control, waste management, water management, nature conservation, landscape protection, chemicals, genetic engineering, or to atomic energy or radiation protection,
 - c) laws pertaining to food, medicines, plant protection or contagious diseases,
 - d) industry and trade laws or laws pertaining to workers' protection,
 - e) laws pertaining to narcotics, weapons or explosives,
 has been required to pay a fine of more than ten thousand deutschmarks or has received a criminal sentence, or
2. has repeatedly, or through gross negligence of duty, violated provisions pursuant to No. 1 letters a through e.

(3) In order to prove the necessary reliability, a certificate of good conduct and the results of an enquiry of the central commercial register (*Gewerbezentralregister*) shall be submitted the first time any persons referred to in paragraph (1) are checked for reliability, or when such persons are replaced, or when a reliability check is required for other reasons.

Article 9

Requirements Pertaining to the Persons Responsible for Managing and Supervising Operations

(1) The persons responsible for managing and supervising operations shall be reliable. Article 8 (1) second sentence, and paragraphs (2) and (3) shall apply *mutatis mutandis*.

(2) The persons responsible for managing and supervising operations shall possess the necessary technical competence to perform their tasks. Requirements for acquisition of such technical competence shall be as follows:

1. completion of studies in the areas of engineering, chemistry, biology or physics at a university, or a qualification from a technical college, or a master-craftsman qualification in a field in which the company can be classified on the basis of its facilities and processes or its operational processes;
2. knowledge, acquired in two years of practical experience, about the waste management activity for which a management or supervisory function is planned; and
3. participation in one or more training courses which have been recognised by the competent authority and which impart knowledge, in keeping with the Annex to this Ordinance, which is required to perform the tasks of the persons referred to in sentence 1; the Annex to the Ordinance

on Transport Licences (*Transportgenehmigungsverordnung*) shall apply mutatis mutandis to companies that collect or transport waste.

(3) Where proper fulfilment of the tasks of the persons responsible for managing and supervising operations is assured, taking into account the circumstances referred to in Article 3 (1) second sentence, the following may also be recognised as proof of the necessary technical competence:

1. completed vocational training in a subject area in which the company can be classified on the basis of its facilities and processes or its operational procedures; and, additionally,
2. knowledge, acquired in four years of practical experience, about the waste management activity for which a management or supervisory function is planned.

Paragraph (2) second sentence No. 3 shall remain unaffected.

(4) Training in subject areas other than those referred to in paragraph (2) second sentence No. 1 and paragraph (3) first sentence No. 1 may be recognised if such training can be considered to be of equivalent value with regard to the task in question, taking into account the circumstances referred to in Article 3 (1) second sentence. Vocational experience in areas other than those referred to in paragraph (2) second sentence No. 2 and paragraph (3) first sentence No. 2 may be recognised if the knowledge obtained through practical experience can be considered of equivalent value with respect to the specific task in an individual case.

(5) The requirements for technical competence referred to in paragraph (2) second sentence Nos. 1 and 2 and paragraph (3) first sentence Nos. 1 and 2 may be waived if the person responsible for managing and supervising operations

1. had at least five years of experience, as of 7 October 1996, in performing tasks within the company that are comparable to those of a person responsible for managing and supervising operations; and if
2. the proper fulfilment of these tasks is assured, taking into account the circumstances referred to in Article 3 (1).

Article 10 Requirements Pertaining to the Company's other Personnel

The company's other personnel shall be reliable and possess the necessary knowledge to perform their tasks. With regard to reliability, Article 8 (1) second sentence shall apply mutatis mutandis. To obtain such knowledge, such personnel shall undergo in-company training, on the basis of an on-the-job training plan.

Article 11 Requirements Pertaining to Further Training

The owner of the company shall ensure that the persons responsible for managing and supervising operations, and all other company personnel, undergo suitable further training so that they possess the up-to-date knowledge required for their tasks. At intervals of no greater than two years, the persons responsible for managing and supervising operations shall take part in training courses within the meaning of Article 9 (2) second sentence No. 3. Such further training shall cover the subject areas specified in the Annex to this Ordinance. The owner of the company shall determine the further training requirements for the company's other personnel.

Section 4 Supervision and Certification of Specialised Waste Management Companies

Article 12 Supervision Contract

(1) Supervision contracts pursuant to Article 52 (1) of the Closed Substance Cycle and Waste Management Act shall be in writing. Such contracts shall lay down the provisions governing supervision of the company and the company's certification as a specialised waste management company pursuant to the provisions of Articles 13 and 14.

(2) The parties to such contracts may enter into additional agreements, provided that such agreements do not contradict the provisions of this Ordinance.

Article 13 Supervision of the Company

(1) In the supervision contract, the technical supervisory organisation shall make the following commitments:

1. to check compliance - prior to initial certification following significant changes concerning operation and, otherwise, annually - with the requirements of this Ordinance for the company's organisation, technical and human resources and activities, and with the requirements of the Ordinance pertaining to the reliability, technical competence and relevant skills of the company owner, of the persons responsible for managing and supervising operations and of the company's other personnel;
2. to keep written records of such inspections, and their results, available to the company;
3. in cases in which such inspections show that the provisions of this Ordinance are not fulfilled, to provide the company with a detailed, specific list of all deficiencies;
4. to maintain strict confidence with regard to all documents and information, including the content and results of discussions, studies and inspections, obtained either by the technical supervisory organisation or by experts commissioned by it as part of the performance of the supervision contract, and to refrain from making such documents and information available to third parties; any obligations under public law to notify the competent authorities shall remain unaffected.

(2) The company shall enter into the following obligations:

1. to make available to the experts commissioned by the technical supervisory organisation all information, documents and records required to check compliance with the provisions of this Ordinance;
2. to permit the experts commissioned by the technical supervisory organisation to enter its offices and premises, to examine documents and to carry out technical studies and inspections, where such actions are required to check compliance with the provisions of this Ordinance; the company shall also provide personnel and tools as necessary; and
3. to notify the technical supervisory organisation without delay of any changes within the company that are significant with regard to the fulfilment of the provisions of this Ordinance.

(3) In its inspections, the technical supervisory organisation shall check compliance with applicable legal provisions and with any pertinent, officially promulgated administrative provisions of the Federal Government and the *Länder*.

(4) In checking compliance with the provisions of this Ordinance, the technical supervisory organisation shall take into account the results of inspections

1. carried out by an independent environmental verifier or an environmental verification body pursuant to Article 4 (3) of Council Regulation (EEC) 1836/93 of 29 June 1993 allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme (OJ EC No. L 168 p. 1) or
2. carried out by an agency accredited pursuant to DIN EN ISO 45012 within the framework of certification of a quality management system pursuant to DIN EN ISO 9001, 9002, 9003 or 9004.

Article 14 Certification of the Specialised Waste Management Company

(1) If an inspection pursuant to Article 13 has determined compliance with the provisions of this Ordinance, and if the competent authority has approved the supervision contract, the technical supervisory organisation shall issue the company a written supervision certificate containing the following information:

1. the name and seat of the company and its certified sites;
2. a description of the company's certified activities with specification of its sites and facilities, and, in the case of a corresponding application of Article 2 (2) second sentence, with specification of the types of waste, areas of origin, recovery and disposal operations that are involved;
3. the name of the technical supervisory organisation, the date of issue of the certificate and the signatures of the commissioned expert and of the director of the technical supervisory organisation or his representative.

(2) The supervision certificate shall be subject to a time limit. Its period of validity shall not exceed 18 months.

(3) A supervision seal shall be issued along with the supervision certificate to the company. The supervision seal shall use the designation "specialised waste management company" (*Entsorgungsfachbetrieb*) together with a reference to the certified activity and the technical supervisory organisation issuing the supervision seal.

(4) The technical supervisory organisation shall revoke a company's supervision certificate and its right to use the supervision seal if

1. the company fails to fulfil the provisions of this Ordinance even after expiry of a period of no longer than three months set by the organisation;
2. it is required to do so by an administrative act of the competent authority;
3. a company has permanently ceased the certified activity;
4. the supervision contract is terminated or becomes ineffective due to other reasons.

(5) In the cases specified in Article 4, the company shall no longer be entitled to use the supervision seal and shall return the supervision certificate to the technical supervisory organisation upon demand. The supervision seal shall become ineffective when revoked.

Article 15 **Approval of the Supervision Contract**

(1) The supervision contract shall be subject to the approval of the supreme *Land* authority responsible for waste management in the area where the head office of the technical supervisory organisation, or of the authority appointed by it, is located; such approval may also be issued in general form. In approving supervision contracts that also lay down the provisions governing supervision of specialised waste management companies with sites in other *Länder*, the competent authority pursuant to sentence 1 shall take its decision in consultation with the competent authorities of these other *Länder*. Approval shall be granted if

1. the supervision contract fulfils the provisions of Articles 12 through 14 and if
2. the experts commissioned by the technical supervisory organisation to execute the supervision contract possess the reliability, independence and technical competence required for this task.

(2) The requirements laid down in paragraph (1) third sentence No. 2 with regard to reliability, independence and technical competence shall be deemed fulfilled if the expert is accredited as an environmental verifier pursuant to Article 9 of the Environmental Audit Act (*Umweltauditgesetz*), or if the technical supervisory organisation is accredited as an environmental verification body pursuant to Article 10 of the Environmental Audit Act, for the sector of recycling, treatment, destruction or disposal of solid or liquid waste within the meaning of Article 2 letter i of Regulation (EEC) No. 1836/93.

(3) The approval may be made conditional and may be tied to restrictions where necessary to ensure compliance with the prerequisites for approval specified in paragraph (1). In particular, the competent authority may require the technical supervisory organisation to report to it, either in a single instance or at regular intervals, on the execution of supervision and certification.

(4) The approval of the supervision contract may be revoked

1. if such approval has been tied to a condition and if one or both parties have not fulfilled this condition, or have not fulfilled it within a defined period;
2. if, on the basis of facts which have subsequently arisen, the competent authority pursuant to paragraph (1) would be entitled to refuse approval;
3. in order to prevent or remedy serious disadvantage to the public interest; or
4. if the technical supervisory organisation has not properly fulfilled its responsibilities pursuant to Article 13 (1) and Article 14.

Article 16 **Ineffectiveness of the Supervision Contract**

If the supervision contract becomes ineffective, the specialised waste management company shall no longer be entitled to use the supervision certificate and the supervision seal of the technical supervisory organisation and shall no longer be entitled to refer to itself as a "specialised waste management

company". If the ineffectiveness of the supervision contract is due to reasons which are beyond the specialised waste management company's control, the authority responsible for approval may permit the specialised waste management company to continue using the supervision certificate and to continue referring to itself as a "specialised waste management company" for a reasonable transitional period.

Section 5 Final Provisions

Article 17 Availability of DIN Standards

The DIN standards referred to in Article 13 have been published by Beuth-Verlag GmbH, Berlin, and are archived by the German Patent Office (*Deutsches Patentamt*) in Munich.

Article 18 Transitional Provision

Until 6 October 1997, courses for fulfilment of technical competence requirements pursuant to Article 9 (2) second sentence No. 3 shall not be subject to the approval of the competent authority.

Article 19 Entry into Force

This Ordinance shall enter into force on 7 October 1996.

The *Bundesrat* has given its consent.

Bonn, 10 September 1996

The Federal Chancellor
Dr Helmut Kohl

The Federal Minister for the Environment, Nature Conservation and Nuclear Safety
Angela Merkel

Annex

to the Ordinance on Specialised Waste Management Companies

Technical competence of persons responsible for managing and supervising a specialised waste management company

Such competence shall include the following:

1. facility-related, process-related and other measures for waste avoidance, proper and safe recovery of waste and waste disposal that does not impair the public interest;
2. the harmful environmental impacts, other hazards, significant impairments and nuisances that may be caused by waste, and measures to prevent or remedy such problems;
3. the type and nature of waste requiring special supervision;
4. provisions of waste management law and of other environmental legislation applicable to the waste management sector;
5. references to legislation on hazardous goods;
6. provisions pertaining to company liability.