

Federal Ministry for the Environment,  
Nature Conservation and Nuclear Safety

**Translation**

**Promulgation  
of the Amendment to the Waste Water Charges Act**

**of 18 January 2005**

**(unofficial text)**

Pursuant to Article 2 of the Fifth Act Amending the Waste Water Charges Act of 9 December 2004 (Federal Law Gazette Part I, p. 3332), the wording of the Waste Water Charges Act in the version effective as of 1 January 2005 is hereby promulgated as follows. The amended version takes into account:

1. the version of the Act promulgated on 3 November 1994 (Federal Law Gazette Part I, p. 3370),
2. Article 3 of the Act of 11 November 1996 (Federal Law Gazette Part I, p. 1690), which article entered into force on 19 November 1996,
3. Article 2 of the Ordinance of 21 March 1997 (Federal Law Gazette Part I, p. 566), which article entered into force on 1 April 1997,
4. Article 3 of the Act of 25 August 1998 (Federal Law Gazette Part I, p. 2455), which article entered into force on 29 August 1998,
5. Article 19 of the Act of 9 September 2001 (Federal Law Gazette Part I, p. 2331), which article entered into force on 1 January 2002,
6. Article 1 of the above mentioned Act, which article entered into force on 1 January 2005.

Bonn, 18 January 2005

The Federal Minister for the Environment,  
Nature Conservation and Nuclear Safety  
Jürgen Trittin

**Act**  
**Pertaining to Charges Levied for**  
**Discharging Waste Water into Waters**  
**(Waste Water Charges Act -**  
***Abwasserabgabengesetz, AbwAG*)**

Section One  
General Provisions

Article 1

**Principle**

A charge (waste water charge) shall be paid for discharging waste water into a water within the meaning of Article 1, para. 1 of the Federal Water Act (*Wasserhaushaltsgesetz*). The charge shall be levied by the Federal *Länder*.

Article 2

**Definitions**

(1) For the purposes of this Act, waste water is water, the properties of which have been changed by domestic, commercial, agricultural or other uses, and the water drained together with it during dry weather conditions (polluted water), as well as water running off and collected from built-up or paved or asphalted surfaces following precipitation (hereinafter referred to as rain water). Liquids released and collected from facilities designed for the treatment, storage and depositing of waste shall also be deemed to be polluted water.

(2) For the purposes of this Act, discharging is the direct conveyance of waste water into a water body; conveyance into the subsoil shall be deemed to constitute a discharge into a water, whereby conveyance into the ground within the framework of agricultural soil treatment techniques shall be excluded from this provision.

(3) For the purposes of this Act, a waste water treatment plant is a facility used to reduce or eliminate the noxiousness of waste water; facilities serving to prevent the generation of waste water either in full or in part shall also be regarded as waste water treatment plants.

## Article 3

**System of Assessment**

(1) The waste water charge shall depend upon the noxiousness of the waste water, which shall be determined on the basis of the oxidizable substances, of phosphorus, of nitrogen, of the organohalogens, of the metals mercury, cadmium, chromium, nickel, lead, copper and their compounds, as well as of the toxicity of the waste water to fish eggs, expressed in units of noxiousness in accordance with the Annex to this Act. In addition to rain water (Article 7) and small discharges (Article 8), a specific assessment of noxiousness shall not be required if the concentration of noxious substances or the annual volume to be used as a basis for determining the number of units of noxiousness does not exceed the threshold values stated in the Annex, or if the dilution factor  $T_{\text{EGG}}$  does not exceed 2.

(2) In the cases falling under Article 9, para. 3 (river clarification basins), the charge levied shall be calculated according to the number of units of noxiousness in the water body downstream the river clarification basin.

(3) The *Länder* may stipulate that the noxiousness of waste water shall not be calculated to the extent that it is eliminated in secondary settling ponds directly connected with a waste water treatment plant.

(4) The Federal Government shall be authorised to adapt the provisions on procedures for determining noxiousness, as specified in the Annex, to the respective state-of-the-art of science and technology by statutory ordinance with the consent of the *Bundesrat*, provided that this does not substantially alter the assessment of noxiousness.

## Section Two Determination of Noxiousness

### Article 4

#### **Determination on the Basis of an Official Notice**

(1) With the exception of rain water (Article 7) and small discharges (Article 8), the pollutant load to be used as a basis for determining the units of noxiousness shall be calculated in accordance with the values stated in the official notice licensing the respective waste water discharge. The official notice shall at least set limits for the concentration of noxious substances and groups of noxious substances stated in the Annex to Article 3 under nos. 1 to 5 which are to be complied with during a specific period of time, and, in the case of toxicity to fish eggs, the dilution factor to be complied with during a specific period of time (monitoring values), and shall stipulate the annual volume of polluted water. If the official notice contains monitoring values for a noxious substance or a group of noxious substances for various periods of time, the monitoring value of the longest period of time shall be used as a basis for calculating the charges. Such monitoring values need not be established if a noxious substance or a group of noxious substances stated in the Annex to Article 3 is not expected to exceed in the waste water the threshold values prescribed in the Annex.

(2) Para. 1 shall apply accordingly in cases falling under Article 9, para. 3 (river clarifying basins).

(3) If water that has been directly withdrawn from a water resource has noxious properties within the meaning of Article 3, para. 1 prior to its use (initial pollution load), this initial pollution load shall be estimated for the noxious substances and groups of noxious substances stated in Article 3, para. 1 at the request of the party liable to pay waste water charges; this estimated initial pollution load shall not be attributed to this party. This estimate shall be based on the mean values determined over several years for the concentrations of the noxious substances in question. The *Länder* may stipulate uniform levels for the mean concentration of noxious substances in waters or parts thereof.

(4) Within the framework of water monitoring pursuant to the provisions of water legislation, compliance with the provisions of the official notice shall be monitored by government agencies or officially recognised bodies. If the monitoring results show

that one of the monitoring values used for calculating the charges to be paid has neither been complied with nor may be deemed to have been complied with in the assessment period, the number of units of noxiousness calculated shall be increased. This increase shall depend on the percentage by which the highest value measured exceeds the monitoring value specified. If the monitoring value specified has not been complied with on only one occasion, the increase shall be determined on the basis of half this percentage; if the monitoring value specified has not been complied with on several occasions, it shall be determined on the basis of the full percentage. If the official notice licensing the waste water discharge in accordance with para. 1, sentence 4 does not specify such a monitoring value, and if monitoring shows that the concentration stated as a threshold in the Annex to Article 3 has been exceeded, then the number of units of noxiousness calculated, taking the threshold value as a basis, shall be increased by the percentage resulting from sentences 3 and 4. If the official notice, in addition to the monitoring values to be taken as a basis pursuant to para. 1, also contains monitoring values specified for shorter periods of time, or stipulates values for the volume of waste water or pollutant load to be complied with over a specific period of time, the number of units of noxiousness shall also be increased where these values are exceeded. If the specified volume of waste water has not been complied with, then the number of units of noxiousness shall be increased for all monitoring values limited in the official notice pursuant to para. 1. Where neither the monitoring value pursuant to para. 1 nor a monitoring value or a specified value pursuant to sentence 6 has been complied with, the increase in the number of units of noxiousness shall be determined on the basis of the highest applicable percentage.

(5) Where a discharger notifies the competent authority that he will observe a value lower than the monitoring value stipulated in the official notice pursuant to para. 1, or a volume of waste water smaller than the volume of waste water stipulated in the official notice for a specific period of not less than three months in the assessment period, then the number of units of noxiousness for this period of time shall be determined in accordance with the notified value. The deviation must be at least 20 per cent. This notification outlining the circumstances on which it is based shall be submitted at least two weeks before the beginning of the period for which the application is made. Paras. 2 and 3 shall apply accordingly. Proof shall be furnished by means of an officially approved measuring programme that the notified value has been met in accordance with the provisions of the decision regarding the monitoring value; the results of the measurements of official monitoring shall be incorporated into the evaluation of the measuring programme. Paras. 1 to 4 shall apply where no proof has been furnished that the notified value has been or where official monitoring

discovers that a monitoring value on which the level of the charge is calculated pursuant to para. 1 or a specified value pursuant to para. 4 sentence 6 has not been met or has been deemed not to have been met.

Article 5  
(Deleted)

Article 6  
**Determination in Other Cases**

(1) Where the specified values required for determining the units of noxiousness are not contained in an official notice pursuant to Article 4, para. 1, the discharger must notify the competent authority, at the latest one month before the beginning of the assessment period, as to which monitoring values of significance for determining the units of noxiousness will be observed by him in the assessment period. If the discharger does not fulfil his obligation pursuant to sentence 1, the highest measured result obtained from official monitoring shall be used as a basis for determining the units of noxiousness. Where no result from official monitoring is available, the competent authority shall estimate the monitoring values. The annual volume of polluted water shall be estimated at the time the units of noxiousness are determined.

(2) Article 4, paras. 2 to 5 shall apply accordingly.

Article 7  
**Flat-rate Calculation  
for the Discharge of Polluted Rain Water**

(1) The number of units of noxiousness of rain water discharged via a public sewerage system shall be 12 per cent of the number of inhabitants served by this system. If rain water from paved or asphalted commercial areas is discharged via a private sewerage system, the charges shall be calculated on the basis of 18 units of noxiousness per full hectare, if the paved or asphalted commercial areas are larger than 3 hectares. The number of the inhabitants served by the system and the size of the paved area may be estimated.

(2) The *Länder* may determine the conditions under which the discharge of rain water shall be exempt in whole or in part from waste water charges.

Article 8  
**Flat-rate Calculation  
for the Discharge of Small Quantities  
of Domestic and Similar Types of Polluted Water**

(1) Unless prescribed otherwise by the *Länder*, the number of units of noxiousness of polluted water from domestic sources and similar types of polluted water for which a public corporation is liable to pay charges in accordance with Article 9, para. 2, sentence 2, shall be half the number of inhabitants not served by the public sewerage system. The number of inhabitants may be estimated where it is impossible to determine this number, or where this would involve unreasonable expenditure.

(2) The *Länder* may determine under which conditions the discharge shall be exempt from charges. The discharge shall be exempt from charges if the construction of the waste water treatment plant complies with at least the generally acknowledged rules of technology and if the proper disposal of sludge is ensured.

Section Three  
Liability to Pay Charges

Article 9  
**Liability to Pay Charges, Rates**

(1) Anyone who discharges waste water (discharger) shall be liable to pay waste water charges.

(2) The *Länder* may determine that public corporations shall be liable to pay waste water charges in lieu of dischargers. Public corporations to be designated by the *Länder* shall be liable to pay waste water charges in lieu of dischargers who discharge less than 8 cubic metres of polluted water per day from private households or similar sources. The *Länder* shall determine how waste water charges levied in this way may be passed on to the generators of such water.

(3) Where the water of a water body is purified in a river clarifying basin, the *Länder* may determine that the operator of the river clarifying basin shall be liable to pay waste water charges in lieu of dischargers in a catchment area to be defined. Para. 2, sentence 3 shall apply accordingly.

(4) The liability to pay waste water charges shall not apply up to and including 31 December 1980. The annual rate levied per unit of noxiousness shall be

DM 12.00	as of 1 January 1981
DM 18.00	as of 1 January 1982
DM 24.00	as of 1 January 1983
DM 30.00	as of 1 January 1984
DM 36.00	as of 1 January 1985
DM 40.00	as of 1 January 1986
DM 50.00	as of 1 January 1991
DM 60.00	as of 1 January 1993
DM 70.00	as of 1 January 1997
Euro 35.79	as of 1 January 2002.

(5) Apart from rain water (Article 7) or small discharges (Article 8), the rate specified in para. 4 shall be reduced by 75 per cent, and by half as of the 1999 year of assessment for those units of noxiousness which cannot be avoided, even though

1. the contents of the official notice pursuant to Article 4, para. 1 or the notification pursuant to Article 6, para. 1, sentence 1 at least meet the requirements pursuant to Article 7a of the Federal Water Act laid down by the Federal Government with the consent of the *Bundesrat*, and
2. the requirements pursuant to Article 7a of the Federal Water Act laid down by the Federal Government with the consent of the *Bundesrat* are complied with during the assessment period.

Sentence 1 shall apply *mutatis mutandis* if no requirements pursuant to Article 7a of the Federal Water Act are laid down by the Federal Government with the consent of the *Bundesrat* for the monitoring values laid down in the official notice pursuant to Article 4, para. 1 or the notified monitoring values pursuant to Article 6, para. 1, sentence 1.

(6) If a notification pursuant to Article 4, para. 5 is made, the reduction shall be calculated in accordance with the notified value, provided the official notice is adapted to the notified value following the notification and provided this value fulfils the requirements of para. 5.

## Article 10

### **Exemption from Liability to Pay Charges**

(1) Liability to pay waste water charges shall not be applicable

1. to the discharge of water which was already polluted before it was withdrawn from a water resource for use and which does not show any additional noxiousness within the meaning of this Act,
2. to the discharge of polluted water into a surface water created during the extraction of mineral raw materials, provided that this water has only been used for washing the products obtained there and does not contain any noxious substances other than those extracted, and provided that it is ensured that no noxious substances will enter other waters,
3. to the discharge of polluted water from watercraft that has been generated on such craft,
4. to the discharge of rain water running off from paved or asphalted commercial areas of up to three hectares and from railroad tracks where no public sewerage system is used for this purpose.

(2) The *Länder* may stipulate that waste water charges shall not be levied on the discharge of waste water into layers of the subsoil in which the groundwater, on account of its natural properties, is not suitable for the extraction of drinking water using conventional treatment methods.

(3) If waste-water treatment plants are constructed or enlarged, the operation of which may be expected to reduce by at least 20 per cent of the load of one of the hazardous substances and groups of hazardous substances in a waste-water current to be treated and to reduce the overall pollution load at discharge into the water, the expenses incurred for construction or enlargement of the plant may be set off against the charges due for this discharge as a whole during the three years prior to the

planned taking into operation of the plant. This does not apply to the percentage by which the charge is increased pursuant to Article 4, para. 4. If the charge has already been paid the operator of the waste water treatment plant is entitled to repayment of the appropriate sum. No interest shall be paid on this sum. The charge shall have to be paid retrospectively if the plant is not taken into operation or a reduction of at least 20 per cent is not achieved. Pursuant to Article 238 of the Fiscal Code (*Abgabenordnung*) interest shall be paid on the charge levied retrospectively starting from the day the amount was due.

(4) Para. 3 shall apply *mutatis mutandis* to plants which transfer the waste-water of existing inputs to a waste-water treatment plant which meets or has been modified to meet the standards pursuant to Article 18b of the Federal Water Act, subject to the proviso that a reduction in the total pollution load may be expected in these discharges.

(5) Where waste-water treatment plants are erected or expanded in the area described in Article 3 of the Unification Treaty (*Einigungsvertrag*), the costs of which are liable for settling-off pursuant to para. 3 or 4, the costs or services entailed may be set off, in accordance with paras. 3 and 4, against the waste-water charge which the party liable to pay this charge owes for other inputs in this area until the year of assessment 2005.

## Section Four Setting, Levying and Use of Waste Water Charges

### Article 11

#### **Period of Assessment, Obligation to Notify**

(1) The period of assessment shall be deemed to be the calendar year.

(2) In the cases referred to under Articles 7 and 8, the party liable to pay waste water charges shall calculate the units of noxiousness of the waste water and submit the relevant documents to the competent authority. If the party liable to pay waste water charges is not also the discharger (Article 9, paras. 2 and 3), the discharger shall supply the party liable to pay waste water charges with the necessary data and documents.

(3) The *Länder* may stipulate that the party liable to pay waste water charges shall also calculate the number of units of noxiousness of the waste water in other cases, that such party shall provide the data required for an estimate, and submit the relevant documents to the competent authority. Para. 2, sentence 2 shall apply accordingly.

## Article 12

### **Failure to Comply with the Obligation to Notify**

(1) If the party liable to pay waste water charges fails to comply with its obligations pursuant to Article 11, para. 2, sentence 1 and the supplementary provisions issued by the *Länder*, the competent authority may estimate the number of units of noxiousness.

(2) A discharger who is not liable to pay waste water charges pursuant to Article 9, para. 2 or 3 may nevertheless be rendered liable by way of an estimate to pay such charges if he fails to comply with his obligations pursuant to Article 11, para. 2, sentence 2 and the supplementary provisions issued by the *Länder*. In this case the party liable and the discharger shall be liable jointly and severally.

## Article 12a

### **Legal Remedies against Liability to pay Charges**

Objections and rescissory action contesting liability to pay charges shall not have a suspensive effect. Sentence 1 shall also be applied to official notices issued prior to 19 December 1984.

## Article 13

### **Use of Charges Levied**

(1) The revenue accruing from waste water charges shall only be used for specific purposes connected with measures for maintaining or improving water quality. The *Länder* may stipulate that the administrative expenditure associated with the enforcement of this Act and of the *Länder's* own supplementary provisions shall be paid for out of the revenue accruing from waste water charges.

(2) The following shall in particular be deemed to be measures pursuant to para. 1 above:

1. the construction of waste water treatment plants,
2. the construction of rain water retention basins and facilities for the purification of rain water,
3. the construction of circular sewers and retention sewers at and along reservoirs, the shores of lakes and the seashore, and of connecting interceptors permitting the establishment of joint treatment facilities,
4. the construction of facilities for the disposal of sewage sludge,
5. measures such as low-flow augmentation or oxygenation taken in and at water bodies for observing and improving water quality and measures for maintaining such water bodies,
6. research on and development of suitable facilities and techniques for improving water quality,
7. basic and further training of operating staff for waste water treatment plants and other facilities designed to maintain and improve water quality.

## Section Five Common Provisions

### Article 14

#### **Application of Provisions on Penalties and Fines under the Fiscal Code**

The penal clauses contained in Article 370, paras. 1, 2 and 4 and in Article 371 of the Fiscal Code (*Abgabenordnung – AO 1977*) shall apply accordingly to any evasion of waste water charges; the provision on fines under Article 378 of the Fiscal Code (*AO 1977*) shall apply accordingly to any unlawful reduction of the waste water charges payable.

Article 15

**Administrative Offences**

(1) An administrative offence shall be deemed to have been committed by anyone who wilfully or negligently

1. contravenes Article 11, para. 2, sentence 1 by failing to submit the calculations or documents or by failing to submit them in an accurate or complete manner,
2. contravenes Article 11, para. 2, sentence 2 by failing to provide the party liable to pay waste water charges with the necessary data or documents or by failing to submit them in an accurate or complete manner.

(2) An administrative offence may be punished by a penalty not exceeding two thousand five hundred Euro.

Article 16

**Clause Pertaining to Cities  
with the Status of a *Land* (City States)**

Article 1 shall also apply if the *Länder* of Berlin and Hamburg are themselves liable to pay waste water charges. Article 9, para. 2, sentences 1 and 2 shall apply to the *Länder* of Berlin and Hamburg subject to the proviso that they may also declare themselves to be liable to pay waste water charges.

Article 17

(Deleted)

Article 18

(Entry into Force)

**Annex**  
(to Article 3)

(1) The assessment of noxious substances and groups of noxious substances and the respective threshold values are given in the following table:

No.	Noxious substances and groups of noxious substances assessed	The following full measuring units each correspond to one unit of noxiousness	Threshold values given concentration and annual volume	Procedure to determine the noxiousness of waste water	
1	Oxidizable substances expressed as Chemical Oxygen Demand (COD)	50 kilogrammes of oxygen	20 milligrammes/litre and an annual volume of 250 kilogrammes	303	
2	Phosphorus	3 kilogrammes	0.1 milligrammes/litre and an annual volume of 15 kilogrammes	108	
3	Nitrogen as the aggregate of the individual determinations of nitrate nitrogen, nitrite nitrogen and ammoniacal nitrogen	25 kilogrammes	5 milligrammes/litre and an annual volume of 125 kilogrammes	nitrate nitrogen: 106 nitrite nitrogen: 107 ammoniacal nitrogen: 202	
4	Organic halogen compounds as adsorbable organic halogens (AOX)	2 kilogrammes of halogen, calculated as organic chlorine	100 microgrammes/litre and an annual volume of 10 kilogrammes	302	
5	Metals and their compounds:		and		
5.1	mercury	20 g	1 µg	100 g	215
5.2	cadmium	100 g	5 µg	500 g	207
5.3	chromium	500 g	50 µg	2.5 kg	209
5.4	nickel	500 g	50 µg	2.5 kg	214
5.5	lead	500 g	50 µg	2.5 kg	206
5.6	copper	1 000 g of metal	100 µg per litre	5 kg annual volume	213
6	Toxicity to fish eggs	6 000 cubic metres of waste water divided by T <sub>EGG</sub>	T <sub>EGG</sub> = 2	401	

$T_{\text{EGG}}$  represents the dilution factor at which waste water loses its toxic effect on fish eggs. The values stated in the table are based on the procedures to determine the noxiousness of waste water according to the numbers of the Annex "Analysis and measurement procedures" of the Waste Water Ordinance in the version promulgated on 17 June 2004 (Federal Law Gazette Part I, p. 1108, 2625) referred to.

(2) If waste water is discharged into coastal waters, the toxicity to fish eggs shall be disregarded to the extent it is attributable to the content of salts resembling the main components of sea water. This shall also apply to the discharge of waste water into the estuaries of surface waters, provided such estuaries have a natural salt content similar to that of coastal waters.