

# Street Works Arisings - Industry consultation

Intended audience

This document is for:

* Members of Street Works UK (SWUK) who produce excavated waste from the installation, repair, and maintenance of utilities
* Companies undertaking the same activities above on behalf of SWUK
* Waste facilities that accept these wastes from SWUK members Context

You may be aware that there is currently a Regulatory Position Statement ([RPS 211](https://www.gov.uk/government/publications/excavated-waste-from-utilities-installation-and-repair-rps-211/excavated-waste-from-utilities-installation-and-repair-rps-211)) that allows waste generated by utilities companies under certain circumstances to be moved as non-hazardous waste without being tested, and accepted at permitted facilities. This RPS was scheduled for withdrawal 30 April 2023 but has not yet been withdrawn. This enables operators to continue using it while we work with industry to consider options for the future control of this waste stream. RPS 211 will be withdrawn when the new RPSs described in this briefing are published. See below for more information.

# Background

RPS 211 was published to provide time for Street Works UK (SWUK) to commission a study into the development of a Risk Assessment (RA) methodology that could be used in place of testing due to the challenges of storing waste on/beside the roadway while awaiting test results. This work has not been completed. We are providing more time to allow SWUK to fully develop their proposal, however we do not consider that RPS 211 is fit for purpose, so it will be withdrawn and replaced.

For context, the work undertaken so far by SWUK members to identify the hazards in this waste stream shows that approximately 15-18% of these waste arisings meet the threshold to be classified as hazardous waste. The most prevalent hazardous components found so far are coal tar and hydrocarbons.

We are proposing two new Regulatory Position Statements (RPSs) to replace RPS 211 while SWUK continue to develop a Risk Assessment methodology. If successful, this methodology will be used in place of the normal sampling and testing which these wastes require under the Technical Guidance on the Classification of Waste (WM3). The proposed RPSs will cover the production, movement, storage, and use of unassessed arisings from street works carried out by/on behalf of utilities companies who are members of SWUK.

We have outlined key conditions for the two RPSs below so you can determine how they may impact your business and provide us with feedback on the proposals. (For examples of published RPSs, see [Regulatory Position Statements](https://www.gov.uk/government/collections/basic-rules-environmental-permitting-regulatory-positions) [on Gov.uk](https://www.gov.uk/government/collections/basic-rules-environmental-permitting-regulatory-positions) ).

We are mindful that these changes will cause additional work for some parties, however the assessment of all waste, and the prohibition on mixing hazardous waste are both legal requirements and any deviation from these requirements must be properly authorised.

Relevant waste types

The proposed RPSs would only apply to wastes that would be classified under the following codes if they were assessed in accordance with the Technical Guidance in WM3:

17 01 01 concrete

17 01 02 bricks

17 01 03 tiles and ceramics

17 01 06\*/07 mixtures of concrete, bricks, tiles, and ceramics 17 03 01\*/02 bituminous mixtures

17 05 03\*/04 soil and stones

17 09 03\*/04 mixed construction and demolition wastes

(an asterisk at the end of the code indicates a hazardous waste)

# The RPS proposals

We are proposing two new RPSs, one aimed at the producers of this waste, and one for the sites receiving the waste. We believe this will allow greater flexibility for both the producers and receivers of this waste while maintaining a suitable level of environmental protection.

**Note –** Neither RPS applies to waste that is known, or suspected to be hazardous (e.g., due to the visible or olfactory presence of contamination). Any such waste must be fully assessed in line with the requirements of WM3. Where this waste is moved to a storage facility prior to testing it must be moved as precautionary hazardous waste including consignment notes, consignee returns etc.

Producer RPS

For the avoidance of doubt, this RPS applies to waste arisings from works classified as Immediate, Emergency, Minor, and Standard as defined by the New Roads and Street Works Act (NRSWA); Major works are not covered by this RPS and any waste arisings from Major works must be assessed in line with the guidance in WM3.

We are proposing that arisings generated in accordance with this RPS can be moved without the normal full assessment required by our Technical Guidance on the Classification and Assessment of Waste (WM3).

The waste must be segregated by type during excavation and transport (e.g., road planings/asphalt, and sub-base must be kept separate when excavated and when moved).

The waste may be moved either to a place controlled by the producer, or to a permitted site.

Conditions for how these loads must be classified and moved will be dependent on the size of the arisings:

* Where the works generate 15 m3 or less, this waste can be moved as non-hazardous waste (including waste transfer notes).
  + According to data provided by SWUK, this is approximately 95 – 97% of all works.
* Where the works generate more than 15 m3 this waste must be moved as hazardous waste, including all relevant controls (e.g., consignment note, consignee returns).
  + According to data provided by SWUK, this is approximately 3 – 5% of all works.

Receiving site RPS

We are proposing that both the unassessed ‘hazardous’ and ‘non-hazardous’ waste described above may be accepted at permitted waste sites that would normally only be able to accept the non-hazardous version of these waste codes (see Relevant Waste Types above).

**Note -** Where the waste is moved to a site controlled by the producer for storage pending testing, it must be stored in accordance with the conditions of [Non Waste Framework Directive Exemption 3.](https://www.gov.uk/guidance/waste-exemption-nwfd-3-temporary-storage-of-waste-at-a-place-controlled-by-the-producer)

You will not be penalised for accepting this waste provided you can demonstrate it has been produced in line with the Producer RPS and you follow the conditions of this Receiving site RPS. You must still follow all other measures regarding [duty of care,](https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice/waste-duty-of-care-code-of-practice#waste-holders-waste-duty-of-care-requirements) as well as waste acceptance as set out in our guidance on appropriate measures at non- [hazardous and inert waste facilities](https://www.gov.uk/guidance/non-hazardous-and-inert-waste-appropriate-measures-for-permitted-facilities/3-waste-pre-acceptance-acceptance-and-tracking) and Chemical waste: appropriate measures for permitted facilities - Guidance.

Note that this RPS does not allow you to treat unassessed, or hazardous waste (except where your permit allows the treatment of that hazardous waste code, and the waste is suitable for the treatment process).

Conditions:

* The unassessed waste accepted under the producer RPS must be kept separate from other (i.e., non-RPS) wastes received, however the non-hazardous loads (those of 15 m3 or less) of each waste type may be mixed with each other.
* Waste from an individual street works, that is assumed-classified as hazardous (i.e., those exceeding 15 m3) must be kept segregated from all other waste and cannot be mixed. You may test these loads on receipt, and once assessed,
  + If the waste is found to be non-hazardous you may mix it with other known non-hazardous arisings.
  + If the waste is found to be hazardous you may either treat it if your permit allows treatment of hazardous waste, or you may send it directly to a hazardous waste facility.
* Before you can use any waste received under this RPS for any purpose, you must be able to demonstrate that it is suitable for that purpose; this will include sampling and analysis of these loads in accordance with WM3 as well as any other applicable specifications.
* You will need to keep records of the waste you receive under this RPS, including transfer paperwork and any sampling/testing results for the waste.

We are also proposing that before you use this RPS you must:

* Notify the Environment Agency (the details of how you notify us will be set out in the RPS once they are published), and
* Update your management system (EMS/working plan) to set out how you will comply with the RPS, including how you will manage the wastes and ensure environmental risk is reduced (for example, use of impermeable surfacing to prevent hazardous substances leaching to groundwater or surface water).

Timescales and next steps

Once we receive the feedback from this consultation, we will review the responses and make any necessary amendments before we publish them to Gov.uk. At the same time, RPS 211 will be withdrawn because it will be superseded by the new RPSs.

The proposed RPSs will expire within 15 months of the date of publication. The exact dates they are in place will depend on the final timelines agreed with SWUK regarding the development and rollout of their Risk Assessment (RA), the expiry date will be published on each RPS.

7 months before the RPSs expire, SWUK will submit the results of their study to the Environment Agency and we will decide, within 1 month, whether it can be used in place of full Waste Classification. This will allow approximately 6 months for industry to adapt to the outcome of our review of the RA.

If the RA is approved for use, members of SWUK and anyone working on behalf of SWUK must use this to assess any waste within scope of the Risk Assessment, or they must fully assess and classify the waste in accordance with WM3. The RA will either classify the waste as Hazardous or Non-Hazardous and the waste will need to be taken to a permitted waste site that can accept the relevant waste code.

From the sample testing data provided by SWUK we know that approximately 15% of street works arisings display hazardous properties above one or more thresholds; it is likely the use of the Risk Assessment will increase the percentage of arisings that are classified as hazardous due to the uncertainty introduced by not testing the waste.

Once the RPSs have expired, sites receiving these wastes will either:

* Revert to accepting only the waste codes their permit allows them to take, or
* Have varied their permit to add any hazardous codes not already listed on the permit

Please note, if you are proposing to vary your permit it may take longer than the standard 13 weeks depending on permitting queues. You may also wish to use this opportunity to make any other changes to your permit.

**Consultation questions**

# Deadline – 20 November 2023

1. Do you consider the proposed conditions in each RPS to be feasible for your business? If not, please tell us why.
2. Do you have any feedback on either RPS?
3. Do you consider it likely that you will vary your permit to accept some, or all, of the mirror-hazardous versions of the codes listed in this consultation?
4. If yes to Q3, will you be varying your permit to add any treatment activities relating to these wastes?

**Waste site operators -** Please send feedback to [wcrespond@environment-agency.gov.uk](mailto:wcrespond@environment-agency.gov.uk) using the subject “SWUK RPS consultation”.

**SWUK members –** Please send feedback to [EAConsultation2023@streetworks.org.uk](mailto:EAConsultation2023@streetworks.org.uk)