



KESKKONNAMINISTEERIUM



REPUBLIC OF ESTONIA
MINISTRY OF THE ENVIRONMENT

How the WFD and REACH interact in the system of wastes becoming products

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1 Introduction and Background

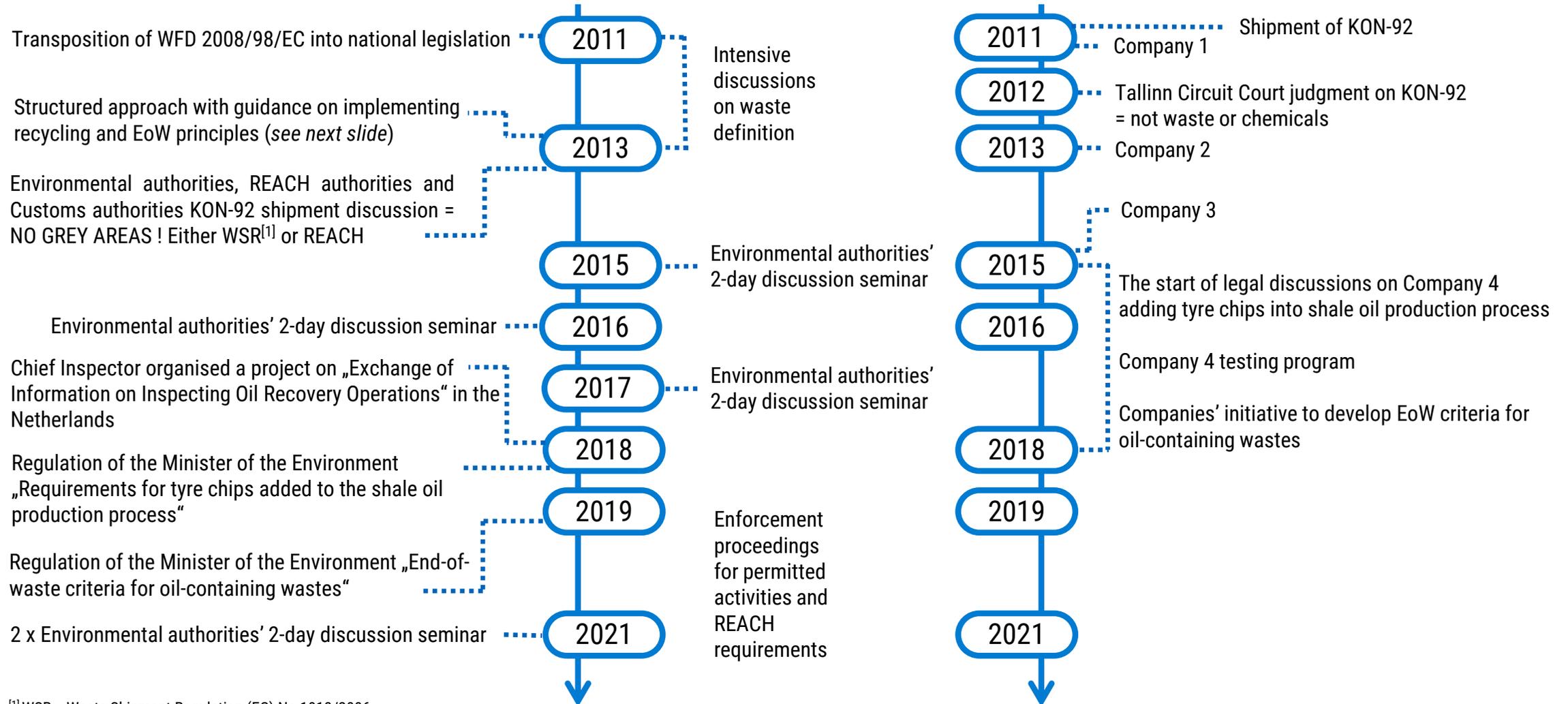


Introduction

- All environmental decisions: administration of the Ministry of the Environment (MoE)
 - main role the Environmental Board and the Environmental Inspectorate (=now in one authority)
- All REACH topics: administration of the Ministry of Social Affairs (MoSA)
 - main role the Health Board as the CA of REACH&CLP
- Core discussions about the End-of-Waste criteria related to oil wastes = hazardous waste
- Up to 01.01.2020 all hazardous waste operators had to apply for a licence prior to a permit – since 01.01.2020 there is only a permit with the same requirements
- All hazardous waste licences were discussed in a committee for hazardous waste management – now the environmental protection permit committee
- Standing members of the committee: industrial emissions, waste, ambient air experts from MoE and the Environmental Board, enforcement representative, legal adviser, REACH&CLP experts from MoSA and the Health Board + invited experts dependant on topics
- All case studies were discussed in the Committee

Timeline of milestones

Case studies (slide 10-11) on timeline



^[1] WSR = Waste Shipment Regulation (EC) No 1013/2006

How waste ceases to be waste



Recycling as in WFD Art 3 p 17
Material with original properties or purpose
Product standards
National Regulations ^[1]
Using as fuels or backfilling operations

End-of-Waste as in WFD Art 6 <i>(so-called narrow interpretation)</i>
EU EoW criteria Regulations
National EoW criteria Regulations ^[2]
MS case-by-case decisions ^[3]

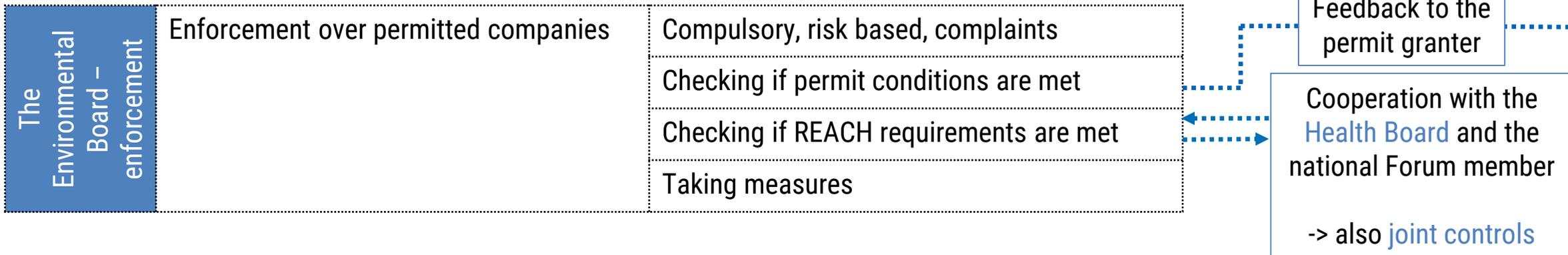
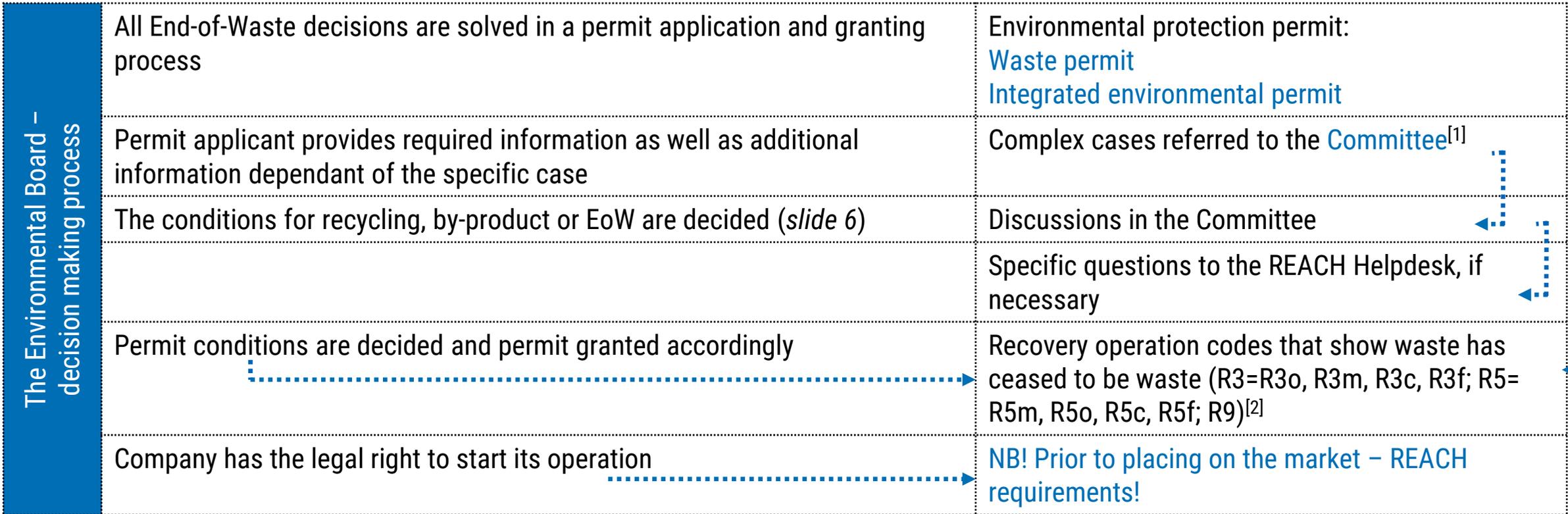
^[1] E.g. biomass ash and oil shale fly ash if they meet specific criteria set in the Fertilisers Act and related Fertilisers Regulations

^[2] Six National Regulations have been established for the EoW of specific waste streams (in ET <https://envir.ee/ringmajandus/jaatmed/jaatmete-lakkamine>); TRIS search -> Country EE, numbers 458, 357, 700, 154, 297, 662, 28

^[3] Directive (EU) 2018/851 amending Directive 2008/98/EC on waste, Article 6 amendments; No case-by-case decisions have been made so far

2 Decision making process





^[1] Environmental protection permit committee as in slide 4

^[2] Recovery operation codes as in Annex II of WFD and national Regulation (in ET): <https://www.riigiteataja.ee/akt/108062021008>

3 Case studies



Brought up by the Estonian Tax and Customs board, dispute started over the Customs Codes. Ministry of the Environment provided expert opinions about the definition of waste as the shipment itself was the discarded result of a chemical production company (based on Russian documentation). The Case went to court and ended with a ruling by the Tallinn Circuit Court that in its judgement *inter alia* explained the shipment was „goods“ and no application of waste or chemicals legislation should be assessed. The shipment was not allowed on the Estonian market and was reexported according to customs rules.

Outcome: Meeting with relevant authorities and a collective agreement that the ruling could not be a precedent – there are no grey areas, either waste or REACH requirements have to be met before shipment.

Company mainly collects waste oils and bottoms of fuel tanks from ships with the aim to recover the fuel component. Discussions started on the legality on how waste could cease to be waste as the intended use would not make it a recycling operation. Additionally the question about REACH requirements arises.

Outcome: The company was given a licence and a permit to produce „fuel components“ under the conditions that the component would be sold to a accepting partner for further processing into new products. As regards to the REACH requirements, the company provided several analysis documents together with a foreign expert opinion about the sameness with an already registered substance. Based on this, it was accepted that Company 1 uses REACH Article 2.7.d) exemption.

Company collected waste oils with the aim to recover the fuel component. Discussions started on the legality on how waste could cease to be waste as the intended use would not make it a recycling operation. Company had the best technological park for their operations compared to other similar companies, but not the expertise to use it.

Outcome: The company was finally given a licence to produce „fuel components“ under the conditions that the components would go to an oil refining company for further treatment. However, the company ceased their activities before obtaining a permit due to internal issues.

^[1] Commission Decision 2000/532/EC on the List of waste, in Estonia (in ET): <https://www.riigiteataja.ee/akt/118122020026>

Company 3

Action: production of a „fuel component“ from wastes containing oil (16 07 08, section 13)

Company collects waste oils with the aim to recover the fuel component. Discussions started on the legality on how waste could cease to be waste as the intended use would not make it a recycling operation. Since there already had been several similar cases, company's permit was handled the same way as regards to the End-of-Waste status. Additionally the question about REACH requirements arises.

Outcome: The company was given a permit to produce „fuel components“ under the conditions that the component would be sold to a accepting partner for further processing into new products. As regards to the REACH requirements, the company submitted a REACH Article 9 PPORD notification to ECHA. Enforcement proceedings are ongoing.

Company 4

Action: adding tyre chips into shale oil production process

Company 4 is a large energy company that also has a shale oil production line and a municipal waste incinerator. Driven from an End-of-Life tyres' pile up situation in Estonia at that time, company found a way to use tyre chips in the shale oil production process. Discussions started on the legality on how to assess the proposed action from the waste side but also from the REACH side, as shale oil is a registered substance. Company had to develop a testing program and was permitted carry out the testing.

Outcome: As this was a unique situation and the opportunity of a Member State case-by-case decision^[1] on the EoW was not yet available in national legislation, a Regulation of the Minister of the Environment was established „Requirements for tyre chips added to the shale oil production process“. As regards to the REACH requirements, the company submitted a REACH Article 9 PPORD notification to ECHA. Enforcement proceedings are ongoing.

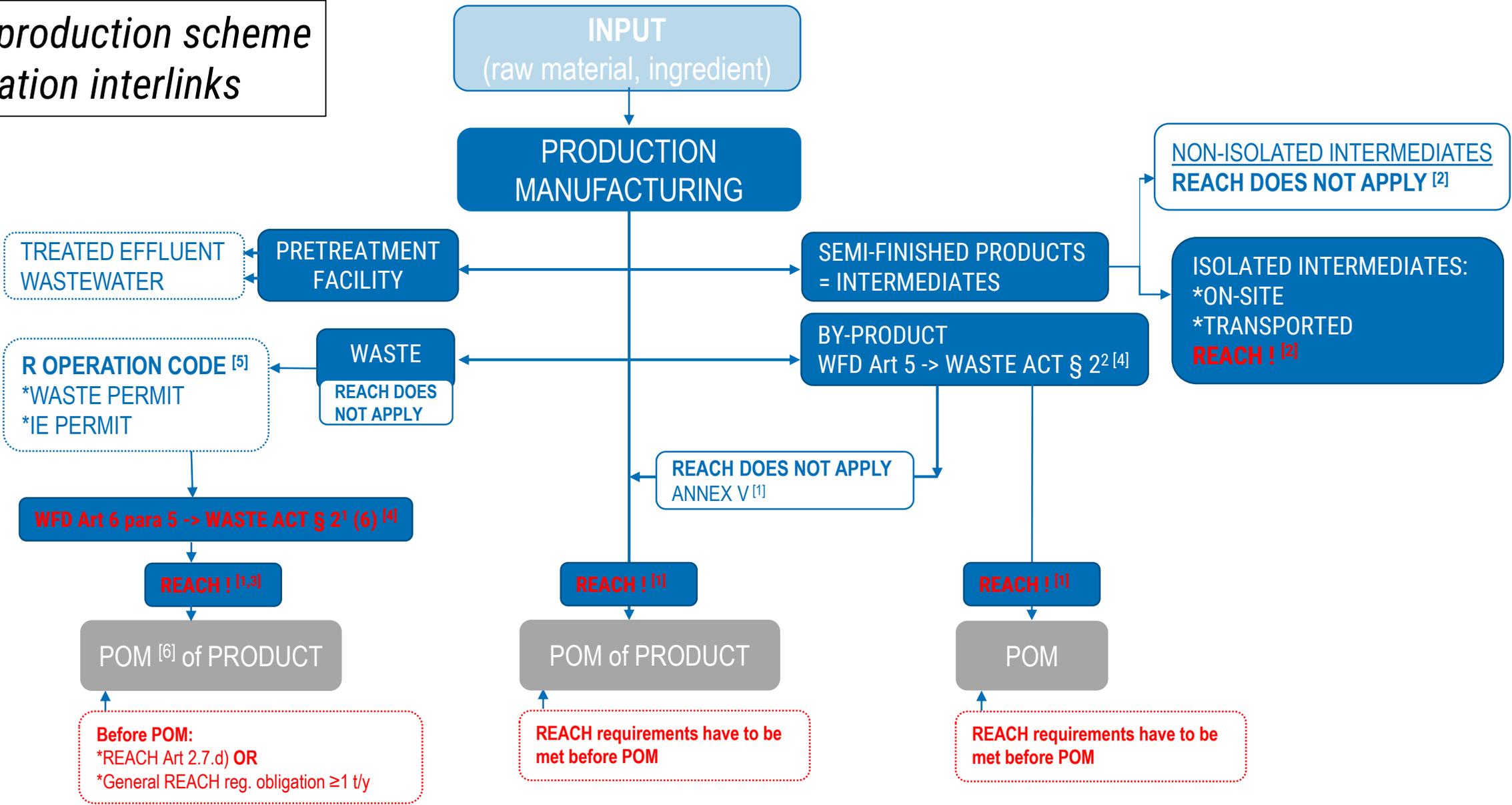
- Note: on the initiative of companies dealing with wastes containing oil also a Regulation of the Minister of the Environment was established for „End-of-waste criteria for oil-containing wastes“
- Note: all active cases are under surveillance and enforcement proceedings have brought up new questions

^[1] Directive (EU) 2018/851 amending Directive 2008/98/EC on waste, Article 6 amendments

4 Conclusions



**General production scheme
-> Legislation interlinks**



[1] <https://echa.europa.eu/guidance-documents/guidance-on-reach>
 [2] https://echa.europa.eu/documents/10162/2324906/intermediates_en.pdf/0386199a-bdc5-4bbc-9548-0d27ac222641
 [3] https://echa.europa.eu/documents/10162/2324906/waste_recovered_en.pdf/657a2803-710c-472b-8922-f5c94642f836
 [4] Waste Act (in EN): <https://www.riigiteataja.ee/en/eli/502112021006/consolide>
 [5] Recovery operation codes as in Annex II of WFD and national Regulation (in ET): <https://www.riigiteataja.ee/akt/108062021008> ;
 IE permit = integrated environmental permit
 [6] POM = Placing on the market

On production and REACH

- PPORD notifications
 - If meant for research should there be research?
 - How to avoid using PPORD only to avoid registering substances?
- REACH leaves responsibility to the company
 - Too much interpretation room on what obligations apply
 - If company doesn't understand its responsibility, there is no clear decision maker amongst authorities – only suggestions

On waste and REACH

- Application of REACH Article 2.7.d) exemption for recovered substances
 - Clear EU rules should be developed on the approach how to assess substance sameness – what data should be provided on the waste side and what on the already registered substance side
 - Could be applied only to simple substances that are comparable on a chemical structure level
 - Should not be applied to UVCB
- EoW questions as regards to customs codes and shipment of liquids: definition of waste and fuels, application of WSR, REACH and Customs activities

From the authorities' perspective

- Large production companies fall under several legislations with obligations to apply for permits in their sector
 - A permit giving authority takes responsibility of permitting an activity but doesn't have a say in the companies' decision about REACH
- What is the role of an environmental permitting authority as regards to REACH requirements? And what is the role seen here for the REACH CA?
 - How to ensure that a permit is not granted to a company that is not able to fulfil its REACH requirements?
- What data could and should be asked from the applicant in the permit application process to facilitate the work of an environmental inspector?



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Thank You!

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Professional background

2007-2011 Chemicals Notification Centre/Health Board: REACH&CLP CA, REACH issues

2011-2018 Ministry of the Environment, Waste Department: waste classification, list of waste, POPs waste, batteries, ship recycling

2018- ... Ministry of the Environment, Environmental Technology Department: chemicals&waste issues, chemicals-products-waste interlinks, EU POPs and the Stockholm Convention, RoHS