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Wales

## **Environmental Permitting Regulations (England & Wales) 2010**

**Regulatory Guidance Series, No RGN 4**

**Setting standards for environmental protection**

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## SUMMARY

This is guidance on how our regulatory package sets the standards of environmental protection required through the Environmental Permitting (England and Wales) Regulations 2010. It will change with changes in Regulations, Government guidance and experience of applying the Regulations.

Operators should deliver the obligations as specified in their permit but this guidance may help them understand how those have been determined. If in doubt, they should discuss the issue with us and take their own legal advice as appropriate.

We deliver environmental standards using a regulatory package of:

- regulatory and technical guidance;
- an application form;
- environmental risk assessment tools;
- a template of permit conditions used to draft bespoke permits and rules for standard permits;
- a decision document template.

We have translated all the specific technical standards and requirements of the Directives implemented through the Regulations into appropriate application form questions, permit conditions/rules and guidance.

Specific Directive requirements must be met but there are two common themes:

- pollution must be prevented, including specifically meeting health and environmental quality standards;
- going beyond meeting environmental quality standards is sometimes required (e.g. using Best Available Techniques for activities subject to the Integrated Pollution Prevention and Control Directive) but this tends to be balanced by the need to compare costs with benefits.

Permit conditions and standard permit rules may specify certain key measures where fundamental for that type of activity to protect the environment. Other measures may be required through outcome-based conditions/rules leaving some flexibility on how the outcome is achieved.

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# 1. INTRODUCTION

## About this guidance

The Environmental Permitting Regulations (the 'Regulations') implement a number of EU Directives and Government policies designed to protect people and the environment through permitting systems. The Regulations also partially fulfil the environmental protection requirements contained in other legislation (e.g. the Habitats Regulations).

When we permit an activity under the Regulations we may therefore have to apply a number of different environmental protection requirements to that activity.

In some cases these various requirements are discrete and different from each other, but in other cases there is overlap.

Some requirements are precise and prescriptive e.g. that a particular emission limit value (ELV) must be met. Others are not. For example it might be stated that a "high level of protection of the environment" must be secured; that there shall be "no significant pollution"; that there shall be "no risk to the environment"; that "odour or noise nuisance shall be avoided"; or that exposures to ionising radiation are "as low as reasonably achievable".

The operator is normally responsible for proposing how it intends to meet the requirements of the Regulations. The operator will set this out in an application for a permit, or for a variation.

This guidance explains how we should determine the requirements that should apply to a particular activity. It is mainly aimed at the permitting stage but some elements will be relevant to tasks such as permit reviews and compliance assessment.

The guidance is written for our staff but we make it available to help customers too.

# 2. THE REGULATORY PACKAGE

We have designed a regulatory package for environmental permitting to help both operators and our staff in proposing and determining the appropriate requirements of environmental protection.

The regulatory package consists of:

- **technical guidance** containing both general and specific indicative principles, standards and measures which the operator must use. Our technical guidance will be developed and maintained in accordance with the Regulators' Compliance Code. The operator can use the technical guidance as a benchmark for design, preparing applications and for operating their facility. Our staff must use the principles, standards and measures both in determining applications and for compliance assessment;
- an **application form** for permits and variations with standard questions about environmental protection measures (see Part B of the application form);
- environmental **risk assessment tools** (Guidance on environmental risk assessment - ERA), which enables the operator to make an assessment of the potential environmental impact and provides a way for the operator to compare and choose between different options to mitigate impacts;
- a **permit template** with both general conditions and specific conditions for different activities and sectors, which will ensure the permit provides the appropriate standards of environmental protection; and
- a **decision document template** which provides the permitting officers with a standard way of recording the key issues and a checklist of all decisions.

The following paragraphs describe the separate elements of the regulatory package and how they fit together.

## 2.1 Technical guidance

For some activities we have developed a technical guidance note (TGN) series to support the setting of appropriate environmental standards in permits. This series sets indicative technical standards and measures, both at a general level and specific to different industry sectors. We have also produced guidance which is relevant across a number of industry sectors (horizontal guidance) which provides more information on particular environmental issues such as odour, noise and energy efficiency.

The indicative measures set out in our TGN series have been developed to provide an appropriate level of environmental protection having regard to a consideration of the likely costs and environmental benefits of the measures, set in the context of what can be afforded in each sector. In the case of most IPPC Directive activities, the BREF<sup>1</sup> process will have considered costs and benefits for those matters subject to BAT. In these cases our guidance will be based on the relevant BREF for the sector.

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<sup>1</sup> See Best available techniques (BAT) on page 14

We also have principles-based guidance on radiological protection, which is supported by more detailed guidance.

Requirements for activities falling within the scope of Directives relating to surface water and groundwater quality are generally set out in the relevant legislation and codes of practice.

## **2.2 The application form and risk assessment**

We have designed the application form questions so that operators must identify the measures they intend to take by reference to the TGN series, where relevant. For certain, specified small-scale activities, where sufficient information is supplied with the application, we may be able to undertake an initial risk assessment ourselves; but generally operators must also assess the environmental impact of their proposal, to demonstrate an acceptable environmental outcome at the site. Though it will normally be the case, the operator cannot assume that compliance with the indicative technical measures will avoid adverse local impacts.

Our risk assessment guidance and the relevant TGN will lead the operator through the following process:

1. Identify the technical measures that will be used by reference to the relevant TGN (where different measures are proposed a justification will be required);
2. Identify the hazards, receptors and the impact of the activity when operated using the proposed technical measures;
3. If all impacts are “insignificant” (see the ERA guidance), nothing more is required
4. For any impacts which are not screened out as insignificant, the operator must return to the TGN for alternative measures that might be used to mitigate those impacts. If necessary the operator must make a cost/ benefit assessment to identify the measures that represent the best balance of costs and benefits including trade-offs between environmental media (the ERA guidance provides a way of making this assessment).

The process in relation to radioactive waste is broadly similar, but:

- The proposals need to be assessed against the radioactive substances regulation environmental principles and any relevant guidance;
- The operator must demonstrate that it has “optimised” the process to reduce the radiological impact to people to as low as reasonably achievable, taking into account economic and social factors.

There are separate considerations, not based on impact and risk, which may apply to operators who keep or use sealed radioactive sources, including source-security provisions.

## **2.3 The permit template and conditions**

### **Standard rules permits**

Where we have published standard rules for a particular activity, we are satisfied that an activity of the stated type, operated under those rules, will meet all relevant environmental requirements. We are satisfied that the relevant requirements will be met because the standard rules have been developed alongside an environmental risk assessment for the activity. This guidance does not consider applications for standard permits because the environmental protection measures have already been decided for those activities.

### **Bespoke permitting**

The operator must apply for a bespoke permit where standard rules are not available or an activity is unable to meet the rules.

Where an operator is unable to meet the standard rules as a result of only one or two specific issues (e.g. proximity to housing raising a possible risk of an odour or noise problem), we can assess the application for a bespoke permit in relation to only those issues. We can therefore rely, where appropriate, on a standard rules generic risk assessment for some bespoke permit applications.

We have drafted permit conditions to provide an appropriate framework for all bespoke environmental permits<sup>2</sup>.

When determining a permit application we must ensure that:

- the measures proposed by the operator will not cause an unacceptable impact on people and the environment (judged in accordance with the ERA guidance and other H series guidance, where relevant);
- that any impacts identified will be mitigated in accordance with a consideration of the relevant costs and benefits
- in relation to radioactive waste the impact on people has been reduced to as low as reasonably achievable, taking into account economic and social factors;

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<sup>2</sup> See EPR generic permit template



- that the operator has justified any departures from the TGN indicative standards and other relevant guidance.

We should refuse the application if the measures proposed do not meet these requirements or unacceptable environmental impacts remain. We will permit practices involving radioactive substances only where these have first been approved as a class by Government (“justified”).

Where we grant a permit, the permit conditions must reflect our decisions on the appropriate measures. How we should achieve this is described below.

### **Single permits**

Paragraphs 3.40 to 3.48 of the Core Guidance explain when we can issue a single permit covering more than one regulated facility, where we are the regulator for each facility, the operator is the same for each facility and (with some exceptions) all the facilities are on the same site. The standard permit could refer to more than one set of rules and a bespoke permit may refer out to a set of rules. For example, a bespoke permit could combine rules for a standard mining waste facility and bespoke conditions for a water discharge activity.

It is common for a permit to specify conditions which only apply to particular parts of a facility or site, e.g. a release point from a chimney stack or to control releases from a specified waste treatment area. We will ensure it is clear, using such cross references and diagrams as are necessary.

### **Permit conditions**

#### Key measures

We will set a prescriptive permit condition for all those measures which are significant for a particular sector, as identified in the relevant guidance, or which have been the subject of cost / benefit consideration as part of the application or determination.

We will decide that a measure is key where it is fundamental to the prevention or minimisation of pollution in a particular sector. These key measures will include those which require significant investment or have to be confirmed at the design stage to avoid excessive cost, but in all cases will reflect the scale of the activity.

The following paragraphs describe the different ways in which the main control measures can be specified in the permit.

Where we can prescribe the key measures for every operator within a regime, sector or activity type, and we do not consider that allowance for site-specific differences is necessary or appropriate, then we will set the conditions as standard for that regime, sector or activity.

Where a key measure can be applied in different ways at an individual site, then this approach will not work. In this case the permit will require the operator to comply with the site-specific measures set out in part of the permit application. This may be done by reference to the relevant guidance or by a site-specific management plan such as an odour management plan. We will do this either by incorporating the relevant part of the application into the permit or by setting a site specific condition in the permit.

In each of the above cases, the operator will normally have to apply to vary the permit to make changes to these key measures (although provision may be made for minor changes by agreement). It is therefore in the interests of both operators and ourselves that the prescriptive conditions described above are only used where it is essential to specify those measures. This will give operators flexibility to operate their activities, so long as appropriate standards of environmental protection are met. We will therefore ensure that measures prescribed in the permit are kept to a minimum and contain no more detail than is necessary.

On some occasions, we may identify an issue that should be dealt with as a key measure for a particular site only once the site has started to operate. Where this occurs there are standard permit conditions that will allow us to require the operator to submit a management plan or a revision of an existing plan, for our approval and which will require it to operate in accordance with the approved plan.

### Other measures

In addition to the key measures, there will be other important environmental protection measures that the operator should take. We will normally expect these to be summarised in the application and our determination will focus on any serious deficiencies we identify. The permit conditions we will apply to these measures will be outcome-based, allowing the operator flexibility, as long as the outcome is achieved.

Examples of outcome-based conditions include those requiring the operator to maintain, implement and review plans or management systems in order to achieve an objective such as accident prevention. We will not normally approve such plans (unless they relate to key measures – see above) in order to allow appropriate flexibility of operation. Other examples of outcome-based conditions include those that require operators to use appropriate measures to achieve an objective, such as preventing odour or noise annoyance, or to do what is practicable to prevent or minimise such annoyance.

Where a condition requires the operator to take appropriate measures to secure a particular objective, we will expect the operator to use those measures described in the relevant guidance which are appropriate for meeting the objective; they will not be set out in a site specific condition. The operator will have described the measures it proposes to take in its application and/or in a relevant management plan.

The operator will need to keep the measures it uses under review and will need to change them where, for example:

- standards or measures have changed as a result of a technical guidance note being revised;
- an environmental problem has arisen or the risk of such a problem has become too high.

Where changes are necessary, we will give the operator a reasonable period to make them. What is a reasonable period will depend on the significance of the issue for the environment, the operator and the need to secure the objectives that apply to the type of regulated facility. Where significant investment may be involved (or there is a significant dispute between ourselves and the operator as to what is required), we may vary the permit, taking account of regulation 20(4) for stand-alone water discharge activities, and if necessary the matter can be resolved on appeal.

## **2.4 The decision document**

Our staff must record and explain the important features of the determination in the decision document. The decision document template provides suitable headings to record the important issues. Any significant impacts on people and the environment or departures from indicative standards, should be recorded. Our decisions on these issues should be explained, including the use of permit conditions to address the issue.

Where particular Directives or other legislative requirements (see below) raise significant issues, we should explain these in the decision document. Any consideration of an appropriate assessment under the Habitats Regulations would fall into this category.

The decision document template contains a checklist to record all the relevant decisions. Unless the issue is of particular importance for the site there is no need to provide an explanation of these decisions.

## **3. EUROPEAN DIRECTIVES**

Our approach to permitting described above has been designed to deliver the environmental standards required by all the Directives implemented by the Regulations.

We have translated all the specific technical standards and requirements of the Directives into appropriate application form questions, permit conditions and relevant technical guidance.

We will deliver the general objectives and framework provisions of the Directives, through the permitting approach described above. How this works for specific Directives is described below, by way of example. All activities we regulate by environmental permits will be subject to one or more of these Directives.

Government guidance on specific Directive requirements is also available.<sup>3, 4, 5, 5.</sup>

### **3.1 Integrated Pollution Prevention and Control (IPPC) Directive (2008/1/EC)**

#### **The IPPC general principles and other IPPC Directive considerations.**

Article 3 of the IPPC Directive sets out general principles which include the requirements that all the appropriate preventive measures are taken against pollution, in particular through application of the best available techniques and that no significant pollution is caused. The general principles also require specific consideration of energy efficiency, waste hierarchy principles, waste disposal issues, accident prevention and securing site protection on closure.

If significant pollution would be caused, even after applying best available techniques (BAT, see below), we must address this under the general principles of Article 3. Stricter conditions or refusal may be needed. This is built into the general approach described above.

Other parts of the IPPC Directive require a consideration of the effects of raw materials, implications for soil and groundwater, monitoring, and waste management.

These considerations are not required to be based on BAT, but the general approach described in section 2 above will equally secure the proper consideration of these various additional issues. TGNs for IPPC installations and our H1 guidance have been designed to contain indicative standards and guidance for all relevant IPPC issues.

#### **Best available techniques (BAT)**

The IPPC Directive states that emission limit values (ELVs) **must** be included for polluting substances (in particular those defined in Annex III) that are likely to be emitted

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<sup>3</sup> See Defra website

<sup>4</sup> Environmental Permitting Guidance, *The IPPC Directive, Part A(1) Installations and Part A(1) Mobile Plant.* <sup>5</sup> Environmental Permitting Guidance, *The Waste Framework Directive.*

<sup>5</sup> Environmental Permitting Guidance, *The Groundwater Directive* (to be drafted)

in significant quantities, although the ELVs may be supplemented or replaced by equivalent parameters or technical measures where appropriate as explained below.

This requirement does not apply to emissions of carbon dioxide from those installations that are subject to the Greenhouse Gas Emissions Trading Regulations.

The ELVs must be **based on BAT**, “but shall take account of the technical characteristics of the particular installation..., its geographical location and the local environmental conditions”. We must bear in mind that the IPPC Directive requires BAT to be used to **prevent** or **minimise** emissions.

Where available the European BAT reference documents (BREFs) set out conclusions on what constitute BAT for the sector concerned and the emission levels associated with their use (BAT-AELs). We use these as indicative standards in our sector Technical Guidance Notes (TGNs). For the landfill sector where there is no BREF, operators must rely on the standards specified in the Landfill Directive (1999/31/EC), the landfill TGN and associated guidance notes.

The BREFs make it clear that BAT-AELs are not ELVs, but are to be used for reference when setting site-specific ELVs in individual permits. The BREFs explain that this is because there may be local, site specific factors (as outlined above) to take into account. It should be noted that the BAT-AELs quoted in the BREFs should have reference conditions and averaging frequencies associated with them (typically being expressed as an annual average), and where ELVs are set in permits with different reference conditions or monitoring frequencies (typically 4-hour periodic sample, hourly or daily limit for continuous emission monitoring) the numerical value of the ELV should take into account these differences and the normal variability of plant operation. The relationship between indicative standards, BAT-AELs and individual permits is explained further below.

If meeting a European environmental quality standard (EQS) requires a stricter ELV than indicated on the basis of BAT (or an overriding requirement to prevent certain emissions (e.g. hazardous substances to groundwater as defined in the Water Framework and Groundwater Directives), the regulator must impose that ELV or consider refusing the permit altogether. This is addressed in our guidance on environmental risk assessment and in the Government guidance on Part A installations.

Where appropriate, the ELVs may be supplemented or replaced by “equivalent parameters or technical measures”. It may often be appropriate, and indeed more effective, to use conditions relating to process control and possibly restrictions on inputs etc as a substitute for, or to complement, numerical ELVs.

Other specific provisions surrounding the setting of ELVs are:

- ELVs may be set for groups of pollutants rather than for individual pollutants;
- ELVs shall normally apply at the point at which emissions leave the installation, any dilution being disregarded; and
- the effect of wastewater treatment plant may be taken into account when determining ELVs for indirect releases to water provided that an equivalent level of protection of the environment is guaranteed and higher levels of pollution are not thereby caused.

Our general approach to permitting described above is designed to secure the proper application of BAT at IPPC installations. The approach reflects a consideration of the costs and benefits of alternative options and a consideration of indicative technical standards set in guidance.

### **Setting ELVs in permits for installations**

Installations will normally be expected to comply with indicative standards as a minimum.

The relevant BAT-AEL should therefore normally be used as the reference point for setting the ELV. However, we must remember that the Directive requires emissions to be minimised, and site-specific factors must also be considered, so there are circumstances where basing an ELV on the BAT-AEL would not be appropriate. Two examples of these are as follows.

The first example is where actual performance based on BAT for the installation in question is already, or has the potential to be better than the BAT-AEL; or where there are exceptional, site-specific reasons why the BAT-AEL provides an insufficient level of environmental protection (whether because of local factors or where an EQS would be exceeded). In this case, the ELV in the permit would be stricter than the BAT-AEL.

The second example is where the operator provides a transparent and balanced, sitespecific justification for not achieving compliance with the indicative standard. In this case, provided that a high level of environmental protection is still being achieved, we would set an ELV that is less strict than the BAT-AEL, and normally accompany this with some additional requirements, depending on the reasons why the installation cannot comply, for example:

- If the installation cannot currently comply with indicative standards but will be able to do so in the foreseeable future, and is not causing significant pollution, it will be allowed to operate but required to upgrade towards indicative standards within a reasonable timescale.
- If indicative standards are not met, and significant upgrading is not proposed, based on the limited remaining life of the plant, we would normally incorporate a time limit into permit conditions to ensure that the installation does close as planned. Should

the operator subsequently decide to continue operating beyond that point, or to reopen the plant at a later date, we will require upgrading to take place before the plant is allowed to operate further.

- If no upgrading is proposed, and the justification is that the environmental benefit from upgrading is marginal, and significantly outweighed by the costs, we would require this to be reviewed periodically in case the circumstances change. For instance, if major refurbishment is carried out, that may present a more cost-effective opportunity to align performance with the indicative standards (or even go beyond them).

If there is no BAT-AEL in the BREF or TGN, our approach is essentially the same: the operator should base its proposals on the techniques, usually described in the BREF or TGN, to prevent or minimise emissions, and propose an ELV on that basis. The operator must use a cost and benefit appraisal to justify the site-specific reasons why any proposed alternative measures or deviation from the indicative measures represents BAT for its installation.

We intend to produce further technical guidance for staff to use when setting ELVs. In summary ELVs should:

- be set to limit emissions to a level consistent with the BAT-AEL unless there are justified, site specific reasons);
- be based on actual performance, particularly where that is or should be better than the indicative standard; and
- be set with defined monitoring parameters to assess compliance with the ELV.

Our general approach to permitting described above is designed to secure the proper application of BAT at IPPC installations. The approach embodies a consideration of the costs and benefits of alternative options and a consideration of indicative technical standards set in guidance. In the case of IPPC installations, the relevant TGNs are based on the applicable BREF..

### **Environmental Impact Assessment (EIA) Directive information**

The IPPC Directive requires a consideration of “any relevant information obtained, or conclusion arrived at”, as a result of an environmental impact assessment carried out in relation to an installation under the EIA Directive. This extends to any EIA, no matter when carried out (so although relatively old EIAs may be of less relevance to the permit determination, they must still be considered). However, not all applications we receive will have been subject to EIA.

Where EIA applies it will almost always form part of the planning process. As such, it may or may not be concluded at the time we receive a relevant application. Our

application form requires the operator to supply us with copies of any environmental statement, planning permission and relevant committee report describing the EIA decision, which are available at that time. We should then take account of that information, and update it, as appropriate, during our permit determination.

In most cases, it is unlikely that the EIA information will add significantly to the content of our own permit application and in particular the environmental risk assessment conducted in accordance with our guidance, as these are likely to be more detailed. But we are required to consider the relevant EIA information that is available at the time of our determination.

**Note** that the requirement to consider EIA information is entirely separate from the claim which is sometimes made, that an EIA should be carried out as part of the IPPC determination itself. Our position on this is that the EIA Directive has been properly implemented through the planning system and it does not require any implementation during the pollution control (environmental permit) determination. Legal advice should be sought where the issue is raised.

### **3.2 The Waste Framework Directive (2008/98/EC)**

#### **The relevant objectives**

The main requirements of the Waste Framework Directive are the “relevant objectives” of article 13. These apply to waste management (which includes both waste disposal and recovery operations and to all wastes including hazardous wastes).

Article 13 provides that waste management should be carried out:

*“ without endangering human health and without harming the environment and in particular without:*

- (i) risk to water, air, soil, plants or animals; or*
- (ii) causing nuisance through noise or odours; or*
- (iii) adversely affecting the countryside or places of special interest;*

We consider that the general approach described in section 2 above will ensure the proper consideration of these issues through environmental permitting.

#### **Waste hierarchy considerations**

The waste hierarchy set out in Article 4 must be applied to the generation of waste by a regulated activity. In addition, waste generated must be treated in accordance with the waste hierarchy in Article 4. Our TGN “How to Comply” contains guidance on how we expect operators to demonstrate they have discharged this duty.



## **Ban on mixing hazardous waste**

Article 18 provides that permits may allow the mixing of hazardous waste but only if Article 13 (see above) is complied with, there is no increase in adverse impact on human health and the environment and the mixing conforms to BAT. Where we allow the mixing of hazardous waste a specific permit condition will be applied to secure this.

## **Other requirements**

Various other requirements apply, such as in relation to record keeping (Article 35(1)) and the need for specific conditions relating to matters such as the types and quantities of waste.

See also the Government Guidance<sup>5</sup>.

### **3.3 The Water Framework Directive (2000/60/EC)**

The Water Framework Directive provides an overarching framework to coordinate water management. It integrates the requirements of a number of existing Directives and introduces new ecological objectives. It does not seek to change or overrule the objectives set out in other Directives: equivalent measures are put in place to maintain the level of protection provided in any Directives that it repeals<sup>6</sup>

The Directive establishes a demanding water classification system, in order to identify pressures that may lead to deterioration in ecological status of water bodies. The Directive requires all water bodies to aim to achieve good ecological status by 2015.<sup>7</sup>

River Basin Management Plans (RBMPs) detail the measures that must be taken to improve or maintain the ecological status of water bodies. Some of these measures can be achieved by controlling environmental emissions. It is these measures that are delivered through the Environmental Permitting Regulations, by means of environmental permits for water discharge activities.

There is separate guidance to Natural Resources Wales on the delivery of Water Framework Directive obligations<sup>8</sup>.

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<sup>6</sup> The Freshwater Fish Directive, the Shellfish Directive and the Dangerous Substances Directives are to be repealed in 2013

<sup>7</sup> 2015 is the preferred date. In practice the WFD acknowledges that this may not always be possible, so there are derogations available that could result in some objectives being fulfilled as late as 2027, and even later in some cases.

<sup>8</sup> Defra and Welsh Assembly Government, River Basin Planning Guidance Volume 1 (August 2006) and Volume 2 (August 2008)

### 3.4 The Groundwater Daughter Directive (2006/118/EC)

#### General Principles

Articles 1 and 6 of the Groundwater Daughter Directive describe the need for measures to protect groundwater in order to achieve the objectives of Article 4.1(b) of the Water Framework Directive. Along with additional requirements brought forward from earlier Groundwater Regulations and the previous Groundwater directive (80/68/EEC – which remains in force until December 2013) these requirements are incorporated into the Environmental Permitting Regulations 2010. They are set out in detail in Government and EU guidance<sup>9</sup>

All necessary measures must be put in place to prevent inputs into groundwater of any **hazardous substances**.

All necessary measures should also be put in place to limit the input of **non-hazardous pollutants** to groundwater to prevent pollution, deterioration in the chemical status of groundwater bodies or avoid significant and sustained upward trends in the concentrations of pollutants. These measures shall take account of established best practise including BEP and BAT.

A number of exclusions apply to the “prevent or limit” requirements noted above, including a *de minimis* provision, accidents or exceptional circumstances of natural cause, where there is net damage to the environment or human health and where there are disproportionate costs to remove existing (historic) ground contamination.

### 3.5 The Basic Safety Standards Directive (96/29/Euratom)

The Basic Safety Standards Directive incorporates the radiological protection principles of justification, optimisation and limitation.

The Directive provides that all new classes or types of practice resulting in exposure to ionising radiation are to be justified before being adopted. A practice will be justified if it produces sufficient benefit to the exposed individuals, or to society, to offset the radiation detriment it causes. Decisions on justification will be taken by Government, and practices must not be permitted unless they are justified.

In relation to the principle of optimisation, all exposures to radiation of any member of the public and of the population as a whole are to be kept as low as reasonably achievable, taking into account economic and social factors.

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<sup>9</sup> Insert ref to Defra/WAG guidance to the EA ;

CIS Guidance Document 17, 2007 – *Guidance on preventing or limiting direct and indirect inputs in the context of the Groundwater directive 2006/118/EC.*

The Directive also sets out dose limits for the sum of the doses resulting from the exposure of any member of the public to ionising radiation (subject to certain exceptions).

### **3.6 The High-Activity Sealed Radioactive Sources and Orphan Sources Directive (2003/122/Euratom)**

The aim of the Directive is to prevent the exposure of workers and the public to ionising radiation arising from the inadequate control of high activity sealed radioactive sources (HASS) and orphan sources. The Directive sets out a number of requirements which need to be in place before a permit can be issued for HASS including:

- adequate arrangements for the safe management of sources when they become disused sources; and
- adequate financial provision for the safe management of sources when they become disused sources.

Obligations are also imposed on holders of HASS in relation to staff competency and training, maintenance, incident prevention and response, record keeping, identification, marking and transfer of HASS.

### **3.7 Other European Directives**

Other Directives that are implemented through the Regulations, mainly contain either specific additional prescriptive requirements or general provisions about ensuring protection of the environment, similar to the general provisions of the relevant Framework Directives.

The approach described in section 2 is designed to secure all these requirements. Any specific extra requirements are addressed in the relevant guidance and standard conditions.

Additional guidance on these Directives can also be found<sup>3</sup>, as follows

In Government Guidance:

- **Core Environmental Permitting guidance**
- **End of Life Vehicles Directive**
- **Integrated Pollution Prevention and Control (IPPC) Directive, Part A(1)**  
(including the Titanium Dioxide Directive)
- **Large Combustion Plants Directive**
- **Solvent Emissions Directive**
- **Waste Electrical and Electronic Equipment Directive**

- **Waste Framework Directive**
- **Waste Incineration Directive**
- **Landfill Directive**
- Mining Waste Directive

In our Regulatory Guidance Series on specific Directives:

- Understanding the Landfill Directive (LFD 1).

## 4 OTHER LEGISLATIVE REQUIREMENTS

There are additional legislative requirements which also apply to environmental permitting. Unless otherwise indicated below, we consider that the general approach described in section 2, will deliver these requirements.

### 4.1 Requirements relating to Air Quality

#### Section 81 EA 1995 - Air Quality Strategy

We are required to have regard to the Air Quality Strategy for England, Scotland, Wales and Northern Ireland, in exercising our functions under the Regulations. However, air quality issues should have been fully dealt with in setting permit conditions as described above. Regard may be had to our guidance on our role in the regulation of industrial processes and sites that handle waste materials, with respect to air quality matters: “Natural Resources Wales – regulating to improve air quality”.

#### The Persistent Organic Pollutants Regulations 2007

We are required, when considering an application for an environmental permit or for a significant modification to a permit for an **installation**, to have regard to Article 6(3) of the Persistent Organic Pollutants Regulation (Regulation (EC) No. 850/2004) (the EC POPs Regulation). Article 6(3) requires that, where an installation releases a chemical listed in Annex III to the EC POPs Regulation, we must give priority consideration to alternative processes, techniques or practices that have similar usefulness but which avoid the formation and release of such listed chemicals. This requirement is stated to be “without prejudice” to the IPPC Directive, so the consideration of Annex III chemicals (PCDD/PCDF, HCB, PCB and PAHs) in the context of requiring BAT to minimise their emission should generally deliver compliance with the EC POPs Regulation: but care must be taken – where relevant – to ensure that this is done and our consideration recorded.

### 4.2 Requirements relating to Water Quality

#### The Bathing Water Regulations 2008

These Regulations implement the Bathing Water Directive (2006/7/EC). The requirements are phased in across the period up to March 2015. They will require us to exercise our environmental permitting functions to secure the aims of the Directive in general and also specifically with a view to ensuring all bathing waters are classified as sufficient by 2015 and an increased number of bathing waters are classified as good or excellent.

## **The Surface Waters (Fishlife) (Classification) Regulations 1997**

These Regulations implement the Freshwater Fish Directive [2006/44/EC]. Where an environmental permit is granted for discharges to waters designated under the Directive, the regulator must set permit conditions which will result in the mandatory standards for the quality of the waters, known as the Environmental Quality Standards (EQSs), being met and guideline EQSs being respected. These values are set out in the Regulations. The EQSs provide limits on the permissible level of certain substances in the designated waters; the limit depends on whether the water supports salmonid or cyprinid fish.

## **The Surface Waters (Shellfish) (Classification) Regulations 1997**

These Regulations implement the Shellfish Waters Directive [2006/113/EC]. Where an environmental permit is granted for discharges to waters designated under the Directive, the regulator must ensure that the permit contains conditions such that compliance with the permit conditions results in the mandatory EQSs being met and guideline EQSs observed. These values are set out in the Regulations that form part of the UK's transposition of the Shellfish Waters Directive. For most of the substances covered by the EQSs, the regulator will set numerical limits in permits. Microbiological quality will be controlled through specifying treatment levels that must be achieved prior to the discharge entering the designated waters.

## **The Urban Wastewater Treatment Directive (91/271/EEC)**

The Urban Wastewater Treatment Directive aims to protect the environment from pollution of sewage discharges. It sets treatment levels based on the size of the discharge and sensitivity of the receiving water. The regulator must exercise its powers to ensure compliance with the treatment standards prescribed by the Directive and must ensure that pollution from storm water is limited.

## **Marine and Coastal Access Act 2009**

Section 58 requires that any authorisation or enforcement decision taken by a public authority must be in accordance with the appropriate marine policy documents unless relevant considerations indicate otherwise. Any environmental permitting decision that affects marine waters therefore must be made in accordance with the marine policy statement and marine plan for the area covered by the permit

**The UK Marine Policy Statement was published in March 2011 for all UK waters. Marine Plans are being developed The first Marine Plans in England will be for the East Inshore and Offshore marine areas - an area that extends from Flamborough Head, East Yorkshire, to Felixstowe, Suffolk and from our coast to the limit of our territorial waters. The MMO will use its experience of marine**

## planning in the first two areas to deliver the full programme of 10 Marine Plans for England by April 2022.

In Wales the intention is to have national marine plans for both the onshore and offshore by 2012/13.

### 4.3 Requirements relating to Conservation

#### The Conservation of Habitats and Species Regulations 2010

An application for an environmental permit will be considered to be a proposal for a new plan or project for the purposes of the Habitats Regulations. We can include conditions in a permit to avoid adverse effects on any European site, over and above those to ensure compliance with the Regulations. Should the facility still threaten an unacceptable impact on such a site, the application should be refused.

The following procedural steps will therefore need to be addressed:

- Assess whether the proposals described in the application would have “*a likely significant effect on a European Site in Great Britain*” (either alone or in combination with other plans or projects). Our guidance (*Applying the Habitats Regulations to new Agency Authorisations and Activities*) should be considered. This indicates that it is unlikely a regulated facility would fall within this category unless it is within certain specified distances of a European site.
- If the proposal is assessed as being likely to have a significant effect, there must be “*an appropriate assessment of the implications of the plan or project for the European site, in view of that site’s conservation objectives*”. (See our guidance for advice on undertaking such an assessment).
- We cannot grant the permit unless it is considered that, in the light of the assessment and taking into account any additional conditions or restrictions which it is possible to impose, the installation will “*not adversely affect the integrity of the European site*” (Again, further advice on this is contained in our guidance<sup>10</sup>).

### Countryside and Rights of Way Act 2000 (CROW 2000)

#### Section 85 duty concerning Areas of Outstanding Natural Beauty (AONBs)

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<sup>10</sup> See the *Habitats Directive Handbook*.

In deciding whether to grant a permit and/or what conditions to impose, regard should be had to “*the purpose of conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty*”.

## **Wildlife and Countryside Act 1981 (WCA 81)**

### **Section 28G WCA 81 duty concerning SSSIs**

The CROW Act 2000 amends the WCA 1981 by way of adding a new section 28G duty in relation to SSSIs. In deciding whether to grant a permit and/or what conditions to impose in any case where the regulated facility “*is likely to affect the flora, fauna, or geographical or physiographical features by reason of which a site of Special Scientific Interest is of special interest*”,

We must take:

*“reasonable steps, consistent with the proper exercise of the [Natural Resources Wales’s] functions, to further the conservation and enhancement of the flora, fauna or physiographical features by reason of which the site is of special scientific interest”.*

### **Section 28I WCA 81 duty to consult**

If the facility is considered likely to damage any of the flora, fauna or geographical or physiographical features by reason of which an SSSI is of special interest and NE/CCW is therefore consulted under this provision, a statement should be recorded to confirm that the consultation procedures of this section have been followed and how NE/CCW's advice has been taken into account.

If a notice under s 28I(6) has been served on NE/CCW by us (i.e. a notice advising that we propose not to follow NE/CCW's advice and explaining why), this should be annexed to the decision document.

## **Environment Act 1995 (EA 95)**

### **Section 7 EA 1995 - pursuit of conservation and other objectives**

Reference should be made to the duties imposed on us under s 7(1)(b) and (c)(i)–(iii) EA 1995, to have regard to a range of particular conservation issues, in exercising its pollution control functions (including under environmental permitting).



*7(1)(b) - to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiographical features of special interest;*

*7(1)(c)(i) - to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest;*

*7(1)(c)(ii) - to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects;*

*7(1)(c)(iii) - to have regard to any effect which the proposals would have on the economic and social well being of local communities in rural areas.*

Note that section 7(c)(i)-(iii) is not limited to conservation matters alone, as we must also have regard for the economic and social well being of rural communities. We do not have any set screening criteria for assessing whether installations might impact on cultural heritage sites. GIS should have been used to identify any such sites close to the application site (e.g. scheduled ancient monuments, listed buildings etc.). If these are within close proximity, the applicant should have been encouraged to seek the advice of English Heritage or Cadw (the Welsh Government's historic environment service) in Wales to assess any likely impacts.

Note also that there are further matters set out in section 7(2) for consideration by us, relating to the desirability of maintaining public access to areas of natural interest/beauty or buildings /objects of interest. Specific advice should be sought if there is any indication that these duties may be relevant in respect of a particular application.

### **Section 8(3) – Notifications**

Should any notification be received from NE or CCW regarding SSSIs, this and our response should be recorded.

## **Natural Environment and Rural Communities Act 2006**

### **Section 40 duty concerning the conservation of biodiversity.**

In deciding whether to grant a permit and / or what conditions to impose, regard should be had to “*the purpose of conserving biodiversity*”. Biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.

## 4.4 General Requirements

### Section 4 Environment Act 1995 (EA 1995) - Pursuit of Sustainable development

Consideration should be given to whether there are any additional conditions which should be imposed in pursuance of the requirements of s 4 EA 1995, namely “*to make the contribution towards achieving sustainable development*”, which is described in the statutory guidance “Natural Resources Wales’s “Objectives and Contribution to Sustainable Development: Statutory Guidance issued to the Agency by the Secretary of State” in December 2002. This is stated to:

*“provide guidance to the Agency on such matters as the formulation of approaches that the Agency should take to its work, decisions about priorities for the Agency and the allocation of resources. It is not directly applicable to individual regulatory decisions of the Agency”.*

There is also equivalent guidance issued by the Welsh Assembly Government<sup>11</sup>. Note that if consideration is being given to the imposition of requirements solely for the purposes of s 4 EA 1995, it will be necessary to be satisfied that such requirements do not undermine or conflict with the other requirements of the Regulations (because other, specific, statutory duties imposed on us take precedence over our duty under s 4 EA 1995), and that any such proposed requirements satisfy the duty to consider costs and benefits as set out in s 39 EA 1995 and described in the statutory guidance.

### Human Rights Act 1998 (HRA 1998)

The HRA 1998 applies to our environmental licensing decisions, including the grant of a permit, taken after 2 October 2000. General advice on the Act and its implications for us has been published by the Department for Constitutional Affairs. Consideration must now be given to whether a decision to grant (or not to grant) a permit, or to impose (or not to impose) particular conditions, is incompatible with someone's Convention rights.

The principal Convention rights that might be affected by a decision of ours are the right to life (Article 2), the right to a fair trial (Article 6), the right to respect for private and family life (Article 8) and the right to protection of property (Article 1 First Protocol). It is important to remember that the operator's Convention rights might be affected, as well as those of objectors to the grant of a permit.

Certain Convention rights are absolute. Others are limited in explicit and finite circumstances. Others are qualified. Interference with a qualified right may be justified, provided that it is in accordance with the law, serves one of the aims set out in the

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<sup>11</sup> *Natural Resources Wales's Objectives and Contribution to Sustainable Development in Wales: Statutory Guidance from the National Assembly for Wales*, see NRW website.

qualification to the relevant Article, and is “*necessary*” in a democratic society. Any interference with individual rights must be proportionate to the aim pursued. It is recognised that public authorities, such as Natural Resources Wales, often have to strike a balance between the general social and economic needs of the community and the specific interests of individuals.

Under the HRA 1998, we must consider whether our decision in respect of a permit under the Regulations will result in, or (N.B.) *will fail to prevent*, any potential or actual breach of a Convention right (e.g. the operation of the installation would affect the health of local residents). If we do identify such a breach we must then consider whether we have discretion to act otherwise under UK law, as its primary obligation must be to fulfil its statutory duty. Where we do have discretion and the Convention right at issue is not absolute, we must then consider whether our decision is justified. For example, if representations have been made by members of the public on matters subject to regulation under the permit which might affect health, amenity or house values, these should be duly considered. Such matters should, however, be weighed against a proper assessment of any benefits of the grant of a permit in terms of the “*economic well-being of the country*” and the rights or freedoms of the operator.

In most situations, a properly made environmental permit determination will preclude any potential breach of Convention rights. Where there is any doubt, legal advice should be sought.

### **Legislative and Regulatory Reform Act 2006**

Section 21 requires any person exercising a regulatory function (defined to include environmental permitting) must have regard to certain specified principles, subject to any other requirement affecting the exercise of those functions. This means that the duty will only apply to environmental permitting, to the extent that it does not affect any other requirement of the EP Regulations. The principles are that:

- regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
- regulatory activity should be targeted only at cases in which action is needed.

### **The Local Democracy, Economic Development and Construction Act 2009**

Section 23 of the Act requires us where we consider it appropriate to take such steps as we consider appropriate to secure the involvement of interested persons in the exercise of our functions by providing them with information, consulting them or involving them in any other way. Section 24 requires us to have regard to any Secretary of State guidance as to how we should do that.

Our public consultation duties are set out in the Regulations, and in our statutory Public Participation Statement, which implement the requirements of the Public Participation Directive. We also have additional guidance on public participation at sites of high public interest (Agency Guidance Note RGS6) and the Agency's Building Trust with Communities toolkit. We consider that these requirements, statements, guidance and tools, together ensure that our duties under this Act are secured in relation to environmental permitting.