Cyfoeth Naturiol Cymru
Natural Resources Wales

Standard Rules Consultation No.12 Beneficial spreading of waste on land

Standard rules for the Environmental Permitting Regulations

Autumn 2016

Published by:

Natural Resources Wales

Cambria House

29 Newport Road

Cardiff

CF24 0TP

0300 065 3000 (Mon-Fri, 8am - 6pm)

enquiries@naturalresourceswales.gov.uk

www.naturalresourceswales.gov.uk

Summary

The Environmental Permitting (England and Wales) Regulations 2010 (“EP Regulations”) allow us to offer standard permits, to reduce the administrative burden on business while maintaining environmental standards. They are based on sets of standard rules that we can apply widely in England and Wales. The rules are developed using assessments of the environmental risk posed by the activity.

The rules take considerable time, resources and consultation to develop but once in place they make applying and determining the applications comparatively easy. This is because there is no need for a site-specific risk assessment.

We are proposing the revision of the following 4 standard rules covering land spreading and digestate storage:

- SR2010No4: mobile plant for the landspreading of wastes
- SR2010No5: mobile plant for the reclamation, restoration or improvement of land
- SR2010No6: mobile plant for the landspreading of sewage sludge
- SR2010No17: storage of digestate from anaerobic digestion plants

We would like your views on the following proposals:

1. The introduction of new restrictions affecting land spreading and storage activities which will give better environmental protection.
2. New provisions giving operators greater flexibility in the size of area and choice of acceptable wastes they can spread.
3. Minor changes to definitions and wording to improve clarity and consistency.

We will take account of the consultation responses and publish the new standard rules on our website together with details of the application process.

Contents

1 About this consultation

This is an explanatory document that provides an outline of the documents we are consulting on, and an overview of the standard permitting process. It is designed to help you understand and comment on them.

1.1 What we are consulting on

The Environmental Permitting Regulations allow us to develop and revise standard rules for certain activities. We base them on our understanding of the risks. We are asking for your views on whether we have correctly identified the risks associated with each activity and whether the revised set of rules are appropriate to manage those risks.

The consultation is primarily about the following documents:

Generic risk assessments (see Section 3 for more information):

These describe the risks that each type of activity poses to the environment and human health and the ways in which these risks can be controlled. They define the boundary of risk that can be regulated by common controls, whilst still achieving a high level of environmental protection.

Standard rules sets (see Section 3 for more information):

These consist of all the rules necessary to ensure that the risks to the environment and human health are reduced to an acceptable level for this activity.

1.2 What this consultation means to you

We think that this consultation will be of particular interest to:

Operators, trade associations, and business:

This is your opportunity to ensure that the rules and generic risk assessment work for you and your industry but also provide the necessary protection to the environment and human health. We would like any suggestions you may have to extend the uptake of existing rules and for further sets of rules.

Other regulators, the public, community groups and non-governmental organisations with an interest in environmental issues:

This is your opportunity to ensure that the rules and risk assessment work to provide the necessary protection to the environment and human health, whilst still being useful to industry.

2 Standard permits – how they work

2.1 What is a standard permit?

Standard permits contain one condition, which refers to a fixed set (or sets) of standard rules that an operator must comply with. The standard rules define the activities that an operator can carry out and specify necessary restrictions on those activities, such as emission limits or the types of waste or raw materials that can be accepted at the site. Standard rules are published on our website following public consultation. This is the twelfth such consultation.

An operator who wishes to carry out a particular activity can look at the standard rules and, if they can comply with them, they may decide to apply for a standard permit. We are able to issue the permit more quickly and more cheaply because we have no decisions to make on site-specific permit conditions. An operator who cannot meet the requirements of the standard rules must apply for a **bespoke permit** and provide us with additional information. It takes us longer to issue a bespoke permit because we have to carry out a more detailed assessment of the application, decide whether to include site-specific conditions and consult in accordance with our public participation statement which is available on our website.

There is no right of appeal against the rules in a standard permit because applying for a standard permit is voluntary. If an operator wants to change the way the site operates so that it falls outside the scope of the standard rules or they feel that the standard permit no longer works for their particular operation, an application must be made to vary to a bespoke permit.

Operators must apply for a bespoke permit for any regulated activities not covered by standard rules. These activities generally have a higher potential impact on the environment or require more complex controls than operations for which standard rules can be used.

Standard Rules permits can only be granted where the regulated facility has one single legal person as the operator. The term **'Operator'** is defined in regulation 7 of EPR as the person who has control over the operation of a regulated facility. If a regulated facility has not been put into operation, the person who will have control over it when it is in operation, is the operator.

The central issue in deciding whether someone is the operator of a regulated facility is whether they are able to exercise control over its operation. They must demonstrably have the authority and ability to ensure that the Environmental Permit is complied with.

When assessing whether an operator (or proposed operator) has the authority and ability we considering the following and other factors.

Does the operator/proposed operator have the authority and ability to:

1. Manage site operations through having day-to-day control of plant operations, including the manner and rate of operation?
2. Ensure that permit conditions are effectively complied with?
3. Decide who holds key staff positions and have incompetent staff removed?
4. Make investment and/or other financial decisions affecting performance of the facility?
5. Ensure that regulated activities are suitably controlled in an emergency?

A site owner can continue to be the operator and hold the permit where it lets a contract for activities at a site provided they continue to take responsibility and exert sufficient supervision.

2.2 What are standard rules?

When developing sets of **standard rules** we carry out a single assessment of risk for a commonly undertaken activity. This enables us to define the risk boundary within which the rules can be used. This boundary comprises a number of restrictions such as size, location and operational controls. The restrictions will be those necessary to enable a consistent set of rules to reduce the risk to an acceptable level. The rules would be the same for each operator carrying out that particular activity, irrespective of location. Rules and risk assessments are published in advance so that operators and the public know precisely what controls we will apply to a proposed activity.

In developing the risk boundary for each set of standard rules, we have to protect the environmental quality of some specific sensitive receptors. For example, standard rules sets may contain a rule which requires that the activity must not be carried out within a certain distance of specified types of nature conservation sites, such as European sites[1].

The rules for some operations will not permit activities to be carried out within a specified distance of a watercourse or groundwater source protection zone. Operators will need to check that their operation fits within the rules before making an application. If there is a change in the local circumstances after the permit has been issued such that the operation no longer fits within the standard rules (for example a conservation site is designated within the prescribed screening distance), an operator may be required to upgrade the operation to maintain levels of protection or apply to change to a bespoke permit.

We have based most of the rules on the objectives that need to be achieved. They specify **what** we want operators to achieve, but do not tell them **how** to achieve it. That is their responsibility. This approach is not new and was used in previous regimes such as water quality discharge consents, waste management licensing, pollution prevention and control and radioactive substances regulation. Guidance on how to comply with the rules we have already published is provided in **'How to comply with your environmental permit'**, which is available on our website.

2.3 The generic risk assessment

We have prepared a generic risk assessment for each rule set. The assessment defines the risk boundary that can be regulated through common controls and how to properly manage the risks. The risk assessment has been carried out using the "source – pathway – receptor" approach. The risk assessment is split into three broad sections:

Data and information – this section comprises receptor, source, harm and pathway information that is relevant to the activity under consideration.

Judgement – we have carried out the risk assessment to determine the likelihood of the receptors being exposed to the hazard, the consequences of the hazard being realised and the overall magnitude of the risk.

[1] Candidate or Special Area of Conservation (cSAC or SAC) and proposed or Special Protection Area (pSPA or SPA) in England and Wales). For the purposes of standard rules, a Ramsar site is considered as a European site.

Action – risks will be controlled by setting standard rules. In the case of the management of noise and vibration this will include compliance with the relevant noise and vibration management plan where necessary. We will control residual risks by carrying out compliance assessment, such as site inspections, to ensure that operators comply with the rules.

As previously mentioned, a set of standard rules may contain a rule which requires that activities must not be carried out within a certain distance of specified nature conservation sites. The broad sensitivity of habitats and species groups to the potential hazards from facilities regulated by us through the EP Regulations is well understood. Harm can occur through hazards such as toxic contamination, nutrient enrichment, habitat loss, siltation, smothering, disturbance and predation.

These distance rules allow us to filter out activities which could not have an effect on the interest features of these sites and species. This is part of the overall risk boundary for each activity and is necessary because we will not be consulting the nature conservation bodies on individual applications for standard permits, in accordance with our public participation statement.

3 Proposed set of rules and risk assessment

3.1 Amendment to mobile plant standard rules and risk assessments authorising the spreading of waste on land for agricultural or ecological benefit. SR2010 No4, SR2010 No5 and SR2010 No6

These mobile plant standard rules authorise the spreading of waste on land for agricultural or ecological benefit. They were developed in response to changes to waste exemptions which took effect in 2010. The improvements proposed in this consultation reflect the experience gained from over the past six years.

The current proposals to amend these standard rules are as follows:

a) Changes to the provisions for temporary storage of waste prior to spreading

b) Enable operators to request deployments for areas greater than 50 hectares

c) Manage spreading in Groundwater Safeguard Zones for nitrate

d) Add restrictions on spreading in adverse conditions

e) Update the list of acceptable wastes and add a number of new wastes

f) Require pre-notification of the intention to commence spreading

g) Minor amendments to existing definitions and wording to provide greater clarity and consistency

a) Storage of wastes prior to spreading

When mobile plant permitting for land spreading was introduced in 2010 the standard permits included the associated storage of waste at the place of use. This was done to ensure operational flexibility around the spreading window and to avoid the practical and logistical difficulties of having to spread the waste immediately it arrived on site. It was not intended as an alternative to properly constructed and maintained storage facilities.

The storage limit was set at 3,000 tonnes at any one time per permit, a figure which reflected our expectation that the majority of waste destined for landspreading would be stored either at the site of production or at permitted intermediate storage facilities and delivered to the place of use shortly before spreading. However many operators have interpreted this as 3,000 tonnes per deployment which has resulting in bulk storage at the place of use becoming the preferred long-term storage option.

We consider that the storage of large quantities of wastes in temporary facilities of unknown quality of construction poses an unacceptably high potential risk. This is particularly true of liquid wastes. Putting the current 3,000 tonnes limit into perspective; an Olympic size swimming pool can contain 2,500 tonnes of aqueous waste.

Some storage facilities are being used continuously, the procession of waste inputs and outputs ensuring the facility is never empty. These permanent facilities are by definition not mobile, they are waste transfer stations which require site permits.

The reliance on storage under deployments has discouraged investment in more appropriate storage facilities, undermined business resilience and created serious problems for waste producers in periods when the land is waterlogged, frozen or otherwise unavailable. This has become a recurring problem in recent years with a succession of producers and landspreaders reporting difficulties at various times and some AD facilities having to cease operations for lack of somewhere to store their digestates.

We continue to believe that storage under deployments is acceptable if appropriate safeguards are put in place, and it is clear that permit holders value the flexibility this offers. We therefore propose to make the following amendments:

- The storage limits will in future apply to each deployment rather than to each permit. This will provide significantly more flexibility than the current arrangement and will avoid the need for operators to obtain multiple permits.
- A storage limit of 3,000 tonnes will continue to apply to each deployment.
- We will take a different approach to the secure storage of solid (stackable) and liquid (non-stackable) wastes. Of the 3,000 tonnes in total allowed per deployment no more than 1,250 tonnes shall be non-stackable waste (the limit under the previous paragraph 7 exemption).
- No more than 3,000 tonnes of waste shall be stored in a single location at any one time. Of this no more than 1,250 tonnes shall be non-stackable waste.
- The NVZ requirement for field heaps will be adopted in the permit in order to minimise run-off. The condition reads as follows “field heaps shall occupy as small a surface area as is practically required to support the heap and prevent it from collapsing and must not be sited within 30m of surface water if the land is steeply sloping (i.e. a slope of 12 degrees (1 in 5 or 20%) or greater)”.
- Ammonia is a pollutant identified in the Gothenburg Protocol and National Emission Ceilings Directive (NECD), both of which seek to limit emissions. The uncovered storage of high readily available nitrogen wastes can result in airborne ammonia emissions. It also has local impact upon air quality and an excessive deposition of nitrogen has been proven to adversely affect species composition/richness in sensitive habitats. We therefore propose that digestate must be covered when it is stored within 200 metres of a European Site, Ramsar Site or a Site of Special Scientific Interest (SSSI) in order to limit the impact on these sites.

b) Deployments for areas greater than 50 hectares (SR2010No4 and No6 only)

Some deployments we receive are extremely complex and involve a wide range of variables (waste types, application rates, soil types, cropping regimes). Such deployments take considerable time to assess. Others are relatively simple e.g. a single waste type on a large field. In these circumstances we consider it is reasonable to allow deployments for areas greater than 50 hectares. We therefore propose to allow deployments of up to 100 hectares where they relate to a “continuously managed area of land”.

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c) Groundwater Safeguard Zones for nitrate

Groundwater sources of drinking water are precious resources but they are increasingly at risk from pollution. The pollutant of greatest concern is nitrate.

Treatment to remove pollutants from drinking water is very expensive; a typical plant costs upwards of £4million with annual operating costs of several hundred thousand pounds. Rather than burden water customers with the cost of building and operating these additional treatment facilities it is more cost effective to prevent or reduce pollution at source.

The designation of Groundwater Safeguard Zones for nitrate is part of a coordinated strategy to protect our groundwater resources and they play an important role in providing a sustainable supply of drinking water.

To complement other protective measures we therefore propose that the landspreading of high readily available nitrogen wastes be excluded from these standard rules.

A definition of high readily available nitrogen wastes derived from the Nitrate Pollution Prevention Regulations is included in the interpretation section.

d) Spreading in adverse conditions

In order to minimize the risk of pollution landspreading exemptions U10 and U11 already contain the following restrictions:

Waste must not be spread on land if:

- The land has been frozen for 12 hours or more in the preceding 24 hours
- The land is waterlogged, frozen or snow covered

We consider that these restrictions should apply equally to landspreading activities carried out under environmental permits. To give them greater prominence and make them legally binding we propose to include them in the standard rules.

Definitions of waterlogged and frozen derived from cross compliance guidance are included in the interpretation section.

e) List of acceptable wastes

Since these standard rules were introduced in 2010 we have received requests for new wastes to be added to the table of acceptable wastes. We have also identified a number of amendments to waste codes and descriptions which will add greater clarity and accuracy. These changes will increase the range of wastes that may be spread under the standard rules.

Consultees are invited to propose other waste types for inclusion in the standard rules. Please ensure that suggestions are accompanied by evidence that the wastes are suitable for recovery by spreading on land and clearly state the benefit they provide.

f) Require pre-notification of the intention to commence spreading

The standard rules and deployment arrangement gives operators the ability to choose when their spreading activity will take place and to change spreading dates if required. We consider this is both a reasonable and essential flexibility of the system.

We have a duty to regulate landspreading effectively but can only do so if we are able to observe the activity. This can be difficult as spreading only takes place for short periods over the life of the deployment. This can be resolved if the operator notifies us in advance of when they intended to carry out the spreading.

Some operators have volunteered information about when they intend to spread but complain that as a consequence their activities are inspected more frequently and this places them at greater risk of being scored for non-compliance. Given this failure of the voluntary approach to pre-notification we propose to include the following condition to require the permit holder to pre-notify us of their intention to spread.

Natural Resources Wales shall be notified at least 48 hours in advance of the intention to commence spreading operations. In the event that spreading operations cease for more than 7 days Natural Resources Wales shall be notified at least 48 hours in advance of the intention to recommence spreading.

Notifications could be made in a number of ways. We invite consultees to tell us which method or methods they would prefer.

g) Minor amendments to existing definitions and wording

A number of minor additions and amendments have been made to provide greater consistency and clarity, and some references have been updated.

The introductory note now explains that Regulation 16 of the Environmental Permitting Regulations restricts the deployment of mobile plant permits on sites which are also regulated by site based environmental permits. Where there are inconsistencies between the conditions of the two permits the conditions of the site permit will take precedence. In practice this means that these landspreading standard rules cannot be used on deposit for recovery sites because the range of waste types that may be used is much wider than under the site based permit.

There are no proposed changes to the current charges for these permits

3.2 Amendment to the standard rule and risk assessment for the storage of digestate from anaerobic digestion plants. SR2010 No17.

We propose to extend the current standard permit for the storage of digestate SR2010No17 to allow storage of the full range of non-hazardous wastes that can be spread under the land treatment standard rules.

The proposal is as follows:

a) Expand the list of acceptable wastes to include all non-hazardous wastes listed in SR2010Nos 4, 5 and 6.

b) Remove the exclusion on wastes consisting solely or mainly of dust powder and loose fibres. These wastes will be acceptable if they are stored in a building.

c) Require stackable wastes to be stored on impermeable surface with sealed drainage.

d) Require containers used to store non-stackable wastes to be constructed to CIRIA 126 specifications.

e) High readily available nitrogen wastes may be stored but containers must be covered to prevent ammonia emissions.

f) Different wastes must be stored separately.

g) Minor amendments to existing wording and definitions to provide greater clarity and consistency.

Making this standard rules available for the storage of such a broad range of wastes will present operators with a low cost alternative to obtaining a bespoke permit. It will ensure that waste producers, waste managers and landspreading operators have a suitable permit to develop contingency storage capacity and reduce their exposure to business risk when the land bank is unavailable e.g. in adverse weather conditions and NVZ closed periods. Investment in these facilities will help operators meet contractual obligations throughout the year and regardless of the availability of the land bank.

It should also end the practice of applying for deployments on a speculative basis. Because many operators have chosen not to invest in dedicated storage facilities they are entirely dependent upon storage under deployments. In order to accept wastes as and when they become available some operators are applying for deployments in advance and without knowing the type and composition of the wastes they will be handling. The wastes listed on the deployment are likely to bear no resemblance to what is actually stored and spread on the land. This practice undermines the assessment process and brings into question whether the activity being carried out is bona fide recovery. By investing in purpose built and permitted storage facilities operators will be able to legally receive and store wastes and then submit accurate applications for deployments.

4 Consultation questions

This consultation is your opportunity to contribute towards the development of these standard rules. They should be published in early 2017.

We would particularly welcome your feedback on the questions below:

Question one:

Have we correctly identified all the risks for each activity, as described in the generic risk assessments associated with the consultation?

Question two:

Can you suggest other wastes that could be suitable for inclusion in these standard rules?

Question three:

Do the codes and descriptions for ashes cover the range of waste ashes being spread on land?

Question four:

What would be your preferred method for pre-notifying us of the intention to commence spreading operations?

Question five:

We consider that taken as a whole the package of proposals described here will not have a significant financial impact on the wider business community. If you agree or disagree, please explain why, and provide evidence to support your view of the likely impacts.

Question six:

Please tell us if you have any other views or comments on these proposed revisions that have not been covered by previous questions.

5 Responding to this consultation

5.1 Important dates

This consultation will be open until 23rd December 2016

5.2 How to respond

You can view the consultation documents and questions online at http://naturalresources.wales/?lang=en

If you would like to ask for a printed version of the document to be posted to you, please contact our Customer Contact centre via email, telephone or post:

Email	enquiries@naturalresourceswales.gov.uk
Phone	0300 065 3000
Mail	Natural Resources Wales, Ty Cambria, Newport Road, Cardiff, CF24 0TP

You can submit your response by email or letter. Please send your completed response form by 23rd December to the address above.

5.3 What will the responses be used for?

We will use the responses from this consultation to inform proposals to the Welsh Government. Natural Resources Wales staff dealing with this consultation will see all responses in full.

5.4 How we will use your information

Throughout the consultation we will make all comments (apart from personal information) publicly available on our website. This includes comments received online, by email, post and by fax, unless you have specifically requested that your response be kept confidential. Only names of organisations that respond and not individuals will be published.

If you respond online or provide an email address, you will receive an acknowledgement of your response. After the consultation has closed a summary of the responses will be published on our website by the end of March 2015. You will be contacted to let you know when this is available. You will also be notified of any forthcoming river basin consultations unless you request otherwise.

In accordance with the Freedom of Information Act 2000, we may be required to publish your response to this consultation, but will not include any personal information. If you have requested your response to be kept confidential, we may still be required to provide a summary of it.