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Standard Rules Consultation No.12 Deposit for Recovery

**Standard rules for the Environmental Permitting Regulations
Autumn 2016**

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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.

This is the twelfth consultation on sets of standard rules and associated risk assessments. We are proposing a new standard rule and risk assessment in relation to deposit of waste for recovery activities and the withdrawal of four existing standard rules covering those activities.

For each new standard rule set we have also, in accordance with Section 4.4 of our charging scheme, indicated the proposed applicable charge band from the default standard facility table as applicable.

We would like your views on the following proposals:

1. Standard rules and risk assessment for the use of waste in a deposit for recovery activity (construction, restoration, reclamation or improvement of land other than by mobile plant) SR2016 No.1.
2. Phased withdrawal of the following 4 standard rules;
 - a. SR2010 No7 50kte: use of waste in construction.
 - b. SR2010 No8 100kte: use of waste in construction.
 - c. SR2010 No9 50kte: use of waste for reclamation, restoration or improvement of land.
 - d. SR2010 No10 100kte: standard rules to operate for reclamation, restoration or improvement of land.
3. The Business Engagement Assessment for these proposals.

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

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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 sites¹.

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 New rules and risk assessment for the use of waste in a deposit for recovery operation (construction, reclamation, restoration or improvement of land other than by mobile plant) SR2016 No.1

The proposed rules would allow the use of up to 60,000 cubic metres of very low risk inert waste only for construction, reclamation, restoration or improvement of land in low risk locations only. There would be a limited allowance for the use of other waste in surface layers for specific purposes.

Currently, the charges for the new standard permit would comprise:

- an application charge of £1,948
- a transfer charge of £974, e.g. change of operator at a site
- a surrender charge of £543 to cover dealing with the notification
- an annual subsistence charge of £2,040 to cover inspection.

3.2 Withdrawal of rules for the use of waste in construction and rules for the use of waste for the reclamation, restoration or improvement of land (SR2010 No7, SR2010 No8, SR2010 No9 and SR2010 No10)

We propose that these rules would be withdrawn for new applicants in January 2017. Those operating under these rules already would be given 6 months to either:

- complete their operations and apply to surrender their permit; or
- apply to vary to the new standard rules if the activities comply with them; otherwise apply to vary to a bespoke permit authorising the activity

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:

Do you agree with our approach to use standard rules for deposit of waste for recovery activities?

Question two:

What are your views on the proposed changes and why?

Question three:

Do you understand the requirements of the proposed new standard rules?

Question four:

Will the proposed standard rules provide a useful mechanism to allow the beneficial use of waste?

Question five:

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

Question six:

Will the proposals have any other impacts that we have not identified. These could be financial impacts or costs and benefits that are not readily quantifiable.

Question seven:

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 run 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 2016 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.