

Environmental Permitting

Environmental Permitting Guidance Water Discharge Activities

**For the Environmental Permitting (England and Wales)
Regulations 2010**

Draft guidance for Consultation – May 2009



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1. Introduction

About this guidance

- 1.1 This guidance is part of a series of guidance documents which accompany the Environmental Permitting (England and Wales) Regulations 2010 SI 2010 No. [XXXX] (“the Regulations”)¹.
- 1.2 The series consists of the Environmental Permitting Core Guidance², which describes the general permitting and compliance requirements for all activities covered by the Environmental Permitting system, and specific guidance on each of the European Directives and other legislation implemented through the Environmental Permitting system³.
- 1.3 This guidance should be read in conjunction with the Environmental Permitting Core Guidance.
- 1.4 This guidance is intended to help the Regulator, the regulated community, and others with an interest in water discharge activities. It describes the views of the Secretary of State for the Department for Environment, Food and Rural Affairs (Defra) and the Welsh Ministers on how the European Directives and other legislation relating to water discharge activities should be applied and how particular terms should be interpreted in England and Wales. This guidance explains the legal requirements but only the national or European Courts can give a definitive interpretation of the legislation.
- 1.5 Readers should note that “water discharge activities” includes both those activities that require a permit, and those activities that are unlawful, for instance causing pollution to surface water, whether deliberate or accidental.
- 1.6 The Environment Agency provides more detailed technical guidance on many aspects of water discharge activities. These are available on its website www.environment-agency.gov.uk.
- 1.7 Along with the Directives addressed in this guidance, a number of other European Directives are also relevant to water discharge activities. Connections between the Regulations and other legislation are outlined in Annex 1 to the Environmental Permitting Core Guidance.
- 1.8 Where a water discharge activity takes place as part of the operation of a regulated facility of a different class, the Government guidance for that class also applies. The Environment Agency also publishes regulatory and technical guidance for these other classes – available on the Environment Agency website.⁴

¹ Available at www.defra.gov.uk/environment/epp/guidance.htm

² *Ibid.*

³ *Ibid.*

⁴ www.environment-agency.gov.uk

- 1.9 Chapter 2 of this guidance sets out the scope of water discharge activities. Chapter 3 sets out the permitting requirements specific to water discharge activities, based on the relevant Directives, and describes how the Directives' objectives are delivered through environmental permits for water discharge activities. Chapter 4 describes other requirements relevant to environmental permitting.
- 1.10 Relevant requirements for water discharge activities are set out in Schedule 20 to the Regulations (reproduced as Annex 1 to this document). Relevant requirements for exempt water discharge activities are set out in Paragraph 4 of Part 2 of Schedule 2 to the Regulations (reproduced in Annex 2), and descriptions of exempt water discharge activities are set out in Part 2 of Schedule 3 to the Regulations (reproduced here in Annex 2).
- 1.11 A separate glossary of terms is available⁵. The glossary briefly explains the meaning of many words, phrases and acronyms used in the Regulations and Directives.

Water Resources Act 1991

- 1.12 Rivers, estuaries, coastal waters, territorial waters out to 3 nautical miles, lakes and ground waters are all controlled waters. The Water Resources Act 1991 regulates discharges to these controlled waters and sets out the responsibilities of the Environment Agency in relation to regulating these. Discharges of sewage effluent, trade effluent or other polluting matter to controlled waters may only be made with the consent of the regulator.
- 1.13 The Environmental Permitting Regulations 2010 replace the parts of the Water Resources Act 1991 that relate to offences, permitting and regulation of discharges.

Water Framework Directive

- 1.14 The objective of this Directive is to establish a framework to protect inland surface water, coastal water, transitional waters and groundwater. The aims are to prevent further deterioration of aquatic ecosystems and to protect and enhance their status; to promote sustainable water use; to provide further protection to the aquatic environment; for groundwater, to ensure the progressive reduction of the present level of pollution and prevent its further pollution; to contribute to mitigating the effects of floods and droughts.
- 1.15 The Water Framework Directive has further aims relating specifically to surface water. These include restoring or maintaining good status and good ecological potential for all surface water bodies by 2015⁶; phasing out

⁵ Available at www.defra.gov.uk/environment/epp/guidance.htm

⁶ This is the preferred date. In practice, the Water Framework Directive 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.

discharges of priority hazardous substances and progressively reducing the pollution from priority substances.

Other Directives

- 1.16 There are further EU Directives that impose objectives relevant to the regulation of surface water quality. In some protected areas, this legislation sets higher standards than the Water Framework Directive, in which case it is the more stringent requirements that are considered when permitting water discharge activities. These Directives may protect waters for particular uses, control particular substances or regulate the water discharge activities of specific sectors. See the chapter on [Permitting](#) for more information.

The Freshwater Fish Directive⁷

- 1.17 The aim of the Freshwater Fish Directive is to protect or improve the quality of running or standing fresh waters which support, or could become capable of supporting particular species of fish. The Directive affects any discharges into and impacts on designated waters, including from industrial and urban waste water treatment plants, by laying down water quality requirements..

The Bathing Waters Directive⁸

- 1.18 This Directive aims to protect designated bathing waters from faecal pollution, in order to protect human health and the environment. It therefore affects any discharges from urban waste water treatment works, as well as some other types of business and industry, that may impact on the quality of the bathing waters.

The Shellfish Waters Directive⁹

- 1.19 This Directive aims to protect or improve shellfish waters in order to support shellfish life and growth and thus to improve the high quality of shellfish products for consumption. It affects any discharges to designated waters as well as any that impact on these waters, including those from urban waste water treatment plants and industry, by laying down water quality requirements.

The Dangerous Substances Directive¹⁰

- 1.20 This Directive, with its “daughter Directives”, aims to eliminate particularly toxic substances and to reduce pollution from other less severely toxic substances. For any discharges to inland, coastal and territorial surface waters, it is necessary to obtain prior authorisation if the discharge is likely to contain dangerous substances.

⁷ Directive 2006/44/EC of the European Parliament and of the Council on the quality of fresh waters needing protection or improvement in order to support fish life

⁸ Directive 2006/7/EC of the European Parliament and of the Council concerning the management of bathing water quality

⁹ Directive 2006/113/EC of the European Parliament and of the Council on the quality required of shellfish waters

¹⁰ Council Directive 76/464/EEC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community

The Urban Waste Water Treatment Directive¹¹

- 1.21 This Directive aims to protect the environment from the adverse effects of the collection, treatment and discharge of urban waste water. The Directive covers statutory water and sewerage companies, since they own and operate the public sewerage system and the urban waste water treatment works. Discharges from certain industrial sectors such as food and drink processing plants can have a similar polluting effect to untreated sewage, so some of these are also covered by the Directive.
- 1.22 A permit must be obtained for any discharge to water that is covered by any of the above Directives. This is so that the regulator can limit the potential for pollution in the receiving waters and ensure the waters meet the objectives set by the legislation, thereby protecting the environment and human health.

¹¹ Council Directive 91/271/EEC concerning urban waste-water treatment

2. Scope of Water Discharge Activities

What is a “water discharge activity”?

- 2.1 The term “water discharge activity” covers the discharge or entry to inland freshwaters¹², coastal waters or relevant territorial waters of any poisonous, noxious or polluting matter; waste matter; trade effluent or sewage effluent. It is an offence to cause or knowingly permit an entry or discharge to inland freshwaters, coastal waters or relevant territorial waters of any poisonous noxious or polluting matter; waste matter; trade effluent or sewage effluent except under and to the extent authorised by an environmental permit.
- 2.2 A water discharge activity may take place as part of the operation of a facility of another class, for example Part A installations which discharge to surface water, or it may be a stand-alone water discharge activity, such as a sewage discharge from a pub or restaurant. Where it is part of the operation of a facility of another class any such discharge must at least comply with the requirements specified for permitted water discharge activities. Water discharge activities may be operated by an individual person (for example, the person causing a polluting discharge or entry, whether accidental or intended), or an organisation or company occupying a site and operating a treatment system.
- 2.3 “Polluting matter” is not explicitly defined: “pollute” should be given its ordinary dictionary meaning¹³, and so means “to make physically impure, foul or filthy; to dirty, stain, taint, befoul”. The matter entering or being discharged into controlled waters need not be shown to have caused actual harm: capacity to pollute is sufficient for it to count as “polluting matter”. “Poisonous” and “noxious” should also be taken to have their ordinary dictionary meanings. “Waste” in the term “waste matter” is defined in Schedule 20 of the Regulations as anything that is waste for the purposes of the Waste Framework Directive or the Mining Waste Directive, but not excluded from the scope of either Directive.
- 2.4 “Water discharge activity” includes the discharge of trade or sewage effluent into the sea beyond the limits of controlled waters where the effluent is discharged from land through a pipe.
- 2.5 “Water discharge activity” also includes activities causing deposits to be carried away in water, except for those that relate to land drainage, flood prevention or navigation. So, for example, the removal of a deposit from the bottom of a channel where the deposit had accumulated because of a dam holding back the waters is a water discharge activity.

¹² As defined in the Water Resources Act 1991 and the Control of Pollution (Lakes and Pond) Order 1989

¹³ As decided in the case of *R v Dovermoss ex parte National Rivers Authority* (Court of Appeal) (1995)

- 2.6 Cutting or uprooting a substantial amount of vegetation in or near inland freshwaters counts as a water discharge activity if the debris falls into the water; however, if certain conditions are met, the activity can be exempt (see “Exemptions”, below).

What is not a “water discharge activity”?

- 2.7 Discharges made or authorised by any of the following “prescribed statutory provisions” are not water discharge activities:
- Part 4 of the Marine and Coastal Access Act 2009 (deposits and dredging in the sea)¹⁴
 - Section 163 of the Water Resources Act 1991 (discharges for works purposes by the Environment Agency)
 - Section 165 of the Water Industry Act 1991 (discharges for works purposes by a water undertaker)
 - any local statutory provision that expressly confers a power to discharge effluent to water.
- 2.8 The discharge of trade or sewage effluent from a vessel is not a water discharge activity.
- 2.9 A discharge from a highway drain, unless a highway drain notice has been served and has taken effect, is not a water discharge activity (see “Notices”, below).
- 2.10 A discharge into the waters of a lake or pond that are not “inland freshwaters” is not a water discharge activity, unless a notice has been served and has taken effect (see “Notices”, below).

Notices

- 2.11 The regulator can serve a notice specifying that, from a date specified on the notice, an activity not ordinarily regulated as a water discharge activity is a water discharge activity, and therefore cannot be operated without the regulator’s consent.

Discharge from a highway drain

- 2.12 The regulator can serve a notice specifying that a discharge from a highway drain is a water discharge activity from the specified date. This means the discharge cannot be carried on without being authorised by an environmental permit. Such a notice may be served on a highway authority, or any other person entitled to keep open a drain under Section 100 of the Highways Act 1980. A notice specifies the date from which it takes effect, which will be not less than six months after being served.

¹⁴ This Act has not yet been made

Discharge of trade effluent or sewage effluent

- 2.13 The regulator can serve a notice specifying that a discharge into the waters of a lake or pond that are not “inland freshwaters” is a water discharge activity. This means that the discharge cannot be carried on without being authorised by an environmental permit, unless it is registered as an exempt water discharge activity. Such a notice specifies the date from which it takes effect, which will be not less than three months after being served.

Exemptions

- 2.14 Water discharge activities that meet certain conditions can be exempted from the requirement for a permit. These are described below.

Discharge of sewage effluent

- 2.15 A small sewage treatment plant, i.e. discharging less than five cubic metres per day of sewage effluent to inland freshwaters, coastal waters or relevant territorial waters, may be registered as an exempt water discharge activity, provided it meets certain conditions¹⁵.
- 2.16 One of these conditions is that all works and equipment used for the treatment and discharge of sewage effluent must meet certain requirements, which are described in separate Government guidance. These cover the standards for design and manufacture; construction, installation and operation specifications; and siting and installation.
- 2.17 Further conditions for the exempt water discharge activity are that the discharge could not reasonably have been made to the foul sewer at the time it was first made; that the discharge does not contain trade effluent; and that all works and equipments for the treatment and discharge of the sewage effluent are maintained as specified by the manufacturer. Records of maintenance work must be kept for at least five years after the work has been done.
- 2.18 Any exempt water discharge activity must be registered with the regulator, and the regulator must be notified if the exempt water discharge activity ceases to be in operation. At this time, the works and equipment for treating and discharging must be appropriately decommissioned to reduce the risk of further pollution.
- 2.19 When an occupier of land on which an exempt water discharge activity operates ceases to occupy that land, that occupier must notify the next occupier of the land of the exempt water discharge activity. This notice must describe the exempt facility, state the conditions of the exemption, and must be accompanied by the records of any maintenance that had been carried out in the preceding five years.

¹⁵ See the section on Exemptions in the Environmental Permitting Core Guidance

2.20 Septic tank discharges to surface waters do not fall into the scope of this exemption. Septic tanks discharging less than two cubic metres of sewage effluent per day to ground or to soakaway may be registered as exempt groundwater activities¹⁶.

Vegetation management activities

2.21 As mentioned above, cutting or uprooting a substantial amount of vegetation in or near inland freshwaters is within the scope of a water discharge activity. However, if certain conditions are met, a permit is not required. These conditions are that:

- all reasonable steps are taken to notify the owner of the downstream riparian area prior to cutting or uprooting the vegetation
- all reasonable steps are taken to remove any resulting debris from the water promptly
- any vegetation removed from the water is not deposited within five metres of the water
- where it is necessary to allow the vegetation to pass downstream, the regulator is given prior notice of the dates of the activity; the planned cutting or uprooting must not take place if the water flow is not sufficient to carry the vegetation downstream.

¹⁶ See the Environmental Permitting Groundwater Activities Guidance

3. Permitting

- 3.1 In the context of this guidance, “permitting” is taken to mean the complete regulatory cycle which includes application, determination, reporting, compliance and surrender. This Chapter describes the requirements that the permitting process must deliver.
- 3.2 Permitting requirements derive from the relevant Directives and other legislation, as transposed in England and Wales. In the permitting process, the Environment Agency must have regard to any Statutory Guidance and should also take into account relevant Council Recommendations and statements of Government policy and national strategies.

The Water Framework Directive

- 3.3 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 repeals¹⁷.
- 3.4 The Directive establishes a demanding water classification system, in order to identify pressures that may lead to a deterioration in ecological status of water bodies. The Directive requires all water bodies to achieve good ecological status by 2015¹⁸.
- 3.5 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.
- 3.6 There is separate guidance to the Environment Agency on the delivery of Water Framework Directive obligations¹⁹.

Discharge to Freshwaters Supporting Fish Life

- 3.7 The Freshwater Fish Directive requires the UK to designate freshwaters in England and Wales that **support, or if pollution were reduced or eliminated, would become capable of supporting particular** fish populations. In these

¹⁷ The Freshwater Fish Directive, the Shellfish Directive and the Dangerous Substances Directives are to be repealed in 2013.

¹⁸ 2015 is the preferred date. In practice, the Water Framework Directive 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.

¹⁹ Defra and Welsh Assembly Government, River Basin Planning Guidance Volume 1 (August 2006) and Volume 2 (August 2008).

designated waters, the Directive's water quality standards must be met. This can affect the requirements on permits to discharge into these bodies of water.

- 3.8 The waters designated under this Directive include all rivers with an average natural daily flow of greater than 0.31 cubic metres per second, and all still waters of surface area greater than 50 hectares. The designated waters now cover over 14,500 kilometres of rivers and canals and 14,000 hectares of still waters in England and Wales²⁰. These are Protected Areas under the Water Framework Directive.
- 3.9 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 Regulations²¹ that form part of the UK's transposition of the Directive. The Environmental Quality Standards 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.
- 3.10 The regulator is responsible for establishing programmes in designated waters to reduce pollution **and to ensure that they conform with the EQSs. The UK must meet the mandatory EQSs, and must endeavour to respect the guideline EQSs.**

Discharges to Bathing Waters

- 3.11 The 1976 Bathing Water Directive designates waters used for bathing. In these waters, more stringent environmental standards apply, which affects the requirements on permits to discharge into these bodies of water. The waters designated under this Directive are identified in the Schedules of the Bathing Waters (England) Notice 2008²², along with any transparency waivers at these sites. These waters are Protected Areas under the Water Framework Directive. The Bathing Waters Directive was revised in 2006 and will be fully implemented in 2015 when the first report on compliance under the new standards will be produced, based on 4 years of data from 2012. Any new discharge potentially affecting compliance with the new Bathing Waters standards has to be designed to ensure compliance with them.
- 3.12 The main pressure on the quality of bathing waters is microbiological organisms, so primarily permits for sewage discharges are affected by the Directive.

²⁰ Full lists of designated waters in England and Wales are available on both Defra's website: <http://www.defra.gov.uk/ENVIRONMENT/water/quality/fwfish/> and the Welsh Assembly Government's website: <http://new.wales.gov.uk/topics/environmentcountryside/foodandfisheries/fisheries/freshwaterfish/?lang=en>

²¹ The Surface Waters (Fishlife) (Classification) Regulations 1997 (SI 1997 No 1331) as amended by the Surface Waters (Fishlife) (Classification) (Amendment) Regulations 2003 (SI 2003 No 1053).

²² The Schedules are titled Bathing Waters (England) 2008 and Bathing Waters (Wales) 2008.

- 3.13 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 EQSs being met. These are set out in the Regulations²³ that originally transposed the 1976 Bathing Water Directive. These reflect the mandatory values set by the Directive. The 2006 Directive will not be fully implemented until 2015, so some existing limits will become more stringent during the transition to full implementation.
- 3.14 For intermittent discharges, the regulator has developed standards based on likely spill frequency which are consistent with the EQSs.
- 3.15 The regulator must exercise its powers to ensure compliance with the mandatory EQSs. Where waters meet either imperative or guideline standards in every Bathing Season, the regulator must act to ensure no deterioration.
- 3.16 In addition to the imperative standards, there are guideline standards. The regulator is responsible for establishing programmes to reduce pollution in the designated waters and must endeavour to respect the guideline standards.

Discharges to Shellfish Waters

- 3.17 The Shellfish Waters Directive aims to protect or improve the quality of water for shellfish. It requires the UK to designate shellfish waters. In these waters, the Directive's water quality requirements must be met; this can affect the requirements on permits to discharge into these bodies of water. These waters are Protected Areas under the Water Framework Directive.
- 3.18 There is pressure on the quality of shellfish waters from both microbiological organisms and toxic or persistent substances, so the Directive affects all types of discharge.
- 3.19 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 respected. These values are set out in the Regulations²⁴ that form part of the UK's transposition of the Shellfish Waters Directive.
- 3.20 For intermittent discharges, the regulator has developed standards based on likely spill frequency which are consistent with the EQSs.
- 3.21 The regulator must exercise its powers to ensure compliance with the mandatory EQSs. For most of the substances covered by the EQSs, the

²³ The Bathing Waters (Classification) Regulations 1991 (SI 1991 No 1597); the revised Directive was transposed through the Bathing Water Regulations 2008 (SI 2008 No 1097) and the Bathing Waters (England) Notice 2008.

²⁴ The Surface Waters (Shellfish) (Classification) Regulations 1997 (SI 1997 No 1332); the Surface Waters (Shellfish) Directions 1997.

regulator will set numerical limits in permits, so that compliance results in the waters meeting the EQSs. Microbiological quality will be controlled through specifying treatment levels that must be achieved prior to the discharge entering the designated waters.

- 3.22 The regulator is responsible for establishing programmes in designated waters to reduce pollution and to ensure that they conform with the EQSs. The UK must meet the mandatory water quality standards and must endeavour to respect the guideline standards.

Discharges of hazardous substances

- 3.23 One of the requirements of the Water Framework Directive is that environmental objectives should be at least as stringent as those required under the Dangerous Substances Directive²⁵. This and its daughter Directives set emission limit values and environmental quality objectives: the Directives are to be integrated into the Water Framework Directive.
- 3.24 The Priority Substances Directive²⁶, a daughter Directive of the Water Framework Directive, establishes EQSs for a list of 33 prioritised substances, and includes the standards established in the daughter Directives of the Dangerous Substances Directive.
- 3.25 More stringent environmental standards apply where a discharge may contain the listed substances. This may affect the requirements on permits for all types of discharge.
- 3.26 The Priority Substances Directive requires Members States to:
- aim to achieve the EQSs by 2015²⁷
 - take measures aimed at ensuring that the concentrations of certain bioaccumulative substances do not significantly increase in sediment or relevant biota²⁸
 - if designating mixing zones, to restrict the zone to the locale of the point of discharge; to ensure the size zone is proportionate to the concentrations of pollutants at the point of discharge; to include in RBMPs a description of the way in which such zones are defined and how the zones can be reduced in future
 - establish an inventory (including maps where possible) of losses, discharges and emissions of all substances listed in the Priority Substances Directive, and to share these inventories with the Commission

²⁵ Council Directive 76/464/EEC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community. The Water Framework Directive repeals the Dangerous Substances Directive in 2013 and repeals its “daughter Directives” in 2012.

²⁶ Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy.

²⁷ Subject to Article 4 of the Water Framework Directive

²⁸ Subject to Article 4 of the Water Framework Directive

- 3.27 The Water Framework Directive requires²⁹ that emissions, discharges and losses of the listed priority substances should be progressively reduced, and, for a subset of priority hazardous substances, should be ceased if possible within 20 years of agreement of the Priority Substances Directive³⁰.

Discharges from Waste Water Treatment Plants

- 3.28 The Urban Waste Water Treatment Directive aims to protect the environment from the pollution of sewage discharges. As some discharges of trade effluent have a similar polluting effect to sewage discharges, the Directive may also affect discharges that are not of sewage effluent (see 3.33).
- 3.29 The Directive broadly sets treatment levels for discharges on the basis of the size of the discharge and the sensitivity of the waters receiving the discharge. Most discharges will require secondary treatment, which is usually a biological process. Discharges into waters identified as Sensitive Areas will require more stringent treatment than this ordinary secondary treatment.
- 3.30 The Directive identifies Sensitive Areas on the basis of three criteria set out in the Regulations that originally transposed the Directive³¹. These criteria are:
- waters that are eutrophic or may become eutrophic if protective action is not taken
 - waters that exceed or could exceed a specified concentration of nitrate
 - waters receiving discharges that are subject to more than secondary treatment under the requirements of other Directives
- 3.31 The Directive requires Member States to review environmental waters every four years to determine whether they are Sensitive Areas.
- 3.32 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.
- 3.33 The Directive requires that significant discharges of industrial waste water receive the appropriate level of treatment. Significant discharges are those to fresh waters or estuaries that serve population equivalents of 2,000, and those to coastal waters that serve population equivalents of 10,000.

Discharges into and from Public Sewers

- 3.34 Under the Water Resources Act 1991, in certain circumstances a sewerage undertaker may be liable for discharges to surface water even where it is not responsible for the discharge, if the discharge came from a sewer it owns and operates. This situation has been reflected in the Environmental Permitting Regulations.

²⁹ Subject to Article 4 of the Water Framework Directive

³⁰ It is recognised that cessation of emissions of naturally occurring substances is not possible.

³¹ The Urban Waste Water Treatment (England and Wales) Regulations 1994 (SI 1994 No 2841)

- 3.35 Where there is more than one sewerage undertaker operating on a sewerage network, the particular sewerage undertaker may be liable if it received the matter included in the discharge into its sewer. Liability also depends on whether the particular undertaker was bound to receive effluent into their sewers, whether unconditionally or subject to conditions that were observed.

4. Other requirements

Variations

- 4.1 Regulator-initiated variations of a permit condition are subject to a “four year rule”. This means that, subject to a few exceptions, where a regulator has issued a permit , the regulator cannot vary any conditions in that permit within four years of the date of issue unless the operator agrees to the variation or it is the operator that requests the variation.
- 4.2 The four-year rule does not apply to conditions in standard permits.

Appeals

- 4.3 Where an operator appeals against a variation of a permit condition by the regulator, or the imposition of conditions on a previously unconditional permit, the effect of the condition(s) is suspended until the appeal has been resolved.

Annex 1 – Schedule 20 to the Environmental Permitting Regulations

SCHEDULE 1

Regulation 35(n)

Provision in relation to water discharge activities

PART 1

Application and interpretation

Application

1. This Schedule applies in relation to every water discharge activity.

Interpretation

2. In this Schedule—

“the 1980 Act” means the Highways Act 1980^(a);

“discharging sewer” means the sewer or works from which sewage effluent is discharged;

“discharging undertaker” means the sewerage undertaker in which a discharging sewer is vested;

“highway drain” means a drain which a highway authority or other person is entitled to keep open by virtue of section 100 of the 1980 Act;

“main connection” has the same meaning as in section 110A of the Water Industry Act;

“pipe” has the same meaning as in the 1991 Act;

“sending undertaker” means a sewerage undertaker which discharges sewage effluent into the discharging sewer or other sewer or works vested in the discharging undertaker;

“waste” in the term “waste matter” includes—

- (a) anything that is waste for the purposes of the Waste Framework Directive, and that is not excluded from the scope of that Directive by Article 2(1) of that Directive;
- (b) anything that is waste for the purposes of Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive 2004/35/EC, and that is not excluded from the scope of that Directive by Article 2(2) of that Directive.

Meaning of “water discharge activity”

- 3.—(1) A “water discharge activity” means any of the following—

- (a) the discharge or entry to inland freshwaters, coastal waters or relevant territorial waters of any—
 - (i) poisonous, noxious or polluting matter,
 - (ii) waste matter, or
 - (iii) trade effluent or sewage effluent;
- (b) the discharge from land through a pipe into the sea outside the seaward limits of controlled waters of any trade effluent or sewage effluent;

^(a) 1980 c. 66.

- (c) the removal from any part of the bottom, channel or bed of any inland freshwaters a deposit accumulated by reason of any dam, weir or sluice holding back the waters, by causing it to be carried away in suspension in the waters, unless the activity is carried on in the exercise of a power conferred by or under any enactment relating to land drainage, flood prevention or navigation; or
 - (d) cutting or uprooting a substantial amount of vegetation in any inland freshwaters or so near to any such waters that it falls into them.
- (2) A “water discharge activity” does not include—
- (a) a discharge made, or authorised to be made, by or under any prescribed statutory provision;
 - (b) the discharge of trade effluent or sewage effluent from a vessel;
 - (c) a discharge from a highway drain unless a notice has been served under paragraph 4 and has taken effect;
 - (d) a discharge mentioned in paragraph 5, unless a notice has been served under that paragraph and has taken effect.

PART 2

Functions of the regulator

Highway drain notices

- 4.—(1) The regulator may serve on a highway authority, or other person entitled to keep open a drain under section 100 of the 1980 Act, a notice specifying that on and from the date the notice takes effect, any discharge made by that highway authority or that person from a highway drain—
- (a) is a water discharge activity; and
 - (b) must not be carried on unless authorised by an environmental permit.
- (2) A notice takes effect not less than 6 months after the notice is served, on the date specified in it for the purpose.

Discharge of trade effluent or sewage effluent

- 5.—(1) The regulator may serve on a person who discharges trade effluent or sewage effluent into any waters of a lake or pond which are not inland freshwaters a notice specifying that, on and from the date the notice takes effect, any discharge made by that person to those waters—
- (a) is a water discharge activity; and
 - (b) must not be carried on unless—
 - (i) authorised by an environmental permit; or
 - (ii) it is an exempt water discharge activity.
- (2) A notice takes effect not less than 3 months after the notice is served, on the date specified in it for the purpose.

PART 3

Discharges into and from public sewers

Liability resulting from discharge of sewage effluent from public sewer

- 6.—(1) This paragraph applies for the purpose of determining liability for a water discharge activity that consists of a discharge of sewage effluent from a discharging sewer vested in a discharging undertaker.

(2) A discharging undertaker causes a discharge of sewage effluent if—

- (a) matter included in the discharge was received by the discharging undertaker into the discharging sewer or into any other sewer or works vested in it;
- (b) the discharging undertaker was bound (either unconditionally or subject to conditions which were observed) to receive the matter into the discharging sewer or other sewer or works; and
- (c) sub-paragraph (3) does not apply.

(3) This sub-paragraph applies if, before the discharging undertaker discharges the sewage effluent from the discharging sewer, the sending undertaker, under an agreement with the discharging undertaker under section 110A of the Water Industry Act, discharges the sewage effluent through a main connection into—

- (a) the discharging sewer; or
- (b) any other sewer or works vested in the discharging undertaker.

(4) If sub-paragraph (3) applies, the sending undertaker causes the discharge if—

- (a) matter included in the discharge was received by the sending undertaker into a sewer or works vested in it; and
- (b) it was bound (either conditionally or subject to conditions which were observed) to receive that matter into that sewer or works.

(5) A sewerage undertaker is not guilty of an offence under regulation 38(1)(a), (1)(b), (2) or (3) in relation to a water discharge activity that consists of a discharge of sewage effluent from a sewer or works vested in it if—

- (a) the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works;
- (b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and
- (c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.

(6) A person is not guilty of an offence under regulation 38(1)(a), (1)(b), (2) or (3) in relation to a discharge which the person caused or permitted to be made into a sewer or works vested in a sewerage undertaker if that undertaker was bound to receive the discharge, either unconditionally or subject to conditions which were observed.

Annex 2 – Paragraph 4 of Part 2 of Schedule 2, and Part 2 of Schedule 3 to the Environmental Permitting Regulations

Paragraph 4 of Part 2 of Schedule 2 to the Regulations

Exempt water discharge activities

4. For the purpose of the definition of “exempt water discharge activity”, the requirements are that a water discharge activity must—

- (a) fall within a description in Part 2 of Schedule 3 (exempt facilities: descriptions and conditions);
- (b) satisfy, in relation to an activity of that description, the relevant conditions specified in that Part of that Schedule; and
- (c) be registered by the occupier.

Part 2 of Schedule 3 to the Regulations

PART 2

Exempt water discharge activities: descriptions and conditions

Discharge of sewage effluent

5.—(1) For the purposes of paragraph 4(a) of Part 2 (requirements for exemption) of Schedule 2, the description is the discharge of less than 5 cubic metres per day of sewage effluent to inland freshwaters, coastal waters or relevant territorial waters from a sewage treatment plant.

(2) For the purposes of paragraph 4(b) of that Part of that Schedule, the conditions in relation to a water discharge activity described in sub-paragraph (1) are—

- (a) that all works and equipment used for the treatment of sewage effluent and its discharge comply with the requirements specified in guidance issued by the appropriate authority in relation to—
 - (i) design and manufacturing standards,
 - (ii) construction, installation and operation specifications, and
 - (iii) siting and installation.
- (b) that the discharge cannot reasonably, at the time it is first made, be made to the foul sewer;
- (c) that the discharge does not contain trade effluent;
- (d) that all works and equipment for the treatment of sewage effluent and its discharge are maintained in accordance with the manufacturer’s specification;
- (e) that records of maintenance work are kept by the occupier for at least 5 years after the work is carried out;
- (f) that the occupier must notify the regulator if an exempt water discharge activity ceases to be in operation;

- (g) that the occupier must ensure that all works and equipment for the treatment of sewage effluent and its discharge are appropriately decommissioned when the exempt facility ceases to be in operation so that there is no risk of pollutants entering inland freshwaters or coastal waters;
- (h) before an occupier ceases to be in occupation of land on which an exempt water discharge activity is carried on, that occupier must give to the person who will next be in occupation of the land a written notice—
 - (i) stating that an exempt water discharge activity is being carried out on the land;
 - (ii) containing a description of the exempt facility;
 - (iii) stating the conditions that must be satisfied in relation to the exempt facility; and
 - (iv) accompanied by any records of maintenance mentioned in paragraph (e).

Vegetation management activities

- 6.—(1) For the purposes of paragraph 4(a) of Part 2 (requirements for exempt facilities) of Schedule 2, the description is cutting or uprooting a substantial amount of vegetation in any inland freshwaters or so near to any such waters that it falls into them.
- (2) For the purposes of paragraph 4(b) of that Part of that Schedule, the conditions in relation to a water discharge activity described in sub-paragraph (1) are—
- (a) that the downstream riparian owner must be notified before the commencement of the cutting or uprooting;
 - (b) that all reasonable steps must be taken to promptly remove the vegetation from the waters;
 - (c) that vegetation removed from the waters must not be deposited within 5 metres of the waters; and
 - (d) that where it is necessary to allow vegetation to pass downstream—
 - (i) prior notice of the dates of the activity is given to the regulator, and
 - (ii) the activity does not take place if there is insufficient flow to convey the vegetation.