



Department  
for Environment  
Food & Rural Affairs

# Consultation on Amendments to the Environmental Permitting (England and Wales) Regulations 2016 as applied to Groundwater Activities and related Surface Water Discharge Activities

September 2021

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OR

Consultation on Amendments to the Environmental Permitting (England and Wales) Regulations 2016

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# Part 1: Introduction

We plan to make some changes to the Environmental Permitting (England and Wales) Regulations 2016 (henceforth referred to as the Environmental Permitting Regulations) as they apply to groundwater activities and some related surface water discharge activities. This consultation seeks your views on the proposed changes.

## 1.1 Context

1. Groundwater is a very important national resource. It provides a clean and reliable source of drinking water for around a third of England's public water supply and thousands of private drinking water supplies. It plays a vital role across many industry sectors, including food manufacturing, brewing, and bottled waters, as well as the agricultural industry where it is used for irrigation, food processing and livestock raising. It also supports important wetland ecosystem habitats and sensitive surface water environments, such as chalk streams. The natural capital value of benefits from groundwater across England is estimated to be between £8.9bn and £13.5bn per year.
2. The government is committed to ensuring that the quality of our groundwater resources is protected. Activities that take place on or below the ground surface with the potential to impact upon the quality of groundwater are called "groundwater activities".
3. Groundwater activities are regulated through the Environmental Permitting Regulations. The Environmental Permitting Regulations provide for ongoing supervision and controls by the Environment Agency (EA) as regulators of activities which could adversely impact upon groundwater quality.
4. In the face of growing pressures from climate change and population growth, it is important that we optimise the regulatory tools available for managing and protecting groundwater quality. This will bring about benefits for groundwater quality and will also help to ensure that government resources are being used most effectively to tackle the highest priority issues. **Our objective is therefore to update the Environmental Permitting Regulations to improve the way in which groundwater activities, and some related surface water discharge activities, are regulated.**

## 1.2 Overview of the Environmental Permitting Regulations

5. The Environmental Permitting Regulations require operators of “regulated facilities” to obtain a permit or to register some activities, which would otherwise require permits, as “exempt facilities”. There are currently twelve different kinds of regulated facility, including water discharge activities and groundwater activities.
6. The Environmental Permitting Regulations provide a hierarchy of regulatory controls for these activities, enabling the EA to regulate the activities in a manner that is proportionate to the level of risk posed to the environment. These controls include:
  - **Bespoke environmental permits**, which represent the highest tier of regulatory control and are reserved for the highest risk activities. Bespoke environmental permits require a site-specific risk assessment to be undertaken as part of a site-specific permit application. If granted by the EA, the permit will contain a list of site-specific conditions that operators are required to comply with. Bespoke environmental permits are the most expensive and resource intensive type of permit.
  - **Standard Rules Permits (SRPs)**, which consist of requirements common to the type of facilities subject to them. SRPs are suitable for activities where the generic risks are well understood and mitigated, and therefore where a site-specific risk assessment is not necessary.
  - **Mobile Plant Permits (MPPs)**, which are a type of SRP used to regulate activities that utilise mobile plant to operate in different locations, for example spreading of waste on land. An operator of a mobile plant activity will apply once for a MPP and will then submit a separate deployment form for each location that the permit will be used at to ensure that local conditions have been accounted for when determining the risk of undertaking that activity.
  - **General Binding Rules (GBRs)** are not permits in the context of groundwater activities and surface water discharge activities, but are rather a list of “exemption conditions” that must be met in order for a facility to operate without a permit as an exempt groundwater or water discharge activity; these exemption conditions are legally binding requirements. GBRs are suitable for well understood, low-risk and generally small-scale activities that are operating in a very low-risk environment. General binding rules are the least costly type of control as operators do not have to pay for a permit.

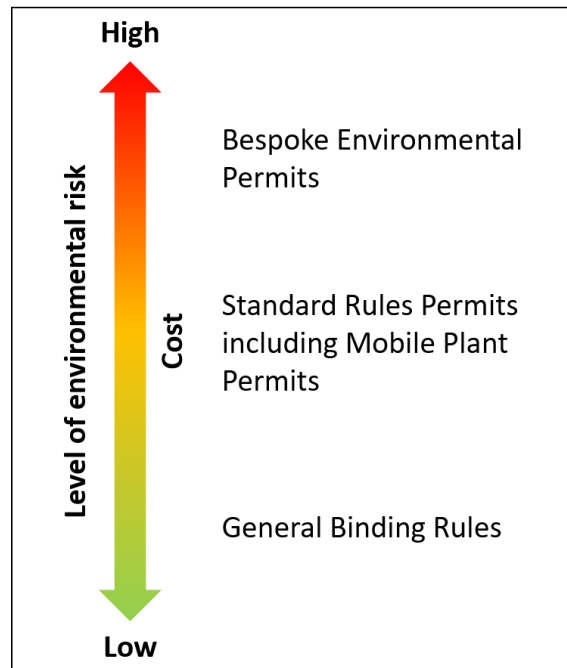


Figure 1 – Schematic showing the hierarchy of regulatory controls available under the Environmental Permitting Regulations

7. The Environmental Permitting Regulations are made up of **Schedules** to the regulations, which identify requirements that must be delivered through the permitting system. Each policy area or “regime” covered by the Environmental Permitting Regulations has a specific Schedule that sets out the environmental requirements to be complied with for that regime, in addition to the general requirements common to all regimes within the main regulations themselves (such as Environmental Permitting Regulations offences).
8. The Schedules also feature the criteria for any activities that are excluded from the regulations and therefore do not require a permit.
9. The following Schedules are relevant for this consultation:
  - **Schedule 22:** Groundwater activities
  - **Schedule 21:** Water discharge activities
  - **Schedule 2:** Exempt facilities (general)

### 1.3 About this consultation

10. This consultation seeks your views on the proposed approach to amending the Environmental Permitting Regulations as applied to groundwater activities and some related surface water discharge activities. The consultation package comprises:
  - The **consultation document** where:
    - **Part 1** sets out the background to the consultation

- **Part 2** sets out each of the proposals for updating the Environmental Permitting Regulations. Consultation questions are included where there is an opportunity for you to shape the proposed approach.

A glossary of acronyms used throughout the consultation document can be found in **Annex A**.

- The **Draft General Binding Rules (Annex B and C)** which set out the proposed exemption conditions that must be complied with for two specific activities to operate without a permit.

11. Whilst this consultation covers England only, the existing Environmental Permitting Regulations also apply to Wales. We are working with the Welsh Government and Natural Resources Wales to ensure due consideration is given to cross-boundary areas.

12. A Regulatory Triage Assessment has been undertaken to quantify the potential impacts on businesses as a result of the proposals. The potential costs to businesses are primarily comprised of: fees for new permit applications; familiarisation and administration costs associated with new permit applications; and the cost of compliance with updated conditions in the regulations. The benefits to businesses are primarily comprised of: savings on permit fees; reduced administration costs associated with new permitting options; and reduced costs to comply with updated conditions in the regulations. The estimated equivalent annualised net costs to business have been calculated as £0.4m.

## 1.4 Audience

13. Anyone may respond to this consultation. Those who are likely to have an interest include:

- Homeowners or businesses that discharge commercial trade effluent and currently have a permit for a groundwater activity or a surface water discharge activity
- Homeowners or businesses that currently operate a small sewage discharge under the existing '[General binding rules for small sewage discharges \(SSDs\) with effect from January 2015](#)'
- Homeowners or businesses that operate a closed loop ground source heat pump, and the wider ground source heat and geothermal industry
- Local authorities and cemetery developers
- The onshore oil and gas industry
- Water companies
- Contractors that remediate groundwater following pollution incidents

## 1.5 Responding to the consultation

14. This consultation starts on Wednesday 29<sup>th</sup> September 2021 and closes on Wednesday 22<sup>nd</sup> December 2021.
15. You can respond to the consultation questions using the online tool which can be found on Citizen Space at: <https://consult.defra.gov.uk/water-quality/amendments-to-the-epr-for-groundwater>. Responses may also be sent to Defra by email or post. If responding via email or post, please state:
- Your name
  - Your email address
  - Your organisation
  - The consultation title
16. Enquiries and responses should be directed to:  
[EPRAmendments2021@defra.gov.uk](mailto:EPRAmendments2021@defra.gov.uk)

OR

Consultation on Amendments to the Environmental Permitting (England and Wales) Regulations 2016  
Consultation Coordinator  
2nd Floor  
Foss House  
Kings Pool  
1-2 Peasholme Green  
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17. If you would like to receive hard copies of the consultation documents, please contact [EPRAmendments2021@defra.gov.uk](mailto:EPRAmendments2021@defra.gov.uk)
18. You may find that not all questions in this consultation are relevant to you or your business. Where this is the case you do not have to provide an answer and should select “N/A” from the available answers and write “N/A” in any free text answer boxes.

## 1.6 After the consultation

19. Members of the public may ask for a copy of the responses under the Freedom of Information (FOI) legislation. If you do not want your response – including your name, contact details and any other personal information – to be publicly available, please say so clearly in writing when you send your response to the consultation.



Please note, if your computer automatically includes a confidentiality disclaimer this will not count as a confidentiality request. Please explain why you need to keep the details confidential. We will take your responses into account if someone asks for this information under the FOI legislation. However, because of the law, we cannot promise that we will always be able to keep those details confidential.

20. We will summarise all responses once the consultation window is complete. This summary will include a list of names of organisations that respond to the consultation, but not people's personal names, addresses or other contact details.

21. This consultation is being held in line with the UK government's Consultation Principles. **Please note that a consultation period of 12 weeks applies.** More information on the UK government's Consultation Principles can be found at: <https://www.gov.uk/government/publications/consultation-principles-guidance>

## 1.7 Next Steps

22. The proposals in this consultation require changes to the Environmental Permitting Regulations which will require Parliamentary approval. The planned timeline from the launch of the consultation up to the point of implementation of the updated Environmental Permitting Regulations is set out below:

- September to December 2021 – public consultation on the proposals
- March 2022 – government response to consultation is published
- Summer 2022 – Statutory Instrument laid in Parliament
- Autumn 2022 – Implementation of the updated Environmental Permitting Regulations

# **Part 2: Proposals and consultation questions**

## **2.1 About you**

**Q0.1: Would you like your responses to be treated as confidential? Yes/No**

**If you answered Yes to this question, please give your reason.**

**Q0.2: What is your name?**

**Q0.3: What is your email address?**

**Q0.4: Are you responding on behalf of an organisation or as an individual?**

**Q0.5: What is the name of your organisation (if applicable)?**

## 2.2 Proposals

This section sets out the changes we are proposing to make to the Environmental Permitting Regulations and asks for your views on these changes. This section is structured as follows:

- The changes we are proposing to make to the Environmental Permitting Regulations are set out in Section 2.2.1 to 2.2.3
- The questions we would like you to answer to help us finalise the changes can be found at the end of each proposal

A glossary is provided in **Annex A** to explain the acronyms used in this section.

### 2.2.1 Increasing the range of permitting options for groundwater activities

For most activities covered by the Environmental Permitting Regulations, the EA can issue a variety of permits according to the level of risk that an activity poses to the environment. Having access to a range of permitting options enables the EA to regulate activities in a reasonable and proportionate manner.

However, due to historic requirements, groundwater activities can currently only be permitted through the use of bespoke environmental permits, or otherwise be made exempt from permitting. Bespoke environmental permits represent the highest tier of regulatory control that can be applied under Environmental Permitting Regulations, requiring site-specific risk assessments and the development of site-specific operating conditions. In some cases, the need for a bespoke permit is disproportionate to the risk represented by the groundwater activity. This results in unnecessary costs to businesses and unnecessary regulatory burden on the EA.

We are therefore proposing that the EA should be given access to a greater range of permitting options for groundwater activities, enabling them to apply a more risk-based approach to regulating groundwater activities as they do already for other regimes covered by the Environmental Permitting Regulations, such as waste operations.

#### **Proposal 1: The Environment Agency will have the option to issue Standard Rules Permits for groundwater activities where the generic risks are well-understood, assessed and mitigated**

Standard Rules Permits (SRPs) consist of requirements common to the type of facilities subject to them (“standard facilities”) and can be used instead of site-specific permit conditions. Standard rules are suitable for activities where the generic risks are well-understood, assessed and mitigated. These rules must achieve the same high level of

environmental protection as site-specific conditions and will form the conditions of the SRP.

It is therefore proposed that the EA should be able to issue SRPs for specific groundwater activities where the generic risks are well-understood, assessed and mitigated. This will reduce permitting costs for operators and enable the EA to refocus resources on more pressing issues, whilst maintaining levels of protection for groundwater quality.

It is important to emphasise that this amendment is only to give the EA the option to issue SRPs for groundwater activities. **No specific SRPs are being proposed as part of this consultation.** Any future activity specific SRP proposals will be subject to a public consultation.

**Q1: To what extent do you agree with the proposal to give the EA the option to issue Standard Rules Permits for groundwater activities where the generic risks are well-understood, assessed and mitigated? If this question is not applicable to you, please select N/A.**

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. N/A

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

### **Proposal 2: The Environment Agency will have the option to issue Mobile Plant Permits for groundwater activities where the generic risks are well-understood, assessed and mitigated**

Mobile Plant Permits (MPPs) are a type of SRP. They are currently used to regulate waste activities that make use of mobile plant i.e., plant that is designed to move, or be moved, from site to site in order to carry out an activity. Such activities include the spreading of waste on land for agricultural benefits.

An operator making use of an MPP applies for the permit only once. After the MPP has been issued, the operator will need to complete and submit a deployment form for each location where the mobile plant will be used to carry out the activity. The deployment form requires site specific information and control measures to be provided and agreed prior to the use of any mobile plant at each site. This is less expensive and time intensive than applying for a new permit at each site, but still ensures that local conditions and local risks have been considered. Controls specific to the local conditions will therefore be in place each time the MPP is used, even though only one permit is needed.

It is therefore proposed that the EA should be given the option to make available MPPs for specific groundwater activities involving mobile plant where the generic risks are well-understood, assessed and mitigated.

A key benefit of this approach is that costs will be reduced for operators that currently have to pay for a bespoke environmental permit every time they carry out a groundwater activity that could potentially be undertaken under an MPP. These operations – such as remediation schemes involving discharges to groundwater following clean-up of a groundwater pollution incident - will therefore become more affordable. This is not only a benefit to businesses undertaking remediation schemes for small scale clean-up operations, but also reduces the risk that groundwater pollution incidents are left unaddressed due to affordability issues. The speed of deployment of such remedial schemes will also be significantly improved – a key factor in ensuring prompt clean-up of pollution incidents.

**Q2: To what extent do you agree with the proposal to give the EA the option to issue Mobile Plant Permits for groundwater activities where the generic risks are well-understood, assessed and mitigated? If this question is not applicable to you, please select N/A.**

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. N/A

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

### **Proposal 3: We will publish General Binding Rules for small-scale cemetery developments in low-environmental risk settings, and for closed-loop ground source heat pump activities in low-environmental risk settings**

General Binding Rules (GBRs) are available in the Environmental Permitting Regulations for specific, low risk activities that take place in certain low risk settings. If an operator can comply with the exemption conditions set out in the GBRs for that specific activity, the level of risk to the environment will be very low. In the context of groundwater activities and surface water discharge activities, this means that the operator does not need to apply for a permit and can operate as an “exempt facility”.

A key benefit of this approach is that there are no permitting costs to operators if they can comply with the exemption conditions set out in the GBRs. It also means that the EA can focus its resources and efforts on addressing pollution risks from higher risk activities,

whilst at the same time ensuring the environment is appropriately protected from the potential impacts of lower risk activities.

GBRs already exist for Small Sewage Discharges (SSDs) to surface waters and groundwater. We have identified two further specific activities for which GBRs would be an appropriate regulatory control for the level of risk that these activities present. These activities are:

- **Small-scale cemetery developments in low-environmental risk settings.** The GBRs will apply to burials of human remains, other than burials of human ashes from crematoria, within existing operational cemeteries and certain proposed new cemetery developments. An initial draft of the exemption conditions that will be set out within these GBRs can be found in the accompanying document titled “Annex B - Draft exemption conditions for small-scale cemetery developments in low-environmental risk settings”.
- **Closed loop ground source heat pump activities in low-environmental risk settings.** The GBRs will apply to the operation of closed loop ground source heat pumps. An initial draft of the exemption conditions that will be set out within these GBRs can be found in the accompanying document titled “Annex C - Draft exemption conditions for closed-loop ground source heat pump activities in low-environmental risk settings”.

Please note that both sets of GBRs may be updated following feedback from this consultation.

**Q3a: To what extent do you agree with the proposal to make General Binding Rules available for small-scale cemetery developments in low-environmental risk settings? If this question is not applicable to you, please select N/A.**

- Strongly agree**
- Agree**
- Neither agree nor disagree**
- Disagree**
- Strongly disagree**
- N/A**

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

**Q3b: To what extent do you agree that the draft exemption conditions for small-scale cemetery developments in low-environmental risk settings in Annex B are appropriate? If this question is not applicable to you, please select N/A.**

- Strongly agree**
- Agree**

- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. N/A

Please provide details to explain your answer. If this question is not applicable to you, please write N/A.

**Q3c: To what extent do you agree with the proposal to make General Binding Rules available for closed loop ground source heat pump activities in low-environmental risk settings? If this question is not applicable to you, please select N/A.**

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. N/A

Please provide details to explain your answer. If this question is not applicable to you, please write N/A.

**Q3d: To what extent do you agree that the draft exemption conditions for closed loop ground source heat pump activities in low-environmental risk settings in Annex C are appropriate? If this question is not applicable to you, please select N/A.**

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. N/A

Please provide details to explain your answer. If this question is not applicable to you, please write N/A.

**Q3e: To what extent do you agree that the draft exemption conditions for closed loop ground source heat pump activities in low-environmental risk settings in Annex C should apply to all sizes of such activities? If this question is not applicable to you, please select N/A.**

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. N/A

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

**Q3f: If you think that the draft exemption conditions for closed-loop ground source heat pump activities in low-environmental risk settings in Annex C should include a size threshold (energy in kWh per year), what size limit do you think is reasonable?**

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**



## 2.2.2 Increasing the range of pollutants that can be controlled for groundwater activities

Under the Environmental Permitting Regulations a “pollutant” is defined as any substance which is liable to cause pollution. For such pollutants, the EA can apply regulatory controls to groundwater activities to ensure that contamination of the groundwater environment by these pollutants does not occur.

However, where a potential pollutant is not considered to be a “substance” under the current regulations, these regulatory controls are not available for groundwater activities. Two such potential pollutants are microbial entities and heat. As such, the EA are currently unable to regulate groundwater activities that might introduce these potential pollutants to the groundwater environment.

This does not only leave the groundwater environment at risk of microbial and heat pollution but is at odds with the regulatory controls available for surface, bathing, and drinking water, which do already cover microbial pollution. It is also at odds with the definition of “pollution” in the Environmental Permitting Regulations, which recognises heat as a form of pollution.

### **Proposal 4: We will enable the EA to apply regulatory controls for microbial pollutants where appropriate and to issue permits for groundwater activities with conditions to protect groundwater from microbial pollution**

Microbial pollution of groundwater, particularly groundwater that is used as a source of drinking water, can result in gastrointestinal disorders in consumers. It is therefore proposed that the EA should be able to apply regulatory controls to activities with the potential to cause microbial pollution of groundwater.

This will bring the regulations for groundwater quality in line with the regulations for surface water quality, bathing water quality, and drinking water quality. It will also ensure that the Environmental Permitting Regulations are effective in protecting groundwater resources from pollution by microbial entities and, in turn, effective in protecting the wider environment and human health from the potentially harmful impacts of microbial pollutants.

Under this proposal, the EA would only apply additional controls on permitted discharges to protect groundwater from the impact of microbial entities where there is actual microbial pollution or a significant risk of microbial pollution occurring. This is only likely to be required for discharges very close to potable abstractions (e.g., within groundwater Source Protection Zone 1) and only then where evidence supports the requirement for such additional permitting controls to be necessary.

### **Q4: To what extent do you agree with the proposal to enable the EA to apply regulatory controls for microbial pollutants where appropriate and to issue permits**

**for groundwater activities with conditions to protect groundwater from microbial pollution? If this question is not applicable to you, please select N/A.**

- a. Strongly agree**
- b. Agree**
- c. Neither agree nor disagree**
- d. Disagree**
- e. Strongly disagree**
- f. N/A**

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

**Proposal 5: We will enable the EA to apply regulatory controls for heat pollution where appropriate and to issue permits for groundwater activities with conditions to protect groundwater from heat pollution**

The input of heat to groundwater may cause adverse impacts on surface water ecosystems that are reliant on groundwater but can tolerate only narrow changes in temperature. The input of heat to groundwater can also alter the solubility of the surrounding rock, which may change groundwater water chemistry and have potential knock-on impacts for the effectiveness of groundwater treatment processes. Further to this, the input of heat to a groundwater body may result in improved conditions for the proliferation of potentially harmful pathogens, such as *Legionella pneumophila*, which would usually be unable to survive in groundwater due to the low temperatures.

It is therefore proposed that the EA should be able to apply regulatory controls to heat pollution in the same way that they do for other pollutants. This will ensure that the Environmental Permitting Regulations are effective in protecting groundwater resources – and the ecosystems they support – from heat pollution.

**Q5: To what extent do you agree with the proposal to enable the EA to apply regulatory controls for heat pollution where appropriate and to issue permits for groundwater activities with conditions to protect groundwater from heat pollution? If this question is not applicable to you, please select N/A.**

- a. Strongly agree**
- b. Agree**
- c. Neither agree nor disagree**
- d. Disagree**
- e. Strongly disagree**
- f. N/A**

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

## 2.2.3 Clarifying and updating existing controls for groundwater activities and some related surface water activities

We have identified four areas within the existing Environmental Permitting Regulations where there is a need to clarify or update the regulations to ensure that the protection of groundwater quality is optimised, to ensure that the regulations are clear to operators, and to ensure that the regulations remain in line with the latest developments in technology.

### Proposal 6: We will update the General Binding Rules for Small Sewage Discharges

The [GBRs for SSDs](#) were established on the basis of maximum volumes that could be discharged without posing an unacceptable risk to groundwater and surface water environments.

However, there have been isolated incidents where operators or developers have avoided the cost of installing suitably sized treatment plants by “splitting” discharges across multiple SSDs that – individually – are permitted under the GBRs. Under these conditions, where multiple SSDs are discharging in close proximity to each other, the assumptions of the GBRs are no longer valid. This means that there is a potential risk of pollution occurring in the receiving groundwater or surface water body.

It is therefore proposed that the following new rules are added to the existing list of GBRs to clarify that multiple SSDs should not be located in such close proximity that the conditions of the GBRs are no longer valid:

- No.22 A new discharge shall not use the same point of discharge as any other discharge if the combined volume of those discharges would exceed the volumetric GBR thresholds for groundwater or surface water.
- No.23 A new discharge shall not be made to a discharge point within 50 metres of any other exempt groundwater activity or water discharge activity.

**Q6: To what extent do you agree with the proposal to add these new rules to the General Binding Rules for Small Sewage Discharges to ensure that multiple discharges should not be located in close proximity to each other? If this question is not applicable to you, please select N/A.**

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. N/A

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

**Proposal 7: We will require operators of Onshore Oil and Gas facilities to apply to surrender their permits, rather than to provide a notification of surrender**

When an Onshore Oil and Gas (OO&G) facility operator wishes to surrender a site permit for an oil and gas well that includes a **waste operation activity**, they are required to submit a permit surrender application to the EA. This application must be accompanied by evidence to demonstrate that the permitted activities have not caused any detrimental impacts to the environment, and that the site poses no on-going threat to the environment. Only when the EA are satisfied that this is the case can the permit be returned, and the responsibilities on the operator in relation to environmental protection be lifted.

However, the same process does not apply to OO&G facilities that only have a **groundwater activity** permit. In this case, the operator only needs to notify the EA that the permit is no longer required, and the environmental responsibilities associated with the permit are automatically lifted. As such, there is no regulatory power available to the EA to require environmental assessment of the current situation at the point of decommissioning or of any future likelihood of pollution occurring.

It is therefore proposed that operators of OO&G facilities that include, or only have, a groundwater activity should have to apply to surrender the groundwater activity permit, rather than notify the EA that the permit is no longer required. This will ensure that any pollution issues are remediated, and that there are no ongoing risks to the groundwater environment at the point of decommissioning or that may arise in future.

**Q7: To what extent do you agree with the proposal to require operators of Onshore Oil and Gas facilities to apply to surrender their groundwater activity permits, rather than to only provide a notification of surrender? If this question is not applicable to you, please select N/A.**

- a. **Strongly agree**
- b. **Agree**
- c. **Neither agree nor disagree**
- d. **Disagree**
- e. **Strongly disagree**
- f. **N/A**

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

## **Proposal 8: We will update the list of exemptions from the prohibition on direct discharges to groundwater**

Direct discharges of pollutants to groundwater are prohibited under the Environmental Permitting Regulations and more explicitly the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. However, the Regulations provide a limited list of specific groundwater activities which are exempt from this prohibition, provided that certain measures are met. This list has been transcribed into Schedule 22 of the Environmental Permitting Regulations and represents a specific list of groundwater activities that the EA can control.

This list was established 16 years ago and as such does not account for new technologies or activities that the EA have subsequently decided should be permitted. It is therefore proposed that the list of exemptions from the prohibition on direct discharges to groundwater within the Environmental Permitting Regulations is updated to include the following specific activities:

- **The discharge of treated groundwater from remedial solution activities directly back into groundwater.** “Remedial solution activities” means the doing of any works, the carrying out of any operations, or the taking of any steps in relation to any land or groundwater for the purpose of preventing, minimising, remedying or mitigating the effects of pollution of groundwater to restore the land or waters to their former state. The benefit of adding this type of activity to the list of exemptions, and therefore enabling this type of activity to be permitted, is that it will be easier for remediation activities to take place where pollution of groundwater has occurred, whilst ensuring that the EA can manage any risk associated with the return of the remediated groundwater.
- **The use of injection techniques to increase the flow of fluids or gas to an abstraction point for the purposes of, or in connection with, energy recovery and production.** These are techniques used by geothermal operators and the OO&G industry to improve the efficiency of energy recovery and production. These techniques are also being developed around the world to increase the capacity of the rocks to provide heat for geothermal projects. The current regulations prevent this activity in England if there is water in the target formation, so these techniques could not be used to help promote the use of green heat technologies. Whilst this technique has been used for decades within the OO&G industry the EA have not historically issued permits for these activities. The benefit of adding this type of activity to the list of exemptions, and therefore enabling this type of activity to be permitted, is that both the geothermal and the OO&G industries can use techniques that ensure efficient and economical recovery of resource. The EA will then be better placed to manage any environmental risk associated with the use of these fluid injection techniques.

**Q8a: To what extent do you agree with the proposal to add remedial solution activities to the list of exemptions from the prohibition on direct discharges to groundwater, thereby enabling the EA to issue permits for these activities where appropriate? If this question is not applicable to you, please select N/A.**

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. N/A

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

**Q8b: To what extent do you agree with the proposal to add fluid injection techniques to the list of exemptions from the prohibition on direct discharges to groundwater, thereby enabling the EA to issue permits for these activities where appropriate? If this question is not applicable to you, please select N/A.**

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. N/A

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

### **Proposal 9: We will clarify the defence for sewerage undertakers in breach of permit conditions**

Sewerage undertakers may sometimes contravene the following regulations in the Environmental Permitting Regulations due to circumstances beyond their control:

- Regulation 38(1) (operating (or causing/knowingly permitting) a water discharge activity or groundwater activity without an environmental permit)
- Regulation 38(2) (failing to comply with or to contravene an environmental permit condition)

For example, if a third party were to make an unauthorised discharge into a sewer which then adversely impacted the treatment processes at a treatment works, the discharge from

that works may be in breach of the permit conditions at that site, and the sewerage undertaker responsible for that works would therefore be in breach of their permit.

To this end, the Environmental Permitting Regulations intend to offer a defence for sewerage undertakers under the following circumstances:

- Another person caused or knowingly permitted a discharge to be made into the sewer or works
- 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
- The undertaker could not reasonably have been expected to prevent the discharge into the sewer or works

However, the current wording of the Environmental Permitting Regulations is unclear in that the defence applies only to Regulation 38(1) (operating without a permit) but not Regulation 38(2) (breaching a permit), which is more commonly the case. This creates some uncertainty for sewerage undertakers and creates enforcement difficulties for the regulator.

It is therefore proposed that the Environmental Permitting Regulations are updated to clarify that the defence for sewerage undertakers where a contravention occurs as a result of an unauthorised discharge into a sewer or sewage treatment works by a third party, applies to both the offence of operating without an environmental permit (Regulation 38(1)) **and** the offence of contravening an environmental permit (Regulation 38(2)).

**Q9: To what extent do you agree with the proposed approach to clarify the defence for sewerage undertakers in breach of permit conditions? If this question is not applicable to you, please select N/A.**

- a. Strongly agree**
- b. Agree**
- c. Neither agree nor disagree**
- d. Disagree**
- e. Strongly disagree**
- f. N/A**

**Please provide details to explain your answer. If this question is not applicable to you, please write N/A.**

## Annex A: Glossary

<b>EA</b>	Environment Agency
<b>FOI</b>	Freedom of Information
<b>GBRs</b>	General Binding Rules
<b>MPPs</b>	Mobile Plant Permits
<b>OO&amp;G</b>	Onshore Oil and Gas
<b>SRPs</b>	Standard Rules Permits
<b>SSD</b>	Small Sewage Discharge



## **Annex B: Draft exemption conditions for small-scale cemetery developments in low-environmental risk settings**

Please see related document titled 'Annex B - Draft exemption conditions for small-scale cemetery developments in low-environmental risk settings'. Any dates in the document that currently read [Date] [Month] [Year] will be specified once the implementation date has been finalised.

## **Annex C: Draft exemption conditions for closed-loop ground source heat pump activities in low-environmental risk settings**

Please see related document titled 'Annex C - Draft exemption conditions for closed-loop ground source heat pump activities in low-environmental risk settings'. Any dates in the document that currently read [Date] [Month] [Year] will be specified once the implementation date has been finalised.