

# Method for assessing compliance - environmental permits for land spreading waste sheep dip and pesticide washings

Operational instruction 114\_06

Issued 06/04/2010

This document is for staff at level 3 of the Permitting & Compliance: issuing and maintaining permits and securing compliance capabilities in the Environment Officers technical development framework.



Document details

**What's this document about?**

Describes how to plan and carry out a compliance inspection for environmental permits for a groundwater activity (hereafter referred to as "permit") under the Environmental Permitting (England & Wales) Regulations 2010, authorising the discharge of waste sheep dip or pesticide washings to land. It does **not** apply to permits authorising the discharge of sewage effluent to ground / groundwater. It covers in detail the following topics:

- why compliance inspections are necessary;
- the structure of an inspection;
- what data needs to be gathered;
- how the data should be used.

The instructions are primarily aimed at:

- the requirement to review all existing permits issued prior to the implementation of the Groundwater Regulations 2009 before 22<sup>nd</sup> December 2012;
- and the subsequent six yearly inspection / review required by current service levels (SLs).

They also apply to integrated site inspections and/or groundwater compliance inspections for cross compliance.



Related documents



Feedback

**Who does this apply to?**

Environment Officers and any other operational staff involved in groundwater inspections or integrated inspections.

**Contact for queries**

Paul  
Doherty

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# Introduction

## Background

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### Legal principle

Reg 71 of The Environmental Permitting Regulations (EPR) 2010 require that all existing permits authorising the discharge to ground / groundwater of hazardous substances or non-hazardous pollutants that were granted before the implementation of the Groundwater Regulations 2009, must be reviewed by 22 December 2012 for compliance with the Water Framework Directive (WFD) (2000/60/EC) and new Groundwater Daughter Directive (GWDD) (2006/118/EC).

Periodic reviews (every six years) are required subsequent to this to ensure continued compliance with the conditions of each permit and to ensure that the environment is suitably protected.

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### When to do a compliance inspection

There are four main instances when you should carry out a compliance inspection:

1. for any permit granted after 30<sup>th</sup> October 2009 (i.e. on the enactment of the now superceded Groundwater Regulations 2009), the initial site visit coinciding with the first six yearly review of the permit;
  2. an integrated inspection resulting from inclusion within the risk based approach farm selection programme;
  3. an inspection required on behalf of the Rural Payments Agency (RPA) or Rural Inspectorate for Wales (RIW) under cross compliance;
  4. as part of the statutory review of all existing permits in relation to the WFD / GWDD (December 2012) compliance requirement, where such permits have not been visited within six years at the time of the scheduled review.
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### EPR 2010 & WFD / GWDD requirements

We are required by the EPR 2010 to:

- review all permits issued before the enactment of the Groundwater Regulations 2009 prior to December 2012;
  - on review, assess compliance with the conditions of the permit;
  - take appropriate steps (where necessary) to ensure the operator complies with the conditions of the permit.
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## Codes of Practice and notices

Activities that are not deliberate discharges (disposal), that may result in the input of hazardous substances or non-hazardous pollutants to groundwater, can be controlled by statutory groundwater protection codes of practice (CoP) and notices to either prohibit the activity or to require the operator to obtain a permit (EPR2010 Schedule 22, para 9 or 10 respectively).

An inspection should therefore assess an operators adherence with the requirements of any relevant CoP that applies at the site. Where there is significant risk that the activity may result in the input of hazardous substances to groundwater or pollution by non-hazardous pollutants, then you should consider either serving a Prohibition Notice (Schedule 22 para 9) which is intended to stop the activity or a Notice to require an environmental permit (Schedule 22 para 10) thereby bringing it into control by considering it to be a groundwater activity.

## Impact on SFP scheme

Compliance with the conditions of permit is one of the measures taken into account for the Single Farm Payment (SFP) (cross compliance) scheme.

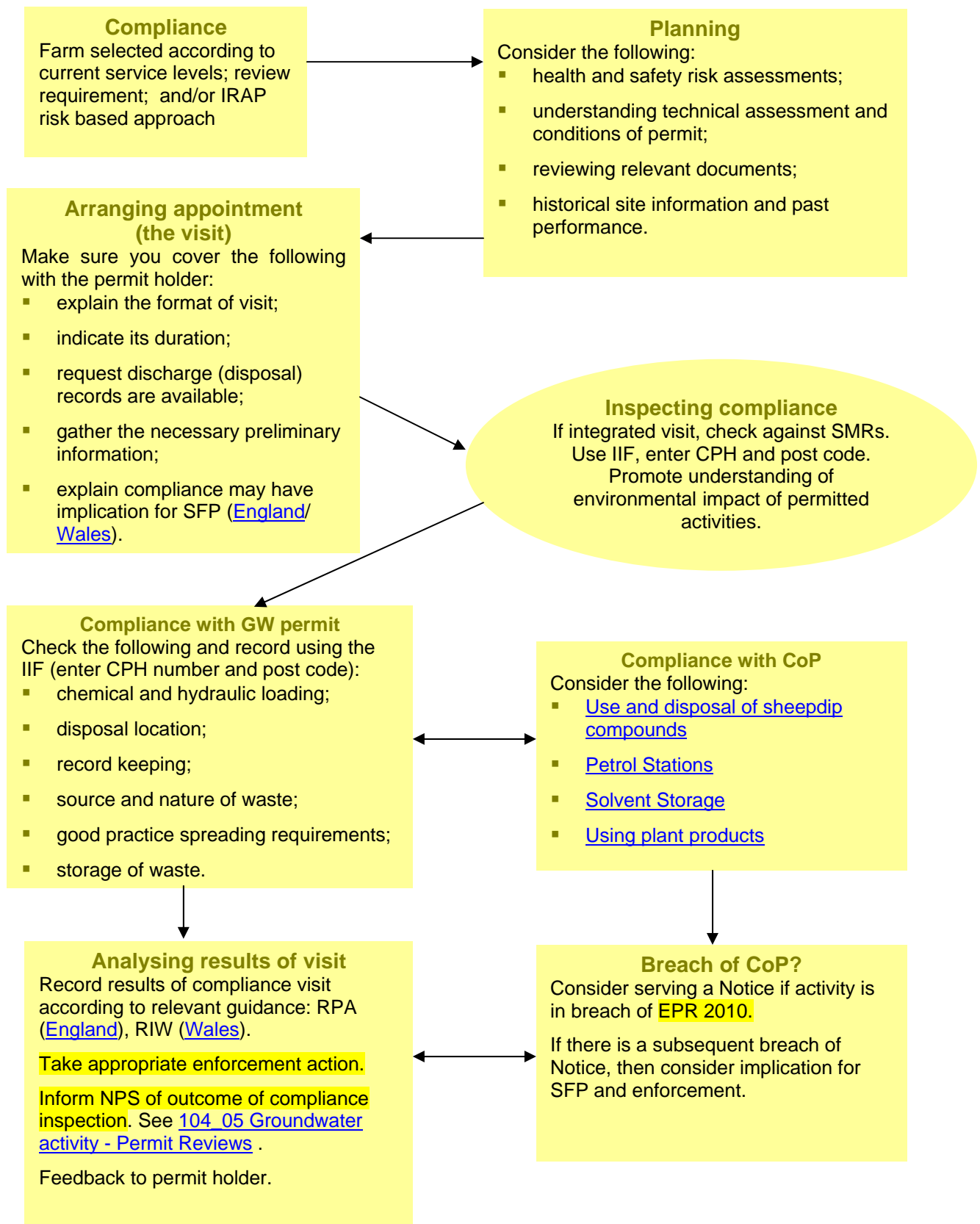
We must report all instances of non-compliance to the RPA in England or the RIW in Wales.

## Compliance inspections

**In this chapter** This chapter includes the following:

Topic	See page
<a href="#">Overview of the compliance inspection process</a>	<a href="#">5</a>
<a href="#">What is a compliance inspection?</a>	<a href="#">6</a>
<a href="#">The planning stage</a>	<a href="#">6</a>
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<a href="#">Historical site information and the past performance of the permit holder</a>	<a href="#">10</a>

# Overview of the compliance inspection process



## What is a **groundwater activity** compliance inspection?

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### What does it involve?

A compliance inspection contains the following minimum components:

- [a planning stage](#), (page 6);
  - [collecting site specific information](#) (the site visit itself), (page 10);
  - [analysing the results and deciding on any action required](#), (page 15);
  - regular evaluation and reporting of inspection activities.
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### Aims of the compliance inspection

The compliance inspection must collect appropriate information to ensure that:

- the **permit** issued is adequate to protect the environment and complies with legislative requirements;
  - the discharge (disposal) activity is compliant with the conditions of the permit;
  - the results of any monitoring of the effects of the discharge on the environment are within acceptable limits;
  - the permit holder can demonstrate compliance with any relevant statutory CoPs.
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## The planning stage

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### What to include

The planning stage must cover the following considerations:

- a [health and safety assessment](#), (page 6);
  - [understanding the conditions](#), (page 8) to be complied with;
  - [understanding the related guidance](#) documents, (page 9);
  - [historical site information and the past performance](#) of the permit holder, (page 10).
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## Health and safety assessment

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### Actions

The steps in the table below list what you must consider and what you must do during the health and safety assessment.

Step	Action
1	<p>You must consult with the related generic risk assessments before carrying out a compliance inspection.</p> <p>Some common generic risk assessment that you may require are:</p> <ul style="list-style-type: none"><li>▪ <a href="#">lone working</a>;</li><li>▪ <a href="#">hostile situations</a>;</li></ul>

Step	Action								
	<ul style="list-style-type: none"> <li>▪ <a href="#">ground penetration</a>;</li> <li>▪ <a href="#">agricultural site visits</a>.</li> </ul> <p>You must consider a visit to a farm or an isolated dwelling as 'lone-working' on a site and you must follow the lone working procedure.</p>								
2	Before the visit, you must identify and record all appropriate control measures, such as personal protective equipment and double manning.								
3	<p>If you need to take soil samples during the site visit, consider the presence of underground services. Services such as water, electricity, gas or sewage mains, present a serious risk to users of ground penetration equipment, such as a spade or auger.</p> <p>Before you visit the site, you must carry out an appropriate level of risk assessment, described in step 1.</p>								
4	Before starting any soil sampling during the compliance inspection, refer to <a href="#">OI 1137_08 (Avoiding Underground Services)</a> . Complete the Ground penetration risk assessment checklist in the <a href="#">soil investigation protocol</a> .								
5	<p>Interpret the results of the ground penetration checklist as follows:</p> <table border="1"> <thead> <tr> <th>If...</th> <th>then...</th> </tr> </thead> <tbody> <tr> <td>a site is low risk</td> <td>you can take samples to a depth of 30 cm without the need for a CAT scan.</td> </tr> <tr> <td>you require samples from depths greater than 30 cm</td> <td>you must complete a written, task specific risk assessment and a CAT scan of the sample area.</td> </tr> <tr> <td>underground services are present or suspected</td> <td>you must not use an auger to take soil samples. You must use a hand trowel instead as described in '<a href="#">underground services</a>'</td> </tr> </tbody> </table> <p><b>Note</b> Only an authorised regular user of CAT equipment can carry out underground service detection for staff work.</p>	If...	then...	a site is low risk	you can take samples to a depth of 30 cm without the need for a CAT scan.	you require samples from depths greater than 30 cm	you must complete a written, task specific risk assessment and a CAT scan of the sample area.	underground services are present or suspected	you must not use an auger to take soil samples. You must use a hand trowel instead as described in ' <a href="#">underground services</a> '
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6	<p>You must make copies of the risk assessment paperwork available to everyone involved in the compliance inspection procedure.</p> <p>You must also retain the risk assessment documents on file for future reference.</p>								
7	<p>It is good practice for you to contact the local utilities provider or access the utilities database when assessing the sample area.</p> <p>You must also consult with the permit holder about buried services before collecting samples.</p>								

## Understanding the conditions to be complied with

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### Preparation

To carry out a well informed compliance inspection, you need to be familiar with the following:

- a basic knowledge of the permit conditions;
- the details of the Level 1 prior examination and technical assessment so that you can determine and understand the risk factors associated with the particular site. Take this to the site to assist in any discussions over decisions during the determination process.

For some sites, a detailed Level 2 technical assessment will have been carried out before a permit was granted. For these sites, contact your local Groundwater & Contaminated Land (GW&CL) team and discuss the following:

- the outcomes of the Level 2 technical assessment. Take a copy of the assessment to the site to assist in any discussions over decisions during the determination process.
- the data contained in the local Groundwater quality monitoring network to assess whether groundwater has become contaminated with **pollutant** substances.

**Note** The practicality of using monitoring information to assess compliance with an environmental permit for a groundwater activity depends on the relative location of the monitoring point(s).

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## Understanding the related guidance documents

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### Permit compliance inspections

Before you carry out a **groundwater** activity compliance inspection, you should familiarise yourself with the following documents:

- [26\\_05 Applying the Compliance Classification Scheme to environmental permits for groundwater activities;](#)
  - [EAS/8001/1/1 Enforcement and prosecution policy;](#)
  - [49\\_02 Applying the Habitats Regulations to new and existing environmental permits for groundwater activities;](#)
  - [Landfill Directive Joint Policy/Process advisory note;](#)
  - [28\\_05 Implementation of Cross Compliance \(England\);](#)
  - [30\\_05 Implementation of Cross Compliance \(Wales\);](#)
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### General pollution prevention duties

You may become aware of other environmental concerns during a compliance inspection visit. In support of your general pollution prevention duties, **you should also familiarise yourself with the following documents:**

- [Groundwater protection code – use and disposal of sheep dip compounds](#)
  - [Groundwater protection code – petrol stations and other fuel dispensing facilities involving underground tanks;](#)
  - [Protecting our water, soil and air –a code of good agricultural practice for farmers, growers and land managers;](#)
  - [Groundwater protection code - solvents use and storage](#) (this code will be of only limited application on farms);
  - Code of practice - [Practice for the safe use of plant protection products](#)
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## Historical site information and past performance

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### Review available information

The historical performance of a permit holder may have a significant bearing on the attitude taken by that person and on the health and safety implications of the visit.

#### Actions

Check the following resources for any information which may help you to prepare for a compliance inspection:

- National Incident Recording System (NIRS) database;
  - Compliance Classification Scheme (CCS) database;
  - Hostile sites database.
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## Collecting site specific information (the site visit)

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**In this chapter** This chapter includes the following:

Topic	See page
<a href="#">Arranging an appointment</a>	<a href="#">10</a>
<a href="#">Inspecting compliance with conditions</a>	<a href="#">12</a>
<a href="#">Inspecting compliance with a statutory CoP</a>	<a href="#">13</a>
<a href="#">Reviewing the requirements of a permit</a>	<a href="#">14</a>

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## Arranging an appointment

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### Background

With the introduction of cross compliance and the SFP scheme, the outcomes of a compliance inspection can have quite serious financial consequences for permit holders.

Therefore, make the holder aware, during your first contact, that a compliance inspection will be associated with cross compliance.

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### First contact

It is not a formal requirement to correspond with permit holders but it is good practice. The table below describes how to make contact and what to do.

Step	Action
1	Contact the permit holder to schedule an appointment that is convenient. The FARMS database contains standard letters for this. Using the phone to arrange an appointment provides an opportunity to gauge the likely reception on site. If you cannot make contact by phone, try to arrange an appointment by letter. Only use cold calling as a last resort.
2	Due to changes in farming practices, permit holders may wish to revoke their permit.

Step	Action
	It is useful if you can establish during the first contact whether the permit is still required. This will help us target resources at sites where holders intend to retain the permit and are involved in discharging hazardous substances or other non-hazardous pollutants.
3	<p>During this first contact you must do the following:</p> <ul style="list-style-type: none"> <li>▪ explain the format of the visit;</li> <li>▪ give an indication of the likely duration of the inspection;</li> <li>▪ request that relevant disposal records be made available for inspection;</li> <li>▪ gather as much preliminary information as possible; For example, information detailing additional features, such as the location of the pesticide preparation area.</li> <li>▪ explain that the outcomes of the compliance inspection may have implications for cross compliance and the permit holder's SFP (if appropriate).</li> </ul>

### Integrated visits

Some sites may require inspections for issues other than compliance with a **permit**. In these cases, offer the permit holder an integrated inspection visit.

If an inspecting officer wants to carry out additional regulatory duties, they must tell the permit holder about the extra time they will require during the inspection visit.

#### Who can carry these out?

Only appropriately trained officers can carry out integrated site inspections.

### What to cover in a site visit

As a minimum, cover the following during an inspection visit:

- check compliance with the conditions of the **permit**;
- assess the operator's adherence with any applicable CoPs;
- consider the impact of the discharge (disposal) activity and the need for any required improvements in the operator's performance and/or the permit conditions;
- promote and improve the understanding of the permit and of the environmental impact of the permitted activities;
- for cross compliance inspections, assess compliance against all relevant statutory management requirements (SMRs);
- other unregulated activities not controlled by a permit;
- promote general awareness by having regard to our wider pollution prevention duties.

Try to make the best possible use of your time with the holder to discuss the potential impact of other farm activities on the environment.

## Inspecting compliance with permit conditions

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### Our legal requirement

We are required by Regulation 71 of the EPR 2010 to review any environmental permit that was granted before the coming into force of the Groundwater Regulations 2009 before 22<sup>nd</sup> December 2012. At the time of the review, we must 'assess compliance with the conditions of the permit, and if operators fails to comply with any condition of the permit, take appropriate steps to ensure compliance'

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### What to check

#### Check compliance with a permit for a groundwater activity

Assess the level of compliance with each permit condition during the inspection visit. Place particular emphasis on checking compliance with the following:

- permitted chemical and hydraulic loadings;
- discharge location;
- record keeping;
- source and nature of the waste;
- good practice spreading requirements;
- storage of waste prior to discharge.

#### Check compliance with EPR 2010

A holder may be fully compliant with the conditions of a permit but not automatically be fully compliant with the 'prevent or limit' requirements of the WFD / GWDD, now implemented via the EPR 2010. Completing a statutory review fully determines compliance with the EPR 2010 / GWDD. Refer to [Reviewing the requirements of a permit](#), to understand what information to collect for review purposes.

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### Importance of record keeping

Since you will rarely observe discharges taking place, the holder must keep accurate records as a fundamental demonstration of compliance with the conditions of their permit.

If the holder fails to keep records, you will have significant difficulties when assessing the impact of an activity.

During the compliance visit, it is important that you record as much information as possible in terms of the how, the what and the when of the disposal activity.

The IFF provides for entries such as hydraulic and chemical loading with respect to the discharge activity, together with types of substances discharged, frequency and so on. Take a copy of the disposal records from the site and keep them on file. (You may want to provide the operator with a copy of the "[record of discharge \(disposal\) form](#)" for future recording.

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### Further guidance

Advice on interpreting and consistently recording breaches of permit conditions can be found in [26\\_05 Applying the Compliance Classification Scheme \(CCS\) to breaches of environmental permits for groundwater activities](#)

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# Inspecting compliance with a statutory CoP

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## Background

Ministers have approved CoPs for groundwater protection.

Groundwater protection codes are intended to give practical guidance to anyone undertaking an activity, on or in the ground, about the steps they should take to:

- prevent hazardous substances entering groundwater;
  - and avoid pollution of groundwater by other non-hazardous pollutants.
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## Breaches and enforcement

Failure to comply with a statutory CoP is not an offence in itself. However, the implications of non-compliance are that the activity may not comply with the requirements of the **WFD / GWDD now implemented via EPR 2010**. The breach, therefore, may present a high risk to groundwater quality.

You will need to decide whether or not a code has been, or is likely to be, breached as you decide whether to serve a **groundwater activity notice to either prohibit the activity or require an environmental permit**.

Non-compliance with a **groundwater activity** notice is also significant with respect to cross compliance, and must be reported to the RPA for England or RIW for Wales.

Failure to comply with a **groundwater activity** notice will normally lead to prosecution.

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## What to consider

As a result of the compliance inspection, you will be required to confirm that satisfactory pollution prevention measures are in place to protect the water environment. You will also need to assess compliance with any relevant CoP.

For the purposes of the compliance inspection, you should consider:

- [Use and disposal of sheep dip compounds](#);
  - [Petrol stations](#) and other fuel dispensing facilities, including underground storage tanks;
  - [Solvent use and storage](#);  
This code has limited relevance on farm inspections.
  - [Using plant protection products](#).
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## Further guidance

In addition to the above, the original Defra guidance to the Environment Agency on the Groundwater Regulations (Defra 2001) refers to the Water code as being relevant to the Regulations. Note : in due course (during 2010) this will be superseded by Groundwater Activities guidance under EPR2010.

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## Reviewing the requirements of a permit

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### Legal requirement

We are required by **Regulation 71 of the EPR 2010** to review all existing groundwater permits that were issued prior to the enactment of the Groundwater Regulations 2009 by December 2012. This is to ensure the groundwater permit is:

- still relevant for the discharge being made;
- still protective of the environment;
- compliant with the **WFD / GWDD (via EPR 2010)**;
- compliant with other relevant legislation; for example, Habitats Regulations.
- compliant with Landfill Directive requirements.

The compliance inspection must collect the relevant information to:

- inform the statutory review process;
- verify the assumptions used in the initial technical risk assessment;
- enable a satisfactory review to be carried out

**You should refer to the guidance within Operational Instruction [104\\_05 environmental permit reviews – groundwater activities](#), for full details as to what is required for a permit review.**

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### Initial reviewing the permit

Most permits are issued solely on the basis of a desk-based assessment. It is essential that the initial review validates the site specific data and verifies any assumptions made during the permitting process.

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### Selecting sites

**For existing permits that require review before 22<sup>nd</sup> December 2012, site selection should be prioritised according to the expiry date condition (which as carried over from the GWR 1998) – see OI 104\_05 for further details.**

**Subsequent to this December 2012 review, permits should continue to be reviewed periodically, according to a risk based (OPRA) approach and current service levels. (For example, small bespoke permits for discharging waste sheep dip require subsequent review at least once every six years).**

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### What information is required?

The main body of information that you should collect to inform the review process includes:

- details of the discharge practices and records to confirm the hydraulic and chemical loadings made on the land and the hazardous substances discharged;
- details confirming the locations of risk receptors, including watercourses, springs and boreholes;
- clarifying the soil's physical characteristics where necessary, including soil depth, type, texture and organic content, vegetation cover and general drainage characteristics;  
Collecting this information by soil sampling may only be necessary on a site specific basis where there is doubt over the acceptability of the original groundwater permit.
- details of other factors that may demonstrate the unsuitability of the discharge site;
- identifying any suitable monitoring points for requisite surveillance.

## Analysing the results and deciding on any action required

**In this chapter** This chapter includes the following:

Topic	See page
<a href="#">Recording the information</a>	<a href="#">15</a>
<a href="#">Feedback and giving information</a>	<a href="#">16</a>
<a href="#">Enforcement</a>	<a href="#">16</a>
<a href="#">Reporting</a>	<a href="#">17</a>

## Recording the information

### Data collection

The table below lists what you must do to comply with data collection requirements.

Step	Action
1	You must accurately record all the information you gather during the site visit on an IIF.
2	It is crucial that you identify the full details of any non-compliance at the time of the compliance inspection.
3	Keep the details you collect on file, if the information is relevant to any cross compliance issue.  Keep the data for at least seven years.
4	It is also important that you obtain the county parish holding (CPH) number from the holder.  Enter it on to the inspection form.

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## Feedback and giving information

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### Feedback and dialogue

Feedback to the permit holder both during and after a compliance inspection is of the utmost importance.

Use the site visit as an opportunity to raise awareness of the environmental consequences of the holder's activities and performance.

Your feedback to them should relate back to permit conditions, statutory CoPs and/or general groundwater pollution prevention issues.

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### Informing and reporting a non compliance

If you identify a non compliance during an inspection, you must inform the holder of the following in writing:

- the nature of the non compliance event/s;
- any action required to achieve compliance;
- enforcement outcomes, where appropriate;
- the outcome of the permit review;
- any implications for cross compliance and the single farm payment scheme;

A letter template for reporting non compliance to a permit holder is available on the FARMS database.

#### Reporting

As the groundwater protection is one of the relevant cross compliance SMRs, report all instances of non compliance to the RPA in England or the RIW in Wales.

For guidance on reporting breaches of permit for cross compliance purposes, follow Implementation of Cross Compliance (England/Wales).

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## Enforcement

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### Enforcement action

After a compliance inspection, it may be necessary to initiate enforcement action. All enforcement action should, where appropriate seek to:

- ensure that preventative or remedial action is taken to protect the environment;
- ensure compliance with the conditions of a permit;
- provide an appropriate sanction for a criminal offence.

**! Important:** All enforcement action must be carried out in accordance with our [Enforcement and Prosecution Policy \(EPP\)](#); and corresponding [Guidance for the enforcement and prosecution policy \(OI: 354\\_03\)](#); our CCS and Common incident classification scheme (CICS) guidance, and the Police and Criminal Evidence Act 1984.

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## Reporting

### Actions

The table below lists the reporting procedures.

System	Action
CL2A	<p>Record basic details arising from the compliance inspection on the Groundwater (Regulations), Contaminated Land and Works Notice System database (CL2A).</p> <p>Enter summary details of any non compliance into the Compliance inspection (conclusion) textbox on CL2A. You have a maximum length of 500 characters.</p> <p>Enter the farm CPH number into CL2A in the <b>Alternative site references</b> field.</p> <p>You can find advice on using CL2A in <a href="#">the CL2A User Guide</a>.</p>
CCS	<p>Record all breaches of groundwater permit conditions following <a href="#">187_02 Recording permit non-compliance using the Compliance Classification Scheme (CCS)</a>.</p> <p>You can find advice on the interpretation and consistent recording of breaches in <a href="#">26_05 Applying the Compliance Classification Scheme (CCS) to breaches of groundwater permits</a>.</p>
CICS	<p>Record all condition breaches that cause an actual pollution event in NIRS, following <a href="#">04_01 Common Incident Classification Scheme (CICS) incident classification methodology</a>.</p>

## Related documents

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### Links on our intranet

- [04\\_01 Common Incident Classification System, Incident Classification Methodology](#)
- [26\\_05 Applying the Compliance Classification Scheme to environmental permits for groundwater activities](#)
- [30\\_05 Implementation of Cross Compliance \(Wales\)](#)
- [45\\_04 Agricultural site visits](#)
- [49\\_02 Appendix 5: Applying the Habitats Regulations to new and existing environmental permits for groundwater activities](#)
- [104\\_05 environmental permit reviews – groundwater activities](#)
- [187\\_02 Recording permit non-compliance using the Compliance Classification Scheme](#)

From Health and safety:

- [Lone working](#);
- [Hostile situations](#);
- [Avoidance of underground cables](#) CoP.

Soil investigation protocols:

- [Soil investigation protocol](#).
- [Groundwater protection code – petrol stations and other fuel dispensing facilities involving underground tanks](#)
- [Use and disposal of sheep dip compounds](#)
- [The CL2A user guide](#)
- [EAS/8001/1/1 Enforcement and prosecution policy](#)
- [Landfill Directive Joint Policy/Process advisory note](#)

### Links on other websites

From the Defra website:

- [Groundwater protection code – Use and disposal of sheep dip compounds](#)
- [Petrol stations](#)
- [Groundwater protection code - Solvents use and storage](#) (this code will be of only limited application on farms);
- [Code of Good Agricultural Practice for the Protection of Water – The Water Code](#);
- *Guidance on the Groundwater Regulations 1998* (DETR 2001)

From the Pesticides government website:

- Code of practice - [Practice for the Safe Use of Plant Protection Products](#)
-