



How to use groundwater activity notices

Operational instruction 221_07

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This document is for staff at level 2/3 of the Securing Compliance capability, in the Environment Officers and Groundwater & Contaminated Land technical development frameworks.



Document details

What's this document about?

This document provides guidance on how and when to use groundwater activity notices (i.e. any notice served under Schedule 22, paragraphs 9 – 12 of the Environmental Permitting (England and Wales) Regulations 2010).

It includes a simple qualified risk assessment form to help you investigate and decide on the best course of action and links to notice templates that you will need to use.

For further guidance on how to serve an enforcement notice refer to the [Enforcement notice handbook](#).



Related documents

Who does this apply to?

Applies to staff responsible for groundwater pollution prevention.

This includes:

- Environment officers;
- Groundwater and Contaminated Land technical teams;
- Environment Management team leaders.



Feedback

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Contact for queries

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What are groundwater activity notices?

Legal background

Under Schedule 22 to the Environmental Permitting Regulations there are several groundwater activity notices. These are:

- Prohibition notice (paragraph 9)
- Notice requiring an environmental permit (paragraph 10)
- Notice in relation to a highway drain (paragraph 11)
- Notice in relation to a domestic septic tank or sewage treatment plant (paragraph 12)

Guidance on the use of each of these notices is given below.

In addition there are a number of other notice provisions within the Environmental Permitting Regulations, for example:

- Enforcement notices (Reg 36) – to comply with condition(s)
- Suspension notices (Reg 37) – to suspend a permit
- Notice of works to remedy pollution (at a regulated facility) (Reg 57)
- Provision of information notices (Reg 60)

All these are covered within the [Enforcement notice handbook](#).

Prohibition notice (paragraph 9)

We can serve a Prohibition notice on any person carrying on, or proposing to carry on, any activity on or in the ground where that activity might lead to:

- a discharge of a pollutant that results in the direct input of that pollutant to groundwater;
- a discharge of a pollutant in circumstances that might lead to an indirect input of that pollutant to groundwater;
- any other discharge that might lead to the direct or indirect input of a pollutant to groundwater.

Serving a prohibition notice on a person prohibits them from carrying on the activity.

We may withdraw a prohibition notice at any time by further notice served on the person.

Notice requiring an environmental permit (paragraph 10)

We can serve a notice on any person carrying on, or proposing to carry on, any activity on or in the ground where that activity might lead to:

- a discharge of a pollutant that results in the direct input of that pollutant to groundwater;
- a discharge of a pollutant in circumstances that might lead to an indirect input of that pollutant to groundwater;
- any other discharge that might lead to the direct or indirect input of a pollutant to groundwater

requiring that person, from the date the notice takes effect, to hold an environmental permit authorising the carrying on of the activity.

A notice requiring an environmental permit takes effect on the date specified in it, but:

- a notice served in relation to a highway drain (paragraph 11) does not take effect until at least 6 months after it is served; and
- a notice served in relation to a domestic septic tank or sewage treatment plant (paragraph 12), or for any other purpose, does not take effect until at least 3 months after it is served.

Notice in relation to a highway drain (paragraph 11)

Under paragraph 11, a highway authority or other person entitled to keep open a highway drain by virtue of section 100 of the Highways Act 1980 who operates a highway drain other than under and in accordance with an environmental permit is not guilty of an offence under regulation 38(1) unless we have served a notice on that person requiring them to have an environmental permit and the notice has taken effect.

A notice is served in relation to a highway drain does not take effect until at least 6 months after it is served.

Notice in relation to a domestic septic tank or sewage treatment plant (paragraph 12)

Before 1st January 2012, a person who, other than under and in accordance with an environmental permit, uses a septic tank or sewage treatment plant with a discharge of 2 cubic metres per day or less of sewage effluent that results in the input of pollutants to groundwater is not guilty of an offence under regulation 38(1) unless we have served a notice on that person requiring them to have an environmental permit and that the notice has taken effect.

A notice served in relation to a domestic septic tank or sewage treatment plant does not take effect until at least 3 months after it is served.

Difference between a groundwater activity notice and an anti-pollution works notice?

Our work emphasises pollution prevention

A **groundwater activity** notice is only relevant for hazardous substances or non-hazardous pollutants as defined in the **Environmental Permitting Regulations (EPR)**. However, there is a potential overlap of control where these are used for pollution prevention. A **groundwater activity** notice is used for prohibiting an activity per se **or requiring an environmental permit**, whilst APW notices can **also** be used for requiring specific controls/measures to be undertaken.

Although prevention is the key, failure to comply with the requirements of a **groundwater activity** notice will result in enforcement action being taken in accordance with the [Guidance for the enforcement and prosecution policy](#).

When to use a groundwater activity notice

Use a **groundwater activity** notice:

- in order to prevent pollution of groundwater;
- if groundwater is the first and most significant controlled water at risk.

Examples of when a **groundwater activity notice could be used include:**

- to prohibit an activity where non-adherence to the advice within relevant codes of practice (CoP) is likely to result in the input into groundwater of any hazardous substance or non-hazardous pollutants;
 - to prohibit an activity which has not been satisfactorily addressed through planning. For example, and subject to [GP3](#) and any bespoke risk assessment, consideration can be given to prohibiting to the underground storage of hazardous substances (such as petrol) in SPZ1.
 - to require specific on going controls, via environmental permit conditions, for an activity that represents an unacceptable risk to groundwater without the benefit of such controls.
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When to use an anti-pollution works notice

You can use an anti-pollution works notice if:

- only surface water needs to be protected; or
- we need to prevent pollution direct to surface water (that is, not **via** groundwater) as well as to groundwater, providing this achieves all the controls necessary to manage the risks to groundwater.

Example:

We need one-off control to protect groundwater, such as bunding a tank without, for example, the need for ongoing monitoring **or control**.

Steps to take in deciding to serve a groundwater activities notice?

Things to consider

You must refer to the [Enforcement notice handbook](#) on how to serve an enforcement notice.

In addition, you should consider that serving a groundwater activity notice can involve a range of activities including field assessments and investigations, planned campaigns, as well as the serving of notice itself, enforcement and monitoring/reporting. Also, you must keep an audit trail of the decision-making process, and consideration given of using reports of contravention and submission to area enforcement panels.

You should also consider the activity within the context of our [Groundwater Protection: Policy and Practice \(GP3\)](#), especially Part 4 which summarises the legislation relevant to the management and protection of groundwater and sets out our associated and complementary policies.

Example:

Inside SPZ1 we will object to any new sewage effluent discharges to ground. However, we will consider the need to control any existing sewage discharges found within a SPZ1 on the basis of risk assessment using environmental permits. Where necessary we will use a prohibition notice to stop any unacceptable discharge. We will assess such discharges on an individual basis using a risk-based approach and applying site specific judgement.

Identify hazards

We identify an activity that poses a risk to groundwater in a number of ways, for example through:

- a permit (for a groundwater activity) review inspection;
- ad hoc site visits by Environment Management staff;
- an Integrated Inspection and/or Cross Compliance site visit;
- information received from external sources;
- information received from internal sources such as, exception reports for the groundwater quality monitoring network;
- a planned groundwater pollution prevention campaign;

Once identified, you must assess the activity that represents a risk to groundwater and take appropriate action.

Encourage voluntary measures

Although there is no requirement to do so, you should consult with the person on whom you're serving the notice, where appropriate. This is not a formal requirement and failure to consult will not invalidate the notice.

Encourage the operator to carry out voluntary measures in all cases, such as compliance with relevant codes of practice, and any additional measures that may be appropriate.

If voluntary action is not achieved or is not appropriate

Where voluntary action is not achieved or is not appropriate, decide whether or not to serve a **groundwater activity** notice. The Environment Management team leader, in consultation with the Groundwater and Contaminated Land (GWCL) team, should make the decision and seek legal advice, if necessary.

Investigate and assess the risks

If you've decided that a **groundwater activity** notice is the most appropriate means of controlling the activity, then a risk assessment needs to be undertaken to assess what, if any, further actions may be necessary.

Keep an audit trail

Enter particulars relating to the **groundwater activity** notice onto the CL2A database register. Enter particulars of **groundwater activity** notice on the National Enforcement Database (NEDS).

Record all actions relevant to serving a **groundwater activity** notice. Subject to national security and confidentiality claims, the public register should include details of the following:

- the full **groundwater activity** notice, and
 - any notice **withdrawing the groundwater activity notice**.
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How to draft a **groundwater activity** notice

Requirements of a **groundwater activity notice**

The generic steps and requirements of serving a **groundwater activity** notice are set out within the [enforcement notice handbook \(193_08\)](#).

Failure to comply with the notice

Non compliance

Failure to comply with a **groundwater activity** notice is an offence (see the [enforcement notice handbook \(193_08\)](#)). In addition, for notices served on agricultural activities, non-compliance must also be reported to the Rural Payments Agency / Rural Inspectorate for Wales as part of Cross Compliance.

Withdrawing a notice

If necessary, you can **withdraw a groundwater activity notice served under paragraph 9 of Schedule 22 which prohibits an activity, by serving a further notice on the recipient**.

Appeals

Legal requirements for appeals

Any person who is aggrieved by **the serving of a groundwater activity** notice may within 21 days appeal to the Secretary of State or the Welsh Ministers as appropriate. However, a **groundwater activity** notice must be complied with pending appeal unless the Secretary of State or the Welsh Ministers directs otherwise.

Carrying out a risk assessment

Approach

There are two levels of approach you can take to match the level of assessment to the needs of the problem under investigation.

Level 1 – simple assessment

A simple, generic source - pathway – receptor risk assessment is provided.

This basic level of assessment will be sufficient in most situations, including those where a rapid means of conducting a risk assessment is needed. By using this, you can make basic decisions in the field or within a short timescale.

Even for emergency situations, we need a minimum level of risk assessment and recording.

In many instances where a **groundwater activity** notice is considered, the risk may be from a **non-adherence** of recognised **Groundwater Protection** Codes; although our actions must be justified, a detailed assessment may not be appropriate in such cases.

Level 2 – detailed assessment

More detailed assessments will normally only be needed where significant costs will be imposed on the operator. These will be site specific, so the generic form is not suitable.

**Risk
assessment
principles**

The principles that apply to both levels are described below.

| Principle | Level 1 – simple assessment | Additional for Level 2 – detailed assessment |
|---|---|--|
| Source identification | <p>Identify the:</p> <p>presence of hazardous substances / non-hazardous pollutants: definition of the inherent environmental hazard posed by the properties of the substances present;</p> <p>scale of hazardous substances / non-hazardous pollutants: amount that potentially could be released, assuming management systems have failed;</p> <p>frequency: potential or actual frequency of releases (this may also be related to the throughput of materials).</p> | |
| Exposure assessment - definition of pathways | <p>This may be simple identification of the potential pathways to groundwater.</p> <p>Examples</p> <p>unsaturated zone flow from the surface;</p> <p>fissures;</p> <p>infiltration systems;</p> <p>boreholes.</p> | <p>If a more detailed appraisal is needed for a particular pathway, undertake a semi-quantitative or quantitative assessment of the pathway characteristics, primarily to determine time of travel and attenuation along the pathways.</p> |
| Exposure assessment – identification of receptors | <p>Identify:</p> <p>the type of controlled water that could be affected (fundamentally this is groundwater, but this may include springs through to borehole abstractions and baseflow to streams);</p> <p>locations of potential additional receptors (other than the groundwater itself).</p> | <p>At a more detailed assessment level, determine the characteristics of the receptors</p> <p>Examples</p> <p>water quality,</p> <p>flow,</p> <p>environmental objectives, etc.</p> |
| Exposure assessment - mitigating factors | <p>Measures may be relied upon to prevent pollution, including:</p> <p>infrastructure measures;</p> <p>operational measures/environmental management procedures (housekeeping, training, emergency procedures etc).</p> <p>We will also need a qualitative assessment of the reliability and security of these measures.</p> | |

| Principle | Level 1 – simple assessment | Additional for Level 2 – detailed assessment |
|-------------------------|---|--|
| Consequences of failure | <p>Identify:</p> <p>frequency of incidents;</p> <p>environmental impact. Relate this to the Common Incident Classification system (CICS) Categories 1-3, where appropriate, and extend to specific consideration of groundwater.</p> <p>Consider past incidents and their impact on the decision on whether to serve a Notice.</p> | |
| Timescale | <p>How long before an impact at the receptor would be likely?</p> <p>emergency – within hours or days. Notice procedures would probably be inappropriate and our emergency powers should be considered;</p> <p>urgent – within 1 month;</p> <p>moderately urgent – within 3 months;</p> <p>moderate priority– 3 to 12 months;</p> <p>low priority – over 12 months.</p> | |

Risk assessment supporting document

Supporting document [221_07_SD01](#) outlines a Level 1 qualitative risk assessment and cost benefit analysis for groundwater activity notices, and provides guidance on how to complete the assessment and analysis template.

Supporting documents

Notice templates

Templates of Notices are available under the appropriate activity type as attached links.

Notice templates

Groundwater activity [Prohibition notice \(193_08_SD135\)](#)

Groundwater activity [Prohibition notice - withdrawal notice \(193_08_SD142\)](#)

Groundwater activity notice – requiring an environmental permit (general) ([193_08_SD143](#))

NOTE: Use the above template for requiring an environmental permit (highway drain) and / or (domestic septic tank)

Related documents

Links

- [26_05 Applying the Compliance Classification Scheme to groundwater authorisations granted under the Groundwater Regulations 2009](#)
 - [114_06 Inspecting compliance with conditions of groundwater activity permits granted under the Environmental Permitting Regulations 2010](#)
 - [EAS/8001/1/1 Enforcement and prosecution policy](#)
 - [354_03 Guidance for the Enforcement and prosecution policy](#)
 - [193_08 Enforcement notice handbook: how to serve enforcement notices and notice templates](#)
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