

Environmental Permitting Regulations (England and Wales) 2010

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Regulatory Guidance Series, No RGN 2

Understanding the meaning of regulated facility

Version 2.0 April 2010

Record of changes

Version	Date	Change
1.0	March 2008	Issued for launch of Environmental Permitting Regulations.
Draft	January 2010	Incorporating mining waste, batteries and water discharge, groundwater and radioactive substances activities. Certain regulated facilities can now be part of others. Changes in layout and editing. Appendices moved into separate documents. Informal consultation.
2.0	April 2010	Minor amendments after considering comments. Further work required to clarify explanations for water activities.

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SUMMARY

This is high level regulatory guidance identifying the facilities we regulate under the Environmental Permitting Regulations.

Use the route map overleaf to help you navigate to the essential detail you need to read for your project.

The definition of 'regulated facility' is somewhat complex and explained in Section 2.

Facilities are grouped into 'classes':

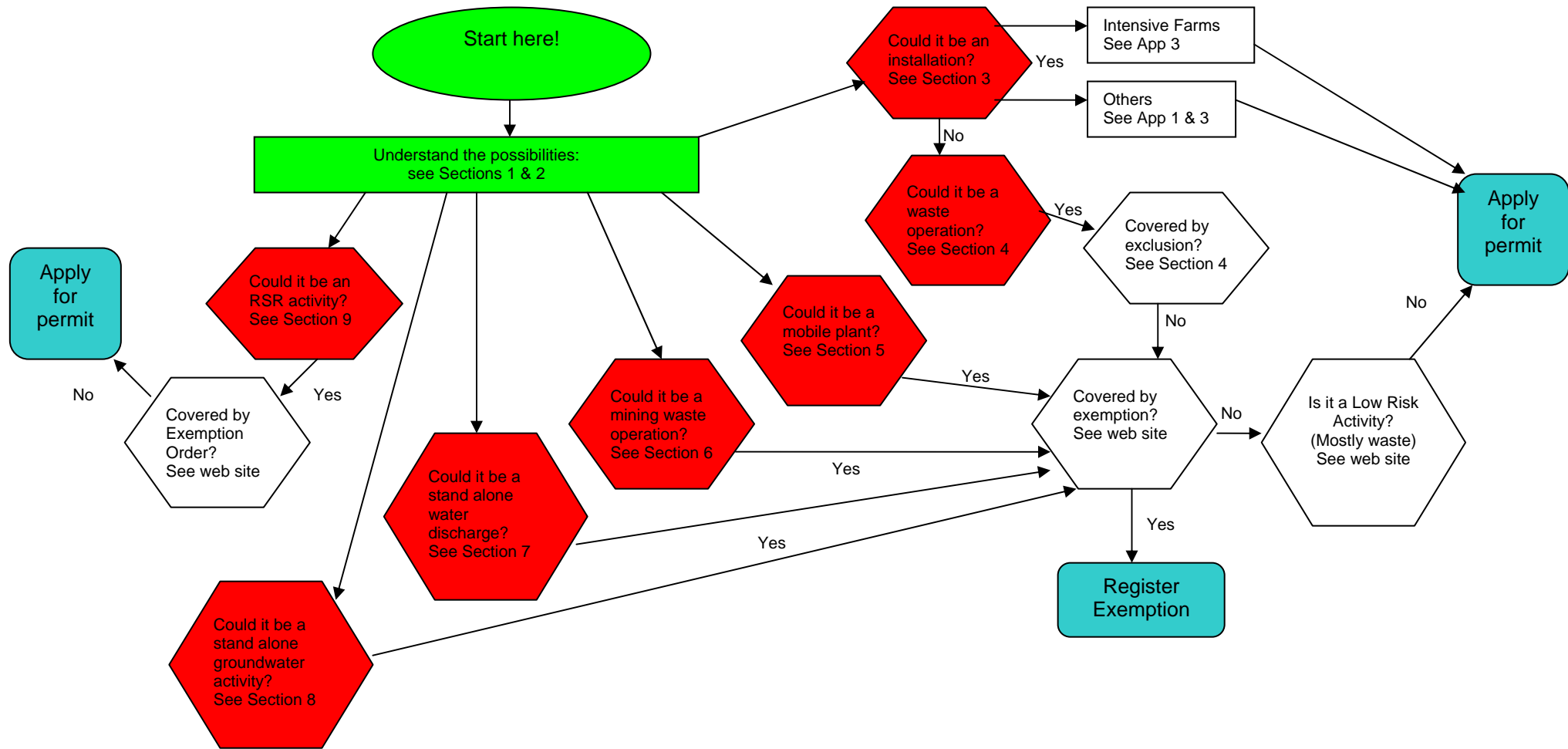
- 'installations' – generally these are facilities at which industrial, waste and intensive farming activities falling (mainly) under the Integrated Pollution Prevention and Control Directive are carried out. The activities are listed in Schedule 1 to the Regulations. You should check Box 1 in Section 3 to see if your project could meet one of the activity descriptions. An installation may involve more than just the listed activity.
- any other waste activity (recovery or disposal) will generally be a 'waste operation' if not defined as an installation or part of it (Section 4);
- 'mobile plant', i.e. a mobile version of the above (Section 5). The most common are mobile waste plant used in land reclamation.
- 'mining waste operations' managing extractive waste (Section 6);
- surface 'water discharge activities' - these can be stand alone or part of one of the above (Section 7);
- 'groundwater activities' - these may be stand alone or part of any of the other facilities (Section 8);
- 'radioactive substances activities' - these can never be part of another facility (Section 9).

A permit is required before any of these activities can be lawfully brought into operation, unless it is an existing permitted operation being brought under the Regulations with transitional arrangements. Permit conditions will depend on the type of regulated facility and the risks posed to the environment.

Note some specific waste and water activities are of sufficiently low risk that instead of being permitted they can be registered as an Exemption or even not require permission from us (generally waste activities which it is not in the public interest to regulate). We do not cover these here. Also, certain activities involving radioactive substances are covered by Exemption Orders, and these activities are not covered here.

If in doubt, operators should get our advice on detail, particularly before making an application for complex activities or several facilities on one permit.

Route map to whether you have a regulated facility and need to apply for a permit



Contents

1	Introduction	2
2	What is a regulated facility?	3
	Classes of regulated facility	3
	Regulated facilities which can be stand alone or part of others	3
	Regulated facility type	5
	Terms relevant to the charging scheme	5
	Exempt facilities and excluded waste operations are not regulated facilities	6
	Location of regulated facilities	6
3	Is it an installation?	7
	Defining the installation	8
	The common sense test	8
4	Is it a waste operation?	11
	Recovery and disposal	11
	Excluded waste operations	13
	Exempt waste operations	13
	Is it hazardous waste?	14
	Defining your regulated facility	14
	Relevant waste operations	14
5	Is it a waste or Part A mobile plant?	16
	Waste mobile plant	16
	Part A mobile plant	16
6.	Is it a mining waste operation	18
	Types of mining waste operation	19
	Scope of the mining waste operation	19

7 Is it a water discharge activity?	19
What is not a water discharge activity	19
Exemptions	20
Scope of the regulated facility	20
8 Is it a groundwater activity?	21
Exemptions	23
Scope of the regulated activity	23
9 Is it a radioactive substances activity?	24
What is radioactive material or radioactive waste	24
What is not a radioactive substances activity	25
Exemption Orders	25
Scope of the regulated activity	26

Appendices (separate documents)

- 1. Interpretation of Schedule 1 to the Regulations**
- 2. Defining your Schedule 1 installation**
- 3. Interpretation of an installation for the intensive farming sector**

1. Introduction

- 1.1 This note explains the meaning of ‘regulated facility’ under the Environmental Permitting (England and Wales) Regulations 2010 (‘the Regulations’).
- 1.2 It is designed to help our staff and customers decide if an activity is a regulated facility and therefore needs a permit (regulation 12).
- 1.3 The Department for the Environment, Food and Rural Affairs (Defra), the Department of Energy and Climate Change (DECC) and the Welsh Assembly Government (WAG) have issued guidance on what is a regulated facility in:
 - Core Environmental Permitting Guidance (‘the Core guidance’)
 - guidance on the IPPC Directive Part A(1) Installations and Part A(1) Mobile Plant (‘the Part A guidance’)
 - guidance on the Waste Framework Directive (‘the WFD guidance’)
 - guidance on the Landfill Directive (‘the DFD guidance’)
 - guidance on the Mining Waste Directive (‘the MWD guidance’)
 - guidance on the Waste Batteries and Accumulators Directive (‘the Batteries Directive guidance’)
 - guidance on Water Discharge Activities (‘WD guidance’);
 - [guidance on Groundwater Activities (‘GW guidance’)];
 - guidance on Radioactive Substances Activities (‘RS guidance’)
 - guidance on Exempt Waste Operations

As you work through our guidance, you may need to refer to the Regulations and the government guidance.

2. What is a regulated facility?

2.1 Section 3 of the Core guidance explains ‘regulated facility’. It is a collective term used to describe all the different kinds of operations that require a permit under the Regulations.

Classes of regulated facility

2.2 The following are ‘classes’ of regulated facility:

- an ‘installation’, which consists of one or more activities listed in Part 2 of Schedule 1 to the Regulations (see Box 1) and any other (unlisted) activities that are directly associated with it;
- a ‘waste operation’, including activities which are technically linked and could include the treatment and storage of waste batteries and accumulators. Note that some specific waste operations are ‘excluded’ and others are ‘exempt’. Details of these are provided in Section 4. They cannot be regulated facilities in themselves but could be part of an installation.
- a ‘mobile plant’ used to carry out a waste operation or a Part A or B activity listed in Part 2 of Schedule 1;
- a ‘mining waste operation’ is the management of extractive waste, excluding the activities in Article 2(2)(c) of the Mining Waste Directive. (A ‘mining waste facility’ is a type of mining waste operation defined in the Mining Waste Directive).
- a ‘water discharge activity’ (regulation 8(1)(f));
- a ‘groundwater activity’ (regulation 8(1)(g));
- a radioactive substances activity, including mobile radioactive apparatus (regulation 8(1)(e)).

When the Regulations say “regulated facilities/facility” they mean any or all of the above.

2.3 A ‘standard facility’ is where one of these facilities is regulated using standard rules published under regulation 26(5).

Regulated facilities which can be stand alone or part of others

2.4 Under the 2010 Regulations, the classes of regulated facility may overlap, i.e. a waste operation carried on as part of an installation will be a regulated facility even though it is part of another regulated facility. This is different to the 2007 Regulations, where the categories of regulated facility were all exclusive, i.e. a waste operation carried on as part of an installation was not a regulated facility.

2.5 The following classes of regulated facility may be stand alone or “carried on as part of the operation of” other classes. These are:

- waste operations;

- mining waste operations;
- water discharge activities;
- groundwater activities.

2.6 A regulated facility will be carried on as part of the operation of another when:

(a) **it is part of an installation or a mining waste operation** (because the definition of installation already encompasses equivalent tests and the definition of mining waste operation is so broad it already covers e.g water discharge activities related to the extractive waste),

(b) **it is essentially one activity that falls within the description of two classes of regulated facility at the same time**, so that either could be described as being carried on as part of the other (subject to the rules in regulation 8(4)). For example:

- a polluting water discharge which also contains radioactive material will be both a water discharge activity and a radioactive substances activity;
- a waste operation which might lead to a discharge to groundwater (e.g a landfill or a sheep dipping activity) will be both a waste operation and a groundwater activity;
- a polluting water discharge consisting of Directive waste (e.g a discharge which has escaped the sewerage system) will be both a water discharge activity and a waste operation.

In these cases (i.e (a) and (b)) above, the requirements of the relevant EPR Schedules will apply cumulatively. For example, a landfill will be subject to both the Waste Framework and Groundwater Directives, and if non-inert, the IPPC Directive as well.

(c) **it is a water discharge activity which results from the operation of a waste operation or a radioactive substances activity**. For example:

- a polluting water discharge piped out of a waste operation.

In this case, even though the water discharge activity is carried on as part of the operation of a waste operation or radioactive substances activity, it is not itself a waste operation or radioactive substances activity and the relevant EPR Schedules (e.g. 9 or 23) would not apply to it.

2.7 On the basis of Regulation 8(4), the definitions of the various classes of regulated facility themselves, and section 2.6 above:

The operation/activity below can be part of	an installation	a waste operation	a mining waste operation	a radioactive substances activity
waste operation	✓	X	X	X
mining waste operation	✓	X	X	X
water discharge activity	✓	✓	✓	✓
groundwater activity	✓	✓	✓	✓

Other combinations are not possible.

- 2.8 Some requirements of the Regulations apply to a class of regulated facility only when it is not carried on as part of any other class. The Regulations only include defined terms for this situation in the case of “stand alone water discharge and stand alone groundwater activities”. We therefore have adopted a term “stand alone waste operations”. We think it unlikely that a mining waste operation would be carried on as part of another class (e.g. an installation), so it does not seem necessary to apply a ‘stand alone’ term for these.

Regulated facility type

- 2.9 We also need a term for our application systems to describe any kind of “stand-alone regulated facility”. The suggested term is “regulated facility type / type of regulated facility”.

Terms relevant to the charging scheme (and not defined in Regulations)

- 2.10 Each waste operation is a separate regulated facility but it will be common for an operator to conduct a number of waste operations at the site. It is therefore useful to have a collective term, for charging purposes, for all these waste operations that will be in one permit.

Waste facility can be used as shorthand for a group of waste operations that are not part of an installation, but are carried on by the same operator on one site, as one overall operation, and under one permit (e.g. a transfer station).

Waste facility group can be used where more than one waste facility is carried on by the same operator at one site under one permit. Each waste facility group will be accorded an Opra banded profile under the Opra Scheme and will attract a tier 3 charge under the Charging Scheme.

Installation group can be used where more than one installation is carried on by the same operator at one site and under one permit. Each installation group will be accorded an Opra banded profile under the Opra Scheme and will attract a tier 3 charge under the Charging Scheme.

Installation activity can be used to cover either a Schedule 1 activity or a DAA carried on as part of an installation.

Mining waste facility group can be used where more than one mining waste facility is carried on by the same operator at one site under one permit. Each mining waste facility group will be accorded an Opra banded profile under the Opra scheme and will attract a tier 3 charge under the Charging Scheme.

Tier 2 facility is a term used in the Charging Scheme to describe those lower risk activities that are subject to fixed (as opposed to Opra based) charges. It includes standard facilities and also farming installations, DAA installations, Local Authority installations, Low Impact Installations and others – see Schedule 1 of the Charging Scheme.

Tier 3 facility is a term used in the Charging Scheme. It means a waste facility group, an installation group or a mining waste facility group.

Exempt facilities and excluded waste operations are not regulated facilities

- 2.10 An ‘exempt facility’ means an exempt waste operation, an exempt water discharge activity or an exempt groundwater activity. Each of these types of exempt facility are defined in the Regulations, eg as being a waste operation which meets certain requirements stated in Schedule 2. These requirements relate to the type of activity, whether it meets certain conditions and whether it has been registered. Only stand alone water discharge or groundwater activities can be exempt facilities. Exempt waste operations will normally be stand alone waste operations but a limited class of waste operations carried on at installations (those in Section 5.3 or 5.4 of Part 2 of Schedule 1) can also be exempt waste operations.
- 2.11 An ‘excluded waste operation’ means a stand alone waste operation that is the subject of a Food and Environmental Protection Act 1985 (FEPA) licence or which relates to controlled waste described in regulation 7(1) of the Controlled Waste Regulations 1992.

Location of regulated facilities

- 2.12 The Regulations apply to England and Wales, including the territorial waters adjacent to England and Wales. A regulated facility would require an environmental permit whether carried out at an onshore or (within the territorial waters) offshore location. However, note that wastes produced offshore and then brought onshore are subject to the Waste Framework Directive, not the Mining Waste Directive. The Regulations apply to activities carried out both underground and above ground. The only exceptions are in Section 1.1 Part A(1) of Schedule 1, where the interpretation note provides that certain offshore platforms are excluded, and Section 3.5 Part B, where underground activities are excluded in a similar way (see Part 2 of Appendix 1). The Regulations extend to offshore locations beyond territorial waters, in relation to radioactive substances activities carried out on oil and gas installations within the English Area of the UK continental shelf.

3. Is it an installation?

- 3.1 Part 2 of Schedule 1 to the Regulations lists activities which are the basis of installations. They include Part A(1) activities which we regulate and Part A(2) and Part B activities which are regulated by local authorities. We shall focus mainly on Part A(1) activities here. Part A activities are generally but not exclusively activities specified in the Integrated Pollution Prevention and Control (IPPC) Directive. A summary list is provided in Box 1.

Box 1: Summary list of installations (from Part 2 of Schedule 1)

Chapter 1: **Energy**: combustion, gasification, liquification and refining activities.

Chapter 2: **Metals**: ferrous metals, non-ferrous metals, surface treating metals and plastic materials.

Chapter 3: **Minerals**: production of cement and lime, activities involving asbestos, manufacture of glass and glassfibre, other minerals, ceramics.

Chapter 4: **Chemicals**: organic, inorganic, fertiliser production, plant health products and biocides, pharmaceutical production, explosives production, manufacturing involving carbon disulphide or ammonia, storage in bulk.

Chapter 5: **Waste management**: incineration and co-incineration of waste, landfills, other forms of disposal of waste, recovery of waste, production of fuel from waste.

Chapter 6: Other: **paper, pulp and board manufacture, carbon, tar and bitumen, coating activities, printing and textile treatments, dyestuffs, timber, rubber, food industries, intensive farming, Solvent Emission Directive.**

- 3.2 You should carefully review the list of activities in Part 2 of Schedule 1 to see if the project includes one or is to be carried out on the same site as one. (You need to consider the site as a whole at this stage, including operations by other organisations, in case your project is part of an installation as a Directly Associated Activity).
- 3.3 We give our interpretation of Schedule 1 to the Regulations in Appendix 1. Advice on generic terms is given in Part 1 of Appendix 1. Part 2 of the Appendix is an annotated reproduction of Part 2 of Schedule 1, giving interpretative advice. Our comments are in *italics*, to distinguish them from the text of the Regulations.
- 3.4 If you carry on a Schedule 1 listed activity then - provided it is not a Section 5.3 or 5.4 activity which is also an **exempt waste operation** under regulation 5 (see Section 4) - you should read on to define the scope of your installation. Activities which are exempt will not require an environmental permit if stand alone but could be part of an installation if directly associated with another activity in Schedule 1.

- 3.5 If your activity is not caught in Schedule 1 you should consider if it is a Directly Associated Activity because linked to an existing installation (perhaps with a different operator) and, if not, then whether it is another type of facility, eg a waste operation.

Defining the installation

- 3.6 Part A guidance defines an installation as:
- (i) a stationary technical unit (STU) where one or more activities listed in Part 2 of Schedule 1 to the Regulations are carried out; and
 - (ii) any other location on the same site where any other directly associated activities (DAA) are carried out which have a technical connection with the activities carried out in the STU and which could have an effect on pollution.
- 3.7 The EC Commission guidance on the IPPC Directive¹ includes advice on the interpretation of installation and related terms.
- 3.8 Part A guidance also states a DAA for a Solvent Emissions Directive (SED) activity is an activity which:
- (i) has a technical connection with the SED activity;
 - (ii) is carried out on the same site as the SED activity; and
 - (iii) could have an effect on any discharge of volatile organic compounds (VOC) into the environment.
- 3.9 Figure 1 provides an overview of the process of identifying the installation.
- 3.10 You should identify and list all the activities listed in Schedule 1. (Tip: drawing them as a block diagram brings clarity to this). Each listed activity will be the basis of an STU, unless successive steps in one integrated industrial activity, when they become one STU. An STU also includes all the basic things (for example utilities) needed for it to operate, even for a brief period.
- 3.11 You then need to use the Core guidance 'Limb tests' to identify DAA. Our Appendix 2 should help you define the STU and DAA. It does not matter who operates the various different activities at an installation – it is still one installation and all the operators need a permit. (Appendix 3 provides specific help for intensive farming).

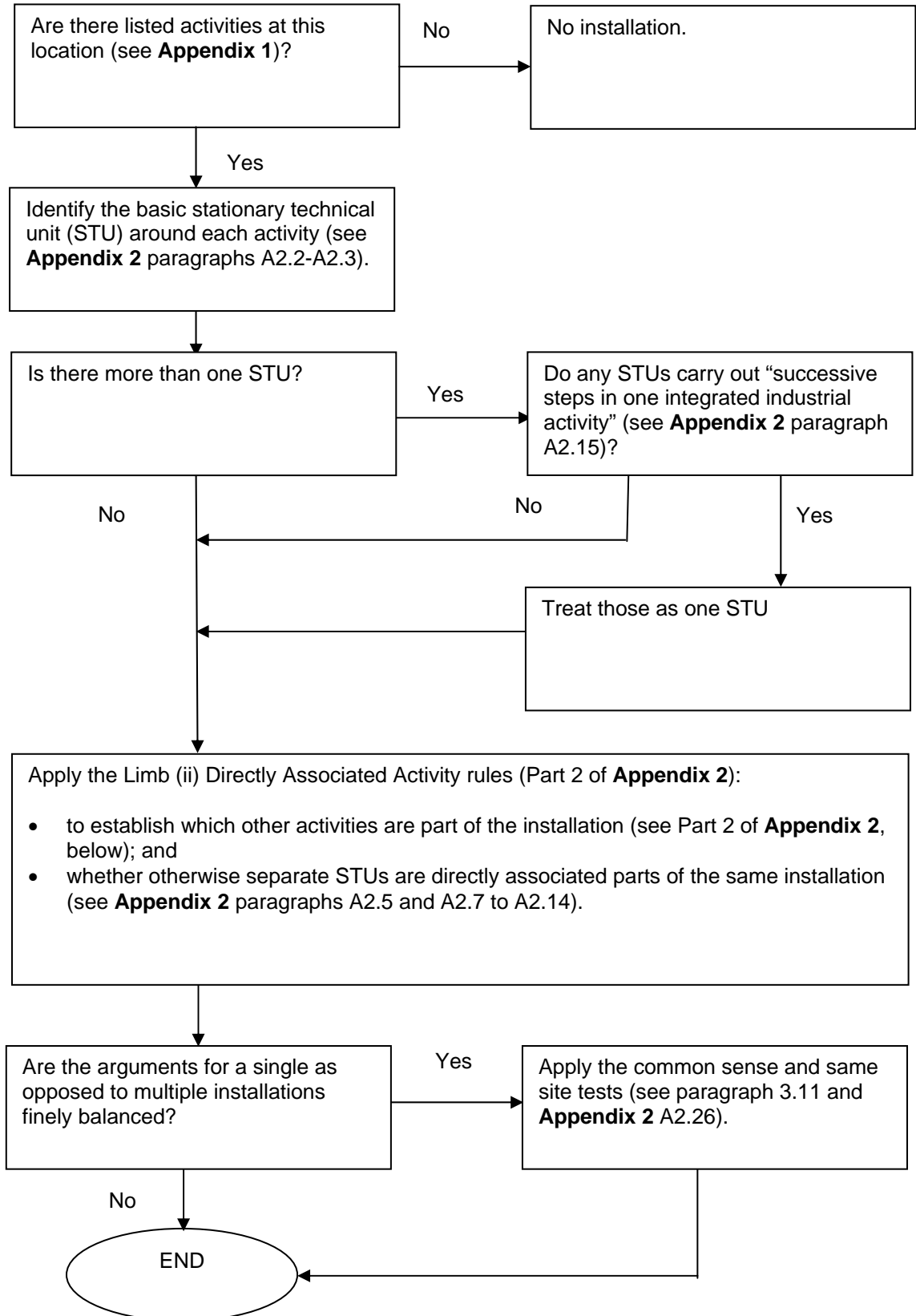
The common sense test

- 3.12 Normally, the composition of the installation will be clear. The 'common sense test' should help if it is unclear whether you have one or more installations because the evidence is finely balanced.

¹ Available at: http://ec.europa.eu/environment/ippc/general_guidance.htm

- 3.13 First, consider all the STU and their DAA separately and then consider them as one unit. If there are issues that can be addressed through permit conditions when they are treated as one unit that cannot be addressed when they are treated separately then it is normally appropriate to consider them as one installation.
- 3.14 Secondly, test the proposed boundary of the installation. It should draw in all plant and machinery carrying out Schedule 1 activities together with activities that are clearly connected to them and can reasonably considered to have the potential to affect emissions.
- 3.15 Note that common utility supplies at multi-activity installations such as air, water, nitrogen and steam ring mains do not normally have the effect of joining STUs together to form one installation.
- 3.16 The common sense test must be applied at the end of the assessment of the number and breadth of the installations - and then only when it is truly difficult to decide if there is one installation or more using the rules of association listed in Appendix 2.
- 3.17 The common sense test must not be used to divide an installation which has two operators, just because there is a perception that regulation of the two parts of the installation might be simpler if they are kept entirely separate.

Figure 1 - Identifying the installation



4. Is it a waste operation?

- 4.1 This concerns waste operations not covered in either Schedule 1 (installations) or Schedule 20 (mining waste operations) and would include activities involving the treatment or storage of waste batteries or accumulators (Schedule 19). It does not relate to radioactive wastes: see Section 9 of this guidance. Figure 2 provides an overview of the decision process for waste operations.
- 4.2 Regulation 2 states that a waste operation is recovery or disposal of waste. Waste is defined (except where otherwise defined) as meaning anything that is waste in the Waste Framework Directive (WFD) and not excluded by its Article 2(1)². Each individual operation with an R or D number is a waste operation and each is a regulated facility.
- 4.3 The WFD defines waste as “any substance or object...which the holder discards or intends or is required to discard” (Article 1(a) and para 2.1 of WFD guidance). The definition of waste is complex but key here and Government has published guidance³.
- 4.4 Note that when the Regulations use the term “waste operation” this includes waste operations which are stand alone (i.e. including those which formerly would have been under waste management licensing (WML)) or which are carried on as part of the operation of another type of regulated facility, eg an installation.

Recovery and disposal

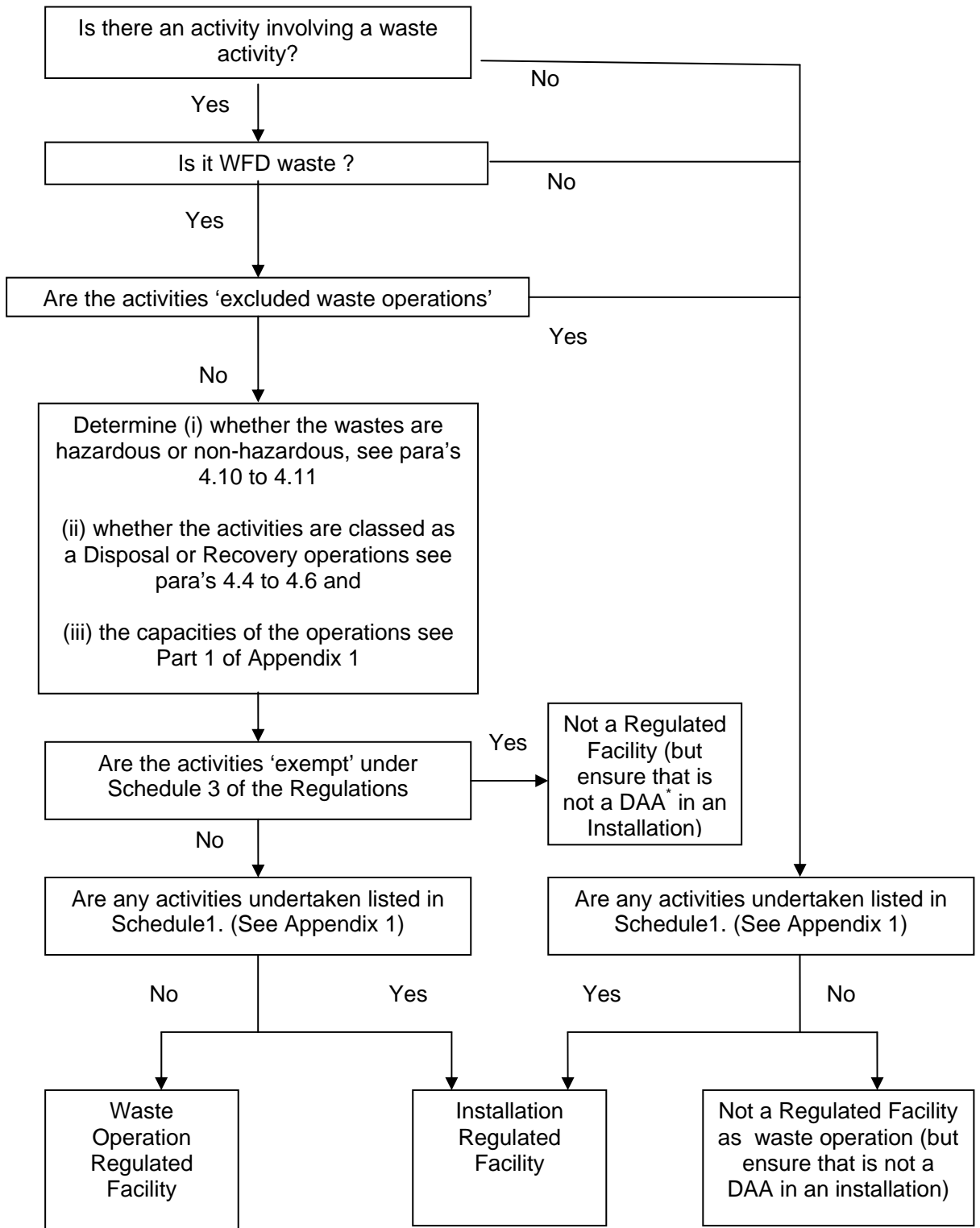
- 4.5 The WFD guidance explains the difference between a recovery and a disposal operation in paragraphs 3.5 to 3.17 and we provide our own guidance⁴. The permit will make different requirements according to whether the activity is a recovery or disposal operation
- 4.6 Disposal and recovery operations are listed in Annexes IIA and B of the WFD respectively.
- 4.7 The distinction between disposal and recovery is important for determining whether the operation can be an exempt waste operation or whether it is a listed activity in Schedule 1 to the Regulations.

² Article 2(1) excludes gaseous effluents emitted into the atmosphere and the following where they are already covered by other legislation: radioactive waste; waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries; animal carcasses and the following agricultural waste: faecal matter and other natural, non dangerous substances used in farming; waste waters, with the exception of waste in liquid form; and decommissioned explosives.

³ www.defra.gov.uk/environment/waste/topics/pdf/ecj-definition.pdf

⁴ Guidance to determine whether a waste activity is a disposal or recovery operation (303_05)

Figure 2 – Waste operation overview



* DAA = Directly Associated Activity: see para 3.5

Excluded waste operations

- 4.8 Core guidance (para's 3.14-15) explains that some waste operations are not regulated facilities in themselves because they are more appropriately regulated under other regimes. Operations under the following are excluded:
- Food and Environmental Protection Act 1985;
 - the disposal or recovery of sludges which are not to be treated as industrial or commercial waste under Regulation 7(1) of the Controlled Waste Regulations 1992.

However, they could form part of an installation if found to be a directly associated activity.

Exempt waste operations

- 4.9 An exempt waste operation is defined in regulation 5(1) of the Regulations. Para's 2.17 to 2.22 of the government's Exempt Waste Operations guidance explains them.
- 4.10 The first part of the regulation 5(1) definition provides that an exempt waste operation means a waste operation that is (a) not carried on at installation or an activity that falls within section 5.3 or 5.4 of Part 2 of Schedule 1 and is carried on at an installation and (b) that meets the general requirements for exempt facilities at paragraph 3(1) of Schedule 2.
- 4.11 Waste operations carried on at a Part A or Part B installation, including any directly associated activities, will be covered by the environmental permit for that installation. In such a case, the waste operation may not be registered as an exempt waste operation. The exceptions to this is where the waste operation is an activity falling within section 5.3 or 5.4 of Part 2 of Schedule 1 or when the exempt waste operation is carried out by another operator. In such cases, the waste operation is not required to be covered by the permit of that installation and it may be an exempt waste operation.
- 4.12 The second part of the definition provides that, in order for a waste operation to be an exempt waste operation, the operation must meet the requirements in paragraph 3(1) of Schedule 2. These requirements are as follows:
- the waste operation must fall within a description in Part 1 of Schedule 3;
 - the waste operation must satisfy the relevant general and specific conditions specified in Part 1 of Schedule 3. These are specified in the same paragraph as the description for the operation;
 - the waste operation must be registered;
 - an establishment or undertaking must be registered in relation to the operation (but this does not apply where a waste operation is carried on by a person who is not an establishment or undertaking e.g. householder); and

- the type and quantity of waste submitted to the waste operation and the method of disposal or recovery must be consistent with the need to attain the objectives in Article 4 of the Waste Framework Directive.

Is it hazardous waste?

- 4.13 To decide whether certain activities are ‘exempt’ or fall within Schedule 1 of the Regulations, you need to know whether they involve hazardous or non-hazardous waste.
- 4.14 Hazardous waste is defined under Regulation 2 by referring to Section 5.1 of Part 2 of Schedule 1 (for these incineration activities) and otherwise by reference to the Hazardous Waste Regulations⁵. Thus, hazardous waste and non-hazardous waste generally have the same meaning as used for consignment purposes, except for incineration. We provide guidance on coding and classification of waste⁶.

Defining your regulated facility

- 4.15 A site may often comprise a number of Waste Framework Directive Annex II recovery or disposal (R or D) operations. Each will be a waste operation regulated facility provided that it is not exempt or excluded. It could also be a regulated facility but forming part of an installation.
- 4.16 The term ‘waste facility’ can be used as shorthand for a group of waste operations (not carried out at an installation) which are carried on, by the same operator on one site, as one overall operation (e.g. a transfer station). We have used this term in our EP Charging Scheme and Opra Scheme.
- 4.17 Each waste facility can include activities that are associated with its operation. Examples would be storage of raw materials, chemicals, reagents, fuels etc. If there is any doubt whether a non-waste activity is part of the waste facility, the logic behind Directly Associated Activities set out in Appendix 2 can provide a steer.

Relevant waste operations

- 4.18 The Regulations use this term to cover all stand alone waste operations (including former WML operations) plus those waste operations carried out as or within installations that used to be categorised as Specified Waste Management Activities under Pollution Prevention and Control (PPC). This is mainly those in Sections 5.2 to 5.4 of Part 2 of Schedule 1 to the Regulations. It does not include Section 5.1 incinerators or ancillary waste operations such as the use of waste-derived fuel. The Regulations require planning permission is obtained before we can issue a permit for them. And the Government uses the

⁵ Regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005 in England and of the Hazardous Waste (Wales) Regulations 2005 in Wales.

⁶ Hazardous Waste: Interpretation of the definition and classification of hazardous waste (2nd Edition v 2.1).

Core Guidance to require operators of relevant waste operations to meet technical competence requirements of one of their approved schemes.

5. Is it a waste or Part A mobile plant?

5.1 Mobile plant is defined in regulation 2 as meaning any of the following —

- a) Part A mobile plant,
- b) Part B mobile plant
- c) waste mobile plant.

Mobile radioactive apparatus is covered in Section 9 of this guidance.

5.2 The definition of mobile plant is explained in para's 3.18 to 3.26 of the Core guidance.

Waste mobile plant

5.3 This is defined in regulation 2 as plant that is —

- a) designed to move or be moved whether on roads or other land,
- b) used to carry on a waste operation, and
- c) not an installation, Part A mobile plant or Part B mobile plant.

If it is not self evidently mobile, you should consider the following factors:

- the nature of the activities
- the extent of site engineering/fixings
- the mobility of the equipment
- the intended duration of the operation.

Part A mobile plant

5.4 Paragraph 1 of Part 1 of Schedule 1 defines Part A mobile plant as Part A(1) or Part A(2) mobile plant and the former as meaning plant, other than an installation, that is used to carry on a Part A(1) activity alone or with Part A(2) and/or a Part B activity (the carrying on of the Part A(1) activity taking precedence over the other classifications of activity).

5.5 EC Commission guidance⁷ is referenced in the Core guidance and considers the meaning of “stationary” in the context of stationary technical unit. The Commission guidance considers the question of whether plant that is designed to be moved periodically but which in practice operates from the same location for some time, should be considered to be stationary. Suggested tests in the Commission guidance include: the length of time the plant is expected to or does in fact, remain stationary; the nature of the activities and their

⁷ http://ec.europa.eu/environment/ippc/pdf/installation_guidance.pdf

environmental impact; and the degree of physical installation involved in moving and establishing the plant.

- 5.6 The precise duration of plant being located at a particular site that could lead it to be considered stationary would need to be determined according to the facts of individual cases. It should be concluded that if the plant will operate at a particular location for a significant period of time, then it should be considered stationary and permitted accordingly.
- 5.7 The environmental impact is relevant in particular to the protection of land. There is no requirement to apply to surrender an environmental permit for a mobile plant, it is only necessary for the operator to notify us. Where the activities have the potential to impact on land quality and the plant will be operated at a single location for a prolonged period of time, environmental protection is best served by permitting the plant in a way that requires a demonstration that the land is left in a satisfactory state.
- 5.8 Although theoretically mobile, some plant may require significant engineering work to move. So, for example, does the plant just arrive on its own wheels or be transported as a single unit, or does it need a significant degree of engineering and construction to establish it as ready for use at a particular location? A plant that requires significant effort to move and which operates at one site for a prolonged period of time should not be considered mobile.
- 5.9 A stationary technical unit forms the basis of an installation and must be, by definition, stationary.
- 5.10 In light of these tests, we expect few mobile plant carrying out a Part A activity.
- 5.11 The Commission guidance also concludes that whilst the term stationary means that the installation as a whole should be stationary (in the sense described above), the installation may still include plant or equipment which is mobile. For example, if a directly associated activity is carried out in mobile plant, it must still be regulated as part of the installation.

6. Is it a mining waste operation?

- 6.1 The Mining Waste Directive (MWD) covers the management of “extractive waste”. Where extractive waste is the waste arising from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries (Article 2(1)).
- 6.2 The definition of waste is set out in Article 1(a) WFD and therefore the European Court of Justice (ECJ) cases on definition of waste are pertinent. In particular *Palin Granit* and *Avesta Polarit*. See Annex 3 of the MWD guidance for discussion of how the definition of waste bears on interpretation of the directive. We have to take into account the possibility that some of the material that has previously been considered to be extractive waste may, after an application of the cases, prove not to be waste. We are liaising with representatives of the CBI Minerals Group on the issue and possible implications.
- 6.3 A mining waste operation is defined in Schedule 20, para 2(1) as the management of extractive waste, whether or not involving a mining waste facility, but does not include the activities in Article 2(2)(c) of the MWD.
- 6.4 A mining waste facility is defined in Schedule 20, para 2(1) as a “waste facility” as defined in Article 3(15) of the MWD but excluding those facilities mentioned in Article 24(2) or in the first paragraph of Article 24(4) of that Directive;
- 6.5 According to Article 3(15) of MWD, ‘waste facility’ means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension, for the following time periods:
- no time period for Category A waste facilities⁸ and facilities for waste characterised as hazardous in the waste management plan;
 - a period of more than 6 months for facilities for hazardous waste generated unexpectedly;
 - a period of more than 1 year for facilities for non-hazardous non-inert waste;
 - a period of more than 3 years for facilities for unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste.

Article 3(15) goes on to deem these facilities to include dams to contain, retain, confine or otherwise support such a facility; and heaps and ponds, but excluding voids into which waste is replaced after extraction of the mineral, for rehabilitation and construction purposes.

⁸ A mining waste facility will be classified as Category A where: a failure or incorrect operation at the mining waste facility has the potential (based on a risk assessment) to cause a major accident; or the mining waste facility contains hazardous waste above a certain threshold; or the mining waste facility contains dangerous substances above a certain threshold (see MWD guidance para. 2.14).

6.6 The following are excluded from MWD and requiring an environmental permit for that purpose :

- in Article 24(2), those waste facilities closed by 1 May 2008
- in Article 24(4), those waste facilities which stopped accepting waste before 1 May 2006 and are completing the closure procedures in accordance with the applicable Community or national legislation or programmes approved by us as the competent authority, and will be effectively closed by 31 December 2010.
- Article 2.2 excludes:
 - waste not directly arising from prospecting, extraction and treatment of mineral resources
 - waste arising from offshore prospecting, extraction and treatment of mineral resources

6.7 The injection of water and reinjection of pumped groundwater, where this is covered by Article 11(3)(j) of the Water Framework Directive, is excluded from the MWD but will require an environmental permit as a groundwater activity.

6.8 Government has decided that we should be the competent authority under the MWD - except for the provisions that relate to the external emergency plan - and that the mechanism for approval of the waste management plan required under MWD shall be via an environmental permit. This is achieved through Schedule 20 of the Regulations.

Types of mining waste operation

6.9 Para 1 of Schedule 20 applies the requirements of the Schedule to every mining waste operation and Section 3 of the MWD guidance explains how a permit is required for them all. Mining waste operations that include one or more mining waste facilities are an important subset and may be required to meet the specific permitting requirements of MWD Article 7. See the MWD guidance for detail.

Scope of the mining waste operation

6.10 The regulated facility will include all areas used for management of extractive waste arising from a specific mining operation and active since May 2008. Typically this will involve a number of discrete areas, joined by some routinely used linkage such as roads, railways, pipelines or watercourses. For example, the waste may be placed into lagoons to dewater, used to infill voids as they occur, accumulated in spoil heaps, or used in construction of lagoon bunds/dams, or of noise or amenity bunds. Hence, the plan of the regulated facility may have a leopard spot appearance and be spread across a wide geographical area. In deciding whether a remote area many miles away is part of the one facility we will weigh the nature and technical significance of the connections against the distance. (See section 2.5).

- 6.11 Our aim is to regulate the facility as a whole, to get the required outcomes. Generally, this would be best served by having a single permit for a regulated facility that has one operator.
- 6.12 A mining waste operation regulated facility may have discharges to surface or groundwater. As regulated facilities they may be part of the mining waste operation regulated facility or stand alone, depending on the tests in section 2.6.
- 6.13 In some circumstances, a landfill installation may be on the same site as a mining waste operation and take its waste. The mining waste operation would generally not be part of the installation because the installation is dependent on the mining waste operation and not vice versa. Though they could be regulated under the same permit if they had the same operator.

7. Is it a water discharge activity?

7.1 Water discharge activities are covered in Schedule 21 of the Regulations. Para 3.30 of Core Guidance summarises a water discharge activity as:

- the discharge or entry to certain waters of any poisonous, noxious or polluting matter, waste matter, trade effluent or sewage effluent
- the discharge from land through a pipe into the sea of any trade effluent or sewage effluent
- the removal of certain deposits from the bed of inland freshwaters
- the cutting or uprooting of a substantial amount of vegetation in inland freshwaters and failure to take reasonable steps to remove the vegetation from the waters; or
- the operation of a highway drain or a discharge of trade or sewage effluent into lakes or ponds which are not inland freshwaters where a notice in relation to the activity has taken effect.

7.2 As discussed in Section 2, a water discharge activity may be part of another type of regulated facility, (i.e. an installation, waste or mining waste operation), in which case the permit will cover all the water discharge activity requirements. Some requirements in the Regulations only apply to stand alone water discharge activities.

7.3 Typically a stand alone water discharge activity will be a water company sewage discharge subject to the Urban Waste Water Treatment Regulations requirements, or a private sewage discharge or a trade effluent discharge that is not from an installation, waste or mining waste operation.

What is not a water discharge activity

7.4 Water discharge activities do not include (para 3.8 of water discharge guidance):

- discharges made or authorised by any of the following 'prescribed statutory provisions':
 - Part 4 of the Marine and Coastal Access Act 2009 (Marine Licensing)¹⁵ and Part II of the Food and Environmental Protection Act 1985;
 - Section 163 of the Water Resources Act 1991 (discharges for works purposes by the Environment Agency);
 - Sections 165 of the Water Industry Act 1991 (discharges for certain works purposes by water undertakers);
 - any local statutory provision that expressly confers a power to discharge effluent to water.
- discharge of uncontaminated surface water;
- Discharge of trade or sewage effluent from a vessel (for example, a ship);

- discharge from a highway drain, unless a highway drain notice has been served and has taken effect; and
- discharge into the waters of a lake or pond that are not 'inland freshwaters', unless a notice has been served and has taken effect

Exemptions

7.5 Certain types of stand alone water discharge activities are exempt. These are listed in Part 2 of Schedule 3 of the Regulations and para's 3.12-16 of the WD Guidance. They are:

- a discharge from a small sewage treatment plant, i.e. discharging five cubic metres per day or less of sewage effluent to inland freshwaters, coastal waters or relevant territorial waters,
- cutting or uprooting of vegetation in or near inland freshwaters.

These activities should be registered.

Scope of the regulated activity

7.6 The scope of a stand alone water discharge activity includes all the equipment essential to undertake that activity and the site is the footprint of that equipment, including the discharge pipe and outlet. In many cases, the discharge to water will be made outside the boundary of the treatment site. The site includes control equipment, control rooms and utility areas serving them. Whilst the permit will relate to the whole water discharge activity, the focus of regulatory attention will remain on the quality of the effluent and the proper operation of the equipment provided. The permit will only exceptionally specify a particular piece of equipment.

8. Is it a groundwater activity?

8.1 Groundwater activities are covered in Schedule 22 of the Regulations. The schedule incorporates the requirements of the Groundwater (England and Wales) Regulations 2009 SI 2902. Paragraph 6 of Schedule 22 says for the purposes of implementing the Groundwater Directive, Water Framework Directive and Groundwater Daughter Directive we must, in exercising our relevant functions, take all necessary measures -

- (a) to prevent the input of any hazardous substance into groundwater; and
- (b) to limit the input of non-hazardous pollutants into groundwater so as to ensure such inputs do not cause pollution of groundwater

8.2 Para 3.35 of the Core Guidance summarises a groundwater activity as:

- the discharge of a pollutant that results in or might lead to a direct or indirect input to groundwater;
- any other discharge that might lead to a direct or indirect input of a pollutant to groundwater;
- an activity in respect of which a notice under Schedule 22 has taken effect;
- an activity that might lead to a discharge mentioned above where that activity is carried on as part of the operation of a regulated facility of another class.

You should refer to the Interpretation Section of Schedule 22, for detailed definitions.

8.3 Schedule 22, para 3(3) excludes the following from the definition of a groundwater activity (and therefore needing a permit) if the input of the pollutant:

- (a) is the consequence of an accident or exceptional circumstances of natural cause that could not reasonably have been foreseen, avoided or mitigated;
- (b) is or would be of a quantity and concentration so small as to obviate any present or future danger of deterioration in the quality of the receiving groundwater; or
- (c) is or would be incapable, for technical reasons, of being prevented or limited without using—
 - (i) measures that would increase risks to human health or to the quality of the environment as a whole, or
 - (ii) disproportionately costly measures to remove quantities of pollutants from, or otherwise control their percolation in, contaminated ground or subsoil.

The regulator must keep a record of all determinations under para 3(3).

- 8.4 A pollutant is any substance liable to cause pollution, including hazardous and non-hazardous substances.

A hazardous substance is any substance or group of substances that are toxic, persistent and liable to bio-accumulate and other substances or groups of substances which give rise to an equivalent level of concern. The Joint Agencies Groundwater Directive Advisory Group is responsible for maintaining a list of hazardous substances for the UK. An indicative list can be found in Box 2 but you should refer to our web site for a complete list. A non-hazardous pollutant is any pollutant other than a hazardous substance.

Box 2: Indicative list of hazardous substances listed in para 4 of Schedule 22.

The following when they are toxic, persistent and liable to bio-accumulate:

- (a) organohalogen compounds and substances which may form such compounds in the aquatic environment;
- (b) organophosphorous compounds;
- (c) organotin compounds;
- (d) substances and preparations, or the breakdown products of such, which have been proved to possess carcinogenic or mutagenic properties or properties which may affect steroidogenic, thyroid, reproduction or other endocrine-related functions in or via the aquatic environment;
- (e) persistent hydrocarbons and persistent and bioaccumulable organic toxic substances;
- (f) cyanides;
- (g) metals (in particular cadmium and mercury) and their compounds;
- (h) arsenic and its compounds;
- (i) biocides and plant protection products.

- 8.5 Para 8 of Schedule 22 lists inputs to groundwater which can be permitted provided they do not compromise the groundwater objectives in Article 4 of the Water Framework Directive. These are reproduced in Box 3.

- 8.6 A groundwater activity may be integral to an installation, waste or mining waste operation or radioactive substances activity. Some requirements in the Regulations only apply to stand alone groundwater activities.

Box 3: Inputs to groundwater discharges that may be permitted (from Schedule 22, para 8)

- (a) the injection of water containing substances resulting from the operations for exploration and extraction of hydrocarbons or mining activities, and injection of water for technical reasons, into geological formations from which hydrocarbons or other substances have been extracted or into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that the injection does not contain substances other than those resulting from the above operations,
- (b) the reinjection of pumped groundwater from mines and quarries or associated with the construction or maintenance of civil engineering works,
- (c) the injection of natural gas or liquefied petroleum gas for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes,
- (d) the injection of natural gas or liquefied petroleum gas for storage purposes into other geological formations where there is an overriding need for security of gas supply, and where the injection is such as to prevent any present or future danger of deterioration in the quality of any receiving groundwater,
- (e) construction, civil engineering and building works and similar activities on or in the ground which come into contact with groundwater,
- (f) discharges of small quantities of substances for scientific purposes for characterisation, protection or remediation of bodies of water limited to the amount strictly necessary for the purposes concerned,
- (g) interventions in surface waters for the purposes, amongst others, of mitigating the effects of floods and droughts, and for the management of waters and waterways,
- (h) the artificial recharge or augmentation of a body of groundwater for the purposes of groundwater management,
- (i) reinjection into the same aquifer of water used for geothermal purposes.

Exemptions

8.7 Schedule 3, Part 3 of the Regulations contain two specific exemptions from the need for permits:

- discharge of small quantities of certain pollutants for scientific purposes;
- under specified circumstances, discharge of 2 m³ or less per day of sewage effluent that results in input into groundwater.

These activities should be registered.

Scope of the regulated facility

8.8 The regulated facility is the footprint of the equipment required for the discharge activity. For example: a field where waste pesticides are spread; or the treatment plant, discharge pipe and infiltration system to ground for sewage effluent from a sewage treatment works.

9. Is it a radioactive substances activity?

9.1 Radioactive substances activities are defined in Schedule 23, Part 2, para 5 of the Regulations. In summary, these are:

- keeping or using radioactive material on premises used for the purposes of an undertaking;
- accumulating or disposing of radioactive waste on or from premises used for the purposes of an undertaking;
- receiving radioactive waste, in the course of carrying on an undertaking, for the purpose of disposing of that waste;
- keeping or using mobile radioactive apparatus for specified purposes; or
- carrying out specified works in relation to the development of a facility for the underground disposal of solid radioactive waste. We shall develop separate guidance for this special case, and the rest of this Section does not apply to it.

These are carried over from the Radioactive Substances Act 1993, except for the last category, which is aimed primarily at development of a geological disposal facility.

9.2 Permits for radioactive substances activities are intended, amongst other things, to fulfil part of the Basic Safety Standards Directive (BSSD) requirements under Articles 3(1), 4(1) and 4(2) relating to reporting and authorisation, and also Council Directive 2003/122/EURATOM on the control of high-activity sealed sources and orphan sources (HASS).

What is radioactive material or radioactive waste

9.3 The definitions of radioactive material and radioactive waste are carried over from the Radioactive Substances Act 1993.

9.4 Radioactive material is defined in Schedule 23, Part 2, para 2. It includes:

- material containing specified naturally occurring radionuclides above specified concentration thresholds;
- material containing artificial radionuclides at any concentration, unless the radioactivity is present as a consequence of the disposal of radioactive waste or by way of contamination in the course of the application of a process to some other substance.

Where a material contains only naturally occurring radionuclides that are not specified in the Regulations, or specified radionuclides at concentrations below the specified thresholds, then it is not radioactive material for the purpose of the Regulations (and thus its keeping or use is not a radioactive substances activity).

9.5 Radioactive waste is defined to include waste which consists wholly or partly of:

- a substance that, if it were not waste, would be radioactive material;
- a substance that has been contaminated in the course of the production, keeping or use of radioactive material, or by contact with or proximity to other radioactive waste.

What is not a radioactive substances activity

9.6 A number of situations are excluded from the Regulations or from the definition of a radioactive substances activity:

- The keeping or use of radioactive material, or the receipt, accumulation or disposal of radioactive waste, on domestic premises is not a radioactive substances activity. This is because the premises are not 'used for the purposes of an undertaking'. An 'undertaking' includes any trade, business or profession.
- The keeping or use of radioactive material by a licensee of a nuclear site on any premises situated on that site is not a radioactive substances activity (Schedule 23, Part 2, para 6(1)).
- The accumulation of radioactive waste on any premises situated on a nuclear site is not a radioactive substances activity (Schedule 23, Part 2, para 6(3)). This applies whether the accumulation is by the licensee or by a tenant on a nuclear site.
- A radioactive substances activity is not carried out where the only radioactive material on a premises is kept or used in or on a railway vehicle, road vehicle, vessel or aircraft and either:
 - the vehicle, vessel or aircraft is on the premises in the course of a journey; or
 - the material is used in propelling the vessel or is kept in or on the vessel for use in propelling it.(Schedule 23, Part 2, para 7).
- Premises occupied on behalf of the Crown for naval, military or air force purposes, or for the purposes of the Ministry of Defence, or occupied by or for the purposes of a visiting force are not subject to the Regulations (Schedule 4, para 5). However, the Ministry of Defence follows the requirements of the Regulations under a voluntary arrangement.

Exemption Orders

9.7 Exemption Orders were in force under the Radioactive Substances Act 1993 and remain in force under the Regulations. They are published as individual Statutory Instruments. A person taking advantage of an Exemption Order must comply with the conditions set out in the Order. It is expected that these Exemption Orders will soon be replaced by new exemption arrangements to be made by amending the Regulations.

- 9.8 A radioactive substances activity to which an Exemption Order applies is still a regulated facility. We may inspect such an activity to check compliance with the conditions of the Order .

Scope of the regulated facility

- 9.9 The site of the regulated facility is all the land and buildings (including any place underground and any land covered by water) within the boundary of the premises where the radioactive substance activity is carried out, together with any systems used for the disposal of radioactive waste up to the point of discharge to the environment or where they become the responsibility of another, for example pipelines to sea or controlled waters, or to a public sewer.